

**TITLE 3  
OFFENSES,  
INFRACTIONS, AND  
MOTOR VEHICLES**

## TITLE 3 OFFENSES, INFRACTIONS, AND MOTOR VEHICLES

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# **CHAPTER 3.1**

# **CRIMINAL OFFENSES**

## CHAPTER 3.1 CRIMINAL OFFENSES

### OFFENSES AGAINST THE PERSON

#### 3.1.1 Kidnapping and Custodial Interference

A person commits the crime of Custodial Interference if the person willfully takes away or detains another person against his will so as to interfere substantially with his liberty, or knowingly and without the consent of the lawful custodian shall take away, entice, or detain a child from the custody of his lawful custodian when he lacks lawful permission or authority to do so, shall be guilty of Custodial Interference. Custodial Interference is a Class A Offense.

A person commits the crime of kidnapping if the person takes the person from one place to another; or secretly confines the person in a place where the person is not likely to be found with any of the following purposes:

- (a) To compel any person to pay or deliver money or property as ransom; or
- (b) To hold the victim as a shield or hostage; or
- (c) To cause physical injury to the victim; or
- (d) To terrorize the victim or another person.

Kidnapping is a Class A offense.

#### 3.1.2 Menacing

A person commits the crime of menacing if by word or conduct the person intentionally attempts to place another person in fear of imminent serious physical injury. Menacing is a Class A offense.

#### 3.1.3 Assault

(a) A person commits the crime of assault in the third degree if the person:

- (1) Intentionally, knowingly, or recklessly causes physical injury to another; or
- (2) With criminal negligence causes physical injury to another by means of a deadly weapon.

Assault in the Third Degree is a Class C offense.

(b) Notwithstanding Sub-section (3) of this section, Assault in the Third Degree is a Class A offense if the person commits the crime of Assault in the Third Degree and:

- (1) The person has previously been convicted of assaulting the same victim;

(2) The person has previously been convicted at least three (3) times under this section or under equivalent laws of another jurisdiction and all of the assaults involved domestic violence as defined herein below; or

(3) The assault is committed in the immediate presence of or is witnessed by the person's or the victim's minor child or step-child or minor child residing within the household of the person or victim;

(4) For the purposes of Sub-section (b) of this section;

(A) Domestic violence means abuse between family and/or household members and includes any of the following: (1) Spouses; (2) Former Spouses; (3) Adult persons related by blood or marriage; (4) Persons co-habiting with each other; (5) Persons who have co-habited with each other or who have been involved in a sexually intimate relationship; (6) Unmarried parents of a minor child.

(B) The assault is witnessed if the assault is seen or directly perceived in any other manner by the child.

Domestic Assault in the Third Degree is a Class A offense.

(c) A person commits the crime of assault in the third degree if the person, with criminal negligence causes physical injury to another by means of a deadly weapon. Assault in the third degree is a Class C offense.

(d) A person commits the crime of assault in the second degree if the person:

(1) Recklessly causes serious physical injury to another under circumstances manifesting extreme indifference to the value of human life;

(2) Recklessly causes physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life;

(3) While being aided by another person actually present, intentionally or knowingly causes physical injury to another;

(4) Intentionally, knowingly, or recklessly causes physical injury to an emergency medical technician or paramedic while the technician or paramedic is performing official duties;

(5) Being at least 18 years of age, intentionally or knowingly causes physical injury to a child 10 years of age or younger;

(6) Knowing the other person is a staff member, intentionally or knowingly propels any dangerous substance at the staff member while the staff member is acting in the course of official duty or as a result of the staff member's official duties;

(7) As used in this section:

(A) "Dangerous substance" includes, but is not limited to, blood, urine, saliva, semen and feces.

(B) "Staff member" includes but is not limited to (1) A volunteer by the department, youth authority or other entity in charge of a facility to work with, or in the vicinity of, inmates or youth offenders.

Assault in the second degree is a Class B offense.

(e) A person commits the crime of assault in the first degree if the person:

(1) Intentionally or knowingly causes serious physical injury to another; or

(2) Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon; or

(3) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life.

Assault in the first degree is a Class A offense.

#### 3.1.4 Criminal Homicide

A person commits criminal homicide if, without justification or excuse, the person intentionally, knowingly, recklessly, or with criminal negligence causes the death of another human being. Criminal Homicide is a Class A offense.

#### 3.1.5 Sex Abuse

A person commits the crime of sex abuse if the person subjects another person to sexual contact and the victim does not consent to the sexual contact; or the victim is incapable of consent by reason of being under 18 years of age. Sex abuse is a Class A offense.

#### 3.1.6 Rape (These were taken from the Oregon Revised Statutes)

(a) A person commits the crime of rape in the third degree if the person has sexual intercourse with another person less than 16 years of age. Rape in the third degree is a Class C offense.

(b) A person who has sexual intercourse with another person commits the crime of rape in the second degree if the other person is under 14 years of age. Rape in the second degree is a Class B offense.

(c) A person who has sexual intercourse with another person commits the crime of rape in the first degree if:

- (1) The victim is subjected to forcible compulsion by the person;
- (2) The victim is under 12 years of age;
- (3) The victim is under 16 years of age and is the person's sibling, of the whole or half blood, the person's child or the person's spouse's child; or
- (4) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

Rape in the first degree is a Class A offense.

### 3.1.7 Harassment

Any person who engages in a course of conduct that alarms or seriously annoys another person and which serves no legitimate purpose is guilty of harassment. Harassment is a Class C offense.

## OFFENSES AGAINST PROPERTY

### 3.1.20 Burglary

A person commits the crime of burglary in the first if the person enters or remains unlawfully in a residence with intent to commit a crime therein. Burglary in the first is a Class A offense.

A person commits the crime of burglary in the second if the person enters or remains unlawfully in a building with intent to commit a crime therein. Burglary in the second is a Class B offense.

### 3.1.21 Criminal Mischief

A person commits the crime of criminal mischief in the third degree if, with intent to cause substantial inconvenience to the owner or to another person, and having no right to do so nor reasonable ground to believe that the person has such right, the person tampers or interferes with property of another. Criminal mischief in the third degree is a Class C offense.

Any person who shall willfully remove, alter, or destroy any boundary marker or other landmark erected by the Tribe or the United States within the Reservation, shall be guilty of Criminal Mischief in the second Degree. Criminal mischief in the second degree is a Class B offense.

Any person who shall willfully deface, damage, pollute or otherwise physically mistreat any public monument, personal property, building structure or place of worship or burial, or who for exhibition or display shall place or cause to be placed any mark, work, or design upon, or shall publicly mutilate, deface or defile, or use in connection with any advertisement of any nature, any official flag of the United States, the State of Oregon,

or the Burns Paiute Tribe, shall be guilty of Criminal mischief in the first degree. Criminal mischief in the first degree is a Class A offense.

### 3.1.22 Embezzlement

Any person who shall, having lawful custody of property not his own, appropriate the same to his own use with intent to deprive the owner thereof, shall be guilty of Embezzlement. Embezzlement is a Class B offense.

### 3.1.23 Theft by Extortion

A person commits theft by extortion when the person compels or induces another to deliver property to the person or to a third person by instilling in the other a fear that, if the property is not so delivered, the person or a third person will in the future:

- (a) Cause physical injury to some person; or
- (b) Cause damage to property; or
- (c) Engage in other conduct constituting a crime; or
- (d) Accuse some person of a crime or cause criminal charges to be instituted against the person; or
- (e) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
- (f) Cause or continue a strike, boycott or other collective action injurious to some person's business; except that such conduct shall not be considered extortion when the property is demanded or received for the benefit of the group in whose interest the person purports to act; or
- (g) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
- (h) Use or abuse the position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
- (i) Inflict any other harm that would not benefit the person.

Theft by extortion is a Class A offense.

### 3.1.24 Forgery or Counterfeiting

Any person who shall, with intent to defraud, falsely sign, execute, alter or counterfeit any written instrument or currency, shall be guilty of Forgery or Counterfeiting. Forgery and Counterfeiting are Class B offenses.

### 3.1.25 Fraud; Fraudulent Credit Card Use

(a) Any person who shall, by willful misrepresentation or deceit or by false interpreting or by the use of false weights or measure, obtain any money or other property shall be guilty of Fraud. Fraud is a Class B offense.

(b) Any person who has closed his account with the bank or depository, prior to the issuance or delivery of check or order shall be guilty of Fraud. Fraud is a Class A offense.

(c) A person commits the crime of Fraudulent Use of a Credit Card if, with intent to injure or defraud, the person uses a credit card for the purpose of obtaining property or services with knowledge that:

(1) The card is stolen or forged; or

(2) The card has been revoked or canceled; or

(3) For any other reason the use of the card is unauthorized by either the issuer or the person to whom the credit card is issued.

The value of single credit card transactions may be added together if the transactions were committed: against multiple victims within a 30-day period; or against the same victim within a 180-day period. Credit card means a card, booklet, credit card number or other identifying symbol or instrument evidencing an undertaking to pay for property or services delivered or rendered to or upon the order of a designated person or bearer.

Fraudulent Use of a Credit Card is a Class C offense if the aggregate total amount of property or services the person obtains or attempts to obtain is valued at less than \$750.00. Fraudulent Use of a Credit Card is a Class A offense if the aggregate total amount of property or services the person obtains or attempts to obtain is valued at more than \$750.00.

### 3.1.26 Theft by Receiving

A person commits theft by receiving if the person receives, retains, conceals or disposes of property of another knowing or having good reason to know that the property was the subject of theft. "Receiving" means acquiring possession, control or title, or lending on the security of the property. Theft by Receiving is a Class B offense.

### 3.1.27 Robbery

A person commits the crime of robbery if in the course of committing or attempting to commit theft the person uses or threatens the immediate use of physical force upon another person with the intent of:

(a) Preventing or overcoming resistance to the taking of the property or to retention thereof immediately after the taking; or

(b) Compelling the owner of such property or another person to deliver the property or to engage in other conduct which might aid in the commission of the theft.

Robbery is a Class A offense.

### 3.1.28 Theft

Any person who shall take the property of another person with intent to steal shall be guilty of Theft. Theft is a Class B offense.

### 3.1.29 Theft of Services

Any person who shall obtain services which he knows are available only for compensation, by deception, threat, force or any other means designed to avoid due payment there for, shall be guilty of Theft of Services. Theft of Services is a Class B offense.

### 3.1.30 Criminal Trespass

(a) A person commits the crime of criminal trespass in the second degree if the person enters or remains unlawfully in or upon premises. Criminal trespass in the second degree is a Class C offense.

(b) A person commits the crime of criminal trespass in the first degree if the person:

(1) Enters or remains unlawfully in a residence;

(2) Having been denied future entry to a building pursuant to a merchant's notice of trespass, reenters the building during hours when the building is open to the public; or

(3) Enters or remains unlawfully in or upon premises where activity involving the unauthorized manufacture of a controlled substance or any precursor chemical for such substances occur; or wherein are kept, stored or located any of the devices, equipment, things or substances used for the unauthorized manufacture of a controlled substance. Premises mean any real property, improvements on real property, boat, trailer, motor vehicle, of manufactured dwelling.

Criminal trespass in the first degree is a Class A offense

(c) A person commits the crime of criminal trespass while in possession of a firearm who, while in possession of a firearm, enters or remains unlawfully in or upon premises. Criminal trespass while in possession of a firearm is a Class A offense.

### 3.1.31 Unauthorized Use of Vehicle

Any person who shall operate another's automobile, airplane, motorcycle, motor boat or other motor propelled vehicle without the consent of the owner shall be guilty of Unauthorized Use of Vehicle. Unauthorized Use of Vehicle is a Class B offense.

### 3.1.32 Negotiating a Bad Check

Any person who shall, with the intent to defraud, issue, or pass a check, draft or order for payment of money upon any bank or other depository for the purpose of obtaining money, property or any other thing of value, or paying for services, knowing at the time of such issuance or delivery that: 1) he has insufficient funds in or credit with the bank or depository for payment in full; or 2) he issues a stop-payment order directing the bank or depository on which the check is drawn not to honor said check and who fails to make payment of money in the amount of the check or draft or otherwise arrange a settlement agreed upon by the holder of the check within 30 days of issuing said check or draft, shall be guilty of Unlawful Issuance of a Bank Check.

The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or depository for the payment of such check or draft; and the issuing or delivery of such a check or draft to another person without such fund or credit to meet the same shall be prima facie evidence of an intent to defraud. Unlawful Issuance of Bank Check is a Class C offense.

## OFFENSES AGAINST THE FAMILY

### 3.1.40 Abuse of Vulnerable Adult

(a) It shall be unlawful for any person:

(1) To willfully inflict physical or mental pain or injury on an elder or vulnerable adult or threaten to do the same;

(2) To willfully misuse the funds, property or resources of an elder or vulnerable adult for profit or advantage; or

(3) Who is responsible for the care of an elder or vulnerable adult, to willfully fail to provide food, clothing, shelter, medical care or other services reasonably necessary to sustain the life and health of an elder or vulnerable adult.

(b) A Tribal Police Officer shall arrest any person whom he has probable cause to believe has violated this Section by inflicting physical pain or injury on an elder or vulnerable adult or threatened to do the same.

(c) In addition to any other penalty imposed for a violation of this Section, the Tribal Court may grant any other civil or equitable remedy.

Abuse of Vulnerable Adults is a Class A offense.

### 3.1.42 Bigamy

A person commits the crime of bigamy if the person knowingly marries or purports to marry another person at a time when either is lawfully married. Bigamy is a Class B offense.

### 3.1.43 Contributing to the Delinquency of a Child

Any person who shall, by act or omission, encourage, cause or contribute to the delinquency of a child who is 17 years of age and under shall be guilty of Contributing to the Delinquency of a Child. Contributing to the Delinquency of a Child is a Class B offense.

### 3.1.44 Criminal Non-Support

Any person who shall, without just cause, fail to provide for the support of his spouse, child or other dependent, shall be guilty of Criminal Non-Support. Criminal Non-Support is a Class B offense.

### 3.1.45 Furnishing Alcohol to a Person Under Twenty-One

Any person who shall sell, barter or give any alcoholic beverage to any person under the age of twenty-one years shall be guilty of Distributing Alcohol to a Person Under Twenty-one. Distributing Alcohol to a Person Under Twenty-one is a Class A offense.

### 3.1.46 Endangering the Welfare of a Child

A person commits the crime of endangering the welfare of a child if the person knowingly:

(a) Induces, causes or permits an unmarried person under 18 years of age to witness an act of sexual conduct or sadomasochistic abuse; or

(b) Distributes, sells, or causes to be sold, tobacco in any form to a person under 18 years of age; or

(c) Sells to a person under 18 years of age any device in which tobacco, marijuana, cocaine or any controlled substance, is burned and the principal design and use of which is directly or indirectly to deliver tobacco smoke, marijuana smoke, cocaine smoke or smoke from any controlled substance into the human body including but not limited to:

(1) Pipes, water pipes, hookahs, wooden pipes, carburetor pipes, electric pipes, air driven pipes, corncob pipes, meerschaum pipes and ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

(2) Carburetion tubes and devices, including carburetion masks;

(3) Bongs;

(4) Chillums;

(5) Ice pipes or chillers;

(6) Cigarette rolling papers and rolling machines; and

(7) Cocaine free basing kits.

Endangering the welfare of a child is a Class A offense.

### 3.1.47 Incest

A person commits the crime of incest if the person marries or engages in sexual intercourse or deviate sexual intercourse with a person whom the person knows to be related to the person, either legitimately or illegitimately, as an ancestor, descendant or brother or sister of either the whole or half blood. Incest is a Class A offense.

### 3.1.48 Child Abandonment

A person commits the crime of abandonment of a child if, being a parent, lawful guardian, or other person lawfully charged with the care or custody of a child under 15 years of age, the person deserts the child in any place with intent to abandon it. Child Abandonment is a Class A offense. For the purposes of this section abandonment is defined as: The leaving of a child by a parent without communication or failure to support a child and there is no indication of the parent's willingness to assume his/or her parental role(s) for a period exceeding one (1) month.

### 3.1.49 Child Neglect

(a) A person having custody or control a child under 10 years of age commits the crime of child neglect in the second degree, if, with criminal negligence, the person leaves the child unattended in or at any place for such period of time as may be likely to endanger the health or welfare of such child. Child Neglect in the Second Degree is a Class B offense.

(b) A person having custody or control of a child under 16 years of age commits the crime of child neglect in the first degree, if, with criminal negligence, the person knowingly leaves the child or allows the child to stay (1) in a vehicle where controlled substances are being criminally delivered or manufactured; or (2) on premises and in the immediate proximity where controlled substances are criminally delivered or manufactured. Child Neglect in the First Degree is a Class A offense.

### 3.1.50 Failure to Send Child to School

A person having custody or control of a minor child who neglects or refuses to send child to school is guilty of Failure to Send Child to School. Failure to Send Child to School is a Class C offense.

## OFFENSES AGAINST THE ADMINISTRATION OF GOVERNMENT

### 3.1.60 Bribery

Any person who shall promise, offer or give or cause to be promised, offered or given, any money, property, services or other thing of value to any officer, employee or

representative of any Tribal organization, with intent to influence his decision or action on any matter, which may be brought or is pending before him in his official capacity, and any person who, being such officer, employee or representative or person so acting, shall solicit or accept any such bribe, shall be guilty of Bribery. Bribery is a Class B offense.

#### 3.1.61 Conspiracy to Commit Offense

Any two or more persons who shall conspire to commit an offense prohibited in this Code against the Tribe or any human being, one or more of who shall do an act to affect the object of the conspiracy, shall each be guilty of Conspiracy to Commit an Offense. Conspiracy to Commit an Offense shall be of the same class as the offense the persons conspired to commit.

#### 3.1.62 Doing Business without a License

Any person who shall, without a valid license from the Council, commence or carry on any business, trade, profession or calling on the Reservation, the transaction or carrying on of which is required by this Code to be licensed, shall be guilty of Doing Business Without a License. Doing Business without a License is a Class C offense.

#### 3.1.63 Escape

Any person who shall, being in lawful custody for any offense, escape or attempt to escape, or fail to return to official detention following temporary leave granted for a specific purpose for a limited period (excluding probation, parole, or release on bail) or who shall permit or assist or attempt to permit and assist another person to escape, shall be guilty of Escape. Escape is a Class A offense.

#### 3.1.64 False Alarm

Any person who shall knowingly cause a false fire alarm or alarm of other emergency to be transmitted to or within any organization, official or volunteer for dealing with emergencies involving danger to life or property, shall be guilty of False Alarm. False Alarm is a Class B offense.

#### 3.1.65 Initiating a False Report

A person commits the crime of initiating a false report if the person knowingly initiates a false alarm or report which is transmitted to a fire department, law enforcement agency or other organization that deals with emergencies involving danger to life or property. Initiating a false report is a Class B offense.

#### 3.1.66 Criminal Impersonation of a Peace Officer

A person commits the crime of criminal impersonation of a peace officer if the person uses false law enforcement identification in the commission of an offense. Criminal impersonation of a peace officer is a Class B offense. As used in this section, "false law

enforcement identification" means a badge or an identification card that (a) Identifies the possessor of the badge or card as a member of a law enforcement unit; and (b) Was not lawfully issued to the possessor by the law enforcement unit.

### 3.1.67 Misuse of Public Funds

Any person who shall, being a public servant or other person charged with receipt, safekeeping, transfer or disbursement of public funds, without lawful authority, appropriate funds to his own use or the use of another, or who shall otherwise handle public funds in a manner not authorized by law, shall be guilty of Misuse of Public Funds. Misuse of Public Funds is a Class A offense.

### 3.1.68 Obstructing Governmental or Judicial Administration

A person commits the crime of obstructing governmental or judicial administration if the person intentionally obstructs, impairs or hinders the administration of law or other governmental or judicial function by means of intimidation, force, physical or economic interference or obstacle. Obstructing governmental or judicial administration is a Class A offense.

### 3.1.69 Hindering Prosecution

A person commits the crime of hindering prosecution if, with intent to hinder the apprehension, prosecution, conviction or punishment of a person who has committed a crime, or with the intent to assist a person who has committed a crime in profiting or benefiting from the commission of the crime, the person:

- (a) Harbors or conceals such person; or
- (b) Warns such person of impending discovery or apprehension; or
- (c) Provides or aids in providing such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or
- (d) Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person; or
- (e) Suppresses by any act of concealment, alteration or destruction physical evidence which might aid in the discovery or apprehension of such person; or
- (f) Aids such person in securing or protecting the proceeds of the crime.

Hindering prosecution is a Class A offense.

### 3.1.70 Perjury

A person commits the crime of perjury if the person makes a false sworn statement in regard to a material issue, knowing it to be false. Perjury is a Class A offense.

### 3.1.70 Refusing to Assist a Peace Officer

A person commits the offense of refusing to assist a peace officer if upon command by a person known by the person to be a peace officer the person unreasonably refuses or fails to assist in effecting an authorized arrest or preventing another from committing a crime. Refusing to assist a peace officer is a Class B offense.

### 3.1.71 Resisting Arrest or Process

A person commits the crime of resisting arrest if the person intentionally resists a person known by the person to be a peace officer in making an arrest. As used in this section:

(a) "Arrest" means to place a person under actual or constructive restraint or to take a person into custody for the purpose of charging that person with an offense and includes, but is not limited to, the booking process.

(b) "Resists" means the use or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person and includes, but is not limited to, behavior clearly intended to prevent being taken into custody by the actions of the arresting officer. The behavior does not have to result in actual physical injury to an officer. Passive resistance does not constitute behavior intended to prevent being taken into custody.

It is no defense to a prosecution under this section that the peace officer lacked legal authority to make the arrest or book the person, provided the peace officer was acting under color of official authority.

Resisting arrest is a Class A offense.

### 3.1.72 Tampering with Evidence

A person commits the crime of tampering with physical evidence if, with intent that it be used, introduced, rejected or unavailable in an official proceeding which is then pending or to the knowledge of such person is about to be instituted, the person:

(a) Destroys, mutilates, alters, conceals or removes physical evidence impairing its verity or availability; or

(b) Knowingly makes, produces or offers any false physical evidence; or

(c) Prevents the production of physical evidence by an act of force, intimidation or deception against any person.

Tampering with physical evidence is a Class A offense.

### 3.1.73 Tampering with a Witness or Juror

A person commits the crime of tampering with a witness if:

(a) The person knowingly induces or attempts to induce a witness or a person the person believes may be called as a witness in any official proceeding to offer false testimony or unlawfully withhold any testimony; or

(b) The person knowingly induces or attempts to induce a witness to be absent from any official proceeding to which the person has been legally summoned.

Tampering with a witness or juror is a Class A offense.

## OFFENSES AGAINST PUBLIC MORALS, ORDER AND WELFARE

### 3.1.90 Animal Abuse

A person commits the crime of animal abuse if, except as otherwise authorized by law, the person intentionally, knowingly or recklessly causes physical injury to an animal. Animal abuse is a Class B offense.

### 3.1.91 Disorderly Conduct

A person commits the crime of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, the person:

(a) Engages in fighting or in violent, tumultuous or threatening behavior;

(b) Makes unreasonable noise;

(c) Disturbs any lawful assembly of persons without lawful authority;

(d) Obstructs vehicular or pedestrian traffic on a public way;

(e) Congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse;

(f) Initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, Crime, catastrophe or other emergency; or

(g) Creates a hazardous or physically offensive condition by any act which the person is not licensed or privileged to do.

Disorderly conduct is a Class B offense.

### 3.1.92 Drug Abuse (Crime Severity to be determined at Tribal Council's discretion)

Any person, under the jurisdiction of this Law and Order Code, who violates any of the following subsections shall be guilty of committing the offense of Drug Abuse and upon conviction shall be sentenced according to the penalties herein described.

Definitions. As used in this section:

(a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body.

(b) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I and II. See Appendix A attached hereto.

(c) "Delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

(d) "Drug" means (1) substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement of any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure of any function of the body of man or animals; (4) substances intended for use as a component of any article specified in clause (1), (2), or (3) of this subsection. It does not include devices or their components, parts, accessories.

(e) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or re-labeling of its container, except that this term does not include the preparation or compounding of a controlled substance by:

(1) A practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or

(2) A practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(f) "Marijuana" means all parts of the plant of the genus Cannabis L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(g) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause 1, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(h) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

### 3.1.93 Controlled Substance: Definition

A drug or its immediate precursor classified in Appendix A. If a substance is an ingredient of a controlled substance, the ingredient shall be considered to be in the same schedule as that controlled substance. Substances which are precursors of the ingredient shall not be subject to control solely because they are precursors of the ingredient. A list of precursors marked Appendix B is attached hereto.

### 3.1.94 Drug Paraphernalia: Definitions

Drug paraphernalia means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

(a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(d) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances;

(e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

- (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;
- (g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (h) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- (i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
- (j) Containers and other objects used, intended for use, or designed for use in storing and concealing controlled substances;
- (k) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
- (l) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish oil into the human body, such as:
  - (m) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
  - (n) Water pipes;
  - (o) Carburetion tubes and devices;
  - (p) Smoking and carburetion masks;
  - (q) Roach clips: Meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
  - (r) Miniature cocaine spoons, and cocaine vials;
  - (s) Chamber pipes;
  - (t) Carburetor pipes;
  - (u) Electric pipes;
  - (v) Air-driven pipes;
  - (w) Chillums;
  - (x) Bongs; and
  - (y) Ice pipes, or chillers.

In determining whether an object is drug paraphernalia under this section, a court or other authority should consider, in addition to all other logically relevant facts, the following:

- (a) Statements by an owner or by anyone in control of the object concerning its use;
- (b) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state, federal or tribal law relating to any controlled substance;
- (c) The proximity of the object, in time and space, to a direct violation of this chapter;
- (d) The proximity of the object to controlled substances;
- (e) The existence of any residue of controlled substances on the object;
- (f) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;
- (g) Instructions, oral or written, provided with the object concerning its use;
- (h) Descriptive materials accompanying the object which explain or depict its use;
- (i) National and local advertising concerning its use;
- (j) The manner in which the object is displayed for sale;
- (k) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (l) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
- (m) The existence and scope of legitimate uses for the object in the community; and
- (n) Expert testimony concerning its use.

### 3.1.95 Prohibited Acts (Manufacture, Cultivate, Deliver): Penalties

Except as authorized by this section, it is unlawful for any person to manufacture, cultivate, deliver, or possess with intent to manufacture or deliver, a controlled substance. Any person who violates this subsection is guilty of a Class A crime.

### 3.1.96 Prohibited Acts (Possession): Penalties

Except as authorized by this section, it is unlawful for any person to possess a controlled substance. Any person who violates this subsection is guilty of a Class A offense.

### 3.1.97 Prohibited Acts (Drug Paraphernalia): Penalties

Except as authorized by this section, it is unlawful for any person to possess any drug paraphernalia. Any person who violates this subsection is guilty of a Class A crime.

### 3.1.98 Defenses

Any person lawfully involved in the possession, distribution, manufacture or delivery of any controlled substance listed in Appendix A shall not be in violation of this section.

### 3.1.99 Indecent Exposure

Any person who shall, for the purpose of arousing or gratifying sexual desire of himself or of any other human other than his spouse, exposes his sexual parts under circumstances in which he knows his conduct is likely to cause affront or alarm, shall be guilty of Indecent Exposure. Indecent Exposure is a Class B offense.

### 3.1.100 Public Intoxication

Any person who is in a voluntarily-induced state of intoxication created by the use of alcoholic beverages or any other drug of any kind, and who causes a disturbance of the public in any private or public place is guilty of public intoxication. Public intoxication is a Class C offense.

### 3.1.101 Offensive Littering

Any person who shall dispose of any garbage or other litter anywhere within the Reservation except in public waste disposal grounds designated by the Council, or who, without lawful permission, shall store or allow to accumulate any wrecked, junked or unserviceable vehicles, appliances or farm/yard implements anywhere on the Reservation shall be guilty of Littering. Littering is a Class C offense.

### 3.1.102 Use or Possession of Alcoholic Beverages Prohibited

Any person who is in possession of or knowingly in the presence of alcoholic beverages on the Burns Paiute Indian Reservation is guilty of Use or Possession of Alcoholic Beverages. Use or Possession of Alcoholic Beverages is a Class C offense.

### 3.1.103 Prostitution

A person commits the crime of prostitution if (a) the person engages in or offers or agrees to engage in sexual conduct or sexual contact in return for a fee; or (b) the person pays or offers or agrees to pay a fee to engage in sexual conduct or sexual contact. Prostitution is a Class B offense.

### 3.1.104 Public Nuisance

Any person who shall, without proper authority, do any act or fail to perform any duty, which act or omission unreasonably annoys, injures or endangers the comfort, repose, health, property or safety of any person, or which offends public decency, shall be guilty of Public Nuisance. Public Nuisance is a Class C offense.

### 3.1.105 Maintain Public Hazard

Any person who shall have on his premises an abandoned refrigerator, freezer, or other container not in active use, any door to which has a lock or latch which automatically fastens when the door is closed and which cannot be readily opened from the inside shall be guilty of Maintaining a Public Hazard. Maintaining a Public Hazard is a Class C offense.

### 3.1.106 Riot

A person commits the crime of riot if while participating with five or more other persons the person engages in tumultuous and violent conduct and thereby intentionally or recklessly creates a grave risk of causing public alarm. Riot is a Class A offense.

### 3.1.107 Spreading Venereal Disease

Any person who shall, knowingly or having reason to believe that he has a venereal disease other than AIDS/HIV, infect another person with venereal disease, shall be guilty of Spreading Venereal Disease. Spreading Venereal Disease is a Class C offense.

Any person who shall, knowingly or having reason to believe that he has a AIDS/HIV, infect another person with AIDS/HIV, shall be guilty of Spreading AIDS/HIV. Spreading AIDS/HIV is a Class A offense.

### 3.1.108 False Swearing

A person commits the crime of false swearing if the person makes a false sworn statement, knowing it to be false. False Swearing is a Class C offense.

### 3.1.109 Unlawful Discharge of Display of Fireworks

Any person who shall willfully discharge or display any fireworks within the following areas:

- (a) Forest lands;
- (b) Range lands; or
- (c) Farmland.

### 3.1.110 Carrying or Displaying a Weapon

Any person who shall (1) carry concealed on his person, or (2) carry, exhibit, display or draw any pistol, firearm, dagger, sword, knife, or other cutting or stabbing instrument, club, or any other weapon, apparently capable of producing bodily harm in a manner, under circumstance, and at any time in tribal or BIA buildings on the Reservation, that either manifests in intent to intimidate other or that warrants alarm for the safety of other persons shall be guilty of carrying or displaying a weapon. The provision of this section shall not apply to any person who by virtue of his office or public employment is vested by law with a duty to preserve public safety, maintain public order, or to make arrests for offenses, while in the performance of such duty or to any person engaged in military activities sponsored by Federal or state governments. Carrying or Displaying a Weapon is a Class A offense.

### 3.1.111 Carrying of Concealed Weapon

Any person who carries concealed upon the person any gun (unless person has state issued concealed weapon permit) or knife having a blade that projects or swings into position by force of a spring or by centrifugal force, any dirk, dagger, ice pick, metal knuckles, or any similar instrument by the use of which injury could be inflicted upon the person or property of any other person is guilty of Carrying A Concealed Weapon. Weapons lawfully seized under this section may be forfeited to the Tribe pursuant to Tribal Civil forfeiture procedures.

Carrying a Concealed Weapon is a Class B offense.

### 3.1.112 Weapons, Firing

Any person, except a bona fide law enforcement officer acting within the scope of his or her duty, who discharges a firearm within any settled community on the lands of the Burns Paiute Indian Reservation shall be guilty of Unlawful Discharge of a Firearm. Weapons lawfully seized under this section may be forfeited to the Tribe pursuant to Tribal civil forfeiture procedures.

Unlawful Discharge of a Firearm is a Class B offense.

### 3.1.113 Unlawful Photography

Any person who photographs, videotapes, films, or records any funerals without the permission of the immediate family involved is guilty of Unlawful Photography. Unlawful Photography is a Class C offense.

### 3.1.114 Minor in Possession by Consumption of Alcohol

A person under the age of 21 who is in possession of alcohol by consumption shall be guilty of minor in possession by consumption of alcohol. Minor in Possession of Alcohol is a Class C offense.

### 3.1.115 Unlawful Burning

A person shall be guilty of Unlawful Burning who:

- (a) Burns rubbish containing paper products openly; or
- (b) Conducts open burning within 50 feet of any structure or other combustible material;  
or
- (c) Burns rubbish without a garden hose connected to a water supply or other appropriate extinguishing equipment readily available; or
- (d) Does not constantly attend the burning.

Unlawful Burning is a Class C offense.

## OTHER OFFENSES

### 3.1.140 Aiding or Abetting

Any person who shall counsel, encourage, solicit, request, aid, procure or abet another to commit an offense under this Title or under any ordinance or regulation of the Burns Paiute Tribal Council shall be guilty of aiding or abetting. Aiding or Abetting is an offense of the same classification as the offense aided or abetted.

## PENALTIES

### 3.1.200 Class A Offense

A person convicted of a Class A offense shall be sentenced to imprisonment for a period not to exceed 1 year, or a fine not to exceed \$5000, or both imprisonment and a fine.

### 3.1.201 Class B Offense

A person convicted of a Class B offense shall be sentenced to imprisonment for a period not to exceed 6 months, or a fine not to exceed \$2500, or both imprisonment and a fine.

### 3.1.202 Class C Offense

A person convicted of a Class C offense shall be sentenced to imprisonment for a period not to exceed 30 days, or a fine not to exceed \$1000, or both imprisonment and a fine.

### 3.1.203 Probation

Except as otherwise provided in this Code, the Court shall have the authority to suspend the imposition of sentence on a person who has been convicted of an offense

and to place him on probation. The Court may attach to the order of probation such reasonable conditions as it deems necessary. At any time before the end of the probationary period, if the Court is satisfied that the defendant has inexcusably failed to comply with a substantial requirement imposed as a condition of the probation order, or if the defendant has been convicted of another crime, the Court may revoke the probation and sentence or re-sentence the defendant as provided in this Code.

### 3.1.204 Disposition of Fines

All fines and fees collected by the Court under the provisions of this Code shall be held in a special account of the Tribe to be used for maintenance of the Court and Law and Order Program.

## PROPERTY SEIZED AS EVIDENCE

### 3.1.250 Property Seized as Evidence

When any officer in the execution of a valid search shall seize any evidence material to the investigation or prosecution of any offense, the evidence shall be safely kept so long as necessary for the purpose of being produced in evidence at any trial. After the trial, the evidence shall be restored to its owner if it is lawful for the owner to possess it. Otherwise, the property shall be disposed of pursuant to the forfeiture provisions of this Code.

## CONTEMPT PROCEEDINGS

### 3.1.260 Definitions

(a) "Confinement" means custody or incarceration, whether actual or constructive.

(b) "Contempt of Court" means the following acts, done willfully:

(1) Misconduct in the presence of the court that interferes with a court proceeding or with the administration of justice, or that impairs the respect due the court;

(2) Disobedience of, resistance to or obstruction of the court's authority, process, orders or judgments;

(3) Refusal as a witness to appear, be sworn or answer a question contrary to an order of the court;

(4) Refusal to produce a record, document or other object contrary to an order of the court; or

(5) Violation of a statutory provision that specifically subjects the person to the contempt power of the court.

(c) "Punitive sanction" means a sanction imposed to punish a past contempt court.

(d) “Remedial sanction” means a sanction imposed to terminate a continuing contempt of court or to compensate for injury, damage or costs resulting from a past or continuing contempt of court.

### 3.1.265 Nature of contempt power

The power of a court to impose a remedial or punitive sanction for contempt of court is an inherent judicial power. This chapter of the Tribal Code establishes procedures to govern the exercise of that power.

### 3.1.266 Right to appointed counsel

A person facing contempt proceedings have the same rights as the person charged with violating the criminal code.

### 3.1.267 Types of sanctions

(a) A court may impose either remedial or punitive sanctions for contempt.

(b) Confinement may be remedial or punitive. The sanction is:

(1) Remedial if it continues or accumulates until the defendant complies with the court’s order or judgment.

(2) Punitive if it is for a definite period that will not be reduced even if the defendant complies with the court’s order or judgment.

(c) A fine may be remedial or punitive. A fine is:

(1) Punitive if it is for a past contempt.

(2) Remedial if it is for continuing contempt and the fine accumulates until the defendant complies with the court’s judgment or order or if the fine may be partially or entirely forgiven when the defendant complies with the court’s judgment or order.

(d) Any sanction requiring payment of amounts to one of the parties to a proceeding is remedial.

(e) Any sanction imposed by a court for contempt is in addition to any civil remedy or criminal sanction that may be available as a result of the conduct constituting contempt. In any civil or criminal proceedings arising out of the conduct constituting contempt, the court shall take into consideration any contempt sanctions previously imposed for the same act.

### 3.1.270 Procedure for imposition of remedial sanctions

(a) Except as provided for in Burns Paiute Tribal Code provisions, proceedings to impose remedial sanctions for contempt shall be conducted as provided in this section.

(b) The following persons may initiate the proceeding or, with leave of the court, participate in the proceeding, by filing a motion requesting that defendant be ordered to appear:

(1) A party aggrieved by an alleged contempt of court;

(2) Tribal prosecutor;

(3) Any other person specifically authorized by the Burns Paiute Tribal Code to seek imposition of sanctions for contempt.

(c) A motion to initiate a proceeding under this section shall be filed in the proceeding to which the contempt is related, if there is a related proceeding.

(d) The person initiating a proceeding under this section shall file supporting documentation or affidavits sufficient to give defendant notice of the specific acts alleged to constitute contempt.

(e) The court may issue an order directing the defendant to appear. Except as otherwise provided in this section, the defendant shall be personally served with the order to appear.

(f) The court may impose a remedial sanction only after affording the defendant opportunity for a hearing tried to the court. The defendant may waive the opportunity for a hearing by stipulated order filed with the court.

(g) A defendant has no right to a jury trial, and except as provided in this section, has only those rights accorded to a defendant in a civil action.

(h) A defendant is entitled to be represented by counsel at his or her own expense. A court shall not impose on a defendant a remedial sanction of confinement unless; before the hearing is held the defendant is informed that such sanction may be imposed.

(i) If the defendant is not represented by counsel when coming before the court, the court shall inform the defendant of the right to counsel at his or her own expense.

(j) Inability to comply with an order of the court is an affirmative defense.

(k) In any proceeding for imposition of a remedial sanction other than confinement, proof of contempt shall be by clear and convincing evidence. In any proceeding for imposition of a remedial sanction of confinement, proof of contempt shall be beyond a reasonable doubt.

(l) Proceedings under this section are subject to rules adopted under the Burns Paiute Tribal Code.

### 3.1.271 Procedure for imposition of punitive sanctions

Except as otherwise provided for in the Burns Paiute Tribal Code proceedings to impose punitive sanctions for contempt shall be conducted as provided in this section.

(a) The tribal prosecutor shall be the person who may initiate the proceeding by an accusatory instrument charging a person with contempt of court and seeking a punitive sanction.

(b) The tribal prosecutor may initiate proceedings on the prosecutor's own initiative, on the request of a party to an action or proceeding or on the request of the court. After the tribal prosecutor files an accusatory instrument, the court may issue any order or warrant necessary to compel the appearance of the defendant.

(c) Except as otherwise provided by this section, the accusatory instrument is subject to the same requirements and laws applicable to an accusatory instrument in a criminal proceeding, and all proceeding on the accusatory instrument shall be in the manner prescribed for criminal proceedings.

(d) Except for the right to a jury trial, the defendant is entitled to the constitutional and statutory protections that a defendant would be entitled to in a criminal proceeding in which the fine or term of imprisonment that could be imposed is equivalent to the punitive sanctions sought in the contempt proceeding.

(e) Inability to comply with an order of the court is an affirmative defense. If the defendant proposes to rely in any way on evidence of inability to comply with an order of the court, the defendant shall, not less than five days before the trial of the cause, file and serve upon the tribal prosecutor, prosecuting the contempt a written notice of intent to offer that evidence. If the defendant fails to file and serve the notice, the defendant shall not be permitted to introduce evidence of inability to comply with an order of the court at the trial of the cause unless the court, in its discretion, permits such evidence to be introduced where just cause for failure to file the notice, or to file the notice within the time allowed, is made to appear.

(f) The court may impose a remedial sanction in addition to or in lieu of a punitive sanction.

(g) In any proceeding for imposition of a punitive sanction, proof of contempt shall be beyond a reasonable doubt.

### 3.1.272 Compelling attendance of defendant

(a) If a person served with an order to appear under Tribal Code Chapter I, Section 5, fail to appear at the time and place specified in the order, the court may issue any order or warrant necessary to compel the appearance of the defendant.

(b) A person against whom a complaint has been issued under Tribal Code Chapter I, Section 6, may be cited to appear in lieu of custody as provided for in Chapter I, Section 5. If the person fails to appear at the time and place specified in the citation, the court may issue any order or warrant necessary to compel the appearance of the defendant.

(c) When the court issues a warrant for contempt, the court shall specify a security amount. Unless the defendant pays the security amount upon arrest, the tribal police shall keep the defendant in custody until either a release decision is made by the court or until disposition of the contempt proceedings.

(d) The defendant shall be discharged from the arrest upon executing and delivering to the tribal police, at any time before the return of the warrant, a security release or a release agreement to the effect that the defendant will appear on the return day and abide by the order or judgment of the court or officer or pay, as may be directed, the sum specified in the warrant.

(e) The tribal police shall return the warrant and the security deposit, if any, given to the tribal police by the defendant by the return day specified in the warrant.

(f) When a warrant for contempt issued under subsection (2) of this section has been returned after having been served and the defendant does not appear on the return day, the court may do either or both of the following:

(1) Issue another warrant.

(2) Proceed against the security deposited upon the arrest.

(g) If the court proceeds against the security under subsection (5) of this section and the sum specified is recovered, the court may award to any party to the action any or all of the money recovered as remedial damages.

### 3.1.273 Compelling testimony of witnesses

(a) Upon the motion of the person initiating the proceeding, the court may compel the testimony of a witness as provided under Burns Paiute Tribal Code in a contempt proceeding.

(b) In any case where the person initiating the proceeding is not represented by the person initiating the proceeding shall serve a notice of intent to compel testimony on the tribal prosecutor. The notice shall be served not less than 14 calendar days before any hearing on the motion to compel testimony.

(c) The notice required by this section shall identify the witness whose testimony the person initiating the proceeding intends to compel and include, if known, the witness' name, date of birth, residence address and social security number, and other pending proceedings or criminal charges involving the witness. The notice shall also include the case name and number of the contempt proceeding and the date, time and place set for any hearing scheduled as provided in Burns Paiute Tribal Code.

(d) If the person initiating the proceeding fails to serve the required advance notice or fails to serve the notice within the time required, the court shall grant a continuance for not less than 14 calendar days from the date the notice is served to allow the tribal prosecutor opportunity to be heard on the matter of compelling testimony. The court

may compel testimony under this subsection only after the full notice period and opportunity to be heard, unless before that time the tribal prosecutor waives in writing any objection to the motion to compel.

(e) In any hearing on a motion to compel testimony under this section, the tribal prosecutor in which the contempt proceeding is pending, may appear to present evidence or arguments to support or oppose the motion.

(f) In lieu of compelling testimony under this section, the court may continue the contempt proceeding until disposition of any criminal action that is pending against the witness whose testimony is sought and that charges the witness with a crime.

### 3.1.274 Summary imposition of sanction

A court may summarily impose a sanction upon a person who commits a contempt of court in the immediate view and presence of the court. The sanction may be imposed for the purpose of authority and dignity of the court. The provisions in Chapter I, Sections 5 & 6 do not apply to summary imposition of sanctions under this section.

### 3.1.275 Sanctions authorized

(a) Unless otherwise provided by Tribal Code, a court may impose one or more of the following remedial sanction:

(1) Payment of a sum of money sufficient to compensate a party for loss, injury or costs suffered by the party as the result of a contempt of court.

(2) Confinement for so long as the contempt continues, or six months, whichever is the shorter period.

(3) An amount not to exceed \$500.00 or one percent of the defendant's annual gross income, whichever is greater, for each day the contempt of court continues. The sanction imposed under this paragraph may be imposed as a fine or to compensate a party for the effects of the continuing contempt.

(4) An order designed to insure compliance with a prior order of the court, including probation.

(5) Payment of all or part of any attorney fees incurred by a party as the result of a contempt of court.

(6) A sanction other than the sanctions specified in paragraphs (a) to (e) of this subsection if the court determines that the sanction would be an effective remedy for the contempt.

(b) Unless otherwise provided by Tribal Code, a court may impose one or more of the following punitive sanctions for each separate contempt of court:

- (1) A fine of not more than \$500.00.
  - (2) Forfeiture of any proceeds or profits obtained through the contempt.
  - (3) Confinement for not more than six months.
  - (4) Probation or community service.
- (c) In a summary proceeding under Section 9 – Summary imposition of sanction – a court may impose one or more of the following sanctions for each separate contempt of court:
- (1) A punitive fine of not more than \$500.00.
  - (2) Confinement as a punitive sanction for not more than 30 days: or
  - (3) Probation or community service.
- (d) The court may impose a punitive sanction for past conduct constituting contempt of court even though similar present conduct is a continuing contempt of court.

### 3.1.276 Limitations of actions

- (a) Except as provided in Section 6 of this Contempt Proceedings in the Tribal Code, proceedings under Section 6 to impose remedial sanctions for contempt and Section 7 to impose punitive sanctions for contempt shall be commenced within two years of the act or omission constituting the contempt.
- (b) For the purposes of this section, a proceeding to impose remedial sanctions shall be deemed commenced as to each defendant when the motion provided for in Section 6 is filed.
- (c) Proceeding to impose punitive sanctions is subject to the following time limitations:
  - (1) Prosecution is commenced when a warrant or other process is issued, provided that the warrant or other process is executed without unreasonable delay;
  - (2) Time starts to run on the day after the offense is committed;
  - (3) Except as provided in this Section 11 Subsection (4), the period of limitation does not run during:
    - (A) Any time when the accused is not an inhabitant of or usually resident within this state; or
    - (B) Any time when the accused hides within the state so as to prevent process being served upon the accused; or

(C) If, when the offense is committed, the accused is out of the state, the action may be commenced within the time provided after coming of the accused in the state.

(D) Notwithstanding Subsection C above, in no case shall the period of limitation otherwise applicable be extended by more than three years.

(E) The time limitations imposed by Subsection (1) of this section shall not act to bar proceedings to impose sanctions for an act or omission that constitutes a continuing contempt at the time contempt proceedings are commenced.

## APPENDIX A: DRUG CLASSIFICATIONS

### SCHEDULE I

(a) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol.
- (2) Allylprodine.
- (3) Alphacetylmethadol.
- (4) Alphameprodine.
- (5) Alphamethadol.
- (6) Benzethidine.
- (7) Betacetylmethadol.
- (8) Betameprodine.
- (9) Betamethadol.
- (10) Betaprodine.
- (11) Clonitazene.
- (12) Dextromoramide.
- (13) Dextrorphan.
- (14) Diampromide.
- (15) Diethylthiambutene.
- (16) Dimenoxadol.
- (17) Dimepheptanol.
- (18) Dimethylthiambutene.
- (19) Dioxaphetyl butyrate.
- (20) Dipipanone.

- (21) Ethylmethylthiambutene.
- (22) Etonitazene.
- (23) Etoxeridine.
- (24) Furethidine.
- (25) Hydroxypethidine.
- (26) Ketobemidone.
- (27) Levomoramide.
- (28) Levophenacymorphan.
- (29) Morpheridine.
- (30) Noracymethadol.
- (31) Norlevorphanol.
- (32) Normethadone.
- (33) Norpipanone.
- (34) Phenadoxone.
- (35) Phenampromide.
- (36) Phenomorphan.
- (37) Phenoperidine.
- (38) Piritramide.
- (39) Propheptazine.
- (40) Properidine.
- (41) Racemoramide.
- (42) Trimeperidine.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salt of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine.
- (2) Acetyldihydrocodeine.
- (3) Benzylmorphine.
- (4) Codeine methylbromide.
- (5) Codeine-N-Oxide.
- (6) Cyprenorphine.
- (7) Desomorphine.
- (8) Dihydromorphine.
- (9) Etorphine.
- (10) Heroin.
- (11) Hydromorphinol.
- (12) Methyldesorphine.
- (13) Methylhydromorphine.
- (14) Morphine methylbromide.
- (15) Morphine methylsulfonate.
- (16) Morphine-N-Oxide.
- (17) Myrophine.
- (18) Nicocodeine.
- (19) Nicomorphine.
- (20) Normorphine.
- (21) Pholcodine.
- (22) Thebacon.

(c) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine.
- (2) 5-methoxy-3,4-methylenedioxy amphetamine.
- (3) 3,4,5-trimethoxy amphetamine.
- (4) Bufotenine.
- (5) Diethyltryptamine.
- (6) Dimethyltryptamine.
- (7) 4-methyl-2,5-diamethoxyamphetamine.
- (8) Ibogaine.
- (9) Lysergic acid diethylamide.
- (10) Marihuana.
- (11) Mescaline.
- (12) Peyote.
- (13) N-ethyl-3-piperidyl benzilate.
- (14) N-methyl-3-piperidyl benzilate.
- (15) Psilocybin.
- (16) Psilocyn.
- (17) Tetrahydrocannabinols.

## SCHEDULE II

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
- (2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (1), except that these substances shall not include the isoquinoline alkaloids of opium.
- (3) Opium poppy and poppy straw.

(4) coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed; cocaine, its salts, optical and geometric isomers, and salts of isomers; ecgonine, its derivatives, their salts, isomers, and salts of isomers; or any compound, mixture, or preparation which contains any quantity of any of the substances referred to in this paragraph.

(b) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alphaprodine.

(2) Anileridine.

(3) Bezitramide.

(4) Dihydrocodeine.

(5) Diphenoxylate.

(6) Fentanyl.

(7) Isomethadone.

(8) Levomethorphan.

(9) Levorphanol.

(10) Metazocine.

(11) Methadone.

(12) Methadone-Intermediate,

4-cyano-2-dimethylamino-4,4-diphenyl butane.

(13) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.

(14) Pethidine.

(15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.

(16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.

(17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.

(18) Phenazocine.

(19) Piminodine.

(20) Racemethorphan.

(21) Racemorphan.

(c) Unless specifically excepted or unless listed in another schedule, any injectable liquid which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

### SCHEDULE III

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers.

(2) Phenmetrazine and its salts.

(3) Any substance (except an injectable liquid) which contains any quantity of methamphetamine, including its salts, isomers, and salts of isomers.

(4) Methylphenidate.

(b) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.

(2) Chorhexadol.

(3) Glutehimide.

(4) Lysergic acid.

(5) Lysergic acid amide.

(6) Methyprylon.

(7) Phencyclidine.

(8) Sulfondiethylmethane.

(9) Sulfonethylmethane.

(10) Sulfonmethane.

(c) Nalorphine.

(d) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Anabolic steroids.

#### SCHEDULE IV

(1) Barbital.

(2) Chloral betaine.

(3) Chloral hydrate.

(4) Ethchlorvynol.

- (5) Ethinamate.
- (6) Methohexital.
- (7) Meprobamate.
- (8) Methylphenobarbital.
- (9) Paraldehyde.
- (10) Petrichloral.
- (11) Phenobarbital.

#### SCHEDULE V

Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
- (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.
- (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
- (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

## APPENDIX B: PRECURSOR SUBSTANCES

- (1) "Iodine matrix" means iodine at a concentration greater than two percent by weight in a matrix or solution.
- (2) "Matrix" means something, as a substance, in which something else originates, develops, or is contained.
- (3) "Precursor substance" means:
  - (a) Phenyl-2-propanone.
  - (b) Methylamine.
  - (c) D-lysergic acid.
  - (d) Ergotamine.
  - (e) Diethyl Malonate.
  - (f) Malonic acid.
  - (g) Ethyl Malonate.
  - (h) Barbituric acid.
  - (i) Piperidine.
  - (j) N-acetylanthranilic acid.
  - (k) Ethylamine.
  - (L) Pyrolidine.
  - (m) Phenylacetic acid.
  - (n) Anthranilic acid.
  - (o) Morpholine.
  - (p) Ephedrine.
  - (q) Pseudoephedrine.
  - (r) Norpseudoephedrine.
  - (s) Phenylpropanolamine.
  - (t) Benzyl cyanide.

- (u) Ergonovine.
- (v) 3,4-Methylenedioxyphenyl-2-propanone.
- (w) Propionic anhydride.
- (x) Insosafrole (Isosafrole).
- (y) Safrole.
- (z) Piperonal.
- (aa) N-methylephedrine.
- (bb) N-ethylephedrine.
- (cc) N-methylpseudoephedrine.
- (dd) N-ethylpseudoephedrine.
- (ee) Hydriotic acid.
- (ff) Gamma butyrolactone (GBL), including butyrolactone, 1,2-butanolide, 2-oxanolone, tetrahydro-2-furanone, dihydro-2(3H)-furanone and tetramethylene glycol, including gamma aminobutyric acid (GABA).
- (gg) 1,4-butanediol.
- (hh) Any salt, isomer or salt of an isomer of the chemicals listed in paragraphs (a) to of this subsection.
- (ii) Iodine in its elemental form.
- (jj) Iodine matrix.
- (kk) Red phosphorus, white phosphorus, yellow phosphorus or hypophosphorus acid and its salts.
- (LL) Anhydrous ammonia

# **CHAPTER 3.2**

# **CIVIL INFRACTIONS**

## CHAPTER 3.2 CIVIL INFRACTIONS

### GENERAL PROVISIONS

#### 3.2.1 Definitions

As used in this Chapter:

- (a) "Infraction" means a civil offense in which the remedy involved is money damages which have been pre-determined by the Tribal Council as provided by the infractions procedures in this Code. An infraction is not a crime and the punishment shall not affect or impair the credibility of a witness or otherwise of any person convicted thereof.
- (b) "Defendant" means the person against whom an action is filed under this Chapter.
- (c) "Litter" means all waste material including but not limited to disposable packages or containers thrown or deposited as herein prohibited but not including the wastes of the primary processes of mining, logging, sawmilling, farming or manufacturing;
- (d) "Public" means a location to which the public or a substantial group has access or those individuals present in such location. A "public" place includes, but is not limited to: highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.
- (e) "Lawful permission" means an Order of the Tribal Court.

#### 3.2.2 Duties and Authority of Officers; Warrant Not Required

- (a) It shall be the duty of tribal law enforcement officers to enforce the provisions of this Chapter without the necessity of procuring a warrant.
- (b) A tribal law enforcement officer is authorized to arrest any person who resists, delays, prevents or obstructs any such officer, in the discharge of any duty under this Chapter or gives a false report to any peace officer. Any person who is subject to the criminal laws of the Tribe and who is arrested under this Section shall be guilty of a Class C offense and may be prosecuted pursuant to the criminal provisions of this Code. To the extent authorized by law, any person who is not subject to the criminal laws of the Tribe and who is arrested under this Section may be transported without unnecessary delay to the nearest authority for the state of Oregon or the United States.

### OFFENSES

#### 3.2.3 Trespass

A person commits the infraction of trespass if he/she:

(a) Enters upon the real property of another that is posted to prohibit trespassing, is fenced or contains obvious outward signs of habitability without permission of the owner or the owner's agent;

(b) Enters tribal lands that are not specifically posted as open to the public;

(c) Refuses to depart from or re-enters the Burns Paiute Reservation in violation of an order of exclusion issued by the Tribal Court as provided by this Code.

### 3.2.4 Vandalism

A person commits the infraction of vandalism if he:

(a) Injures, defaces, damages or destroys:

(1) Private property in which any other person has an interest without the consent of such other person;

(2) Tribal or other public property without the lawful consent of the appropriate governing body; or

(3) An obvious place of burial.

(b) Deposits, throws, or propels any substance upon any highway, roadway, runway, or railroad track, or any vehicle while such vehicle is either in motion or stationary.

Public Order

### 3.2.5 False Reporting

A person commits the infraction of false reporting if he initiates a false alarm or report, which is transmitted to a fire department, law enforcement agency or other organization that responds to emergencies involving danger to life or property.

### 3.2.6 Use or Possession of Alcoholic Beverages

A person commits the infraction of use or possession of alcoholic beverages if he uses or possesses alcoholic beverages anywhere on the Burns Paiute Indian Reservation.

### 3.2.7 Harassment

A person commits the infraction of harassment if:

(a) Without lawful authority, he, by words or conduct directed at another, threatens to:

(1) Cause bodily injury in the future to any person;

- (2) Cause physical damage to the property of a person other than the actor;
  - (3) Subjects any person to physical confinement or restraint; or
  - (4) Does any other act which is intended to substantially harm any person with respect to his or her physical or mental health or safety; and
- (b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out.

### 3.2.8 Cruelty to Animals

- (a) A person commits the infraction of cruelty to animals if he:
- (1) Maliciously kills, maims or wounds any animal;
  - (2) Overworks, tortures, torments, deprives of necessary sustenance, drink or shelter, cruelly beats, or mutilates or cruelly kills any animal;
  - (3) Has custody of or is responsible for an animal and willfully subjects the animal to needless suffering or inflicts any unnecessary cruelty upon the animal;
  - (4) Transports or carries any animal in a cruel and inhumane manner;
  - (5) Causes any animal to fight for his amusement or betting or wagering, permits the same to be done on any premises or is present at such fight.
- (b) It shall be a defense to a prosecution under this Section if the actor was involved in an accepted veterinary practice or engaged in hunting in accordance with the provisions of this Code and his actions were not cruel or inhumane under the circumstances. The Court shall use a reasonableness standard when determining whether a defense exists under this Subsection.

### 3.2.9 Public Nuisance

- (a) A person commits a public nuisance infraction if without lawful authority to do so he does any act or fails to do any duty, which act or omission either:
- (1) Unreasonably annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons;
  - (2) Offends public decency;

(3) Unlawfully interferes with, obstructs, or tends to obstruct, or render dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, highway, or road; or

(4) In any way unreasonably renders three (3) or more persons insecure in life or the use of property.

(b) An act or omission to act, which affects three or more persons in the ways specified in this Section is still a nuisance regardless that the extent of the annoyance or damage inflicted on the individuals is unequal.

(c) The presence of a lawful authority under this Section need not be disproved by the Tribe but shall be presented as an affirmative defense.

(d) The commission by act or omission of a public nuisance shall not be punished under this Section if the same conduct constitutes another offense which has also been charged against a defendant.

#### 3.2.10 Failure to Have Sewer Connection

A person commits the infraction of failure to have sewer connected if he fails to have his home connected to the Sewer system and reasonable access to such system is available to his home.

#### 3.2.11 Littering

A person commits the infraction of littering if he:

(a) Throws, discards or otherwise disposes of any litter anywhere within the Reservation except in authorized public waste disposal grounds or an authorized receptacle made available for such purpose, or

(b) Without lawful permission, stores or allows to accumulate any wrecked, junked, abandoned or unserviceable vehicles, appliances or implements anywhere on the Reservation. People shall be entitled to retain a motor vehicle that has been wrecked so long as such vehicle is being promptly repaired for further use by the owner and the owner obtains permission from the Tribal Council. If the owner of property otherwise subject to this section can prove to the Tribal Council that the item of property is an antique, the owner shall be granted permission by the Tribal Council to retain such item of property. This section shall not apply to the tribal police retaining or storing property needed for evidence in court.

#### 3.2.12 Violation of Tribal Law

A person commits the infraction of violation of tribal law if he violates any tribal law or any other council enactment intended to preserve the peace, health, safety, welfare and

morals of the Reservation, when a punishment for such violation is not provided under any other provision of this Code or the law or enactment itself.

#### Administration of Government

##### 3.2.13 Interference with Judicial Process

A person commits the infraction of interference with Judicial process if he:

(a) Except as provided by tribal law or procedure, interferes with or attempts to influence any decision of the Tribal court or investigation, prosecution, or settlement of any case; or

(b) Unlawfully detains or otherwise interferes with a witness or party to an action while such person is going to or from a court proceeding or attending court.

Nothing in this Section shall effect or limit the lawful authority of the Tribal Council to carry out its constitutional authority.

#### PENALTIES

##### 3.2.14 Penalty

For a violation of any section of this code, the penalty shall be a fine of \$25 to \$100.

# **CHAPTER 3.3**

# **MOTOR VEHICLES**

## CHAPTER 3.3 MOTOR VEHICLES

### STATE MOTOR VEHICLE LAWS INCORPORATED

#### 3.3.1 Provisions Incorporated

The substantive provisions of the following parts of the Oregon Revised Statutes (ORS) as presently constituted or hereafter amended are incorporated herein as provisions of this Code and shall apply to all persons subject to the jurisdiction of the Burns Paiute Tribal Court: ORS Chapters 801 – 822 inclusive.

#### 3.3.2 Amendments

Amendments, additions or deletions to or from such provisions by the State of Oregon after the enactment of this Code shall become a part hereof for all purposes unless the Council by ordinance or resolution specifically provides otherwise.

#### 3.3.3 Motor Vehicle Offenses

It is unlawful for any person to operate, drive or move a motor vehicle on the roads of the Burns Paiute Indian Reservation in violation of any of the requirements of Section 1, hereinabove or to do any act forbidden or fail to perform any act required by Section 1.

#### 3.3.4 Definitions

As contained in the above-cited motor vehicle laws, "highways", "state highways" and "public highways" shall be construed to mean "all roads, public and private, within the jurisdiction of the Burns Paiute Tribe", and "county jail" or "jail" shall be construed to mean "tribal or other jail authorized by the Tribe to receive prisoners". Reference to any "court" shall be construed to mean the "Burns Paiute Tribal Court".

#### 3.3.5 Inapplicable Provisions

Any of the provisions or portions of the provisions of the Oregon Revised Statutes listed above which, by their nature, would not apply to the Burns Paiute Tribe, Reservation, or Tribal Court, or the incorporation of which would undermine the underlying principles and purposes of this Code, or which are inconsistent with the provisions of this Chapter or this Code are not incorporated herein.

#### 3.3.6 Maximum Speed Limit

The maximum speed limit for the reservation or portions thereof shall be set by the Tribal Council. The maximum speed limit for the road leading to and around the community center shall be fifteen miles per hour. Signs shall be prominently placed indicating the speed limit.

#### 3.3.7 Procedural Provisions

The procedure established for criminal offenses under this Code shall be utilized for violations of this Chapter.

IMPLIED CONSENT  
[RESERVED FOR EXPANSION]

3.3.18 Occupational Driver's Permit--Petition--Eligibility--Restrictions--Cancellation

(a) Any person whose privilege to drive within the exterior boundaries of the Burns Paiute Reservation is suspended or denied under this Subchapter may petition the Tribal Court for an occupational driver's permit. The Court upon determining that the petitioner is engaged in an occupation or trade which makes it essential that the petitioner operate a motor vehicle may, in its discretion, issue a permit to drive to the petitioner and may set definite restrictions such as hours of the day, which may not exceed twelve hours in any one day, days of the week, type of occupation, areas or routes of travel permitted, or no driving if the person has been drinking.

(b) The Tribal Court may cancel an occupational driver's permit upon receipt of notice that the holder has operated a motor vehicle in violation of its restrictions or upon notice of the commission of an alcohol related driving offense.

3.3.19 Notice to Tribal Police Department

The Tribal Court shall notify the Tribal Police Department in writing of any suspension or denial of driving privileges within the boundaries of the Burns Paiute Reservation and of any occupational permits issued by the Court and restrictions placed upon such occupational permit.

TRAFFIC INFRACTIONS

3.3.20 Infraction - What Constitutes

Failure to perform any act required or the performance of any act prohibited by this Chapter is designated a traffic infraction and may not be classified as a criminal offense except for the following provisions of this Chapter incorporated by reference in Section 3.3.1:

- (a) ORS 820.500 relating to operation of mobile home pilot vehicles;
- (b) ORS 823.061-823.063 relating to the transportation of dangerous articles;
- (c) ORS 811.700(b) relating to hitting or striking an unattended car or other property;
- (d) ORS 811.700(a) relating to duty in case of injury to or death of a person or damage to an attended vehicle;
- (e) ORS 811.535 relating to obedience to police officers, flagmen, or fire fighters;

- (f) ORS 811.535 relating to refusal to give information to or cooperate with an officer;
- (g) ORS 811.540 relating to failure to stop and give identification to an officer;
- (h) ORS 811.540 relating to attempting to elude pursuing police vehicles;
- (i) ORS 811.140 relating to reckless driving;
- (j) ORS 813.010 relating to persons under the influence of intoxicating liquor or drugs;
- (k) Relating to vehicular homicide by motor vehicle;
- (l) Relating to vehicular assault;
- (m) Relating to negligent driving;
- (n) ORS 811.125 relating to racing of vehicles on highways;
- (o) Relating to leaving children in an unattended vehicle with the motor running;
- (p) Section 4 relating to driving without a valid driver's license;
- (q) Section 5 relating to driving with a suspended or revoked license.

Unless otherwise provided by this Title, prosecution of traffic infractions listed under this Title shall be in accordance with the procedures for infraction violations pursuant to this Code.

### 3.3.21 Monetary Deterrent Schedule

- (a) Equipment (46.37)
  - (1) Illegal Use of Emergency Equipment, ORS 820.320: \$20.00
  - (2) Defective or modified exhaust system, mufflers, prevention of noise and smoke:
    - (A) First offense: \$30.00
    - (B) Second offense within one year: \$50.00
    - (C) Third and subsequent within one year: \$70.00
    - (D) All other Equipment Infractions: \$25.00
- (b) Size, Weight, Load (46.44)
  - (1) Over legal tires, wheelbase

- (A) First offense: \$55.00
  - (B) Second offense: \$85.00
  - (C) Third offense: \$100.00; In addition to above 3 cents/excess lb.
- (2) Violation of Special Permit: \$50.00
  - (3) Failure to obtain Special Permit: \$50.00
  - (4) Failure to submit to being weighed: \$50.00
  - (5) Illegal vehicle combination: \$50.00
  - (6) Illegally transporting mobile home: \$55.00

Any other infraction defined \$35.00

- (c) Rules of the Road (46.61)
  - (1) Failure to stop: \$25.00
  - (2) Failure to yield right of way, ORS 811.275, 811.280, 811.285: \$25.00
  - (3) Following too close: \$25.00
  - (4) Failure to signal, ORS 811.400: \$25.00
  - (5) Improper lane usage or travel, ORS 811.370: \$25.00
  - (6) Impeding traffic: \$25.00
  - (7) Improper passing, ORS 811.410, 811.415, 811.420, 811.425: \$25.00
  - (8) Prohibited and improper turn, ORS 811.335: \$25.00
  - (9) Crossing double yellow line of center, ORS 811.420: \$25.00
  - (10) Operating with obstructed vision: \$25.00
  - (11) Wrong way on one way street: \$25.00
  - (12) Failure to comply with restrictive signs, ORS 811.265: \$25.00

If an accident occurs with any of the above listed infractions or speed too fast for conditions, the penalty plus the infraction shall be: \$100.00.

- (d) Speeding, ORS 811.109
  - (1) If posted speed limit is over 40 mph:

- (A) 0-10 over limit: \$40.00
  - (B) 11 - 20 mph over limit: \$75.00
  - (C) 21 - 30 mph over limit: \$150.00
  - (D) 31 mph over limit: \$300.00
- (2) If posted speed limit is 40 mph or less:
- (A) 0-10 over limit: \$40.00
  - (B) 11 - 20 mph over limit: \$75.00
  - (C) 21 - 30 mph over limit: \$150.00
  - (D) 31 mph over limit: \$300.00
- (3) Speed too fast for conditions, ORS 811.100: \$50.00
- (e) Serious Infractions
- (1) Spilling for failure to secure load: \$70.00
  - (2) Throwing or depositing debris on highway: \$150.00
  - (3) Passing stopped school bus with red lights flashing: \$200.00
  - (4) Violation of posted road restriction: \$70.00
- (f) Parking
- (1) Illegal parking on roadway, ORS 811.550(3): \$20.00
  - (2) Any other parking infraction: \$20.00
  - (3) Illegal handicap parking: \$200.00
- (g) Pedestrians
- Any infraction regarding pedestrians: \$25.00
- (h) Bicycles (applies to fifteen (15) and under)
- Any infraction regarding bicycles: \$15.00
- All other unlisted infractions: \$25.00

If an accident occurs with any of the above listed infractions or speed too fast for conditions, the penalty for the infraction shall be:  
\$50.00

(i) Driving Uninsured: \$100.00

(j) Driving without a valid Oregon Driver's License: \$100.00

Failure to Carry License: \$50.00

(k) Traffic Crimes:

(1) Negligent homicide and failure of the driver of an involved vehicle to stay at the scene of an accident involving injury or death shall be punishable by imprisonment for a period not to exceed 360 days, or a fine not to exceed \$5,000 or both the imprisonment and the fine.

(2) Driving under the influence of intoxicating liquor or of any drug, physical control, reckless driving, failure to stop at the command of a police officer, and driving while license is suspended or revoked shall be punishable by imprisonment for a period not to exceed one (1) year, or a fine not to exceed \$5,000 or both the imprisonment and the fine.

(3) All other major traffic crimes including but not limited to Reckless Driving, Driving While Suspended and Hit and Run (not involving injury or death) shall be punishable by a fine not to exceed \$5000 or imprisonment for a period not to exceed 90 days or both and suspension of driving privileges on the reservation for six (6) months.

(4) In addition to any other penalties imposed on a person convicted of a traffic offense, the Court may prohibit or set restrictions on the operation of a vehicle by such person on any road within the jurisdiction of the Burns Paiute Tribe for a period not to exceed one year, or may utilize the provisions for the suspension or revocation of driver's licenses.

(l) Open Container Fine: \$100.00

(m) All other violations not included above: Fine \$50.00

(n) Alternate Jurisdiction: Any non-Indian accused of a traffic crime or traffic infraction over whom the Tribal Court has no jurisdiction shall be referred to either Harney County Justice Court or Harney County Circuit Court for prosecution.

## TRAFFIC FEE SCHEDULE

### EQUIPMENT (46.37)

Illegal use of Emergency Equipment 820.320	\$20.00
Defective or modified exhaust system, mufflers, prevention of noise & smoke	
First offense	\$30.00
Second offense within 1 year	\$50.00
Third & subsequence within 1 year	\$70.00
All Other Equipment Infractions	\$25.00

### SIZE, WEIGHT, LOAD (46.44)

Over legal tires, wheelbase	
First offense	\$55.00
Second Offense	\$85.00
Third Offense in addition to 3 cents/excess lb.	\$100.00
Violation of Special Permit	\$50.00
Fail to obtain Special Permit	\$50.00
Fail to submit to being weighed	\$50.00
Illegal vehicle combination	\$50.00
Illegally transporting mobile home	\$55.00
Any other infraction defined	\$35.00

### RULES OF THE ROAD (46.61)

Fail to stop	\$25.00
Fail to yield right of way 811.275, 811.280, 811.285	\$25.00
Following too close	\$25.00
Fail to signal 811.400	\$25.00
Improper lane usage or travel 811.370	\$25.00

Impeding traffic	\$25.00
Improper passing 811.410, 811.415, 811.420, 811.425	\$25.00
Prohibited and improper turn 811.335	\$25.00
Crossing double yellow line of center 811.420	\$25.00
Operating with obstructed vision	\$25.00
Wrong way on one way street	\$25.00
Fail to comply with restrictive signs 811.265	\$25.00

If an accident occurs with any of the above listed infractions or speed too fast for conditions, the penalty plus the infraction shall be: \$100.00

#### SPEEDING ORS 811.109

If posted speed limit is over 40 mph:

0-10 mph over limit	\$40.00
11-20 mph over limit	\$75.00
21-30 mph over limit	\$150.00
31 mph over limit	\$300.00

If posted speed limit is 40 mph or less:

0-10 mph over limit	\$40.00
11-20 mph over limit	\$75.00
21-30 mph over limit	\$150.00
31 mph over limit	\$300.00

Speeding too fast for conditions 811.100 \$50.00

#### SERIOUS INFRACTIONS

Spilling for failure to secure load	\$70.00
Throwing or depositing debris on highway	\$150.00
Passing stopped school bus with red lights flashing	\$200.00
Violation of posted road restriction	\$70.00

## PARKING

Illegal parking on roadway (811.550(3))	\$20.00
Any other parking infraction	\$20.00
Illegal handicap parking	\$200.00

## PEDESTRIANS

Any infraction regarding pedestrians	\$25.00
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## BICYCLES (applies to fifteen (15) and under)

Any infraction regarding bicycles	\$15.00
All other unlisted infractions	\$25.00

If an accident occurs with any of the above listed infractions or speed too fast for conditions, the penalty for the infraction shall be:

Driving Uninsured	\$100.00
Driving with a valid Oregon Driver's License	\$100.00
Failure to Carry License	\$50.00

## TRAFFIC CRIMES

Negligent homicide and failure of the driver of an involved vehicle to stay at the scene of an accident involving injury or death shall be punishable by imprisonment for a period not to exceed 360 days, or a fine not to exceed \$5,000 or both the imprisonment and the fine.

Driving under the influence of intoxicating liquor or of any drug, physical control, reckless driving, failure to stop at the command of a police officer, and driving while license is suspended or revoked shall be punishable by imprisonment for a period not to exceed one (1) year, or a fine not to exceed \$5,000 or both the imprisonment and the fine.

All other major traffic crimes including but not limited to Reckless Driving, Driving While Suspended and Hit and Run (not involving injury or death) shall be punishable by a fine not to exceed \$5,000 or imprisonment for a period not to exceed 90 days or both and suspension of driving privileges on the reservation for six (6) months.

In addition to any other penalties imposed on a person convicted of a traffic offense, the Court may prohibit or set restrictions on the operation of a vehicle by such person on any road within the jurisdiction of the Burns Paiute Tribe for a period not to exceed one

year, or may utilize the provisions for the for the suspension or revocation of driver's licenses.

OPEN CONTAINER FINE \$100.00

ALL OTHER VIOLATIONS NOT INCLUDED ABOVE \$50.00

**ALTERNATE JURISDICTION**

Any non-Indian accused of a traffic crime or traffic infraction over whom the Tribal Court has no jurisdiction shall be referred to either Harney County Justice Court or Harney County Circuit Court for prosecution.

# **CHAPTER 3.4 CENTRAL RECORDS DEPOSITORY**

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# **CHAPTER 3.5 FIREWORKS**

[RESERVED FOR EXPANSION]

**TITLE 4  
NATURAL AND CULTURAL  
RESOURCES**

## TITLE 4 NATURAL AND CULTURAL RESOURCES

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[RESERVED FOR EXPANSION]

# **CHAPTER 4.1**

## **HUNTING**

## CHAPTER 4.1 HUNTING

### TRIBAL HUNTING PERMITS

#### 4.1.1 Possession

All hunters of the Burns Paiute Tribe must have in their possession while hunting a properly issued Burns Paiute Tribal Hunting Permit. A hunter shall be considered to be hunting without a permit if the permit has been altered or defaced in any way, or if false information was given in applying for the permit.

#### 4.1.2 Definitions

A hunter is defined as a Burns Paiute Tribal Member. A designated party shall mean Burns Paiute Tribal member.

#### 4.1.3 Designated Party

If a Tribal Member is unable to hunt for him/herself, a permit will be issued to a designated party on the person's behalf. A tribal member convicted of a felony may have a designated hunter under this section.

#### 4.1.4 Ceremonial Hunting

For ceremonial hunting purposes, the Tribal Council will designate hunters only for that purpose. Special hunting will only be for funerals, Reservation Day and other special dinners.

#### 4.1.5 Youth Hunters

Hunters 17 years of age and under must be accompanied by an adult and possess a Hunter's Safety Course Card.

#### 4.1.6 Issuance

Burns Paiute Tribal Hunting Permits shall be issued by the Tribal Court Clerk or Tribal Police upon receipt and approval of the hunter's application.

### WEAPONS

#### 4.1.10 Weapons

The only weapons that may be used for hunting on the Burns Paiute Reservation are .223 cal. or larger for big game and shotguns for game birds, traditional or compound bow, rim fire (.22 cal.) for small game. Traditional or compound bow may be used for any of the above listed species in lieu of rifle or shotgun.

## HUNTING AREAS

### 4.1.20 Hunting Areas

Hunting is permitted only in those designated areas of the Burns Paiute Reservation where it is permissible under the Tribal Laws to fire weapons.

The only allotment under Tribal control that is legal to hunt is Allotment 111.

## RESTRICTIONS

### 4.1.30 Restrictions

All tribal members are subject to the following restrictions:

- (a) Hunting is permitted only from ½ hr. before sunrise to ½ hr. after sunset;
- (b) Hunting with an artificial light is prohibited;
- (c) Hunting big game with a dog is prohibited;
- (d) Firing a weapon across a maintained public/tribal road is prohibited; and hunting from a motorized vehicle is prohibited; and
- (e) Bag limits, weapons, and other hunting regulations adopted by the Burns Paiute Tribal Council must be obeyed.

## CIVIL VIOLATION

### 4.1.40 Civil Violation

Any person who violates any provision of these hunting laws commits a civil violation. Penalty for the first civil violation shall not exceed payment of a fine of more than \$250, forfeiture of weapons and game, and the suspension of hunting privileges for 2 years.

Penalty for the second and additional civil violations shall not exceed payment of a fine of not more than \$500, forfeiture of weapons and game, and the suspension of hunting privileges indefinitely.

If the violator is not an enrolled member of the Burns Paiute Tribe, then in addition to the above penalties the violator may be prosecuted under federal law (18 U.S.C. 51165) and/or excluded from the Burns Paiute Reservation.

## HUNTING REGULATIONS FOR THE BURNS PAIUTE INDIAN RESERVATION

### 4.1.50 Game Birds

The only game birds that may be hunted are the following:

- (a) Ring-necked Pheasants
- (b) Hungarian and Chukar Partridges
- (c) Valley Quail
- (d) Waterfowl: (ducks and coots) to be set by State regulations

#### 4.1.51 Bag Limits

Daily bag limits are as follows: to be set by State regulations

- (a) Ring-necked Pheasants: three (3)
- (b) Hungarian and Chukar Partridges: six (6)
- (c) Valley Quail: eight (8)
- (d) Waterfowl: According to State regulations

#### 4.1.52 Hunting Season For Game Birds

- (a) Ring-necked Pheasants: October 16.November 28
- (b) Hungarian/Chukar Partridges: October 16.December 31
- (c) Valley Quail: October 16.December 31
- (d) Waterfowl: according to State regulations

#### 4.1.53 Hunting Season For Deer

August 15 through Oct. 15 – Buck 2 point or better and Doe.

#### 4.1.54 Bag Limit for Deer

Bag limit: one (1).

### WEAPON FIRING REGULATION

This regulation designates the area where weapons may be fired under Burns Paiute Tribal Laws, 3.1.112 Weapons, Firing.

#### 4.1.60 Area

No discharging of firearms will be permitted within home site and building areas of Old Camp, New Camp (lower housing), and the New Housing Development (upper housing)

which includes the Community Center and Tribal Court. The term “within the home site and building areas” means within 500 feet of any building in the named areas.

#### 4.1.61 Livestock and Pets

No discharging of firearms when livestock and pets are within, or may reasonably be, within range of the weapons used.

#### 4.1.62 Target Practice

Target practice will be limited to Brown’s Canyon only.

### PERMITS

#### 4.1.70 Duration

Permits for hunting on reservation land will be issued for one year.

#### 4.1.71 Area

Maps will be issued showing allowable designated hunting areas.

#### 4.1.72 Possession

Each hunter must carry permit when hunting.

# **CHAPTER 4.2 CULTURAL RESOURCE PROTECTION**

## CHAPTER 4.2 CULTURAL RESOURCE PROTECTION

### CULTURAL RESOURCE PROTECTION

#### 4.2.100 Title

This section of the Burns Paiute Tribal Code shall be referred to as the Burns Paiute Cultural Resources Protection and Management Code.

#### 4.2.101 Tribal Policy and Legislative Intent

The Burns Paiute Tribe affirms its authority and commitment to the preservation, protection and promotion of Tribal culture and heritage. This trust includes the management of ancient and contemporary cultural use sites and resources fundamental in the recognition of traditional life ways, values and histories of The Burns Paiute Tribe. These cultural sites and resources include those associated with traditional foods and other natural resources, other sacred sites as designated by The Burns Paiute Tribe, habitations, and historical events and personalities.

It is recognized that these are an invaluable, irreplaceable and endangered Tribal resource. It is a basic Tribal intent that these resources be protected and preserved within the traditional Tribal territorial limits. It is the intent of The Burns Paiute Tribe to protect, preserve and manage cultural resources by the use of policy, statutory prohibitions and regulations. In keeping with this intent, the following policies are established:

- (1) It is a policy of The Burns Paiute Tribe to encourage all persons knowing the locations of archaeological, historical or cultural sites to report this information to the Cultural Resources Protection Program.
- (2) It is a policy of The Burns Paiute Tribe to encourage all property owners, land managers and developers in the Central and Eastern Oregon area to adhere to federal, state and Tribal laws protecting archaeological, cultural and historical properties.
- (3) It is a policy of The Burns Paiute Tribe to recognize that all activities to preserve and maintain the culture of its people is a legitimate and necessary Tribal governmental function, and may require the expenditure of Tribal funds.
- (4) It is a policy of The Burns Paiute Tribe that the cultural education of Tribal members is of equal or greater importance to the long-term welfare of The Burns Paiute Tribe and its members, as is traditional schoolroom education in that it provides the foundation for the perpetuation of The Burns Paiute Tribe as a distinct political and cultural entity.
- (5) It is the policy of The Burns Paiute Tribe to recognize, respect and foster the wide range of cultural and traditional diversity present among Reservation families, and individual Indians.
- (6) It is a policy of The Burns Paiute Tribe to discourage excavations because of the interest of The Burns Paiute Tribe and their members in protecting the privacy and non-

disturbance of their on and off Reservation, persons, places and property. This chapter should not be interpreted to encourage excavations or studies on or off the Reservation. The intent of this chapter is to regulate and strictly control such activity when and if it does take place.

(7) It is a policy of The Burns Paiute Tribe to encourage the Tribal Council to participate in the decision making process regarding the Native American Graves Protection and Repatriation Act. The Burns Paiute Tribe shall notify the Tribal Membership of repatriation of ancestral human remains.

(8) The Burns Paiute Tribe, to manage and protect all cultural, natural and wildlife resources within the territorial jurisdiction of The Burns Paiute Tribe in a manner, which preserves, protects and/or enhances the vitality of the resource. To the extent that other tribal laws or regulations are not affected.

(9) In addition to other areas of cultural resources protection and management, this Chapter will provide guidance and authorization for the Cultural Resources Protection Program, Burns Paiute Cultural Coalition Committee to undertake actions which assist The Burns Paiute Tribe in preserving, protecting and perpetuating The Burns Paiute Tribe's language, legends and lore, songs, dances, art, music, crafts, technology, and cosmology.

(10) In addition to relevant Federal and State laws, regulations, and guidelines, Tribal laws and policies are established by this Chapter that will protect archaeological, cultural, and historical sites and resources.

#### CULTURAL RESOURCES OFFICE AND BURNS PAIUTE CULTURAL COALITION COMMITTEE; PROTECTION OF CULTURAL RESOURCES

##### 4.2.110 Cultural & Heritage Department & Committee

(1) The Burns Paiute Cultural Resources Office shall endeavor to increase efforts in protecting, locating, documenting, and evaluating cultural and historic sites and resources. This information will provide a record of the past for future generations. Information on sites recorded in tribal traditional areas will also be collected and evaluated as available. The Cultural Resource Office is further authorized to seek funding from federal, state and private sources to aid in the enforcement of this Chapter in accordance with existing Burns Paiute Tribal Policy.

(2) Pursuant to the provisions contained under BPTC Chapter 3.1, the Cultural Resources Office is authorized to seek and obtain the assistance of the Burns Paiute Tribal Police Department and other law enforcement agencies for the investigation, prosecution and enforcement of any provision of this Chapter.

(3) Pursuant to Article 1, Section (7) of the Burns Paiute Tribal Constitution and Bylaws, a Burns Paiute Cultural Coalition Committee shall be established to provide oversight for the cultural resources management activities and Cultural Resource programs. The Committee shall operate pursuant to a set of Bylaws approved of by the

Burns Paiute Tribal Council. This Committee shall perform its duties in a manner consistent with established Tribal, Federal, and State laws.

(4) The Cultural Resources Office shall be the repository for the following cultural resources information: archive of all known places of cultural significance including but not limited to places of spiritual significance, traditional use hunting areas, traditional root gathering areas, fiber and lithic material collecting areas, burial locations, and geographical locations exhibiting archaeological evidence of “pre-contact” and “post-contact” habitation.

(5) Access to the collections and archives for educational and research purposes will be controlled by the Burns Paiute Tribal Council in consultation with the Burns Paiute Cultural Resource Office, and the Burns Paiute Cultural Coalition Committee. All documents and information regarding cultural resources contained with the repository are considered to be sensitive and confidential and are exempt from the Freedom of Information Act.

(6) The Cultural Resources Office and the Burns Paiute Cultural Coalition Committee are authorized to develop rules and procedures for the use and disclosure of sensitive and confidential information. Such rules and procedures are subject to final approval of Burns Paiute Tribal Council.

#### 4.2.111 Protection of Cultural Resources-General Rules

It is the intent of this Section to protect resources of particular cultural significance to the Burns Paiute Tribe. This Section is intended to prevent the willful and/or the inadvertent destruction, damage, loss, desecration, theft and or illegal sale of cultural resources.

The following rules are established to provide general protection of cultural resources.

(1) All Tribal land use actions shall take into consideration the possible impact of the land use action to archaeological, historical and cultural sites and resources as required by federal, state, and tribal law.

(2) The Cultural Resources Office shall conduct a reconnaissance survey of all proposed land use developments and or proposed ground disturbing activities prior to final approval of any land use development project and/or ground disturbing activity as required by federal, state, and tribal law. The Office may issue a conditional clearance permit if the proposed development has already been surveyed or the probability of adverse affect to cultural resources has been determined to be non-existent or negligible.

(3) All proposed land use developments, whether industrial, agricultural, forest practices, home development, or commercial in nature, must have a "clearance" from the Cultural Resources Office pursuant to BPTC Chapter 4.2. For the purposes of this section, "clearance" means that adequate research has been completed to the satisfaction of the Cultural Resources Office in accordance with Tribal, federal and state laws. In order

to proceed with development, the results of such research must indicate that no adverse affect will occur to significant cultural resources as a result of any land use development.

(4) Any proposed land use development which has been determined through research to pose adverse affect to significant cultural resources, may proceed only after a mitigation plan has been developed which reduces adverse affect to an insignificant level. All proposed mitigation plans must be approved of by the Cultural Resources Office in consultation with the Burns Paiute Culture and Heritage Committee, and the Burns Paiute Elders Committee.

(5) The following land uses and activities are exempt from the permit process:

(a) Home gardens less than one (1) acre in size.

(b) Tree, grasses and shrubbery planting and existing nursery operations. This includes wildlife habitat enhancement projects that do not require or include additional ground disturbing activities.

(c) Fence construction, telephone and power pole placements.

(d) Home dwelling/Building additions, modifications and renovation. Any such additions, modification or renovation must be appended to existing structures (project dependant).

(e) Buildings/structures less than two hundred (200) square feet in area which are accessory to an existing dwelling or building (project dependant).

(f) General landscaping around home dwellings/structures.

(g) Root and food gathering and processing operations.

(h) Agricultural uses as defined, except new cultivation. New cultivation shall be defined as any operation that would cultivate land that has not been cultivated, or has lain idle for more than five (5) years.

(i) Maintenance, repair or operation of cemeteries, existing roads, railroads, utility facilities, ditches and irrigation canals (project dependant).

#### 4.2.112 Designation of Culturally Significant

For the Purposes of this chapter, the following list hereby enumerates designated items of cultural significance and/or subjects of extreme cultural interest and sensitivity. The list is not exhaustive and may be expanded by amendment to this Chapter.

(1) Earth, Air and Water, to the extent that other Tribal Laws, Rules or Regulations do not provide general protection of these resources.

- (2) Human Remains obtained by any federal, state or local agency, and any public or private foundation, company, educational institution, museum or individual, within aboriginal territory.
- (3) Funerary items, any jewelry, regalia, tools, sacred objects, clothing, works of art or any other item thought to have been associated, found or obtained at or near a burial site.
- (4) Native Wild Plants, any native wild traditional plant, or plant parts, plant extract, tree or tree parts, tree extract, grasses, root, bark, seed, or berry used for sustenance, clothing, lodging, regalia, ceremony, arts and crafts, tools, nets, weapons and healing, by Indian people, traditionally, historically, and contemporarily.
- (5) Native Wild Game, any native wild traditional game animal or fish or parts, used for subsistence by Indian people, traditionally, historically, and contemporarily.
- (6) Medicines, any traditional plant, animal, or animal parts, mineral, object, water, or in any combination thereof, used for medicinal purposes by Indian peoples, traditionally, historically and contemporarily.
- (7) Native Wild Animals, any wild mammal, bird, fish, insect, reptile or amphibian, parts, hides, skins, bones, teeth, hair, or feathers, not used for sustenance, but have traditional, historical and contemporary value to the Burns Paiute Tribe in preserving Tribal culture, tradition, history, rights and interests.
- (8) Material associated with traditional habitation and subsistence practices such as stones, stone tools, stone works of art, stone flakes, bones, bone tools, shells and any other objects commonly associated with archaeological finds or undertakings.
- (9) Petroglyphs, Pictographs and Petrographs, any work of art that has been etched into stone, with or without the use of pigment, or any work of art that has been placed upon stone by the mere use of pigment. Petroglyphs, Pictographs, and Petrographs shall include only those works of art that have been identified to have traditional and or historic value to the Burns Paiute Tribe and shall not include contemporary works of art or "graffiti".

#### 4.2.113 Tribal Register of Cultural Sites-Protected Sites Status

The Cultural Resources Office shall develop and maintain a register of all known burial, sacred, cultural, archaeological and historic sites. All such listed properties on the Burns Paiute Reservation shall be accorded "protected site status". The Cultural Resources Office shall work with Federal and State agencies to include off-reservation Tribal-registered sites on National or State Registers of Historic Sites or Places. All proposed developments or activities which may adversely affect a protected site on the Burns Paiute Reservation must be approved by the Burns Paiute Cultural Coalition Committee. The register shall be developed and maintained with the following:

- (1) A status report regarding the register shall be made annually to the Burns Paiute General Council. Such report shall be made by the Burns Paiute Cultural Coalition Committee.

(2) Criterion for site selection and registration shall be developed by the Burns Paiute Cultural Coalition Committee.

(3) The Burns Paiute Cultural Coalition Committee may by regulation restrict public access to portions of the Tribal Register of Cultural Sites. Many of the sites will require security measures to prevent public promulgation of their location and content. This Section is intended to prevent the potential adverse affect if site information is publicly released. In restricting public access, the Committee need only consider the nature of the sites contained in the Register proposed for public access restriction and the potential for adverse affect if the sites are not restricted. The decision to publicly release or not release information regarding any protected site is within the discretion of the Burns Paiute Cultural Coalition Committee and the Burns Paiute Tribal Council. Any person may file an appeal of the decision of the Committee to the Burns Paiute Tribal Court pursuant to BPTC Chapter 4.2.

## CULTURAL, ETHNOGRAPHICAL, HISTORICAL AND ARCHAEOLOGICAL STUDIES

### 4.2.114 Permission Required-Cultural Resources Office

(1) A person knowing or having reason to know that a Protected Site or Protected Object is involved may not excavate, alter or conduct any phase of construction on or near a protected site on protected lands, conduct a field investigation, or make an exploratory excavation on protected lands to determine the presence of a Protected Site, remove from Protected Lands any Protected Object, without first obtaining a permit issued by the Cultural Resources Office. Any person found to be in violation of this Section, is subject to the penalties described in BPTC Chapter 4.2.

(2) Persons conducting historic, cultural or ethnographic research on the Burns Paiute Tribe and other tribally owned or controlled lands shall first apply for and obtain permission from the Burns Paiute Tribal Council and obtain a permit issued in conformance with BPTC Chapter 4.2.

(3) Any person conducting archaeological excavations, surveys, or any fieldwork, shall submit original copies of all work performed on tribally owned or controlled lands to the Cultural Resources Office. All reports submitted conform with Tribal standards. Any such reporting not in accordance will constitute a violation of a permit term punishable under BPTC Chapter 4.2.

(4) The Cultural Resources Office in the Burns Paiute Cultural Coalition Committee shall develop procedural rules and regulations for the issuance of permits described in BPTC Chapter 4.2.

(5) The Cultural Resources Office is authorized to require conditions regarding any permits issued. Such conditions may include but not be limited to, the use of Tribal members to serve on field crews, as interpreters and as monitors. Conditions may also be placed upon permits regarding the when, where, how and with whom historic, cultural and or, ethnographic research is conducted. Non-compliance with the conditions placed upon

a permit shall be treated as a violation of permit terms, punishable pursuant to BPTC Chapter 4.2.

(6) The Cultural Resources Office may suspend a permit for cause upon determining that any term or condition of a permit is not being met by a permit-holder.

(7) The Cultural Resources Office may issue a Stop Work order and suspend a permit for cause upon determining that continuation of activities under a permit would not be in the best interests of the Burns Paiute Tribe. Such a suspension is made without liability to the Burns Paiute Tribe, its agents or employees. Such a suspension shall not prejudice the ability of the permit holder to hold or obtain other permits. Any stop work order or suspension of a permit by the Cultural Resources Office shall have the force of law and non-compliance with a stop work order or suspension, shall be actionable and punishable pursuant to the provisions contained in BPTC Chapter 4.2.

(8) Any Tribal member conducting research into personal family history, Tribal history or conducting cultural resources research, which is not part of any undertaking, or research that is non-profit for family or personal use, is exempted from the permit requirements of this Section.

## OFFENSES AGAINST THE BURNS PAIUTE TRIBE

### 4.2.115 General Offenses

(1) It shall be unlawful for any person who, knowing or having reason to know that a protected site or object is involved shall excavate, injure, remove, damage, destroy, alter or remove a protected on tribally owned or controlled land unless that activity is authorized by a permit issued pursuant to BPTC Chapter 4.2.

(2) It shall be unlawful for any person to knowingly sell, purchase, exchange, transport, barter, receive or offer to sell any protected object. If such object was excavated or removed from protected lands in violation of: (a) the prohibition contained in subsection (1) of this Section, or (b) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Tribal, federal, or state law.

(3) It shall be unlawful for any person to undertake any activity or program that may result in changes in the character or use on lands tribally owned or controlled unless that undertaking is authorized by permit pursuant to BPTC Chapter 4.2.

(4) It shall be unlawful for any person, firm, association, company, partnership, holding company, club, society, Tribal, state, or federal agency, to undertake any ground disturbing activity on the Reservation without having first obtained a permit pursuant to BPTC Chapter 4.2. Any person conducting any ground disturbing activity without a permit is subject to the criminal and/or civil penalties described in BPTC Chapter 4.2 and 3.1.

(5) It shall be unlawful for any person to make an unauthorized disclosure of sensitive or confidential information, which may result in the destruction, damage or loss of any

cultural resource. Violations of this section are subject to the penalties described in BPTC Chapter 4.2.

(6) It shall be unlawful for any person to knowingly disobey, disregard or not comply with a stop work order as duly issued by the Cultural Resources Protection Program. Violations are subject to criminal and, or civil penalties described in BPTC Chapter 4.2 and 3.1.

#### 4.2.116 Indian Offenses

(1) It shall be unlawful for any Indian person to sell, purchase, offer to sell or transport any protected objects. Any Indian person engaging in any such activities shall be subjected to criminal or civil sanctions imposed by the provisions contained in this Chapter and any other applicable law.

(2) It shall be unlawful for any Indian person to gather, collect, possess with intent to sell, sell or offer to sell, buy or offer to buy or transport any cultural resources which have been classified as "protected objects" by Burns Paiute Tribal Code.

#### 4.2.117 Violation of Permit Terms

It shall be unlawful for any person to not fully comply with the terms of a permit issued pursuant to BPTC Chapter 4.2 and shall be subject to civil prosecution pursuant to BPTC Chapter 4.2 BPTC 2.3.40 to 2.3.153.

### TRIBAL COURT-TRIBAL PROSECUTOR-LAW ENFORCEMENT

#### 4.2.130 Tribal Court Jurisdiction

The Tribal Court for The Burns Paiute Tribe shall have original criminal and civil jurisdiction to hear all cases arising under this Chapter. All criminal cases including appeals, arising under this Chapter shall be governed by the Burns Paiute Tribal Law and Order Code for the Burns Paiute Tribe. All civil cases shall be prosecuted by the Tribal Prosecutor and the Burns Paiute Tribe shall have the burden of proving any civil pleading by a preponderance of the evidence. The Tribal Court shall issue warrants for criminal violations of this Chapter in conformance with established procedural rules contained in the Burns Paiute Tribal Law and Order Code. The Tribal Court may issue Administrative Warrants for civil violations of this Chapter pursuant to procedural rules established by the Burns Paiute Tribe and the Tribal Court. Except as otherwise provided, all civil trials shall be to the court without a jury. Nothing in this Chapter shall be construed to be a waiver of the Burns Paiute Tribes' sovereign immunity from suit.

#### 4.2.131 Tribal Prosecutor

The Tribal Prosecutor for The Burns Paiute Tribe, in conjunction with the Tribal Police Department and the Cultural & Heritage Department shall be responsible for the investigation and for the criminal and civil prosecutions of all cases arising under this Chapter.

#### 4.2.132 Burns Paiute Tribal Police Department

The Burns Paiute Tribal Police Department, with the assistance of the Burns Paiute Cultural & Heritage Department, shall be responsible for the investigation and enforcement of the provisions contained in this Chapter.

#### 4.2.133 Appeals

The Burns Paiute Tribal Court of Appeals shall have jurisdiction to hear all appeals arising under this Chapter. The Burns Paiute Tribal Law and Order Code shall govern all appeals regarding criminal actions brought under this Chapter. All cases filed in the Burns Paiute Tribal Court as Civil Causes of action, may be appealed to the Burns Paiute Tribal Court of Appeals as follows:

Any party wishing to appeal shall file a Notice of Appeal with the Burns Paiute Tribal Court and the Northwest Intertribal Court of appeals pursuant to BPTC Chapter 1.1.280, et seq. within ten (10) working days after the decision being appealed is rendered.

#### 4.2.134 Culture & Heritage Department - Appeal of Office Decisions

Any administrative action or decision made pursuant to this Chapter by the Burns Paiute Cultural & Heritage Department, which is a final action for the Burns Paiute Tribe, may be appealed by any party adversely affected by such action. Any appellant adversely affected by an administrative action taken by the Cultural Resources Protection Program shall be entitled to review of the action before the Burns Paiute Tribal Council as follows:

- (1) Notice of Appeal under the provisions of this part must be filed with the Burns Paiute General Manager within ten (10) working days of receipt of notice of a final action by the of Cultural Resources Protection Program.
- (2) Review by the General Manager shall be limited to ensuring that the decision or administrative action taken by the Cultural Resources Protection Program complies with Tribal Law.
- (3) Upon official receipt of any filed Notice of Appeal, the General Manager shall, within fifteen (15) days, hold a hearing pursuant to the Committee's Bylaws to reach a decision regarding any such appeal. After the conclusion of any hearing(s) held, the General Manager shall within ten (10) days, render a written decision regarding the appeal.

#### 4.2.135 Administrative Appeals - Appeal of Council Decisions

Any appellant adversely affected by a Tribal Council decision on appeal, shall be entitled to a review of such decision in the Burns Paiute Tribal Court. Judicial Review of any such decision shall be conducted as follows:

- (1) Any party wishing to appeal shall file a Notice of Appeal with the Burns Paiute Tribal Court within ten (10) working days after the decision being appealed is rendered.

(2) Grounds for Appeal.

(a) A party may appeal a final order of the Burns Paiute Tribal Council to the Burns Paiute Tribal Court upon an allegation, made in good faith, that an error was made by the Burns Paiute Culture and Heritage Committee that prejudiced the outcome of the proceeding before the Tribal Council or that an error was made by the Tribal Council in the interpretation of law; and

(b) Judicial Review by the Burns Paiute Tribal Court shall include review which ensures that the appellant received due process of law and that all rights of the appellant under the Indian Civil Rights Act (25 U.S.C. 1301.1303) were observed.

(3) Appeals from the Tribal Council to the Burns Paiute Tribal Court shall proceed in the tribal court as an ordinary civil or criminal action, as the case may be.

## PENALTIES FOR VIOLATIONS

### 4.2.150 Criminal Penalties

Any Indian who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in this Chapter shall, upon conviction, be fined not more than \$5,000 or imprisoned not more than one year, or both with costs. Such person may also be subject to the civil penalties provided for in BPTC Chapter 4.2 and 2.3.40 to 2.3.153. Any criminal prosecution of an Indian person for a violation of this Chapter, shall be governed by the Burns Paiute Tribal Law and Order Code and all rules of the Tribal Court regarding criminal prosecutions.

### 4.2.151 Civil Penalties

Any person violating the provisions of this Chapter commits a civil infraction punishable by fine or exclusion from the Reservation. Exclusion from the reservation shall be conducted pursuant to the Burns Paiute Tribal Exclusion Code. The infraction shall be punishable by a maximum fine of \$5,000. Except as otherwise provided, the trial of any such infraction shall be by the Court without a jury and the prosecution shall have the burden of proving the alleged infraction by a preponderance of the evidence.

### 4.2.152 Civil Damages

Any person violating the provisions of this Chapter shall be liable to The Burns Paiute Tribe for civil damages to be assessed by the jury after a trial by jury wherein the jury has made a finding to the amount of damages. "Civil damages" shall be interpreted liberally by the jury to include, but not be limited to the following:

(1) Costs of restoration of a protected site.

(2) Enforcement costs associated with the enforcement of the provisions of this Chapter.

- (3) Costs associated with disposition of protected objects, including, reburial.
- (4) Costs associated with documentation, testing, and evaluation of a protected site in order to assess the characteristics of the site.

#### 4.2.153 Forfeiture of Contraband

All Protected Objects obtained in violation of the provisions of this Chapter shall be deemed contraband and forfeited to the Burns Paiute Tribe after a hearing without a jury, in the Tribal Court.

Any and all vehicles and equipment used in commission in violation of this chapter shall be seized.

#### 4.2.154 Suspension of Privilege to Exercise Traditional Rights on the Burns Paiute Reservation

In addition to any other criminal or civil penalty imposed, Tribal members exercising traditional hunting, gathering and pasturing rights in violation of the terms of BPTC chapter 4.2 may have those privileges suspended by the Tribal Court after a hearing. The Tribal Court may impose such a suspension after receipt of a recommendation for a suspension from the Tribal Prosecutor. The Tribal Prosecutor may make such a recommendation with the concurrence of the Burns Paiute Cultural Coalition Committee. The Tribal Court shall establish the terms and period of suspension not to exceed two (2) years.

#### 4.2.155 Seizure of Security

At the discretion of the citing police officer, the officer may seize such property in the possession of the defendant as the officer deems reasonably necessary to secure payment of any fine or civil damages which may be levied upon the defendant upon conviction of the infraction or crime. The officer shall, at the time of seizure, give to the defendant a receipt accurately describing the item(s) seized.

#### 4.2.156 Removal from Reservation

The citing police officer may remove or escort from the Reservation any person committing a violation of this Chapter, pursuant to BPTC Chapter 3.2.

#### 4.2.157 Tribal Policy with Regard to Management Activities Outside the Burns Paiute Reservation

It is the policy of the Burns Paiute Tribe to reaffirm and reacquaint all federal agencies with their trust responsibility to the Burns Paiute Tribe. The trust responsibility means that proper and adequate management regimes which provide the optimum level of trust protection for important natural resources and ecosystems that provide much of the Burns Paiute Tribal cultural resources. It is through this trust responsibility that comprehensive and meaningful cultural resources management may be developed and fostered. It is the policy of the Burns Paiute Tribe to encourage management activity by city, county, state

and federal agencies outside the Burns Paiute Reservation, which will enhance, protect and preserve the traditional rights of the Burns Paiute Tribe.

It shall also be the policy of the Burns Paiute Tribe to seek, negotiate and obtain contracts with federal, state and private agencies to perform Cultural Resource Protection surveys, studies and excavations that ultimately enhance, protect and preserve the cultural, historical interests and traditional rights of the Burns Paiute Tribe. The Burns Paiute Tribe encourages the establishment of memoranda of agreement with appropriate persons and agencies to effectuate the policies contained in this section.

#### 4.2.158 Reports of Significant Activity Outside of the Burns Paiute Reservation

Members of the Burns Paiute Tribe, Tribal employees, and others are hereby encouraged to report to the Burns Paiute Cultural Coalition Committee or Tribal Police all activity outside the Burns Paiute Reservation which might adversely affect Tribal traditional rights and interests.

#### 4.2.159 Exercise of Traditional Rights on Tribal Lands and Lands Managed by the Burns Paiute Tribe

Members of the Burns Paiute Tribe shall exercise tribal rights on the Burns Paiute Reservation and other tribal lands as follows:

- (1) Hunting and Fishing Rights shall be exercised in accordance with the provisions of Tribal Hunting and Fishing Laws and Regulations.
- (2) Root, Berry and Food Gathering Rights shall be exercised in accordance with Tribal custom and tradition.
- (3) Pasturing Rights shall be exercised in accordance with terms of a permit issued by the Burns Paiute Tribe and, or the Federal Agency responsible for administering the pasturelands.
- (4) To the extent that the Burns Paiute Tribe has not issued any rule or regulation, the Burns Paiute Cultural Coalition Committee, may issue rules and regulations regarding the harvest, possession, sale or use of any cultural resources. Such rules or regulations may include but are not limited to:
  - (a) Seasons: The Committee may establish seasons when cultural resources may be harvested.
  - (b) Locations: The Committee may establish closures on and off the Reservation. This Section means that specific cultural resources may not be harvested by Tribal members in closed areas.
  - (c) Sale or Trade: The Committee is authorized to issue rules and regulations restricting the sale, offer for sale, trade, barter, possession and use of cultural resources

not in a protected class status. Such rules or regulations may include the prohibition of any sales or commercial activity of cultural resources in a protected object status.

(5) Any such rule or regulation issued by the Committee, must have as its purpose, the protection and or preservation of any cultural resources, and or to prevent the waste, abuse or adverse effect to an identified cultural resource.

(6) When lands in question are not held in trust state regulations apply.

## AMERICAN INDIAN RELIGIOUS FREEDOM ACT

### 4.2.170 Tribal Policy and Legislative Intent

On August 11, 1978, the Congress of the United States enacted Public Law 95-41 (92 Stat. 469), known as the "American Indian Religious Freedom Act", which provides "on or after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites." It is the policy of the Burns Paiute Tribe to support this act.

### 4.2.171 Protection of Indian Religious Freedom

The Burns Paiute Tribal Council of the Burns Paiute Tribe may take such actions as are necessary to implement the provisions of the American Indian Religious Freedom Act.

### 4.2.172 Protection of Sacred Sites and Recovery of Sacred Resources

(1) The Burns Paiute Tribal Council shall take such actions as are necessary to protect Sacred Sites identified by other persons hired or employed by the Burns Paiute Tribal for the purpose of site identification. The Burns Paiute Tribal Council shall take such actions as are necessary to recover Sacred Objects that have been illegally obtained, or obtained without the consent or authorization by the Burns Paiute Tribe.

(2) The Cultural & Heritage Department shall promulgate and enforce any regulations, rules or policies developed to effectuate protection of Sacred Sites.

(3) The Cultural & Heritage Department is authorized and encouraged to negotiate memoranda of agreement with other tribes, state, federal and local agencies which outline specific measures to protect Sacred Sites. The final authority to sign such agreements rests with the Burns Paiute Tribal Council.

### 4.2.173 Receipt of Artifacts and Cultural Resources Donated and Purchase

It is the policy of the Burns Paiute Tribe that persons possessing resources, objects, or other materials with religious, historical, or cultural significance to the Burns Paiute Tribe be encouraged to donate these resources to the Burns Paiute Tribe in order to prevent the

dispersion and loss of resources important to the preservation of the culture of the Burns Paiute Tribe. The Burns Paiute Tribe discourages the use of sale or purchase to acquire these resources, however, as a last resort, the purchase of these resources may be authorized only after approval from the Burns Paiute Tribal Council.

The Burns Paiute Tribe reserves the right to seek legal redress through the appropriate Court to obtain a court order for the return of cultural resources.

#### 4.2.174 Access to Sacred Sites

The Burns Paiute Tribal Council shall take such actions as it deems necessary to ensure that Tribal members are granted access to sacred sites.

### PROTECTION OF INDIAN GRAVES

#### 4.2.180 Tribal Policy and Legislative Intent

Oregon Revised Statutes 97.740 through 97.760 provide for the protection of Indian graves. It is the policy of the Burns Paiute Tribe to support enforcement of these statutes. ORS 97.750 provides:

- (1) If such action is necessary to protect the burial from imminent destruction, and upon prior notification to the State Historic Preservation Office and to the appropriate Indian tribe in the vicinity of the intended action, a professional archaeologist may excavate a Native Indian cairn or grave and remove resource objects and human remains for subsequent re-interment under the supervision of the Indian tribes.
- (2) Except as provided in subsection (1) of this section, any proposed excavation by a professional archaeologist of a Native Indian cairn or grave shall be initiated only after prior written notification to the State Historic Preservation Office and with the prior written consent of the appropriate Indian tribe in the vicinity of the intended action. Failure of a tribe to respond to a request for permission within 30 days of its mailing shall be deemed consent. All resource objects and human remains removed during such an excavation shall, following scientific study, be re-interred at the archaeologist's expense under the supervision of the Indian tribe.
- (3) In order to determine the appropriate Indian tribe under this section and ORS 97.745, a professional archaeologist or other person shall consult with the Commission on Indian Services which shall designate the appropriate tribe."
- (4) It is the intent of BPTC Chapter 4.2 to provide a mechanism for expeditiously determining whether or not written consent for an excavation shall be given pursuant to ORS 97.750(2).

#### 4.2.181 Procedures for Obtaining Consent

A request for consent to excavate pursuant to ORS 97.750 shall be presented to the Cultural & Heritage Department. The Cultural & Heritage Department shall direct

appropriate representatives, employees and, or professionals under contract of the Burns Paiute Tribe to conduct an investigation of the matter and make a formal written report to the Burns Paiute Tribal Council within 20 days recommending whether or not to grant consent to the excavation, and if consent is granted, what if any conditions should be imposed on the excavation. Such conditions shall include the option of the Burns Paiute Tribe to perform the excavation in full or in part and any other survey or preliminary work in full or in part, under contract with the requesting party.

#### 4.2.182 Native American Graves Protection and Repatriation Act

The Native American Graves Protection and Repatriation Act (NAGPRA) provides for the protection of Native American graves and for the return and repatriation of human remains, burial artifacts, unassociated burial artifacts, sacred objects and objects of cultural patrimony. It is the policy of the Burns Paiute Tribe to support the enforcement and administration of this act.

(1) The Cultural & Heritage Department is vested with the authority to administer the provisions of the NAGPRA. The Cultural & Heritage Department shall administer NAGPRA related issues with the Burns Paiute Cultural Coalition Committee and or the Burns Paiute Tribal Council.

(2) The Cultural & Heritage Department shall develop administrative procedures to implement the provisions of Tribal consultation with federal agencies and others, regarding the proper handling and disposition of human remains, burial artifacts sacred objects and objects of cultural patrimony.

(3) The Cultural & Heritage Department shall, in consultation with the Burns Paiute Cultural Coalition Committee and or the Burns Paiute Tribal Council, and the Tribal attorney, initiate administrative and or legal action to enforce the provisions of the NAGPRA.

(4) The Cultural & Heritage Department in conjunction with the Burns Paiute Cultural Coalition Committee shall identify lands suitable for repatriation activities.

(5) The Cultural & Heritage Department is authorized and encouraged to negotiate memoranda of agreement with other tribes regarding protocol of repatriation activities. The Cultural & Heritage Department is also authorized to negotiate memoranda of agreement with private landowners, local, state and federal agencies regarding the availability and suitability of setting-aside lands suitable for repatriation activities. The final authority to sign any such agreement rests with the Burns Paiute Tribal Council.

#### 4.2.183 Standards and Procedures for the Discovery and Handling of Ancestral Human Remains

(1) Applicability: The procedures describe the necessary steps to be followed in the discovery and subsequent handling of ancestral human remains found on "protected lands" or lands within the possessory and usage area of The Burns Paiute Tribe. The intent of these procedures is to ensure that such remains are treated with dignity at all

times and, when applicable, are accorded appropriate handling as specified by a Tribal representative.

As a guiding principle, the Burns Paiute Tribe recognize and reaffirm the belief that Native American ancestral human remains hold paramount religious significance to many contemporary Northern Paiute speaking people of the Great Basin. To better protect and enhance our traditional cultural values, the Burns Paiute Tribe establishes the following policies:

- (a) All encountered human remains are to be treated as Native American until available evidence indicates otherwise.
- (b) Preference shall be given to the preservation of ancestral human remains "in-situ".
- (c) The repatriation of ancestral human remains will occur as expeditiously as possible and in the same location whence the remains came.

Preservation in situ is not always feasible, therefore alternative protective measures must be implemented and carried out in a manner consistent with the recommendations of the Burns Paiute Tribe. Given the complexity of each potential discovery, ample opportunity must be given to the Burns Paiute Tribe to participate in or oversee any identification or removal procedure immediately thereafter from the time of discovery.

(2) Procedures regarding the Discovery of Human Remains

- (a) All suspected in-situ human remains and or burials that have been exposed as a result of adverse impact or disturbance, must be reported immediately to the Burns Paiute Tribal Council, the Burns Paiute Cultural Coalition Committee, the Burns Paiute Tribal Police, the Oregon State Police and the appropriate Medical Examiner's Office by the Cultural Resources Office. If the discovery occurs on state or federal lands, a detailed letter or report from the agency with administrative jurisdiction over such lands shall be requested.
- (b) In the event that suspected remains are endangered due to adverse impacts or other occurrences, interim protective measures shall be developed and implemented.
- (c) The Burns Paiute Tribal Council shall be notified by the Cultural & Heritage Department regarding opportunities to inspect any burial site and ancestral human remains.
- (d) Coordinated efforts to inspect burial sites and or human ancestral human remains, should include members of the Burns Paiute Tribal Council, members of the Burns Paiute Cultural Coalition Committee, appropriate law enforcement personnel, land managers, archaeologist, and or anthropologist, and Burns Paiute cultural resources staff. The Cultural & Heritage Department shall ensure that all law enforcement agencies with jurisdiction and the appropriate Medical Examiner are informed of any planned inspection of a burial site.

(e) Burial inspections shall determine if the skeletal remains are human, and if human, if the remains are modern or ancient. Burial inspection procedures shall be limited to non-destructive observational analysis by a qualified physical anthropologist. The inspection procedure will terminate if the remains are determined to be of modern origin, and possibly under the jurisdiction of a law enforcement agency. The inspection team shall also determine evidence of desecration or other violations of law such as the Archeological Resources Protection Act (ARPA). If there is evidence of ARPA violations, then the team shall thoroughly document the violation using the best available investigative techniques.

(f) If the discovery is determined not to be within the jurisdiction of law enforcement, then the inspection team shall determine, using the best available evidence, if the human remains are Native American or non-Native American in origin. The inspection procedure will terminate if the inspection team determines that the remains are non-Native American. If the inspection team determines that the remains are of Native American origin, the inspection team shall initiate interim measures to secure the site until a formal plan is developed by the Cultural & Heritage Department.

(g) No parts of human remains, including associated funerary objects or artifacts, shall be handled, removed, collected or photographed unless it is specified in writing by the Burns Paiute Cultural & Heritage Department.

(h) If human remains and or burials are discovered in-situ during the course of any ground disturbing activity, the activity is to be halted until an on-site inspection is completed.

(i) If planned construction and or ground disturbing activities are such that destruction of the exposed remains is imminent, emergency removal and exhumation procedures shall be developed and implemented immediately.

(j) If ancestral human remains and or burials are discovered in-situ during the course of an archeological excavation, excavation activities shall cease and the Burns Paiute Cultural Committee shall be notified. Once the inspection team has concluded its inspection, and if conditions favor preservation in-situ, the Burns Paiute Cultural Committee shall develop a plan for interment. If conditions do not favor preservation in-situ, then the remains may be exhumed pursuant to a plan developed by the Committee.

### (3) Procedures for the Analysis of Human Remains.

(a) Once any human remains are determined to be Native American, in all cases, the Burns Paiute Tribe reserves the right to reburial without scientific study.

(b) In all cases, the Burns Paiute Tribe reserves the right to the re-burial of associated funerary objects without scientific study.

(c) A reasonable effort shall be made to retain all organic materials contained in, or on the surface of any human bone or associated funerary object for the purposes of reburial.

### (4) Procedures for the Interment of Human Remains

- (a) The Burns Paiute Tribe reserves the right to reburial of any ancestral remains and or funerary objects without prior notification.
- (b) The Cultural Resources Protection Program in conjunction with the Burns Paiute Cultural Committee shall, upon notification that ancestral human remains have been discovered, develop the appropriate plan to inter the human remains.
- (c) Whenever possible, interment shall occur at the original location of discovery. All information regarding the existence of known burials, should be safeguarded and not announced publicly.

## OREGON LAND CONSERVATION AND DEVELOPMENT COMMISSION; GOAL 5 IMPLEMENTATION

### 4.2.190 Tribal Policy and Legislative Intent

Among other things, Goal 5 adopted by the Oregon Land Conservation and Development Commission provides for inventorying and protecting historical, archaeological and cultural sites. It is the policy of the Burns Paiute Tribe to support the implementation of Goal 5 and it is the purpose of BPTC Chapter 4.2 to establish a Tribal mechanism to interact with state and local governments charged with implementing LCDC Goal 5.

The Cultural & Heritage Department and the appropriate Tribal Departments, Employees, and Professionals under contract with the Burns Paiute Tribe, shall develop and present to the Burns Paiute Tribal Council for adoption a plan for identifying, inventorying, and reporting significant historic, cultural, and archaeological sites for designation as such by the Burns Paiute Tribal Council in areas outside the Reservation boundaries. The inventory plan shall contain objective and subjective criteria to be used in deciding which historic, cultural, and archaeological sites are significant and warrant special protection.

## MISCELLANEOUS

### 4.2.200 Tribal Contracting with Federal and State Agencies

The Cultural & Heritage Department is authorized to contract with Federal and State Agencies to perform cultural resource surveys, ethnographical research, file literature searches, archaeological excavations, archaeological restorations, re-internment operations, archival research and recovery projects, test excavations, and other related fields of operations and research related to cultural resource protection.

### 4.2.201 Application-Code

This chapter should be interpreted broadly to effectuate the intent of the Burns Paiute Tribe to protect Tribal interests on the Reservation and on lands managed by the Tribe. Nothing in this chapter should be construed to in any way limit Traditional Tribal rights.

### 4.2.202 Severability

If any provision of this Chapter or the application thereof to any person, court or circumstances is held invalid by the Burns Paiute Tribal Court, Federal Court or State Court, the invalidity shall not affect other provisions of this Chapter which can be given effect with the invalid provision or application and to this end, the provisions of this Act are severable.

#### 4.4.210 Definitions

(1) "Adverse effect" means a reasonable likelihood of more than moderate adverse consequences for cultural resources in any given site or area, the determination of which is based on (1) the context of a proposed action or development; (2) the intensity of a proposed action, including the magnitude and duration of an impact and the likelihood of its occurrence; (3) the relationship between a proposed action and other similar actions which are individually insignificant but which may have a cumulatively significant impacts; and (4) proven mitigation measures which the proponent of an action will implement as part of the proposal to reduce otherwise significant affects to an insignificant level.

(2) "Agricultural use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling of crops or by the feeding, breeding, management and sale of, or production of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use. Current employment of land for agricultural use includes:

(a) The operation or use of farmland subject to any agriculture-related government program;

(b) Land lying fallow for one (1) year as a normal and regular requirement of good agricultural husbandry;

(c) Land planted in orchards or other perennial prior to maturity; and

(d) Land under buildings supporting accepted agricultural practices. Current employment does not include livestock feedlots.

(3) "Ancestral burial site" or "Burial Site" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which there was intentionally deposited, as part of the death rites or ceremonies of a culture, the remains of a deceased individual or individuals. All Ancestral burial sites shall also be considered sacred sites and be defined as a "Protected site".

(4) "Ancestral human remains" or "Human Remains" means the physical remains, articulated or unarticulated bones and bone fragments, artifacts, and the surrounding soil matrix where decomposition has occurred of any deceased human remains that are reasonably believed to be of Native American, or any deceased human individual of historic or prehistoric origin that is known, or has been identified, through available evidence, as Native American.

- (5) "Archaeological resource" means resource evidence of cultural activities of the past, at least 100 years in age.
- (6) "Archaeological site" means a geographical locality which contains archaeological resources or features in contextual association with each other and the surrounding environment. Archaeological sites may also be defined as a "Protected site".
- (7) "Burns Paiute Tribal Council" means the Burns Paiute Tribal Council of The Burns Paiute Tribe or their successors.
- (8) "Buffer Zone" means an area adjacent to a cultural resources site or area that is established and managed to protect cultural resources from human or livestock disturbance.
- (9) "Clearance" means that prior to the issuance of clearance permit that a report has been completed and submitted to the Cultural Resources Office which illustrates appropriate and adequate research regarding any proposed ground disturbing activity or any activity which may result in an adverse impact to known or suspected cultural resources.
- (10) "Clearance permit" means the written authorization to proceed with a proposed development or activity issued by the Cultural Resources Office.
- (11) "Consultation" unless used otherwise in this Chapter, means the formal, direct face-to-face contact with the Burns Paiute by any governmental agency or private entity. Such contact or "consultation" is for the specific purpose of seeking Tribal participation in co-managing cultural resources.
- (12) "Cultural resources" unless defined elsewhere in this Chapter, Cultural Resources shall mean natural resources, wildlife, objects or products of human activity, or any object or place given significance by human action or belief.
- (13) "Cultural Resources Protection Program" means that Program of The Burns Paiute Tribe that among other things, has been designated to enforce the provisions of this Chapter.
- (14) "Cultural Resources Studies" means actions conducted to determine if cultural resources are present in an area that would be affected by a proposed uses or development. Cultural Resources Studies may include but not limited to; archival research, surface surveys, subsurface testing, mitigation/data recovery and ethnographical/ethno historic research.
- (15) "Cultural site" means an area identified and listed on the inventory of cultural sites maintained by the Cultural Resources Office. Some of these sites, not all, may have a particular cultural, religious, or traditional value to the Burns Paiute Tribe which may require appropriate management measures to prevent damage, abuse, or deterioration to the site.

- (16) "Cumulative Effects" means the combined effects of two or more activities. The effects may be related to the number of individual activities, or to the number of repeated activities on the same piece of ground. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.
- (17) "Funerary objects" means any artifact or material:
- (a) Which was intentionally placed with a deceased individual, either at the time of burial or at some subsequent time thereafter, as part of the death rites or ceremonies of a culture, and
  - (b) Which has been identified, through available evidence, as having been removed from a burial site.
- (18) "General Council" means the entire membership of The Burns Paiute Tribe over the age of 18 years, or as otherwise defined by the Burns Paiute Tribal Constitution and Bylaws.
- (19) "Genetic descendent" means any person or persons known, or reliably assumed to have a relationship to a specified human individual or group of individuals.
- (20) "Ground Disturbing Activity" means any activity that disturbs the surface of the ground, such as construction, digging, logging, farm practices on uncultivated soil, dredging, drilling, filling and mining.
- (21) "Historic site" means an area designated as such by the Burns Paiute Cultural Committee which has particular historical value to the Burns Paiute Tribe and which requires the protection of this Chapter to prevent theft, damage, abuse, or deterioration. Historic sites may also be defined as a "Protected site".
- (22) "Human remains" means the physical remains of any deceased human individual.
- (23) "Indian" means, a person who is a member of an Indian tribe.
- (24) "In situ" means any undisturbed intact human remains or portions thereof, including burial sites, in their original depositional setting at the time of burial. In situ shall also mean the undisturbed intact artifacts which form a part of an archaeological site.
- (25) "Mitigation" means the use of any or all of the following actions: (1) Avoiding the impact altogether; (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected cultural resources and or environment; or (4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (26) "Museum collections" means any private, local, state, or federal agency, including institutions of higher education which has control or possession of Tribal cultural resources.

- (27) "Native American" has that same meaning given for "Indian".
- (28) "Objects of Cultural Patrimony" means an object having ongoing historical, traditional, or cultural importance central to the Tribal people who currently comprise the Burns Paiute Tribe, rather than property owned by an individual Tribal member, and which therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Burns Paiute Tribe or any other tribe and such object shall have been considered inalienable by the Burns Paiute Tribe at the time the object was separated from the Burns Paiute Tribe.
- (29) "Post-depositional disturbance" means any disturbance by natural or man-made processes that alters or degrades the integrity of a known or potential site.
- (30) "Protected lands" means: (a) all Trust lands or lands owned and managed by the Burns Paiute Tribe (b) all lands outside the Reservation which are owned by the Burns Paiute Tribe or held by the United States in trust for the Burns Paiute Tribe or its members.
- (31) "Protected objects" means burial goods, human remains, significant archaeological resources and objects of cultural or historic significance obtained from cultural or historic sites.
- (32) "Protected object classification" means those resources or objects which have religious, traditional, spiritual, social, educational and or artistic value to the Burns Paiute Tribe and its membership, and is considered worthy of uncompromising protection. The Cultural Resources Office shall maintain an inventory of all Protected Objects recorded, collected, or otherwise known of, or possessed by the Burns Paiute Tribe.
- (33) "Protected sites" means any tribally recorded religious, sacred, cultural, and historic sites and significant archaeological sites.
- (34) "Reburial" means the physical replacement of disinterred human remains and or funerary objects into the ground at its original location, or at other specified locations deemed appropriate by the Burns Paiute Tribe.
- (35) "Reconnaissance Survey" means a cursory field study of an area to gauge the potential of cultural resources being present. A reconnaissance survey is used only to determine what level of further survey work may be required to fully understand what cultural resources are extant in the area.
- (36) "Interment" means the ritual aspect of reburial that is conducted under strict cultural rules of practice by a traditional religious practitioner.
- (37) "Repatriation" means the physical return of any cultural item or artifact, including human remains, to its place of origin.
- (38) "Reservation" means all territory within the external boundaries of the Burns Paiute Reservation of Oregon as defined by the legal descriptions of (1) Indian Joe Allotment Land; (2) Main Reservation and (3) Old Camp.

(39) "Sacred Objects" means specific ceremonial objects which are needed by Tribal members for the practice of traditional Indian religions by present day adherents.

(40) "Sacred sites" means any site, which has been determined by the Burns Paiute Tribe as having religious, cultural or spiritual significance. All sacred sites will be listed on the Tribal Register of Cultural Sites.

(41) "Significant Cultural Resources" unless defined elsewhere in this Chapter, Significant Cultural Resources means: (1) those resources that meet the criteria for eligibility to the National Register of Historic Places; or (2) those resources or sites that can be demonstrated to be a Traditional Cultural Property as defined in the Guidelines published by the National Park Service, Bulletin 38; or (3) those resources that are classified as a Protected Objects or Protected Sites and may be eligible for inclusion on the Tribal Register of Cultural Sites.

(42) "Tribal Register of Cultural Sites" means all of those sites inventoried and recorded by the Cultural & Heritage Department.

(43) "Tribe" means The Burns Paiute Tribe.

(44) "Undertaking" means any project, activity, program or development or change in land use that can result in changes in the character or use of a cultural resource, if any such cultural resource(s) is located in the area of potential effects. For federal undertakings, the project, activity or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements (36 CFR 800.2(o)).

# **CHAPTER 4.3 RANGELAND MANAGEMENT**

[RESERVED FOR EXPANSION]

# **TITLE 5**

# **FAMILY LAW**

## TITLE 5 FAMILY LAW

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# **CHAPTER 5.1**

# **DOMESTIC RELATIONS**

## CHAPTER 5.1 DOMESTIC RELATIONS

### 5.1.1 Preamble

This Code shall be known as the Burns Paiute Tribal Family Law Code.

### MARRIAGE

#### 5.1.30 Marriage License

- (1) No marriage shall be performed under authority of this Chapter unless the parties first obtain a marriage license from the Tribal Court clerk.
- (2) Upon payment of a fee of \$50.00, the clerk shall issue a marriage license to persons who appear entitled to be married as provided in this Chapter.
- (3) The clerk shall keep a public record of all marriage licenses and certificates issued.
- (4) The marriage license, properly endorsed by the authorized person performing the marriage, shall be returned to the clerk who shall issue a marriage certificate to the parties.

#### 5.1.31 Existing Marriages

- (1) All marriages performed other than as provided for in this Chapter, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Tribe.
- (2) All marriages performed or entered into on the Reservation prior to the effective date of this Chapter, including those perfected according to Tribal custom, are declared valid for all purposes under this Chapter. Parties to such marriages may obtain a marriage certificate upon proof to the clerk by affidavit or otherwise of the validity of their marriage, and payment of a fee to be set by the Court.
- (3) Customary and common law marriages entered into subsequent to the adoption of this Chapter shall not be recognized by Tribal law but may be recognized as valid pursuant to 5.1.31(1) of this Chapter.

#### 5.1.32 Persons Who May Marry

No marriage license shall be issued or marriage performed unless the persons to be married meet the following qualifications:

- (1) She or he is at least 16 years old and, if over 16 years of age but less than 18 years of age, has the written consent of his/her parent or guardian, properly notarized, to marry;

(2) At least one of the persons to be married is an enrolled member of the Burns Paiute Tribe;

(3) She or he has obtained a blood test to detect venereal disease within 30 days prior to the marriage and such test results were negative or she or he files an affidavit attesting to the fact that she or he is free of venereal disease. A certificate of the test results or the affidavit shall be presented to the clerk before any license is issued.

#### 5.1.33 Who May Perform Marriages

(1) A marriage may be solemnized and performed on the Reservation by any of the following:

(a) Recognized clergyman or person recognized by his religion as having authority to marry;

(b) A judge of the Tribal Court;

(c) Any person recognized by Oregon State law as having authority to marry.

(2) No marriage solemnized or performed before any person professing to have authority to marry shall be invalid for want of such authority, if consummated in the belief of the parties or either of them that he had such authority and that they have been lawfully married.

#### 5.1.34 Marriage Ceremony

No particular form of marriage ceremony is required. However, the persons to be married must declare in the presence of the person performing the ceremony, that they take each other as husband and wife, and he must thereafter declare them to be husband and wife.

#### 5.1.35 Void and Voidable Marriages

(1) Marriages between an ancestor and his descendant, between brothers and sisters, of the half as well as the whole blood, between an uncle and his niece or an aunt and her nephew, or between cousins up to the fifth degree and cousins removed up to the fifth degree are void from the beginning, whether or not the degree of relationship is legitimate or illegitimate.

(2) Marriages between a person who is at the time of the marriage married to another person still living are void; provided, however, that such marriages will be considered valid until ruled otherwise by a court of competent jurisdiction if the party previously married:

(a) Actually believed, in good faith, that the prior marriage had been dissolved as a result of divorce or annulment; or

(b) Actually believed, in good faith, that his or her prior spouse was dead.

(3) When a marriage is contracted in good faith and in the belief that it is a valid marriage, the issue of such marriage born or conceived prior to the voiding or receiving notice of the invalidity of the marriage for any reason shall be the legitimate issue of both parents.

(4) If neither party to a marriage is enrollable in the Burns Paiute Tribe or if either party to a marriage is incapable as a result of some cause or mental dysfunction or legal incapacity to enter into the marital state and such cause appears to be permanent, or if the consent of either party to marry was obtained by force or fraud; the marriage is voidable.

## ANNULMENT

### 5.1.70 Grounds for Annulment

A marriage may be annulled for any of the following causes existing at the time of marriage:

(1) That the party on whose behalf it is sought to have the marriage annulled, was under the age of 18 years, and such marriage was contracted without the consent of his or her parents or guardian, or persons having charge of him or her, unless, after attaining the age of consent, such party freely cohabits with the other party to the marriage as husband and wife;

(2) That the former husband or wife of either party was living, and the marriage with such former husband or wife was then in force;

(3) That either party was of unsound mind, unless such party, after coming into reason, freely cohabited with the other as husband and wife;

(4) That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife.

(5) That the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband and wife; or

(6) Impotence that continues and appears to be incurable.

(7) That neither party to the marriage was enrollable as a member of the Burns Paiute Tribe.

#### 5.1.71 Action to Annul; Parties and Limitations

An action to obtain a Decree of Annulment of a marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

- (1) For causes mentioned in Subsection 5.1.70(1), by the party to the marriage who was married under the age of legal consent, within two years after arriving at the age of consent, or by a parent, guardian, or other person having charge of such minor male or female, at any time before such married minor has arrived at the age of legal consent;
- (2) For causes mentioned in Subsection 5.1.70(2) by either party during the life of the other, or by such former husband or wife;
- (3) For causes mentioned in Subsection 5.1.70(3) by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party;
- (4) For causes mentioned in Subsection 5.1.70(4) by the party injured, within two years after the discovery of the facts constituting a fraud;
- (5) For causes mentioned in Subsection 5.1.70(5) by injured party, within four years after the marriage.
- (6) For causes mentioned in Subsection 5.1.70(6) by the injured party, within two years after the marriage.

#### 5.1.72 Legitimacy of Children

When a marriage is annulled for any reason, children begotten before judgment are legitimate and succeed to the estate of both parents. The Court may at the time of granting the annulment or at any future time, make necessary orders for the custody and support of said child or children as the circumstances and surroundings of the parents may require.

#### 5.1.73 Conclusiveness of Judgment of Annulment

A judgment of annulment of a marriage is conclusive only as against the parties to the action and those claiming under them.

### DISSOLUTION OF MARRIAGE

#### 5.1.100 Dissolution and Annulment Procedure

Proceedings in dissolution and annulment shall be commenced and conducted in the manner provided by law for civil cases, except as otherwise specifically provided. A final Decree of Divorce shall restore the parties to the status of unmarried persons.

#### 5.1.101 Dissolution and Annulment Residency Requirement

In order to maintain an action for divorce or annulment in the Tribal Court, at least one party to the marriage must be an enrolled member of the Burns Paiute Tribe and have lived within the territorial jurisdiction of the Tribal Court for at least three months prior to bringing the action, except that an annulment may be granted where either party lives within the jurisdiction of the Court and the marriage was performed under authority of this Chapter.

#### 5.1.102 Grounds for Dissolution

The sole grounds for dissolution shall be that the marriage is irretrievably broken.

#### 5.1.103 Right to Dissolution

The husband may in all cases obtain a dissolution from his wife for the same causes and in the same manner as the wife may obtain a dissolution from her husband.

#### 5.1.104 Maintenance and Suit Money; Restraint

(1) The Court may order either party to pay to the clerk for the benefit of the other party a sum of money for the temporary or permanent separate support and maintenance of the adverse party and the children, and to enable such party to prosecute and defend the action.

(2) The Court may temporarily or permanently restrain either party from doing certain acts harmful to the other or to the children, or to the property of either, during the pendency of the dissolution proceedings. Violation of a current and valid restraining order shall be handled under Sections 5.3.16 to 5.3.19. In addition, civil contempt or exclusion proceedings may be brought against any person violating a valid court order obtained pursuant to this section.

#### 5.1.105 Pleadings; Findings; Decree

The petition for dissolution shall be in writing and signed by the petitioner or the petitioner's counsel or attorney. No Decree of Dissolution shall be granted upon default or otherwise, except upon legal evidence taken in the cause by the Court who shall make and file its findings and decree upon the evidence. The decree shall become absolute upon entry unless the judge orders otherwise in which case the period of time until which it becomes absolute may be up to three months.

#### 5.1.106 Disposition of Property and Children

When a Decree of Dissolution is made the Court may make such orders in relation to the children, property, and parties, and the maintenance of the parties and children by alimony and child support, as may be equitable. Subsequent changes, modifications or

new orders may be made by the Court with respect to the custody of the children as shall be reasonable and proper.

#### 5.1.107 Child Custody Proceeding; Commencement; Notice; Intervention

(1) A child custody proceeding is commenced in the Tribal Court:

(a) By a parent:

(i) By filing a petition for dissolution of marriage, annulment or declaration of invalidity; or

(ii) By filing a petition seeking custody of the child or;

(b) By a person other than a parent, by filing a petition seeking custody of the child; but only if the child is not in the physical custody of one of its parents or if the petitioner alleges that neither parent is a suitable custodian.

(2) Notice of a child custody proceeding shall be given to the child's parent, guardian and custodian, who may appear and be heard and may file a responsive pleading. The Court may, upon a showing of good cause, permit the intervention of other interested parties.

#### 5.1.108 Child Custody; Relevant Factors in Awarding Custody

The Court shall determine custody in accordance with the best interests of the child and, secondarily, the traditions and customs of the Burns Paiute Indian people. The Court shall consider all relevant factors including:

(1) The wishes of the child's parent or parents as to visitation privileges;

(2) The wishes of the child as to his custodian and as to visitation privileges;

(3) The interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may significantly affect the child's best interests;

(4) The child's adjustment to his home, school, and community; and

(5) The mental and physical health of all individuals involved.

(6) The Indian heritage of the child.

The Court shall not consider conduct of a proposed guardian that does not affect the welfare of the child.

#### 5.1.109 Child Custody; Temporary Custody Order; Vacation of Order

(1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by affidavit. The Court may award temporary custody after a hearing, or, if there is no objection, solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage, legal separation, or declaration of invalidity is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the Court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a custody decree be issued.

(3) If a custody proceeding commences in the absence of a petition for dissolution of marriage, legal separation, or declaration of invalidity, is dismissed, any temporary order is vacated.

#### 5.1.110 Child Custody; Temporary Custody Order or Modification of Custody Decree- Affidavits Required

A party seeking a temporary custody order or modification of a custody decree shall submit a motion, together with an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of the affidavit, to other parties to the proceedings, who may file opposing affidavits. The Court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

#### 5.1.111 Child Custody; Interview with Child by Court; Advice of Professional Personnel

(1) The Court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation privileges. The Court may permit counsel to be present at the interview. The Court shall cause a record of the interview to be made and to be made part of the record in the case.

(2) The Court may seek the advice of professional personnel or persons knowledgeable in the welfare of Indian children whether or not they are employed on a regular basis by the Court. The advice given shall be in writing and shall be made available by the Court to counsel upon request. Counsel may call for cross-examination of any persons consulted by the Court.

#### 5.1.112 Child Custody; Priority Status of Proceedings; Hearings; Record; Expenses of Witnesses

(1) Custody proceedings shall receive priority in being set for hearing.

(2) Either party may petition the Court to authorize the payment of necessary travel and other expenses incurred by any witness whose presence at the hearing the Court deems necessary to determine the best interests of the child.

(3) The Court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the Court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the work of the Court.

(4) If the Court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the Court may make an appropriate order sealing the record.

#### 5.1.113 Child Custody; Visitation Rights

(1) A parent, grandparent, or any other person able to show to the Court a traditional right or custom of child care, and not granted custody of the child may be granted reasonable visitation rights unless the Court finds, after a hearing, that visitation would endanger the child's physical, mental or emotional health. The Court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances.

Any person may petition the Court for visitation rights at any time including, but not limited to, custody proceedings.

(2) The Court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child but the Court shall not restrict a parent's or grandparent's visitation rights unless it finds that the visitation would endanger the child's physical, mental or emotional health.

#### 5.1.114 Child Custody; Powers and Duties of Custodian; Supervision by Appropriate Agency When Necessary

(1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the Court after hearing, finds, upon motion by the non-custodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical, mental, or emotional health would be endangered.

(2) If both parents or all contestants agree to the order, or if the Court finds that in the absence of the order the child's physical, mental, or emotional health would be endangered, the Court may order an appropriate agency which regularly deals with children to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out. Such order may be modified by the Court at any time upon petition by any party.

#### 5.1.115 Child Custody Decree – Modification

(1) Except as otherwise provided in this Chapter, the Court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the Court at the time of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interests of the child. In applying these standards the Court shall retain the custodian established by the prior decree unless:

(a) The custodian agrees to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the custodian or;

(c) The child's present environment is detrimental to his physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

(2) If the Court finds that a motion to modify a prior custody order has been brought in bad faith, the Court shall assess the attorney's fees and court costs of the custodian against the petitioner.

#### 5.1.116 Child Support; Apportionment of Expense

In a proceeding for dissolution of marriage, legal separation, declaration of invalidity, maintenance, or child support, after considering all relevant factors but without regard to marital misconduct, the Court may order either or both parents owing a duty of support to any child of the marriage dependent upon either or both spouses to pay an amount reasonable or necessary for the support of the child.

#### 5.1.117 Minor or Dependent Child; Court Appointed Attorney to Represent; Payment of Costs, Fees and Disbursements

The Court may appoint an attorney to represent the interests of a minor or dependent child with respect to his custody, support, and visitation. The Court shall enter an order for costs, fees, and disbursements in favor of the child's attorney. The order shall be made against either or both parents. In no event shall such costs, fees, and disbursements be borne by the Tribe.

#### 5.1.118 Support or Maintenance Payments; To Whom Paid

(1) The Court may, upon its own motion or upon motion of either party, order support or maintenance payments to be made to:

(a) The person entitled to receive the payments, or

(b) The appropriate tribal department; or

(c) The clerk of Court as trustee for remittance to the person entitled to receive the payments.

(2) If payments are made to the clerk of Court:

(a) The clerk shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order; and

(b) The parties affected by the order shall inform the clerk of the Court of any change of address or of other conditions that may affect the administration of the order.

#### 5.1.119 Support or Maintenance Payments; Order to Make Assignment of Periodic Earnings or Trust Income; Duty of Payor to Withhold and Transmit

The Court after hearing may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person or agency entitled to receive the payments. The assignment is binding on the employer, trustee or other payor of the funds two weeks after service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding ten dollars as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

#### 5.1.120 Payment of Costs, Attorney's Fees, etc.

The Court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party for maintaining or defending any proceeding under this Chapter and for reasonable counsel or attorney's fees or other professional fees in connection therewith, including sums for legal services rendered and costs.

### SEPARATE MAINTENANCE AND PROPERTY RIGHTS

#### 5.1.150 Separate Maintenance

(1) A wife, living on the lands of the Burns Paiute Reservation, who through no fault of her own or by agreement with her husband, is living separate and apart from her husband, or whose husband has deserted her, or has failed to support her when otherwise able to do so, may maintain an action for a decree of separate maintenance.

(2) During the pendency of the action the Court may order the husband to pay temporary maintenance and suit money as in an action for dissolution.

(3) If it appears that the wife is entitled to such, the Court shall grant a decree of separate maintenance awarding custody of children, maintenance, child support and expenses of suit as may be equitable under the circumstances.

#### 5.1.151 Property Rights of Married Persons

(1) Either a wife or a husband can obtain, own, hold, give, sell or otherwise deal with real or personal property as if they were unmarried.

(2) Either a wife or a husband can enter into contracts and sue or be, sued to the same extent and in the same manner as if unmarried.

(3) Neither a wife nor a husband nor the property of either in which their spouse has no interest is liable for the debts or obligations of the other spouse solely by reason of marriage to the other spouse.

(4) A conveyance, transfer, or lien executed by either husband or wife in favor of the other shall be valid to the same extent as between other persons.

(5) The Burns Paiute Tribe shall accept the property laws of the State of Oregon currently in force at the time of any decree or order under this Chapter as its own; except as specifically provided in this Chapter.

#### 5.1.152 Family Expenses

The expenses of the family and the education of the children are chargeable upon the property of both husband and wife or either of them, and they may be enforced jointly or separately.

#### 5.1.153 Custody of Children and Property

(1) Absent a judicial decree of property distribution or custody or otherwise, neither the husband or the wife can remove the other or the children from the place of family dwelling without the consent of the other, provided, however, that children may be removed from the family residence by one parent without the consent of the other if such appears to be reasonably necessary to protect the physical well being of the children, the children are thereafter provided with a more proper living environment, and application is made to the Court within ten days for an order of the Court, modifiable at any time, approving such removal of the children.

(2) If either spouse abandons the other spouse, the abandoned spouse is entitled to custody of and legal guardianship over all children under the age of 18 unless a court of competent jurisdiction shall otherwise direct. Abandonment shall be defined as

voluntary absence of a parent from the home in which the children reside for a period of 180 days without intent to return.

## PARENTAGE

### 5.1.160 "Parent and Child Relationship" Defined

As used in this Chapter, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

### 5.1.161 Presumption of Paternity

A man is presumed to be the natural father of a child if:

- (1) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or dissolution, or after a decree of separation is entered by a court; or
- (2) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born within three hundred days after the termination of cohabitation; or
- (3) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and
  - (a) He has acknowledged his paternity of the child in writing filed with the register of Vital Statistics or the Burns Paiute Tribal Enrollment Office; or
  - (b) With his consent, he is named as the child's father on the child's birth certificate; or
  - (c) He is obligated to support the child under a written voluntary promise or by court order.
- (4) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his child; or
- (5) He acknowledges his paternity of the child in a writing filed with the registrar of Vital Statistics, or the Burns Paiute Tribal Enrollment Office, who shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the

acknowledgment within a reasonable time after being informed thereof, in a writing filed with the registrar of Vital Statistics. If another man is presumed under subsection (1),(2),(3) or (4) of this section to be the child's father, such acknowledgment shall give rise to the presumption of paternity only with the written consent of the otherwise presumed father or after such other presumption has been rebutted.

A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

#### 5.1.162 Artificial Insemination

(1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of the child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the registrar of Vital Statistics, where it shall be kept confidential and in a sealed file.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived unless the donor and the woman agree in writing that said donor shall be the father. The agreement must be in writing and signed by the donor and the woman. The physician shall certify their signatures and the date of the insemination and file the agreement with the registrar of Vital Statistics, where it shall be kept confidential and in a sealed file.

(3) The failure of the licensed physician to perform any administrative act required by this section shall not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only in exceptional cases upon an order of the Court for good cause shown.

#### 5.1.163 Determination of Father and Child Relationship; Who May Bring Action; When Action Maybe Brought

(1) A child, a child's natural mother, a man alleged or alleging himself to be the father, a child's guardian, a child's personal representative, the Burns Paiute Tribe, the State of Oregon, or any interested party may bring an action at any time for the purpose of declaring the existence or nonexistence of the father and child relationship.

A man presumed to be a child's father under Section 5.1.161 may bring an action for the purpose of declaring the nonexistence of the father and child relationship only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(2) In an action brought by the Tribe or State of Oregon pursuant to this Chapter the Tribe may be represented by the prosecutor or general counsel, the State may be represented by either the prosecuting attorney for the county where the action is brought or by the State attorney general.

(3) Regardless of its terms, no agreement between an alleged or presumed father and the mother or child, shall bar an action under this section.

(4) If an action under this section is brought before the birth of the child, all proceedings may be stayed until after the birth, except service of process and discovery, including the taking of depositions to perpetuate testimony.

(5) Actions under this Chapter may be maintained as to any child, whether born before or after the enactment of this Chapter.

#### 5.1.164 Jurisdiction

(1) The Tribal Court shall have jurisdiction of any action to determine paternity brought under this Chapter. The action may be joined with an action for divorce, dissolution, annulment, declaration of invalidity, separate maintenance, filiation, support, or any other civil action in which paternity is an issue including proceedings in Juvenile Court.

(2) Any person who has sexual intercourse within the lands of the Burns Paiute Indian Reservation with a person who is a member or is eligible to become a member of the Burns Paiute Tribe thereby submits to the jurisdiction of the Tribal Court as to an action brought under this Chapter with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by statute, personal jurisdiction may be acquired by personal service of summons outside the Reservation or by service in accordance with the Tribal Code as now or hereafter amended.

#### 5.1.165 Parties

The child shall be made a party to the action. If the child is a minor, the child shall be represented by the child's general guardian or a guardian ad litem appointed by the Court. The child's mother or father may not represent the child as guardian or otherwise. The natural mother, each man presumed to be the father and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the Court, shall be given notice of the action in a manner prescribed by the Court and an opportunity to be heard. The Court may align the parties.

### 5.1.166 Blood Tests

(1) The Court may, upon request of a party shall, require the child, mother, and any alleged father who has been made a party to submit to blood tests. If an alleged father objects to a proposed order requiring him to submit to paternity blood tests, the Court may require the party making the allegation of possible paternity to provide sworn testimony, by affidavit or otherwise, stating the facts upon which the allegation is based. The Court shall order blood tests if it appears that a reasonable possibility exists that the requisite sexual contact occurred. The tests shall be performed by an expert in paternity blood testing appointed by the Court. The expert's verified report identifying the blood characteristics observed is admissible in evidence in any hearing or trial in the parentage action, if (a) the alleged or presumed father has had the opportunity to gain information about the security, validity, and interpretation of the tests and the qualifications of any experts, and (b) the report is accompanied by an affidavit from the expert which describes the expert's qualifications as an expert and analyzes and interprets the results. Verified documentation of the chain of custody of the blood samples is admissible to establish the chain of custody. The Court may consider published sources as aids to interpretation of the test results.

(2) The Court, upon request by a party, shall order that additional blood tests be performed by the same or other experts qualified in paternity blood testing, if the party requesting additional tests advances the full costs of the additional testing within a reasonable time. The Court may order additional testing without requiring that the requesting party advance the costs only if another party agrees to the advance the costs or if the Court finds, after hearing, that (a) the requesting party is indigent, and (b) the laboratory performing the initial tests recommends additional testing or there is substantial evidence to support a finding as to paternity contrary to the initial blood test results. The Court may later order any other party to reimburse the party who advanced the costs of additional testing for all or a portion of the costs.

(3) In all cases, the Court shall determine the number and qualifications of the experts.

(4) The costs of these blood tests shall be borne by the parties. In no event shall the tribe be responsible for the payment of costs of the blood tests.

### 5.1.167 Evidence Relating to Paternity

Evidence relating to paternity may include:

(1) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) Blood test results, weighted in accordance with evidence of the statistical probability of the alleged father's paternity;

(4) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the Court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(5) All other evidence relevant to the issue of paternity of the child.

#### 5.1.168 Civil Action; Testimony; Evidence –Jury

(1) Any paternity action under this Chapter is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify.

(2) Upon refusal of any witness, including a party, to testify under oath or produce evidence of any other kind on the ground that said witness may be incriminated thereby, and if a party requests the Court to order that person to testify or provide the evidence, the Court shall then hold a hearing and shall so order, unless it finds that to do so would be clearly contrary to the public interest, and that person shall comply with the order.

If, but for this section, such a witness would have been privileged to withhold the answer given or the evidence produced by him, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but he shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which he has been ordered to testify pursuant to this section. He may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or for offering false evidence to the Court.

(3) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

(4) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the Court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if he has undergone and made available to the Court blood tests the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the Court shall be made a defendant in the action.

(5) The trial shall be by the Court without a jury.

#### 5.1.169 Judgment or Order Determining Parent and Child Relationship; Support Judgment and Orders; Custody

(1) The judgment and order of the Court determining the existence or nonexistence of the parent and child relationship shall be determinative for all purposes.

(2) If the judgment and order of the Court is at variance with the child's birth certificate, the Court shall order that an amended birth certificate be issued.

(3) The judgment and order shall contain other appropriate provisions directed to the appropriate parties to the proceeding, concerning the duty of current and future support, the extent of any liability for past support furnished to the child if that issue is before the Court; the custody and guardianship of the child, visitation privileges with the child; the furnishing of bond or other security for the payment of the judgment; or any other matter in the best interest of the child. The judgment and order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) Support judgment and orders shall be for periodic payments which may vary in amount. The Court may limit the father's liability for the past support to the child to the proportion of the expenses already incurred as the Court deems just: Provided however, that the Court shall not limit or affect in any manner the right of nonparties to seek reimbursement for support and other services previously furnished to the child.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, the Court shall consider all relevant facts, including, but not limited to:

(a) The needs of the child; (b) The standard of living and circumstances of the parents; (c) The relative financial means of the parents; (d) The earning ability of the parents; (e) The need and capacity of the child for education, including higher education; (f) The age of the child; (g) The responsibility of the parents for the support of others; and (h) The value of services contributed by the custodial parent.

(6) In determining custody, a court, in accordance with the best interests of the child, shall consider all relevant facts including:

(a) The wishes of the child's parents as to the child's custody and as to visitation; (b) The wishes of the child as to the child's custodian and as to visitation privileges; (c) The interaction and interrelationship of the child with the child's parent or parents, the child's siblings, and any other person who may significantly affect the child's best interests; (d) The child's adjustment to home, school, and community; (e) The mental and physical health of all individuals involved; and (f) The Indian heritage of the child and the customs of the Tribe. The Court shall not consider conduct of a proposed custodian that does not affect the welfare of the child.

(7) In any dispute between the natural parents of a child and a person or persons who have (a) commenced adoption proceedings or who have been granted an order of adoption, and (b) pursuant to a court order, or placement by the Tribal Child Welfare Services or by a licensed agency, have had actual custody of the child for a period of

one year or more before court action is commenced by the natural parent or parents, the Court shall consider the best welfare and interests of the child, including the child's need for situation stability, in determining the matter of custody, and the parent or person who is more fit shall have the superior right to custody.

5.1.170 Support Orders; Time Limit; Exception

A Court may not order payment for support provided or expenses incurred more than five years prior to the commencement of the action. Any period of time in which the responsible party has concealed himself or avoided the jurisdiction of the Court under this Chapter shall not be included within the five-year period

5.1.171 Temporary Support; Temporary Restraining Order; Preliminary Injunction; Support Debts; Notice

(1) If the Court has made a finding as to the paternity of a child, or if a party's acknowledgment of paternity has been filed with the Court, or a party alleges he is the father of the child, any party may move for temporary support for the child prior to the date of entry of the final order. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) Any party may request the Court to issue a temporary restraining order or preliminary injunction, providing relief proper in the circumstances, and restraining or enjoining any party from:

(a) Molesting or disturbing the peace of another party;

(b) Entering the home of another party; or

(c) Removing a child from the jurisdiction of the Court.

(3) The Court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.

(4) The Court may issue a temporary restraining order or preliminary injunction and an order for temporary support in such amounts and on such terms as are just and proper in the circumstances.

(5) A temporary order, temporary restraining order, or preliminary injunction:

(a) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding;

(b) May be revoked or modified;

- (c) Terminates when the final order is entered or when the petition is dismissed; and
- (d) May be entered in a proceeding for the modification of an existing order.

#### 5.1.172 Enforcement of Judgments or Orders

(1) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this Chapter or under other or prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent it has furnished or is furnishing these expenses.

(2) The Court may order support payments to be made to the Tribal Department of Social Services, to a parent, the clerk of the Court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the Court.

(3) All remedies for the enforcement of judgments apply.

#### 5.1.173 Modification of Judgment or Order; Continuing Jurisdiction

The Court has continuing jurisdiction to prospectively modify a judgment and order for future education and future support upon showing a substantial change of circumstances.

#### 5.1.174 Action to Determine Mother and Child Relationship

Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this Chapter applicable to the father and child relationship apply.

# **CHAPTER 5.2**

## **JUVENILES**

## CHAPTER 5.2 JUVENILES

### PRELIMINARY PROVISIONS

#### 5.2.10 Short Title

This Chapter shall be known as the Burns Paiute Tribe's "Juvenile Code."

#### 5.2.11 Purpose and Construction

This Chapter shall be liberally construed and interpreted to fulfill the following expressed purposes:

- (1) To provide every Indian child coming within the provisions of this Chapter with access to community-based, culturally appropriate services to help the child grow up safe, healthy, and spiritually strong—and free from abuse, neglect, sexual exploitation, and the damaging effects of alcohol and substance abuse;
- (2) To encourage, guide, assist, and compel if necessary, parents, guardians, and custodians to provide safe and nurturing physical and emotional environments for their children;
- (3) To recognize that alcohol and substance abuse is a disease that is both preventable and treatable and to provide services for its prevention and treatment;
- (4) To preserve traditional concepts, including but not limited to the importance of extended family, the obligations of family members to one another, and the essential role that grandparents and elders play in the upbringing of Indian children;
- (5) To preserve and strengthen family and Tribal ties and each child's cultural and ethnic identity whenever possible;
- (6) To secure for each child coming before the Burns Paiute Tribe's Juvenile Court such care, guidance, stability, and control, preferably in his or her own home, as will serve his or her health, safety, and welfare and the best interests of the Burns Paiute Tribe;
- (7) To attempt to encourage grandparents and other extended family members providing care to a child to seek legal guardianships, where appropriate, to allow for decision-making on medical care, education, and other issues, and to offer financial, respite, and other support to such grandparents and extended family members;
- (8) To preserve and retain the unity of families whenever possible, separating a child from the child's parents only when necessary for the child's health, safety, and welfare or in the interests of public safety;

(9) To provide for the protection, care, and wholesome mental and physical development of any child removed from his or her home and to help the child develop into a responsible, well-adjusted adult;

(10) To improve any conditions or home environment that may be contributing to the delinquency of a child, and at the same time, to protect the peace and security of the community and its individual residents from juvenile violence and law-breaking;

(11) To promote stability and security within the Tribal community by establishing efficient, timely, and culturally-based processes for appropriately handling juvenile offender and dependency matters;

(12) To provide judicial and other procedures through which the provisions of this Chapter are executed and enforced and through which the parties are assured a fair hearing and the protection of their civil and other legal rights; and

(13) To clearly separate "juvenile offender" from "juvenile in need of care" processes affecting children under this Chapter, and to provide appropriate and distinct dispositional options for the treatment and rehabilitation of these children and their families.

#### 5.2.12 Indian Child Welfare Act

It is intended that the provisions of this Chapter be consistent with and carry out the purposes of the Indian Child Welfare Act, 25 U.S.C. Sec.1901, et seq., where applicable.

### DEFINITIONS

#### 5.2.20 Definitions

Terms used in this Chapter shall be liberally construed so as to provide for the jurisdiction of the Burns Paiute Tribe over Indian children within its jurisdiction and to facilitate the authority of the Juvenile Court to act to protect the interests of such children and their families. For the purposes of this Chapter:

(1) "Abandon" shall mean to intentionally neglect or avoid parental duties, obligations, and responsibilities. Abandonment may include but is not limited to situations in which a child's parent, guardian, or custodian has:

(a) Shown the intent, through words or behavior, to give up all further obligation or responsibility for the child;

(b) Failed to provide any financial assistance or other material support for the child for one (1) year or more, if such support or assistance is required by law or agreement;

(c) Failed to visit or otherwise contact or communicate with the child for one (1) year or more; or

(d) Without regard for the mental or physical health, safety, or welfare of the child, knowingly left a child who is under the age of twelve (12) without supervision by a responsible person over the age of thirteen (13) for a period of eight (8) consecutive hours or more. The following factors shall be considered in determining whether a child was left without regard for their mental or physical health, safety, or welfare:

- (i) Whether the child was left under the supervision of another person;
- (ii) The age of the child and any special needs of the child;
- (iii) The duration of time in which the child was left without supervision;
- (iv) The condition and location of the place where the child was left;
- (v) Whether there was food and other provisions left for the child;
- (vi) Whether the child's movement was restricted;
- (vii) The location of the child's parent, guardian, or custodian; and
- (viii) Any other factor that would endanger the health or safety of the child.

(2) "Abuse" shall mean any of the following:

- (a) Inflicting physical, emotional, or mental injury or harm on a child;
- (b) Subjecting a child to sexual abuse;
- (c) Failing to maintain reasonable care and treatment of a child;
- (d) Exploiting or overworking a child to such an extent that the child's health, safety, or well-being is endangered;

(e) Subjecting a child to unreasonable physical discipline. Physical discipline that is moderate and inflicted for purposes of restraining or correcting a child may be considered reasonable in some circumstances. The age, size, and condition of the child, the presence and location of any resulting injury, and the frequency of reported discipline shall be considered when determining whether physical discipline is reasonable or moderate. The following types of actions are presumed to be unreasonable forms of physical discipline:

- (i) Throwing, kicking, burning, or cutting a child;
- (ii) Striking a child with a closed fist;

- (iii) Shaking a child under age the age of three (3);
  - (iv) Interfering with a child's breathing;
  - (v) Threatening a child with a weapon; or
  - (vi) Doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks.
- (f) Failing to protect a child from abuse;
- (g) Failing to provide a safe environment for a child, free from persons who may harm the child;
- (h) Exposing a child to imminent harm from his or her surroundings, including but not limited to permitting a child to live in physical filth or to enter or remain in a place where methamphetamines are being or have been manufactured;
- (i) Exposing a child to domestic violence;
- (j) Exposing a child to repeated alcohol or drug abuse or to a single extreme event of alcohol or drug abuse by a caregiver that impairs the caregiver's ability to adequately care for the child;
- (k) Knowingly allowing a child to ride in a vehicle operated by a person whose driving abilities are impaired by alcohol or drug use; and/or
- (l) The abuse of alcohol or the use of illegal drugs by a pregnant woman.
- (3) "Adjudicatory Hearing" shall mean a proceeding in the Juvenile Court to determine whether a child has committed a specific juvenile offense or is a juvenile in need of care, as set forth in a petition.
- (4) "Adult" shall mean any person eighteen (18) years of age or older. A child who is the mother, father, or putative father of a child shall be considered to be an adult pursuant to this Chapter only for the purpose of entering into agreements and providing authorizations, releases, and/or waivers in relation to Juvenile Court proceedings concerning the care or custody of the child.
- (5) "Child" or "Juvenile" shall mean:
- (a) A person who is less than eighteen (18) years of age who is not emancipated; or

(b) A person eighteen (18) years of age or older for whom proceedings were commenced in Juvenile Court prior to his or her eighteenth (18th) birthday and who is under the continuing jurisdiction of the Juvenile Court.

(6) "Custodian" shall mean a person or persons, other than a parent or guardian, who has physical custody of a child under Tribal law, Tribal custom as defined by the Elder's Council, or state law, or to whom temporary physical care, custody, and control of a child has been transferred by the child's parent, and who has a duty to provide the child with care, food, shelter, clothing, medical care, education, and supervision.

(7) "Dependency Proceeding" shall mean a proceeding concerning a child who is alleged or found to be a juvenile in need of care, including but not limited to proceedings for emergency custody, foster care placement, guardianships, termination of parental rights, adoption, and emancipation, and the review of any such action.

(8) "Detention" shall mean the placement of a juvenile in a physically restrictive facility that is licensed to exercise authority over and to provide care for juveniles.

(9) "Dispositional Hearing" shall mean a proceeding in the Juvenile Court to determine how to resolve a case after it has been determined, at the adjudicatory hearing, that the child has committed a juvenile offense or is a juvenile in need of care.

(10) "Domicile" shall mean a person's permanent home, legal home, or main residence. The domicile of a child is generally that of the child's custodial parent or guardian, including the place that the child's parent or guardian considers to be or intends to be their permanent home. Domicile for purposes of jurisdiction is established at the time of the alleged acts.

(11) "Elder's Council" shall mean a group of elders who are member of the Burns Paiute Tribe, and other Indian elders residing on the Burns Paiute Reservation, who have volunteered to serve as mentors to and/or advocates for children who are subject to the jurisdiction of the Juvenile Court. The Elder's Council shall provide input and assistance to the Juvenile Court, Social Services Department, and Juvenile Services Coordinator on juvenile matters, as requested, and may take other action to pass the Tribe's customs for family and community life on to the next generations.

(12) "Emancipation" shall mean a Juvenile Court process through which the legal duty of a child's parent, guardian, or custodian to provide care, shelter, and support for the child is terminated and the child is recognized as an adult for various purposes.

(13) "Extended Family" shall mean the grandparents, aunts, uncles, brothers, sisters, brothers-in-law, sisters-in-law, nieces, nephews, first or second cousins, and/or step-parents of a child, and/or any other person who has established a significant family-type relationship with the child.

(14) "Foster Home" or "Foster Care" shall mean substitute family care for a child who has been voluntarily or involuntarily removed from parental care, which has been certified by the Tribe or other qualified authorizing entity.

(15) "Guardian" shall mean a person or persons, other than a child's parent, who is by law responsible for the child and who has a duty to provide for the protection, care, shelter, and control of the child and the management of the child's property.

(16) "Juvenile Services Coordinator" shall mean the Social Services Department staff member or other Tribal employee designated by the Social Services Department Director, who performs the duties and responsibilities set forth in section 5.2.42 of this Chapter.

(17) "Indian" shall mean, for purposes of this Chapter only:

(a) A person who is a member of, or any child who is eligible for enrollment with, the Burns Paiute Tribe or any other federally or state-recognized Indian tribe;

(b) Any person within the territorial jurisdiction of the Burns Paiute Tribe who has some identifiable blood quantum of the Burns Paiute Tribe and who has at least one (1) parent who is enrolled with the Tribe; or

(c) Any other person who resides within the territorial jurisdiction of the Burns Paiute Tribe and is recognized by the Tribal community as Indian.

(18) "Indian Child Welfare Advisory Committee" shall mean a committee appointed by the Tribal Council to provide guidance and assistance to the Social Services Department and Juvenile Court to promote the protection of Indian children.

(19) "Juvenile Court" shall mean the Burns Paiute Tribal Court when exercising jurisdiction under this Chapter.

(20) "Juvenile Court Judge" shall mean any judge of the Burns Paiute Tribal Court when exercising jurisdiction under this Chapter.

(21) "Juvenile in Need of Care" shall mean a child:

(a) Whose parent(s), guardian, custodian, or other person responsible for the child's care:

(i) Has subjected the child to abuse or neglect;

(ii) Is unfit to provide adequate care for the child;

(iii) Through no fault of their own, is unable to care for the child; or

- (iv) Has abandoned the child.
  - (b) For whom there is no parent, guardian or custodian available and willing to provide care;
  - (c) Whose life or health is in clear and substantial danger and for whom the intervention of the Juvenile Court is essential to provide the treatment, rehabilitation, or services needed by the child or his or her family;
  - (d) Who has suffered a serious unexplained injury or a series of unexplained injuries while in the care or custody of the child's parent, guardian, custodian, or other person responsible for the child's care;
  - (e) Who is uncontrolled or beyond the control of the child's parent(s), guardian, or custodian, or who has special needs beyond the parenting abilities of the child's parent(s), guardian, or custodian;
  - (f) Whose behavior endangers the health, safety, or welfare of the child or others;
  - (g) Who has committed a serious juvenile offense, who has committed more than one (1) juvenile offense, or who has committed a juvenile offense as a result of parental pressure, guidance, or approval;
  - (h) While subject to compulsory school attendance, has failed to regularly attend school full-time during the school term. Any child who has had eight (8) unexcused absences of one-half day or more in any four (4) week period in which school is in session shall be considered to have failed to regularly attend school full-time;
  - (i) Who is in need of treatment, rehabilitation, or services, and/or who's family is in need of treatment, rehabilitation, or services, which are not presently being received, and the intervention of the Juvenile Court is essential to provide this treatment, rehabilitation, or services;
  - (j) Who has had a breakdown in the parent-child relationship based on the refusal of the child's parent, guardian, or custodian to permit the child to live with them or based on the child's refusal to live with his or her parent, guardian, or custodian;
  - (k) Who has run away from the home of the child's parent(s), guardian, custodian, or other person responsible for the child's care; or
  - (l) Who has filed a petition for emancipation pursuant to this Chapter.
- (22) "Juvenile Offender" shall mean a person who is found to have committed a juvenile offense prior to his or her eighteenth (18th) birthday.

(23) "Juvenile Offense" shall mean the commission of a status offense and/or a violation of a Burns Paiute Tribal law or other applicable law that is committed by a person who is under the age of eighteen (18) years at the time the offense was committed.

(24) "Least Restrictive" shall mean the least drastic method of achieving a goal.

(25) "Legal Custody" shall mean a relationship between a child and a person other than the child's parent that is created by order of the Juvenile Court and that vests in the custodian any or all of the following duties and authorities, subject to the supervision of the Juvenile Court:

(a) To have physical custody and control of the child;

(b) To supply or authorize the supplying of food, clothing, shelter, education, supervision, discipline, medical or dental care, and other necessities for the child; and

(c) To make, authorize, or consent to decisions involving the child's behavior, health, safety, welfare, and morals, except decisions of major legal significance, which shall be made by the Juvenile Court.

(26) "Neglect" shall mean the failure to provide a child with adequate food, clothing, shelter, education, supervision, and/or medical or dental care necessary for the child's health, safety, and well-being.

(27) "Parent" shall include a child's natural or adoptive parent(s), but not a person whose parental rights have been legally terminated. A child born to a married couple is presumed to be the biological off spring of the husband unless DNA testing, blood evidence, or legal documents establish otherwise.

(28) "Petition" shall mean a document submitted to the Juvenile Court that alleges facts about a child or the child's situation that, if true, would justify the Court taking jurisdiction over the child.

(29) "Presenting Officer" shall mean the Burns Paiute Tribe's Prosecuting Attorney, Tribal attorney, Social Services Department staff member, or other person who performs the duties and responsibilities set forth in section 5.2.46 of this Chapter.

(30) "Probable Cause" shall mean facts or evidence that would make a reasonable person believe that certain facts are likely to be true.

(31) "Probation" shall mean a legal status created by a Juvenile Court order whereby a juvenile offender is placed under the supervision of a person designated by the Court. A juvenile offender on probation shall be ordered to return to the Juvenile Court for further proceedings if the juvenile fails to comply with any of the conditions of the probation.

(32) "Protective Supervision" shall mean a legal status created by a Juvenile Court order whereby supervision and assistance is provided to a juvenile offender by the Social Services Department, the Juvenile Services Coordinator, and/or other suitable agency. The Juvenile Court may permit a juvenile offender to remain in the juvenile's home or may place the juvenile with a relative or other suitable individual, and may specify particular requirements to be observed during the protective supervision.

(33) "Reasonable Grounds" shall mean an objectively justifiable suspicion that is based on specific facts or circumstances. Reasonable grounds requires is more than a hunch, but requires less evidence than probable cause.

(34) "Reservation" shall mean the Burns Paiute Reservation and lands under the jurisdiction of the Burns Paiute Tribe.

(35) "Restitution" shall mean financial or other reimbursement to a victim of a juvenile offense, limited to ascertainable damages that are a direct and proximate result of the juvenile offense. Restitution may include reimbursement for injury to or loss of property, actual medical, psychiatric, and psychological treatment expenses incurred, and lost wages resulting from the offense, but shall not include reimbursement for mental anguish, pain and suffering, or other intangible losses.

(36) "Shelter Care Facility" shall mean a home or other residential facility that is certified to care for children in an unrestricted setting and that is suitable for the safekeeping of a child who is taken into custody, including substance abuse shelters and halfway houses.

(37) "Significant Family-Type Relationship" shall mean an ongoing personal relationship with a child that has been ongoing for at least twelve (12) months, or since the birth of the child if the child is less than twelve (12) months old, and in which the person claiming the relationship has:

(a) Had physical custody of the child or has resided in the same household as the child;

(b) Provided the child with necessary care, education, and discipline, and supplied food, clothing, shelter, and incidental necessities to the child; and

(c) Through interaction, companionship, interplay, and mutuality, helped fulfill the child's psychological needs for a parent.

(38) "Social Services Department" shall mean the Burns Paiute Tribe's Social Services Department, which has the duty to provide services and programs to promote the health, safety, and welfare of children within the Tribe's jurisdiction, and to perform additional responsibilities in accordance with this Chapter.

(39) "Spokesperson" shall mean a person approved by the Juvenile Court to speak for a child, a child's parent, guardian, or custodian, or another party to a Juvenile Court

proceeding, including a guardian ad litem, court appointed special advocate, attorney, member of the Elder's Council, or other spokesperson.

(40) "Status Offense" shall mean an act that is an offense because it is committed by a juvenile. Status offenses include but are not limited to curfew violations, offenses involving possession of tobacco or alcoholic beverages, and runaway and truancy violations.

(41) "Title IV-E Cases" shall mean juvenile in need of care cases that receive funding through Title IV of the federal Social Security Act. Title IV-E provides federal reimbursement for qualified children who have been removed from their homes and placed in foster care or other out of home care under a court order or voluntary placement agreement.

(42) "Tobacco Products" shall mean cigarettes, cigars, chewing tobaccos, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

(43) "Tribal Council" shall mean the Tribal Council of the Burns Paiute Tribe.

(44) "Tribal Court" shall mean the court established pursuant to the Burns Paiute Tribal Constitution to exercise jurisdiction over matters arising under the laws of the Burns Paiute Tribe.

(45) "Tribe" or "Tribal" shall mean the Burns Paiute Tribe.

(46) "Unfit" shall mean the inability to care for a child due to conduct or a condition that is seriously detrimental to the child. In assessing such conduct or conditions, the Juvenile Court shall consider:

(a) Emotional illness, mental illness, or mental deficiency that is of such a nature and duration as to place the child's physical or mental health at risk, or to render the person incapable of providing proper care for the child for extended periods of time;

(b) Conduct toward any child of an abusive, cruel, or sexual nature;

(c) A substantial history of alcohol and/or drug abuse and/or addictive or habitual use of alcohol and/or drugs to the extent that parenting abilities have been substantially impaired;

(d) Criminal conduct that impairs the ability to provide adequate care for the child; and

(e) Imprisonment (actual or pending) for a significant period of time while the child is in the person's custody.

#### 5.2.21 Other Terms

Any term not defined in this Chapter may be understood to have the meaning ascribed to it in the Definitions section of the Indian Child Welfare Act, P.L. 95-608, 25 U.S.C. Sec. 1901, et seq. or in the most recent edition of Black's Law Dictionary.

## THE JUVENILE COURT SYSTEM

### 5.2.30 Establishment

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

### 5.2.31 Jurisdiction

(1) The Juvenile Court shall have jurisdiction in any proceeding in which an Indian child who resides or is domiciled within the Burns Paiute Indian Reservation is alleged to be a juvenile offender and the acts giving rise to allegations that a child is a juvenile offender occur within the territorial jurisdiction of the Burns Paiute Tribe, unless the Juvenile Court transfers jurisdiction to the adult Tribal Court in accordance with section 5.2.193 of this Chapter.

(2) The Juvenile Court shall have jurisdiction in any juvenile offender proceeding in which the acts giving rise to allegations that a child is a juvenile offender occur outside the territorial jurisdiction of the Burns Paiute Tribe if the juvenile resides or is domiciled within the Burns Paiute Indian Reservation and jurisdiction is transferred to the Juvenile Court by a state, tribal, or other court and the Juvenile Court accepts the transfer of jurisdiction.

(3) The Juvenile Court shall have jurisdiction in any dependency proceeding concerning any Indian child residing or domiciled on the Burns Paiute Reservation and/or concerning any Indian child who is a ward of the Juvenile Court.

(4) The Juvenile Court shall have jurisdiction in any dependency proceeding concerning an Indian child when the acts giving rise to the allegations that the child is a juvenile in need of care occur within the territorial jurisdiction of the Burns Paiute Tribe.

(5) The Juvenile Court shall have jurisdiction in any dependency proceeding concerning an Indian child not residing or domiciled on the Burns Paiute Reservation when jurisdiction is transferred to the Juvenile Court by a state, tribal, or other court and the Juvenile Court accepts the transfer of jurisdiction, in accordance with section 5.2.341 or section 5.2.342 of this Chapter.

(6) The Juvenile Court shall have jurisdiction over the parent, guardian, or custodian of any child who is within the Court's jurisdiction, as necessary to protect the best interests of the child, if the child's parent, guardian, or custodian has been served with notice of the proceedings.

(7) The Juvenile Court shall have jurisdiction over any adult who is or is alleged to be in violation of this Chapter or a Juvenile Court order when the acts giving rise to the alleged violation occur within the territorial jurisdiction of the Burns Paiute Tribe or when the offender or the child who is the subject of the alleged violation resides in or is domiciled on the Burns Paiute Reservation.

#### 5.2.32 Continuing Jurisdiction

(1) The Juvenile Court shall retain jurisdiction over a child and the child's parent(s), guardian, or custodian until one of the following occurs:

- (a) The Juvenile Court dismisses the petition or case;
- (b) The Juvenile Court transfers jurisdiction over the proceedings to another court;
- (c) The Juvenile Court issues an order remanding a juvenile alleged to be a juvenile offender to the Tribal Court to be tried as an adult;
- (d) The Juvenile Court issues an order terminating jurisdiction;
- (e) The child who is subject of the juvenile offender or dependency proceedings reaches the age of twenty-one (21) years; or
- (f) The child becomes emancipated by court order or by marriage.

(2) When the Juvenile Court asserts jurisdiction over a person pursuant to this Chapter, the Court may retain jurisdiction over that person even if the person leaves the territorial boundaries of the Reservation.

#### 5.2.33 Full Faith and Credit

The Juvenile Court shall recognize and give full faith and credit to state court orders and the orders of other tribal courts concerning children over whom the Juvenile Court could take jurisdiction if:

- (1) The state or tribal court had jurisdiction over the parties to the proceedings and the subject matter;
- (2) The provisions of the Indian Child Welfare Act, if applicable, were properly followed;
- (3) Due process was provided to all interested persons participating in the proceedings; and
- (4) The proceedings did not violate the public policies, laws, customs, or common law of the Burns Paiute Tribe. The Elder's Council shall be responsible for educating the

Juvenile Court Judge about whether a proceeding has violated the customs of the Burns Paiute Tribe.

#### 5.2.34 Cooperative Efforts

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 Chapter.

### JUVENILE COURT PERSONNEL

#### 5.2.40 Juvenile Court Judge

(1) The Juvenile Court shall consist of the judge of the Tribal Court when hearing a matter arising under the provisions of this Chapter. If there is more than one Tribal Court judge, the Juvenile Court shall consist of a judge or judges appointed by the Chief Judge of the Tribal Court. Whenever possible, the Juvenile Court Judge(s) shall have significant prior training and experience in juvenile matters, and preferably experience in tribal juvenile matters.

(2) The rules on disqualification or disability of a Juvenile Court Judge shall be the same as those rules that govern Tribal Court Judges.

(3) In carrying out the duties and powers described in this Chapter, the Juvenile Court Judge(s) shall have the same duties and powers as judges of the Tribal Court, including but not limited to the contempt power and the power to issue orders, subpoenas, and arrest and search warrants.

(4) The Juvenile Court Judge(s) shall have broad authority to make orders for the care, custody, treatment supervision, protection, placement, and physical residence of a child, and to order any action, treatment, services, assessment, support payment, sanction, or condition on the activities of a child or a child's parent, guardian, or custodian as the Juvenile Court Judge(s) may deem advisable, appropriate, and in the best interests of the child.

(5) The Juvenile Court Judge shall work with the Social Services Department to coordinate the efforts and activities of the Elder's Council.

#### 5.2.42 Court Clerk

The Tribal Court Clerk shall perform all of the administrative duties of the Juvenile Court, as directed by this Chapter and the Juvenile Court Judge. The Tribal Court Clerk shall perform the same responsibilities for the Juvenile Court as for the Tribal Court that are not in conflict with this Chapter.

#### 5.2.43 Social Services Department

(1) The Burns Paiute Tribe's Social Services Department has the duty to provide services and programs to promote the health, safety, and welfare of children within the Tribe's jurisdiction. The Social Services Department is responsible for:

(a) Immediately investigating all allegations of child abuse, neglect, and abandonment, and if appropriate, proceeding according to the provisions of this Chapter;

(b) Maintaining the confidentiality of all records, files, documents, and other related information associated with dependency proceedings;

(c) Offering appropriate services to families and making reasonable efforts to prevent or eliminate the need for the removal of children from their homes;

(d) Assuring that all reasonable measures are taken to protect the welfare of all wards of the Juvenile Court who are placed in the care of the Department;

(e) Providing support, services, monitoring, and follow-up to all children within the jurisdiction of the Juvenile Court and their parents, guardians, custodians, and foster or shelter care providers;

(f) Coordinating visitation between a child who has been removed from the home and the child's parent, guardian, or custodian as appropriate or ordered by the Juvenile Court. Whenever possible, such visitation shall be designed to promote and expand the relationship between the child and the child's parent, guardian, or custodian;

(g) Monitoring the progress of a child who has been removed from the home and the child's parent, guardian, or custodian toward reunification of the family, and for reporting on that progress to the Juvenile Court;

(h) Monitoring any foster care or shelter care provider with whom a child is placed to assure that the placement continues to serve the best interests of the child and otherwise meets the standards set forth in this Chapter on an ongoing basis;

(i) Coordinating the efforts and activities of the Tribe's Indian Child Welfare Advisory Committee and the Elder's Council; and

(j) Performing additional responsibilities in accordance with this Chapter.

(2) The following functions shall be carried out by the Juvenile Services Coordinator or other Tribal employee as designated by the Social Services Department:

(a) Tracking, evaluating, and recording each juvenile offender's activities associated with the requirements of the Juvenile Court or county juvenile probation officer, Juvenile Services Coordinator, or as agreed to following an informal conference;

- (b) Providing case management services, offering referrals for alcohol and drug treatment and other services, providing documentation and reports to the courts, coordinating residential treatment efforts, and providing transportation for juveniles and families;
- (c) Performing drug and alcohol testing on juvenile offenders where such tests have been ordered by the Juvenile Court or agreed to following an informal conference;
- (d) Making preliminary inquiries, social studies, and such other investigations as provided in this Chapter, as directed by the Juvenile Court, or as otherwise necessary, keeping written records of such inquiries, studies, and investigations, and making reports to the Juvenile Court as provided in this Chapter or as directed by the Court;
- (e) Holding informal conferences with juveniles and their families, in accordance with this Chapter, to discuss alternatives to the filing of juvenile offender petitions;
- (f) Explaining to any juvenile placed on probation or under protective supervision, and to the juvenile's parent, guardian, or custodian and other persons concerned, what the meaning and conditions of the probation or protective supervision are and any other necessary instructions;
- (g) Maintaining contact with and keeping informed concerning the conduct of each juvenile on probation or under protective supervision, and reporting thereon to the Juvenile Court as directed or otherwise necessary;
- (h) Using all suitable methods to aid juveniles on probation or under protective supervision to bring about improvements in their conduct and/or conditions;
- (i) Identifying and developing resources on the Reservation, in conjunction with the Juvenile Court and the Tribal Council as applicable, to enhance each Tribal child's potential as a viable member of the Tribal community; and
- (j) Performing such other duties in connection with the care, custody, or transportation of children as the Juvenile Court or this Chapter may require.

#### 5.2.44 Tribal Police Department

The Burns Paiute Tribal Police Department is responsible for the following activities pursuant to this Chapter:

- (1) Providing at least one (1) law enforcement officer to serve on the Tribe's Indian Child Welfare Advisory Committee, as recommended by the Social Services Department and approved by Tribal Council;
- (2) Receiving and investigating reports involving suspected child abuse or neglect;

(3) Taking a child alleged to be a juvenile offender or a juvenile in need of care into protective custody, in accordance with Department policies and procedures, Tribal law, and this Chapter; and

(4) Performing additional responsibilities in accordance with this Chapter.

#### 5.2.45 Presenting Officer

The Tribal Prosecutor, a Burns Paiute Tribal law enforcement officer, a Social Services Department staff member, or the Tribal attorney may carry out the duties of a Presenting Officer under this Chapter. A Presenting Officer shall represent the people of the Burns Paiute Tribe at all proceedings herein.

#### 5.2.46 Guardian Ad Litem and CASA

(1) The Juvenile Court may appoint a guardian ad litem or court appointed special advocate (CASA) for a child, where a guardian ad litem or CASA is available, for the purposes of a juvenile offender or dependency proceeding, if the Court finds that the child does not have a natural or adoptive parent, guardian, or custodian willing and able to exercise effective guardianship or additional advocacy is otherwise necessary.

(2) Subject to the direction of the Juvenile Court, the duties of a guardian ad litem or CASA may include but are not be limited to:

(a) Investigating all relevant information about the case;

(b) Appearing on behalf of and representing the interests of the child in judicial proceedings, and ensuring that all relevant facts are brought before the Juvenile Court;

(c) Providing other advocacy for the child to ensure that the Juvenile Court and the Social Services Department fulfill their obligations to the child in a timely fashion;

(d) Monitoring services to the family to ensure compliance with the Juvenile Court's orders; and

(e) Bringing to the Juvenile Court's attention any change in circumstances that may require a modification of an order of the Court.

#### 5.2.47 Indian Child Welfare Advisory Committee

(1) The Tribe's Indian Child Welfare Advisory Committee is a child protection team established by the Tribal Council to:

(a) Review Juvenile Court cases and state court cases involving Tribal children and make appropriate findings and recommendations to the Juvenile Court and Social Services Department;

- (b) Identify child welfare needs in the community and potential opportunities for education, training, and outreach;
  - (c) Provide advice to the Social Services Department, Juvenile Court, or Tribal Council regarding funding opportunities and other juvenile matters; and
  - (d) Provide other assistance to the Social Services Department upon request.
- (2) The Indian Child Welfare Advisory Committee shall convene at least monthly and shall make decisions by consensus.

#### 5.2.48 Elder's Council

- (1) The Elder's Council shall provide input and assistance to the Juvenile Court, Social Services Department, and Juvenile Services Coordinator, as requested, on juvenile matters.
- (2) The Juvenile Court may ask members of the Elder's Council to serve as mentors to and/or advocates for children who are subject to the Court's jurisdiction.
- (3) The Juvenile Court, Social Services Department, or Juvenile Services Coordinator may ask the Elder's Council to supervise or otherwise oversee community service projects or other juvenile offender activities.

#### 5.2.49 Additional Court Personnel

The Juvenile Court may set qualifications and appoint additional Juvenile Court personnel, such as spokespersons and other necessary personnel, whenever the Court determines that it is appropriate to do so.

### RULES OF PROCEDURE

#### 5.2.50 Rules of Procedure, Generally

- (1) Juvenile Court proceedings shall be governed by the rules of procedure for the Tribal Court that are not in conflict with this Chapter.
- (2) All proceedings held pursuant to this Chapter shall be conducted by the Juvenile Court, separate from other proceedings. At all such hearings, the child and the child's parent, guardian, and custodian, who shall be considered parties to the proceedings, shall have the applicable rights listed in section 5.2.70 of this Chapter.
- (3) All Juvenile Court hearings shall be held without a jury and may be continued from time to time.

(4) The general public shall be excluded from Juvenile Court proceedings. Only the parties, their spokesperson(s), witnesses, law enforcement officers, the victim, and other persons essential to the determination of the matter before the Court shall be permitted to attend Juvenile Court hearings, unless the presence of such a person is prohibited by the Court. Other persons may be admitted by order of the Juvenile Court or if requested by the parties.

#### 5.2.51 Evidence

(1) Juvenile Court proceedings shall be governed by the rules of evidence for the Tribal Court that are not in conflict with this Chapter.

(2) No Juvenile Court adjudication upon the status of any child shall be deemed criminal or be deemed a conviction of crime; provided that a juvenile may be convicted of a crime if the Juvenile Court has transferred the matter to the adult Tribal Court.

(3) The Juvenile Court may rely on the Court records and evidence given in a prior Juvenile Court proceeding involving a child when making rulings regarding the child. The fact that a child has been a party to a dependency proceeding, and any information obtained during the course of a Juvenile Court proceeding shall not be admissible as evidence against the child in any Tribal Court proceedings.

#### 5.2.52 Notice of Hearings; Summons

(1) Notice of hearings shall be served in the same manner notice is served in other civil actions under Tribal law and shall include a copy of the petition.

(2) Notice of all Juvenile Court hearings shall be given to:

(a) The child, if the child is twelve (12) years of age or older, and the child's spokesperson, if any;

(b) The child's parent, guardian, or custodian and the spokesperson(s) for the child's parent, guardian, or custodian, if any;

(c) A foster parent, pre-adoptive parent, or relative currently providing care for the child. The Court shall also give the foster parent, pre-adoptive parent, or relative an opportunity to be heard at the hearings. A foster parent, pre-adoptive parent, or relative providing care for the child is not considered a party to the proceedings solely because of notice and the opportunity to be heard;

(d) A legal grandparent of the child, if the grandparent makes a written request for notice and provides a mailing address to the Juvenile Court. The Court shall give the grandparent an opportunity to be heard at the hearings. A legal grandparent is not considered a party to the proceedings solely because of notice and the opportunity to be heard; and

(e) Any other party or person the Juvenile Court deems necessary for the hearing.

(3) The Juvenile Court shall issue a summons or subpoena to any person or party that the Court believes is necessary for the proper adjudication of a hearing.

(a) A summons or subpoena issued pursuant to this Chapter shall contain the name of the Juvenile Court, the title of the proceedings, and the date, time, and place of the hearing. A copy of the petition shall be attached to the summons or subpoena.

(b) The summons or subpoena shall be delivered personally by a Tribal law enforcement officer or an appointee of the Juvenile Court. If the summons or subpoena cannot be delivered personally, the summons or subpoena may be delivered by certified mail or otherwise served in accordance with Tribal law.

(c) If a person who has been issued a summons or subpoena fails to appear at the hearing, that person shall be held in contempt of Court.

#### 5.2.53 Time

In computing any period of time prescribed under this Chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday. When the period of time is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

#### 5.2.54 Payment of Fees and Expenses

(1) There shall be no fee for filing a petition under this Chapter nor shall any fee be charged by any Tribal officer for the service of process or for attendance in Juvenile Court at any such proceedings.

(2) Witness fees shall be paid in accordance with the rules of the Burns Paiute Tribal Court.

(3) The Juvenile Court may impose a fifty dollar (\$50.00) probation fee, if applicable, on any juvenile who has been adjudicated as a juvenile offender and placed on probation or under protective supervision.

#### 5.2.55 Intervention

Any adult member of a child's extended family and any permanent or long term guardian or foster parent of a child within the jurisdiction of the Juvenile Court may file a motion to intervene in any Juvenile Court dependency proceeding involving the child. The Juvenile Court shall allow the motion for intervention if the Court determines that the proposed

intervenor has a significant relationship with the child and that intervention is in the best interests of the child. The Juvenile Court shall determine what rights, similar to those of a party, shall be extended to an intervenor, in the best interests of the child.

#### 5.2.56 Consolidation

Juvenile Court proceedings involving two (2) or more children or two (2) or more proceedings involving the same child may be consolidated when the factual basis for jurisdiction is the same or similar or for the convenience of all parties. Separate dispositional and review hearings may be held if it is reasonable to do so.

#### 5.2.57 Telephone Appearances

(1) The Juvenile Court may permit a party to a Juvenile Court proceeding to participate in a hearing by telephone, at the party's own expense.

(2) A Juvenile Court Judge may participate in a Juvenile Court proceeding and/or issue orders by telephone only where a judicial decision or other judicial action is required within seventy-two (72) hours or another unforeseen emergency exists.

#### 5.2.58 Testimony of a Child in Chambers or by Videotape

(1) The Juvenile Court, on the motion of any party or on the Court's own motion, may take testimony in chambers from any child appearing as a witness. The testimony in chambers will be audio-taped to preserve the record verbatim. The Juvenile Court may exclude the child's parent and any other persons, except spokespersons, if the Court determines that their exclusion is in the best interests of the child.

(2) The Juvenile Court may allow a child to testify by means of a videotape deposition, closed circuit television, or other appropriate method if the Court determines that video testimony is in the best interests of the child and does not violate the rights of any party.

#### 5.2.59 Contempt

Any person who fails to obey a Juvenile Court order, summons, or subpoena may be cited by the Court to appear and show cause why he or she should not be held in contempt of Court. If the Court finds contempt of Court, the person shall be subject to sanctions in accordance with the Burns Paiute Tribal Law and Order Code.

### RIGHTS OF PARTIES

#### 5.2.60 Rights of Parties

At the start of each hearing, the Juvenile Court shall inform the parties of their rights, the allegations set forth in the applicable petition, and the possible consequences if the

allegations are found to be true. The parties to a Juvenile Court proceeding shall have all rights secured to them by Tribal or federal law, including but not limited to the right:

- (1) To counsel at their own expense. The Juvenile Court may continue any proceeding if it appears that additional time is necessary for a party to obtain a spokesperson;
- (2) To testify or remain silent and not to incriminate themselves. The Court shall inform the parties that any statement they make may be used against them;
- (3) To introduce evidence and to be heard on their own behalf; and
- (4) To subpoena and examine witnesses.

## PARENTAL / ADULT RESPONSIBILITY

### 5.2. 70 Parent as Party

The parent, guardian, or custodian of a child alleged or found to be a juvenile offender or a juvenile in need of care pursuant to this Chapter is a party to the case and is expected to attend all court proceedings involving the child. The parent, guardian, or custodian of a child alleged or found to be a juvenile offender or a juvenile in need of care may be summoned to appear at any proceeding involving the child.

### 5.2. 71 Dispositions

- (1) The Juvenile Court may order the parent, guardian, or custodian of a child alleged or found to be a juvenile offender or a juvenile in need of care to submit to services and other requirements, including but not limited to:
  - (a) Medical evaluations;
  - (b) Psychological and/or psychiatric testing, assessment, and treatment;
  - (c) Alcohol and drug assessment and treatment;
  - (d) Visitation;
  - (e) Cooperation with the Social Services Department;
  - (f) Compliance with a case plan, safety plan, and/or service agreement;
  - (g) Cooperation with and participation in any and all services in which the child is engaged, including on-site residential or institutional services; and
  - (h) Participation in other services, as determined by the Juvenile Court, Social Services Department, or Juvenile Services Coordinator.

(2) The parent, guardian, or custodian of a child alleged or found to be a juvenile offender or a juvenile in need of care, or any other adult, may be charged with contributing to the delinquency of a child, criminal non-support, furnishing alcohol to a person under twenty-one (21) years of age, endangering the welfare of a child, incest, child abandonment, child neglect, failure to send child to school, and/or other offenses pursuant to the Tribe's Law and Order Code or other applicable law.

(3) An adult may be charged with the offense of failing to supervise a child if the person is the parent, guardian, custodian, or other person lawfully charged with the care or custody of a child under fifteen (15) years of age and the child commits a juvenile offense. Failing to supervise a child is a Class B violation. The Juvenile Court may assert jurisdiction over a first offense of failing to supervise a child.

(4) In a prosecution of a person for failing to supervise a child, it is an affirmative defense that the person:

(a) Is the victim of the juvenile offense;

(b) Reported the offense to the appropriate authorities; or

(c) Took reasonable steps to control the conduct of the child at the time the person is alleged to have failed to supervise the child.

(5) Where the Juvenile Court finds that a person has failed to supervise a child, the Court may:

(a) Order the person to pay restitution to the victim(s) for economic damages arising from the juvenile offense. The amount of restitution ordered under this subsection may not exceed \$2,500;

(b) Order the person to complete a parent effectiveness program approved by the Court;

(c) Order the person to pay a monetary fine not to exceed \$5,000; and/or

(d) Impose other community service and/or other sanctions, in accordance with the Tribe's Law and Order Code, and may make other orders designed to hold the parent, guardian, or custodian accountable for the conduct of the child.

#### 5.2. 72 Cost of Support

If the Juvenile Court determines that the parent, guardian, or custodian of a child found to be a juvenile offender or a juvenile in need of care is financially able to do so, the Court may order the parent, guardian, or custodian to pay all or part of the costs of the support for the child, the costs of treatment for the child and/or the child's parent,

guardian, or custodian, and/or other costs associated with the Juvenile Court proceedings.

## PLACEMENT PREFERENCES

### 5.2.80 Placement Preferences

A child who has been alleged or found to be a juvenile offender or a juvenile in need of care and who has been removed from his or her home pursuant to this Chapter shall be placed in out of home care in accordance with the following order of preference, where applicable:

- (1) The home of the child's non-custodial parent, if any, and if approved by the Social Services Department and operated in accordance with this Chapter;
- (2) The home of the child's grandparent, if approved by the Social Services Department and operated in accordance with this Chapter;
- (3) The home of a member of the child's extended family, if approved by the Social Services Department and operated in accordance with this Chapter;
- (4) A private Tribal family home, certified by the Social Services Department and operated in accordance with this Chapter;
- (5) A private Indian family home, certified by the Social Services Department and operated in accordance with this Chapter;
- (6) A foster care facility on the Burns Paiute Reservation, certified by the Social Services Department and operated in accordance with this Chapter;
- (7) A shelter care facility on the Burns Paiute Reservation, certified by the Social Services Department and operated in accordance with this Chapter;
- (8) A tribal- or state-licensed home or facility located outside of the Burns Paiute Reservation, and operated in accordance with this Chapter; or
- (9) A juvenile detention facility, only for the placement of a juvenile offender or a child alleged to be a juvenile offender, only if a physically restrictive facility is needed to assure adequate supervision of the juvenile.

## MEDICAL EXAMINATIONS AND TREATMENT

### 5.2.90 Court-Ordered Medical Examinations

- (1) The Juvenile Court may order medical, dental, psychological, psychiatric, and/or other professional examination of a child, the parent, guardian, or custodian of a child,

or any other party or person before the Court if the Court determines, pursuant to a hearing, that the party or other person's medical, dental, psychological, psychiatric, and/or other health issues are relevant to the proceedings.

(2) If a child who has been taken into custody pursuant to this Chapter requires emergency medical care, including surgery, and no parent or guardian is available or willing to consent to the care, the Juvenile Court may authorize the care.

(3) An examination ordered pursuant to this section shall be paid for by the party or other person being examined, unless the Juvenile Court orders otherwise. Where possible, the Social Services Department may seek payment for such examinations from a non-custodial parent, the Tribe, the state, Indian Health Services, or other available funding sources, rather than from the person being examined.

#### 5.2.91 Emergency Medical Examinations and Treatment

(1) When a child is being taken into custody pursuant to this Chapter and it reasonably appears to the law enforcement officer or Social Services Department staff member taking a child into custody that the child is in need of medical treatment to preserve his or her health, the officer or Social Services Department staff member shall have the authority to authorize a medical evaluation.

(a) As soon as it is possible and safe to do so, the law enforcement officer or Social Services Department staff member shall make immediate and recurring efforts to notify the child's parent or guardian of the evaluation and obtain their consent to any required treatment.

(b) The law officer or child protection worker may authorize treatment for the child if:

- (i) The child is found to be in need of medical treatment to preserve the child's health, as diagnosed by a physician at the evaluation, and the child's parent or guardian cannot be located after due diligence; or
- (ii) The child's parent or guardian does not consent to the treatment, but: the evaluating physician diagnoses the child as needing immediate treatment to avoid death or substantial permanent injury; or the Juvenile Court orders the treatment.

(2) No person giving authorization for a medical evaluation or treatment pursuant to this section shall have any liability, civil or criminal, for giving such authorization.

### JUVENILE RECORDS

#### 5.2.100 Confidentiality and Maintenance of Records

- (1) All records related to juvenile offender and dependency proceedings kept and maintained by the Juvenile Court and other Tribal departments shall be confidential and shall be maintained in a secure location, separate from other records.
- (2) No person shall have access to juvenile offender or juvenile in need of care records except:
  - (a) The parties to the case, their spokespersons, and any interveners approved by the Juvenile Court, where such records are relevant to an issue before the Court;
  - (b) Juvenile Court system staff directly involved in the handling of the case;
  - (c) Law enforcement officers, only for the purpose of preparing for a Juvenile Court hearing or as otherwise ordered by the Juvenile Court;
  - (d) The Oregon Department of Human Services and/or the United States Department of Health and Human Services, when required pursuant to an agreement under Title IV-E of the Social Security Act; and
  - (e) Any other person having a legitimate interest in a particular case or the work of the Juvenile Court, by order of the Court, with good cause shown.
- (3) All juvenile offender records shall be maintained by and used solely for the purposes of the Burns Paiute Tribe. No juvenile offender records shall be used beyond the boundaries of the Burns Paiute Reservation, except where such records are requested by the federal government for a proceeding pursuant to the Major Crimes Act or where the records have been requested pursuant to a valid court order.
- (4) The Juvenile Court may order any party to a Juvenile Court proceeding to sign a release of information authorizing treatment and service providers to release records, reports, and assessments relevant to an issue or issues before the Juvenile Court to Juvenile Court system staff directly involved in the handling of the case.
- (5) At the completion of a juvenile offender or dependency proceeding, Juvenile Court system staff shall seal the entire file. The records of the proceedings shall not be made available for inspection except by order of the Juvenile Court, with good cause shown.

#### 5.2.101 Law Enforcement Records

Law enforcement records and files concerning a child shall be kept separate from the records and files of adults. All law enforcement records shall be confidential and shall not be open to inspection, except as permitted under section 5.2.100.

#### 5.2.102 Destruction of Records

(1) When a child who has been the subject of any Juvenile Court proceeding reaches the age of eighteen (18) years or the disposition order is terminated if the disposition order extends beyond the child's eighteenth (18th) birthday, the Juvenile Court shall order the Court Clerk to destroy both the law enforcement records and the Juvenile Court records; provided that:

(a) Records related to adoption proceedings shall not be destroyed.

(b) All records related to eligibility for foster care maintenance payments under Title IV-E shall be retained for a minimum of four (4) years after the applicable child has left care; and

(c) The Social Services Department shall retain all records related to payments under a Title IV-E Agreement for a minimum of thirty-nine (39) months after payment.

(2) Following the destruction of records, the Court Clerk shall respond to records inquiries as if no such records had ever existed.

#### 5.2.103 Juvenile Recording Tape Retention

Tapes used in the recording of juvenile matters shall be retained by the Juvenile Court until the child reaches the age of eighteen (18) years or the disposition order is terminated if the disposition order extends beyond the child's eighteenth (18th) birthday, except that adoption proceeding records shall be permanently retained. If a Juvenile Court file involves more than one child, the related tape shall be retained until the youngest child involved reaches the age of eighteen (18) years.

#### 5.2.104 Confidentiality of Dependency Proceeding Information

All Juvenile Court records, files, documents, and other related information associated with a dependency proceeding, including but not limited to acknowledgment that a case is before the Court, the release of any identifying information (*i.e.*, the names of children, families, or witnesses involved in a proceeding), and the substance of a hearing, order, or Juvenile Court file, are confidential and shall not be accessible for public inspection, except as permitted under section 5.2.100.

#### 5.2.105 Contempt of Court

No Juvenile Court records or other confidential information shall be viewed or disseminated except as provided in this Chapter. Any person who receives or views documents or other information pursuant to this provision shall maintain the confidentiality of such information. Failure to abide by this restriction shall constitute contempt of Court.

### FOSTER HOMES AND SHELTER CARE AND DETENTION FACILITIES

#### 5.2.110 Certification of Foster Care and Shelter Care Providers

(1) All persons providing foster care or shelter care for a child pursuant to this Chapter shall be certified by the Social Services Department or another comparable agency; provided that:

(a) The Juvenile Court may order a child to be placed in the home of a guardian that has not been certified; and

(b) The Social Services Department may place a child in the home of the child's grandparent or other member of the child's extended family if the placement is approved by the Social Services Department and operated in accordance with this Chapter.

(2) The Social Services Department shall recruit, screen, certify, and monitor foster care and shelter care providers for the care of children, in accordance with the Department's licensing standards, rules, and procedures, any orders of the Juvenile Court, this Chapter, and any other applicable law or agreement.

(3) In assessing a candidate to become a foster care or shelter care provider, the Social Services Department shall consider, but not is limited to, the following:

(a) The ability and willingness of the candidate provider to meet the child's physical, emotional, cultural, and educational needs.

(b) The ability and willingness of the candidate provider to provide safety for the child, including a willingness to cooperate with any restrictions placed on contact between the child and others, and a willingness to prevent anyone from influencing the child in regard to the allegations in the case; and

(c) The ability and willingness of the candidate provider to cooperate with the Social Services Department and comply with its directives and to support the Social Services Department's efforts to implement the reunification plan for the child.

(4) The Social Services Department shall establish specific background check procedures and standards for the backgrounds of foster care and shelter care providers.

(a) The Social Services Department shall conduct a background check of any candidate provider and any persons who will reside at the provider's home while a child would be placed with the provider.

(b) The Social Services Department may use any records maintained by the Burns Paiute Tribe, including but not limited to records of the Tribal Police Department, Housing Department, Human Resources Department, Enrollment Office, and Tribal Court, in assessing a candidate provider's background. By filing an application for foster care or shelter care certification, the applicant waives any expectation of

confidentiality or privilege with regard to any records under the control of the Burns Paiute Tribe.

(c) A candidate provider shall not be certified if his or her background check reveals a felony conviction for child abuse or neglect, spousal abuse, a crime against children (including but not limited to child pornography), or a crime involving violence (including but not limited to rape, sexual assault, or homicide, but not including physical assault or battery).

(d) A candidate provider shall not be certified if his or her background check reveals a felony conviction for physical assault, battery, or a drug-related offense if the offense was committed within the last five (5) years, unless the Social Services Department determines that the candidate provider is otherwise qualified to receive certification, the personal would be a safe placement that is in the child's best interests, and the disqualification would create emotional harm to the child.

(5) Prior to certification of a foster care or shelter care provider, the Social Services Department shall conduct an inspection of any residence that is likely to be used by the candidate provider while a child would be placed with the provider. The inspection shall assess whether the candidate provider's residence meets the Social Services Department's standards. No candidate whose home fails to pass the inspection shall be certified to provide foster or shelter care for a child until such time that the home does meet the Department's standards.

(6) No Social Services Department staff shall be certified to provide foster or shelter care through the Tribe's program, but may be licensed and provide foster or shelter care through another agency.

#### 5.2.111 Standards, Rules, and Regulations

(1) The Social Services Department shall prescribe and enforce standards, rules, and regulations governing the operation of foster homes, shelter care facilities, and detention facilities with whom children are placed pursuant to this Chapter. Such policies and procedures shall reflect the need to provide for the educational, cultural, and spiritual needs of the child involved and shall include but are not limited to standards for:

- (a) Cleanliness, safety, privacy, and comfort;
- (b) Heat, water, and light;
- (c) Personnel;
- (d) Visitation privileges;
- (e) Occupancy;

- (f) The provision of medical and dental care; and
  - (g) The provision of food, furnishings, clothing, and toilet articles.
- (2) The Social Services Department shall require all foster care and shelter care placements to comply with the following requirements:
- (a) No child may be punished, ridiculed, or criticized for expressing, through speech, custom, or dress, the child's Indian or tribal heritage;
  - (b) A child may wear his or her own clothes, rather than clothes supplied by the family or facility, if the clothes comply with minimum standards of cleanliness and are age-appropriate;
  - (c) A child shall be allowed to attend the school in which the child is enrolled whenever possible. School work and educational assistance at the child's level of development shall be provided to the child at the home or facility;
  - (d) A child may be required to perform reasonable chores, but no child shall be required to perform duties that are not commensurate with the child's age or physical or mental abilities;
  - (e) No child shall be punished by physical force, the deprivation of meals, or the deprivation of family visits;
  - (f) A child shall be given the opportunity to engage in physical exercise every day;
  - (g) No child shall be locked alone in a room unless a reasonable belief exists that the child may cause physical injury to the child or to others if not locked alone. Any child locked alone in a room shall be visited at least once every fifteen (15) minutes. The confinement shall not continue unnecessarily; and
  - (h) A child shall be allowed to attend traditional ceremonies, funerals, and related events of the child's extended family if:
    - (i) The Social Services Department approves and coordinates the child's attendance at the event(s);
    - (ii) The child is accompanied by a parent, guardian or custodian; and
    - (iii) The child's parent, guardian, or custodian agrees to return the child to the facility or home immediately following the ceremony, funeral, or related events.
- (3) Whenever a child is placed in a home or facility located outside the boundaries of the Burns Paiute Reservation, the Juvenile Court shall require the party receiving

custody of the child to sign an agreement that the child will be returned to the Reservation upon order of the Court.

(4) A child under sixteen (16) years of age may not be detained in a jail or a facility used for the detention of adults, unless the juvenile offender proceedings are transferred to adult Tribal Court in accordance with this Chapter.

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

(a) A juvenile detention facility is not available or would not assure adequate supervision of the juvenile;

(b) The juvenile is detained in a cell separate from adult prisoners but not removed from sight and sound of supervising adults; and

(c) Adequate supervision is provided twenty-four (24) hours a day.

#### 5.2.112 Monitoring; Revocation of Certification

(1) The Social Services Department staff member responsible for certification shall monitor the performance of all certified foster care and shelter care providers to assure that the providers continue to meet the Department's standards.

(2) The Social Services Department staff member responsible for certification shall revoke the certification of any provider who fails to meet the standards set by the Social Services Department.

(a) The Social Services Department staff member responsible for certification shall provide the provider with thirty (30) days written notice prior to revoking a certification. The notice shall state the grounds for the proposed revocation and shall offer the provider the opportunity to meet with the Social Services Department staff member responsible for certification to discuss the proposed revocation.

(b) If the Social Services Department staff member responsible for certification still finds grounds for the revocation after the meeting with the provider, the certification will be revoked on the date stated in the notice.

(c) The Social Services Department staff member responsible for certification is not required to provide notice or a reason for the revocation of a foster care or shelter care certification or an opportunity to respond where doing so would be contrary to the best interest of a child in foster care or shelter care.

(3) A provider who has had his or her certification revoked by the Social Services Department staff member responsible for certification pursuant to this section may appeal the revocation to the Social Services Department Director.

(4) A decision by the Social Services Department Director to revoke a foster care or shelter care certification is final and is not subject to any additional review or appeal.

## STATUS OFFENSES

### 5.2.120 Curfew

(1) No child under sixteen (16) years of age shall be on the public streets, highways, parks, or other public places between the hours of 10:00 p.m. and 4:00 a.m. of the following morning on any night, unless accompanied by the child's parent, guardian, or custodian or accompanied by another responsible adult with the permission of the child's parent, guardian, or custodian.

(2) For juveniles sixteen (16) to seventeen (17) years of age, curfew hours are 10:00 p.m. to 4:00 a.m. of the following morning on Sundays through Thursdays, and 12:00 p.m. to 4:00 a.m. of the following morning on Fridays and Saturdays, including holidays.

(3) A person who is eighteen (18) to twenty-one (21) years of age shall not be considered an "adult" for purposes of accompanying a child under this section.

(4) The Tribal Police Department shall provide the parent, guardian, or custodian of a juvenile alleged to have committed a curfew violation with written notice of the alleged violation.

(5) A juvenile who has been found to have committed his or her first curfew violation shall be released to his or her parent or guardian. If the child's parent or guardian is not available, the child shall be released to his or her custodian or another responsible adult. Both the adult and the juvenile shall be warned of the possible consequences of future curfew violations.

(6) The Juvenile Court may make an order for the disposition of a juvenile who has been found to have committed a second or subsequent curfew violation in accordance with section 5.2.175 of this Chapter.

### 5.2.121 Juvenile in Possession of Alcohol

(1) No person under the age of twenty-one (21) years shall purchase, attempt to purchase, acquire, or have personal possession of an alcoholic beverage, except the acceptance of sacramental wine as part of a religious rite or service. Personal possession includes the acceptance or consumption of an alcoholic beverage, including a single drink.

(2) The Juvenile Court may make an order for the disposition of a juvenile who has been found to have violated this section in accordance with section 5.2.175 of this Chapter.

### 5.2.122 Offenses Involving Tobacco

- (1) It is unlawful for any person under eighteen (18) years of age to possess tobacco products, with the exception of tobacco for traditional uses.
- (2) The Juvenile Court may make an order for the disposition of a juvenile who has been found to have violated this section in accordance with section 5.2.175 of this Chapter.
- (3) In addition to or in lieu of any disposition described in section 5.2.175 of this Chapter, the Juvenile Court may order any juvenile who has been found to have violated this section to participate in a tobacco education program or a tobacco use cessation program and/or to perform community service related to diseases associated with consumption of tobacco products.

### TAKING AN ALLEGED JUVENILE OFFENDER INTO CUSTODY

#### 5.2.130 Grounds for Taking an Alleged Juvenile Offender into Custody

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

- (1) The officer has probable cause to believe that the juvenile has committed a juvenile offense; or
- (2) A warrant has been issued for the juvenile.

#### 5.2.131 Complaint

A complaint alleging that a juvenile has committed a juvenile offense may be filed by the Juvenile Services Coordinator, the Social Services Department, or a Tribal law enforcement officer. The complaint shall contain:

- (1) A citation to the Tribal Code provision that the juvenile is alleged to have violated;
- (2) The name, age, and address of the juvenile who is the subject of the complaint, if known; and
- (3) A plain and concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged offense occurred.

#### 5.2.132 Warrant and Other Procedures

The Juvenile Court may issue a warrant directing that a juvenile be taken into custody if the Juvenile Court finds that there is probable cause to believe that the juvenile committed the juvenile offense alleged in the complaint. The criminal procedures set out in the Tribe's Law and Order Code shall be used by the Juvenile Court, Juvenile

Services Coordinator, Social Services Department, and Tribal law enforcement officers where applicable, unless such procedures conflict with the provisions of this Chapter.

#### 5.2.133 Tribal Law Enforcement Officer's Duties

(1) The Burns Paiute Tribal Police Department's policies and procedures for taking juveniles into custody, releasing juveniles taken into custody to a responsible adult, transporting juveniles to temporary placements, and communicating with the Social Services Department regarding juvenile offenders shall be consistent with the requirements of this Chapter.

(2) A Tribal law enforcement officer who takes a juvenile alleged to be a juvenile offender into custody shall:

(a) Make immediate and recurring efforts to inform the juvenile's parent, guardian, or custodian that the juvenile has been taken into custody and of their right to be present with the juvenile until the need for shelter care or detention is determined. The officer may make an exception to this notification requirement, with the approval of his or her supervisor, where immediate notification of a parent, guardian, or custodian may compromise the investigation or endanger the juvenile or other children;

(b) Inform the juvenile of his or her "Miranda rights" at the time the juvenile is taken into custody. If the juvenile indicates that he or she does not understand the "Miranda rights," the officer shall make a good faith effort to explain the rights to the juvenile.

(c) If the juvenile invokes his or her privilege against self-incrimination, the juvenile shall not be questioned except to determine his or her identity and the name(s) of his or her parent, guardian, or custodian, and/or to obtain a medical evaluation and treatment pursuant to section 5.2.91 of this Chapter

(3) Unless shelter care or detention is necessary, the officer taking the juvenile into custody shall release the juvenile to the juvenile's parent or guardian. If the juvenile's parent or guardian is not available, the juvenile shall be released to his or her custodian or another responsible adult.

(a) The officer shall issue verbal counsel or a warning to both the adult and the juvenile as may be appropriate.

(b) The Tribal Police Department shall provide the parent, guardian, or custodian of the juvenile with written notice of the alleged violation.

(4) If the juvenile is not released, the officer taking the juvenile into custody shall immediately contact or take the juvenile to the Juvenile Court Judge, Juvenile Services Coordinator, or Social Services Department to determine whether shelter care or detention is immediately necessary.

(5) If the Juvenile Court, Juvenile Services Coordinator, or Social Services Department determine that shelter care or detention of a juvenile taken into custody is not immediately necessary, the juvenile shall be released to his or her parent, guardian, or custodian and ordered to appear at an adjudicatory hearing on a date to be set by the Court.

#### 5.2.134 Immediate Shelter Care or Detention

(1) If the Juvenile Court, Juvenile Services Coordinator, or Social Services Department determines that shelter care or detention is immediately necessary, the Juvenile Court, Juvenile Services Coordinator, or Social Services Department shall place the juvenile in detention or shelter care pending the custody hearing. A juvenile shall not be placed in shelter care or detention unless a complaint is filed or the Juvenile Court orders that the juvenile be taken into custody pursuant to this Chapter.

(2) The Juvenile Services Coordinator or Social Services Department shall immediately explore pre-adjudication custody arrangements for the juvenile and shall prepare recommendations for the juvenile's temporary care and custody for presentation to the Juvenile Court at the custody hearing. A juvenile alleged to be a juvenile offender may be detained, pending the custody hearing, at:

(a) The home of the juvenile's grandparent, if the home is approved by the Social Services Department and is operated in accordance with this Chapter;

(b) The home of a member of the juvenile's extended family, if the home is approved by the Social Services Department and is operated in accordance with this Chapter; or

(c) Another certified placement, in accordance with the order of preference set forth in section 5.2.90.

(3) If the juvenile's parent, guardian, or custodian has not been contacted prior to the juvenile's placement in shelter care or detention, the Juvenile Court, Juvenile Services Coordinator, or Social Services Department shall make immediate and recurring efforts to inform them that the juvenile has been taken into custody.

#### 5.2.135 Custody Hearing

(1) If a juvenile alleged to be a juvenile offender is placed in detention, shelter care, or another out of home custody arrangement, the Juvenile Court shall conduct a custody hearing within twenty-four (24) hours of the placement for the purpose of determining whether continued detention, shelter care, or out of home custody is necessary pending further proceedings.

(2) Notice of the custody hearing shall be given to the juvenile and his or her parent, guardian, or custodian as soon as the time for the hearing has been established.

(3) If the juvenile's parent, guardian, or custodian has not been contacted or is not present at the custody hearing, the Juvenile Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian, or custodian. If it appears that further efforts are likely to produce the juvenile's parent, guardian, or custodian, the Juvenile Court shall recess for not more than twenty-four (24) hours and shall direct the Juvenile Services Coordinator or Social Services Department to make continued efforts to obtain their presence.

#### 5.2.136 Procedure at Custody Hearing

At the custody hearing, the Juvenile Court shall inform the juvenile and his or her parent, guardian, or custodian of their rights, as set forth in section 5.2.70 of this Chapter. The juvenile and the juvenile's parent, guardian, or custodian shall have the opportunity to be heard on their own behalf.

#### 5.2.137 Continued Custody

(1) Following the custody hearing, the juvenile shall be released to his or her parent, guardian, or custodian and ordered to appear at an adjudicatory hearing on a date to be set by the Juvenile Court, unless the Court finds that:

(a) The juvenile is alleged to have committed a violent or sex offense that is serious enough to warrant continued detention, shelter care, or other out of home custody of the juvenile;

(b) If released, there are reasonable grounds to believe the juvenile will run and will be unavailable for further proceedings;

(c) If released, there are reasonable grounds, based on the seriousness of the alleged offense or the juvenile's history of conduct, to believe that the juvenile will commit a serious act causing damage to person or property if released; and/or

(d) The further detention, shelter care, or other out of home care for the juvenile is otherwise necessary, following consideration of the recommendations of the Juvenile Services Coordinator or Social Services Department regarding pre-adjudication custody options for the juvenile.

(2) The Juvenile Court may release the juvenile to a relative or other responsible adult Tribal member instead of the juvenile's parent, guardian, or custodian if the juvenile's parent, guardian, or custodian consents to the release.

### INVESTIGATION AND RECOMMENDATION

#### 5.2.140 Investigation and Recommendation

(1) Within three (3) days of the custody hearing or the release of an alleged juvenile offender to his or her parent, guardian, or custodian, the Juvenile Services Coordinator or Social Services Department shall make an investigation to determine whether the interests of the juvenile and the public require that further action be taken.

(2) Based on the investigation, the Juvenile Services Coordinator or Social Services Department shall:

(a) Determine that no further action is needed;

(b) Suggest to the juvenile and the juvenile's parent, guardian, or custodian that they appear for an informal conference;

(c) Recommend that the Prosecuting Attorney file a petition in the Juvenile Court to initiate further proceedings. The petition shall be filed within six (6) days of the custody hearing if the juvenile is in detention or shelter care or another out of home placement. If the juvenile has been previously released to his or her parent, guardian, custodian, relative, or other responsible adult, the petition shall be filed within ten (10) days the release of an alleged juvenile offender to his or her parent, guardian, or custodian; or

(d) Request that the Juvenile Court transfer the proceedings to adult Tribal Court pursuant to this Chapter.

#### 5.2.141 Fingerprinting and Photographs; Other Non-Testimonial Evidence

(1) A juvenile alleged to be a juvenile offender child shall not be fingerprinted or photographed for criminal identification purposes, except:

(a) By order of the Juvenile Court. If an order of the Juvenile Court is so given, the fingerprints or photographs shall be used only as specified by the Court;

(b) Pursuant to a search warrant; or

(c) If the juvenile offender proceedings are transferred to adult Tribal Court pursuant to this Chapter.

(2) Other non-testimonial evidence (*i.e.*, hair, blood, urine, nails, breath, stomach contents, handwriting exemplars, etc.) may not be taken for criminal identification purposes from a juvenile alleged to be a juvenile offender except:

(a) With the consent of the child and the child's parent, guardian, or custodian after being advised of the purpose of such evidence collection;

(b) By court order; or

(c) When exigent circumstances exist to obtain necessary evidence prior to its destruction.

## INFORMAL CONFERENCES

### 5.2.150 Informal Conferences

(1) The Juvenile Services Coordinator or Social Services Department may hold an informal conference with a juvenile and the juvenile's parent, guardian, or custodian to discuss alternatives to the filing of a petition alleging that the juvenile is a juvenile offender if:

(a) The admitted facts bring the case within the jurisdiction of the Juvenile Court;

(b) An informal adjustment of the matter would be in the best interest of the juvenile and the Tribe; and

(c) The juvenile and the juvenile's parent, guardian, or custodian consent to an informal adjustment with the knowledge that such consent is voluntary.

(2) Notice of the informal conference shall be given to the juvenile and the juvenile's parent, guardian, or custodian and their spokespersons, if any, as soon as the time for the conference has been established. This duty to provide notice does not authorize the Juvenile Services Coordinator or Social Services Department to compel any person to appear at any conference, to produce any papers, or to visit any place.

(3) No statement made during the informal conference may be admitted into evidence at an adjudicatory hearing or any other proceeding against the juvenile under this Chapter.

### 5.2.151 Informal Conferences - Disposition

(1) At the informal conference, the Juvenile Services Coordinator or Social Services Department may propose an informal adjustment of the matter or may recommend that the Prosecuting Attorney file a petition alleging that the juvenile is a juvenile offender.

(2) If the Social Services Department and the family agree to an informal adjustment of the matter, a plan for the informal adjustment of the matter shall be set forth in writing and signed by the parties. The plan may include but not be limited to:

(a) Referrals for the juvenile and/or the juvenile's parent, guardian, or custodian to a community agency, treatment facility, or other service provider for assistance;

(b) Terms of supervision calculated to assist and benefit the juvenile, which regulate the juvenile's activities and which are within the ability of the juvenile to perform;

(c) Referrals for the juvenile and/or the juvenile's parent, guardian, or custodian to the Elder's Council for education, community service activities, restorative justice, and/or other appropriate activities designed to promote healing between the parties and the community; and/or

(d) Acceptance of an offer of restitution if voluntarily made by the juvenile.

#### 5.2.152 Informal Conference - Post-Disposition

If the parties agree to an informal adjustment of the matter, the Juvenile Services Coordinator or Social Services Department shall review the juvenile's progress every thirty (30) days. If, at any time after the initial thirty (30) day period, the Juvenile Services Coordinator or Social Services Department concludes that positive results are not being achieved, the Juvenile Services Coordinator or Social Services Department shall recommend that a petition alleging that the juvenile is a juvenile offender be filed pursuant to this Chapter. Any informal adjustment period shall not exceed six (6) months.

### INITIATION OF FORMAL JUVENILE OFFENDER PROCEEDINGS

#### 5.2.160 Petition

Formal juvenile offender proceedings shall be instituted by a petition alleging that the juvenile is a juvenile offender, filed by the Prosecuting Attorney on behalf of the Tribe. The petition shall state:

- (1) The name, birth date, tribal affiliation, and residence of the juvenile;
- (2) The names and residences of the juvenile's parent, guardian, and/or custodian;
- (3) A citation to the Tribal Code provision(s) that the juvenile is alleged to have violated;
- (4) If the juvenile is in detention, shelter care, or other out of home care, the placement location and the date and time the juvenile was taken into custody; and
- (5) If appropriate, a request that the juvenile's parent, guardian, or custodian be ordered to pay program fees, detention-related costs, and such other reasonable costs associated with the proceedings.

#### 5.2.161 Setting of Adjudicatory Hearing

(1) Upon receipt of the petition alleging that the juvenile is a juvenile offender, the Juvenile Court shall set a date for the adjudicatory hearing, which shall not be more than twenty (20) days after the Juvenile Court receives the petition.

(2) If the adjudicatory hearing is not held within twenty (20) days after the filing of the petition, the petition shall be dismissed and cannot be filed again, unless:

(a) The hearing is continued upon motion of the juvenile; or

(b) The hearing is continued upon motion of the Prosecuting Attorney by reason of the unavailability of material evidence or witnesses, if the Juvenile Court finds that the Juvenile Services Coordinator or Social Services Department has exercised due diligence to obtain the material or evidence and reasonable grounds exist to believe that the material or evidence will become available.

(3) Notice, in writing, of the adjudicatory hearing shall be given to the juvenile, the juvenile's parent, guardian, or custodian, and any other person the Juvenile Court believes necessary for the proper adjudication of the hearing, at least five (5) days before the hearing.

## ADJUDICATION AND DISPOSITION

### 5.2.170 Purpose of the Adjudicatory Hearing

The Juvenile Court shall conduct the adjudicatory hearing for the sole purpose of determining whether the juvenile committed the alleged juvenile offense(s).

### 5.2.171 Adjudicatory Hearing - Proof

The Juvenile Court shall hear testimony concerning the circumstances that gave rise to the petition alleging that the juvenile is a juvenile offender. If the allegations set forth in the petition are sustained by proof beyond a reasonable doubt, the Juvenile Court shall find the juvenile to be a juvenile offender and shall proceed to the dispositional hearing.

### 5.2.172 Admission to Allegations

If the juvenile admits the allegations set forth in the petition, the Juvenile Court shall proceed to the disposition stage only if the Court finds that:

(1) The juvenile fully understands his or her rights under Tribal and federal law and fully understands the potential consequences of his or her admission;

(2) The juvenile voluntarily, intelligently, and knowingly admits to all facts necessary to constitute a basis for Juvenile Court action; and

(3) The juvenile has not, in his or her purported admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.

### 5.2.173 Predispositional Report

(4) The Juvenile Services Coordinator or Social Services Department shall prepare a written predisposition report describing all reasonable and appropriate alternative dispositions for a juvenile found or admitted to be a juvenile offender. The report shall contain a specific plan for the care of and assistance to be provided to the juvenile to resolve the problems presented in the petition. The report shall contain a detailed explanation showing the need for the proposed plan of disposition and the benefits to the juvenile under the proposed plan. Preference shall be given to dispositional alternatives that least restrict the juvenile's freedom and that are most consistent with the interests of the Tribe. If so recommended, the report shall contain specific reasons for not recommending placement of the juvenile with the juvenile's parent, guardian, or custodian.

(5) The Juvenile Services Coordinator or Social Services Department shall present the predispositional report to the Juvenile Court, the juvenile or his or her spokesperson, if any, and the Prosecuting Attorney at least one (1) day before the dispositional hearing.

(6) The juvenile and/or the juvenile's parent, guardian, or custodian may prepare an alternative predispositional report. An alternative predispositional report shall be submitted to the Juvenile Court, the juvenile or his or her spokesperson, if any, and the Prosecuting Attorney at least one (1) day before the dispositional hearing.

#### 5.2.174 Dispositional Hearing: Timing and Notice

(1) A dispositional hearing shall take place immediately following the adjudicatory hearing or at a later date not more than twenty (20) days after the adjudicatory hearing. At the dispositional hearing, the Juvenile Court shall hear evidence on the question of the proper disposition of the juvenile offender.

(2) Notice of the dispositional hearing shall be given to the juvenile and the juvenile's parent, guardian or custodian, and their spokespersons, if any, at least forty-eight (48) hours before the hearing.

#### 5.2.175 Dispositional Hearing: Findings and Order

(1) At the dispositional hearing, the Juvenile Court shall consider the predispositional report(s) submitted and shall afford the juvenile and the juvenile's parent, guardian, or custodian an opportunity to controvert the factual contents and conclusions of the reports.

(2) The Juvenile Court shall have broad discretionary power to make orders for the care, custody, control, and rehabilitation of a juvenile who has been found or admitted to be a juvenile offender, including but not limited to orders:

(a) Permitting the juvenile to remain in the home of the juvenile's parent(s), guardian, or custodian, subject to any terms and conditions the Juvenile Court deems appropriate;

(b) Placing the juvenile in the physical custody of a grandparent, other extended family member, or other suitable person or facility, in accordance with the placement preferences set forth in section 5.2.80 of this Chapter, and subject to any terms and conditions the Juvenile Court deems appropriate;

(c) Placing the juvenile in an institution, treatment facility, or agency designated by the Juvenile Court, including but not limited to an alcohol or substance abuse shelter or halfway house, group home, shelter home, secure juvenile detention facility, medical facility, or school;

(d) Placing the juvenile on probation or under protective supervision, subject to any terms or conditions set by the Juvenile Court;

(e) Referring the juvenile to the Elder's Council for education, community service activities, restorative justice, and/or other appropriate activities designed to promote healing between the juvenile and the community; and/or

(f) Ordering the juvenile to undergo an alcohol assessment and treatment as recommended by the Juvenile Services Coordinator, Social Services Department, or other service providers;

(g) Imposing any sanction, including but not limited to restricting the juvenile's activities or contacts, suspending the juvenile offender's driving privileges, requiring the juvenile to perform community service, ordering the juvenile to pay a fine not to exceed \$1,000, and/or requiring the juvenile or the juvenile's parent, guardian, or custodian to make restitution for an injury or damage caused by the juvenile.

(3) A dispositional order shall be in effect for the time period set by the Juvenile Court but in no case shall the order remain in effect beyond the juvenile offender's twenty-first (21<sup>st</sup>) birthday.

(4) A dispositional order shall constitute a final order for purposes of appeal.

#### 5.2.176 Sex Offender Registration / Adam Walsh Child Protection and Safety Act Requirements

If a juvenile found to be a juvenile offender is at least fourteen (14) years of age at the time of the offense and the juvenile has committed a sex offense comparable to or more severe than aggravated sexual abuse, as defined by federal law, the juvenile shall register as a sex offender.

(1) The juvenile shall register as a sex offender before he or she is released from detention or jail or shall register within three (3) days of a non-detention sentence, in accordance with the requirements of applicable laws and policies.

(2) The juvenile offender shall update his or her sex offender registration information in accordance with the requirements of applicable laws and policies.

## REVIEW AND MODIFICATION OF DISPOSITIONAL ORDERS

### 5.2.180 Review Hearings

(1) Dispositional orders shall be reviewed at review hearings that conducted at the Juvenile Court's discretion, at least once every six (6) months. The Juvenile Court may review a dispositional order at any time upon the motion of the juvenile, the juvenile's parent, guardian, or custodian, the Social Services Department, or Juvenile Services Coordinator.

(2) Notice, in writing, of a review hearing shall be given to the Juvenile Services Coordinator or Social Services Department, the juvenile, the juvenile's parent, guardian, or custodian, and their spokespersons, if any, at least forty-eight (48) hours before the hearing.

(3) At the review hearing, the Juvenile Court shall review the performance of the juvenile, the juvenile's parent, guardian, or custodian, and the Juvenile Services Coordinator or Social Services Department, and other persons providing assistance to the juvenile and the juvenile's family.

(4) A dispositional order of the Juvenile Court may be modified upon a showing of a change of circumstances, substantial progress toward resolving the problems presented in the petition, or a lack of progress toward resolving the problems presented in the petition.

## TRANSFER TO ADULT COURT

### 5.2.190 Request for Transfer to Adult Tribal Court

The Juvenile Services Coordinator, Social Services Department, Prosecuting Attorney, or the juvenile may file a petition requesting that the Juvenile Court transfer a juvenile offender proceeding to adult Tribal Court if the juvenile is fourteen (14) years of age or older and is alleged to have committed a serious or sex offense, including but not limited to the following offenses, as defined in the Tribe's Law and Order Code:

- (1) Kidnapping;
- (2) Assault;
- (3) Criminal Homicide;
- (4) Sex Abuse;

- (5) Rape; or
- (6) Robbery.

#### 5.2.191 Transfer Hearing

(1) The Juvenile Court shall conduct a hearing to determine whether the juvenile offender proceeding should be transferred to adult Tribal Court. The transfer hearing shall be held not more than ten (10) days after the petition requesting the transfer is filed.

(2) Written notice of the transfer hearing shall be given to the juvenile and the juvenile's parent, guardian, or custodian at least seventy-two (72) hours prior to the hearing.

#### 5.2.192 Transfer to Adult Tribal Court

(1) The Juvenile Court may transfer jurisdiction over the juvenile to adult Tribal Court if the Juvenile Court finds clear and convincing evidence that:

(a) The juvenile is fourteen (14) years of age or older and is alleged to have committed a serious or sex offense;

(b) There are not reasonable prospects for rehabilitating the juvenile through the resources available to the Juvenile Court; and

(c) The offense(s) allegedly committed by the juvenile evidence a pattern of conduct that constitutes a substantial danger to the Tribal community.

(2) When determining whether to transfer jurisdiction to adult Tribal Court, the Juvenile Court shall consider the nature and seriousness of the offense allegedly committed by the juvenile and the nature and condition of the juvenile, as evidenced by his or her age, mental and physical condition, past record of offenses, and response to past efforts at rehabilitation.

(3) When a juvenile offender proceeding is transferred to adult Tribal Court, the Juvenile Court shall issue a written transfer order containing the reasons for its order. The transfer order shall constitute a final order for purposes of appeal.

### DUTY TO REPORT AND INVESTIGATE CHILD ABUSE AND NEGLECT

#### 5.2.200 Duty to Report Child Abuse and Neglect

(1) Any medical personnel, school personnel, mental health personnel, social worker, or law enforcement officer within the territorial jurisdiction of the Burns Paiute Tribe and any employee of the Burns Paiute Tribe who has reasonable suspicion that a child has

been abused or neglected or is a juvenile in need of care shall immediately report the suspected abuse, neglect, or need for care.

(2) Any other person who has reasonable suspicion that a child has been abused or neglected or is a juvenile in need of care as defined in this Chapter, is encouraged to report the suspected abuse, neglect, or need for care.

(3) Reasonable suspicion exists where it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in similar circumstances to suspect child abuse, neglect, or need for care.

(4) Reports of suspected abuse, neglect, or need for care shall be submitted to the Burns Paiute Tribe's Social Services Department or to the Burns Paiute Tribal Police Department.

(5) The identity of a person who makes a report pursuant to this section is confidential and may only be disclosed:

(a) Between agencies receiving or investigating the report;

(b) To the Prosecuting Attorney in a criminal prosecution, the Juvenile Services Coordinator or Social Services Department in a juvenile delinquency matter, or the Presenting Officer in a juvenile dependency matter;

(c) To the child's spokesperson;

(d) To a licensing agency when abuse in out-of-home care is reasonably suspected;

(e) By court order; or

(f) When the reporter waives confidentiality.

(6) A person who is required to report and knowingly fails to do so has committed a violation, which is punishable by a fine of not more than \$100, employee discipline, and/or other action pursuant to the Federal Compliance Guidelines.

(7) A person making a report pursuant to this section shall be immune from civil or criminal liability, based on the report, if he or she made the report in good faith.

(8) A person who knowingly makes a false report committed a violation, which is punishable by a fine of not more than \$100.

#### 5.2.201 Investigating Suspected Child Abuse or Neglect

- (1) The Burns Paiute Tribal Police Department and/or the Social Services Department may receive a report from any person with knowledge of facts involving suspected child abuse, neglect, or other need for care.
- (2) Upon receipt of a report of suspected child abuse, neglect, or other need for care, the Burns Paiute Tribal Police Department shall initiate an investigation to determine if the report has any factual basis, in accordance with the Police Department's policies and procedures and shall forward the report to the Social Services Department.
- (3) Upon receipt of a report of suspected child abuse, neglect, or other need for care, the Social Services Department shall initiate an investigation. In the course and scope of the investigation, the Social Services Department shall, as reasonable:
  - (a) Attempt to contact and interview all relevant parties, including but not limited to the child and the child's parent, guardian, or custodian, as well as, if appropriate, other caretakers, relatives, extended family members, neighbors, teachers, service providers, and treatment personnel;
  - (b) Attempt to visit the home and/or place where the child is residing;
  - (c) Assess the child's current circumstances, including but not limited to the nature of the reported charges, the child's home environment and family and parental history, and the family's current circumstances, including financial information if relevant and this information is reported by appropriate parties volunteering the information;
  - (d) Determine whether the child can remain safely in the home with reasonable services provided, and if so, assist in providing those services;
  - (e) Seek out extended family members, relatives, or others with whom the child is familiar and with whom the child could be placed, if necessary, pending further investigation; and
  - (f) Make tentative conclusions as to what is in the best interests of the child and how best to protect the child's health and safety until further investigation can be concluded.
- (4) If the Social Services Department has probable cause to believe that the child is a juvenile in need of care, the Department shall ask the Presenting Officer to file a petition alleging that the child is a juvenile in need of care.
- (5) The Social Services Department may ask the Juvenile Court to issue an emergency custody order for the child or may ask a Tribal law enforcement officer to take the child into protective custody if the Social Services Department has probable cause to believe that the child is a juvenile in need of care, that the child is in immediate danger from his or her surroundings, and that the child's removal from the home is necessary for the protection of the child.

### 5.2.202 Photographs

(1) A law enforcement officer or Social Services Department staff member conducting a child abuse investigation may photograph or cause to have photographed any child subject of the investigation for purposes of preserving evidence of the child's condition at the time of the investigation.

(a) A child who appears to have suffered a suspicious physical injury shall be photographed immediately.

(b) If a child appears to have suffered a suspicious physical injury in the anal or genital region, the officer or Social Services Department staff member shall immediately arrange for the child's injury to be photographed by a medical provider. Photographs of the anal or genital region may be taken only by a medical provider.

(2) Photographs taken pursuant to this section shall be considered confidential records in accordance with this Chapter.

## VOLUNTARY SERVICES AND PLACEMENTS

### 5.2.210 Voluntary Services

(1) The Social Services Department may provide services to a child, a child's parent, guardian, or custodian, or a family, upon request, where the services are reasonable and available and are needed to prevent or eliminate the need for removal of the child from the home.

(2) The Social Services Department shall provide forms for requesting voluntary services.

### 5.2.211 Voluntary Placements

(1) To provide for the protection of a child and services and treatment for a family, the Social Services Department may accept legal custody of a child for placement in foster care or shelter care if an appropriate placement is available and the placement is voluntarily requested by and consented to, in writing, by the following persons, where applicable:

(a) Both parents, if the child lives in the home with both parents;

(b) The custodial parent, if the custodian parent received custody of the juvenile(s) pursuant to a divorce or other custody decree. Voluntary placements shall not be implemented so as to substantially interfere with any non-custodian parent's visitation rights, unless such interference is in the best interests of the child; or

(c) The child's legal guardian with whom the child lives.

(2) The written voluntary placement agreement shall be binding on the parties to the agreement and shall specify, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the Social Services Department while the child is in placement. At the time the voluntary placement agreement is signed, the person(s) giving consent shall be given a copy of this section.

(3) A voluntary placement shall not exceed three (3) months in duration, unless extended by order of the Juvenile Court. No foster care maintenance payments may be made for a child who has remained in a voluntary placement for more than 180 days unless the Juvenile Court has made a determination within the first 180 days of the placement that such placement is in the best interests of the child.

(4) The person(s) giving consent to place a child in foster care can withdraw their consent to the placement at any time. If consent is withdrawn, the voluntary placement agreement shall be deemed to be revoked and the child shall be returned to the parent or guardian or to the home of an extended family member of the child, if such placement is requested by the parent or guardian within forty-eight (48) hours; provided that if the Social Services Department has reasonable grounds to believe that the return of the child would be contrary to the child's best interests, the Social Services Department shall take the child into protective custody and shall immediately file a request for a custody hearing with the Juvenile Court.

## COMMENCEMENT OF JUVENILE IN NEED OF CARE PROCEEDINGS

### 5.2.220 Commencement of Juvenile in Need of Care Proceedings

A juvenile in need of care proceeding shall commence when a child is taken into protective custody or when the Presenting Officer files a petition alleging that a child is a juvenile in need of care.

## TAKING A CHILD INTO PROTECTIVE CUSTODY

### 5.2.230 Grounds for Taking a Child into Protective Custody

A child may be taken into protective custody by a Tribal law enforcement officer or the Social Services Department, pursuant to the policies and procedures of the respective Departments, if:

(1) The officer or the Social Services Department has probable cause to believe that the child is a juvenile in need of care, that the child is in immediate danger from his or her surroundings, and that the child's removal from the home is necessary for the protection of the child;

(2) It reasonably appears that the child has run away from home; or

(3) An emergency custody order has been issued for the child.

#### 5.2.231 Emergency Custody Orders

(1) The Juvenile Court shall enter an emergency custody order directing that a child be taken into protective custody if the Juvenile Court finds that there is probable cause to believe the child is a juvenile in need of care, that removal is necessary for the protection of the child, and that one or more of the following situations exists:

(a) The child is suffering from an illness or injury and no parent, guardian, or custodian responsible for the child is able or willing to provide adequate treatment for the child;

(b) The child is in immediate danger from his or her surroundings;

(c) The child's health is in immediate risk of harm;

(d) The child is likely to be subject to injury or abuse by others or by him or herself if not taken into protective custody;

(e) The child has been abandoned by his or her parent, guardian, custodian, or other person responsible for the care of the child;

(f) No parent, guardian, or custodian is able or willing to provide adequate care and supervision for the child; or

(g) Conduct or statements by the child or others indicate that the child is likely to run away or be taken from the area and will be unavailable for further proceedings if not taken into protective custody.

(2) The custody procedures set out in Burns Paiute Tribe's Law and Order Code shall be used by the Juvenile Court, Social Services Department, and Tribal law enforcement officers wherever applicable, unless such procedures conflict with the provisions of this Chapter.

#### 5.2.232 Protective Custody

(1) When a law enforcement officer or the Social Services Department take a child into protective custody, the officer or Department shall make immediate and recurring efforts to notify the child's parent, guardian, or custodian that the child has been taken into protective custody, to advise them of the reasons for taking the child into custody, and to notify them of the place of continued custody if it is safe to do so.

(2) If a Tribal law enforcement officer takes a child into protective custody, the officer shall immediately notify the Social Services Department that the child has been taken into custody and shall inform the Department of the basis for the removal.

(3) The jurisdiction of the Juvenile Court shall attach at the time a child is taken into protective custody.

(4) When a child is taken into protective custody, the Juvenile Court may authorize medical personnel to conduct a physical examination of the child for the purpose of preserving evidence if the Court determines that reasonable grounds exist to believe that the child has been physically or sexually abused, that the physical evidence of the abuse exists and is likely to disappear, and that it is in the best interests of the child to have the examination.

(a) A sexual assault advocate, victims' rights advocate, or other advocate may be present with the child during the examination.

(b) A child twelve (12) years of age or older may refuse to consent to such an examination.

(5) A Tribal law enforcement officer or the Social Services Department may release a child taken into protective custody pursuant to this Chapter to the child's parent, guardian, or custodian if the child's parent(s), guardian, or custodian sign a written statement agreeing that the child will not be removed from the Harney County area pending further proceedings and:

(a) Safeguards are in place that make it reasonable to believe that the child is no longer in immediate danger; or

(b) The parent, guardian, or custodian is not the person from whom the child was removed and reasonable grounds exist to believe that the child is not at risk of harm while in their custody.

(6) If the officer or the Social Services Department releases the child to the physical custody of the child's parent(s), guardian, or custodian, the child shall remain a ward of the Juvenile Court and in the legal custody of the Social Services Department pending the adjudicatory hearing.

(7) Following the release of a child taken into protective custody, the Social Services Department shall offer services and encourage the child and the child's parent(s), guardian, or custodian to voluntarily accept the services.

## TEMPORARY PROTECTIVE PLACEMENTS; CUSTODY HEARING

### 5.2.240 Temporary Protective Placements

(1) If a child is not released to his or her parent, guardian, or custodian, the Social Services Department shall immediately explore alternative preadjudication custody arrangements and shall prepare recommendations for the temporary care and custody of the child for presentation at the custody hearing.

(2) A child alleged to be a juvenile in need of care may be placed in temporary protective custody in accordance with the order of preference set forth in section 5.2.90 pending the custody hearing.

(3) In attempting to place the child pursuant to this section, the Social Services Department shall consider, but not be limited to, the following:

(a) The ability of the placement being considered to meet the child's physical, emotional, and educational needs;

(b) The ability of the placement being considered to provide safety for the child, including a willingness to cooperate with any restrictions placed on contact between the child and others, and a willingness to prevent anyone from influencing the child in regard to the allegations in the case;

(c) The ability of the placement being considered to support the Social Services Department's efforts to implement the reunification plan for the child; and

(d) If more than one (1) placement is being considered, which person(s) has the closest existing personal relationship with the child.

#### 5.2.241 Custody Hearing

(1) If a child is placed in protective custody, the Juvenile Court shall conduct a custody hearing as soon as possible, but no later than within seventy-two (72) hours of the child's placement in protective custody, for the purpose of determining whether continued protective custody of the child is necessary pending further proceedings.

(2) Notice of the custody hearing shall be given to the child and his or her parent, guardian, or custodian as soon as the time for the hearing has been established.

(3) If the child's parent, guardian, or custodian has not been contacted or is not present at the custody hearing, the Juvenile Court shall determine what efforts have been made to notify and to obtain the presence of the parent, guardian, or custodian. If it appears that further efforts are likely to produce the parent, guardian, or custodian, the Juvenile Court shall recess for not more than twenty-four (24) hours and shall direct the Social Services Department to make continued efforts to obtain the presence of the parent, guardian, or custodian.

(4) At the conclusion of the custody hearing, the child shall be released to his or her parent, guardian, or custodian and ordered to appear at the adjudicatory hearing on a date to be set by the Court, unless the Court finds reasonable grounds to believe that:

- (a) The allegations of abuse, neglect, or abandonment are true, the child is in immediate danger, and the child's removal from the home is necessary for the protection of the child;
  - (b) If the child is released, the child will run away and will be unavailable for further proceedings; or
  - (c) If the child is released, the child will commit a serious act causing damage to person or property.
- (5) If the child is not released to his or her parent, guardian, or custodian:
- (a) The Juvenile Court shall make an order placing the child in the temporary legal custody of the Social Services Department; and
  - (b) The Juvenile Court may order the protective custody, shelter care, detention, or other appropriate placement for the child upon consideration of the recommendations of the Social Services Department regarding preadjudication custody arrangements; or
  - (c) The child may be released to a grandparent, another member of the child's extended family, or other responsible adult Tribal member if the child's parent, guardian, or custodian consents to the release. If the child is ten (10) years of age or older, the child and the child's parent, guardian, or custodian must both consent to the release.
- (6) If the Juvenile Court determines that there are no reasonable grounds to believe that the child is a juvenile in need of care, the child shall be released from emergency custody and no further action need be taken unless the Court so orders.

## INVESTIGATION, RECOMMENDATION, AND SERVICES

### 5.2.250 Investigation and Services by Social Services Department

- (1) The Social Service Department shall make an investigation within three (3) days of the custody hearing or the release of the child to his or her parent, guardian, or custodian to determine whether the best interests of the child and the Tribe require that further action be taken.
- (2) In the course and scope of the investigation, the Social Services Department shall, as reasonable:
  - (a) Attempt to contact and interview all relevant parties, including the child and the child's parent, guardian, or custodian, as well as, if appropriate, other caretakers, extended family members, relatives, neighbors, teachers, service providers, and treatment personnel;
  - (b) Attempt to visit the home and/or place where the child is residing;

(c) Address the child's current circumstances, including but not limited to the nature of the juvenile in need of care allegations, the child's home environment and family and parental history, and the family's current circumstances, including financial information if relevant;

(d) Determine if the child can remain safely in the home with services provided, and assist in providing those services;

(e) Seek out extended family members, other relatives, or other persons with whom the child is familiar and with whom the child could be placed, if necessary, pending further investigation; and

(f) Make tentative conclusions as to what is in the best interests of the child and how best to protect the child's health and safety until further investigation can be concluded.

(3) Based upon the results of this investigation, the Social Services Department shall:

(a) Determine that no further action need be taken;

(b) Suggest to the child and the child's parent, guardian, or custodian that they appear for an informal conference; or

(c) Recommend that the Presenting Officer file a petition alleging that the child is a juvenile in need of care in the Juvenile Court to initiate further proceedings. If the child has been released to a parent, guardian, custodian, or relative, the petition shall be filed within ten (10) days of the child's release. The petition shall be filed within six (6) days of the custody hearing if the child is in other protective custody.

(4) Pending the adjudicatory hearing, the Social Services Department shall offer appropriate services to the parent, guardian, or custodian and the child and shall make reasonable efforts to prevent the removal of the child from the care of the parent, guardian, or custodian or to eliminate the need for continued removal.

## INFORMAL CONFERENCE

### 5.2.260 Informal Conference

(1) The Social Service Department may hold an informal conference with the child's parent, guardian, or custodian to discuss alternatives to the filing of a petition alleging that the child is a juvenile in need of care if:

(a) The admitted facts bring the case within the jurisdiction of the Juvenile Court;

(b) An informal resolution of the matter would be in the best interest of the child and the Tribe; and

(c) The child's parent, guardian, or custodian consent to an informal conference with knowledge that the consent is voluntary.

(2) Notice of the informal conference shall be given to the child's parent, guardian, or custodian and their spokespersons, if any, as soon as the time for the conference has been established. This notice does not authorize the Social Services Department to compel any person to appear at any conference, produce any papers, or visit any place.

(3) The Social Service Department may, but is not required to, invite the child to attend the informal conference.

(4) The Social Service Department may, but is not required to, invite additional family members, resources, or other interested persons to attend the informal conference.

#### 5.2.261 Informal Conference – Disposition

(1) At the informal conference, the Social Services Department may agree to a plan for the informal adjustment of the matter or may recommend that the Presenting Officer file a petition alleging that the child is a juvenile in need of care pursuant to this Chapter.

(2) If the Social Services Department and the parent, guardian, or custodian agree to an informal adjustment of the matter, a plan for the informal adjustment of the matter shall be set forth in writing and signed by the parties. The plan shall be detailed and specific as to:

(a) The areas in which the family needs assistance;

(b) The services required to address those needs;

(c) Who will provide those services. The plan shall include any necessary referrals for the child and/or the child's parent, guardian, or custodian to Tribal or other community agency(s) for needed assistance or treatment;

(d) Any terms of supervision required of the family, which shall be calculated to assist and benefit the child;

(e) The time lines to which the family and the Social Services Department will be held for completion of services; and

(f) How the family's progress, or lack of progress, will be measured.

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

#### 5.2.262 Informal Conference - Post-Disposition

The Social Service Department shall review the child and family's progress every thirty (30) days. If at any time after the initial thirty (30) day period, the Social Services Department concludes that positive results are not being achieved, the Social Services Department shall recommend that a petition alleging that the child is a juvenile in need of care be filed pursuant to this Chapter.

## INITIATING FORMAL JUVENILE IN NEED OF CARE PROCEEDINGS

### 5.2.270 Petition

- (1) Formal juvenile in need of care proceedings are initiated when a petition alleging that the child is a juvenile in need of care is filed by the Presenting Officer on behalf of the Tribe and in the best interests of the child.
- (2) The petition shall state, in ordinary and concise language:
  - (a) The name, birth date, sex, tribal affiliation, and residence of the child;
  - (b) The residences at which the child has lived for the previous year, the names of the persons with whom the child has lived, and the length of time the child has lived with each person and at each residence;
  - (c) The names and residences of the child's parent, guardian, and/or custodian. In addition, the names and residences of the child's putative father(s) or step-parent, if any;
  - (d) Whether any other person has or claims to have physical custody of or legal rights to the child and, if so, the name and residence of that person;
  - (e) Allegations as to the facts that would make the child a juvenile in need of care, including but not be limited to the date, time, and location where the alleged acts occurred, the names of any alleged witnesses, and all other information relevant to the allegations;
  - (f) Whether there is a custody proceeding involving the child pending in any other court;
  - (g) If the child is in protective custody, the place of protective custody if not confidential, the date and time the child was taken into custody, the reasons the child has been removed from parental care, and the reasonable efforts made by the Social Services Department to prevent or negate the need for removal of the child; and
  - (h) If appropriate, a request that the child's parent, guardian, or custodian be ordered to pay court costs, program fees, and such other reasonable costs associated with the proceedings.

#### 5.2.271 Setting of Adjudicatory Hearing

(1) Within forty-five (45) days of the receipt of a petition alleging that a child is a juvenile in need of care, the Juvenile Court shall set a date for the adjudicatory hearing.

(2) Notice, in writing, of the adjudicatory hearing shall be given to the child, the child's parent, guardian, or custodian, their spokespersons if any, the Social Services Department, the Presenting Officer if other than the Social Services Department, and any other person the Juvenile Court believes necessary for the proper adjudication of the hearing, at least five (5) days before the hearing.

(3) If the adjudicatory hearing is not held within forty-five (45) days after the filing of the petition, the petition shall be dismissed and cannot be filed again, unless:

(a) The hearing is continued upon motion of the child; or

(b) The hearing is continued upon motion of the Presenting Officer by reason of the unavailability of material evidence or witnesses and the Juvenile Court finds that the Presenting Officer has exercised due diligence to obtain the material or evidence and that reasonable grounds exist to believe that the material or evidence will become available.

### ADJUDICATION

#### 5.2.280 Adjudicatory Hearing

The Juvenile Court shall conduct the adjudicatory hearing for the sole purpose of determining whether the child is a juvenile in need of care. The hearing shall be private and closed to the public.

#### 5.2.281 Adjudicatory Hearing - Proof

(1) At the adjudicatory hearing, the Juvenile Court shall receive evidence concerning the circumstances that gave rise to the petition alleging that the child is a juvenile in need of care.

(2) If the allegations set forth in the petition are sustained by proof that is clear and convincing, the Juvenile Court shall find the juvenile to be a juvenile in need of care and shall proceed to or set a date for the dispositional hearing.

(3) A finding that a juvenile is a juvenile in need of care constitutes a final order for the purpose of appeal.

#### 5.2.282 Ward of the Court

- (1) If the Juvenile Court finds that the child is a juvenile in need of care, the Court may make the child a ward of the Court.
- (2) When a child who is a ward of the Juvenile Court is placed in the temporary legal custody of the Social Services Department or another custodian, the Court may direct that the child be placed in the temporary physical custody of someone other than the legal custodian, with supervision by the legal custodian. The Juvenile Court may impose such conditions and restrictions on the temporary physical custodian as needed to protect the health, safety, and welfare of the child and in the child's best interests.
- (3) The Court's wardship over the child shall continue, and the child shall be subject to the Court's jurisdiction, until one of the following occurs:
  - (a) The Court dismisses the case concerning the child;
  - (b) The Court enters an order terminating the wardship and temporary custody;
  - (c) The child turns eighteen (18) years old and the jurisdiction of the Juvenile Court is not continued;
  - (d) The child is emancipated by marriage or court order; or
  - (e) A Decree of Adoption of the child is entered by a court.

## DISPOSITION

### 5.2.290 Predispositional Report

- (1) The Social Services Department shall prepare a written predispositional report describing all reasonable and appropriate dispositions for a child found to be a juvenile in need of care. The report shall contain a specific plan for the care of and assistance to be provided to the child, calculated to resolve the problems presented in the petition. The report shall contain a detailed explanation showing the need for the proposed plan of disposition and the benefits to the child under the proposed plan. Preference shall be given to the dispositional alternatives that are the least restrictive of the child's freedom, consistent with the best interests of the child and the Tribe. If so recommended, the report shall contain specific reasons for not recommending placement of the child with the child's parent, guardian, or custodian.
- (2) The Social Services Department shall present the predispositional report to the Juvenile Court, the child, the child's parent, guardian, or custodian, their spokespersons, if any, and the Presenting Officer if other than the Social Services Department, at least one (1) day before the dispositional hearing.
- (3) The child, the child's parent, guardian, or custodian, and/or any other person may prepare an alternative predispositional report. An alternative predispositional report shall

be submitted to the Juvenile Court, the parties and their spokespersons, if any, and the Social Services Department at least one (1) day before the dispositional hearing.

#### 5.2.291 Dispositional Hearing: Timing and Notice

(1) A dispositional hearing may take place immediately following the adjudicatory hearing or at a later date not more than twenty (20) days after the adjudicatory hearing. At the dispositional hearing, the Juvenile Court shall hear evidence on the question of the proper disposition of a child found to be a juvenile in need of care.

(2) Notice of the dispositional hearing shall be given to the child, his or her parent, guardian, or custodian, their spokespersons, if any, the Social Services Department, and the Presenting Officer if other than the Social Services Department, at least forty-eight (48) hours before the dispositional hearing.

#### 5.2.292 Dispositional Hearing

(1) At the dispositional hearing, the Juvenile Court shall determine a plan for the child, which shall include but not be limited to a plan for the legal custody, physical custody, and placement of the child, and the services to be provided to the child and the child's family.

(2) The Juvenile Court shall consider the predispositional report submitted by the Social Services Department and shall afford the child's parent, guardian, or custodian an opportunity to controvert the factual contents and conclusions of the report. The Juvenile Court shall also consider any alternative predisposition reports, if any.

#### 5.2.293 Dispositional Alternatives

(1) If a child has been found to be a juvenile in need of care, the Juvenile Court may make any of the following dispositions:

(a) Permit the child to remain with his or her parent, guardian, or custodian, subject to such limitations and conditions as the Court may prescribe;

(b) Order the Social Services Department to place the child in foster care or shelter care, subject to such limitations and conditions as the Court may prescribe; and/or

(c) Place conditions or restrictions upon the child, the child's parent, guardian, or custodian, or any other person designed to improve the circumstances of the child. Such conditions or restrictions include but are not limited to ordering:

- (i) Cooperation with the Social Services Department;
- (ii) Compliance with a case plan / service agreement;

- (iii) Participation in Social Services Department case planning meetings;
- (iv) Medical, psychological, or psychiatric evaluation and treatment;
- (v) Individual and/or family counseling and/or prescriptive therapy;
- (vi) Alcohol and/or drug evaluation and treatment;
- (vii) Sex offender evaluation and treatment;
- (viii) Domestic violence counseling, anger management classes, parenting classes, and/or other services;
- (ix) Mediation to resolve family or other disputes;
- (x) Visitation with the child, with or without restrictions;
- (xi) Attendance at child's school, other functions, and/or Tribally-sponsored activities;
- (xii) Restrictions on contact, associations, or travel;
- (xiii) Payment of support or other necessary costs; and/or
- (xiv) Cooperation with and participation in all services in which the child is engaged, including on-site residential or institutional services.

(2) The Court shall enter specific findings setting out, in detail, the reasons for the terms and conditions imposed in the order.

(3) If the Juvenile Court enters an order removing a child from the legal custody of a parent, guardian, or custodian, the Court's written findings shall include:

(a) Whether the removal of the child from the legal custody of the parent, guardian, or custodian was, and continues to be, in the best interests of the child, and whether the out-of-home placement of the child was and continues to be in the best interests of the child, given the child's health, safety, and welfare needs;

(b) Whether the Social Services Department has made reasonable efforts, considering the circumstances of the child and parents, to prevent or eliminate the need for removal of the child from parental care and to make it possible to reunify the family;

- (i) In support of its determination of whether or not reasonable efforts have been made by the Social Services Department, the Court shall enter a description of what preventive and reunification efforts were made and why further efforts could or could not have prevented or shortened the separation of the family;

- (ii) Where the initial contacts with the family have occurred during an emergency in which the child could not safely remain in parental care, even with reasonable services being provided, the Social Services Department shall be considered to have made reasonable efforts to prevent or eliminate the need for removal of the child;
- (iii) Where the Court finds that reasonable preventive or reunification efforts have not been made, but that such efforts, even if made, could not have prevented the need for the removal of the child, the Social Services Department shall be considered to have made reasonable efforts to prevent or eliminate the need for removal of the child;

(c) Whether the case plan / service agreement is designed to make reunification of the family likely, and what efforts the Social Services Department is making to implement that plan; and

(d) Where an alternative permanent plan for the child is necessary, whether the case plan / service agreement reflects a concurrent, alternative permanent plan for the child, and what efforts the Social Services Department is making to develop and implement that plan in the event the child cannot be returned to parental care.

(4) If the Juvenile Court determines that the child cannot remain safely in the home despite services the Social Services Department has or could have provided and must be removed, the Social Services Department shall have a duty to make reasonable efforts to make it possible for the child to return home, largely through providing the parents with services designed to alter the situation that led to the removal. Reasonable efforts are not required, but may be offered at the discretion of the Social Services Department and with approval of the Court, where:

(a) The parent has been convicted of involvement in the murder or voluntary manslaughter of any person;

(b) The parent has been convicted of felony assault that resulted in serious bodily injury to the child or another person;

(c) The parent's rights to a sibling of the child have been terminated involuntarily; or

(d) The Juvenile Court or another court of competent jurisdiction has determined that the parent has subjected a child to aggravated circumstances, including but not limited to torture, sexual abuse, and/or physical abuse.

(5) Where warranted or required pursuant to this Chapter, the Juvenile Court may recommend that termination of parental rights proceedings begin.

(6) A dispositional order shall be in effect for the time period set by the Juvenile Court.

(7) A dispositional order shall constitute a final order for purposes of appeal.

#### 5.2.294 Preferences for Foster Care and Shelter Care Placements

(1) Where a child is placed in the Social Services Department's custody for placement in foster care or shelter care, either voluntarily or by order of the Juvenile Court, the Social Services Department shall place the child with a foster care or shelter care provider, in accordance with the placement preferences set forth in section 5.2.90, in the least restrictive setting that most approximates a family, within a reasonable proximity to the child's home if such a placement is in the child's best interests, and in a placement in the child's special needs, if any, are met.

(2) Where appropriate, the Social Services Department may consider the following factors when placing a child:

- (a) The wishes of the child and the child's parent, guardian, or custodian;
- (b) The child's adjustment to a new home, school, or community;
- (c) The mental and physical health of the child; and
- (d) The need to promote continuity and stability in the life of the child.

#### 5.2.295 Case Plan / Service Agreement

The Social Services Department shall develop a written case plan / service agreement for each child removed from the home within sixty (60) days from the date the child is removed from the home.

(1) The case plan / service agreement shall include:

- (a) A description of the services offered and the services provided to prevent the removal of the child from the home and to reunify the family, including a description of the appropriateness of such services;
- (b) A discussion of the services provided and that will be offered to the child's parent, guardian, or custodian to improve the conditions in the home to facilitate the child's return to the home, or for providing another permanent placement for the child;
- (c) A plan for meeting the health and education needs of the child;
- (d) A description of the type of home or facility in which the child is to be placed, a discussion of the safety and appropriateness of the placement, and a plan for assuring that the child receives safe and proper care;

(e) A discussion of whether the placement is designed to achieve placement in a safe setting that is the least restrictive setting available, that is in close proximity to the home of the child's parent, guardian, or custodian, and which is consistent with the best interests and special needs of the child;

(i) If the child is placed a substantial distance from the home of the child's parent, guardian, or custodian, the reasons why such placement is in the child's best interests;

(ii) If the child is placed in foster care outside the state of Oregon, assure that an authorized caseworker of either state visits the placement at least once every twelve (12) months and submits a report on the visit to the Social Services Department, and assure that at the permanency hearing, a determination is made as to whether an out-of-state placement continues to be appropriate and in the child's best interests;

(f) A plan for assuring that services are provided to the child and foster parent to address the needs of the child while in foster care;

(g) Where appropriate, for a child sixteen (16) years of age or older, a written description of the programs and services that will help the child prepare for the transition from foster care to independent living; and

(h) In the case of a child for whom the permanent plan is adoption or placement in another permanent home, the recruitment efforts and other steps that the Social Services Department is taking and plans to take to find an adopting family or other permanent living arrangements for the child;

(2) A copy of the case plan / service agreement shall be provided to the child's parent, guardian, or custodian.

#### 5.2.296 Case Review

The Social Services Department shall review the status of each child placed in foster care or other out-of-home placement at least once every six (6) months to:

(1) Review the placement and plan for assuring that the child receives safe and proper care;

(2) Determine the continuing need for and appropriateness of the placement;

(3) Determine the extent of compliance with the case plan / service agreement;

(4) Determine the extent of progress made toward alleviating or mitigating the problems that led to the removal of the child from the home;

- (5) Project a likely date by which the child may be returned to the home or placed for adoption or in some other permanent living arrangement;
- (6) If the child is placed outside of Oregon, determine whether the out-of-state placement continues to be appropriate and in the child's best interests; and
- (7) In the case of a child who has attained the age of sixteen (16) years, determine the services needed to assist the child to make the transition from foster care to independent living.

## REVIEW AND MODIFICATION OF DISPOSITIONAL ORDERS

### 5.2.300 Review Hearings

- (1) Dispositional orders shall be reviewed at review hearings conducted at the Juvenile Court's discretion, at least once every six (6) months. The Juvenile Court may also review a dispositional order at any time upon the motion of the child, the child's parent, guardian, or custodian, or the Social Services Department.
- (2) Notice, in writing, of a review hearing shall be given to the child if the child is twelve (12) years of age or older, the child's parent, guardian, or custodian, their spokespersons, if any, the Social Services Department, and the Presenting Officer if other than the Social Services Department, at least forty-eight (48) hours before the hearing.
- (3) At the review hearing, the Juvenile Court shall review the performance of the child, the child's parent, guardian, or custodian, the Social Services Department, and other persons or organizations providing assistance to the child and the child's family. The Juvenile Court shall:
  - (a) Determine the continuing need for and appropriateness of Juvenile Court jurisdiction and of the child's placement;
  - (b) Determine the extent of compliance by all parties with the case plan / service agreement;
  - (c) Determine the extent of progress the child's parent, guardian, or custodian has made toward eliminating the need for removal of the child from the home, including but not limited to efforts at compliance with required services and whether sufficient progress is being made to consider return home likely within a reasonable time;
  - (d) Consider whether the services provided to the family have been appropriate, accessible, and provided in a timely manner, whether reasonable efforts are being made by the Social Services Department to alleviate the need for removal of the child from the home, and whether the Social Services Department can reasonably provide additional services that will facilitate the return of the child to the home;

(e) Assess the Social Services Department's concurrent case planning, if any, and the Department's efforts to effect an alternative permanent plan for the child in the event there is insufficient progress to restore custody; and

(f) Project a likely date when the child will be returned to the home or when an alternative permanent plan will be put into effect.

(4) The Court shall return a child to the physical custody of the child's parent, guardian, or custodian, unless the Social Services Department shows good cause why returning the child would not be in the child's best interests.

(5) Following the review hearing, the Juvenile Court may issue, modify, revoke, or extend orders as appropriate for the care, custody, control, and protection of the child.

#### 5.2.301 Notification of Changes

(1) The legal and physical custodian(s) of the child shall be responsible for immediately notifying the Juvenile Court of any changes in the child's placement or any substantial changes in the permanent plan or the child's condition occurring between review hearings.

(2) The Social Services Department shall notify the Juvenile Court and the child's parent, guardian, or custodian any time the child is moved from one out-of-home placement to another.

(3) The Juvenile Court shall notify the child's parent, guardian, or custodian of any determination affecting their visitation rights.

### INDIAN CHILD WELFARE ADVISORY COMMITTEE

#### 5.2.310 Indian Child Welfare Advisory Committee Meetings

(1) The Tribe's Indian Child Welfare Advisory Committee shall meet at least monthly to review cases involving children in Tribal custody.

(2) Unless excused by the Committee, the Social Services Department shall be present and participate in all Indian Child Welfare Advisory Committee meetings. Indian Child Welfare Advisory Committee members and the Social Services Department may participate in meetings by telephone where necessary.

(3) Minutes of each meeting shall be kept and maintained by the Indian Child Welfare Advisory Committee. The minutes shall be confidential and shall be maintained in a secure location.

(4) The Indian Child Welfare Advisory Committee shall make decisions by consensus unless this Chapter provides otherwise.

(5) Indian Child Welfare Advisory Committee members shall sign a confidentiality agreement prior to each meeting. Committee members participating in a review shall have Tribal Court immunity from liability, civil or criminal, for defamation for statements made in good faith by the member in the course and in furtherance of such review.

(6) Indian Child Welfare Advisory Committee members shall disclose potential conflicts of interest prior to reviewing a case. Any Committee member with a conflict of interest may recuse him or herself from a case review. If a Committee member with a conflict of interest does not recuse him or herself from a case review, the Indian Child Welfare Advisory Committee may, by majority vote, remove the Committee member from the review.

(7) The Indian Child Welfare Advisory Committee may request parents, guardians, custodians, foster parents, children, spokespersons, and any other individual the Committee deems necessary, to participate in a Committee meeting. Before participating in a Committee meeting, each participant shall swear or affirm to the Committee that the participant shall keep confidential the information disclosed in the review hearing.

#### 5.2.311 Indian Child Welfare Advisory Committee Recommendations

(1) The Indian Child Welfare Advisory Committee may submit written findings and recommendations to the Social Services Department at any time.

(a) The Social Services Department shall review the Committee's findings and recommendations within ten (10) working days of receipt.

(b) The Committee's recommendations shall be implemented and the case plan / service agreement modified as the Social Services Department deems appropriate and resources permit.

(c) The Social Services Department shall notify the Juvenile Court and the Indian Child Welfare Advisory Committee within ten (10) working days of receipt of the Committee's recommendations if the Department chooses not to implement the Committee's recommendations.

(2) The Indian Child Welfare Advisory Committee:

(a) Shall provide written findings and recommendations to the Juvenile Court at least five (5) days prior to any court hearing in which the return of a child to the home or the termination of parental rights is to be considered; and

(b) May submit written findings and recommendations to the Juvenile Court for any other Juvenile Court hearing involving a child found or alleged to be a juvenile in need of care. The written findings and recommendations shall be submitted to the Juvenile Court at least five (5) days prior to the hearing.

(3) The Indian Child Welfare Advisory Committee's written findings and recommendations shall be prepared in compliance with the Committee's policies and procedures, and shall include but not be limited to the following, where applicable:

(a) Whether the Social Services Department made reasonable efforts prior to placement to prevent or eliminate the need for removal of the child from the home and whether, since removal, the Social Services Department is making reasonable efforts to make it possible for the child to be returned to parental care;

(b) If the child is in parental care, whether it is appropriate to terminate wardship and custody;

(c) The continuing need for, and appropriateness of, the child's placement;

(d) Compliance with the case plan / service agreement by the parties and the Social Services Department and whether progress is being made;

(e) Other problems, solutions, or alternatives the Committee determines should be explored; and

(f) The Committee's recommendations to the Social Services Department, the Court, the child's parent, guardian, or custodian, the foster parent, and any other relevant parties.

(4) The Indian Child Welfare Advisory Committee may submit written findings to the Juvenile Court, at any time, recommending that a hearing be set for the purpose of judicial review.

(d) The Juvenile Court shall review the Committee's recommendation, and the Social Services Department's response if any, within twenty (20) days of receipt. The Court shall include the recommendation in the legal file.

(e) The Court shall set a judicial hearing if recommended by the Committee or as the Court deems necessary.

(f) The Court shall notify the Social Services Department and the Committee if the Court takes any action on the case as a result of the Committee's report.

## PERMANENT PLAN HEARINGS

### 5.2.320 Permanent Plan Hearings

(1) In all cases receiving foster care maintenance payments pursuant to Title IV-E of the Social Security Act, 42 USC § 670 et seq., and in other cases at the discretion of the Juvenile Court, the Juvenile Court shall hold a permanent plan hearing within twelve (12) months from the date a child is removed from the home or the date of the order making a child a ward of the Juvenile Court, whichever comes first, to determine whether continued out of home placement of the child is in the child's best interests and to decide on the permanent plan for the child's custody and care.

(2) The permanent plan hearing may be combined with a review hearing.

(3) Notice, in writing, of a permanent plan hearing shall be given to the child if the child is twelve (12) years of age or older, the child's parent, guardian, or custodian, their spokespersons, if any, the Social Services Department, and the Presenting Officer if other than the Social Services Department, at least forty-eight (48) hours before the hearing.

(4) The Social Services Department shall prepare, and any other party may prepare, a report to the Juvenile Court for the permanent plan hearing and shall provide a copy of the report to each party and their spokespersons, if any, as soon as possible prior to the hearing. The report prepared by the Social Services Department shall include, but not be limited to:

(a) A summary of the history of the case, the progress of the family, the Social Services Department's efforts to offer services to the family, and the participation of the family in services since the last hearing;

(b) The specific details of the Social Services Department's permanent plan for the child and the specific reasons the plan has been chosen, including why the plan meets the child's needs and is in the child's best interests; and

(c) Where applicable, the compelling reasons why the termination of parental rights is not being recommended as the permanent plan.

(5) Following the permanent plan hearing, the Juvenile Court shall:

(a) Determine whether reasonable efforts are being made by the Social Services Department to alleviate the need for removal of the child from the home;

(b) Approve a permanent plan for whether and when:

(i) The child will be returned to his or her parent; or

(ii) Where the Juvenile Court determines that it would not be in the best interests for the child to return home, the Social Services Department will place the child for adoption, with a fit and willing relative or legal guardian, or in another planned permanent living arrangement;

(c) If the child is placed outside of Oregon, determine whether the out-of-state placement continues to be appropriate and in the child's best interests; and

(d) If the child has attained the age of sixteen (16) years, determine the services needed to assist the child to make the transition from foster care to independent living.

#### 5.2.321 Permanent Plan Review Hearings

(1) In all cases in which a child found to be a juvenile in need of care remains a ward of the Juvenile Court, the Juvenile Court shall hold a permanent plan review hearing at least annually to review the permanent plan for the child.

(2) The Social Services Department shall submit a report to the Juvenile Court for the permanent plan hearing review and shall provide a copy of the report to each party and their spokespersons, if any, as soon as possible prior to the hearing. The report prepared by the Social Services Department shall include, but not be limited to:

(a) A summary of the history of the case, the progress of the family, the Social Services Department's efforts to offer services to the family, and the participation of the family in services since the last hearing;

(b) The specific details of the Social Services Department's permanent plan for the child and the specific reasons the plan has been chosen, including why the plan meets the child's needs and is in the child's best interests; and

(c) Where applicable, the compelling reasons why the termination of parental rights is not being recommended as the permanent plan.

(3) At the permanent plan review hearing, the Juvenile Court shall determine:

(a) The continued appropriateness of the placement and the permanent plan;

(b) The extent of compliance with the permanent plan;

(c) The adequacy of services provided to the child and child's foster parent, guardian, or other custodian in the permanent placement; and

(d) Whether other services are necessary to support the permanent plan, and if such services can be reasonably provided by the Juvenile Court or the Social Services Department.

(4) At the conclusion of the permanent plan review hearing, the Juvenile Court may issue, modify, revoke, or extend orders as appropriate for the care, custody, control, and protection of the child.

## DEPENDENCY PROCEEDINGS IN OTHER COURTS

### 5.2.330 Transferring Jurisdiction to the Juvenile Court

(1) The Social Services Department shall be the point of contact for receiving notice related to dependency proceedings in state courts, other tribal courts, or any other court involving children who are or may be Tribal children.

(2) Where such notice related to a dependency proceeding in another court is provided to the Tribe, the Social Services Department and the Presenting Officer shall assess the child and the child's family situation and shall determine whether the case should be transferred to the Juvenile Court. The assessment shall consider but not be limited to:

(a) The Tribal enrollment status and age of the child;

(b) The location and circumstances of the child's family, including any special needs of the child's family, if any;

(c) Whether the state, the Tribe, another tribe, or another sovereign has made any serious attempts to reunite the family;

(d) The availability of a suitable Tribal home for placement of the child and the availability of Tribal services to address the child's needs;

(e) Whether the Social Services Department has funds to provide assistance for the care of the child and whether financial assistance for the care of the child will be available if a transfer of jurisdiction to the Juvenile Court occurs; and

(f) The cost to the Burns Paiute Tribe of legal services required to accomplish the transfer of jurisdiction.

(3) If the Presenting Officer pursues the transfer of jurisdiction, he or she shall petition the Juvenile Court to accept jurisdiction. The Juvenile Court may decline the transfer of jurisdiction if the Court finds clear and convincing evidence that the transfer would not be in the best interest of the child or the Tribe.

(4) If the Juvenile Court issues an order indicating that the Court will accept the transfer of jurisdiction, the Presenting Officer shall file a petition with the state, tribal, or other court requesting the transfer. The Presenting Officer shall provide notice to all parties that a petition to transfer jurisdiction has been filed.

(5) If the state, tribal, or other court grants the petition to transfer jurisdiction, the Juvenile Court shall issue an order accepting the transfer of jurisdiction within seventy-two (72) hours and shall ask the state, tribal, or other court to forward all files concerning the proceedings to the Juvenile Court.

(6) When jurisdiction over a dependency proceeding is transferred to the Juvenile Court, the case shall proceed in accordance with this Chapter.

#### 5.2.331 Other Requests to Transfer Jurisdiction

(1) If an Indian child or the parent, guardian, or custodian of an Indian child petitions a state court, other tribal court, or any other court to transfer jurisdiction over a dependency proceeding to the Juvenile Court, it shall be the duty of the party petitioning the state, tribal, or other court for the transfer of jurisdiction to file a petition with the Juvenile Court asking the Court to accept jurisdiction. The transfer shall not be effective until the Juvenile Court accepts the transfer of jurisdiction.

(2) Upon receipt of a petition asking the Juvenile Court to accept a transfer of jurisdiction, the Juvenile Court shall order the Social Services Department to investigate the matter and submit a written assessment to the Court within fourteen (14) days.

(3) The Juvenile Court shall issue a notice informing the child, the child's parent, guardian, or custodian, the Social Services Department, the Presenting Officer if other than the Social Services Department, and the court from which the transfer has been requested of the date and time for the hearing to review the transfer request. If the child and/or the child's parent, guardian, or custodian do not live in Harney County, Oregon, the notice shall inform them that they may appear at the hearing by telephone and of the procedure for appearing by telephone. Hearings on a request to accept jurisdiction shall be held within fourteen (14) days of the filing of the petition requesting acceptance of jurisdiction, unless a longer time is agreed upon.

(4) When determining whether to accept a transfer of jurisdiction, the Juvenile Court may consider:

(a) Whether the Social Services Department has funds to provide assistance for the care of the child;

(b) Whether other financial assistance for the care of the child will be available if a transfer of jurisdiction to the Juvenile Court occurs;

(c) The cost to the Burns Paiute Tribe of legal services required to accomplish the transfer of jurisdiction; and

(d) The Court costs involved with the required dependency proceedings if the transfer of jurisdiction to the Juvenile Court occurs.

(5) If the Juvenile Court issues an order accepting the transfer of jurisdiction, the Court shall ask the state court, tribal court, or other court to forward all files concerning the proceedings to the Juvenile Court.

(6) When jurisdiction over a dependency proceeding is transferred to the Juvenile Court, the case shall proceed in accordance with this Chapter.

#### 5.2.332 Intervention in Dependency Proceedings in Other Courts

(1) The Social Services Department shall be the Burns Paiute Tribe's agent for notice regarding dependency proceedings involving Indian children in state court, other tribal courts, or any other courts.

(2) The Tribe may intervene in any dependency proceeding taking place in any state court, at any time in the proceeding, pursuant to the Indian Child Welfare Act. The Tribe may intervene in any dependency proceeding taking place in any tribal or other court in accordance with applicable law.

(3) An Indian child involved in a dependency proceeding in state court, the child's parent(s), guardian, or custodian, or the Social Services Department may ask the Presenting Officer to intervene in the proceeding. Where intervention is requested and the Presenting Officer is other than the Social Services Department, the Presenting Officer shall ask the Social Services Department to investigate the matter.

(4) Within fourteen (14) days of receipt of a request for intervention, the Social Services Department shall prepare an assessment of the child and the child's family situation, and shall make a written recommendation to the Presenting Officer regarding whether the Tribe should intervene in the proceedings. The recommendation shall consider, among other factors:

(a) The age of the child;

(b) The location and circumstances of the child's family and any special needs of the family, if any;

(c) Whether the state, tribe, or another sovereign has made any serious attempt to reunite the family; and

(d) The cost to the Burns Paiute Tribe of legal and Social Services Department services required to accomplish the intervention.

(5) If the Social Services Department determines that intervention is in the best interest of the child and the Tribe, the Presenting Officer shall intervene in the proceedings in accordance with applicable law.

#### 5.2.333 Transferring Jurisdiction from the Juvenile Court

(1) The Juvenile Court may transfer jurisdiction over any proceedings pending before the Juvenile Court to an appropriate state court, tribal court, or other court.

(2) Any person may petition the Juvenile Court to transfer jurisdiction over a proceeding to another court. The petition shall include the name, age, address, and tribal affiliation, if known, of the child who is the subject of the proceeding, and a concise statement of the reasons the transfer should be granted. The petition shall be served upon all interested persons by the person filing the petition.

(3) Upon receipt of a petition requesting a transfer of jurisdiction, the Juvenile Court shall issue a notice of hearing informing the child, the child's parent(s), guardian, or custodian, the Social Services Department, the Presenting Officer if other than the Social Services Department, and the court to which the transfer of jurisdiction has been requested of the date and time for the hearing. Hearings on requests to transfer jurisdiction shall be held within thirty (30) days of the filing of the petition requesting the transfer, unless a longer time is agreed upon.

(4) The Juvenile Court may transfer jurisdiction over the proceeding if the Court determines that the state, tribe, or other sovereign has a significant interest in the child and that the transfer is in the best interest of the child. The wishes of the child's parent, guardian, or custodian, the wishes of the child if the child is over the age of (14) years, and cost to the Burns Paiute Tribe of legal and Social Services Department services related to the proceedings, shall be considered, but shall not be controlling, in the Juvenile Court's decision to accept or decline the request to transfer jurisdiction.

## GUARDIANSHIPS

### 5.2.340 Appointment of a Guardian for a Child Found to be a Juvenile in Need of Care

Where a child has been found to be a juvenile in need of care pursuant to this Chapter, the Juvenile Court may appoint a guardian for the child in accordance with this Chapter. The appointment of a guardian for all other children shall proceed in accordance with the applicable guardianship provisions of the Law and Order Code of the Burns Paiute Tribe.

### 5.2.341 Powers and Duties of a Guardian of a Child

(1) A guardian of a child shall exercise the powers and duties of a parent, including responsibility for the care, custody, and control of the child and the management of the child's property, except that a guardian is not legally obligated to provide for the child from the guardian's own funds, is not liable to a third party for the acts of the child by reason of the parental relationship, and shall not dispose of any real property or tribal member benefits of the child except by order of the Juvenile Court. Among other duties, a guardian:

(a) Shall facilitate the child's educational, social, and other activities;

(b) Shall authorize medical or other professional care and treatment for the child. A guardian is not liable by reason of this consent for an injury to the child resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented to the conduct;

- (c) Shall take reasonable care of the child's personal effects and begin protective proceedings if necessary to protect the child's property;
  - (d) May receive money for the support of the child payable to the child's parent(s), guardian, or custodian under the terms of any contract, trust, statutory benefit, insurance system, or other devise;
  - (e) May institute proceedings to compel the performance of a duty to support the child or to pay sums for the welfare of the child;
  - (f) May prosecute the claims of the child, including those for personal injuries;
  - (g) May consent to the marriage or adoption of the child; and
  - (h) Shall report to the Juvenile Court on the condition of the child and the child's estate subject to the guardian's possession or control on an annual basis or as ordered by the Court, including a detailed accounting with the Juvenile Court describing any money or property received by the guardian on behalf of the child and the disposition of the money and property.
- (2) Any money or property received by a guardian on behalf of a child pursuant to this section shall be applied to the child's current needs for support, care, and education. The use of funds or property for any other purpose shall subject the guardian to an action for contempt of court and to criminal and civil penalties or remedies as provided under Tribal, state, and federal law. The guardian shall exercise due care to conserve any excess funds or property for the child's future needs unless a conservator has been appointed for the estate of the child and excess funds are paid over at least annually to the conservator. Money or property received by the guardian shall not be used to compensate the guardian for services unless compensation has been approved by order of the Juvenile Court or as determined by a duly appointed conservator other than the guardian.
- (3) By accepting appointment as a guardian of a child, a guardian submits personally to the jurisdiction of the Juvenile Court in any proceeding related to the guardianship.

#### 5.2.342 Preferences in Appointing Guardians

- (1) In appointing a guardian of a child, the Juvenile Court shall prefer guardianships that maintain and preserve the child's connection to the Tribe and the child's extended family, where appropriate. The Juvenile Court shall appoint a qualified and suitable guardian who is willing to serve, having due regard for the following factors:
- (a) Any request for the appointment of a guardian of a child that is contained in a will or other written instrument executed by a parent of the child;
  - (b) Any request for the appointment of a guardian of a child fourteen (14) years of age or older that is made by the child; and

- (c) Any relationship by blood or marriage of the proposed guardian to the child.
- (3) The following persons are not qualified to act, or to continue to act, as a guardian of a child:
  - (a) A child;
  - (b) An incompetent person; or
  - (c) Any person who has been convicted of a felony, if the Juvenile Court determines that the facts underlying the conviction create a reasonable suspicion that the person will be unable to carry out a guardian's responsibilities to the child, or that the appointment will not be in the best interests of the child.

#### 5.2.343 Voluntary Temporary Guardianships

- (1) A parent or guardian of a child, by a properly executed power of attorney, may voluntarily delegate to another person the temporary guardianship of the child for a period not to exceed six (6) months; provided that a parent or guardian may delegate the temporary guardianship of a child to a school administrator for a period not to exceed twelve (12) months. A voluntary temporary guardianship may be extended beyond the initial six (6) or twelve (12) month period only with the approval of the Juvenile Court.
- (2) A temporary guardian shall have the legal status of a guardian and shall perform any of the powers and duties of a guardian regarding the care, custody, or control of the child and the management of the child's property, except the power to consent to the marriage or adoption of the child.

#### 5.2.344 Letters of Guardianship

The Juvenile Court shall issue a Letter of Guardianship to a person who has accepted a guardianship or who has been appointed as a guardian of a child pursuant to this Chapter. The Letter of Guardianship shall affirm that the named guardian has the authority to and shall perform the duties of a guardian for the named child as provided by law.

#### 5.2.345 Termination of Guardianships

- (1) A guardian's responsibility for the care, custody, and control of a child and the management of the child's property shall terminate upon the death, resignation, or removal of the guardian or upon the death, adoption, marriage, emancipation, or eighteenth (18<sup>th</sup>) birthday of the child. The termination of a guardianship does not affect a guardian's liability for prior acts or the guardian's duty to account for or to discharge existing obligations from the child's funds and assets.

(2) A child fourteen (14) years of age or older or any person interested in the welfare of a child may petition the Juvenile Court for the removal of a guardian on the grounds that the removal would be in the best interests of the child.

(3) A guardian may petition the Juvenile Court for permission to resign from a guardianship. Resignation of a guardian does not terminate the guardianship until the resignation has been approved by the Juvenile Court.

(4) A petition for the removal or resignation of a guardian may, but need not, include a request for the appointment of a successor guardian. Upon receipt of a petition for the removal or resignation of a guardian, the Juvenile Court shall issue a notice directing the necessary parties to appear in Court for a hearing on the petition at the time and place specified in the notice. After hearing any objections to the petition, if any, the Juvenile Court may terminate the guardianship or make any further orders as appropriate and in the best interests of the child.

## TERMINATION OF PARENTAL RIGHTS

### 5.2.350 Purpose

Parental rights to a child may be terminated by the Juvenile Court according to the procedures set forth in this Chapter. Termination shall be considered only as a last resort or where required pursuant to this Chapter for the purpose of freeing a child for adoption and following notification to the Tribal Council. It is the policy of the Tribe that alternative long-term placements that maintain the connection between the child and the child's parent and family, such as guardianships and long-term foster care placements, should be considered whenever possible as an alternative to the termination of parental rights.

### 5.2.351 Effect of the Termination of Parental Rights

(1) A Juvenile Court order terminating parental rights permanently terminates all rights of a parent to a child. A parent whose parental rights have been terminated shall have no standing to appear in any legal proceeding concerning the child, except the appeal of an order terminating parental rights or a motion to revoke the relinquishment of parental rights.

(2) An order terminating parental rights shall not affect the child's enrollment status as a member of the Burns Paiute Tribe, the child's degree of blood quantum, or the child's rights of inheritance under applicable law from biological parents or other family members who die intestate.

(3) The rights of one (1) parent may be terminated without affecting the rights of the other parent.

### 5.2.352 Filing of a Petition by the Presenting Officer

(1) In all Title IV-E cases, except as provided below, the Presenting Officer shall file a petition to terminate parental rights if:

(a) A child found to be a juvenile in need of care has been in the legal custody of the Juvenile Court or Social Services Department and in an out-of-home, non-relative placement for fifteen (15) of the last twenty-two (22) months;

(b) The Juvenile Court has determined that the child has been abandoned;

(c) The Juvenile Court has determined that the child's parent has committed, aided, abetted, attempted, conspired, or solicited the murder or voluntary manslaughter of the child or another child of the parent, or has committed a felony assault that resulted in serious bodily injury to the child or to another child of the parent; or

(d) The parent has subjected the child to, or inflicted upon the child, extreme physical, sexual, or emotional abuse.

(2) The Presenting Officer is not required to file a petition to terminate parental rights in Title IV-E Cases if the Juvenile Court has made written findings that:

(a) The child is being adequately cared for by a relative;

(b) The Social Services Department has not provided the services to the family that are necessary for the safe return of the child to parental care; or

(c) The Social Services Department has documented in the case plan / service agreement compelling reasons why the termination of parental rights would not be in the best interests of the child. Compelling reasons may include, but are not limited to the parent(s) successfully working to complete a service agreement or the existence of another permanent plan that is better suited to meet the needs of the child.

(3) The Presenting Officer may file a petition to terminate parental rights in any case in which the child is in a Tribally-approved or relative placement, an adoptive resource is available, and the termination of parental rights is in the best interests of the child. In determining the best interests of the child, the following factors shall be considered. If a majority of such factors exist, termination of parental rights shall be deemed to be in the child's best interests:

(a) Abandonment of the child;

(b) Emotional illness, mental illness, or mental deficiency of the child's parent that is of such a duration or nature as to place the child's physical or mental health at risk;

(c) A substantial history of drug and/or alcohol abuse by the parent while the child is in the parent's care;

- (d) Anticipated imprisonment of the parent for a period of three (3) or more years;
- (e) An appropriate parent-child relationship does not exist;
- (f) The child has been in out-of-home care for a substantial period of time;
- (g) The existence of non-Tribal siblings; and
- (h) Any other factors the Social Services Department deems relevant to make a determination regarding the best interests of the child.

#### 5.2.353 Petition

- (1) Proceedings to terminate parental rights shall be instituted by a petition to terminate parental rights filed by the Presenting Officer on behalf of the Tribe, by the child, or by the parent or guardian of the child.
- (2) The petition shall state:
  - (a) The name, birth date, tribal affiliation, and residence of the child;
  - (b) The names and residences of the child's parent, guardian, or custodian;
  - (c) If the child is in relative, foster, shelter, or other out of home care, the place of care and the time the child was taken into custody;
  - (d) Whether an adoptive resource is available for the permanent care of the child;
  - (e) Facts showing that every reasonable effort has been made to prevent or correct the situation that has necessitated the filing of the petition; and
  - (f) Reasons for requesting the termination of parental rights, including but not limited to facts which, if true, would prove beyond a reasonable doubt that the termination of parental rights is warranted and in the best interests of the child.

#### 5.2.354 Voluntary Termination (Relinquishment) of Parental Rights

The following procedures shall be required when a petition to terminate parental rights is filed by the child's parent indicating that the parent intends to relinquish his or her parental rights to the child:

- (1) No voluntary termination of parental rights shall be accepted by the Juvenile Court prior to ten (10) days after the birth of the child to whom the parent seeks to terminate his or her parental rights.

(2) No voluntary termination of parental rights shall occur until a written report has been submitted to the Juvenile Court by the Social Services Department indicating that social services and counseling have been offered to the parent, that the consequences of the parent's actions have been fully explained to and are understood by the parent, and that the voluntary termination of parental rights is in the best interests of the child.

(3) If the Juvenile Court has reasonable doubt concerning the emotional state of mind of the parent or the parent's ability to fully understand the consequences of his or her decision to voluntarily terminate parental rights, the Court shall place the child in the legal custody of the Social Services Department for an out-of-home placement for a period not to exceed thirty (30) days, in order to allow the parent to consider his or her decision. The Juvenile Court shall further order legal and psychological counseling for the parent to educate the parent about the consequences of his or her decision. A report indicating that counseling has been completed shall be made to the Juvenile Court.

(4) The Juvenile Court shall conduct a hearing at the end of the thirty (30) days period and shall:

- (i) Return custody of the child to the parent;
- (ii) Process the petition for voluntary termination of parental rights; or
- (iii) Extend the out-of-home placement for no more than thirty (30) additional days to allow for further counseling. Upon completion of the additional counseling, the Juvenile Court shall proceed in accordance with this Chapter.

(5) A parent may withdraw a petition to terminate parental rights, for any reason, at any time prior to the entry of a Decree of Adoption for the child.

(6) After the entry of a Decree of Adoption, a parent showing that the relinquishment of parental rights was obtained through fraud, duress, or coercion may petition the Juvenile Court to vacate the Decree of Adoption, except that no adoption in effect for more than two (2) years may be invalidated under this section.

#### 5.2.355 Termination of Parental Rights Hearing – Timing and Notice

(1) Upon receipt of a petition to terminate parental rights, the Juvenile Court shall set a date for the termination hearing, which shall be not more than forty-five (45) days after the Juvenile Court receives the petition. The hearing may be continued upon the motion of the parent or the Presenting Officer, by reason of the unavailability of material evidence or witnesses, if the Juvenile Court finds that the parent or Presenting 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) Notice, in writing, of the termination of parental rights hearing shall be served on the parent, the child if the child is twelve (12) years of age or older, the child's guardian or custodian if any, their spokespersons, if any, the Social Services Department, and the Presenting Officer if other than the Social Services Department, at least twenty (20) days before the hearing.

(3) The child's parent shall also be provided with a statement that his or her parental rights are proposed to be terminated in the proceeding and that if he or she fails to appear at the time and place specified in the summons, the Juvenile Court may terminate parental rights and take any other action authorized by law.

#### 5.2.356 Pre-Hearing Report

Prior to the termination of parental rights hearing, the Social Services Department shall submit a written report to the Juvenile Court and to all parties containing the facts surrounding the petition to terminate parental rights, the opinions of all professionals consulted, and the Social Service's Department's recommendation to the Court regarding the termination of parental rights.

#### 5.2.357 Termination of Parental Rights Hearing

(1) If the child's parent for whom the termination of parental rights has been proposed is not present at the termination of parental rights hearing, the Juvenile Court shall determine what efforts have been made to notify the parent of the hearing and to obtain his or her presence. If it appears that further efforts are likely to produce the parent, the Juvenile Court shall recess for not more than ten (10) days and shall direct the Social Services Department to make continued efforts to obtain the presence of the parent.

(2) To terminate parental rights to a child, the Juvenile Court must determine, beyond a reasonable doubt, that:

- (a) The child is in a Tribally-approved or relative placement;
- (b) An adoptive resource for the child is available;
- (c) The termination of parental rights is in the child's best interests, and
- (d) The termination of parental rights is warranted because:
  - (i) The parent has abandoned the child;
  - (ii) The parent is unfit by reason of a single or recurrent incident of extreme conduct toward the child or another child and continued custody by the parent is likely to result in serious emotional or physical harm to the child;

- (iii) The parent has subjected the child to willful and repeated serious physical injuries;
- (iv) The parent has subjected the child to willful and repeated acts of sexual abuse;
- (v) Abuse or neglect by the parent has resulted in the death of or serious physical injury to any child;
- (vi) Emotional illness, mental illness, or mental deficiency of the child's parent is of such a duration or nature as to place the child's physical or mental health at risk;
- (vii) The parent has a substantial history of drug and/or alcohol abuse while the child is in the parent's care;
- (viii) It is anticipated that the parent will be imprisoned for a period of three (3) or more years;
- (ix) An appropriate parent-child relationship does not exist;
- (x) The child has been in out-of-home care for a substantial period of time and it is unlikely that the child will be returned within a reasonable time; or
- (xi) The parent's voluntary termination (relinquishment) of parental rights has been acknowledged before the Juvenile Court.

(3) If the Juvenile Court makes the required determinations, the Court shall proceed to disposition or may take the matter under advisement and hold a dispositional hearing within thirty (30) days. If the Juvenile Court schedules a dispositional hearing for a later date, the Court shall provide notice of the dispositional hearing date to all parties.

(4) The Juvenile Court shall require the Social Services Department to prepare a written predisposition report outlining a specific plan for the future permanent care and custody of the child. The Social Services Department shall submit the predisposition report to the Juvenile Court, the parties, and their spokespersons, if any, in a timely manner prior to the disposition hearing.

#### 5.2.358 Disposition

- (1) After the entry of an Order Terminating Parental Rights, the Juvenile Court may:
  - (a) Place the child in the legal custody of the Social Services Department for adoptive placement and place the child in the physical custody of the adoptive parents; or
  - (b) Place the child in a temporary physical custody placement pending transfer to the adoptive resource.

(2) An Order Terminating Parental Rights shall be a final order for purposes of appeal.

## ADOPTIONS

### 5.2.370 Policy

It shall be the policy of the Tribe to prefer adoptions that maintain and preserve the child's connection to the Tribe and child's biological family. In all adoptions performed pursuant to this Chapter, the welfare of the child shall be the primary concern, and the proposed adoption must be in the best interests of the child.

### 5.2.371 Who May Adopt

(1) Any adult twenty-one (21) years of age or older may file a petition to adopt a child pursuant to this Chapter; provided that the adoptive parent shall be at least ten (10) years older than the child being adopted.

(2) In the case of married persons, both spouses shall be petitioners, including a spouse that is the natural parent of a minor to be adopted, except that a married person who is legally separated may adopt without the consent of his or her spouse.

### 5.2.372 Who May Be Adopted

A child may be adopted pursuant to this Chapter if:

(1) He or she is subject to the jurisdiction of the Juvenile Court;

(2) His or her parents' parental rights have been terminated or relinquished or his or her parents are no longer living; and

(3) He or she has been committed to the permanent custody of the Juvenile Court or Social Services Department for adoptive placement.

### 5.2.373 Order of Preference for Adoption

Preference for the adoption of a child shall be given in the following order:

(1) A member of the child's immediate family;

(2) A member of the child's extended family;

(3) A member of the child's Tribe;

(4) A person designated by the child's parent and approved by Burns Paiute Tribal Social Services;

- (5) A member of an Indian Tribe to which the child has hereditary connections;
- (6) A member of any Indian tribe; or
- (7) A qualified and appropriate non-Indian person.

#### 5.2.374 Petition for Adoption

(1) To initiate an adoption, a petition for adoption shall be filed with the Juvenile Court.

(2) In circumstances in which parental rights have been involuntarily terminated and the child is placed within the care and custody of the Social Services Department, the Social Services Department or the Presenting Officer may file the adoption petition. In all other circumstances, a petition for adoption may be filed by the proposed adoptive parent(s).

(3) The petition for adoption shall be verified under oath and shall contain:

(a) The full name, residence, place of birth, date and sex of the child, with attached documentary proof of the date and place of the birth of the child to be adopted.

(b) Documentary proof of the child's membership status in the Tribe or other tribal affiliation, if such proof exists;

(c) The names and residences of the child's legal parent, guardian, or custodian, as well as the names and residences of putative fathers or stepparents, if any;

(d) The full name, residence, date and place of birth, tribal membership or Indian status, and occupation of the adoptive parent, a statement of the adoptive parent's relationship to the child, and documentary proof of the marital status of the adoptive parent; provided the requirement for proof of marital status shall not be interpreted to prohibit single parent adoptions;

(e) Proof of the child's consent to the adoption if the child is ten (10) years of age or older;

(f) An agreement by the adoptive parent of the desire that a relationship of parent and child be established between the parent and the child;

(g) A brief description of why the adoptive parent is capable of providing for the proper care of the child;

(h) An agreement by the adoptive parent to maintain ties with the Tribe, and if appropriate, with members of the child's biological family;

(i) A full description and statement of value of all property owned, possessed, and/or held in trust by and for the child; and

(j) A brief and concise statement of any additional facts that may aid the Juvenile Court in its determination.

#### 5.2.375 Investigative Report

(1) Within thirty (30) days of the filing of a petition for adoption, the Social Services Department shall prepare and present to the Juvenile Court a report regarding whether the adoptive home and adoptive parent are adequate and capable of providing for the proper care of the child and whether the best interests of the child will be promoted by the adoption. The report shall include but not be limited to the suitability of the child for adoption, the financial, moral, and overall fitness, background, and responsibility of the adoptive parent, and the suitability of the adoptive parent's home for the child.

(a) Where the Social Services Department has filed the petition for adoption, the Social Services Department shall conduct a home study and shall file the results of the home study with the Juvenile Court as part of the petition for adoption. The Social Services Department shall conduct a home in all cases, unless an approved adoption or other agency has already completed a home study.

(b) The Social Services Department shall contact appropriate agencies and individuals who have relevant knowledge of the adoptive parent and the adoptive home. Such contacts and relevant information shall be included in the report.

(c) The Social Services Department shall ask the child to be adopted about his or her opinion of the proposed adoption and shall include this information in the investigative report. The consent of the child to be adopted is not required unless the child is ten (10) years of age or older, but a younger child's opinion shall be included in the investigative report.

(2) The Juvenile Court may order other agencies or individuals to prepare and file written reports with the Court to aid in the Court's determination on the suitability of the proposed adoption.

(3) Copies of all reports submitted to the Juvenile Court pursuant to this section shall be served on the parties at the same time they are presented to the Court.

#### 5.2.376 Hearing on the Petition for Adoption

(1) A hearing on the petition for adoption shall be held within sixty (60) days of the Juvenile Court's receipt of a petition for adoption to determine if it is in the child's best interest to be adopted by the proposed adoptive parent.

(2) The proposed adoptive parent shall appear personally at the hearing on the petition for adoption.

(3) At or before the hearing on the petition for adoption, any biological, adoptive, or acknowledged parent of the child may appear personally before the Juvenile Court to express his or her opinion of the proposed adoption.

(4) The judge shall examine all persons appearing at the hearing on the petition for adoption as to the whether the proposed adoptive home and parent are adequate and capable of providing for the proper care of the child, and whether the best interests of the child will be promoted by the adoption.

(5) The biological extended family members of the child may appear before the Juvenile Court to provide information to help the Court decide whether it would be in the best interests of the child to order any visitation or other contact with the child's extended family.

#### 5.2.377 Order on Petition for Adoption

(1) If the Juvenile Court determines that it is in the best interests of the child to grant the proposed adoption, the Court shall enter a final Decree of Adoption.

(a) In the case of a child who has lived with the adoptive parent for more than six (6) months before the adoption petition was filed, the final Decree of Adoption shall be entered immediately. In all other cases, the Juvenile Court shall order the child be placed in the legal custody of the adoptive parent for at least six (6) months. At the end of the six (6) month period, the Court shall request that the Social Services Department investigate the adoptive placement and prepare and present a report to the Juvenile Court. If the Juvenile Court determines that the best interests of the child are served by the adoptive placement, the Court shall enter the final Decree of Adoption immediately.

(b) The final Decree of Adoption shall include such facts necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and adoptive parent are adequate and capable of providing for the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence produced at the hearing on the petition for adoption.

(c) Within five (5) days of the Juvenile Court's issuance of the final Decree of Adoption, the Court Clerk shall notify the Division of Vital Statistics of the State Board of Health of the state that issued the child's original certificate of birth that the adoption has taken place, giving the full names, sex, and birth dates of the child, the child's biological and adoptive parent, and the child's new name where applicable, so that a new record of birth with the name(s) of the child's adoptive parent may be recorded. Where needed to issue a new birth certificate, the Court Clerk shall provide the Division with a certified copy of the final Decree of Adoption.

(d) A child who has been adopted by order of the Juvenile Court may assume the surname of the adoptive parent and is entitled to the same rights as a biological child of the adoptive parent. However, adoption cannot confer Tribal membership status on an adopted child who would not otherwise be eligible for membership. Adoption does not terminate the rights of the natural extended family of the child to know and maintain ties to the child, except by Order of the Court.

(2) If the Juvenile Court determines that the proposed adoption is not in the best interests of the child, the petition for adoption shall be denied. The Juvenile Court may ask the Social Services Department or other agencies authorized to provide such services to assist in the placement and care of the child. Where appropriate, the Juvenile Court may appoint a guardian for the child, in accordance with this Chapter.

#### 5.2.378 Adoption Records

(1) All records, reports, proceedings, and orders related to adoption proceedings conducted pursuant to this Chapter are confidential, permanent records of the Juvenile Court. All such adoption-related records shall be sealed and shall not be available for release to or inspection by the public, except by order of the Juvenile Court.

(2) Information contained in adoption-related records may be released by Juvenile Court pursuant to a petition seeking such records filed by an adopted person who has reached the age of eighteen (18) years, or by a person other than the adopted person who has petitioned for such information, upon a showing of good and sufficient cause.

(a) In either case, no information shall be released unless:

- (i) The biological parent of the adopted child has been given actual and confidential notice by the Juvenile Court of the filing of a petition for the release of the adoption-related records or notice of the Court's intent to issue such information has been published in a local newspaper of general distribution without revealing the name of the biological parent; and
- (ii) The biological parent of the adopted child has consented, in writing or personally before the Juvenile Court, to the release of information or the Court determines the need for information is greater than the parent's right to privacy.

(b) The Juvenile Court may refuse to divulge the biological parent's name but may release other information so long as the information will not lead to the discovery of the parent's name.

### EMANCIPATION

#### 5.2.420 Petition for Emancipation

(1) Any child who is at least sixteen (16) years of age or the parent, guardian, or custodian or any child who is at least sixteen (16) years of age may petition the Juvenile Court for the emancipation of the child.

(2) The petition for emancipation shall be verified under oath and shall include:

(a) The name, address, date of birth, sex, and tribal affiliation of the child;

(b) The name, address, and tribal affiliation of the child's living parent(s) and the child's guardian or custodian, if any;

(c) Whether a custody order has been issued for the child by any other court and whether a custody proceeding involving the child is pending in any other court;

(d) The purposes for which emancipation is sought;

(e) Facts showing that the child is capable of arranging for the child's own support and for the management of the child's own financial affairs; and

(f) The reasons emancipation of the child would be in the best interests of the child.

(3) A uniform filing fee of twenty dollars (\$20) shall be charged and collected by the Juvenile Court for each petition for emancipation. In addition, the Court shall collect any other fees required by law.

(4) Upon receipt of a petition for emancipation, the Juvenile Court shall issue a notice of hearing directing the child, the child's parent, guardian, or custodian, and the Social Services Department to appear in Court for a hearing on the petition at the time and place specified in the notice.

#### 5.2.421 Emancipation Hearings

(1) The Juvenile Court shall conduct a hearing on a petition for emancipation within thirty (30) days of the date on which the petition is filed or as soon as possible thereafter.

(2) At the hearing, the Court shall advise the child of the civil and criminal rights and civil and criminal liabilities of an emancipated child. This advice shall be recited in the Decree of Emancipation, if issued.

#### 5.2.422 Conditions for Issuance of Decree of Emancipation

(1) The Juvenile Court, in its discretion, may issue a Decree of Emancipation if the Court determines that:

(a) The Juvenile Court has jurisdiction over the child;

(b) The child is capable of arranging for the child's own support and the management of the child's own financial affairs;

(c) The child is living separate and apart from the child's parent, guardian, or custodian, the child is a parent, the child has special needs, or special circumstances exist necessitating emancipation; and

(d) Emancipation of the child would be in the best interests of the child.

(2) In determining whether to emancipate a child, the Juvenile Court shall consider:

(a) Whether the child's parent, guardian, or custodian consents to the proposed emancipation;

(b) Whether the child has been living away from the family home and is substantially able to be self-maintained and self-supported without parental guidance and supervision;

(c) Whether the child can demonstrate to the satisfaction of the Juvenile Court that the child is sufficiently mature and knowledgeable to manage his or her affairs without parental assistance; and

(d) Any recommendation of the Social Services Department regarding the proposed emancipation.

#### 5.2.423 Decree of Emancipation

(1) A child emancipated by the Juvenile Court shall be considered to have the rights and responsibilities of an adult, except those specific age requirements regarding voting, use of alcoholic beverages, and other health and safety regulations relevant to the child because of age. A Decree of Emancipation confers the rights of majority upon the emancipated child, including but not limited to:

(a) The termination of the child's parent or guardian's duty to provide for the care, custody, and control of the child, including the obligation of financial support and any other obligation the parent or guardian or any social service agency may have to the child by virtue of the parent-child relationship or the minor status of the child;

(b) The right to establish a separate residence or domicile;

(c) The right to work and earn a living, subject only to health and safety regulations designed to protect children regardless of their legal status;

(d) The right to retain his or her own earnings;

- (e) The right to act autonomously and with the power and capacity of an adult in all business relationships and property transactions, including the right to enter into non-voidable contracts and to sue or be sued in his or her own name;
  - (f) The right to give informed consent to health care services;
  - (g) The right, if a parent, to make decisions and consent to care for his or her minor child; and
  - (h) The right to make a will.
- (2) An emancipated child shall be recognized as an adult for the purposes of the application of the Criminal Chapter of the Burns Paiute Tribe, except when the emancipated child is a victim and the age of the victim is an element of the offense.
- (3) Upon entry of a Decree of Emancipation by the Juvenile Court, the emancipated child, and the petitioner if other than the emancipated child, shall be given a copy of the decree. The decree shall instruct that the emancipated child obtain an Oregon driver's license or an Oregon identification card through the Oregon Department of Transportation and that the Department of Transportation make a notation of the child's emancipated status on the license or identification card, or in the alternative may instruct the emancipated child to obtain an identification card through the Tribe if the Tribe provides identification cards.
- (4) Once the Juvenile Court issues a Decree of Emancipation for a child, the emancipated child cannot be un-emancipated.

## REQUEST FOR A NEW HEARING / JUVENILE APPEALS

### 5.2.430 Request for a New Hearing

- (1) The following persons may, at any time, petition the Juvenile Court for a new hearing on the grounds that new evidence has been discovered that was not known at the time of the original hearing and that could not have become available with due diligence:
- (a) Any child whose status has been adjudicated in a Juvenile Court proceeding;
  - (b) The parent, guardian, or custodian of any child whose status has been adjudicated in a Juvenile Court proceeding; or
  - (c) Any adult who is affected by an order or judgment in a Juvenile Court proceeding.
- (2) If the Juvenile Court determines that new evidence exists that might affect its previous order or judgment, the Court shall order a new hearing and shall make a

disposition of the matter, in the best interests of the child, as warranted by all of the facts and circumstances.

#### 5.2.431 Appeals

- (1) Any party to a Juvenile Court hearing may appeal a final Juvenile Court order, including all transfer, adjudication, and disposition orders, except that the Tribe cannot appeal an adjudication order.
- (2) To appeal a final Juvenile Court order, the party shall file a written notice of appeal with the Juvenile Court within thirty (30) days of the final order or disposition. A final court order or disposition of a hearing may be stayed by the filing of such appeal, by order of the Juvenile Court.
- (3) All appeals shall be conducted in accordance with the Burns Paiute Tribal Law and Order Code and the Tribal Court Rules of Procedure, so long as those provisions are not in conflict with the provisions of this Chapter.
- (4) For purposes of appeal, a record of the proceedings shall be made available to the appellant child, parent, guardian, or custodian. For purposes of appeal, a record of the proceedings shall be made available to any other appellate only by order of the Juvenile Court.

# **CHAPTER 5.3**

# **DOMESTIC VIOLENCE**

## CHAPTER 5.3 DOMESTIC VIOLENCE

### GENERAL PROVISIONS

#### 5.3.10 Purpose

The purpose of this Title is to recognize domestic violence as a serious crime against the Burns Paiute Tribe, the family, and society; and to provide the victim of domestic violence the maximum protection from further violence which the law and those who enforce the law can provide.

It is further the purpose of this Title to recognize that the strength of the Burns Paiute Tribe is founded on healthy families, and that families damaged by domestic violence must be healed by immediate intervention of law enforcement, prosecution, education, counseling, and any other appropriate service.

It is the intent of the Burns Paiute Tribe to expand the ability of the Courts to assist victims by providing a legal means for victims of domestic violence to seek protection orders to prevent further incidents of violence.

It is the intent of the Burns Paiute Tribe that the official response to cases of domestic violence shall stress the enforcement of the laws to protect the victim and shall communicate the attitude that violent behavior in the home is criminal behavior and will not be excused or tolerated.

#### 5.3.11 Jurisdiction

The Burns Paiute Tribal Court shall have criminal and civil jurisdiction as defined in the Burns Paiute Tribal Code.

#### 5.3.12 Definitions

Unless the context otherwise requires, as used in the Burns Paiute Tribal Code:

(a) "Domestic violence" means the occurrence of one or more of the following:

(1) An unlawful attempt, coupled with apparent ability, to commit a violent injury on another domestic household member;

(2) An intentional, unlawful threat by word or act to do violence to another domestic household member, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other domestic household member that such violence is imminent;

(3) Willful and unlawful use of force or violence upon the person of another domestic household member;

(4) Actual, intentional and unlawful touching or striking of another domestic household member against their will;

(5) Unlawfully and intentionally causing bodily harm to another domestic household member; or

(6) Causing a domestic household member to engage involuntarily in sexual activity by force, threat of force, or duress.

(7) "Domestic violence" shall not include acts of self-defense.

(b) "Domestic household member" means spouses, former spouses, persons related by blood or marriage, persons who reside or who have resided together, and persons who have a child in common or are expecting a child together, regardless of whether they have been married or have lived together at any time. For the purpose of this Title, "reside" shall mean ones personal presence at some place of abode with no present intention of leaving and with purpose to remain for an undetermined period of time, but not necessarily combined with the design to stay permanently.

(c) "Domestic protection order" means a court order granted for the protection of victims of domestic violence and may contain specific orders:

(1) Enjoining the respondent from threatening or commit or committing acts of domestic violence against the petitioner and/or any other person named in the petition;

(2) Prohibiting the respondent from harassing, annoying, telephoning, contacting or otherwise communicating with the petitioner, either directly or indirectly;

(3) Removing and excluding the respondent from the residence of the petitioner;

(4) Requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and/or any other person named in the petition; or

(5) Prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court.

(6) Suspending or revoking the privilege to hunt with a firearm while the domestic protection order is in effect. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of any agreements.

(d) "Program of Intervention for Perpetrators" means a specialized program that:

(1) Accepts perpetrators of domestic violence into treatment or educational classes to satisfy court orders;

(2) Offers assessment and treatment to perpetrators of domestic violence; or

(3) Offers classes or instruction to perpetrators of domestic violence.

#### 5.3.13 Crime Involving Domestic Violence

Crimes involving domestic violence may be accompanied by other criminal acts. A crime of domestic violence occurs when a domestic household member commits one or more of the following crimes against another domestic household member:

- (a) Arson;
- (b) Assault Offenses (Simple Assault, Aggravated Assault);
- (c) Burglary;
- (d) Destruction, Damage, Malicious Injury to or Vandalism of Property;
- (e) Disorderly Conduct;
- (f) Family Offenses, Non-Violent (Harassment, Child Custodial Interference);
- (g) Homicide Offenses (Murder, Manslaughter);
- (h) Kidnapping, False Imprisonment;
- (i) Sex Offenses, Forcible;
- (j) Weapon Law Violations;
- (k) Stalking Offenses (Stalking, Aggravated Stalking); and
- (l) Tampering with a Witness

#### 5.3.14 Domestic Violence

(a) Any domestic household member who commits an assault as defined in 3.1.3 of the Burns Paiute Tribal Code, upon any other domestic household member is guilty of the crime of domestic assault.

(d) A conviction for domestic violence is punishable by imprisonment for a term not to exceed One (1) year or by a fine not to exceed Five Thousand Dollars (\$5,000) or by both a fine and imprisonment or any other sentence the Court may deem appropriate.

(1) Any person who pleads guilty or is found guilty of a violation of this section shall undergo, at the person's own expense, an evaluation by a person, organization, or agency approved by the Court to determine whether the defendant should be required to obtain batterers treatment or other appropriate treatment. If the evaluation recommends counseling or other treatment, the evaluation shall recommend the type of counseling and/or treatment considered appropriate for the defendant, and shall recommend any other suitable alternative counseling or treatment programs.

(2) If the evaluation recommends counseling or other treatment, the Court shall order the person to complete the counseling or other treatment, at the person's own expense, in addition to any other sentence which may be imposed. If the Court determines that counseling or treatment would be inappropriate or undesirable, the Court shall enter findings articulating the reasons for such determination on the record. The Court shall order the defendant to complete the preferred counseling or treatment program set forth in the evaluation within the time allowed by the Court, at the person's own expense.

#### 5.3.15 Child Abuse

Anyone who commits a crime involving domestic violence in the presence of a child shall be guilty of the crime of child abuse as describe in 3.1.46 of the Burns Paiute Tribal Code. For the purpose of this section, "in the presence of a child" shall mean in the physical presence of a child or knowing that a child is present and may see or hear an act of domestic violence.

#### 5.3.16 Violation of domestic protection orders is a crime

Violation of one of the following orders issued in accordance with Sections 5.3.40 to 5.3.44 of the Burns Paiute Tribal Code, respectively, is a crime and punishable by imprisonment for a term not to exceed One (1) year or by a fine not to exceed Five Thousand Dollars (\$5,000) or by both a fine and imprisonment or any other sentence the Court may deem appropriate:

- (a) An order enjoining the respondent from threatening to commit or committing acts of domestic violence against the petitioner or other domestic household member.
- (b) An order prohibiting the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner or other domestic household member.
- (c) An order removing and excluding the respondent from the residence of the petitioner.
- (d) An order requiring the respondent to stay away from the residence, school, place of employment, or a specified place frequented regularly by the petitioner and any named domestic household member.
- (e) An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court.
- (f) An order suspending or revoking the respondent's privilege to hunt with a firearm while the domestic protection order is in effect. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of any agreements.

#### 5.3.17 Duties of Law Enforcement Officer to Victim of Domestic Violence; Required Notice to Victim

(a) A law enforcement officer who responds to an allegation of domestic violence shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:

(1) Taking the action necessary to provide for the safety of the victim and any family or household member.

(2) Confiscating any weapon involved in the alleged domestic violence.

(3) Transporting or obtaining transportation for the victim and any child to a shelter.

(4) Assisting the victim in removing essential personal effects.

(5) Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility.

(6) Giving the victim immediate and adequate notice of the rights of victims and of the remedies and services available to victims of domestic violence.

(b) As part of the notice required by paragraph "6" of subsection "a", the law enforcement officer shall give a written notice to the victim as follows:

"If you are the victim of domestic violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the officer assist in providing for your safety. You have the right to request that the officer assist you in obtaining your essential personal effects and locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter, a family member's or friend's home, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the officer assist you in obtaining medical treatment. You may request a copy of the report from the law enforcement department.

You may ask the prosecuting attorney to file a criminal complaint. You also have the right to file a petition in the Burns Paiute Tribal Court requesting a domestic protection order which could include any of the following orders:

(1) An order enjoining your abuser from committing or threatening to commit further acts of domestic violence;

(2) An order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly;

(3) An order removing your abuser from your residence;

(4) An order directing your abuser to stay away from your residence, school, place of employment, or any other specified place frequented by you and another domestic household member;

- (5) An order prohibiting your abuser from using or possessing any firearm or other weapon specified by the Court.
- (6) An order suspending or revoking your abuser's privilege to hunt with a firearm. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of any agreements.
- (7) An order granting you possession and use of the automobile and other essential personal effects;
- (8) An order granting you temporary custody of your children;
- (9) An order denying your abuser visitation temporarily; and
- (10) An order specifying arrangements for visitation, including requiring supervised visitation;

The forms you need to obtain a domestic protection order are available from the Tribal court clerk. The resources available in this community for information concerning domestic violence, treatment of injuries, and places of safety and shelters are:

Tribal Social Services, Tribal Police, Tribal Health Clinic, Tribal Alcohol & Drug Program, HHOPE, Harney District Hospital, Harney Behavioral Health, High Desert Medical

You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property. This can be done through small claims court or through the Victim's Compensation Program."

(c) Written notice:

- (1) must not include the addresses of shelters; and

#### 5.3.18 Mandatory Arrest for Crimes Involving Domestic Violence; Determination of Primary Aggressor; Required Report

(a) A law enforcement officer shall, without a warrant, arrest and charge a person with the appropriate crime if the officer has probable cause to believe that the person has committed a crime involving domestic violence, whether the offense is committed in or outside the presence of the officer.

(b) If a law enforcement officer receives complaints of domestic violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer need not arrest the other person believed to have committed domestic violence. In determining whether a person is the primary aggressor the officer shall consider the following:

- (1) Prior history of domestic violence between the parties;
- (2) The relative severity of the injuries inflicted on each person;
- (3) The likelihood of future injury to each person;
- (4) Threats creating fear of serious injury;
- (5) Whether one of the persons acted in self-defense; and
- (6) Other relevant factors.

(c) A law enforcement officer shall not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by any party; nor shall the officer attempt to reconcile the parties or mediate.

(d) In addition to any other report required, a law enforcement officer who does not make an arrest after investigating a complaint of domestic violence or who arrests two or more persons for a crime involving domestic violence must submit a detailed, written report within one business day, setting forth the grounds for not arresting or for arresting both parties.

#### 5.3.19 Mandatory Arrest for Violations of Domestic Protection Orders

When a law enforcement officer has probable cause to believe that a respondent has violated one or more of the orders contained in an existing domestic protection order and verifies the existence of the order, the officer shall, without warrant, arrest the apparent violator whether or not the violation was committed in or outside the presence of the officer, if the orders are issued in accordance with Sections 5.1.250 to 5.1.262 of the Burns Paiute Tribal Code.

#### 5.3.20 Pre-Arrest Release

Notwithstanding Burns Paiute Tribal Code Rules of Criminal Procedure, 2.1.10(m), any person arrested for a crime involving domestic violence or a violation of a domestic protection order shall not be released on bond or on his/her own recognizance prior to being arraigned. Such arraignment shall not occur less than 2 business days or more than 3 business days following arrest.

#### 5.3.21 Conditions of Release

(a) In making a decision concerning pretrial release of a person who is arrested for or charged with a crime involving domestic violence or a violation of a domestic protection order, the Court shall review the facts of the arrest and detention of the person and determine whether the person:

- (1) Is a threat to the alleged victim;

(2) Is a threat to public safety; and

(3) Is reasonably likely to appear in court.

(b) Before releasing a person arrested for or charged with a crime involving domestic violence or a violation of a domestic protection order, the Court shall make findings on the record if possible concerning the determination made in accordance with subsection (a) and may impose conditions of release on bail on the person to protect the alleged victim of domestic violence and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:

(1) An order enjoining the person from threatening to commit or committing acts of domestic violence against the alleged victim;

(2) An order prohibiting the person from harassing, annoying, telephoning, contacting or otherwise communicating with the alleged victim, whether directly or indirectly;

(3) An order directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be;

(4) An order prohibiting the person from using or possessing a firearm or other weapon as specified by the Court;

(5) An order prohibiting the person from possession or consumption of alcohol or controlled substances.

(6) Any other order required to protect the safety of the alleged victim and to assure the appearance of the person in court.

(c) The Court shall provide a copy of the conditions to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.

(d) If conditions of release are imposed without a hearing, the arrested or charged person may request a prompt hearing before the Court to review the conditions. Upon such a request, the Court shall hold a prompt hearing to review the conditions.

#### 5.3.22 Mandatory Arrest for Violation of Conditions of Release

If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance 5.1.261 of the Burns Paiute Tribal Code, and verifies that the alleged violator has notice of the conditions, the officer shall, without warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

#### 5.3.23 Written Procedures for Prosecution of Domestic Violence; Purpose

The Burns Paiute Tribal prosecuting attorney shall develop or adopt and put into effect written procedures for attorneys who prosecute domestic violence concerning:

- (a) Effective prosecution of such crimes; and
- (b) The protection and safety of victims of domestic violence.

#### 5.3.24 Duty of Prosecutor to Notify Victim

(a) The prosecutor shall make reasonable efforts to notify a victim of an alleged crime involving domestic violence when the prosecutor has decided to:

- (1) Decline the prosecution of the crime;
- (2) Withdraw the criminal charges filed against the defendant; or
- (3) Enter into a plea agreement.

(b) Release of a defendant from custody must not be delayed because of the requirements of subsection "a".

#### 5.3.25 Record of Dismissal Required in Court File

When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused of a crime involving domestic violence, the specific reasons for the dismissal must be recorded in the court file. The prosecutor shall indicate the specific reason why the case cannot or will not be prosecuted.

#### 5.3.26 Dismissal of Criminal Case Prohibited Because Civil Compromise Reached

A court shall not dismiss a criminal case involving domestic violence for the sole reason that a civil compromise or settlement is reached.

#### 5.3.27 Rights of Victims of Domestic Violence; Duty of Prosecutor to Inform Victim of Rights

(a) A victim of domestic violence is entitled to all rights granted to victims of crime including but not limited to the right to:

- (1) Be informed of all hearing dates and continuances;
- (2) Provide the Court with a victim impact statement, victim opinion statement, and an assessment of the risk of further harm;
- (3) Be present at sentencing and address the Court;
- (4) Advise the Court of conditions of probation required to ensure the safety of the victim;

- (5) Restitution for losses sustained as a direct consequence of any criminal conduct;
- (6) Apply for victims' compensation and to be informed of procedures for applying; and
- (7) Receive notice from the prosecutor or Tribal Court in accordance with the Burns Paiute Tribal Code.

(b) The prosecuting attorney or Tribal Court shall notify the victim of domestic violence of that victim's rights as set forth in this section.

#### 5.3.28 Advocate-Victim Privilege Applicable in Cases Involving Domestic Violence

(a) Except as otherwise provided in subsection "b", a victim of domestic violence may refuse to disclose, and may prevent an advocate from disclosing, confidential oral communication between the victim and the advocate and written records and reports concerning the victim if the privilege is claimed by:

(1) The victim; or

(2) The person who was the advocate at the time of the confidential communication, except that the advocate may not claim privilege if there is no victim in existence or if the victim has waived the privilege.

(b) The privilege does not relieve a person from any duty imposed pursuant to the Burns Paiute Tribal Code. Person may not claim the privilege when providing evidence in proceedings concerning child violence.

(c) As used in this subsection, "advocate" means an employee of or volunteer for a program for victims of domestic violence who:

(1) Has a primary function of rendering advice, counseling, or assistance to victims of domestic violence; supervising the employees or volunteers of the program; or administering the program;

(2) Has undergone victim advocate training; and

(3) Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program.

#### 5.3.29 Diversion Prohibited; Deferred Sentencing Permitted

(a) A court shall not approve diversion for a perpetrator of domestic violence.

(b) The Court may defer sentencing of a perpetrator of domestic violence if:

(1) The perpetrator meets the eligibility criteria, which may include any of the following:

(A) The perpetrator's history and pattern of violence;

- (B) The severity of injuries to the victim;
  - (C) The criminal history of the perpetrator;
  - (D) The nature of the crime (simple or aggravated);
  - (E) Prior participation in deferred sentencing; and
- (2) Consent of the prosecutor is obtained after consultation with the victim, when the victim is available; and
- (3) A hearing is held in which the perpetrator enters a plea or judicial admission to the crime; and
- (4) The Court orders conditions of the deferred sentence that are necessary to protect the victim, prevent future violence, and rehabilitate the perpetrator.

(c) The Court shall establish:

- (1) Criteria for determination of a perpetrator's successful completion of the conditions imposed by the Court; and
- (2) Penalties for violation of the conditions imposed by the Court.

#### 5.3.30 Conditions of Probation for Perpetrator Convicted of a Crime Involving Domestic Violence; Required Reports by Probation Department/Tribal Police

- (a) Before placing a perpetrator who is convicted of a crime involving domestic violence on probation, the Court shall consider the safety and protection of the victim of domestic violence and any member of the victim's family or household.
- (b) The Court may condition the suspension of sentence or granting of probation to a perpetrator on compliance with one or more orders of the Court, including but not limited to:
  - (1) Enjoining the perpetrator from threatening to commit or committing acts of domestic violence against the victim and/or other domestic partner;
  - (2) Prohibiting the perpetrator from harassing, annoying, telephoning, contacting, or otherwise communicating with the victim, either directly or indirectly;
  - (3) Requiring the perpetrator to stay away from the residence, school, place of employment, or specified place frequented regularly by the victim and any designated family member;
  - (4) Prohibiting the perpetrator from possessing and/or consuming alcohol or controlled substances;

- (5) Prohibiting the perpetrator from using or possessing a firearm or other specified weapon;
  - (6) Suspending or revoking the perpetrator's privilege to hunt with a firearm for the term of the probation. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of any agreements;
  - (7) Directing the perpetrator to surrender any firearms and/or other specified weapons owned or possessed by the perpetrator;
  - (8) Directing the perpetrator to participate in and complete, to the satisfaction of the Court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or psychiatric or psychological treatment;
  - (9) Directing the perpetrator to pay restitution and or fines as ordered by the Court;
  - (10) Directing the perpetrator to participate in any electronic or satellite monitoring; and/or
  - (11) Imposing any other condition necessary to protect the victim of domestic violence and any other designated domestic partner or to rehabilitate the perpetrator.
- (c) The perpetrator shall pay the costs of any condition of probation according to their ability.
  - (d) The Court shall establish policies and procedures for responding to reports of nonattendance or noncompliance by a perpetrator with the conditions of probation imposed pursuant to subsection "b".
  - (e) The probation department shall immediately report to the Court any assault by the perpetrator, the perpetrator's failure to comply with any condition imposed by the Court or probation department, and any threat of harm made by the perpetrator.

#### 5.3.31 Required Written Policies and Procedures

The Burns Paiute Tribal Law Enforcement shall develop or adopt and put into effect written policies and procedures concerning:

- (a) The effective response of the agency to cases involving domestic violence;
- (b) Enforcement of the Burns Paiute Tribal Code concerning domestic violence;
- (c) Protection and safety of the victim of domestic violence and other domestic household members; and
- (d) Coordination with hospitals and programs for victims of domestic violence.

## CIVIL DOMESTIC PROTECTION ORDERS

### 5.3.40 Eligible Petitioners for Order

(a) A person who is or has been a victim of domestic violence may file a petition for a domestic protection order against a domestic partner who commits an act of domestic violence.

(b) A parent, guardian, or other legal representative may file a petition for a domestic protection order on behalf of a child against a domestic partner who commits an act of domestic violence.

### 5.3.41 Action for Protection

(a) There shall exist an action known as a "petition for a domestic protection order" in cases of domestic violence.

(b) A person may seek relief from domestic violence by filing a petition based on a sworn affidavit with the Burns Paiute Tribal Court, alleging that they are a victim of domestic violence. Any petition properly filed under this chapter may seek protection for any additional persons covered by this chapter.

(c) A person's right to petition for relief under this chapter shall not be affected by that person's having left the residence or household to avoid abuse.

(d) The petition shall disclose the existence of any custody or any marital annulment, dissolution, or separation proceedings pending between the parties, the existence of any other custody order affecting the children of the parties, and the existence of child protection, or adoption proceedings affecting the children of any of the parties.

(e) When the petitioner requests custody of any child, the petition shall disclose:

(1) The county and state where the child has resided for six months immediately prior to filing of the petition;

(2) The party or other responsible person with whom the child is presently residing; and

(3) The party or other responsible person with whom the child has resided for six (6) months immediately prior to the filing of the petition.

(f) A petition shall be filed:

(1) Where the petitioner currently or temporarily resides;

(2) Where the respondent resides; or

(3) Where the act of domestic violence occurred.

(g) There is no minimum requirement of residency to petition for a domestic protection order.

(h) The petition shall not be a matter of public record.

#### 5.3.42 Fees Waived

No filing fee, hearing fee, or bond shall be charged for proceedings seeking only the relief under this chapter.

#### 5.3.43 Ex-parte Temporary Domestic Protection Order

(a) The Court may grant an ex parte temporary protection order pending a full hearing, granting such relief as the Court deems proper, where a petition under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent. The temporary order may include an order:

(1) Restraining the respondent from contacting the petitioner, either directly or indirectly;

(2) Restraining the respondent from committing or threatening to commit acts of domestic violence upon the petitioner;

(3) Excluding the respondent from the dwelling which the parties shared or from the residence of the petitioner until further ordered by the Court;

(4) Awarding temporary custody and/or establishing temporary visitation rights with regard to the minor children;

(5) Restraining any party from interfering with the other's custody of the children or from removing the children from the jurisdiction of the Court;

(6) Ordering other relief as the Court deems necessary for the protection of a domestic partner, including orders or directives to peace officers as allowed under this code;

(7) Restraining the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;

(8) Restraining the respondent from entering any premises when it appears to the Court that such restraint is necessary to prevent the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;

(b) An ex parte temporary domestic protection order shall remain in effect for 10 days from the date of issuance.

(c) A full hearing shall be held no more than 10 days from the date of issuance of a ex parte temporary domestic protection order. The respondent shall be personally served

with a copy of the temporary order and notice of hearing, in accordance with the Rules of Civil Procedure of the Burns Paiute Tribal Code.

(d) If the respondent is not personally served with a copy of the temporary order and notice of hearing, the existing temporary order may be extended for 10 days from the date originally set for hearing, and a new hearing date set. The respondent must be personally served with the new notice of hearing.

#### 5.3.44 Domestic Protection Order

(a) A Court may grant the following relief, if requested, in a domestic protection order after notice and hearing, whether or not the respondent appears:

(1) Temporary custody of the minor children of the petitioner or of the parties be awarded to the petitioner or respondent if the exercise of such jurisdiction is consistent with the provisions of this code, or consistent with prior custody orders entered by a Court of competent jurisdiction.

(2) Restraining the respondent from committing or threatening to commit acts of domestic violence upon the petitioner;

(3) Restraining the respondent from contacting, harassing, telephoning, or otherwise communicating with the petitioner, either directly or indirectly;

(4) Excluding the respondent from the dwelling which the parties shared or from the residence of the petitioner;

(5) Other relief as the Court deems necessary for the protection of the petitioner, including orders or directives to peace officers as allowed under this code;

(6) Restraining the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;

(7) Restraining the respondent from entering any premises when it appears to the Court that such restraint is necessary to prevent the respondent from contacting, molesting, interfering with or menacing the minor children whose custody is awarded to the petitioner;

(8) Prohibiting the respondent from having in their possession any firearm and/or ammunition whether working or not.

(9) Suspending or revoking the respondent's privilege to hunt with a firearm for as long as the domestic protection order is in effect. The authority to revoke or suspend privileges extends to the rights of tribal members to hunt pursuant to the provisions of any agreements

(b) No protection order under this section shall in any manner affect title to real property.

(c) Relief shall not be denied because the petitioner used reasonable force in self-defense against the respondent, or because the petitioner or respondent was a minor at the time of the incident of domestic violence.

(d) Any relief granted by the domestic protection order shall be for a fixed period not to exceed 90 days; provided that an order obtained pursuant to this chapter may, upon written motion and upon good cause shown, be renewed for additional terms not to exceed one (1) year each if the requirements of this chapter are met. The motion to renew an order may be granted without a hearing, if not timely objected to by the party against whom the order is entered.

(e) In providing relief under this chapter, the Court may realign the designation of the parties as "petitioner" and "respondent" where the Court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence.

## FULL FAITH AND CREDIT GIVEN TO DOMESTIC PROTECTION ORDERS

### 5.3.50 Purpose

It is the purpose of this chapter to ensure that domestic violence protection orders issued by other jurisdictions, including tribal and state courts, be honored and enforced by the courts of the Burns Paiute Indian tribe as well as tribal law enforcement. The Tribe finds that federal law, 18 U.S.C § 2265, requires state and tribal courts to honor protection orders entered by each court. To implement this section of federal law, and to assure protection for victims of domestic violence within the Burns Paiute Indian reservation this chapter is being enacted. The problem of domestic violence and stalking on the Burns Paiute Indian reservation is seriously impacting the ability of the Tribe to provide for the health and well-being of its tribal members and threatens the political integrity of the Tribe because of its serious impact upon victims and their families to function in their respective tribal communities. This ordinance is enacted pursuant to the inherent, sovereign right of the Burns Paiute Tribe to enact ordinances for the welfare and protection of all persons on the Burns Paiute Indian reservation and it is intended to apply to all acts of domestic violence and violations of protection orders within the exterior boundaries of the Burns Paiute Indian reservation and all trust lands and dependent Indian communities that lie outside the exterior boundaries of the reservation.

### 5.3.51 Definitions

(a) Ex Parte Protection Order - a temporary order issued by a tribal or state court which restrains any person, Indian or non-Indian, from harassing, annoying, stalking, contacting, or coming within a certain proximity to another person issued by a court with jurisdiction over the person restrained and subject matter jurisdiction. The order shall also provide for an opportunity for a restrained person to be heard before the issuance of a permanent order of protection.

(b) Permanent Order of Protection - an order issued by a tribal or state court which restrains any person, Indian or non-Indian, either permanently or for a specified period

of time, from harassing, annoying, stalking, contacting, or coming within a certain proximity to another person issued by a court with jurisdiction over the person restrained and subject matter jurisdiction. The order may be the result of a civil protection order proceeding or the result of an order arising from a criminal prosecution against a person.

(c) Mutual Protection Order - an order issued by a tribal or state court which restrains both parties to a proceeding from harassing, annoying, stalking, contacting or coming within a certain proximity to another person(s). In order to be enforced by a court of this Tribe, a mutual protection order must be the result of both parties to a proceeding filing separate protection order petitions and the issuing Court finding that each of the persons to a mutual protection order have committed an act of domestic violence under the laws of the issuing jurisdiction.

(d) Issuing Court - a tribal or state court that issues an ex parte or permanent order of protection against a person.

(e) Enforcing Court - a tribal or state court that recognizes and enforces an ex parte or permanent order of protection against a person issued by another tribal or state court.

(f) Full Faith and Credit - the act of enforcing an ex parte or permanent order of protection from another tribal or state court as if it were the order of the tribal court of the Burns Paiute Tribe. In enforcing said order of protection, the enforcing court and its law enforcement agencies shall apply all laws and ordinances, including mandatory arrest for violations of protection orders, that the enforcing court has in existence at the time enforcement of the foreign protection is sought. Registration of the protection order is not a prerequisite to enforcement under this paragraph.

(g) Registration - the act of filing a protection order issued by another tribal or state court with the tribal court of the Burns Paiute Tribe or with the law enforcement agencies of the Burns Paiute Tribe.

(h) Central registry of protection orders - a list of protection orders issued by the state and tribal courts either maintained by the state or Some tribal entity, which contains verifiable methods of identifying the existence of protection orders to be enforced under federal law, 18 U.S.C. § 2265, and the person against whom the protection order is enforceable.

### 5.3.52 Enforcement of Foreign Protection Orders

Whenever any law enforcement officer of the Burns Paiute Tribe or the Tribal Court is presented with an order, either ex parte or permanent, or verifies the existence of such an order with the court or law enforcement of the issuing jurisdiction, which restrains any person from harassing, annoying, stalking, contacting or coming within a certain proximity to another person that was issued by another tribal or state court, that officer and court shall enforce such order and all provisions of such order, including the award of custody and property in such protection order, as if it were issued by the Burns Paiute Tribal Court.

#### 5.3.53 Role of Law Enforcement in Enforcing this Section

If a law enforcement officer of the Burns Paiute Tribe is presented with a protection order, either ex parte or permanent, or verifies the existence of such an order with the court or law enforcement of the issuing jurisdiction or by the oral statements made by the protected person under said protection, the officer shall enforce such order as if it had been entered by the Burns Paiute Court. This shall include arresting a person violating such order without the necessity of a warrant, if the officer has probable cause to believe the person has violated the protection order, and taking all necessary steps to assure the protection of the protected person.

#### 5.3.54 Immunity for Good Faith Enforcement of Foreign Protection Order

An officer or any other law enforcement official of the Burns Paiute Tribe who acts in good faith in enforcing a foreign protection order and its terms shall be immune from suit for wrongful arrest or any other civil or criminal action. This immunity shall extend to a tribal officer who effects the arrest of a non-Indian for violation of a protection order.

#### 5.3.55 Role of Tribal Court in Enforcing This Section

The Tribal Court of the Burns Paiute Tribe shall enforce a protection order, either ex parte or permanent, and all provisions of that protection order, including child custody and property awards, if all the following are satisfied:

- (a) The respondent received notice of the order in compliance with requirements of the issuing jurisdiction;
- (b) The order remains in effect in the issuing jurisdiction;
- (c) The issuing court had jurisdiction over the parties and subject matter;
- (d) The respondent was afforded reasonable notice and the opportunity to be heard prior to the issuance of a permanent protection order or in the case of an ex parte order it appears from the face of the order that a hearing will be conducted within reasonable time to allow the respondent to raise any defenses he may have to the issuance of a permanent protection order.

#### 5.3.56 Registration of Foreign Protection Order with the Tribal Court

Any person who has received a protection order, either ex parte or permanent, from another tribal or state court, may file the protection order with the Clerk of the Tribal Court and request that the Tribal Court of the Burns Paiute Tribe grant full faith and credit to that protection order. Immediately upon the filing of that protection order with the Court, a Tribal Judge shall review such filing and if it appears from the face of the protection order it meets the requirements of the foregoing chapter shall enter an order recognizing the protection order. Said order shall immediately be forwarded to tribal and local law enforcement. A person shall not be charged a filing or registration fee for the filing of a foreign protection order. A person protected by a protection order issued by

another tribal or state court need not file that protection order with the Tribal Court of the Burns Paiute Tribe in order to receive law enforcement protection from the Respondent under this Chapter.

#### 5.3.57 Violation of Foreign Protection Order

It shall be a crime, punishable by up to 1 year in jail and a fine in the amount of \$5,000.00 for any person to violate a protection order, either ex parte or permanent, issued by any state or tribal court within the jurisdiction of the Burns Paiute Tribe. It is not a defense to this section that a protected person had notified or registered the protection order with the Burns Paiute Tribal Court prior to the violation. If the person found to have violated a foreign protection order is a non-Indian, the Tribal Court may exercise civil jurisdiction over said person and impose whatever civil penalties it feels appropriate in accordance with tribal law.

#### 5.3.58 Continuing Duty to Inform the Court of Other Proceedings; Effect of Other Proceedings; Delay of Relief; Omission of Petitioner's Address

(a) At any hearing in a proceeding to obtain a domestic protection order, each party has a continuing duty to inform the Court of each proceeding for a domestic protection order, any civil litigation, and each proceeding concerning family or juvenile matters.

(b) A domestic protection order is in addition to and not in lieu of any other available civil or criminal proceeding. A petitioner is not barred from seeking an order because of other pending proceedings. The Court shall not delay granting relief because of the existence of a pending action between the parties.

(c) A petitioner may omit his or her address from all documents filed with the Court. If a petitioner omits his or her address, the petitioner must provide the Court with a mailing address. If disclosure of the petitioner's address is necessary to determine jurisdiction or consider venue, the Court may order the disclosure to be made:

(1) After the petitioner's consent;

(2) Orally and in chambers, out of the presence of the respondent and a sealed record to be made; or

(3) After a hearing, if the Court takes into consideration the safety of the petitioner and finds that such disclosure is in the best interest of justice.

#### 5.3.59 Effect of Action by Petitioner or Respondent on Order

If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do so does not waive or nullify a domestic protection order.

#### 5.3.60 Mutual Orders Prohibited

The Court shall not grant a mutual domestic protection order to opposing parties.

## FAMILY AND CHILDREN

### 5.3.70 Presumption concerning custody

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the Court that domestic violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in the sole custody, joint custody, or joint physical custody with the perpetrator of domestic violence.

### 5.3.71 Factors in Determining Custody and Visitation

(a) In addition to other factors that a court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the Court has made a finding of domestic violence:

(1) The Court shall consider as primary the safety and well being of the child and of the parent who is the victim of domestic violence.

(2) The Court shall consider the perpetrator's history of causing physical harm, bodily injury, assault, or causing the fear of physical harm, bodily injury, or assault to another person.

(b) If a parent is absent or relocates because of an act of domestic violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

### 5.3.72 Presumption Concerning Residence of Child

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by a court that domestic violence has occurred raises a rebuttable presumption by a court that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic violence in the location of that parent's choice, within or outside the boundaries of the Burns Paiute Reservation.

### 5.3.73 Conditions of Visitation in Cases Involving Domestic Violence

(a) A court may award visitation by a parent who committed domestic violence only if the Court finds that adequate provision for the safety of the child and the parent who is a victim of domestic violence can be made.

(b) In a visitation order, a court may:

(1) Order an exchange of a child to occur in a protected setting;

(2) Order visitation supervised by another person or agency;

(3) Order the perpetrator of domestic violence to attend and complete, to the satisfaction of the Court, a program of intervention for perpetrators of domestic violence or other designated counseling as a condition of the visitation;

(4) Order the perpetrator of domestic violence to abstain from the possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding the visitation;

(5) Prohibit overnight visitation; and/or

(6) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of domestic violence, or other domestic household member.

(c) Whether or not visitation is allowed, the Court may order the address of the child and the victim to be kept confidential.

(d) If the Court allows a family member to supervise visitation, the Court shall establish conditions to be followed during visitation.

#### 5.3.74 Duties of Children's Protective Services

(a) The Burns Paiute Tribal Social Service Department shall develop written procedures for screening each referral for abuse or neglect of a child to assess whether domestic violence is also occurring. The assessment must include but is not limited to:

(1) Inquiry concerning the criminal record of the parents, and the alleged abused or neglectful person and the alleged perpetrator of domestic violence, if not a parent of the child; and

(2) Inquiry concerning the existence of domestic protection orders issued to either parent.

(b) If it is determined in an investigation of abuse or neglect of a child:

(1) That the child or other domestic household member is in danger of domestic violence and that removal of one of the parties is necessary to prevent the abuse or neglect of the child, the Burns Paiute Tribal Prosecutor shall seek the removal of the alleged perpetrator of domestic violence whenever possible.

(2) That a parent of the child is a victim of domestic violence, services must be offered to the victimized parent and the provisions of such services must not be contingent upon a finding that either parent is at fault or has failed to protect the child.

# **CHAPTER 5.4**

# **ADULT PROTECTION**

## CHAPTER 5.4 ADULT PROTECTION

### GENERAL PROVISIONS

#### 5.4.10 Purpose

The purpose of this code is to prevent harm to and promote the independence of elders and vulnerable adults at risk of abuse, neglect, sexual abuse, and exploitation who come within the jurisdiction of the Burns Paiute Tribe. Elders are recognized by the Burns Paiute Tribe as one of the most valued resources and custodians of the Tribe's history, culture and tradition. It is in the interest of the health, safety, and welfare of the Tribe and its people to provide procedures for protecting elder and vulnerable adult abuse. This code shall be liberally interpreted and implemented in the least restrictive manner possible in order to achieve its purpose.

#### 5.4.11 Eligibility

Adult protective services may be provided to any elder or vulnerable adult identified as being at risk of abuse, neglect, sexual abuse, and/or exploitation. Adult protective services are available on a voluntary and time-limited basis for those elders or vulnerable adults not declared incapacitated by the Tribal Court or a court of competent jurisdiction. Adult Protective Services may be court-ordered for those persons legally determined to be unable to care for themselves and/or to lack the capacity to understand the nature of the services offered.

#### 5.4.12 Civil Nature of Code

The provisions of this code are civil and regulatory in nature and are intended to provide assistance and protection to elders and vulnerable adults who may be at risk of abuse, sexual abuse, neglect, and/or exploitation. This code does not affect any applicable criminal code provisions of the Burns Paiute Tribal Code.

#### 5.4.13 Procedural Rights

(1) All rights as set forth herein and in the Indian Civil Rights Act shall be enforced strictly during proceedings under this code.

(2) No hearing shall be held unless notice has been given to the elder or vulnerable adult and other interested parties, including the elder or vulnerable adult's family and caretaker and guardian and conservator, if any. The elder or vulnerable adult and all other interested parties shall have the right to appear, to be heard fully, and to present evidence unless the Tribal Court determines that the elder or vulnerable adult's health would be at risk at such proceeding. The Tribal Court shall publish a written statement of its findings in support of any issuing order.

(3) No elder or vulnerable adult shall be found to be abused, neglected or exploited solely on the grounds of environmental factors which are beyond the elder's, vulnerable adult's or caretaker's control. Such factors include but are not limited to inadequate housing, furnishings, income, clothing, and medical care.

(4) Adult protective services will be provided based on the least restrictive alternative, and shall involve the input of the elder/vulnerable adult to the extent that said person is able.

(5) Adult protective service intervention will only be maintained until the risk is reduced or removed, or alternatively, until the elder or vulnerable adult declines to accept services provided that said elder or vulnerable adult is able to care for him or herself and/or has the capacity to understand the nature of the services offered.

(6) An elder or vulnerable adult and/or caretaker shall be informed about an investigation of elder or vulnerable adult abuse, neglect or exploitation before it begins unless an emergency situation exists, in which case the elder or vulnerable adult and/or caretaker shall be informed as soon as possible, but no later than 72 hours after the investigation begins.

(7) The elder or vulnerable adult's caretaker may refuse adult protective services for himself or herself, but not for the elder or vulnerable adult.

(8) An elder, vulnerable adult, caretaker, or home occupant may refuse to allow the Designated Tribal Authority or the Tribal Police into their home and the Designated Tribal Authority or the Tribal Police shall so inform the elder, vulnerable adult, caretaker, or home occupant of this right and the right of the Designated Tribal Authority or the Tribal Police to seek a warrant before seeking entry.

(9) The elder or vulnerable adult in whose name any petition is filed shall be personally served with a copy of the petition pursuant to this code.

(10) An alleged at-risk or abused elder or vulnerable adult whose capacity is not in question shall have the right to defer civil court proceedings and have access to the Adult Protective Team. An elder or vulnerable adult as an alternative to a civil court proceeding may utilize the Adult Protective Team.

#### 5.4.14 Definitions

(1) "Abuse" means the intentional infliction of physical or mental injury, unreasonable confinement, intimidation, cruel punishment, or deprivation of food, shelter, clothing, or deprive medical services or services necessary to maintain the physical or mental health of an elder or a vulnerable adult.

(2) "Adult protective services" means activities, resources, and support provided to at-risk elders and vulnerable adults under this code to detect, prevent, reduce or eliminate abuse, neglect and exploitation, and to promote maximum independent living.

(3) "Caretaker" means an individual or institution that is required by law to provide or has assumed the responsibility for the care needed to maintain the physical or mental health of an elder or vulnerable adult. This responsibility may arise voluntarily, by contract, by receipt of payment for care, as a result of a familial relationship, or by order of the Burns Paiute Tribal Court or other court of competent jurisdiction. It is not the intent of this code to impose responsibility on an individual if the responsibility would not otherwise exist in law.

(4) "Designated Tribal authority" is the person or persons directed by the Burns Paiute Tribal Council to receive and investigate reports of elder and vulnerable adult abuse, neglect and/or exploitation; to assess and determine the need for protective services; and to coordinate the delivery of said services with the elder advocates and appropriate service agencies. Said person/persons shall be referred to as the Adult Protective Service Worker(s).

(5) "Elder" means a tribal member or other person eligible for services residing on the Burns Paiute Reservation who is:

(a) 60 years of age or older; or

(b) Determined by Tribal Court or Tribal custom to be an elder.

(6) "Essential services" means those services or things necessary to sustain a person's life, physical and mental health, and general well being, such as adequate food, clothing, shelter, and health care. It may include services or items considered essential under the person's customs, traditions or religion, including but not limited to access to traditional foods and access to religious ceremonies or services.

(7) "Emergency situation" means a situation in which an elder or vulnerable adult is immediately at risk of death or injury as a result of abuse, neglect and/or exploitation, and is unable to consent to services that would remove the risk.

(8) "Exploitation" means the unreasonable use of an elder or vulnerable adult or their money, property, or other resources by a caretaker or other person without the elder or vulnerable adult's consent or through fraud, misrepresentation, coercion or duress.

(9) "Incapacitated person" means any person determined by the Tribal Court or a court of competent jurisdiction to be impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause to the extent that he or she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person or which cause has so

impaired the person's judgment that she or he is incapable of realizing and making a rational decision with respect to his or her need for treatment.

(10) "Informed consent" means the consent obtained for a proposed course of protective services action following a reasonable attempt to provide information to the elder, vulnerable adult, and/or caretaker which conveys, at a minimum, the risks, alternatives and outcomes of the various modes of protective service provisions available under the circumstances.

(11) "Least restrictive alternative" means an approach which allows an elder or vulnerable adult independence and freedom from intrusion consistent with the elder's or vulnerable adult's needs by requiring that the least drastic and intrusive method of intervention be used when intervention is necessary to protect the elder or vulnerable adult from harm.

(12) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or psychological functioning or well being.

(13) "Neglect" means the failure to provide for oneself or the failure of a caretaker to provide, to the extent of legal responsibility, food, shelter, clothing, or services necessary to maintain the physical or mental health of an elder or vulnerable adult.

(14) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(15) "Sexual abuse" means any sexual involvement with an elder or vulnerable adult that the elder or vulnerable adult does not consent to, is physically and/or mentally incapable of voluntarily consenting to, or consents to as the result of intimidation, duress or fraud.

(16) "Tribal police department" means the law enforcement branch of the Burns Paiute Tribe.

(17) "Visitor" means a person appointed by the court under Burns Paiute Adult Protection Code or the Burns Paiute Conservator and Guardian Code for the purpose of interviewing and evaluating a respondent, protected person or a vulnerable adult.

(18) "Vulnerable adult" means a tribal member or other person eligible for services residing on the Burns Paiute Reservation who:

(a) Is at least 18 years of age and is declared by the Tribal Court or a court of competent jurisdiction to be incapacitated;

(b) Is at least 18 years of age and has been determined to be disabled by an agency such as the Social Security Administration, Vocational Rehabilitation Division, Veteran's Administration or Medicaid; or

(c) Is at least 18 years of age and is suffering from a continuing disability or a disability that is expected to continue indefinitely that is attributed to mental retardation, or related neurological conditions or illnesses.

#### 5.4.15 Reports of abuse, neglect and exploitation - penalties - confidentiality

##### (1) Who must report

(a) Personal knowledge or reasonable belief. All persons within the civil jurisdiction of the Burns Paiute Tribe unless excepted by privilege must report to the Designated Tribal Authority if they have knowledge of or a reasonable belief that abuse, neglect or exploitation of an elder or vulnerable adult has occurred or will occur. Said persons include, but are not limited to:

(i) All human and health professionals, including the community health representatives, dentists, physicians and Tribal Health and Human Services personnel;

(ii) Police officers;

(iii) Social workers, counselors and similar elder or vulnerable adult service providers;

(iv) Elected officials;

(v) Tribal or Federal employees involved with an individual elder's or a vulnerable adult's monies, real or personal property and/or well-being;

(vi) Employees or staff of private, tribal or state medical, retirement, group, foster or nursing home facilities located on the Burns Paiute Reservation; and

(vii) Elder advocates, home health providers, or any other person working with elders or vulnerable adults.

(b) Employee. If a person is required to report as stated above but is an employee not authorized to report directly to the Designated Tribal Authority by a program, department or agency for which he or she works, said person shall make the report to the person designated by that program, department or agency to transmit such reports to the Designated Tribal Authority. The Designated Tribal Authority shall be notified, in writing, by the program, department or agency of the person or persons authorized to transmit such reports.

(2) Penalty for retaliation. Under the code, a person or entity who takes discriminatory, retaliatory or disciplinary action against an employee or other person who makes a report, against a person who cooperates with the agency to provide testimony or other information about a report, or against a victim of abuse, commits a violation of this code.

The person who takes the discriminatory, retaliatory or disciplinary action is subject to a civil lawsuit by the person who made the report, the victim of abuse named in the report, or the person who cooperated with the Designated Tribal Authority. If the Court hearing the lawsuit decides in favor of the plaintiff, the plaintiff shall recover triple compensatory and punitive damages or \$5,000.00, whichever is greater, from the person or entity that committed the violation.

(3) Failure to report; Civil Penalty; Damages; Criminal Liability. Any person who is required by this code to report suspected elder or vulnerable adult abuse, neglect, or exploitation and fails to do so is subject to a civil penalty of up to \$500.00 and/or 50-100 hours of community service for the benefit of elders or vulnerable adults. The Tribal Court shall assess the penalty only after petition, notice, opportunity for hearing, and a determination that the person had a mandatory duty to report, had good reason to suspect elder or vulnerable adult abuse, neglect or exploitation, and failed to report as required by this code. The person failing to report additionally is subject to any civil suit brought by or on behalf of the elder or vulnerable adult for damages suffered as a result of the failure to report and any criminal penalties set forth in the Burns Paiute Tribal Law and Order Code.

(4) Knowingly False Reporting; Civil Penalty; Damages; Criminal Liability. Any person who makes a report of suspected elder abuse knowing it to be false is subject to a civil penalty of \$500.00 and/or 50-100 hours of community service for the benefit of elders or vulnerable adults. The Tribal Court shall assess the penalty only after petition, notice, opportunity for hearing, and a determination that the reporter made the report knowing it to be false. The person failing to report also is subject to any civil suit brought by or on behalf of the elder or vulnerable adult for damages suffered as a result of the failure to report and any criminal penalties set forth in the Burns Paiute Tribal Law and Order Code.

(5) Oral and Written Reports. Persons required to report shall make their report orally to the Designated Tribal Authority within three (3) working days of their observance of an incident of abuse, neglect or exploitation of an elder or vulnerable adult, unless the elder or vulnerable adult's immediate well-being is threatened, in which case the report should be made at the earliest time possible. Service providers will follow any oral report they make with a written report within five (5) working days. Other persons reporting shall be assisted by the Designated Tribal Authority in making a written report within five (5) working days of their oral report.

(6) Elder's or Vulnerable Adult's Confidentiality and Destruction of Records.

(a) Information contained in written reports and records of oral reports that includes the elder's or vulnerable adult's identity shall be kept confidential by the Designated Tribal Authority and shall not be released unless:

- (i) The elder or vulnerable adult consents after being fully informed of the right to confidentiality, the nature of the information to be released, and the intended use of the information;
- (ii) The information is needed for a court proceeding or police investigation;
- (iii) The Tribal Court orders the release for good cause shown; or
- (iv) Agencies of the Tribal, State or Federal government that provide services to elders or vulnerable adults need to know the information in performance of their duties.

(b) The use of confidential information released shall be restricted to the purposes for which its use is authorized.

(c) The Designated Tribal Authority shall retain all substantiated written reports received and records of all substantiated oral reports received for a period of three (3) years, after which they shall be destroyed; any report deemed made in bad faith shall be destroyed immediately.

(7) Confidentiality of a Reporter's Identity; Immunity for a Reporter.

(a) The identity of a person filing a report shall be kept absolutely confidential and shall not be released unless essential for an administrative proceeding, court proceeding or police investigation, then only to be used for such purposes;

(b) Persons who are required or authorized to report are immune from liability arising from the report so long as the report was made in good faith and with reasonable suspicion ; and

(c) Any person who is sued in connection with the making of a report and prevails in the suit is entitled to recover reasonable attorney's fees and court costs as determined by the Court.

(8) Privileged Communication. No evidentiary privilege, except for the attorney-client privilege, may be raised as a justifiable defense or reason for failing to report suspected elder or vulnerable adult abuse, neglect or exploitation, or for failing to testify as required by this code.

#### 5.4.16 Designated Tribal Authority's Investigative Action on Reports

(1) Reports made to the Designated Tribal Authority.

(a) The Designated Tribal Authority, for purposes of this code, shall receive all reports of elder or vulnerable adult abuse, neglect or exploitation.

(b) The Designated Tribal Authority shall investigate reports of elder or vulnerable adult abuse, neglect or exploitation, immediately referring criminal investigation matters as defined in this Code, to the Tribal Prosecutor. Matters not referred to the Tribal Prosecutor shall be completely investigated by the Designated Tribal Authority. Criminal matters appearing after the complete investigation shall be formally referred to the Tribal Prosecutor.

(2) Upon receipt of any report or information regarding an elder or vulnerable adult who may be in need of adult protective services, it shall be the duty of the Designated Tribal Authority to investigate or cause to be investigated the circumstances surrounding the report. This investigation shall include, but not be limited to: the elder or vulnerable adult's physical injury, emotional injury, financial injury, and all matters which, in the discretion of the Designated Tribal Authority, shall be relevant to the investigation.

(a) If from the report or investigation it appears that the elder or vulnerable adult is in need of essential services only and is not at risk of abuse, neglect and/or exploitation, the Designated Tribal Authority shall deliver a referral to the appropriate services agency for further action, including but not limited to: the Elder Advocates, the Adult Protection Team, Tribal Prosecutor, Tribal Health and Human Services, and Tribal Housing.

(b) If from the report or investigation it appears that the elder or vulnerable adult has been or is in a situation of abuse, neglect and/or exploitation, the Designated Tribal Authority shall investigate the matter as described in paragraph C of this Section to determine whether the elder's or vulnerable adult's present situation is an emergency situation or a non-emergency situation.

(3) The Designated Tribal Authority shall immediately investigate a report of elder/vulnerable adult abuse, neglect and/or exploitation and within 72 hours of the referral prepare a written report of the investigation which shall include the information set out in paragraph F of this Section as well as the results of interviews, observations and assessments, and other fact finding. The Designated Tribal Authority shall conduct in-person interviews with the elder or vulnerable adult and/or caretaker of the elder or vulnerable adult, persons suspected of having committed the acts complained of, employees of agencies or institutions with knowledge of the elder or vulnerable adult's circumstances, and any other person that the Designated Tribal Authority believes to have pertinent information. The existence and contents of medical records and other reports of abuse, neglect, and/or exploitation shall be ascertained. A substantiated investigative report of the Designated Tribal Authority shall be filed with the Tribal Prosecutor within ten working days.

(4) Designated Tribal Authority's contact with the elder/vulnerable adult.

(a) The elder/vulnerable adult shall be contacted by the Designated Tribal Authority as soon as possible, but not later than three (3) working days after receipt of the initial

written or oral referral. In emergency situations, as described in Section 11, contact with the elder/vulnerable adult shall be made immediately by the Tribal Police Department.

(b) Contact with the elder/vulnerable adult is authorized for the purposes of substantiating a report of abuse, neglect or exploitation, for talking to the elder/vulnerable adult, for informing the elder/vulnerable adult of protective services or other services available, and for evaluating the need for an Adult Protective Services Order or other intervention.

(5) Designated Tribal Authority's access to dwelling of an elder/vulnerable adult.

(a) Entry of a private dwelling or any other location where there is a reasonable expectation of privacy for the purpose of contacting an elder/vulnerable adult is not permitted unless:

(i) The elder/vulnerable adult, their caretaker, or the owner or occupant of the dwelling consents, provided that the person authorized to contact the elder/vulnerable adult first identifies himself or herself, his or her title, and the purpose of the visit;

(ii) There is reason to believe that the elder's/vulnerable adult's life may be in imminent danger or that there is imminent threat of bodily harm to the elder/vulnerable adult;

(iii) Pursuant to a court order based on probable cause that the elder/vulnerable adult has been abused, neglected or exploited or may be in danger of being abused, neglected or exploited; or

(iv) There is a need to acquire evidence for use under this code that may be lost or destroyed due to the delay of obtaining a court order.

(b) Nothing in this sub-section shall be construed to limit or restrict police in hot pursuit of fleeing suspects as allowed under existing law.

(c) If the Designated Tribal Authority authorized to seek entry of a premises believes that the effort to obtain entry will be forcibly resisted or there is otherwise apparent danger for the Designated Tribal Authority, the assistance of the Tribal Police Department shall be available to assist with peaceable entry. If peaceable entry is not feasible, a court order may be obtained to restrain persons resisting entry.

(6) Every investigative report made by the Designated Tribal Authority shall be in writing and contain the following information:

(a) The elder/vulnerable adult's name, address or location, and telephone number;

(b) Name, address or location, telephone number of the person(s) or agency who is suspected of abusing, neglecting, or exploiting the elder or vulnerable adult;

(c) The nature and degree of capacity of the elder or vulnerable adult based on the Designated Tribal Authority's professional opinion and observation;

(d) The name, address or location, and telephone numbers of witnesses;

(e) The name, address or location, and telephone of a caretaker;

(f) A description of the acts which are complained of; and

(g) Any other information that the Designated Tribal Authority believes might be helpful in establishing abuse, neglect, or exploitation.

(7) All investigative reports shall be maintained, filed and adequately kept to ensure confidentiality and safety by the Designated Tribal Authority, and shall remain on file for a period of three (3) years.

#### 5.4.17 Voluntary Adult Protective Services

(1) Adult protective services may be provided on a voluntary basis by the Adult Protective Services Worker when requested by or for any non-incapacitated abused or neglected elder or vulnerable adult and the elder or vulnerable adult is found by the Adult Protective Services Worker or Adult Protective Team to be in need of such services.

(2) Voluntary adult protective services shall include those essential and/or protective services necessary to reduce or eliminate the threat of harm and to promote continued independent living.

(3) Voluntary adult protective services are provided subject to available appropriations, resources, and staff, and only as determined necessary by the Adult Protection Worker.

(4) Voluntary adult protective services shall be provided on a time-limited basis and monitored by the Adult Protective Services worker or Adult Protection Team. Said services shall only be provided until the risk is eliminated or reduced, or until the elder/vulnerable adult refuses to accept such services.

(5) Voluntary services shall be based on the least restrictive alternative.

(6) An elder/vulnerable adult in need of voluntary services shall have a choice in selecting the services.

#### 5.4.18 Adult Protective Services Order

(1) The Tribal Court is authorized to issue an Adult Protective Services Order to elders or vulnerable adults that it or a court of competent jurisdiction determines to be incapacitated and at risk of abuse, neglect, or exploitation, pending notice and hearing. The Court shall have broad discretion within the bounds of the law, to fashion adult protective services orders so that the purposes of this code may be accomplished, including but not limited to the following kinds of protective orders:

(a) Removing the person who has abused, neglected or exploited an elder or vulnerable adult from the elder's or vulnerable adult's home;

In the event the elder is residing in the caretaker's home and the caretaker has abused, neglected or exploited an elder or vulnerable adult, then the court can order the elder removed from the caretaker's home, but the court cannot order the caretaker removed from his or her home;

(b) Restraining the person who has abused, neglected or exploited an elder/vulnerable adult from continuing such acts;

(c) Requiring an elder's or vulnerable adult's family, caretaker or any other person with a fiduciary duty to the elder or vulnerable adult to account for the elder's or vulnerable adult's funds;

(d) Requiring any person who has abused, neglected or exploited an elder or vulnerable adult to pay restitution to the elder or vulnerable adult for damages resulting from that person's wrongdoing;

(e) Appointing a legal representative;

(f) Appointing a representative payee, conservator, or guardian for the elder or vulnerable adult;

(g) Ordering the Designated Tribal Authority to prepare a plan for and deliver adult protection services which provide the least restrictive alternative for services, care, or treatment consistent with the elder's or vulnerable adult's needs; or

(h) Removing the elder or vulnerable adult from the place where the abuse, neglect or exploitation has taken or is taking place.

(2) Contents of an Adult Protective Services Order. An Adult Protective Services Order shall contain the following information:

(a) The name of the person to whom it is directed;

(b) The name, address or location, and condition of the elder or vulnerable adult;

(c) A conclusion of law and the relevant finding(s) that the elder or vulnerable adult is incapacitated;

(d) A conclusion of law and the relevant finding(s) that the elder or vulnerable adult is at risk of abuse, neglect, or exploitation;

(e) The restrictions or requirements imposed by the Court in sufficient detail;

(f) The date the adult protective services order is issued and the date the order expires or the time within which the protective order will be reviewed;

(g) The protective services which will reduce or eliminate the abuse, neglect, or exploitation;

(h) The consequences for failure to comply with the order; and

(i) The order shall also include a statement which states that a person bound by the order shall remain bound by it even if circumstances which prompted the order have changed, and that it is the responsibility of any person seeking to avoid the consequence of the order to request that the order be modified to reflect the changed circumstances. However, no such modification shall be made without a hearing at which the petitioner or representative of the petitioner is present.

(3) Petition and Hearing of an Adult Protective Services Order.

(a) The Tribal Designate Attorney Prosecutor shall file petitions and present facts on behalf of the Burns Paiute Tribe for legal proceedings authorized or required by this code; and

(b) A hearing on a petition authorized or required by this code shall be conducted with the purpose of protecting the incapacitated elder or vulnerable adult only where necessary and only to the extent shown by the facts and using the least restrictive alternatives.

(4) Term of an Adult Protective Services Order.

(a) An Adult Protective Services Order shall be issued for a period not to exceed one (1) year; and

(b) The order may be extended at one (1) year intervals as many times as necessary to protect the elder or vulnerable adult, but only after a petition is filed by the party seeking an extension and notice, opportunity for hearing, and a determination based on clear and convincing evidence that such an extension is necessary for the protection of the elder or vulnerable adult.

#### 5.4.19 Emergency Adult Protective Services Order

(1) The Tribal Court shall issue an Emergency Protection Order authorizing adult protective services on an emergency basis, upon petition supported by clear and convincing evidence that an elder or vulnerable adult:

- (a) Is allegedly incapacitated and cannot consent to protective services;
- (b) Is at risk of immediate physical harm; and
- (c) No one is authorized by law or court order to give consent on an emergency basis.

(2) The Emergency Adult Protective Services Order shall:

- (a) Set forth a conclusion of law and the relevant finding(s) that the elder or vulnerable adult is incapacitated;
- (b) Set forth a conclusion of law and the relevant finding(s) that the elder or vulnerable adult is in immediate and imminent danger of abuse, neglect, or exploitation;
- (c) Set out the specific emergency services to be provided to the incapacitated elder or vulnerable adult to remove the conditions creating the emergency situation;
- (d) Provide only those services which will remove the emergency situation;
- (e) Designate the agency required to implement the order; and
- (f) Be issued for a maximum of 72 hours and may be renewed only once for a maximum of 72 hours provided the evidence shows a continuing emergency situation.

(3) The Tribal Court may authorize forcible entry by the Tribal Police Department to enforce the Emergency Adult Protective Services Order after it has been shown that attempts to gain voluntary access to the elder or vulnerable adult have failed.

(4) The petition for an Emergency Adult Protective Services Order shall contain the name and interest of the petitioner; the name, address or location and condition of the elder or vulnerable adult; the nature of the emergency; the nature of the elder or vulnerable adult's incapacity; the proposed protective services; the attempts, if any, to secure the elder or vulnerable adult's consent to protective services; and any other facts the petitioner believes will assist the Tribal Court.

(5) The Tribal Court shall hold a hearing on a petition for an Adult Protective Services Order within 72 hours after an Emergency Adult Protective Services Order is issued, weekends and holidays excluded.

(6) An Emergency Adult Protective Services Order can be set aside by the Tribal Court upon a petition of any party showing good cause.

(7) If the Designated Tribal Authority or law enforcement officer has good cause to believe that an emergency situation exists in which an elder or vulnerable adult who appears to be incapacitated is at risk of immediate and irreparable harm, and that the elder or vulnerable adult may be irreparably harmed during the procurement of an Emergency Adult Protective Services Order, the elder or vulnerable adult immediately may be taken into temporary protective custody, and where necessary transported for medical treatment or to an appropriate facility. Immediately after an elder or vulnerable adult is placed in protective custody, a petition for an Emergency Adult Protective Services Order shall be filed pursuant to the procedure set forth in this Section.

(8) Any person who acts in good faith pursuant to this Section is immune from civil or criminal suit based on that person's actions.

#### 5.4.20 Procedures for Determining Incapacity

(1) Determinations regarding the capacity of an elder or vulnerable adult for the purposes of an action under this code must be made after petition; appointment of an advocate, physician, and visitor; notice; hearing; and a finding based on clear and convincing evidence that the elder or vulnerable adult is incapacitated in accordance with Section 5 of this code, Procedural Rights.

(2) In proceedings necessitating a declaration of incapacity, such as a hearing on a petition for Adult Protective Services or a petition for Emergency Protective Services, the Court shall first address the issue of incapacity and only upon a finding that the elder or vulnerable adult is incapacitated shall the Court proceed with the issue of whether judicial intervention is necessary because the elder or vulnerable adult has been or is at risk of abuse, neglect, and exploitation.

#### 5.4.21 Adult Protection Team

(1) Composition. The Adult Protection Team shall be comprised of a multi-disciplinary group of professionals representing various tribal disciplines and agencies who meet on a regular basis to assist in developing a case plan and coordination of protective services for elder's and vulnerable adult's who are victims of abuse, neglect, or exploitation.

(2) Purpose. The Adult Protection Team shall be charged with the responsibility of helping an elder or vulnerable adult resolve any civil conflict or problems that may prevent the proper care, treatment, and respect for the elder or vulnerable adult involved. The Adult Protection Team may suggest and encourage resolutions based on tribal custom and tradition.

(3) Appointment.

(a) The Adult Protection Team shall be appointed chosen by the Burns Paiute Tribal Council;

(b) The Adult Protection Team shall be comprised of at least five people, but not more than five (5) seven (7) people; and

(c) The Adult Protection Team shall be composed of individuals who are knowledgeable in one or more of the following areas:

- (i) Tribal culture;
- (ii) Tribal Health and Human Services available to elders/vulnerable adults;
- (iii) Legal remedies;
- (iv) Available medical services; and
- (v) Tribal administrative procedure.

(4) Adult Protection Team Time Limits. If the Adult Protection Team determines that it cannot be effective in helping resolve the elder or vulnerable adult's situation, it shall refer the matter back to the Designated Tribal Authority within 30 days of receipt of the case.

(5) Confidentiality. The case records and personal information regarding any elder or vulnerable adult that a member of the team provides shall be kept confidential and shall be used only by team members for the purpose of assessing the needs of the elder or vulnerable adult, and developing and monitoring a protective services plan.

#### 5.4.22 Regulations

The Designated Tribal Authority shall coordinate with the Burns Paiute Tribal Health and Human Services and shall submit proposed rules and regulations to the Tribal Council of the Burns Paiute Tribe for adoption.

#### 5.4.23 Severability

If any provision or application of this Chapter is held invalid, such invalidity shall not affect the remaining provisions or application thereof.