

TITLE 8
LUMMI NATION CODE OF LAWS
CHILDREN'S CODE

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Table of Contents

Chapter 8.01 General Provisions

8.01.010 Declaration of Purpose.....	1
8.01.020 Declaration of Children’s Rights.....	1
8.01.030 Family Preservation Plan	2
8.01.040 Cooperation of LIBC Agencies and Programs.....	2
8.01.050 Grandparent Consultation	2
8.01.060 Notice to Extended Family; Family Conference.....	2
8.01.070 Jurisdiction	2
8.01.080 Transfer of Jurisdiction; Intervention in Other Jurisdiction’s Proceedings	3
8.01.090 Definitions.....	4
8.01.100 Lummi Children Services Department Programs.....	5
8.01.110 Tribal Enrollment of Children in Tribal Custody.....	5
8.01.120 Grandparents Committee	5
8.01.130 Lummi Child Consultation Team.....	6
8.01.140 Parties and Their Rights.....	7
8.01.150 Guardian Ad Litem Qualifications	8
8.01.160 Guardian Ad Litem to Case.....	8
8.01.170 Agreements with Other Jurisdictions.....	9
8.01.180 Confidentiality of Reports.....	9
8.01.190 Conducting Hearing under this Title	11
8.01.200 Out-of-Home Placement Priorities	12
8.01.210 Severability	12

Chapter 8.02 Status of Juveniles

8.02.010 Age of Majority	12
8.02.020 Contracts of Minors - Disaffirmance.....	12
8.02.030 Civil Actions	12
8.02.040 Liability for Acts	12

Chapter 8.03 Delinquent Children

8.03.010 Definition of Delinquent Child.....	13
8.03.020 Temporary Custody of Child Alleged to be Delinquent.....	13
8.03.030 Procedure for Delinquent Children.....	14
8.03.040 Parental Request For Court Supervision for Children in Need.....	14
8.03.050 Remanding of Child to Trial as an Adult.....	14
8.03.060 Truancy Unlawful.....	14
8.03.070 Consumption of Tobacco by a Minor Unlawful	14
8.03.070 Conducting the Hearing	14
8.03.090 Disposition in Delinquency Cases.....	14
8.03.100 Termination of Tribal Court Jurisdiction over a Delinquent Child.....	15

Chapter 8.04 School Truancy

8.04.010 Purpose.....	15
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8.04.020 Definitions.....	15
8.04.030 Compulsory School Attendance	16

Chapter 8.05 Children in Need of Protection

8.05.010 Definition of Child in Need of Protection.....	17
8.05.020 Initiation of a Child in Need of Protection Proceeding	17
8.05.030 Summons for Child in Need of Protection Proceeding.....	17
8.05.040 Temporary Placement of a Child into the Custody of the Lummi Nation.....	18
8.05.050 Hearing Procedure	19
8.05.060 Case Conference Among Parties	19
8.05.070 Child Protection and Reunification Plan.....	19
8.05.080 Disposition after a Child is Found to Be in Need of Protection.....	20
8.05.090 Closure of Case.....	21
8.05.100 Concurrent Proceedings	22
8.05.110 Periodic Court Review	22
8.05.120 Efforts Toward Reunification with the Family	22
8.05.130 Permanency Planning	22
8.05.140 Responsibilities of Foster Parent or Guardian.....	23
8.05.150 Other Court Proceedings Related to Child.....	23
8.05.160 Parents’ Obligation to Support Child	23

Chapter 8.06 Neglected and Abused Children – Sanctions and Reporting

8.06.010 Declaration of Purpose.....	24
8.06.020 Child Abuse and Neglect Unlawful.....	24
8.06.030 Reports	24
8.06.040 Immunity for Civil or Criminal Liability.....	25
8.06.050 Violations	25

Chapter 8.07 Termination of Parental Rights

8.07.010 Purpose.....	25
8.07.020 Effect of Permanently Suspending the Legal Relationship Between a Parent and Child	25
8.07.030 Grounds for Permanently Suspending the Legal Relationship Between a Parent and Child	26
8.07.040 Requirement for Initiation Arising from Child in Need of Protection Proceeding	27
8.07.050 Petition for Permanent Suspension of the Legal Relationship Between a Parent and Child	27
8.07.060 Summons for Permanent Suspension Proceeding	28
8.07.070 Setting of Hearing.....	28
8.07.080 Pre-Suspension Report.....	28
8.07.090 Hearing.....	28
8.07.100 Consent to Permanently Suspending the Legal Relationship Between the Parent and Child	29
8.07.110 Disposition of Proceedings	29
8.07.120 Enrollment Status Unaffected	29
8.07.130 Termination Order is Final.....	29

Chapter 8.08 Adoptions

8.08.010 Personal Jurisdiction.....	29
8.08.020 Petition	29

8.08.030 Consent to Adoption	30
8.08.040 Pre-Adoption Report.....	30
8.08.050 Notice.....	30
8.08.060 Adoption Hearing	30
8.08.070 Provisional Placement Pursuant to Final Decree of Adoption.....	31
8.08.080 Final Decree of Adoption.....	31
8.08.090 Adoption Records	31

Chapter 8.09 Guardianship of Children

8.09.010 Personal Jurisdiction.....	31
8.09.020 Powers and Duties of Guardian.....	31
8.09.030 Commencement of Guardianship Action.....	32
8.09.040 Petition	32
8.09.050 Guardianship Report.....	32
8.09.060 Notice.....	33
8.09.070 Establishment of Guardianship	33
8.09.080 Review of Guardianship	33

Chapter 8.10 Emancipation

8.10.010 Declaration of Emancipation.....	34
8.10.020 Petition for Emancipation	34
8.10.030 Service of Petition – Notice—Date of Hearing.....	34
8.10.040 Hearing on Emancipation.....	34
8.10.050 Emancipation Decree – Certified Copy – Notation of Emancipated Status	34
8.09.060 Power and Capacity of Emancipated Minor	35
8.09.070 Declaration of Emancipation --Voidable	35

**TITLE 8
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Chapter 8.01 General Provisions

8.01.010 Declaration of Purpose

(a) It is the sovereign right of the Lummi Nation to determine the best interests of its children, and its responsibility to protect, care for and nurture our children.

(b) The Lummi Nation declares that the relationship and bond between parents and their children is of paramount importance to the future of the family and to the future of the Lummi Nation. It is the responsibility of each family to determine the living arrangements and custody of the family's children, and to provide for the welfare of those children. However, there are occasionally instances when a child is deprived of the child's right to minimal conditions of safety, health, and nurture, the Nation must intervene on behalf of the child to preserve and protect those rights of the child. All persons, agencies and entities having duties or responsibilities under the Children's Code shall carry out those duties and responsibilities in a manner consistent with the express purposes of this Code.

(c) The Lummi Nation, and all of its agencies and departments, shall work to maintain the family unity in a manner consistent with the safety of the child, and to prevent the unnecessary removal of a child from the child's home. If out-of-home placement is necessary to ensure the safety of the child, the Lummi Nation shall work toward the safe reunification of the child and family in a timely manner.

(d) A Lummi family extends beyond the immediate family to the child's grandparents, aunts, uncles, first cousins, and other family members who have a close relationship with the child. Although a child's parents have direct responsibility for the care of a child, the grandparents, particularly grandmothers, have an inherent responsibility to oversee the welfare of their grandchildren and to teach their grandchildren the Lummi culture and heritage. Aunts and uncles also have a responsibility to provide guidance and teaching to their nieces

and nephews. Those inherent rights and responsibilities must be considered in decision-making under this Title.

(e) This Code shall be liberally construed to effectuate the following purposes:

(1) to ensure the care, protection, and wholesome moral, mental emotional and physical development of children and to protect children's rights as stated in 8.01.020, "Declaration of Children's Rights";

(2) to safeguard, protect, and secure for each child coming under the scope of this Title, the care and guidance, preferably in the child's own home or community, as will serve the emotional, mental and physical welfare of the child and the best interest of the Lummi Nation;

(3) to strengthen families as necessary so that the families can carry out in their own family environment the goals stated in 8.01.010;

(4) for the purpose of Chapter 8.03 of this Title, and consistent with the protection of the public interest, to remove from delinquent children the taint of criminality and to substitute therefore a program of treatment, education, accountability, training and rehabilitation, and to achieve the foregoing purposes in a family environment wherever possible, separating the child from the child's parents only when necessary for the child's welfare or in the interest of public safety.

8.01.020 Declaration of Children's Rights

The Lummi Nation declares that its children are its highest priority. With the goal of providing each child the environment needed to become a strong and healthy member of the community, the Nation further declares that each child has the following rights:

(a) to receive love, attention, and emotional support from the family and from the community;

(b) to live in a home and community free of alcohol and drug abuse;

(c) to be protected from violence in the home;

(d) to be protected from sexual abuse;

(e) to receive good nutrition, shelter, and health care;

(f) to receive an education;

(g) to learn the child's inherent heritage, culture, traditions, and history so that the Nation's children know who they are and where they come from; to learn the names of their grandparents and earlier generations, so that they learn how we are all related;

(h) to learn the child's significance as a member of the Lummi Nation and the child's importance as a seed of the future of the Lummi Nation;

(i) to understand that the child does not have responsibility for the actions of adults and to be protected against feelings of shame and guilt for those actions;

(j) to have positive role models and to receive assistance to become a positive role model;

(k) to learn about the child's responsibilities towards the family and the community through the setting of boundaries for appropriate conduct; and

(l) to receive information regarding the historical trauma suffered by the Lummi people so that they can understand how and why our community has changed within a few generations, and how to preserve the Lummi Sche'lang'en.

8.01.030 Family Preservation Plan

Preservation of Lummi families is central to the health, welfare and cultural integrity of the Lummi Nation. In all cases, the Lummi Children Services Department shall meet with

the child's parents to develop a family preservation or reunification plan that will be an agreement between the parent and the Department for the actions that the parents will take to resolve the protection issues for the child and for the actions the Department will take to support the preservation or reunification of the family and arrange for wrap-around services. The plan will recognize the strengths of the parents and family.

8.01.040 Cooperation of LIBC Agencies and Programs

In order to further the purposes and policies of this Children's Code, upon request from the Lummi Children Services Department, all LIBC agencies and programs must provide services and information as needed for family preservation, reunification, and protection of a child.

8.01.050 Grandparent Consultation

At all stages of a child protection investigation, proceeding, and placement planning, the Lummi Children Services Department shall give a priority to consulting with the child's grandparents about a family resolution to alleviate the protection issues and choose a placement option, unless consultation with an individual grandparent is not in the best interest of the child.

8.01.060 Notice to Extended Family; Family Conference

Immediately after removal of a child from the custody of the child's parent, the Lummi Children Services Department shall exercise due diligence to identify and contact the child's grandparents, and adult aunts, uncles, siblings, and first cousins, and other close family members identified by those person, for possible placement and other assistance in meeting the needs of the child and the child's family.

8.01.070 Jurisdiction

(a) For the purposes of this Title, the Lummi Children's Court shall have jurisdiction as follows:

over a child under the age of 18, wherever the child is domiciled, if:

- (1) the child is an enrolled member of the Lummi Nation;
- (2) the parent of the child is an enrolled member of the Lummi Nation;
- (3) the child is one-quarter or more Lummi blood quantum; or
- (4) the child is eligible for enrollment as a member of the Lummi Nation or would be eligible for enrollment if the child's eligible parent were enrolled;

(A) over an Indian child, as defined in LCL 8.01.010(b), who resides or is domiciled on the Lummi Reservation;

(B) for the purposes of proceedings under Chapter 8.03 of this Title, over a delinquent child as defined in LCL 8.03.001; and

(C) over a parent, guardian, or legal custodian of a child described in this subsection.

(b) The jurisdiction of the Lummi Children's Court is stated widely in this section to grant jurisdiction as may be needed to carry out the purposes of this Title. However, for the purposes of Chapters 8.05 and 8.07, the Nation may more narrowly choose cases to bring before the Children's Court.

(c) If a proceeding is filed with the Lummi Children's Court under Chapters 8.05 or 8.07 involving a child residing on the Lummi Reservation who is not enrolled as a Lummi member but is enrolled with another tribe, the Lummi Children Services Department shall immediately provide notice to the other tribe. If the other tribe requests transfer of jurisdiction, the Lummi Children's Court shall transfer the case to that tribe's court unless the Court finds there is good cause not to do so. For cases that are not transferred, the other tribe has the right to participate as a party in the proceedings before the Lummi Children's Court.

(d) In addition to cases transferred under (c) of this section, the Children's Court may transfer a proceeding pending before it to another court which has concurrent jurisdiction over the child

if the Children's Court determines that the other jurisdiction has significant interest in the child and that transfer would be in the best interest of the child.

(e) The Lummi Children's Court may exercise its equitable powers to give comity to the orders of other jurisdictions.

(f) Upon receipt of a valid order issued by another jurisdiction for the pick-up of a child who is the subject of a child protection proceeding in the other jurisdiction's court, the Lummi Children's Court may issue an ex-parte order to the Lummi Police Department to assist the other jurisdiction in carrying out its order. There is a presumption in favor of validity when the order appears authentic on its face. The Office of Reservation Attorney and the Lummi Children Services Department shall be provided notice and an opportunity to be heard before the Lummi Children's Court order is issued.

8.01.080 Transfer of Jurisdiction; Intervention in Other Jurisdiction's Proceedings

(a) Upon application of a party, and in the absence of an objection by either party, the Lummi Child Consultation Team shall recommend to the Lummi Children Services Department whether a child protection proceeding pending in another jurisdiction should be transferred to the Lummi Children's Court.

(b) The Lummi Children Services Department shall request that a proceeding pending in another jurisdiction's court involving dependency or termination of parental rights of an enrolled or enrollable Lummi child shall be transferred to the Children's Court. However, the Lummi Child Consultation Team may determine in an individual dependency case that the child's best interests will not be served by transfer because necessary services and federal requirements cannot be met because the distance of the child from the Lummi Reservation prevents effective management, such as mandatory case worker home visits, managing visitation, and providing services where the child lives. Additional factors that may be considered for the determination are:

(1) the child is living in proximity to a parent, siblings, or other relatives to which the child is bonded, and transfer of jurisdiction would interfere with visitation or with services being provided for reunification;

(2) the parent lives in the jurisdiction where the case is pending, and it would be a hardship for the parent to participate if the case was transferred to the Children's Court;

(3) the child is placed in a permanent or long-term placement in which the child is bonded and transfer of jurisdiction would cause disruption in case management that would be against the best interests of the child;

(4) the child has special needs that are being served in the other jurisdiction and transfer of jurisdiction would interfere with services being provided;

(5) case management should be centralized for all siblings in a family; or

(6) another factor dictates that the transfer of jurisdiction would not be in the child's best interests.

The Lummi Child Consultation Team shall state the basis for its determination in writing, and provide it to the Lummi Children Services Department.

(c) The Lummi Children Services Department shall intervene and advocate in other jurisdiction's proceedings if:

(1) the child is enrolled or enrollable as a Lummi Tribal member, and a determination is made under (b) that it is not in the best interest of the child to transfer jurisdiction; or

(2) the Nation has determined that an unenrolled and unenrollable child is otherwise a member of the Lummi Nation under LCL 8.01.070(c) for purposes of intervention under the Indian Child Welfare Act.

8.01.090 Definitions

For purposes of this Title, unless otherwise provided in this Title,

(a) a "child" is a person under the age of 18 who has not been emancipated, except that a person under 18 who while emancipated has committed a crime will be treated as a child unless the provisions of 8.03.010 apply; as used in this Title, the term "minor" means a child as defined in this subsection;

(b) an "Indian child" under this Title, is a child who is: (1) a member of the Lummi Nation as defined in (c) of this section or (2) a member of or eligible for membership in another federally recognized Indian Tribe;

(c) a "member of the Lummi Nation" under this Title and for the purposes of the Indian Child Welfare Act shall include:

(1) a child enrolled or eligible for enrollment in the Lummi Nation under Title 34 of this Code, or would be eligible for enrollment if the child's eligible parent were enrolled;

(2) a child or grandchild of an enrolled member of the Lummi Nation; or

(3) a child who is one-quarter or more Lummi blood quantum; or

(4) a child who is otherwise recognized as a member of the Lummi Nation community, as determined in accordance with LCL 8.010.130; recognition of membership pursuant to this subparagraph does not, in itself, provide jurisdiction by the Lummi Children's Court over the child or grant the child enrollment member privileges as defined by the Lummi Nation Constitution or by Title 34 of Lummi Code of Laws;

(d) a "legal parent" is the birth or adoptive parent of a child, but does not include a birth parent whose legal relationship with the child have been judicially permanently suspended, nor a putative father whose name is not on the birth certificate unless his paternity is established under Chapter 11.05 of the Lummi

Code of Laws;

(e) a “child welfare worker” is a person designated by the Lummi Children Services Department to carry out the functions each of its programs is assigned to take under this Title;

(f) the “Lummi Children’s Court” or “Children’s Court” is the Lummi Tribal Court while sitting on cases under this Title; the term “court” as used in this Title shall mean the Lummi Children’s Court, unless otherwise specified;

(g) the “Lummi Child Consultation Team” is defined by LCL 8.01.130 of this Title;

(h) a “relative” is a person connected to the child by blood or marriage;

(i) a “legal custodian” is a non-parent established by a court of law to be the legal custodian of a child, with the power and duties granted in the custody order; the term includes the Lummi Children Services Department when made the custodian of the child;

(j) a “legal guardian” is a non-parent established by a court of law to be the legal guardian of a child, with the powers and duties granted in the guardianship order;

(k) “abandonment” means that

(1) the child is an infant between three and twelve months old, and the parent has not initiated any contact since the infant was released from the hospital after birth; or

(2) the child is over one year old, and the parent has not initiated any contact with the child for 12 consecutive months or has only had infrequent and irregular contact in the most recent 22 months;

For the purpose of this subsection, a “contact” includes visits, telephone calls, letters, and gifts and the contact must be intentionally initiated by the parent, rather than occurring by chance;

(l) “termination of parental rights” is a procedure provided under this Code prior to the

2013 amendments. For the purpose of the Lummi Code of Laws, a termination of parental rights that occurred in this jurisdiction prior to the amendment, or in another jurisdiction, shall be conformed to the outcome of a proceeding under Chapter 8.07 of this Title to permanently suspend the legal relationship between the parent and child.

8.01.100 Lummi Children Services Department Programs

The Lummi Indian Business Council establishes the Lummi Children Services Department to carry out the purposes of this Title for care and protection of our children. The Department shall have the following functions: Lummi Child Protective Services, Lummi Child Welfare Services, and the Foster Care Program, and such other functions as the LIBC shall assign to the Department from time to time, as reflected in the LIBC Organizational Chart.

8.01.110 Tribal Enrollment of Children in Tribal Custody

(a) If a child in the custody of the Lummi Children Services Department is eligible for enrollment as a member of the Lummi tribe, but has not been enrolled in any tribe, the Department may co-ordinate with the Tribal Chairman to apply for enrollment of the child.

(b) During the pendency of a child protection proceeding in the Children’s Court, a parent must have the permission of the court to apply to disenroll a Lummi child or to apply to enroll the child in another tribe.

(c) Before acting on a petition to disenroll a Lummi child, the Enrollment Committee shall enquire to the Lummi Children Services Department whether the child is in a child dependency proceeding.

8.01.120 Grandparents Committee

(a) The Grandparents Committee consists of at least nine community members who are enrolled Lummi tribal members. The members shall be appointed by the Lummi Indian Business Council by resolution. The committee shall select its chairperson and adopt its own manner of meeting and proceeding to carry out its responsibilities

under this Code.

(b) The Grandparents Committee shall advise and consult with Lummi families and the Lummi Children Services Department in order to strengthen families and help families and children when children are placed out of the home.

(c) The Grandparents Committee shall review all proposed adoptions and make such recommendations to the court as the Committee shall deem appropriate.

(d) When granted access to information that is confidential under LCL 8.01.180, Title 34 or other provision of law, committee members must safeguard the information from further release. The Grandparents Committee shall prepare and adopt a Code of Conduct on topics including confidentiality and conflicts of interest. Each member of the Committee shall sign the Code of Conduct and abide by its provisions.

(e) The chair of the committee shall designate a member to serve on the Lummi Child Consultation Team as established under LCL 8.01.130.

8.01.130 Lummi Child Consultation Team

(a) The Child Consultation Team consists of representatives from Lummi Grandparents Committee, the Lummi Cultural Resources Preservation Commission, Lummi Child Protection Services, schools, Lummi Early Learning Program, Lummi Victims of Crime, Lummi Nation Police Department, Lummi Care, Public Health Nurse, Lummi Health Clinic, Lummi Youth Outreach, Lummi Juvenile Probation Office, Lummi Housing, Restorative Justice, Lummi Youth Academy, Lummi Mental Health and other agencies that the Lummi Indian Business Council may later designate. A facilitator selected by the LIBC shall chair the Child Consultation Team. The Child Consultation Team shall make recommendations based on decision of the majority of persons attending a meeting for which there has been notice.

(b) The Child Consultation Team shall meet

periodically to advise and consult:

(1) on matters brought before it by members of the team, Lummi Children Services, or other tribal employees who provide services to children; and

(2) with social workers from other jurisdictions who are managing cases of children described in 8.01.070(a), (b) or (c) or who are otherwise considered members of the Lummi Indian community.

(c) The Child Consultation Team shall:

(1) advise and consult in matters related to children in need of protection such as:

(A) whether a Lummi child is in danger of harm;

(B) whether a child in need of protection petition should be filed in Tribal Court; whether a child should be removed from the child's home either temporarily or on a longer basis;

(C) where a child should be placed if the child cannot be placed with a parent, with a preference to recommending the child be placed with a family member;

(D) whether the tribe should request transfer jurisdiction over a child dependency court proceeding from another jurisdiction to Tribal Court; and

(E) recommend actions to social workers to promote the care of children.

(2) Identify available community and family resources, programs, and services that will protect the child and promote safe reunification of the child with the child's family if possible;

(3) Promote cooperation, communication, and consistency between agencies;

(4) Provide a forum for discussing what actions would best promote the well-being of Indian Children; and

(5) Assist in the development and

implementation of plans to promote the long-term well-being of children and their families; and

(6) When requested by the Court as provided in Section 8.01.130(f) below, testify or otherwise submit information regarding services available to the child and the child's family to promote reunification of the family or other aspects of the plan for the child's welfare.

(d) For the purpose of Sections 8.01.070(b) and (c) of this Title, the Child Consultation Team, in consultation with the Enrollment Office and Sche' lang' en Office, shall make the initial determination whether a child is otherwise considered a "member of the Lummi Nation" under the Indian Child Welfare Act. The team or its designee will also make the initial decision whether the Nation should attempt to intervene in a child dependency court proceeding in another jurisdiction involving a child who is not currently eligible for enrollment under Title 34 but is otherwise a member of the Lummi Nation. Final decision authority on such matters shall lie with the Lummi Indian Business Council, upon request by any member of the child's family who brings the question to the LIBC. In making the decisions under this subsection, the team and LIBC shall consider the need to protect the descendents of the tribe and its tribal heritage, as well as the tribe's available resources to provide services to a non-enrolled member. A determination under this Section does not effect the question whether a child is eligible for enrollment under Title 34 of this Code. The factors to be considered may include:

- (1) whether the child lives on or off the reservation;
- (2) whether the child lives with an enrolled member;
- (3) the child's connections with the Lummi Indian community;
- (4) the amount of Lummi blood of the child;
- (5) the reasons the child is not currently

eligible for enrollment;

(6) the resources of the Lummi Nation; and

(7) the need for intervention based on the actions of the state.

(e) Extended family is particularly important to Children in Need of Protection. A preference shall be given to placing a child with a family member, should the parents not be willing or able to care for the child. Additionally, the child's extended family members may meet with the Child Consultation Team to submit information, orally or in writing, to the Child Consultation Team regarding their concerns about the welfare of the child and action that may be taken to promote the welfare of the child and the child's family.

(f) In any case involving a Child in Need of Protection, the Tribal Court shall have the authority to request and receive testimony from any or all members of the Child Consultation Team that have been, or who in the opinion of the Court should be involved in providing services or making recommendations regarding the welfare of the child and the circumstances of the child's parents and extended family. In addition, once a child has been found to be In Need of Protection, the Court shall have the authority to convene the Child Consultation Team as an advisor to the Court regarding the services available to the child and the child's family; provided, however, that the parents of the child, the child's current custodian, and their attorneys or legal representatives, and the child or the child's representative shall have the right to participate in such conferences unless the Court finds good reason to exclude them from all or any part of such conferences with the Court.

8.01.140 Parties and Their Rights

(a) The parties to court proceedings under Chapters 8.05 and 8.07 are the Lummi Nation acting through the Lummi Children Services Department, the child, the child's legal parents, and the child's legal guardian or legal custodian, if any. The other chapters in this Title identify the parties for purposes of those

chapters.

(b) The following parties to a court proceeding under this Title have the right to be appointed counsel through the Public Defender's Office:

(1) children who are alleged to be delinquent in proceedings filed under Chapter 8.03 of under this Title;

(2) parents of children in proceedings filed under Chapter 8.05 and 8.07 of this Title; and

(3) children, age 13 or over, in proceedings filed under Chapter 8.05, 8.07 and 8.08 of this Title; the Court may end the appointment of counsel if, after consultation with the child, the attorney advises the court that the child waives an attorney or is not capable of providing direction as a client to the attorney.

All other parties have the right to counsel at their own expense,

(c) Parties to court proceedings under this Title have the right to request the Court issue subpoenas for witnesses necessary for the conduct of the hearing, to introduce evidence, to be heard on their own behalf, and to examine witnesses.

(d) There is no right to a jury trial in court proceedings under this Title, except that a child remanded under LCL 8.03.050 has the right to a jury trial in the adult proceeding.

8.01.150 Guardian Ad Litem Qualifications

(a) A Guardian Ad Litem Coordinator's Office is established to coordinate the guardian ad litem program.

(b) The Guardian Ad Litem Coordinator's Office shall maintain a roster of persons it determines are qualified to be guardian ad litem. The Guardian Ad Litem Coordinator's Office shall develop minimum qualifications, training requirements, and conflict of interest guidelines for placement on the roster.

(c) No person may be appointed as a guardian

ad litem if the person has a confirmed history as the perpetrator of child abuse or neglect or as a perpetrator of domestic violence. No guardian ad litem can have a conviction for a sex crime, felony crime of violence, or crime against a child; or a conviction in the past five years of a drug or alcohol related offense or an assault and battery. The person must pass a background check for a confirmed history of child abuse or neglect, and a criminal background investigation for the listed history and offenses.

(d) In the absence of a person on the roster who is able to participate in the proceeding, the Children's Court may appoint as guardian ad litem in a proceeding:

(1) a person who has been found to be qualified to be a guardian ad litem by another jurisdiction;

(2) a person who has completed the training conducted by the CASA program to be a court-appointed special advocate; or

(3) an attorney who is familiar with child protection proceedings under this Title, and who is a member of the Lummi bar;

8.01.160 Guardian Ad Litem to Case

(a) The duty of the guardian ad litem is to make impartial recommendations to the court as to the best interests of the child, including but not limited to:

(1) promoting the health, safety, and well being of the child in the provision of services, placement, and permanency planning decisions;

(2) promoting actions that protect the child's rights as listed in LCL 8.01.020, "Declaration of Children's Rights"; and

(3) maximizing the child's relationship with the child's family, extended family, and the tribal community at large.

In contrast, an attorney for a child has the duty to advocate for the child's wishes, whether or not those wishes are in the child's best interests.

(b) In any proceeding filed under Chapters

8.05, 8.07, and 8.08 of this Title, the Children's Court shall appoint a guardian ad litem if the child is under the age of 13, and may otherwise appoint a guardian ad litem in the discretion of the court. The court has the discretion to not appoint a guardian ad litem for a proceeding in which the child is under the age of 13 if the Lummi Children Services Department is a party to the proceeding and the private parties who have appeared in the proceeding have waived, in writing or on the record, the appointment of a guardian ad litem.

(c) The court may only appoint a guardian ad litem who is eligible under LCL 8.01.150 and does not have a conflict of interest in the matter that may prevent the person from being impartial. In making an appointment, the Children's Court shall give preference to a enrolled Lummi tribal member, and next to a member of another tribe.

(d) The guardian ad litem shall not have the status of a party, but rather as an advocate for the best interests of the child. The guardian ad litem shall be present in court proceedings to present reports and be available for questioning by the court and the parties to the case. The guardian ad litem shall be provided copies of all pleadings, orders, and other documents filed or submitted to the court, and notice of all hearings.

(e) Nothing in this section limits the authority of the Lummi Tribal Court to appoint guardian ad litem to advise as to the best interests of children or vulnerable adults in proceedings brought under other titles of the Lummi Code of Laws.

8.01.170 Agreements with Other Jurisdictions

Lummi Children's Services may enter into agreements with service providers, child welfare workers, law enforcement personnel, probation officers, and other officials in other jurisdictions in order to investigate allegations, share information, and obtain services for children and parents of children under this Title. No agreement may be entered into under this Section that would encumber the tribe financially unless the agreement is also approved by the Lummi Indian Business

Council.

8.01.180 Confidentiality of Records

(a) Information about children and their parents and relatives, foster homes, legal custodians, legal guardians, and adoptive homes obtained pursuant to this Title may only be used as needed to carry out the purposes of this Title; for a related criminal or child protection proceeding; or for a federally-funded benefit program.

(b) Confidential information under this Title includes all aspects of the intervention, investigation, case management, and court proceedings conducted under this Title, including but not limited to: allegations that a child is in need of protection; identification of the needs of the family and child and the contents of the child protection and family reunification plans; the treatment being provided the family and child; the child's health care status and treatment; the child's education status and needs; the identity and address of the child's caretaker; the physical location of the child; the qualifications of the persons proposed to be caretakers of children; payments being provided to caretakers for their care of children; and the results of background checks conducted pursuant to this Title.

(c) Except as otherwise provided in this section, information designated as confidential under this section may be provided to the Lummi Children Services Department; the Office of Reservation Attorney; the attorneys for parties to the proceeding; the guardian ad litem; and the Lummi Police Department. Other persons and entities may only have access as provided in the other subsections of this section.

(d) The Children's Court shall make and preserve a record of all court proceedings and filings under this Title. The records shall be confidential and not open to inspection except by persons or entities named in (c) of this section, the parties, court personnel designated by the Children's Court, Lummi Victims of Crime, and any other person who is allowed access to the records by order of the court based on a legitimate interest in the particular case or the work of the court and upon written

agreement to maintain the confidentiality of the records.

(e) Law enforcement records concerning a child as the victim, suspect or defendant shall be confidential and not open to inspection except by law enforcement personnel; persons or entities named in (c) of this section, the child if the child is a suspect or defendant, parent, guardian or legal custodian, the defendant, the defendant's attorney, court personnel designated by the court, Lummi Victims of Crime, the Lummi Housing director and any other person who is allowed access to the records by order of the court based on a legitimate interest in the particular case or and upon written agreement to maintain the confidentiality of the records.

(f) Upon written agreement by the recipient to maintain the confidentiality of the information defined as confidential in this section, it may be further disseminated:

(1) by the Lummi Children Services Department, Office of the Reservation Attorney, attorneys for parties to the proceedings, guardian ad litem, and the Lummi Police Department as needed to carry out the functions assigned to that person or entity under this Title; except that the attorneys for parties may not advise the attorney's client of the identity of the child's caretaker or the physical location of the child, or otherwise disseminate that information, without authorization from the court or written consent of the caretaker;

(2) to persons who are granted limited access to the information, as a participant allowed under provisions of the Lummi Code of Laws, to the extent that the information relates to their participation;

(3) to a treatment provider providing treatment to the perpetrator or the child;

(4) to law enforcement agencies in other jurisdictions that are investigating allegations of abuse or neglect of a child, or crimes against a child in that jurisdiction by the same alleged perpetrator;

(5) to child protection agencies in other

jurisdictions that are providing services to the alleged victim or the same alleged perpetrator;

(6) to organizations seeking to provide services for children in their care; and

(7) to federally-funded benefit programs which provide assistance to individuals based on need.

(g) Except as otherwise provided in this Title, all persons who are allowed access to confidential information about a child or the child's family pursuant to this Title shall maintain the confidentiality of that information. Any person who violates a duty of confidentiality established under this Title shall be guilty of an offense and fined not more than \$500 and imprisoned not more than ten days. If the person is an employee of the Lummi Indian Business Council, the person is additionally subject to employee discipline up to and including termination of employment. To the extent that the violation of confidentiality arose from release of information obtained during a court proceeding or from court records, the person is also subject to Contempt of Court sanctions under Chapter 4.06.

(h) The results of background checks conducted under this Title may only be released to the person for whom the check is being conducted and to the Lummi Children Services Department. The results of the background check may only be used for the purposes allowed under this Title.

(i) Except as allowed in this section, no disclosure may be made to LIBC, or to any LIBC agency or committee, of information which identifies or provides the location of families and caretakers involved in a child protection case, including the parent, child, foster parent, legal custodian, legal guardian, or adoptive parent, unless the person whose privacy is protected by this provision has signed an appropriate voluntary release authorizing disclosure of the information to specified individuals.

8.01.190 Conducting Hearings Under this Title

(a) All court proceedings under this Title are closed to the general public, except for the parties to the proceeding, the attorneys for parties to the proceeding, the guardian ad litem, court personnel designated by the court, child welfare workers, and attorneys in the Office of Reservation Attorney. Other members of the child's extended family, including but not limited to the aunts, uncles, siblings first cousins, and other family members identified by those persons as having a close relationship with the child, may attend or be present at any hearing under this Title if the Children's Court shall determine on the record that the person's participation is in the best interests of the child and the person's presence will not be disruptive to the proceeding. It is presumed that the presence of the grandparents is in the best interests of the child unless a party or the guardian ad litem objects and shows good cause that the person should not be allowed to participate based on the best interests of the child. All persons present in the courtroom are bound by the confidentiality requirements stated in LCL 8.01.180.

(b) In addition, while a child is in the care of a relative caregiver, foster parent, or pre-adoptive parent, the Lummi Children Services Department must provide such person with timely notice of any proceedings held under Chapters 8.05 and 8.07 of this Title with respect to the child. The Children's Court must provide such persons the opportunity to be heard at those proceedings. Except as otherwise provided in this Title, the right to notice of and opportunity to be heard at these proceedings does not include the right to standing as a party to the case or to participate in the proceedings beyond being heard.

(c) Unless otherwise provided in this Title, the standard of proof for the Children's Court's determinations under this Title shall be a preponderance of the evidence; provided, however, that the standard of proof for permanent suspension of parental rights under LCL 8.07.030 shall be by clear, cogent and convincing evidence. The formal rules of evidence shall be applied in fact-finding hearings for determinations under LCL

Chapters 8.03, 8.05, 8.07 and 8.08. The formal rules of evidence do not apply in preliminary, dispositional, and review proceedings under this Title.

(d) If the Children's Court determines that it is in the best interests of the child and does not violate the rights of a party, the court may allow a child witness to testify by means of a videotape deposition, closed circuit television, or other appropriate method.

(e) The following types of statements by a child under the age of 13 are admissible in evidence in a proceeding under this Title if the court finds that the time, content, and circumstances of the statement provide sufficient indicia of reliability:

- (1) describing any act or attempted act of sexual contact with the child by another; or
- (2) describing an act of physical abuse on that child by another.

A statement may not be admitted under this subsection unless the proponent of the statement makes known to the adverse party the intention to offer the statement, and particulars of the statement, sufficiently in advance of the proceedings to provide the adverse party with a fair opportunity to meet the statement.

(f) The Children's Court may enter a default order against a party, granting the relief requested in the petition, upon motion and affidavit or testimony that provides satisfactory proof to the court that:

- (1) the summons and petition were served in accordance with the requirements of this Title;
- (2) the party has failed to respond or appear as required under the summons issued pursuant to this Title;
- (3) the request for relief made in the petition has a basis in law and fact;
- (4) the court has jurisdiction over the person and the subject matter.

8.01.200 Out-of-Home Placement Priorities

(a) It is the goal of this Title to keep children in a family environment when possible, and to separate the child from the child’s parents only when necessary for the child’s welfare or in the interest of public safety.

(b) In making placements, the child’s health and safety must be the paramount concern. In making an out-of-home placement of a child, a priority shall be placed on keeping the child together with the child’s minor siblings unless placement together is not in the best interests of the child. Additionally, if a child’s parent is working toward reunification with the child, a priority shall be placed on placing the child in a location that presents the greatest likelihood of achieving reunification.

(c) Under Chapters 8.05 and 8.07 of this Title, the Lummi Children Services Department and the Children’s Court shall make every effort, consistent with (b) of this section, the best interests of the child, and the special needs of the child, to adhere to the following priorities as listed for placement when out-of-home placement is required:

- (1) with grandparents;
- (2) with other adult relatives;
- (3) with tribal members of the child’s tribe;
- (4) with members of other tribes;
- (5) with community members;
- (6) with Lummi licensed tribal facilities; and
- (7) with non-tribal members who are sensitive to and committed to encourage and maintain the child’s access to the child’s inherent tribal heritage, culture, traditions, and history; and contact with the child’s tribe.

In making this decision, the Lummi Children Services Department and the Children’s Court shall consider recommendations made by the guardian ad litem, the Lummi Children Services

Department, other parties to the case, and the child’s treatment providers and written recommendations made by persons related to the child by blood or marriage as a grandparent, aunt, uncle, sibling, first cousin, and other close family members identified by those persons.

(d) Other than the priorities established in this section for placement in a relative or tribal home, the placement of a child in a foster or adoptive home may not be delayed or denied based upon the race, color, or national origin of the foster or adoptive parent.

8.01.210 Severability

If any provision of this Title or its application to any person or circumstances is held invalid, the remainder of the Title or the application of the provisions to other persons or circumstances is not affected.

Chapter 8.02 Status of Juveniles

8.02.010 Age of Majority

Except as otherwise specifically provided by this Title, all persons shall be deemed and taken to be of full age for all purposes at the age of 18 years.

8.02.020 Contracts of Minors – Disaffirmance

Unless that child has been legally emancipated, a child is not bound by any contract made by the child unless it is a contract for necessities, such as food, medical care, or shelter. A child will be held to the child’s contracts where, on account of the child’s own misrepresentations as to the child’s majority, the other party has good reason to believe the minor capable of contracting.

8.02.030 Civil Actions

Unless that child has been legally emancipated, a child may not bring a civil action in the court pursuant to Title 3 of this Code except by way of a parent, guardian or a guardian ad litem, to be appointed by a court judge upon application to the court. The provisions of 8.05.150 through 8.05.160 do not apply to this Section.

8.02.040 Liability for Acts

In the event that a minor shall do or cause

damage to the person or property of another, the minor and such parent or other person having legal obligation for such minor shall be fully liable for the damage caused.

Chapter 8.03 Delinquent Children

08.03.010 Definition of Delinquent Child

A person is a delinquent child under this Title if the person is under the age of 19 years and, while under the age of 18:

- (a) has committed an act which is a violation, or which if done by an adult would constitute a violation, of a law or ordinance of the United States or this Code;
- (b) is beyond the reasonable and lawful control of the child's parents or other persons having the child's custody;
- (c) whose behavior or condition is such as to endanger the child's own welfare or the welfare of others;
- (d) has run away from home;
- (e) is repeatedly absent from school without good cause; or
- (f) violates any law or ordinances enacted by the Lummi Indian Business Council governing the actions of such children.

8.03.020 Temporary Custody of Child Alleged to be Delinquent

(a) As soon as practicable after taking a child alleged to be delinquent into custody, the police officer or other person taking the child shall notify the child's parents, guardian or other person responsible for the child that the child has been taken into custody, the reasons for taking the child into custody, and the name and telephone number of the entity which is managing the case. Until the person responsible for the child is notified, efforts to notify the person shall include telephone and personal contacts at the home or place of employment or other locations which the person is known to frequent with regularity. If notification cannot be provided to the responsible person, the notice shall be given to a member of the extended family of the

responsible person.

(b) The police officer or other person taking the child into custody shall release the child to the parents or other responsible person, except in the following circumstances:

- (1) when the court orders the child is not to be released;
 - (2) when an agency legally charged with the supervision of the child has notified a law enforcement agency that the child has run away from a court-ordered placement; or
 - (3) where it appears to the police officer that the welfare of the child or of others may be immediately endangered by the release;
- (c) If a child taken into custody under this Section is not released, the police officer or other person taking the child into custody shall without unnecessary delay take the child:
- (1) before the Tribal Court;
 - (2) to a facility or home designated by the Lummi Nation for the temporary placement of children alleged to be delinquent; or
 - (3) to the juvenile detention quarters designated by the tribe.
- (d) Except when the child is taken in custody pursuant to an order of the court, the police officer or other person taking the child into custody shall promptly notify the court within regular hours the next day the court is open that a child has been taken into custody and shall as soon as possible thereafter file with the court a written report stating the child's name, age and address and the reason why the child was not released to the child's parents or guardian.
- (e) A child must be released from temporary custody under this Section unless, by the end of the next day the court is open following the day when the child was taken into temporary custody, the court approves continued custody.
- (f) Only children 14 years of age or older may be held in detention without prior approval of a court judge.

(g) No child, unless that child has been remanded as an adult under 8.03.050 of this Title, shall be held in an adult jail facility.

8.03.030 Procedure for Delinquent Children

The Lummi Nation may file a petition or complaint in the court alleging that a child has violated this Title. The court may conduct a preliminary inquiry to determine whether the interests of the child or the public require that further action be taken. In any petition alleging delinquency, a parent or legal guardian of the child alleged to be delinquent may be made a party in the petition, or may be added at a later date. Upon the basis of the preliminary inquiry, the Court may:

- (a) make informal recommendations to the child and the child's parent or person having custody as are appropriate to the circumstances;
- (b) require the child and the child's parents or person having custody to appear for an informal hearing, where the court may hear and determine the case in a private and informal manner and may, in lieu of any punishment provided for in the code, place such juvenile under agreed conditions of conduct or under the supervision of a responsible person, institution, or organization selected by the court, under such provisions as the court may see fit;
- (c) direct the child and the child's parents or person having custody to appear in a formal hearing before the court; or
- (d) remand the child under 8.03.050 to stand trial as an adult for the offense charged.

8.03.040 Parental Request For Court Supervision for Children In Need

Any custodial parent or guardian may submit an affidavit and request to the Lummi Nation to initiate a delinquency petition alleging that the child has committed a crime, has run away repeatedly, has failed to attend school without good cause, or is otherwise beyond the control of his or her parent or guardian. Upon receiving such a petition, the court shall conduct the same inquiry as detailed in 8.03.030.

8.03.050 Remanding of Child to Trial as an Adult

A child may be required to stand trial in open court, receiving only such rights and punishment as a person eighteen years of age or older, if

- (a) the child is at the time of remand, 16 years of age or older;
- (b) the child has committed or is alleged to have committed a criminal violation or a violation of a tribal ordinance; and
- (c) the court determines that handling the case as a delinquency proceeding will not serve the best interests of the child or the public.

8.03.060 Truancy Unlawful

It shall be unlawful for any child over the age of 12 to fail to attend school without good cause. Any child found responsible for failing to attend school may be sentenced to detention for a period up to 15 days and a fine of no more than \$250. Failure to attend school shall include being in the school building but failing to attend appropriate class without good cause.

8.03.070 Consumption of Tobacco by a Minor Unlawful

It shall be unlawful for any child to possess or consume tobacco in any form, including, but not limited to chewing and smoking. Any child found consuming tobacco may be sentenced to detention for a period up to three days and a fine of no more than \$100.

8.03.080 Conducting the Hearing

Court hearings under this Chapter shall be closed hearings, unless the child, the child's parent, or person having custody otherwise requests. The general public shall be excluded and only such persons admitted as the Judge finds have a proper interest in the case or the work of the Court.

8.03.090 Disposition in Delinquency Cases

- (a) After a fact finding hearing where the Court finds that the child is delinquent under 8.03.001, the Tribal Court shall enter an

appropriate order directing the disposition to be made in the case. For the purpose of determining the proper disposition of the child after fact finding, the Court may receive testimony, reports or other material relating to the child's mental and physical health and social history. Rules excluding hearsay evidence do not apply.

(b) The Court may order any combination of the following:

(1) direct that the child be placed on probation or under protective supervision;

(2) direct that the child be placed in the legal custody of a relative, a person maintaining a foster home, or a group home approved by the court;

(3) specify particular requirements to be observed during the probation period or protective supervision, including but not limited to restrictions on visitations or communications by the child's parents, restrictions on the child's associates and activities, and may require the child to report to an appointed counselor;

(4) order restitution for property taken, damaged or destroyed by the child as a condition of probation;

(5) order the child to perform acts that will be beneficial to the child or the community;

(6) place the child under the supervision of a responsible person, detention facility, institution or organization;

(7) take any other action deemed necessary, as may be beneficial for the child or the community.

(c) If a parent has been made a party to the matter, the Court may order the parent, parents or legal guardian to attend a hearing scheduled in the matter, to submit to recommended counseling, or to participate in any probation or other treatment program ordered by the court. The Court may enforce any of its orders issued pursuant to this Section by use of its contempt power. Additionally, the Tribal Prosecutor may initiate criminal proceedings for

Disobedience to Lawful Orders of the Court.

(d) Instead of making a disposition under (a) of this Section, the Court may direct the juvenile to stand trial as an adult in open Court, as provided in this Chapter.

(e) Notwithstanding other provisions in Chapter 8.02, a child is bound to any contract that the child makes to comply with conditions of probation under this Section or with an informal resolution under this Chapter.

8.03.100 Termination of Tribal Court Jurisdiction over a Delinquent Child

The court's jurisdiction over a child brought before it under this Chapter continues until whichever of the following occurs first:

(a) The court dismisses the child from court supervision;

(b) The child is remanded to be tried as an adult, unless the child, after remand, is not convicted; or

(c) The child reaches 19 years of age.

Chapter 8.04 School Truancy

8.04.010 Purpose

It is the paramount duty of the Lummi Nation to provide for the education of its children in basic academic subjects and to prepare them to function as productive and culturally knowledgeable members of the Tribe and the Lummi Community.

8.04.020 Definitions

(a) "Alternative Education Program" shall mean an individualized educational program described in a contract approved by the Superintendent or his designee or the appropriate authority of a non-Tribal school in Whatcom County. This shall include a GED program.

(b) "Child" shall mean a child who has turned age 5 by September 1 of that school year to the age of 18 years, whether or not emancipated, who is a member of the Lummi Nation, who resides within the Lummi Reservation, or who is enrolled in the Lummi

Tribal Schools.

(c) “Home School Program” shall mean an individualized educational program described in a contract approved by the Superintendent or his designee or the appropriate authority of a non-Tribal school in Whatcom County.

(d) “School” shall mean the Lummi Tribal Schools, or any school within Whatcom County which has enrolled a Lummi child or a child residing on the Lummi Reservation or an Alternative Education Program.

(e) “Superintendent” shall mean the Lummi Superintendent of Education.

(f) “Truancy Officer” shall mean the person designated by the Tribal Court or the Reservation Attorney’s Office to enforce the provisions of this Code in court actions.

8.04.030 Compulsory School Attendance

(a) Every child shall attend school daily from Monday through Friday during normal hours that school is in session unless:

- (1) the child’s absence is excused pursuant to school policies; or
- (2) the child is participating in an approved school function or is in a Home School or an Alternative Education Program; or
- (3) the child has a high school diploma, GED, or equivalent.

(b) The Superintendent shall be responsible for informing the students and the parents of the students enrolled in the Lummi Tribal Schools about the compulsory education requirements of this Chapter. This information shall be distributed at least annually.

(c) Any individual concerned about a child’s school attendance may report the details of his or her concern to the Superintendent or his designee, to an Officer of Lummi Nation Police Department, or to the Truancy Office.

(d) It shall be the duty of the Superintendent

to create a system to track attendance for the Tribal School and to forward the information of those students and parents who violate the school’s attendance policy to the Lummi Nation Police Department and the Truancy Officer.

(e) It shall be the duty of Lummi Nation Police Department officers who observe a child not in school during normal school hours to determine the status of that child and whether the child is absent from school without good cause as defined in sub-section (a).

(f) Upon receipt of a report concerning a child’s school attendance, it shall be the duty of the individual receiving the report to investigate the facts and circumstances of the report and to make a written report to the Truancy Officer.

(g) The Truancy Officer shall determine whether sufficient facts exist to file a petition against the parent and/or the child under this Chapter, to refer the matter to the Tribal Court’s Community Panel program, or to file a petition with the Tribal Court pursuant to Chapter 8.04. In either case, the Truancy Officer shall give notice of the referral to the child and his parent or person having custody. If a parent or person having custody cannot be found, the Truancy Officer shall notify one or more relatives of the child whose names and addresses shall be provided to the Truancy Officer by the Enrollment Office.

(h) The Tribal Court may:

- (1) make informal recommendations to the child and his parent or person having custody to ensure the child’s regular attendance at school on a voluntary basis; or
- (2) direct the child and his parent or person having custody to comply with specific requirements, established by the Court. These may include fines, community service, parenting classes, conferences with the public health nurse, supervision by probation, and other requirements designed to ensure the child’s regular attendance at school.

(i) If the Truancy Officer determines that sufficient facts exist to form the basis of a criminal complaint against the parents under Section 5.06.020, the Truancy Officer may refer the matter to the Tribal Prosecutor.

(j) Nothing in this Section shall prevent the charging of a parent under Title 5 of this Code for failing to send a child to school, or a charging a child under Chapter 8.04 of this Title for failing to go to school.

Chapter 8.05 Children in Need of Protection

8.05.010 Definition of Child in Need of Protection

For the purposes of this Title, a “child in need of protection” is a child who:

(a) has no parent, guardian, or custodian available, willing, and/or capable to care for the child;

(b) has suffered or is likely to suffer significant physical injury as the result of abuse or neglect;

(c) who has suffered, or is likely to suffer, significant psychological or emotional damage as the result of abuse or neglect;

(d) has been sexually abused or sexually exploited as defined in the Lummi Code of Laws;

(e) has committed a crime or engaged in activity which would constitute a crime if committed by an adult, as a result of parental pressure, guidance, approval or other conduct;

(f) has not been provided adequate food, clothing, shelter, medical care, or education, or care and control by the child’s parent, guardian, or custodian, which is necessary for the child’s health, safety, or well-being, and the deprivation is not due to the lack of financial resources available to the parent, guardian, or other custodian;

(g) has been placed at an unreasonable risk to the child’s health or welfare by failure of the parent, guardian, or custodian to intervene to

eliminate that risk when that person has or should have knowledge of the risk;

(h) has been born addicted or exposed to alcohol, a controlled substance, or any other drug harmful to the physical or mental welfare of the child;

(i) has witnessed significant domestic violence and the child’s parent, guardian or custodian has failed to eliminate the risk of the child witnessing that domestic violence when that person has or should have knowledge of that risk; or

(j) has been beyond the reasonable control of the parents or legal guardians, and acted in ways that placed the child’s health and welfare at risk.

8.05.020 Initiation of a Child in Need of Protection Proceeding

The Lummi Children Services Department may initiate a Child Protection proceeding by filing a petition in the Children’s Court alleging that a child is in need of protection due to the existence or occurrence of one or more of the conditions specified in LCL 8.05.10. The Court may also, at any time and in its discretion, convert a delinquency petition into a proceeding to determine where a child in need of protection.

8.05.030 Summons for Child in Need of Protection Proceeding

(a) A summons along with a copy of the petition must be served on the child, if the child is over 13 years old, and to the child’s parents, guardian, or custodian. If the child has been removed from the home of a legal guardian or custodian, the legal parents shall additionally be served.

(b) At a minimum, the summons shall:

(1) advise that a petition has been filed in the Children’s Court to determine whether the child is in need of protection;

(2) require personal attendance before the Court at the stated dates and time scheduled for the shelter-care hearing and the fact-finding preliminary hearing;

(3) advise that if the person fails to appear at the hearing, or at subsequent hearings scheduled in the matter for which the person has notice, that the court may enter a default order granting the relief requested in the petition;

(4) advise that, if the person cannot for good cause appear personally at a hearing, the person can request permission from the court to appear telephonically; and

(5) advise that free legal assistance is available through the Office of the Public Defender to the parents of the child and to a child age 13 or over; the summons must provide the mailing address and telephone number for the Office of the Public Defender.

(c) Service and proof of service of the summons and petition shall be conducted under the rules set forth in LCL 3.03.030, 3.03.040(b) and 3.03.060. A child welfare worker is not a party to the action for purposes of service under LCL 3.03.030(b). Upon showing to the court that diligent efforts were made to locate and serve a parent and were unsuccessful, the court may allow service to be made by publication of the summons pursuant to the publication provisions in LCL 3.03.040(b). The published notice shall identify the child only by initials.

8.05.040 Temporary Placement of a Child into the Custody of the Lummi Nation

(a) Upon a factual showing that the child's health, welfare or safety would be put into danger if the child's parents, guardian or other person responsible for the child were given advance notice of the application, the Children's Court may grant an ex parte application by the Lummi Children Services Department to take the child into temporary custody if the Court finds probable cause exists to believe the minor is a child in need of protection and the conditions in which the child is found present an imminent danger to the child's health, welfare or safety. The application must state what efforts were attempted to prevent the imminent danger and the factual basis for the allegation that the child's health, welfare or safety would be put

into danger if the child's parents, guardian or other person responsible for the child were given advance notice of the application. The Children's Court order may include:

(1) authorization to enter specified premises to remove the child; and

(2) a grant of temporary custody to the Lummi Nation pending a preliminary hearing.

(b) In the absence of a court order, a child in need of protection may only be taken into temporary custody if a law enforcement officer finds probable cause that:

(1) a failure to remove would place the child in danger of imminent and serious harm; or

(2) the child is in need of adult supervision and has no appropriate adult supervision.

(c) The person taking a child into custody under the provisions of this section shall immediately contact the entity designated by Lummi Nation for placement of children, which shall specify an appropriate placement for the child. The person shall take the child to the specified placement. In making the placement decision, the entity shall:

(1) place the child with the person or persons requested by the child's parent(s) unless parent's action or conditions indicate that the parent's judgment is impaired to a degree that makes the parent's decision unreliable or unwise; or

(2) Place the child in accordance with the priorities established in LCL 8.01.200.

(d) As soon as practicable after taking a child into custody, the law enforcement officer or child welfare worker taking the child shall notify the child's parents, grandparents, guardian or other person responsible for the child that the child has been taken into custody, the reasons for taking the child into custody, and the name and telephone number of the entity which is managing the case. Efforts to notify the responsible person shall include contacts at the home, place of

employment, or other locations where the person is known to frequent with regularity. If notification cannot be provided to the responsible person, the notice shall be given to a member of the extended family of the responsible person.

(e) As soon as practicable after taking a child into custody, the Lummi Children Services Department shall serve a copy of the Summons and Petition on the parents of the child, together with any other pleadings or orders that have been filed or entered in the case.

(f) Within seventy-two hours, excluding weekends and judicial holidays, after a child has been taken into temporary custody and remains in temporary custody, the Children's Court must conduct a shelter-care hearing. The Court shall make a finding whether it is contrary to the welfare of the child to remain in the family home, whether the child's welfare can be served by a family member who is willing to assume responsibility for the child, or whether placement of the child out of the home would be in the best interest of the child. The court's finding must be based on the individual circumstances of the case, and be stated in the court order. If the court finds that formal placement is not necessary, the court shall release the child from the temporary custody of the Lummi Nation. If, at the time of the shelter-care court hearing, the child's parents, grandparents, guardian, or custodian have not been notified, the court shall hear evidence as to the efforts to investigate the whereabouts and give notice to the parents, grandparents, guardian or legal custodian.

(g) The child shall be placed within reasonable proximity to the child's home, taking into account any special needs of the child and the priorities established by LCL 8.01.200. If a child cannot be returned home, the child shall be placed in the least restrictive setting which most closely approximates a family, and in which the child's special needs, if any, may be met.

(h) A child may not remain in temporary custody for more than 45 days without further order of the court authorizing continued

temporary custody.

8.05.050 Hearing Procedure

(a) Hearings held under this chapter are conducted under the procedures stated in LCL 8.01.190.

(b) Within 45 day after a child is placed in temporary custody under LCL 8.05.040, unless the court finds good cause warrants a delay, the Children's Court shall conduct a fact-finding hearing. At the hearing, the Court will determine whether the child is in need of protection as defined in LCL 8.05.010. Even if the court finds good cause for delay of the fact-finding hearing past 45 days, it must still make the reasonable efforts determination required under LCL 8.05.070 and .080 within 45 days after the child was removed from the family home.

8.05.060 Case Conference Among Parties

If the Children's Court has placed a child into the temporary legal custody of the Lummi Nation at the shelter care hearing conducted under LCL 8.05.050, the Court shall order the parties, their counsel, and the assigned guardian ad litem to participate in a conference for the purpose of assisting in identifying safety concerns, the services necessary to remediate the concerns, and the development of a Child Protection and Reunification Plan.

8.05.070 Child Protection and Reunification Plan

(a) No later than 45 days after the child is removed from the home, and at least 7 days before the fact-finding hearing, the Lummi Children Services Department shall file a proposed Child Protection and Reunification Plan with the court and provide a copy to parties and the guardian ad litem. If the Plan does not have the agreement of all parties, any party not in agreement with the Plan may present objections to the Plan and propose alternatives to the Plan at the fact-finding hearing.

(b) If the Children's Court enters an order under LCL 8.05.050 that a child is in need of protection, the court shall enter an order

adopting a Child Protection and Reunification Plan. The Child Protection and Reunification Plan shall have the goal to preserve the unity of the family whenever possible, and may include, but is not limited to, any of the following:

(1) permitting the child to remain with the child's parents, guardian, or custodian subject to those conditions and limitations the court may prescribe, including the protective supervision or legal custody of the child by the Lummi Children Services Department;

(2) ordering removal of the child from the home of the parents, guardians or custodians and placement in the legal custody of the Lummi Nation;

(3) requiring action as needed to remove barriers to reunification and to provide for the protection and well-being of the child which may include, but is not limited to:

(A) ordering that the child's parents, guardian or custodian take necessary steps to establish for the child a home that is safe and stable, and is free from substance abuse, violence and criminal activity;

(B) entering restraining or no-contact orders as needed for the protection of the child;

(C) ordering the child and the child's parents, guardian or custodian to participate in evaluation, treatment, and monitoring for problems such as substance abuse, mental illness, or emotional disturbance; the court may require residential treatment if needed.

(D) ordering parenting classes;

(E) mandating the child's school attendance;

(F) establishing requirements for visitation and communications with parents and siblings;

(G) ordering any other services or

activities for the benefit of the child and the family;

(H) providing for any other culturally appropriate remedy which would properly address the issues found to have caused the minor to be in need of protection;

(I) requiring releases to be signed allowing for the monitoring of compliance with treatment, services and other court ordered activities;

(J) ordering the parties to cooperate to establish paternity, if in the best interests of the child;

(K) ordering the parties to cooperate to document the child's family tree and tribal associations, and to assist as appropriate in the enrollment of the child if the child is eligible for enrollment in the Lummi tribe and is not enrolled in any other tribe;

(L) requiring that the parties maintain a relationship between the child and the child's extended family, unless maintaining that relationship would not benefit the child or would interrupt the child's re-unification with the parents; and

(M) ordering the parties to appear at all scheduled court hearings and maintain contact with the child welfare workers.

(c) To the extent that information needed to monitor the progress on the Child Protection and Reunification Plan is confidential, such as health and substance abuse information, the court shall issue necessary orders allowing the court and the parties to review the information.

8.05.080 Disposition after a Child is Found to Be in Need of Protection

If the Tribal Court finds that a child is in need of protection under this Chapter, the Court shall order a Child Protection Plan be entered for the child's future protection and well-being. The Court shall receive a proposed

Child Protection Plan from the child welfare worker assigned to the case. The Court shall receive testimony, reports or other material relating to the mental, physical and social history of the child, and the child's parent, guardian or custodian, as necessary for the purpose of determining proper disposition of the case. A Child Protection Plan may not extend beyond the date on which the child becomes 18 years old, unless the child enters into a voluntary placement plan after the child turns eighteen. The Child Protection Plan may include any of the following, giving due weight to the need to preserve the unity of the family whenever possible:

(a) permit the child to remain with the child's parents, guardian, or custodian subject to those conditions and limitations the Court may prescribe, including the protective supervision of the child by a local social service agency or placement conditioned upon compliance with the Court's orders;

(b) ordering removal of the child from the home of the parents, guardians or custodians and placement in tribal custody;

(c) order the child and the child's parents, guardian or custodian to participate in counseling or other treatment program as ordered by the Court;

(d) require action necessary for the protection and well-being of the child including but not limited to:

(1) child support and/or restraining or no-contact orders;

(2) evaluation and treatment (including involuntary residential treatment and drug testing) for substance abuse, mental illness, and/or emotional disturbance;

(3) parenting classes;

(4) mandatory school attendance;

(5) visitation and communication orders;

(6) any other services or activities for the benefit of the child and the family;

(7) provide for any other culturally appropriate remedy which would properly address the issues found to have caused the minor to be in need of protection;

(8) providing that failure to comply with a Child Protection Plan may be punished by contempt of court or a charge of Disobedience of Lawful Order of the Court under this Code;

(9) require releases to be signed allowing for the monitoring of compliance with treatment, services and other court ordered activities;

(10) Establishment of paternity, if in the best interests of the child;

(11) Require maintaining a relationship between the child and the extended family to the extent that resources are reasonably available, unless maintaining that relationship would not benefit the child or would interrupt the child's re-unification with the parents.

8.05.090 Closure of Case

A case under this Chapter shall be closed if:

(a) The Court, after a fact-finding hearing, finds that the child is not in need of protection under the criteria of 8.05.010;

(b) the child has reached 18 years of age or is earlier emancipated, except that a child who has reached the age of 18 may agree with the Tribe to continue in a foster placement or other residential facility until that child has reached the age of 21;

(c) the child has been returned to the home of a parent, guardian, or custodian and the Court finds that no further monitoring is required;

(d) the child has been placed in a permanent guardianship in a home approved by the Court; or

(e) the child has been adopted into a home approved by the Court.

8.05.100 Concurrent Proceedings

Once a child has been found to be a Child in Need of Protection, no proceedings affecting the care of that child shall be entertained by the court unless the Lummi Nation is made a party to the action and agrees to the filing of the proceeding. The Lummi Nation may intervene in any case involving the welfare or interests of a child who has been found to be a Child in Need of Protection.

8.05.110 Periodic Court Review

The status of all children subject to a Reunification Plan shall be reviewed by the Children’s Court at least once every six months. Any party to the proceeding may request a more frequent review by filing and serving a motion demonstrating the need or desirability for the review. At each review, the Court shall determine the continued need for out-of-home placement, and the parties’ progress on the Child Protection and Reunification Plan. If the Court finds that any party or person has failed to perform or carry out any duty or responsibility imposed by the Plan, the Court may enter such orders as it deems necessary to achieve compliance with the Plan. Based on the review, the Court shall project a date by which the child may be safely returned to the home or placed in a permanent out-of-home placement.

8.05.120 Efforts Toward Reunification with the Family

(a) When a child is removed from a family home, the court must make a determination within 45 days after removal as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from the home. The Children’s Court must make a new determination at each subsequent review hearing.

(b) Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if the parent has voluntarily relinquished parental rights to the child, or the Children’s Court determines that the child cannot be safely returned to the parent’s home because:

- (1) the parent has subjected the child to aggravated circumstances including or

equivalent to torture, chronic abuse, or sexual abuse;

- (2) the parent has been convicted of:

- (A) intentional homicide or voluntary manslaughter of another child of the parent, or has aided or abetted, attempted, conspired, or solicited to commit such a crime; or

- (B) a felony assault that results in serious bodily injury to the child or another child of the parent.

(c) If the Children’s Court determines that reasonable efforts to return the child to a parental home are not required, or no longer required because no parent is participating in a reunification plan and appropriate efforts by the Nation to achieve participation by a parent do not indicate a reasonable likelihood of future success, a permanency hearing must be held within 30 days of that determination. In appropriate circumstances, the two hearings may be consolidated.

8.05.130 Permanency Planning

(a) The Lummi Nation recognizes the child’s need for stability and permanence if the child cannot be safely returned to the parental home in a reasonable period of time that is based on the child’s individual needs. In such a case, a safe and stable non-parental permanent home must be found for the child such as relative placement, guardianship, or customary adoption. Priorities of homes for placement are stated in LCL 8.01.130(c).

(b) The Lummi Children Services Department, in consultation with the child’s family, must develop a permanency plan for children placed out of the home, which shall determine whether, and by what likely date the child will be:

- (1) reunified with a parent;
- (2) placed permanently with a fit and willing relative;
- (3) placed into a legal guardianship;

(4) placed into a customary adoptive home; or

(5) placed in another planned permanent living arrangement, but only in cases where the Lummi Children Services Department has documented to the court a compelling reason for determining that it would not be in the best interests of the child to follow one of the four specified options above.

(c) No later than twelve months after the date that a child enters foster care, the Children's Court must conduct a hearing for the purpose of evaluating and determining the permanency plan under (a) of this section and whether the Lummi Children Services Department, in consultation with the child's family, has made reasonable efforts to finalize the permanency plan.

(d) If the child remains in foster care, the court must review and make the same determination no less frequently than every 12 months thereafter. A permanency planning hearing may be combined with the review hearing required under LCL 8.05.110.

(d) In the case of a child who will not be returned to the parent, the court must consider both in-state and out-of-state available homes, if placement in such home is consistent with the priorities in LCL 8.01.130. Permanent placement of a child may not be delayed or denied on the basis that the eligible placement is out of the state.

(e) Reasonable efforts to finalize an alternate permanency plan may be made concurrently with efforts to reunify the child and family.

(f) If a child has remained in foster care for 15 consecutive months, or a cumulative amount of 15 of the most recent 22 months, the provisions for initiation of proceeds to permanently suspend the legal relationship between the parents and the child, as set out in LCL 8.07.040, shall apply.

(g) If the child is 16 years of age or older, the Lummi Nation shall begin services to assist the child to learn independent living skills.

(h) The Court shall consult in an age-

appropriate manner with the child regarding the proposed permanency plan.

8.05.140 Responsibilities of Foster Parent or Guardian

No person who has accepted the responsibilities of custody of a minor child under this Title, shall relinquish, cede or otherwise give up those responsibilities without the permission of the Lummi Children Services Department or the Court. No such permission shall be granted unless adequate provisions for the safety and custody of the child have been made.

8.05.150 Other Court Proceedings Related to Child

Once a child has been found to be a Child in Need of Protection, no separate civil proceeding affecting the care of that child shall be entertained by the Lummi Tribal Court unless the Lummi Children Services Department is made a party to the action. The Lummi Children Services Department may intervene in any civil case involving the welfare or interests of a child who has been found to be a Child in Need of Protection.

8.05.160 Parent's Obligation to Support Child

(a) If a child is placed out of the parental home in a child protection proceeding, the Lummi Children Services Department shall request the Lummi Child Support Program to provide services for the establishment and enforcement of child support order against the parents. If no father's name appears on the birth certificate, and one or more putative fathers have been identified, the Lummi Children Services Department shall request the Lummi Child Support Program to provide series to establish legal paternity. Any existing child support obligation will transfer with the custody of the child.

(b) While the child is in the legal custody of the Lummi Children Services Department there is a factual basis, in accordance with LCL 11.06.130, for deviation from the Lummi Child Support Guidelines to the minimum support amount allowed under the Code. While the child is living in an out-of-home placement, the parent's resources should be targeted toward

efforts to comply with the requirements under the Child Protection and Reunification Plan. If and when the child is placed into the custody of the other parent or into a legal guardianship, the final order for child support shall be established against the non-custodial parent pursuant to the Child Support Guidelines. At such time, the Lummi Tribal Court may determine to reduce the arrears by granting credit against the arrears based on a showing that the parent had expenses and a reduced opportunity for income as a result of complying with the requirements of the Child Protection and Reunification Plan.

(d) For the purposes of this section and of Chapter 11.06 of the Lummi Code of Laws, if a child is born as the result of rape or child molestation, the victim shall not have the duty of financial support of the child during such time that the victim does not have custody of the child.

Chapter 8.06 Neglected and Abused Children – Sanctions and Reporting

8.06.010 Declaration of Purpose

The Lummi Nation acting through the Lummi Indian Business Council finds and declares that the relationship and bond between parents and their children is of paramount importance to the future of the family and to the future of the Lummi Indian Tribe. However, there are occasionally instances where non-accidental injury, neglect, death, sexual abuse, and cruelty to children have occurred by their parents, custodians, or guardians, and in those situations where a child is deprived of the child's right to minimal conditions of safety, health, and nurture, the Nation is justified in intervening on behalf of the child to preserve and protect those rights of the child. It is for these reasons that the Lummi Indian Business Council has enacted this Chapter of the Lummi Code of Laws to be known as the Child Abuse and Neglect Law.

8.06.020 Child Abuse and Neglect Unlawful

(a) A person who cares for or is legally responsible for a child, and who recklessly abuses or neglects that child is guilty of child abuse or neglect and, upon conviction, shall be sentenced to imprisonment for a period not to exceed 365 days and a fine not to exceed

\$5,000.

(b) For the purposes of this Section, "child abuse and neglect" means an act or omission that creates a danger to a child's health, welfare, or safety. This Section shall not be construed to prohibit reasonable parental discipline unless such discipline is proved to be injurious to the child's health, welfare and safety. Child abuse or neglect includes:

(1) infliction of bodily injury, unreasonable confinement, intimidation, emotional abuse or cruel punishment of a child that results in physical pain or mental anguish;

(2) failing to provide adequate food, clothing, shelter, medical care, or education that is necessary for the child's health, safety, or well-being, and the deprivation is not due to the lack of financial resource available to the parent, guardian or other custodian;

(3) failing to protect the child from observing acts of domestic violence; and

(4) placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, guardian or custodian to intervene to eliminate that risk when that person has or should have knowledge of the risk.

(c) Nothing in this Section precludes a prosecution under Title 5 if a crime has been committed under that Title, nor limits the application of other provisions under this Title for the protection of a child.

8.06.030 Reports

Whenever any person involved in the delivery of any health or social service on the Lummi Reservation, including but not limited to social workers, education workers, community health representatives, doctors, nurses, psychologists, psychiatrists, and counselors, or any police officer or other law enforcement officer, shall have reasonable cause to believe that a child has suffered child abuse or neglect, the person shall immediately report such incidence or cause a report to be made to the entity specified by Lummi Children's Services. Any other person who has reasonable cause to believe that a child

has suffered child abuse or neglect may also report such incident to the proper law enforcement agency or to the entity specified by Lummi Children's Services. In all cases where a report is required an immediate oral report shall be made by telephone or otherwise and, upon request, shall be followed by a report in writing. Such report shall contain the following information, if known and applicable:

- (a) Name, address, and age of the child;
- (b) The name and address of the child's parents and other persons having custody of the child or being legally responsible for the child;
- (c) The nature and extent of the child's injury or injuries, if any;
- (d) The nature and extent of the neglect of the child, if any;
- (e) The nature and extent of the sexual abuse of the child, if any;
- (f) Any evidence of previous injuries, including their nature and extent; and
- (g) Any other information which may be helpful in establishing the cause of the child's death, injury, or injuries, and the identity of the perpetrator or perpetrators.

8.06.040 Immunity for Civil or Criminal Liability

Any person participating in good faith in the making of a report pursuant to this Chapter or testifying as to the alleged child abuse or neglect in a judicial proceeding under this Title shall, in so doing, be immune from any liability arising out of such reporting or testifying under any law of the Lummi Nation. Any report conforming with the reporting requirements of this Chapter shall not be deemed a violation of any confidential communication privilege by which the reporting individual might otherwise be bound, except that no attorney shall be required to divulge information which the attorney shall have obtained in a confidential communication from the attorney's client over the objection of the client.

8.06.050 Violations

Any person having a duty to make a report under this Chapter who shall fail, neglect, or refuse to make such report shall be guilty of an offense and fined not more than \$500 and imprisoned not more than ten days.

Chapter 8.07 Permanently Suspending the Legal Relationship between a Parent and Child

8.07.010 Purpose

Involuntarily and permanently suspending the parents' legal relationship with a child should be considered as a last resort after all other means have been explored for a permanent placement of the child. The Lummi Children Services Department shall actively explore legal guardianship or a voluntary customary adoption as a permanency plan if return to the parents cannot be accomplished in a reasonable period of time based on the child's need for permanency. When all other legal options have been exhausted, the best interests of the child require that the legal relationship of the parent and child be permanently suspended because of the conduct of the parent toward the child.

8.07.020 Effect of Permanently Suspending the Legal Relationship between a Parent and Child

(a) The legal relationship between a parent and a child may be permanently suspended under the procedures and standards in this chapter.

(b) For the purposes of the Lummi Code of Laws, permanently suspending the legal relationship between a parent and child means that the parent and the child will no longer have legal powers, rights, and responsibilities toward each other, however the child will maintain the right of inheritance from or through the parent. After the legal relationship between the parent and child is permanently suspended, the parent's consent is not necessary for a customary adoption, legal guardianship, or other permanent placement of the child to be entered.

(c) Permanently suspending the legal relationship between the parent and child does not change the child's kinship ties, inherent tribal heritage, or the child's blood quantum or

enrollment status as a member of any Tribe.

(d) No proceeding seeking to permanently suspend the legal relationship between a parent and child shall be commenced unless the Lummi Nation shall have first convened and facilitated a family decision making conference among the members of the child's extended family for the purpose of:

(1) Exploring family resources that may make permanent suspension of parental rights unnecessary, and using the Nation's best efforts to utilize those resources;

(2) Identifying and providing resources and assistance to the extended family and/or to the parents of the child that may make permanent suspension of parental rights unnecessary; and

(3) Identifying and actively pursuing all other alternatives to permanent suspension of parental rights.

(e) If the Lummi Children's Services Department concludes that none of the resources or alternatives identified and pursued under this section has a reasonable probability of success and that permanent suspension of the legal relationship between the parents and child is appropriate, the Department shall present the case to the Grandparents Committee for review. The Grandparents Committee shall review the family situation, the resources available to the family, the efforts by the Nation to reunite the family, and such other factors as the Committee deems appropriate, and decide whether permanent suspension of the legal relationship is warranted. If the Committee concludes that suspension is not warranted, it shall inform the Department of the additional steps that must be taken by the Nation. If the Committee concludes that suspension is warranted, the Nation may proceed to file an action in the Lummi Children's Court to permanently suspend the legal relationship between the parent or parents and the child.

8.07.030 Grounds for Permanently Suspending the Legal Relationship between a Parent and Child.

(a) The Children's Court may permanently suspend the legal relationship between the parent and child of:

(1) a parent who gives consent in accordance with LCL 8.07.100; and

(2) a father whose name does not appear on the birth certificate and who has not established paternity under Chapter 11.05 of the Lummi Code of Laws, provided, however that identified putative fathers must first be provided notice in accordance with LCL 8.07.060(c).

(b) The Children's Court may permanently suspend the legal relationship between a parent and child upon a finding that the parent has abandoned the child as defined in LCL 8.01.090(k). If the parent has abandoned the child, a presumption exists that the parental relationship has been broken so that the burden shall then be on the parent to prove that the child's bond to the parent has not been broken.

(c) The Children's Court may permanently suspend the legal relationship between a parent and child upon a finding that the child is in need of protection in accordance with Chapter 8.05 of this Title if the Court also finds clear and convincing evidence of each of the following:

(1) The court has entered an order stating what the parent was required to accomplish in order to obtain return of the child, but that the parent has failed to accomplish those things within a reasonable period of time that recognizes the individual child's need for permanency; or the court has entered an order under LCL 8.07.110 that reasonable efforts to return the child to the home are not required because the child cannot be safely returned to the home;

(2) There is a substantial probability of future abuse or neglect if the child were returned to the parent;

(3) The conditions which cause the child to meet the definition of a child in need of

protection under LCL 8.05.010 because of conduct by the parent are unlikely to improve within a reasonable period of time that recognizes the individual child's need for permanency; and

(4) The continuance of the legal relationship between the parent and child is not in the best interests of the child and permanently suspending the legal relationship will be in the child's best interest.

8.07.040 Requirement for Initiation Arising from Child in Need of Protection Proceeding

(a) Unless the case is exempted under (b) of this section, the Lummi Nation acting through its Children Services Department (or successor agency) shall file a petition to permanently suspend the legal relationship between a parent and a child who continues to remain in the legal custody of the Lummi Nation:

(1) no later than the 15th consecutive month that the child has been in out-of-home placement, or a cumulative amount of 15 months in the previous 22 months in out-of-home placement; trial home visits or runaway episodes are not included in calculating 15 months in out-of-home placement;

(2) no later than 60 days after a determination that the child is an abandoned infant as defined in LCL 8.01.090(k); or

(3) no later than 60 days after a determination under LCL 8.05.120 that reasonable efforts to reunify the family are no longer required.

(b) An exemption can be made from the requirement under (a) of this section on a written finding by the Court that:

(1) the child is being cared for by a relative as a non-parental child custodian;

(2) there are compelling reasons under the individual circumstances of that case that permanently suspending the legal

relationship between the parent and child is not in the best interests of the child; the determination shall be made in writing and must explicitly describe the basis for the exception; or

(3) that the Lummi Children Services Department has not provided to the family of the child, consistent with the time period in the case plan, the services deemed necessary in the plan for the safe return of the child to the parent's home.

(c) Simultaneously with a proceeding to permanently suspend the legal relationship between the parent and child in accordance with this Chapter, the Lummi Children Services Department must begin to identify, recruit, process, and approve a qualified family for permanent placement.

8.07.050 Petition for Permanent Suspension of the Legal Relationship between a Parent and Child

(a) Only the Lummi Children Services Department may file a petition under this chapter to permanently suspend a parent's legal relationship with a child. Permanent suspension as part of a customary adoption proceeding brought by a private person is separately addressed in Chapter 8.08 of this Title.

(b) The petition shall state:

(1) The name, date of birth, and tribal affiliation of the child; the child's birth record shall be attached to the petition;

(2) The name, date of birth, affiliation, and last known address for each parent;

(3) If no person has been established to be the father under Chapter 11.05 of the Lummi Code of Laws, the name and last known address of any persons who have been identified as a putative father;

(4) The date that the child was first placed outside of a parental home and the history of the child's placements since that time; and

(5) A brief statement of the facts and reasons supporting the request that the legal relationship between the parent and child should be permanently suspended.

8.07.060 Summons for Permanent Suspension Proceeding

(a) The Lummi Children Services Department shall serve the summons and petition on the legal parents and the child if the child is age 13 or older, with a copy of the petition and a summons. Service and proof of service shall be conducted under the rules set forth in LCL 3.03.030, 3.03.040(b), and 3.03.060. Upon a showing to the court that diligent efforts were made to locate and serve a parent and were unsuccessful, the court may allow service to be made by publication of the summons pursuant the publication provisions in LCL 3.03.040(b). The published notice shall identify the child only by initials.

(b) At a minimum, the summons shall:

(1) advise that a petition has been filed in the Children’s Court to permanently suspend the legal relationship between the named parent and named child;

(2) provide a time and date for required personal appearance before the Children’s Court, which is no sooner than 21 days after the person is served; the summons must provide the mailing address and telephone number for the court;

(3) advise that if the person fails to appear at the hearing, or at a subsequent hearing scheduled in the matter for which the person has notice, that the court may enter a default order granting the relief requested in the petition.

(4) advise that if the person cannot for good cause appear personally at a hearing, the person can request the court for permission to appear telephonically; and

(5) advise that free legal assistance is available through the Office of Public Defender to the parents of the child and to a child age 13 or over; the summons must provide the mailing address and telephone

number for the Office of Public Defender.

(c) At least 30 days prior to a hearing to permanently suspend the legal relationship of any identified putative father who is not on the birth certificate, the Lummi Children Services Department shall give notice to that person of the commencement of the proceedings. If the location of an identified putative father is unknown, the Petitioner may publish notice in accordance with LCL 3.03.040(b), however the child may only be identified by initials and date of birth.

8.07.070 Setting of Hearing

After service of the petition and summons is complete, the parties may request a hearing date from the clerk of the court and provide notice to the parties. The hearing may be continued upon motion of any party to the hearing for good cause shown.

8.07.080 Pre-Suspension Report

Upon the filing of the petition to permanently suspend the legal relationship between a parent and child, the Lummi Children Services, or any other qualified person appointed by the court, shall begin the preparation of a pre-suspension report. In preparing the report, the caseworker shall consult with the child’s parents, guardian, or custodian; and all social services, health, and education personnel who have had prior professional contacts with the child and the child’s parent(s) to determine whether permanently suspending the legal relationship between the parent and the child would be in the best interests of the child. The caseworker may also review any of the child’s previous court records. The pre-suspension report shall be in writing and contain the professional opinions of all personnel consulted. The report shall be presented to the court at least seven days prior to the hearing to permanently suspend the legal relationship of the parent and child.

8.07.090 Hearing

Hearings held under this Chapter shall be conducted under the procedures stated in LCL 8.01.190.

8.07.100 Consent to Permanently Suspend the Legal Relationship between the Parent and Child

(a) As part of a proceeding under this chapter, a parent may consent to permanently suspend the legal relationship between the parent and child, but the consent is not valid unless executed in writing and recorded before a Judge and accompanied by the Judge’s certificate that the terms and consequences of the consent were fully explained in detail and were fully understood. If the parent cannot be physically present in the court, the court may take the consent telephonically under procedures it establishes. Any consent given prior to or within 30 days of the birth of the child is invalid. Any consent may be withdrawn prior to the entry of the final decree permanently suspending the legal relationship between the parent and child.

(b) Except as allowed in this Title, a parent does not have the right to permanently suspend or otherwise end his or her legal rights and responsibilities toward the parent’s child.

8.07.110 Dispositional of Proceedings

(a) If the Children’s Court determines to permanently suspend the legal relationship between the parent and child, the court may:

- (1) grant custody to the remaining parent whose legal relationship with the child has not been permanently suspended by court order;
- (2) proceed to grant a petition for customary adoption pursuant to Chapter 8.08 of this Title, where appropriate; or
- (3) grant legal custody to the Lummi Children Services Department for placement.

(b) If the Children’s Court determines not to permanently suspend the legal relationship between the parent and child, the court shall make a disposition in accordance with Chapter 8.05 of this Title regarding a child in need of protection.

8.07.120 Enrollment Status Unaffected

No adjudication permanently suspending the legal relationship between the parent and child

shall affect the child’s enrollment status as a member of any Tribe.

8.07.130 Termination Order Is Final

An order permanently suspending the legal relationship between the parent and child constitutes a final order for purposes of appeal.

Chapter 8.08 Adoptions

8.08.010 Personal Jurisdiction

The Tribal Court shall have personal jurisdiction for purposes of adoption

- (a) as provided under 8.01.070; and
- (b) over any person adopting an Indian child under the jurisdiction of the Tribal Court.

8.08.020 Petition

Any person 21 years or older wishing to adopt a child shall file a petition with the Tribal Court. A petition filed by a married person shall also be signed by the married person’s spouse unless it is shown that the spouse’s whereabouts are unknown. The petition shall be signed and notarized and include:

- (a) The sex, date of birth, residence and Indian status of the child;
- (b) The full name to be given to the child to be adopted;
- (c) The name, age, place and duration of residence and the Indian status of the petitioner;
- (d) As to each parent of the child, proof of parental consent to the adoption; that the parent is deceased; that the parent’s name does not appear on the birth certificate and the parent has not acknowledged or established paternity under 11.05 of this Code; or, if the parent has not consented to the adoption either, of the termination of the parent’s parental rights or a permanent modification of the parents’ parental rights;
- (e) The reasons the petitioner desires to adopt the child; and
- (d) The proposed inheritance guidelines for the child both from the adoptive parent and the

biological parent.

8.08.030 Consent to Adoption

A parent's consent to adoption is not valid unless executed in writing and recorded before a Tribal Court Judge and accompanied by the Judge's certificate that the terms and consequences of the consent were fully explained in detail and fully understood. Any consent prior to or within 30 days of the birth of the child is invalid. Any consent may be withdrawn prior to the entry of the final Decree of Adoption; provided, however, that if within six months from the date of consent it can be shown beyond a reasonable doubt that the consent to adoption was given as a result of fraud, coercion or duress, such consent may be withdrawn during such period.

8.08.040 Pre-Adoption Report

(a) Upon the filing of a Petition for Adoption, the Tribal Court shall notify and appoint Lummi Children's Services, a guardian ad litem or other qualified person to make an investigation.

(b) A written report shall be filed with the Tribal Court within 45 days of the time of the appointment unless further time is granted by the Court.

(c) The report shall state why the proposed adoption is in the best interests of the child and contain all available information concerning:

- (1) the physical and mental condition of the child, the petitioner and the petitioner's family;
- (2) the parent(s) of the child;
- (3) the home environment, family life, health facilities and resources of the petitioners;
- (4) the child's cultural heritage and Indian status;
- (5) the marital status of the petitioner, if married, and divorce, if any. The names and ages of other children, both natural and adopted of the petitioner; and
- (6) any other facts and circumstances

relating to the propriety and advisability of the adoption.

8.08.050 Notice

After the Petition for Adoption is filed, the Tribal Court clerk shall fix a time and place for a hearing on the petition which shall be not less than 60 days from the date of the filing of the petition. Notice of the Hearing shall be given by the court clerk to the petitioner(s), the child's parent(s) if parental rights have not been terminated, the Lummi Nation, through the Office of the Reservation Attorney, and any other person the Tribal Court believes necessary for the proper adjudication of the petition. Notice shall be delivered personally by a tribal law enforcement officer or appointee of the Tribal Court. If the notice cannot be delivered personally it shall be delivered by certified mail. Upon a showing to the Tribal Court that diligent efforts were made to serve the notice on the child's parent(s), and that for sufficient reasons notice could not be made, the Tribal Court may allow notice to be made by publication, pursuant the publication provisions in Title 3 of this Code. The published notice shall identify the child only by initials.

8.08.060 Adoption Hearing

(a) The petitioner(s) and adoptive child shall appear personally at the hearing unless excused by the Tribal Court for good cause shown. If the Tribal Court is satisfied as to the suitability of the child for adoption, the financial ability and moral and physical fitness and responsibility of the petitioner(s) and that the best interests of the child will be promoted by the adoption, it may:

- (1) enter a final Decree of Adoption; or
- (2) place the child in the legal custody of the petitioner(s) for a period of not more than nine months prior to entering a final Decree of Adoption.

(b) If the Court is not satisfied that the adoption will be in the best interests of the child, the petition shall be denied and the child's guardian or custodian instructed to arrange suitable care for the child.

(c) The Court may continue the hearing to permit further observation, investigation or

consideration of any facts or circumstances affecting the granting of the petition.

(d) If the child is 12 years of age or older, the child's wishes regarding the proposed adoption shall be considered by the Tribal Court.

(e) The Court shall make every effort, consistent with the best interests of the child, to adhere to the following priorities of adoptive families considered:

- (1) Extended family members;
- (2) Tribal members of the child's tribe;
- (3) Other Indians; then
- (4) Non-Indians who are sensitive to and willing to encourage and maintain the child's cultural heritage and contact with the child's tribe.

(f) The Court shall give preference to making an adoption open to avoid permanently depriving the child of connections to, or knowledge of, the child's natural family. Under an open adoption, the parents and members of the child's natural extended family shall have a right of reasonable visitation and communication with the child unless restricted by the Court.

8.08.070 Provisional Placement Pursuant to Final Decree of Adoption

If the Court does not enter a final Decree of Adoption but places the child in the legal custody of the petitioner(s), a qualified individual from Lummi Children's Services shall file a supplementary written report as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents within the next 60 days. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final Decree of Adoption may be entered.

8.08.080 Final Decree of Adoption

The final Decree of Adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable of the proper care of the child. The

adoption decree must address inheritance issues. Within five days after the final Decree of Adoption has been entered by the Court, the Bureau of Vital Statistics of Washington State and the Bureau of Indian Affairs shall be notified by the court clerk that the adoption has taken place. The court clerk shall supply both agencies with all necessary information as well as a copy of the final Decree of Adoption for their records. If the child was born in a state other than Washington, the adoptive parents must provide the clerk of the court with information and reporting documents regarding changing the birth certificate of that state. Within five days of receiving such reporting documents, the clerk of the court shall provide assistance to ensure notification of that state that an adoption has occurred.

8.08.090 Adoption Records

All records, reports, proceedings and orders in adoption cases are confidential and shall not be available for release or inspection. Information contained in such records may be released upon petition to the Tribal Court by the adoptive person after reaching legal majority, or otherwise upon order of the Tribal Court upon good cause shown.

Chapter 8.09 Guardianship of Children

8.09.010 Personal Jurisdiction

The Tribal Court shall have personal jurisdiction for purposes of guardianship

- (a) as provided under 8.01.070; and
- (b) over any person who becomes a guardian under the jurisdiction of the Tribal Court.

8.09.020 Powers and Duties of Guardian

- (a) The guardian of a child has the following powers:
 - (1) to have custody and control of the child;
 - (2) to enroll the child in school and obtain school records;
 - (3) to authorize medical and mental health care for the child and obtain medical and mental health records;

(4) to receive property or money under the terms of any statutory or insurance system, contract, will, or court order and apply the money and property for support, care, and education of the ward; however, the guardian may not apply the child's money or property to recompense for services as the guardian; and

(5) to provide consents that would otherwise be provided by the child's parents.

(b) The guardian of a child has the following duties during the period of the guardianship:

(1) to provide for the child's health, care, education, food, shelter, clothing, and protection;

(2) to conserve the child's property;

(3) to allow the parents and the child's extended family reasonable visitation and communication unless determined inappropriate by the Court;

(4) Provide the Court and Lummi Children's Services with the children's current address at all times;

(5) not permanently remove the children from the county in which they lived at the initiation of the guardianship without approval of the Court;

(6) notify the Court and Lummi Children's Services immediately in the event of circumstances seriously affecting the welfare of the child, such as any life threatening circumstances or major medical problems likely to affect the child's welfare;

(7) notify the Court and Lummi Children's Services of a proposed change in who is caring for the child;

(8) provide information upon request to the Court or Lummi Children's Services regarding the child's safety and welfare; and

(9) appear at hearings reviewing the guardianship as scheduled by the Court and report on the child as required under 8.09.045; and

(10) obey any orders entered by the Court at the time of the establishment of the guardianship and at any subsequent reviews of the guardianship.

8.09.030 Commencement of Guardianship Action

Any person wishing to become a guardian of a child shall file a petition with the Tribal Court. The parents, the child over the age of 13, and the Lummi Nation, through the Office of the Reservation Attorney, shall be served with a copy of the petition and a summons in conformity with Title 3 of the Code.

8.09.040 Petition

The petition shall be signed and notarized and include:

(a) The name, sex, date of birth, residence and Indian status of the child;

(b) The name, age, place and duration of residence and the Indian status of the petitioner;

(c) The name and address of the person or agency having legal or temporary custody of the child;

(d) The relationship between the child and the petitioner;

(e) The status of each parent as to that parent's ability to care for the child; and

(f) a description and estimate of value of all property in which the child has an interest.

If the child is a ward of the court, no petition for guardianship may be filed unless the Lummi Nation has approved of the petition.

8.09.050 Guardianship Report

(a) Upon the filing of a Guardianship Petition, the Tribal Court shall notify and appoint Lummi Children's Services or other qualified person to make an investigation.

(b) A written report shall be filed with the Court within 45 days of the time of the appointment unless further time is granted by the Court.

(c) The report shall contain all pertinent information necessary to assist the court in determining the best interests of the child, including:

- (1) the physical and mental condition, and the cultural heritage and Indian status, of the child, the petitioner, and the petitioner's family;
- (2) The status of each parent as to that parent's ability to care for the child;
- (3) the home environment, family life, and resources of the petitioners;
- (4) the family status of the petitioner, including names and ages of other children, marital status, and previous marriages; and
- (5) any other facts and circumstances relating to the propriety and advisability of the guardianship.

8.09.060 Notice

After service of the summons and the Petition for Guardianship is complete, the parties may request a hearing date from the Tribal Court clerk, and provide notice of that date to the other parties.

8.09.070 Establishment of Guardianship

(a) The petitioner(s) and child, if age 12 or older, shall appear personally at the hearing to establish the guardianship unless excused by the Court for good cause shown.

(b) Before establishing a guardianship, the Court must determine that clear and convincing evidence supports a finding that:

- (1) the child's parents have consented to the guardianship;
- (2) there is not a parent available and willing to care for the child; or

(3) if there is a parent available and willing to care for the child, and:

(A) the child meets the definition of a child in need of protection under 8.05.010 because of conduct by the parent;

(B) there is a substantial probability of future abuse or neglect if the child were returned to the parent; or

(C) the conditions that lead to the finding under (b)(3)(A) of this Section are unlikely to improve within a reasonable period of time.

(c) If the child is 12 years of age or older, the child's wishes regarding the proposed guardianship shall be considered by the Court.

(d) If the Tribal Court is satisfied as to the suitability of the guardianship, it may

(1) enter an order granting a permanent guardianship under such terms or conditions that the court finds appropriate;

(2) enter an order granting a temporary guardianship for a stated period under such terms or conditions that the court finds appropriate;

(3) enter an order granting a guardianship supervised by Lummi Children's Services under such terms or conditions that the court finds appropriate and reviewed by the court at intervals it establishes not to exceed one year; and/or

(4) order that the parents pay to the guardian child support in such amounts and at such intervals as the Court may direct.

(e) The term of the guardianship expires when the child reaches the age of 18 or the guardianship is terminated by order of the Court.

8.09.080 Review of Guardianship

(a) The Court shall have continuing jurisdiction over guardianship cases and may conduct periodic reviews of the guardianship. The Court shall provide notice of the review to the

guardian, the child, if age 14 or older, and the Lummi Nation.

(b) At the review hearing, the guardian shall report on:

- (1) the welfare of the child
- (2) the expenditure and use of any of the child's assets or income;
- (3) the child's health;
- (4) the child's school arrangements, attendance, and progress; and
- (5) the child's contacts, if any, with the child's parents and extended family.

(c) At the conclusion of the review hearing, the Court may enter appropriate orders including terminating the guardianship, re-installing a Child in Need of Protection case, or other orders designed to protect the well-being of the child.

Chapter 8.10 Emancipation

8.10.010 Declaration of Emancipation

Any minor who is 16 years of age or older, under the jurisdiction of this court and living on the reservation may petition in Tribal Court for a declaration of emancipation.

8.10.020 Petition for Emancipation

(a) A petition for emancipation shall be signed and verified by the petitioner, and shall include the following information:

- (1) The full name of the petitioner, the petitioner's birth date, and the state and county of birth;
- (2) a certified copy of the petitioner's birth certificate;
- (3) the name and last known address of the petitioner's parent or parents, guardian, or custodian;
- (4) the petitioner's present address, and length of residence at that address;

(5) a declaration by the petitioner indicating that he or she has the ability to manage his or her financial affairs, including any supporting information; and

(6) a declaration by the petitioner indicating that he or she has the ability to manage his or her personal, social, educational, and nonfinancial affairs, including any supporting information.

8.10.030 Service of Petition -- Notice -- Date of Hearing

The petitioner shall serve a copy of the filed petition and notice of hearing on the petitioner's parent or parents, guardian, or custodian at least 15 days before the emancipation hearing. The notice shall be served in accordance the summons service procedure in Title 3 of this Code. The notice shall contain the following language: "The above captioned minor has filed a petition for emancipation in Lummi Tribal Court. The matter is set for hearing on [date] and [time] at the Lummi Tribal Court, 2665 Kwina Road, Bellingham, WA. As a parent or legal guardian of the minor, you have the right to appear at that time. No petition for emancipation shall be granted if a parent or legal guardian objects. If you fail to appear at the appointed time or otherwise file an objection with this court, the emancipation petition may be granted, and the minor child will become legally an adult."

8.10.040 Hearing on Emancipation

The hearing on the petition shall be before a tribal judge. Prior to the presentation of proof the court shall determine whether:

- (a) the petitioning minor understands the consequences of the petition regarding his or her legal rights and responsibilities;
- (b) an investigation should be made by Lummi Children Services or another qualified person regarding the allegations of the petition and file a report with the Court.

8.10.050 Emancipation Decree -- Certified Copy -- Notation of Emancipated Status

(a) The Court shall grant the petition for

emancipation, except as provided in subsection (b) of this Section, if the petitioner proves the following facts by clear and convincing evidence:

- (1) That the petitioner is 16 years of age or older;
- (2) that the petitioner is a resident of the state;
- (3) that the petitioner has the ability to manage his or her financial affairs; and
- (4) that the petitioner has the ability to manage his or her personal, social, educational, and nonfinancial affairs.

A parent, guardian, custodian, or in the case of a dependent minor, the Lummi Nation may oppose the petition for emancipation. The court shall deny the petition if a custodial parent, guardian or custodian opposes the petition.

(c) Upon entry of a decree of emancipation by the court the petitioner shall be given a certified copy of the decree.

8.10.060 Power and Capacity of Emancipated Minor

(a) An emancipated minor shall be considered to have the power and capacity of an adult, except as provided in subsection (b) of this Section. A minor shall be considered emancipated for the purposes of, but not limited to:

- (1) the termination of parental obligations of financial support, care, supervision, and any other obligation the parent may have by virtue of the parent-child relationship, including obligations imposed because of marital dissolution;
- (2) the right to sue or be sued in his or her own name;
- (3) the right to retain his or her own earnings;
- (4) the right to establish a separate residence or domicile;

(5) the right to enter into non-voidable contracts;

(6) the right to act autonomously, and with the power and capacity of an adult, in all business relationships, including but not limited to property transactions;

(7) the right to work, and earn a living, subject only to the health and safety regulations designed to protect those under age of majority regardless of their legal status; and

(8) the right to give informed consent for receiving health care services.

(b) An emancipated minor shall not be considered an adult for the purposes of the adult criminal laws of the Lummi Nation unless the Court remands the emancipated minor to be tried as an adult pursuant to Chapter 8.03.050 of this Code.

8.10.070 Declaration of Emancipation -- Voidable

A declaration of emancipation obtained by fraud is voidable. The voiding of any such declaration shall not affect any obligations, rights, or interests that arose during the period the declaration was in effect.

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