TITLE 50
YOUTH

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NISQUALLY TRIBAL CODE
TITLE 50 – YOUTH
CHAPTER I - NISQUALLY YOUTH CODE

50.01 PURPOSE AND CONSTRUCTION

50.01.01 Purpose

The Nisqually Indian Tribe recognizes that its children are its most important resource and their welfare is of paramount concern to the Nisqually Indian Community. It is essential that the young Indian people of the Nisqually Indian Community receive care and guidance in their own homes, whenever possible, and that their identity and pride as Native Americans always be protected and preserved. Therefore, this Chapter shall be interpreted and understood to accomplish the following tribal objectives:

(a) To provide for the care, protection and development of Nisqually children;

(b) To ensure that Nisqually children receive assistance and guidance in their own homes whenever possible and are separated from their parents only when necessary for the children's protection;

(c) To discourage delinquent acts and to protect the Tribe's interest by providing supervision, care and rehabilitation;

(d) To provide a simple procedure for addressing and resolving conflict involving Indian children that is reflective of tribal traditions as well as the prevailing community standards and which affords all affected persons a fair and impartial hearing consistent with individual rights; and,

(e) To ensure that off-reservation courts will be able to return Nisqually children to the Tribe for care and guidance.

50.01.02 Construction

This Chapter is exempted from the rule of strict construction. It shall be read and understood in a manner that gives full effect to the purposes stated in subsection 50.01.01.

HISTORICAL AND STATUTORY NOTES

The word "subsection" added during 2003 Tribal Code Formatting Amendments as the word had been previously omitted.

50.01.03 Application of Tribal Law or Custom

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

50.01.04 Sovereign Immunity

The sovereign immunity of the Nisqually Indian Tribe shall in no manner be waived by this Chapter. The employees, appointees, and volunteers of the Tribe are cloaked with the sovereign immunity of the Tribe and are not liable for the inability or failure to provide services to any person.

50.01.05 Severability

If any provision or application of this Chapter is determined by review to be invalid, such determination does not render such provision inapplicable to other persons or other circumstances nor invalidate any other provisions of this Chapter.

50.01.06 Repealer

This Chapter is to be interpreted to supersede and replace all prior provisions of the Nisqually Youth Code and any other conflicting laws, rules, or regulations of the Nisqually Indian Tribe.

HISTORICAL AND STATUTORY NOTES

1. This Title originally enacted April 26, 2000.
2. The word "Code" changed to "Subchapter" where context required throughout this Title to achieve consistency with the 2003 Tribal Code Formatting Amendments.
3. The word "Subchapter" changed to "Chapter" where context required in 2009.
4. The words "Law and Order" changed to "Tribal" in 2003 Tribal Code Formatting Amendments.
5. Subsection 50.01.01(b) amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
6. Subsection 20.01.04 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
7. Subsection 50.01.06 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.02 DEFINITIONS

50.02.01 Definitions

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

(a) Abandon - When a parent leaves a child without adequate communication, or fails to support a child, or the parent has indicated an unwillingness to assume his/her parental responsibilities.

(b) Adult - A person eighteen (18) years of age or older, or a person otherwise emancipated, who is not under continuing jurisdiction of the Youth Court as a Child.

(c) Child - Any person who is:

(i) under the age of eighteen (18) years, including an unborn child; or,
(ii) age eighteen (18) to twenty-one (21) years, against whom proceedings were begun in Youth Court prior to his or her 18th birthday and who turned 18 while under the jurisdiction of the Youth Court, and who is eligible to receive and who elects to receive the extended foster care services authorized in this Code. A person who remains dependent and who receives extended foster care services under this Code shall not be considered a "child" under any provision of Nisqually law or for any other purpose.

(d) Child Advocate - Any person appointed by the Nisqually Tribal Court, or any other court of competent jurisdiction, to represent the interests of a child in any legal proceeding.

(e) Court - The Nisqually Tribal Court.

(f) Custodian - A person or agency, other than a parent or guardian, who has temporary physical care, custody, and control of a child.

(g) Custody - All and exclusive parental rights including, but not limited to, the right to choose the child's residence, education, religious training, association or visitation with others; and the right to consent to medical treatment, military service, and marriage.

(h) Delinquent Act - Any act or omission by a child which would be a crime under the laws of the Nisqually Tribe.

(i) Domicile/Residence - The determination of domicile and residence shall be in accordance with tribal law and custom. In the absence of other factors clearly demonstrating an intent to establish a permanent home off Nisqually Tribal lands, a child's domicile/residence shall be deemed within Nisqually Tribal lands. Periods of time spent off Nisqually Tribal lands for purposes of education, employment, health, or other similar reasons do not affect domicile on the Tribal lands. The off reservation placement of a child in the custody of the Tribe shall be considered temporary and shall not impact the domicile of the child.

(j) Extended Family - To the extent consistent with tribal custom, a person who is the Indian child's grandparent, grand aunt or grand uncle, aunt or uncle, brother or

sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, step-parent or any other person who is considered a family member under tribal law or custom.

(k) Guardian - A person other than a child's parent, who has been appointed by a court to undertake the legal responsibility of daily support and supervision of the child.

(l) Immediate Family - Any person who is the child's parent, grandparent, aunt or uncle.

(m) Indian Child - Any unmarried person under the age of eighteen (18) years who is:
(i) A member of a federally recognized Indian tribe, band or an Alaska Native village or corporation; or,
(ii) Eligible for membership, to include those eligible for adoption, in an Indian tribe or an Alaska Native village or corporation and is the biological child of an enrolled member.

(n) Parent - Includes a biological or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include an unwed father who is not named on the child's birth certificate and has not otherwise established paternity under this Chapter.

(o) Temporary Custody - A custodian with temporary custody has limited rights with regard to the child. The custodian shall have physical custody and the right to consent to emergency medical, dental, and educational care only. A temporary custodian must seek the approval of the Court before exercising any other parental rights in regard to the child.

(p) Tribal Land - All land over which the Nisqually Indian Tribe may legally assert jurisdiction; limited only by federal law and the Constitution of the Nisqually Indian Tribe.

(q) Truant - For the purposes of this Title, a child is considered truant when he or she has failed to meet the school attendance requirements of the Nisqually School Attendance Ordinance.

(r) Ward - Any child over whom the Tribal Court is asserting jurisdiction or respecting whom an action is pending in the Tribal Court.

Historical and Statutory Notes

1. Subsection (m)(ii) of this section was amended by Tribal Council Resolution 40-2012, dated April 10, 2012.
2. The definitions of Child and Adult amended by Tribal Council Resolution 20-2021, dated March 3, 2021.

3. The definition of Child amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
4. The definition of Domicile/Residence amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
5. The definition of Extended Family amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
6. The definition of Indian Child amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
7. The definition of Parent amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
8. Definition of Child amended by Tribal Council Resolution 117-2025, dated August 28, 2025.

50.03 JURISDICTION

50.03.01 Personal Jurisdiction

(a) The Court shall have jurisdiction over any proceeding which, when initiated, involves:
   (i) Any Indian child who resides or is domiciled on Nisqually Tribal land; or,
   (ii) Any child who is a member or is eligible for membership in the Nisqually Tribe, to include those children who may be eligible for adoption into the Tribe, regardless of the child's residence or domicile; or,
   (iii) Any child who has been placed in temporary care on Nisqually Tribal Land, or in any care facility licensed or approved by the Tribe for placement of children, unless said child has been placed by a Court or social service agency having a written agreement to do so with the Tribe.

(b) A written determination by the Tribe that a child is a member or eligible for membership in the Nisqually Tribe, or testimony by the Tribe attesting to such status, shall be conclusive evidence that the child is a member or eligible for membership in the Nisqually Tribe.

(c) The Court shall have jurisdiction over adults in aid of its powers under this Title to the fullest extent allowed by federal law and may make such orders as are necessary and in the best interests of the child.

(d) The Court shall have continuing jurisdiction over a child who is determined to be subject to this Title and shall have the power to modify previous orders, or entertain petitions based on new evidence concerning the child.

50.03.02 Subject Matter Jurisdiction

The Nisqually Court shall have jurisdiction over cases arising under this Title, cases arising under other laws of the Nisqually Indian Tribe providing for disposition by the Court, and any actions arising under the customs and traditions of the Nisqually Tribe affecting family and child welfare.

50.03.03 Jurisdictional Questions

The Court shall have the power to decide questions of jurisdiction which may be raised under this Title. The Nisqually Tribe intends to vest the Court with the fullest jurisdiction possible in order to protect the children and families of the Nisqually Tribe.

50.03.04 Recognition of Other Courts' Orders

The Court may give recognition to state and other tribal court orders relating to the welfare of an Indian child as a matter of comity if the Court granting the order had jurisdiction over the case and the order does not violate the laws of the Nisqually Indian Tribe.

50.03.05 Transfer of Jurisdiction to the Nisqually Court

The Court may accept any transfer of jurisdiction over a child from another court for proceedings under this Title. The Court may accept or decline any transfer of jurisdiction over a youth by ex parte motion.

50.03.06 Transfer to Another Jurisdiction

In any proceeding before the Court, the Court may transfer the proceeding to an appropriate state court or another tribal court where the state or the other Indian tribe has a significant interest in the child and the transfer would be in the best interest of the child. Any transfer of jurisdiction from the Court to another jurisdiction shall be in accordance with the following procedures:

(a) A tribe, parent or guardian may request the Court to transfer a proceeding by filing a petition with the Court. The petition shall include:
    (i) The name, date of birth, address and tribal status of the child who is the subject of the proceeding; and,
    (ii) A plain and concise statement of the reasons the transfer should be granted.

(b) The Court shall schedule a hearing on the transfer request to be held on the next scheduled court date provided that time is allowed for proper service of notice.

(c) Notice of the hearing on the transfer shall be given to all the parties at least five (5) business days before the hearing. The notice shall be given in the manner provided in Section 50.10.01 and shall include:
    (i) The nature of the proceedings of the Court;
    (ii) The date, time and place of the hearing; and
    (iii) A copy of the Petition for Transfer.

(d) The Court shall be guided by the following considerations in deciding whether to transfer jurisdiction:
   (i) The wishes of the parent or guardian;
   (ii) The recommendation of the Indian Child Welfare Department, the Indian Child Welfare Committee, the Nisqually Treatment Team and the Presenting Officer;
   (iii) The tribal affiliation of each party;
   (iv) The residence of each party;
   (v) The child's length of residence on or near the Nisqually reservation or another tribe's reservation;
   (vi) The type, duration and frequency of contacts the child and the child's family members have with each community involved; and
   (vii) The interest shown by the other tribe in responding to the notice given by the Nisqually Tribe.

(e) A parent's wishes regarding the transfer shall be considered but shall not be controlling as to the decision to transfer. The controlling factor shall be the child's best interest.

(f) The Court may make such orders as are necessary to protect the child and to retain jurisdiction over the child, pending the outcome of any transfer proceeding.

50.03.07 Cooperation with Agencies

The Court is authorized to cooperate fully with any federal, state, tribal, public, or private agency to participate in any diversion, rehabilitation or training programs and to receive grants-in-aid to carry out the purpose of this Title. The Court may utilize such social services as may be furnished by any tribal, federal, state, or private agency.

50.03.08 Extended Foster Care Jurisdiction

(a) A child who turns eighteen (18) years old while under the jurisdiction of the Tribe may choose to stay in dependency beyond the age of eighteen (18), up to the age of twenty-one (21). For the purposes of this section, dependency means any Youth in Need of Care Proceeding under this Title, including a Youth in Need of Care Guardianship governed by Section 50.22.10.
(b) A child may enter extended foster care at any time after their 18th birthday and, if necessary, a dismissed dependency will be reopened to allow the child to remain in the Tribe's care. The purpose of this section is to enable the child to receive extended foster care services and help developing independent living skills, obtaining housing, or any other assistance with transition to adulthood.

(c) A child who chooses to participate in this program shall be ordered by the court to be under the placement and care authority of NCFS, subject to the child's continuing agreement to participate in extended foster care services.

(d) The child's parent(s) or guardian(s) shall be dismissed from the proceeding when the child reaches the age of eighteen (18).

(e) The child must agree to comply with all orders of the Youth Court; and be:
    a. Enrolled in a secondary education program or a secondary education equivalency program;
    b. Enrolled and participating in a postsecondary academic or postsecondary vocational education program;
    c. Participating in a program or activity designed to promote employment or remove barriers to employment;
    d. Engaged in employment for eighty hours or more per month; or
    e. Not able to engage in any of the activities described in this subsection due to a documented medical condition.

(f) Tribal jurisdiction will terminate upon the Court's finding that:
    a. The child has completed his or her studies;
    b. The child has withdrawn from his or her school program;
    c. The child no longer remains eligible for the school program;
    d. The child has failed to participate in an activity or program to promote employment or remove barriers to employment;
    e. The child has informed the Court he or she no longer wants to participate in the program;
    f. The child is not complying with the case plan, court orders, or placement rules; or
    g. The child has turned age twenty-one (21).

(g) Extended Foster Care Jurisdiction cases shall be reviewed twice per year unless more frequent reviews are requested by the Tribe or the child. Upon review, the Court shall determine:
    a. Whether the child is safe in his or her placement;
    b. Whether the child continues to be eligible for extended foster care services;
    c. Whether the child is developing independent living skills; and
    d. Whether the child is making overall progress toward full independence.

Historical and Statutory Notes

1. Subsection 50.03.08 of this section added by Tribal Council Resolution 20-2021, dated March 3, 2021.
2. Subsection 50.03.01(a) amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
3. Subsection 50.03.01(b) added by Tribal Council Resolution 71-2023, dated June 8, 2023.
4. Subsection 50.03.05 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
5. Subsections 50.03.08(a) and (e) amended by Tribal Council Resolution 71-2023, dated June 8, 2023.

6. Subsection 50.03.08(a) amended by Tribal Council Resolution 117-2025, dated August 28, 2025.

50.04 PRESENTING OFFICER

50.04.01 Presenting Officer -Appointment

The Nisqually Tribal Council shall appoint one or more Presenting Officers to carry out the duties and responsibilities set forth in this Chapter. In the absence of an appointment to the contrary, or when the appointed Presenting Officer is unavailable, the Nisqually Tribal Court Prosecutor shall carry out the duties and responsibilities of the Presenting Officer. If a Prosecutor is not available, the NCFS social worker involved in the case shall act as Presenting Officer.

50.04.02 Presenting Officer - Powers and Duties

The Presenting Officer shall:

(a) File petitions with the Court as provided in this Title;
(b) Represent the Tribe in all proceedings under this Title; and,
(c) Perform such other duties as the Court or this Title may require.

Historical and Statutory Notes

Subsection 50.04.01 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.05 NISQUALLY CHILDREN AND FAMILY SERVICES

50.05.01 Nisqually Children and Family Services

Nisqually Children and Family Services is an administrative office established by the Tribal Council. It is responsible for the provision of child and family welfare related services and for the implementation of this Youth Code and the Indian Child Welfare Act, 25 U.S.C. 1901 et. seq. The program's primary responsibility is to protect Nisqually children and other children in the Tribe's care. The program's other responsibilities shall include working with children and their families, networking with other departments and programs at the Nisqually Tribe, and working with the child's immediate and extended family members.

50.05.02 Nisqually Children and Family Services - Authority

Nisqually Children and Family Services shall have the authority to render services to children and their families; to recommend transfer of proceedings from state courts to Tribal Court; to initiate proceedings in the Tribal Court; to identify and develop resources on the reservation designed to enhance each child's potential as a responsible member of the tribal community; and to perform such other duties and exercise such other authority

as provided for in this Title or otherwise delegated to NCFS by the Nisqually Tribal Council.

50.05.03 Duties and Responsibilities to Wards of the Court

When a child becomes a ward of the Nisqually Court, Nisqually Children and Family Services' duties include: providing direct services to the child and family to the extent services are available and the child or family is eligible; keeping the Court informed of the child's status, the compliance of the parent, guardian, or caregiver, and the child's safety through reports and participation in review hearings as requested by the Court; and working with other agencies where necessary or appropriate for the benefit of the child and family. Nisqually Children and Family Services shall make reasonable efforts to encourage involvement by the child and his or her family in available services.

Nisqually Children and Family Services is neither responsible for the child's financial support nor is it liable for the criminal and civil acts of the child.

50.05.04 Nisqually Children and Family Services Caseworker

The Tribe shall hire one or more Caseworkers to carry out the duties and responsibilities of Nisqually Children and Family Services as set forth in this Title.

Historical and Statutory Notes

1. "Indian Child Welfare Department" changed to "Nisqually Children and Family Services" throughout this Code and Title 50 by Tribal Council Resolution 71-2023, dated June 8, 2023.
2. Subsection 50.05.01 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
3. Subsection 50.05.02 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
4. Subsection 50.03.05 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
5. Subsection 50.05.04 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.06 INDIAN CHILD WELFARE COMMITTEE

50.06.01 Indian Child Welfare Committee - Purpose

The Indian Child Welfare Committee is hereby established to support and protect Nisqually children and families, in keeping with the customs of the Nisqually Indian Tribe. The Indian Child Welfare Committee shall give recommendations to Nisqually Children and Family Services on measures to be taken to protect tribal families including family support services, emergency placements, longer term placements, and adoptions.

50.06.02 Indian Child Welfare Committee - Appointment

The Indian Child Welfare Committee shall be appointed by the Tribal Council and shall consist of a Chairperson, a Secretary, and Members-At-Large. The Committee shall be

made up of individuals who have special expertise or knowledge regarding the issues surrounding children and families.

50.06.03 Indian Child Welfare Committee - Removal

The Tribal Council may remove a member from the Indian Child Welfare Committee when it determines that removal is in the best interest of the Tribe. If a member of the Indian Child Welfare Committee is absent from more than four meetings in one year, that person shall be removed from the Committee and the Tribal Council shall appoint a replacement.

50.06.04 Indian Child Welfare Committee - Powers and Duties

The Committee shall have those powers and duties specified under this Chapter and any other powers and duties delegated by the Tribal Council.

50.07 COMMITTEE MEETINGS

50.07.01 Committee Meeting - When Scheduled

Committee meetings shall be held at least twice a month on regularly scheduled days. Committee meetings are closed to everyone other than the members of the Committee and one or more representative from and designated by Nisqually Children and Family Services. Other persons may only be present if requested by the Committee. Notices for ICW Committee Meetings shall be distributed by a Committee member to each other member of the Committee, Nisqually Children and Family Services, and any other individual the Committee chooses to invite. Notices need not be posted publically, as the meetings are not open and public. The Committee's Bylaws shall further clarify the Notice requirements and procedure.

Other provisions of Nisqually law which may conflict with this subsection, including but not limited to laws on open and public meetings, shall not apply to ICW Committee meetings. The strict confidentiality of ICW Committee Meetings is of paramount importance and is necessary to protect the privacy and best interests of minor children.

50.07.02 Special Meetings

A special meeting of the Committee may be called at any time by the Chairperson or by a majority of the members of the Committee by delivering written notice to each member of the Committee personally, by mail, by fax, or by electronic mail at least 24 hours before the time of such meeting as specified in the notice. The Notice shall identify the place and time of the meeting as well as the business to be transacted. Notice shall also

be provided to Nisqually Children and Family Services and any other individual the Committee chooses to invite.

50.07.03 Committee Meeting - Purpose

The purpose of the Committee meeting is to provide a means for Nisqually Children and Family Services to keep the Tribe informed regarding actions that are being taken in regard to tribal children. The meeting is also an opportunity for Nisqually Children and Family Services to receive advice from the Tribe regarding actions being taken. Discussions regarding particular individuals and cases are strictly confidential and shall be treated accordingly by all persons attending the meeting.

50.07.04 Committee Meeting - Duties of Nisqually Children and Family Services

When a Committee Meeting is held, Nisqually Children and Family Services shall:

(a) Attend the meeting and inform the Committee of any and all actions it is currently taking in regard to tribal children;

(b) Provide a report on the status of all child abuse and neglect reports made since the prior meeting;

(c) Provide the Committee with a Family Preservation Plan for each child for whom action is being taken at the time the child's case is presented to the Committee; and,

(d) Participate in the Committee meeting and solicit the approval of the Committee regarding the proposed plan of action.

50.07.05 Committee Meeting - Powers and Duties of Committee

(a) The Committee may take the following actions at the Committee Meeting:
  (i) Assist Nisqually Children and Family Services in the formulation of a Family Preservation Plan including soliciting information from persons knowledgeable in the customs of the Tribe and the family; and,
  (ii) Make recommendations to Nisqually Children and Family Services regarding placement or other Court proceedings.

(b) The Committee's power in regards to particular cases shall be limited to authority delegated by the Tribal Council. Nisqually Children and Family Services retains the authority to decide whether to pursue any appropriate action regarding a child.

(c) The Committee shall have the power to review and make recommendations on all foster homes to be used by the Tribe for placement.

(d) The Committee shall establish their by-laws and amend them as necessary.

50.07.06 Committee Meetings – Not Open and Public

(a) Meeting agendas and minutes maintained by the ICW Committee shall not be shared outside of the Committee or Nisqually Children and Family Services unless all confidential information and names are redacted.

(b) ICW Committee Meetings shall not be open and public and are subject to the confidentiality provisions of this Section.

(c) Notices of meetings need not be posted publicly.

50.07.07 Family Preservation Plan

The purpose of the Family Preservation Plan is to resolve the problems within the family that may cause or have caused a child to be determined to be a "child-in-need-of care". The goal of the plan is to allow the family to remain together or to work towards reunification if the child has been or will be removed.

The Family Preservation Plan may include any measures necessary for the protection, safety and well-being of the child and the family, including but not limited to evaluation and treatment (including involuntary residential treatment) of substance abuse, mental illness, and emotional disturbance; parenting classes; mandatory school attendance; visitation orders; restraining orders; and other services or activities for the benefit of the child and his or her family. The Plan may specify that Nisqually Children and Family Services will initiate a Court action if the Plan is not complied with.

The Family Preservation Plan shall include the protection of an unborn fetus or nursing baby whose mother is using alcohol or other drugs, to an extent that the fetus or baby may be endangered, and an unborn child whose mother is not receiving adequate prenatal care.

Historical and Statutory Notes

1. Subsection 50.07.01 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
2. Subsection 50.07.02 added by Tribal Council Resolution 71-2023, dated June 8, 2023.
3. Subsection 50.07.03 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
4. Subsection 50.07.04 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
5. Subsection 50.07.05 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
6. Subsection 50.07.06 added by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.08 CHILD PROTECTION TEAM

(a) Nisqually Children and Family Services shall establish a Child Protection Team (CPT) for the purpose of child protection and family preservation. Child Protection

Team meetings may be specific to child protection investigations or more general community issues. The duties of the Child Protection Team shall include the development and implementation of policies and procedures for providing oversight to review cases and technical assistance to those departments, agencies and individuals that interact with abused and neglected children.

(b) The CPT is designed to promote cooperation, communication, and consistency among tribal programs and departments in order to better serve youth and their families.

(c) A CPT created under (a) of this section shall be made up of persons who have knowledge of and experience in child abuse and neglect matters. These persons may include but are not limited to:

i. Mental and physical health practitioners;
ii. Child development specialists;
iii. Educators;
iv. Law enforcement officers;
v. Victim counselors or advocates;
vi. Experts in the assessment and treatment of substance abuse;
vii. The Nisqually Prosecutor or Presenting Officer;
viii. Persons familiar with the Indian Child Welfare Act;
ix. Guardians ad litem or child advocates

(d) A team created pursuant to this section shall review records on a case referred to the team by Nisqually Children and Family Services. Members of the team shall execute confidentiality agreements prior to receiving any information about a case. Nisqually Children and Family Services shall make available to the CPT its records on the case and any other records compiled for planning on the case by other agencies at the request of NCFS.

(e) The CPT shall make recommendations to NCFS on appropriate planning for the case.

(f) Records or other information collected or created by the CPT or any member of the CPT related to the duties under this section are confidential.

(g) Meetings of the CPT are closed meetings and not open to the public or any person not invited to the team by NCFS.

(h) The determinations, conclusions, and recommendations of a team or its members are not admissible in a civil or criminal proceeding, including Youth in Need of Care proceedings. A member may not be compelled to disclose a determination, conclusion, recommendation, discussions, or thought process through discovery or testimony in a civil or criminal proceeding, including Youth in Need of Care proceedings. Records and information collected by the CPT are not subject to discovery or subpoena in connection with a civil or criminal proceeding, including Youth in Need of Care proceedings.

(i) Notwithstanding (g) of this section, an employee of NCFS may testify in a civil or criminal proceeding concerning cases reviewed by the CPT even though NCFS records were reviewed by the CPT and formed the basis of that employee's testimony.

(j) A person who serves on the CPT is not liable for damages or other relief sought in an action brought by the reason of the performance of a duty, function, or activity of the CPT.

Historical and Statutory Notes

Section 50.08 added by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.09 COURT APPOINTED CHILD ADVOCATES

50.09.01 Qualifications of Child Advocate

Any person who is at least eighteen (18) years old shall be qualified to be a child advocate if he or she has been appointed by the Court after presenting proof of qualifications, training, experience, and a finding has been made that the advocate has the necessary expertise for the proceeding.

50.09.02 Duties of Child Advocate

A child advocate appointed by the Court shall have the following duties:

(a) To represent and be an advocate for the best interests of the child by presenting relevant facts to the court through a written report and direct testimony and to recommend a plan that is in the best interest of the child;

(b) To collect relevant information about the child's situation and the family's circumstances;

(c) To monitor court orders for compliance and to bring to the court's attention any change in circumstances that may require a modification of the court's order;

(d) The child advocate shall be deemed an officer of the court for the purpose of immunity from civil liability.

50.09.03 Appointment of Child Advocate

(a) A child advocate shall be appointed by the Court when the Court determines that a child advocate is available and that it would be in the best interest of the child to

do so. Appointment of a child advocate does not alter a child's right to legal counsel at his or her own expense.

(b) A child advocate may be appointed by the Court at the preliminary hearing or at any time thereafter.

(c) All appointment shall be made by an order of the court which shall include a statement that the child advocate is a party to the case and shall have access to legal records and other information available to any social service agency involved in the case.

(d) The order of appointment shall be mailed to all other parties to the case.

Historical and Statutory Notes

Subsection 50.09.01 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.10 COURT PROCEDURES

50.10.01 Procedures for Service of Notice

(a) No proceeding shall be commenced in the Court without written notice to all parties. Notice shall include:
- (i) The nature of the proceedings and the name of the court;
- (ii) The date, time and place of the hearing; and,
- (iii) A copy of the petition or motion if one has been filed.

(b) The notice shall be served as follows:

- (i) By delivering a copy personally to the party or by leaving a copy at the party's residence with any member of the party's family who is residing therein and is sixteen (16) years of age or older.
- (ii) If, after every reasonable effort is made, the person attempting service is unable to serve the party in the above stated manner and the party's address is known, the notice may be served by sending a copy of the notice to the party by certified mail, return receipt requested, properly addressed, postage prepaid and by sending an additional copy to the party by regular mail. Service shall be complete upon mailing.
- (iii) If, after every reasonable effort is made, the party cannot be located, and the party's address is unknown, any other method reasonably designed to give notice to the party, including notice by publication, shall be sufficient.
- (iv) The Court may authorize publication in any manner reasonably designed to give notice to the other party and shall specify the method(s) of publication in the order authorizing publication. Unless otherwise ordered

by the Court, publication shall be made for three consecutive weeks in a newspaper or newsletter of general circulation, including online publications, on the Nisqually Indian Reservation or in Thurston County.

(v) If authorized by the Court, publication may be done on the Nisqually Indian Reservation by posting copies of the Summons (1) in the monthly Nisqually Tribal Newsletter and (2) at both the Nisqually Court House and Nisqually Administration Building for thirty consecutive days. Publication in this manner shall be deemed complete thirty days after the date of first publication.

(vi) In addition to other methods of publication, the Summons shall be posted by the Court on the official Nisqually Indian Tribe Website on a publicly viewable webpage for Legal Notices. Such online notices shall remain publicly accessible for thirty consecutive days.

(vii) The Summons posted shall be provided by the Court and signed by the Court Clerk. The Summons shall require the other party to appear and respond to the petition and shall contain a brief statement of the object of the action.

(viii) When posting on the Reservation is allowed by the Court, the Court or its designee shall submit the Summons to the Tribal Newsletter and post the Summons at the Nisqually Court House and Nisqually Administration Building.

(c) When a party resides, is domiciled, or can be found on the Nisqually Reservation, the Court Clerk or designee of the Court shall serve the party. When a party resides or is domiciled off of the Nisqually Reservation, the Petitioner shall serve the party. NCFS caseworkers or staff may serve parties personally with notice of proceedings and with any subsequent pleadings or documents requiring service.

(d) Proof of service may be made by affidavit stating that the person has fully complied with the requirements for service. If service is made in the manner described in subsection (b)(ii) or (iii), the affidavit must describe the efforts that were made to personally serve the party.

(e) After the notice of the first court proceeding in the case has been properly served, notice of future hearings may be given verbally in open court. If the party is not present when notice of the future hearing is given in open court, the Court Clerk shall provide notice of hearings by regular mail to the person's last known address.

Historical and Statutory Notes

Subsection 50.10.01 amended by Tribal Council Resolution 94-2026, dated October 1, 2026.

50.10.02 Notice to Other Tribes

If the Court or any party, in a proceeding involving the out-of-home placement of a child, has reason to believe that the child is a member or eligible for membership in another

tribe, the Nisqually Court Clerk shall be directed to give written notice of the proceeding to the other tribe. The notice shall ask that the tribe respond in writing within fifteen (15) days of receiving the notice and to state whether it intends to act in the matter.

50.10.03 Rights of the Parties

(a) All parties are entitled to the following rights in all proceedings under this Title:
  (i) To know the reason, the action was brought and if children were removed from the home, the reason for the removal;
  (ii) The opportunity to subpoena witnesses;
  (iii) The opportunity to introduce, examine and cross-examine witnesses subject to the Court's discretion to take any child's testimony in the Court's chambers;
  (iv) The opportunity to discover, offer and inspect evidence;
  (v) The opportunity to present arguments and statements;
  (vi) A statement by the Court to the child and his or her parent or guardian that they have the right to have a legal representative advise and speak for them, at their own expense;
  (vii) If a party initially appears at a proceeding without a legal representative, the Court shall advise that party of their right to request a continuance of the proceeding at which the party makes an initial appearance in order to seek legal representation. Upon request, the Court shall inform a party of any known available services which provide legal representation at little or no cost to qualified applicants.
  (viii) A party need not be a witness against him/herself.

(b) Both of the parents of a child who is the subject of proceedings under this title shall be considered parties to the case, regardless of whether a custody order has been entered for one of the parents.

(c) There is no right to trial by jury during any proceeding under this Title.

50.10.04 Conduct of Court Hearings

(a) All Court hearings conducted under this Title shall be closed to everyone other than the parties except for good cause shown to the Court. The Court shall have the authority to elicit evidence necessary to make its determination.

(b) All hearings conducted pursuant to this Title shall be conducted expeditiously and fairly. All persons entitled to notice shall have reasonable opportunity to participate in all proceedings affecting the child.

(c) Proceedings involving two or more children may be heard at one consolidated hearing when the factual basis for the proceeding is the same or similar, or for the

convenience of all parties. Separate hearings may be held if it is reasonable to do so or upon request by any party. A guardianship proceeding shall have its own cause number, but any guardianship hearing may be consolidated with the underlying youth in need of care matter. Separate hearings shall be held if a party to one child's hearing would not be allowed to be present in one or more of the other children's hearings.

50.10.05 Evidence

The Court may hear any evidence which is relevant to the case and which is reasonably reliable.

50.10.06 Continuances

Except as otherwise expressly provided in this Chapter, the Court may continue any proceeding:

(a) Upon motion of a party if the Court finds that there exists good cause for the continuance, including time to perfect service or to produce material evidence or witnesses currently unavailable although due diligence has been exercised to procure them, if it is reasonable to believe that the evidence or witnesses with soon become available; or

(b) Upon its own motion, if the Court considers it to be in the best interest of the child.

50.10.07 Records

(a) All conference, hearing, and law enforcement records and files pertaining to a youth in need of care proceeding shall be confidential and shall not be open to inspection to any but the following, except as may be ordered by the Court in the child's best interest:
    (i) the child and their legal representative;
    (ii) the child's parent(s), guardian or custodian and their legal representative;
    (iii) the Nisqually Children and Family Services caseworker assigned to the case;
    (iv) the Presenting Officer or Prosecutor;
    (v) the child advocate assigned to the case.

(b) Nisqually Children and Family Services records pertaining to youth in need of care are confidential. Nisqually Children and Family Services records which may be provided with Court filings, in discovery, or otherwise provided to any individual or entity, shall retain their confidential nature and shall not be further

disseminated except as allowed by Court order or by this Title. This prohibition on dissemination shall include an attorney providing a copy to his or her client.

(c) Notwithstanding subsections (a) and (b), Nisqually Children and Family Services is authorized to provide a copy of any Court Order to the child's school or any other agency when the office determines that to do so is in the best interest of the child. NCFS may also share any of its own records, or any conference, hearing, and law enforcement records pertaining to a youth in need of care, with a Child Protection Team in accordance with Section 50.08, above.

50.10.08 Intervention

Upon showing of good cause and if the best interests of the child so indicate, the Court may allow or invite persons other than those entitled to notice to intervene and participate in any or all phases of the proceedings subject to the rules of confidentiality pursuant to this Title.

50.10.09 Placement Preferences

(a) If a child is placed out-of-home, the following placement preferences shall be observed, in order:
   (i) With a member of the child's immediate family who resides within or near the Nisqually community;
   (ii) With a member of the child's immediate family regardless of residence;
   (iii) With a member of the child's extended family who resides within or near the Nisqually community;
   (iv) With a member of the child's extended family regardless of residence;
   (v) With another person who resides within or near the Nisqually Community who has knowledge of and a desire to foster the child's tribal status and special needs;
   (vi) With a member of, or a person eligible for, enrollment in the child's tribe;
   (vii) With a member of another Indian tribe;
   (viii) With any person who has knowledge of and a desire to foster the child's tribal status and special needs (including but not limited to cultural, therapeutic, and needs based on disability);
   (ix) If this order of placement preference cannot be met, then placement may be made with any person deemed suitable by the entity doing the placement. However, efforts should be made to find a more appropriate placement as soon as possible.

(b) The placement preferences in subsection (a) shall be observed unless the person having priority cannot adequately care for and protect the child or placing the child with the person having priority would pose a danger to the child. When a

youth is in extended foster care, the youth's preference regarding where and with whom to live shall take precedence over the above placement preferences.

(c) Placement of a child with anyone who does not reside within the jurisdiction of the Nisqually Indian Tribe shall be contingent on the person's written agreement to accept the jurisdiction of the Tribal Court, to not permanently remove the child from the State of Washington without permission from the Court or supervising agency, to not allow the child to cross an international boundary, and to cooperate fully with Nisqually Children and Family Services and law enforcement.

In any order which places a child off-reservation, the Court shall include a specific plan to ensure that the child maintains cultural and family ties with the Nisqually Tribe.

50.10.10 Appeals

Any party to a proceeding under this Chapter may appeal a fact finding or dispositional order by filing a written notice of appeal with the Court within fourteen (14) days of entry of the final order. All appeals shall be conducted in the same manner as other civil appeals.

Historical and Statutory Notes

1. Subsection 50.10.01(b) amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
2. Subsection 50.10.01(c) amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
3. Subsection 50.10.04 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
4. Subsection 50.10.07 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
5. Subsection 50.10.09(b) amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
6. Subsection 50.10.10 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.11 REPORTING ABUSE AND NEGLECT

50.11.01 Duty to Report Abuse and Neglect

The care of children is both a family and a tribal responsibility. The following are mandatory reporters who shall immediately report suspected abuse or neglect to the Nisqually Police Department or to Nisqually Children and Family Services: all medical and mental health professionals; court personnel; foster parents; law enforcement; elected officials; and all tribal employees (including volunteers and persons working on contract for the tribe) who perform services to the community in the areas of education, health and human services.

Any other person who has reason to suspect that a child has been abused or neglected may report the abuse or neglect to the Nisqually Police Department or to Nisqually Children and Family Services.

50.11.02 Immunity of Reporter

All persons who report child abuse or neglect, in good faith, are immune from civil liability and criminal prosecution.

50.11.03 Sanctions for Not Reporting

Any person who is required to report abuse or neglect under Section 50.11.01 and who knowingly fails to report abuse or neglect is subject to a civil fine not to exceed $5,000.

50.11.04 Contents of Report

A report of abuse or neglect may be made orally or in writing and must include the following information:

(a) The name, age, address, and tribal status of the child, if known;

(b) A plain statement of the facts on which the report is based, including the date, time, and location of the events;

(c) The name, address, phone number and present location of the suspected offender, if known;

(d) The name of the reporter; and,

(e) Any other information that might be helpful in assisting or protecting the child from further abuse or neglect.

All reports of abuse or neglect shall immediately be documented in writing by NCFS or law enforcement upon receipt.

50.11.05 Confidentiality of Report

Child abuse or neglect reports are confidential, including the identity of the reporter. This confidentiality shall not be interpreted to hamper cooperation between agencies which is necessary to properly investigate child abuse and neglect. Where there is a conflict between confidentiality and the need for communication between agencies and departments, protection of the child shall be the overriding consideration.

50.11.06 Investigation Upon Report

(a) NCFS shall document all reports of abuse or neglect received and shall record the screening decision that was made. Following investigation, NCFS shall document whether the report was determined to be founded or unfounded.

(b) Examinations and interviews of a child suspected of having been subject to abuse or neglect shall be conducted under such circumstances and with such safeguards as are designed to minimize additional trauma to the child. It shall be the responsibility of the departments involved in the investigation and/or prosecution of the alleged offenses to coordinate their interviews and limit intrusive examinations with respect to the child.

(c) Photographs, X-rays, medical examinations, psychological examinations, drug testing, interviews and forensic interviews of a child alleged to have been subject to abuse or neglect shall be allowed without parental consent if NCFS or law enforcement officials have reason to believe the child has been subject to abuse or neglect. (See 25 U.S.C. Chapter 34.) The interviews may be conducted at school, the child's day care facility or at other suitable locations outside the presence of parents or guardians.

(d) NCFS shall have access and be provided copies within a timely manner, recognizing that time may be of the essence, of all records, reports, files, and other relevant information of the child from Tribal departments, clinics, child care facilities, and schools for the purposes of investigating abuse and/or neglect. These records may include but are not limited to health and medical records, school attendance records, disciplinary records, and other behavioral information that may be relevant to a dependency case. This information shall continue to be available throughout the duration of the case.

50.11.07 Reporting Regarding Open Cases

When there is a new allegation of child abuse or neglect not included in the original intake regarding a child who is the subject of an open case, the assigned caseworker must make a report as described in this section, notify law enforcement, and document the action taken.

Historical and Statutory Notes

1. Subsection 50.11.01 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
2. Subsection 50.11.04 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
3. Subsection 50.11.05 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
4. Subsection 50.11.06 added by Tribal Council Resolution 71-2023, dated June 8, 2023.
5. Subsection 50.11.07 added by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.12 CHILD IN NEED OF CARE

50.12.01 Child in Need of Care - Defined

A "child in need of care" is one who:

(a) Has been abandoned or who has no parent or guardian available, willing and able to care for him or her.

(b) Has been severely neglected. Signs that a child has been neglected include but are not limited to the following:
- (i) A child who is not receiving the food, clothing, shelter, medical care, education, or supervision needed for his or her well-being or development;
- (ii) An infant who is failing to thrive;
- (iii) A child who is not dressed adequately for weather conditions;
- (iv) A child who is truant;
- (v) A child left with a baby-sitter who is intoxicated, irresponsible, incapacitated or otherwise incapable;
- (vi) A child who lacks parental control because of the habits or fault of the parent(s) or guardian;
- (vii) A child who is doing the work of a parent in running a household because the parent or guardian refuses or fails to act as a parent or forces the child;
- (viii) A child exposed to a dangerous situation as a result of negligence of the parent or guardian;
- (ix) A child whose parent(s) or guardian misuse benefits intended for the child, such as selling or squandering food stamps or commodities;
- (x) An unborn or nursing child whose mother is using alcohol or other drugs, to an extent that the fetus or baby may be endangered;
- (xi) An unborn child whose mother is not receiving adequate prenatal care;
- (xii) A minor who is allowed access to alcohol or other drugs;
- (xiii) A child who is allowed to be out after curfew;
- (xiv) A child with untreated head lice;
- (xv) A child whose parent or caretaker has failed to protect the child from an abusive caretaker, partner, or significant other;
- (xvi) A child who has been exposed to domestic violence in the home;
- (xvii) A child whose caretaker is using substances to the point that it affects the caretaker's ability to take care of family or other household responsibilities;
- (xviii) A child whose caretaker(s) refuses to assist the child in his or her efforts to receive treatment for alcoholism, drug addiction, or any physical or emotional problem.
- (xix) A child who is not receiving adequate dental care.

(c) Has been emotionally abused. Emotional maltreatment causes impaired psychological growth and development of the child. Both community values and professional expertise should be looked at when deciding whether emotional maltreatment has taken place. Some indicators of emotional maltreatment are:

(i) The child's social relationships are seriously impaired: very low self-esteem, a consistent pattern of emotional difficulties such as listlessness, apathy, depression and self-deprecating remarks;

(ii) Serious inability of the child to respond appropriately to adult/child interactions (e.g., the child cowers or ingratiates himself to adults);

(iii) Refusal to bond or establish an emotional attachment to the child;

(iv) Failure to stimulate/educate the child in an appropriate manner or depriving the child of essential responsiveness which stifles emotional growth and development of the child;

(v) Ridiculing, terrorizing or verbally assaulting the child, creating a climate of fear, bullying the child, name-calling, destroying the child's possessions, or attacking beloved people or pets;

(vi) Forceful isolation of a child or cutting a child off from normal social experiences, preventing a child from forming friendships, or a child who is locked in or locked out of the home or who leaves home because of partying in the home;

(vii) Corrupting a child by teaching him or her socially deviant behavior such as rewarding aggression, delinquency, or sexually precocious behavior;

(viii) Penalizing a child for positive, normal behavior.

(d) Has been or is likely to be physically abused. Physical abuse includes but is not limited to:

(i) Any bruising, welting, abrasion, lesions, burns, broken bones, or other damage to the body, not clearly caused by pure accident;

(ii) Giving a child inappropriate food, drink or drugs or a child who is suffering from malnutrition/dehydration;

(iii) Extreme forms of punishment/isolation including, but not limited to, hair pulling, slapping or hitting the child's head, severe shaking, yanking limbs, twisting or pulling the child's ears;

(iv) Blocking the child's airways or in any way hindering the child's ability to breath;

(v) Exposing the child to toxic substances, including, but not limited to, manufacturing or using drugs in the home.

(e) Has been or is likely to be sexually abused. Sexual abuse includes, but is not limited to the following:

(i) Contacts or interactions between a child and an adult when the child is being used for the sexual stimulation of the perpetrator or another person (Pedophilia). Pedophilia includes grooming or soliciting a child for sexual purposes;

(ii) The exposure of the perpetrator's genitals in the presence of a child, or any other sexual act, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose (Exhibitionism);
(iii) Obscene calls, jokes, peeping, sexual propositions, or other forms of sexual exploitation;
(iv) Sexual positioning for photos or other forms of child pornography;
(v) Forcing a child to watch or engage in sexual acts or sexual violence;
(vi) French kissing, handling genitals, masturbation, mouth to genital contact are forms of sexual intercourse. Rape is not limited to penetration;
(vii) Oral, anal, or vaginal rape;
(viii) Anal or vaginal digital penetration or penetration with any object;
(ix) Sexual maiming or sexual bondage.
(x) Failure to protect a child from sexual abuse by another or to protect against incest between siblings.

Sexual abuse may also be committed by a person under eighteen (18) years of age when that person is either three years, or more, older than the victim, when the victim is a mentally impaired child, or when the perpetrator is in a position of power or control over another child.

(f) Has been committing delinquent acts or is using illegal substances as a result of pressure, guidance, approval, or lack of supervision by his or her parents or guardian.

(g) Has run away from home.

(h) Is beyond the control of his or her parent(s), guardian, or custodian such that his or her behavior endangers the health, safety, or welfare of the child or any other person, and assistance outside the immediate family is needed or requested by the parent or guardian.

(i) Has threatened to commit suicide or is showing other signs of being suicidal.

(j) Is presently in the custody of an individual or individuals who have another child regarding whom the Court has a current finding of being in Need of Care.

50.12.02 Receipt of Report by Law Enforcement

Upon receipt of a report that a child is in need of care, law enforcement shall take the following steps:

(a) Law enforcement shall immediately investigate the report and notify Nisqually Children and Family Services. Based on the investigation, a detailed written report shall be completed by law enforcement. A copy shall be delivered to Nisqually Children and Family Services and to the Presenting Officer/Prosecutor within twenty-four hours of the date the complaint was received. When necessary, supplemental reports shall likewise be promptly delivered to Nisqually Children and Family Services and to the Presenting Officer/Prosecutor.

(b) If law enforcement reasonably believes the child is in imminent danger of physical or emotional harm and that removal is necessary for the child's safety or wellbeing, the officer may take the child into custody for 72 hours.

(c) If law enforcement takes a child into custody, he or she shall:
   (i) Release the child to the child's parent(s) or guardian and issue verbal counsel or warning as may be appropriate; or,
   (ii) Immediately notify Nisqually Children and Family Services and request direction as to whether the child should be placed out-of-home and if so where; or,
   (iii) If no representative of Nisqually Children and Family Services can be reached, the officer may contact C.P.S. for the purpose of emergency placement, but shall continue attempts to notify the Nisqually Children and Family Services.
   (iv) If the child is not released, immediate and continuing efforts shall be made by both law enforcement and Nisqually Children and Family Services to notify the child's parent(s) or guardian as to the circumstances surrounding the child's custody.

(d) When law enforcement receives a report that a child has been raped or otherwise sexually molested, the officer shall take the child to the hospital as soon as possible to assess the severity of physical harm and for the collection of evidence.

(e) As mandatory reporters, law enforcement personnel shall report all suspected abuse and neglect to Nisqually Children and Family Services pursuant to Section 50.11 et seq., above, whether or not a report has been made by a third party.

(f) Law enforcement shall perform child welfare checks upon reasonable request by Nisqually Children and Family Services.

50.12.03 Receipt of Report by Nisqually Children and Family Services

Upon receipt of a report that a child is being abused, neglected, or is otherwise in need of care, Nisqually Children and Family Services shall:

(a) Notify Nisqually law enforcement of all reports of abuse or neglect;

(b) Make a preliminary investigation to determine whether there is reason to believe that a child is in need of care. Nisqually Children and Family Services may request C.P.S., law enforcement, or any other appropriate agency to assist in conducting the investigation;

(c) If Nisqually Children and Family Services reasonably believes that a child is in imminent danger of physical or emotional harm and that removal is necessary for the child's safety or well-being, he or she shall:

(i) Request an Emergency Custody Order, if there is time and a judge or judicial officer is available; or,

(ii) Notify Law Enforcement and request that the child be placed in protective custody.

(iii) If the child's parent(s) or guardian has not been notified, Nisqually Children and Family Services shall make continued efforts to inform both parents or the guardian at the earliest possible time and return the child to a parent or guardian if such action is appropriate.

(iv) If the child is not returned to a parent or guardian, Nisqually Children and Family Services shall inform both parents or the guardian of the reason the child is not being returned to the home and inform the parents or guardian that they will be notified of the hearing on the matter and will be parties to the proceedings.

(v) If Nisqually Children and Family Services is unable to locate the child's parent or guardian within 24 hours, the Department shall document its attempts to locate the parent or guardian.

(d) If a child is taken into custody and it is unlikely that he or she will be released to his or her parent(s) or guardian within 72 hours, Nisqually Children and Family Services shall notify the Presenting Officer who shall promptly file a request for Preliminary Hearing.

(e) The Court's jurisdiction shall be in effect at the time a child is taken into protective custody, with or without court order.

(f) If Nisqually Children and Family Services determines that a child is not in an emergency situation but is in need of care, the office shall:

(i) Work with the child and the family and attempt to reach an informal resolution of the problem; or,

(ii) Notify the Presenting Officer who shall promptly file a Petition for Preliminary Hearing.

Historical and Statutory Notes

1. Subsection 50.12.01(h) amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
2. Subsection 50.12.01(j) amended by Tribal Council Resolution 71-2023, dated June 8, 2023.

3. Subsection formerly numbered 50.11.02 was removed by Tribal Council Resolution 71-2023, dated June 8, 2023.
4. Subsection 50.12.02 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
5. Subsection 50.12.03 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.13 EMERGENCY CUSTODY ORDERS

50.13.01 Emergency Custody Orders - Grounds

The Court may enter an emergency custody order upon a sworn oral or written statement of facts, if the Court finds that there is probable cause to believe the child is in imminent danger of physical or emotional harm, is likely to suffer from the long term impact of physical or emotional harm, or that the child has no parent or guardian available and/or able to presently provide proper care.

50.13.02 Emergency Custody Orders - Content

The Emergency Custody Order shall direct a law enforcement officer of other appointee of the Court to take a child into custody. The Order shall state the basis of the Court's jurisdiction, specifically name the child to be taken into custody, be signed by the judge or judicial officer, state the date and time issued, and name the person or persons authorized to take the child into custody. An Emergency Custody Order may be transmitted by the judge or judicial officer by telephone, computer, or fax.

50.13.03 Emergency Custody Order - Service and Duration

An Emergency Custody Order must be executed within 48 hours of issuance, unless more time is allowed by the Court upon a finding of good cause. A child taken into custody under an Emergency Custody Order shall be held until the conclusion of the Preliminary Hearing or as otherwise ordered by the Court. However, no emergency custody shall continue for more than seventy-two (72) hours after the time at which the child is taken into emergency custody unless a request for a Preliminary Hearing has been filed.

Historical and Statutory Notes

1. Subsection 50.13.01 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
2. Subsection 50.13.02 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
3. Subsection 50.13.03 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.14 PRELIMINARY HEARING

50.14.01 Preliminary Hearing – Purpose

The purpose of the Preliminary Hearing is to determine whether there is probable cause to believe that a child is in need of care. A Preliminary Hearing shall be held whenever a

child is taken into custody and it is unlikely that he or she will be released to his or her parent(s) or guardian within 72 hours.

The Court must make the following determinations at that hearing:

(a) The tribal status of the child;

(b) Whether there is probable cause to believe the child is in need of care;

(c) The best interest of the child with regard to any action to be taken;

(d) Whether a child advocate should be appointed for the child; and,

(e) Whether continued out-of-home placement is necessary pending further proceedings.

50.14.02 Request for Preliminary Hearing

A request for a Preliminary Hearing shall be initiated by a petition filed by the Presenting Officer. Nisqually Children and Family Services shall prepare a report that includes all of the information required by NTC 50.14.03 and provide it to the Presenting Officer. After reviewing the report, if the Presenting Officer finds that a Preliminary Hearing is supported by the facts and the law, the Presenting Officer shall file a Petition requesting a Preliminary Hearing. If the Presenting Officer declines to file a Petition, Nisqually Children and Family Services shall be promptly notified of that decision and the child shall be released to the custody of his or her parent(s) or guardian.

50.14.03 Contents of Petition

A request for a Preliminary Inquiry shall include:

(a) The name, date of birth, address, domicile, and tribal status of the child;

(b) The name, address, and tribal status of the child's parent(s);

(c) The name and address of the child's guardian or custodian;

(d) A plain and concise statement of the facts which support the allegation that the child is in need of care; and,

(e) If the child is in out of home placement, the location of the placement and the time taken into custody. (The location of the placement may be omitted if inclusion would put the child or the child's caregiver in danger.)

50.14.04 Setting the Preliminary Hearing

When a child has been taken into emergency custody, a Preliminary Hearing shall be conducted within two (2) working days of filing a request for a Preliminary Hearing. If the child has not been removed from the home, the hearing shall take place at the next scheduled court date.

50.14.05 Preliminary Hearing - Summons

(a) Summons to appear at the Preliminary Hearing shall be given at least twenty-four (24) hours before the hearing. The summons shall include:
  (i) The nature of the proceedings of the Court;
  (ii) The date, time and place of the hearing;
  (iii) A copy of the Petition.

(b) The following persons shall be served with summons:
  (i) The child's parents;
  (ii) The child's guardian;
  (iii) The Presenting Officer;
  (iv) The Indian Child Welfare Department.

(c) The summons shall be served in the manner provided in Section 50.10.01 of this Chapter.

50.14.06 Presence of Parent(s) or Guardian

If the child's parent(s) or guardian is not present at the Preliminary Hearing, the Court shall determine what efforts have been made to notify and to obtain their presence. If it appears that further efforts are likely to produce the parent(s) or guardian, the hearing shall be recessed for a reasonable period of time and the Court shall direct continued efforts to obtain their presence. If the parent(s) or guardian is not produced after a reasonable recess, the Preliminary Hearing shall proceed without delay.

50.14.07 Presence of Counsel—Continuance.

The Court may not continue a preliminary inquiry solely to allow a party to obtain legal representation; however, a party who appears at a preliminary inquiry without legal representation does not waive his or her right to appeal any procedural or substantive error made at the preliminary inquiry by failing to make objections during the inquiry, if legal representation is obtained and written objections are made before the start of the fact-finding hearing.

50.14.08 Court's Finding - Release of Child

If the Court finds that there is not probable cause to believe the child is in need of care, the child shall be released to the custody of his or her parent(s) or guardian.

50.14.09 Court's Finding - Child in Need of Care

(a) If the Court finds that there is probable cause to believe that the child is in need of care, it may make an interim dispositional order as follows:
  (i) That the child be released to his parent(s) or guardian pending further proceedings;
  (ii) That the child be placed out-of-home, if the Court finds that there is probable cause to believe that:
    (A) No parent or guardian is able, available, or willing to provide adequate supervision of and care for the child; or,
    (B) The child will run away or otherwise be unavailable for further proceedings; or,
    (C) The child will be in danger of serious abuse or neglect if the child is returned to his or her parent(s) or guardian; or,
    (D) The child will cause serious damage to persons or property; or,
    (E) The child requires medical care, treatment, or evaluation or other services that he could not otherwise receive if he were to remain in the custody of his parent(s) or guardian; or,
    (F) The child has been abandoned.
  (iii) That any person who poses a threat to the child's well-being be restrained from contacting the child. Such an order may be entered to protect a child in his or her home or while in an out of home placement;
  (iv) That the parties shall keep the Court informed as to any changes in their whereabouts and mailing addresses;
  (v) Appointing a child advocate for the child.
  (vi) The Court may make other orders necessary for the protection and wellbeing of the child and the family, including but not limited to evaluation and treatment (including involuntary residential treatment) of substance abuse, mental illness, and emotional disturbance; parenting classes; mandatory school attendance; visitation orders; and other services or activities for the benefit of the child and his or her family. The Court may make a particular placement conditional on compliance with any of its orders.

(b) Any interim dispositional order of the Court shall remain in effect until a Dispositional Hearing has been held.

50.14.10 Fact Finding Hearing - Scheduling at Preliminary Hearing

(a) If the Court finds that a child is in need of care the Court shall set a date and time for a Fact Finding Hearing regarding the child and shall advise the parties of the date, time and place of that hearing, and shall order their attendance at the hearing.

(b) The Tribe may file an amended petition prior to the Fact Finding Hearing or may rely on its initial petition. If an amended petition is filed, the court shall grant additional time if necessary to ensure a full and fair hearing on any new allegations.

(c) The Court may also schedule a Dispositional Hearing to be held at the same time as the Fact Finding Hearing if it determines that to do so would be in the best interest of the child.

(d) If the parent(s) or guardian of the child is not present at the Preliminary Hearing, notice of the Fact-Finding Hearing shall be served in accordance with Section 50.10.01.

50.14.11 Restraining/No Contact Orders

Any restraining order entered by the Court shall specify the limits of the restraint. Such orders shall clarify whether the restrained party may contact the other person by phone, mail or other means. The order shall also specify the distance which the restrained party must stay away from the other party, his or her home, work or other location and shall clarify such other restraints as may be put upon the person.

Historical and Statutory Notes

1. Subsection 50.14.01 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
2. Subsection 50.14.02 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
3. Subsection 50.14.07 added by Tribal Council Resolution 71-2023, dated June 8, 2023.
4. Subsection 50.14.09(a)(ii) amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
5. Subsection 50.14.10(b) added by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.15 FACT FINDING HEARING

50.15.01 Purpose

The Court shall conduct a Fact Finding Hearing for the purpose of determining whether a child is in need of care.

50.15.02 Setting the Fact Finding Hearing

At the Preliminary Hearing, the Court shall set a date for a Fact Finding Hearing which shall not be more than thirty days after the Preliminary Hearing.

50.15.03 Court's Findings - Release of Child

If the Court does not find by a preponderance of the evidence that the child is in need of care, the child shall be released to the custody of his or her parent(s) or guardian and the case shall be dismissed

50.15.04 Court's Findings - Child in Need of Care

(a) If the Court finds by a preponderance of the evidence that the child is in need of care, it shall schedule a Dispositional Hearing.

(b) If the Dispositional Hearing has previously been scheduled to take place at the same time as the Fact Finding Hearing, the Court shall proceed to disposition unless it determines that it would not be in the best interest of the child.

(c) The Court may make such interim orders as it deems necessary for the best interest of the child.

Historical and Statutory Notes

Subsection 50.15.03 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.16 DISPOSITIONAL HEARING

50.16.01 Predispositional Report

The Indian Child Welfare Department shall prepare a written report describing all reasonable and appropriate alternatives. The report shall contain a proposed Family Preservation Plan as described in Section 50.07.07. The report shall explain the necessity for the proposed plan and its benefits to the child and the child's parent(s) or guardian. If placement with someone other than the child's parent(s) or guardian is recommended, the report shall contain specific reasons for not recommending placement of the child with the child's parent(s) or guardian. The report shall also describe the efforts made to avoid an out of home placement.

50.16.02 Predispositional Report - Service

The Indian Child Welfare Department shall mail or personally deliver the predispositional report to the Court and all parties to the proceeding at least five (5) days before the dispositional hearing.

50.16.03 Additional Reports

Any party to an action pursuant to this Chapter may file a predispositional report which shall include his or her recommendations for consideration by the Court.

50.16.04 Dispositional Hearing

(a) A Dispositional Hearing shall be held to decide how to best meet the needs of the child and assist his or her family. This hearing may take place at the end of the Fact Finding Hearing or may take place separately. The Court shall determine the scheduling and shall direct the Court Clerk to notify all parties.

(b) The Court shall hear testimony, consider all proposed Family Preservation Plans filed and seek recommendations from professionals experienced in providing services to children. All parties shall be given an opportunity to contest the facts and conclusions presented in each proposed Plan.

(c) In determining an appropriate disposition, the Court shall consider all of the following applicable factors:
   (i) Special physical or emotional needs of the child;
   (ii) Social, cultural or religious traditions of the child, his or her family, or the Nisqually Tribe;
   (iii) Availability of resources within the child's extended family;
   (iv) The child's preference for placement, if the child is over twelve (12) years of age;
   (v) The recommendation of Nisqually Children and Family Services the child advocate, and any other person with an interest in the child;
   (vi) Recommendations of professionals experienced in providing services to child;
   (vii) Other factors calculated to meet the needs of the individual child and the purposes of this Title.

50.16.05 Court Ordered Family Preservation Plan (Disposition)

(a) If a child has been determined to be in need of care, the Court shall order a Family Preservation Plan for his or her protection and well-being. The Plan shall either allow the child to remain with his or her parent(s) or guardian, subject to any such limitations and conditions the Court may order, or the Court may order an out-of-home placement subject to the placement preferences listed in Section 50.10.09.

(b) Before placing the child out of the home, the Court must determine that reasonable efforts have been made to avoid the out of home placement, and that:
   (A) No parent or guardian is able, available, or willing to provide adequate supervision of and care for the child; or,

(B) The child will run away or otherwise be unavailable for further proceedings; or,
(C) The child will suffer serious abuse or neglect if the child is returned to his or her parent(s) or guardian; or,
(D) The child will cause serious damage to persons or property; or,
(E) The child requires medical care, treatment, or evaluation or other services that he could not otherwise receive if he were to remain in the custody of his parent(s) or guardian; or,
(F) The child has been abandoned.

(c) An out of home placement may also be subject to any limitations and conditions the Court may prescribe.

(d) The Court may make any orders necessary for the protection and well-being of the child and the family. Such orders may include but are not limited to: evaluation and treatment (including involuntary residential treatment) of substance abuse, mental illness, and emotional disturbance; parenting classes; mandatory school attendance; mediation; visitation orders; restraining orders; and other services or activities for the benefit of the child and his or her family. The Court may make a particular placement conditional on compliance with any of the above orders.

(e) The Court may also order restitution in any reasonable amount for acts of the child resulting in damage or injury to any individual or the Nisqually Tribe and/or order the child to perform community service appropriate to the needs or abilities of the child.

(f) When a petition is based on a youth's truancy, or new findings are made in a case that a youth is truant, the Court may impose any sanction or discipline authorized by the Nisqually Attendance Ordinance.

(g) Orders for visitation shall specifically state frequency, duration, persons with whom visitation is allowed, and whether visits are to be supervised and if so, by whom.

50.16.06 Review Hearings

(a) The Court shall conduct a hearing to review its Family Preservation Plan at least once every six months, or earlier upon motion of any party or upon the Court's own motion. If the child has been placed out of the home, the hearing shall be within six months of the date of initial placement. The first review hearing shall be scheduled by the Court at the Dispositional Hearing. Every review hearing thereafter shall be scheduled at the previous hearing.

(b) The purpose of the hearing shall be to review the progress of the parties and determine whether court supervision should continue.

(c) At the hearing the Court shall review whether the parties are complying with the Plan and shall consider whether modification of the order is necessary to protect the child and strengthen the child's family. The Court shall determine whether NCFS is making reasonable efforts to reunify the family. If the child has been placed out of the home, the Court shall determine whether reasonable efforts have been made to return the child to the home of his or her parent(s) or guardian and whether out of home placement remains necessary

(d) No later than five days before a review hearing, NCFS, through the Tribe's Presenting Officer, shall file a Case Management Report and deliver copies of the report to all parties. The Report shall contain detailed information about the parties' compliance, the child's safety and wellbeing, new services that may be recommended for any party, and efforts NCFS has made to provide services to reunify the family. Supporting documentation shall be attached to the report whenever possible.

Historical and Statutory Notes

1. Subsection 50.16.05(b) added by Tribal Council Resolution 71-2023, dated June 8, 2023.
2. Subsection 50.16.05(f) added by Tribal Council Resolution 71-2023, dated June 8, 2023.
3. Subsection 50.16.06(b) added by Tribal Council Resolution 71-2023, dated June 8, 2023.
4. Subsection 50.16.06(c) amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
5. Subsection 50.16.06(d) added by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.17 PERMANENCY PLANNING

50.17.01 Permanency Planning

(a) If a child has been determined to be in need of care, NCFS shall form a plan for permanency of the child and shall make that plan known to the parents and the court. Court management reports filed by the NCFS caseworker shall inform the parents and the court of the permanency plan throughout the course of the case and shall indicate any proposed changes to the plan. At review hearings, the Court shall make findings as to whether the parties are complying with the family preservation plan and whether NCFS has made reasonable efforts to reunify the family. At any review hearing, the Court may make findings that the current plan for permanency is no longer in a child's best interest and that a different plan is more appropriate. The primary consideration when determining the permanency plan will be the best interest of the child. If any party disagrees with the permanency plan recommended by NCFS or ordered by the Court, the party may request a separate hearing on the permanency plan.

(b) Options for permanency are:

(i) Reunification with the parent(s) or guardian(s) – There has been substantial compliance with the family preservation plan and it is anticipated that in the near future, the child will be returned to the custody of the parent(s) or guardian(s).
(ii) Youth in Need of Care Guardianship – A guardian is appointed to assist the court to supervise the youth. The guardian is given responsibility for the care, custody, and supervision of the child, but NCFS continues to monitor the guardianship and the child's well-being, and provides regular updates to the Court on the guardianship. Relinquishment or rescission of the guardianship results in the re-opening of the underlying youth in need of care case.
(iii) Long-term foster care placement – Guardianship is not an option or is not in the child's best interest, and reunification of the family is not anticipated in the near future.
(iv) Termination of Parental Rights and Adoption – One or more of the following conditions exists and NCFS has recommended termination:
    (A) Abandonment of the child;
    (B) Willful and repeated physical injuries which cause or create a substantial risk of death, disfigurement or impairment of bodily functions;
    (C) Willful and repeated psychological or emotional abuse which cause or create a substantial risk of severe psychological or emotional damage to the child, including, but not limited to, failure to thrive or attachment disorder;
    (D) Willful and repeated acts of sexual abuse; or,
    (E) Voluntary termination of parental rights.

(c) Permanency shall be established via one of the foregoing options no later than 24 months after the dependency was opened. This timeframe may be extended if the parents are in full compliance with the Family Preservation Plan, if more time is needed to find a suitable guardian, or if the Court finds that extending the permanency timeline is in the child's best interest.

(d) A child placed out of home shall not be reunified with the parent(s) or guardian(s) unless the court has ordered an immediate return of custody or a trial return home has occurred. When a trial return home is ordered, the NCFS caseworker shall:
(i) Fully assess any new adults in the home and determine whether they need services to address the safety of the child, regardless of whether they are a party to the dependency.
(ii) Monitor the children's safety, permanency, and well-being.
(iii) Set out clear requirements and a timeline for the parents to regain custody of their children.
(iv) Recommend dismissal of the dependency when the parents or guardians have completed all requirements and demonstrated the ability to safely resume parenting and have custody of their children. A trial return home

shall last for a minimum of six months prior to dismissal, unless the Court finds it is in the children's best interest to dismiss the case sooner.

(v) Notify the Court if a parent(s) or guardian(s) is not meeting the requirements of the trial return home or has not demonstrated the ability to safely resume parenting and have custody of the children.

Historical and Statutory Notes

1. Section 50.17 added by Tribal Council Resolution 71-2023, dated June 8, 2023.
2. Subsection 50.17.01(b)(ii) amended by Tribal Council Resolution 117-2025, dated August 28, 2025.

50.18 SAFETY PLAN

A written safety plan may be developed by NCFS at any time to control or manage threats to a child's safety. A safety plan may be made in addition to a voluntary services agreement or may be implemented at any time over the course of a youth in need of care case.

Safety plans will be developed with participants that are suitable, reliable, and can assist in keeping the child safe. The plan will include activities and tasks for participants that control safety threats to the child, and should use the family's suitable, formal and informal supports to manage the safety threats. The plan should include details for monitoring the safety plan and must be signed by all parties.

Historical and Statutory Notes

Section 50.18 added by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.19 FAMILY VOLUNTARY SERVICES

50.19.01 Purpose

NCFS may offer a family the option to engage in voluntary services in lieu of court intervention. The purpose of voluntary services is to encourage positive collaboration and participation from the family in order to address parental deficiencies or safety concerns. The goal is to avoid court intervention when all parties agree on a course of action and voluntary services are sufficient to keep the children safe.

50.19.02 Voluntary Services Agreement

Family Voluntary Services shall be formalized in a written voluntary services agreement signed by all parties. This intervention is available when there is a low to moderate risk

of harm, imminent danger, or subsequent abuse to the child(ren), and all parties agree to a voluntary services agreement.

50.19.03 Voluntary Placement Agreement

NCFS may use a voluntary placement agreement when a safety threat exists that cannot be managed in the home solely with a voluntary services agreement and/or safety plan. This intervention is appropriate when services provided during a 90-day calendar period are likely to eliminate the need for court intervention. A voluntary placement agreement must be accompanied by a family voluntary services agreement, must be signed by all parties, and may not exceed 90 calendar days in duration. If a parent terminates a voluntary placement agreement, NCFS must immediately assess the child's safety and determine whether or not the child can safely return home. If the child may safely return home, the child must be returned to the parents or legal guardians within one calendar day, excluding weekends and holidays. If the child may not safety return home, NCFS must immediately either contact law enforcement to request placement of the child into protective custody, or file a youth in need of care petition and request a pick-up order within one calendar day, excluding weekends and holidays. If a child is placed out of home pursuant to a voluntary placement agreement under this section, the child may not remain out of home for more than 90 days unless a court action is commenced or all parties agree to another 90 days in writing.

50.19.04 Termination of Voluntary Services

It is within NCFS's sole discretion to offer a family voluntary services based on NCFS's determination of what is in the child's best interest. A voluntary services plan or placement agreement under this section may be terminated at any time by the parent or guardian. If a family does not agree to any of the voluntary interventions described in this section, does not comply with the terms of an agreement, or circumstances change that warrant further investigation or action, NCFS may proceed with further investigation or court action.

Historical and Statutory Notes

Section 50.19 added by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.20 PEACEMAKER CONFERENCE

50.20.01 Request for Peacemaker Conference

After a Preliminary Hearing has been held, any party to the proceeding may file with the Court Clerk a request for a Peacemaker Conference. The Court may also provisionally transfer a case to a Peacemaker Conference on its own motion.

50.20.02 Setting the Peacemaker Conference

The Court Clerk shall schedule the peacemaker conference to be held no later than twenty (20) days after the Request for Peacemaker Conference has been filed.

50.20.03 Peacemaker Conference - Required Notice

(a) Notice of the Peacemaker Conference shall be given at least five (5) days before the hearing. The notice shall include:
  (i) The reason for the Peacemaker Conference;
  (ii) The date, time, and place of the conference; and,
  (iii) A copy of the Petition for Fact Finding.

(b) The following persons shall be served with the required notice:
  (i) The child's parents;
  (ii) The child's guardian or custodian;
  (iii) The child advocate;
  (iv) The Presenting Officer;
  (v) Nisqually Children and Family Services

(c) Notice shall be served in the manner provided in Section 50.10.01 of this Title.

50.20.04 Peacemaker Conference - Procedure

The following procedures apply to Peacemaker Conferences:

(a) The hearing shall be informal and conducted according to the process established by the Court.

(b) No substantive information obtained at the conference may be admitted into evidence at a court hearing or any other court proceeding unless such information can be substantiated by outside evidence. However, the terms of an agreed upon Family Preservation Plan are admissible as evidence at a subsequent proceeding involving the child.

(c) If an agreement is reached at a Peacemaker Conference, it shall be set forth in writing including any conditions or requirements to be performed. The child, the child's parent(s), the child's guardian, the child advocate, and the Tribe's presenting officer or a representative of the Nisqually Indian Child Welfare Department on behalf of the Tribe shall sign the agreement.

(d) The agreement shall be for a fixed period of time and shall not continue beyond the child's eighteenth (18) birthday.

(e) If no agreement is reached during the Peacemaker Conference or the parties fail to appear at the scheduled conference a Fact Finding Hearing shall be scheduled as soon as practical.

(f) Nothing in this Section shall preclude the parties from meeting or conferring without a hearing or conference. If the parties come to an agreement outside of a Peacemaker Conference, the agreement may be presented to the Court and formalized pursuant to Section 50.20.06 below.

50.20.05 Monitoring - Failure to Comply with Agreement

(a) Nisqually Children and Family Services shall monitor any agreement reached at a Peacemaker Conference throughout its term. If Nisqually Children and Family Services finds that there has been a failure to comply with the terms of an agreement, it may recommend that the Presenting Officer proceed with a Fact Finding Hearing.

(b) At the Fact Finding Hearing, the child or his or her parent or guardian may challenge before the Court the allegation of noncompliance with the agreed disposition. If the Court finds that the parties have complied, it shall dismiss the petition and reinstate the agreed disposition.

50.20.06 Formalization of Agreement

(a) When the parties to a Peacemaker Conference reach an agreement they wish to have confirmed and recorded as a formal order of the Court, they shall present a draft order to the Court for its consideration. The Court may enter an order only when the following conditions have been met and are set forth in the order:
   (i) The Court has jurisdiction over the parties and the subject matter of the agreement;
   (ii) All necessary parties have actual knowledge of the proposed order and have agreed to it;
   (iii) The order contains the complete agreement of the parties and contains enough information regarding the full agreement so a dispute as to the order is not likely to arise in the future; and,
   (iv) The order is otherwise proper and enforceable.

(b) Any agreement in which a parent or guardian voluntarily consents to place his or her child in foster care must be signed before a judge or judicial officer of the Court. The judge or judicial officer shall first question the parent or guardian to determine that he or she understands the terms of the agreement and consequences of the consent.

(c) No order may be entered which terminates parental rights unless the requirements of Chapter 50.23 of this Title have been met.

(d) An order of the Court upon a Peacemaker Conference agreement may be enforced as any other order of the Court.

Historical and Statutory Notes

Subsection 50.20.04(f) added by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.21 CUSTODY DECLARATIONS

50.21.01 Purpose

The purpose of this section is to provide a procedure for a parent to obtain a court order declaring that he or she has custody of his or her child. It affirms the existing rights of the parent to custody and protects those rights against other parental claims which have not been established. A declaration under this chapter does not terminate rights a putative father may have.

50.21.02 Petition for Custody - How to File

Any parent of a child may seek an order granting custody of the child by filing a petition with the Court. If the parent is seeking a declaration of custody for more than one child, a separate petition should be filed for each child.

The Court Clerk shall deliver a copy of the petition to the Indian Child Welfare Department no later than three (3) days after the date on which the petition was filed.

50.21.03 Petition for Custody - Contents

(a) The petition shall be a true and correct statement signed and sworn by the petitioner and shall include:
   (ii) The name, date of birth, address, domicile, and tribal status of the child;
   (iii) The name, date of birth, address, and tribal status of the parent seeking the custody declaration;
   (iii) The name, date of birth, address, and tribal status of the child's other natural parent, if such information is known;
   (iv) A statement as to whether any paternity proceedings or other custody proceedings have taken place in regard to the child;
   (v) A statement as to why it is in the best interest of the child for the petitioner to be granted full and exclusive custody; and,
   (vi) Any additional information the parent believes would assist the Court in its decision.

(b) A true and correct copy of the child's birth certificate shall be attached to the petition.

50.21.04 Intervention by Nisqually Children and Family Services

Nisqually Children and Family Services is not required to be a party or witness in a custody case but may provide the Court with information and recommendations.

50.21.05 Setting the Custody Hearing

The Court Clerk shall schedule a hearing before the Nisqually Court to take place no later than sixty (60) days from the date the petition is filed. A notice of hearing shall be mailed or delivered to the petitioner, and to Nisqually Children and Family Services. If the whereabouts of the other natural parent are known, notice of the hearing shall be provided to that parent as specified in Section 50.10.01.

50.21.06 Declaration of Custody - Order

The Court shall enter a written order declaring that the petitioner has custody of the child if it determines that it is in the best interest of the child that the petitioner be granted sole custody.

50.21.07 Declaration of Custody - Duration

A declaration of custody shall remain in effect until:

(a) The child reaches eighteen (18) years of age;

(b) The child marries or becomes otherwise emancipated prior to age eighteen; or,

(c) The Nisqually Court orders a modification of the declaration of custody order.

50.22 GUARDIANSHIPS

50.22.01 Purpose

The purpose of this chapter is to provide a mechanism for the appointment of a guardian for a child to ensure that the child has an adult legally responsible for the child, and that the adult has the necessary legal rights to ensure the child receives proper care. An appointment of a guardian does not terminate parental rights and therefore, a guardian may not consent to an adoption of the child. This section shall apply to both private and youth in need of care guardianships, except as specifically indicated.

50.22.02 Petition for Guardianship - How to File

(a) Any person who is at least eighteen years of age who has an interest in a child may file a petition with the Court requesting the appointment of a guardian for the child.

(b) A petition filed by a married person shall also be signed by the married person's spouse, unless it is shown that the whereabouts of the married person's spouse are unknown.

(c) The Court Clerk shall deliver a copy of the petition to Nisqually Children and Family Services later than three (3) days after the date on which the petition was filed with the Court.

50.22.03 Petition for Guardianship - Contents

The petition for appointment of a guardian shall include:

(a) The name, date of birth, address, and tribal status of the child;

(b) The name, date of birth, address, and tribal status of each of the petitioners;

(c) The name, date of birth, address, and tribal status of the child's parents;

(d) The name and address of the child's current guardian or custodian;

(e) A description of any previous adjudication concerning the care and custody of the child;

(f) A concise statement of the facts and reasons supporting the request that the petitioner(s) be appointed as a guardian; and,

(g) A statement as to why the proposed guardianship is in the best interest of the child.

(h) Information regarding any active court cases involving the child. When the child is currently a ward of the Court, the petition shall include a copy of the most recent order addressing the permanency plan in that case.

50.22.04 Setting the Guardianship Hearing

Upon receipt of the petition for guardianship, the Court shall set a date for a guardianship hearing which shall not be more than forty (40) days after the Court receives the petition. The Court shall also order that a home study be conducted at the expense of the Petitioner(s).

50.22.05 Guardianship Hearing - Summons

(a) Summons to appear at the guardianship hearing shall be given at least twenty (20) days before the hearing. The summons shall include:
(i) The nature of the proceedings of the court;
(ii) The date, time, and place of hearing; and,
(iii)A copy of the petition which has been filed.

(b) The following persons shall be served with the required notice:
(i) The child's parents;
(ii) The child's current guardian or custodian;
(iii) The petitioner(s);
(iv) The Indian Child Welfare Department.

(c) The notice shall be served in the manner provided in Section 50.10.01 of this Chapter.

50.22.06 Intervention by Nisqually Children and Family Services

Nisqually Children and Family Services is not required to be a party or witness in a guardianship case but may provide the Court with information and recommendations.

50.22.07 Guardianship Hearing - Procedure

(a) The prospective guardian(s), the child's parent(s), and the child's current guardian or custodian shall appear personally at the hearing.

(b) The Court shall examine and take testimony of the prospective guardian(s), the child's parent(s), the child's current guardian or custodian, and any other person the Court has found to have a substantial interest in the child.

The Court shall consider all other evidence it deems is relevant to the best interests of the child, including the home study conducted in accordance with 50.22.04. In determining whether the proposed guardianship would be in the best interest of the child, the Court shall consider the placement preferences established in Section 50.10.09.

50.22.08 Guardianship Order

(a) The Court shall enter an order appointing a guardian pursuant to the petition if it finds by clear and convincing evidence that (1) either the current parent(s) or guardian(s) of the child have consented to the proposed guardianship or that the

child will suffer harm if the guardianship is not ordered, and (2) that the proposed guardianship would be in the best interest of the child.

(b) The order appointing guardian shall place the child in the sole care, custody, and control of the appointed guardian.

(c) The order appointing guardian shall empower and charge the appointed guardian with the duty to make major decisions affecting the child including:
  (i) To consent to marriage of the child, enlistment in the armed services and medical, surgical, dental and mental health treatment of the child;
  (ii) To represent the child in legal actions and to make other decisions of substantial legal significance concerning the child;
  (iii) To protect and preserve the child's property, to invest it prudently, and to account for it faithfully, and at the termination of the guardianship, to deliver the assets of the child or the person lawfully entitled thereto;
  (iv) To fulfill all parental duties for the welfare of the child; and,
  (v) To fulfill all other duties which the Court finds necessary to the circumstances of the child.

(d) The order shall inform the guardian that guardianship does not terminate parental rights and that the guardian may not consent to adoption or enroll the child in a Tribe other than the Nisqually Tribe.

(e) If the Court finds that the guardianship petition is not in the best interest of the child, the petition should be dismissed, provided, the Court may enter an order to protect the best interests of the child.

50.22.09 Review Hearings

The Court shall schedule a review hearing to be held within six (6) months of the guardianship order to determine whether the guardianship remains in the best interest of the child. The Court may schedule periodic review hearings thereafter as it deems necessary to stay informed of the child's situation.

50.22.10 Youth in Need of Care Guardianships

(a) The purpose of a Youth in Need of Care Guardianship is to appoint a person to care for the youth and assist NCFSand the court in supervision of the youth.

(b) The parties to a Youth in Need of Care Guardianship shall be the guardian(s), the parents, the youth, Nisqually Children and Family Services, and any other individual or Tribe who the Court has permitted to intervene in the proceeding.

(c) When the Court has determined guardianship is a suitable permanent plan for a youth in need of care and found that the case is ripe for guardianship, Nisqually Children and Family Services shall prepare and submit a petition for guardianship, which shall be accompanied by a Statement of Proposed Guardian.

(d) The assigned Nisqually Children and Family Services caseworker shall, through the Presenting Officer, file with the Court a guardianship report and home study at least ten (10) days before the guardianship hearing. The report and home study shall be mailed to all parties at least ten (10) days prior to the hearing.

(e) Following entry of the guardianship, Nisqually Children and Family Services shall file a motion to dismiss the youth in need of care case.

(f) An initial review hearing shall be held within six (6) months of the guardianship order to determine whether the guardianship remains in the child's best interest. The Court will hold annual review hearings thereafter, unless it is determined by the Court that more or less frequent review hearings are necessary. Nisqually Children and Family Services shall continue to monitor the child's well-being and shall remain a party to the case. Prior to each review hearing, NCFS shall provide a guardianship review report to the Court and serve the report on all parties to the case at least five (5) days prior to the review hearing. The report shall provide a thorough update to the Court on the child's welfare and provide a recommendation as to whether the guardianship should continue.

(g) A Youth in Need of Care Guardianship shall end when the child turns age 18 or when the Court rescinds the guardianship, whichever occurs sooner. When a Youth in Need of Care Guardianship is rescinded, the underlying Youth in Need of Care matter shall be reopened in accordance with Section 50.22.11.

50.22.11 Termination of Guardianship

(a) The Court may terminate any guardianship if the Court finds by clear and convincing evidence that there has been a substantial change in circumstances and the guardianship is no longer in the child's best interest. When determined appropriate by the Court, the guardian or other family members will be referred to NCFS for resources and services that may be helpful to assist in maintaining the family unit.

(b) A parent petitioning the Court for termination of a guardianship and return of custody bears the burden of establishing by clear and convincing evidence that (1) he or she has rectified the parental deficiencies present in the underlying Youth in Need of Care case or there has otherwise been a substantial change in circumstances; and (2) that the guardianship is no longer in the child's best

interest. The parent must provide documentation of completed services and requirements.

(c) There is a presumption that continuation of a guardianship is in a child's best interest and that the child should remain with the guardian. Any person requesting termination of the guardianship bears the burden of overcoming this presumption.

(d) When a Youth in Need of Care guardianship is rescinded and custody is not returned to a parent, the underlying Youth in Need of Care case shall be reopened. NCFS shall provide all necessary services, shall be responsible for placement of the child, and shall provide a report to the court which includes the proposed permanency plan for the child and an updated family preservation plan.

Historical and Statutory Notes

1. Subsection 50.22.01 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
2. Subsection 50.22.02 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
3. Subsection 50.22.03(h) amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
4. Subsection 50.22.08(a) amended by Tribal Council Resolution 71-2023, dated June 8, 2023.
5. Subsection 50.22.10 added by Tribal Council Resolution 71-2023, dated June 8, 2023.
6. Subsection 50.22.11 added by Tribal Council Resolution 71-2023, dated June 8, 2023.
7. Subsection 50.22.10(g) amended by Tribal Council Resolution 117-2025, dated August 28, 2025.

50.23 TERMINATION OF PARENTAL RIGHTS

50.23.01 Purpose

Parental rights to a child may be terminated by the Court according to the procedures in this Chapter.

50.23.02 Termination of Parental Rights - How to File

Proceedings to terminate parental rights shall be instituted by a petition filed by the Indian Child Welfare Department on behalf of the Tribe, or by the parent(s) of the child. If the petition is filed by the child's parent(s) a copy of the petition must be delivered to the Indian Child Welfare Department no later than three (3) days after the petition has been filed.

50.23.03 Termination of Parental Rights - Petition Contents

(a) The petition for termination of parental rights shall state the following:
  (i) The name, date of birth, address, and tribal status of the child;
  (ii) The name, date of birth, address, and tribal status, if known, of the child's parent(s);
  (iii) The name and relationship to the child of the person with whom the child is residing and the length of time at that location;
  (iv) A brief description of the facts supporting a finding that termination of parental rights is in the best interests of the child.

(b) A true and correct copy of the child's birth certificate shall be attached to the petition.

50.23.04 Setting the Termination Hearing

Upon receipt of a petition for termination of parental rights, the Court shall set a date for a termination hearing which shall not be more than forty (40) days after the Court receives the petition.

50.23.05 Termination Hearing - Summons

(a) Summons to appear at the termination hearing shall be given at least twenty (20) days before the hearing. The notice shall include:
  (i) The nature of the proceedings of the court;
  (ii) The date, time, and place of hearing; and,
  (iii) A copy of the petition which has been filed.

(b) The following persons shall be served with the required notice:
  (i) The child's parents;
  (ii) The child's guardian;
  (iii) Nisqually Children and Family Services;
  (iv) The child advocate, if one has been appointed;
  (v) Any person the Court believes necessary for the proper adjudication of the hearing.

(c) The notice shall be served in the manner provided in Section 50.10.01 of this Chapter.

50.23.06 Pre-Termination Report

After a petition for termination of parental rights has been filed, Nisqually Children and Family Services shall prepare a written pre-termination report. In preparing the report, Nisqually Children and Family Services shall conduct a complete home study and shall consult with the child's parent(s), the child's guardian or custodian, and all health,

education and social services personnel who have had prior professional contact with the child. The report shall contain the following information:

(a) An evaluation of the present circumstances of the child, the child's parent(s), and the child's guardian or custodian;

(b) An evaluation of the allegations stated as the basis of the petition;

(c) The professional opinion of all personnel who have been consulted;

(d) A statement as to whether termination of parental rights would be in the best interest of the child.

50.23.07 Pre-Termination Report - Service

Nisqually Children and Family Services shall mail or deliver the pre-termination report to the Court and to all parties to the proceeding at least ten (10) days prior to the hearing.

50.23.08 Termination Hearing - Procedure

(a) The child's parent(s), and the child's guardian or custodian, if any, shall appear personally at the hearing.

(b) The Court shall examine and take testimony of Nisqually Children and Family Services, the child's parents, the child's guardian or custodian, the child advocate, and any person the Court has found to have a substantial interest in the child.

(c) The Court shall consider all other evidence it deems is relevant to the best interests of the child.

50.23.09 Termination of Parental Rights - Determining Factors

The Court may terminate a parent's parental rights when it has determined beyond a reasonable doubt that any of the following conditions exist:

(a) Abandonment of the child;

(b) Willful and repeated physical injuries which cause or create a substantial risk of death, disfigurement or impairment of bodily functions;

(c) Willful and repeated psychological or emotional abuse which cause or create a substantial risk of severe psychological or emotional damage to the child, including, but not limited to, failure to thrive or attachment disorder;

(d) Willful and repeated acts of sexual abuse; or,

(e) Voluntary termination of parental rights.

50.23.10 Voluntary Termination of Parental Rights

(a) The parents of a child may voluntarily terminate their parental rights by signing a consent to termination of parental rights in the presence and with the approval of the Court. However, voluntary termination is not valid unless:
   (i) The parents have received counseling from an appropriate professional who has explained the consequences of terminating his or her rights, have explored all available services to help the parent care for the child and has explored alternatives such as guardianship; and,
   (ii) The parent orally explains his or her understanding of the meaning of termination of parental rights to the judge and the judge certifies that the terms and consequences of the relinquishment were fully explained and were understood by the parent.

(b) The parents may withdraw their consent anytime before entry of a final adoption decree.

(c) Consent given before or within thirty (30) days after the birth of a child is not valid.

(d) The Court shall not allow a parent to voluntarily terminate their parental rights unless the Court determines that it is in the best interest of the child to do so.

50.23.11 Disposition

(a) If the Court finds that none of the factors listed in Section 50.23.09 have been proven beyond a reasonable doubt, then the Court shall dismiss the petition.

(b) If the Court finds that any of the factors listed in Section 50.23.09 have been proven beyond a reasonable doubt, then the Court shall terminate the parental right to the child and shall either:
   (i) Place the child in an out-of-home placement in accordance with the placement preferences established in Section 50.10.09; or,
   (ii) Allow the child to be placed for adoption as provided for under Chapter 50.24 of this Title.

50.23.12 Adjudication not to Affect Enrollment Status

No adjudication of termination of parental rights shall affect the child's enrollment status or eligibility for enrollment or adoption as a member of any tribe.

50.23.13 Enrollment Prior to Entry of Termination Order

(a) If a child is eligible for enrollment in the Nisqually Indian Tribe, the NCFS Social Worker shall submit an application for enrollment of the child to the Nisqually Enrollment Clerk prior to any final order terminating parental rights.

(b) If a child is eligible for enrollment in a Tribe other than the Nisqually Tribe, the other tribe shall be notified and an application for enrollment may be submitted to the appropriate enrollment person prior to entering the order terminating parental rights.

Historical and Statutory Notes

Subsection 50.23.12 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.24 ADOPTION

50.24.01 Child Available for Adoption

A child may be adopted only if he or she has no parents by reason of death or as a result of proceedings terminating parental rights.

50.24.02 Adoption - How to File

(a) Any person over twenty-one (21) years of age may seek to adopt a child who is available for adoption by filing a petition with the Court.

(b) A petition filed by a married person shall also be signed by the married person's spouse, unless it is shown that the whereabouts of the married person's spouse are unknown.

(c) The petitioner must also deliver a copy of the petition to Nisqually Children and Family Services no later than three (3) days after the date on which the petition was filed with the Court.

50.24.03 Petition for Adoption - Contents

A petition for adoption shall include the following:

(a) The name, date of birth, address, and tribal status of the child to be adopted;

(b) The name, date of birth, address, and tribal status of each of the petitioners;

(c) The relationship, if any, of the petitioner(s) to the child;

(d) The names and ages of all other children living in the petitioner's household;

(e) The name of the person with whom the child is currently residing and the length of time at that location;

(f) A description of all previous court proceedings involving the care and custody of the child and the results of these proceedings along with copies of all court orders including any order terminating a parent's rights to the child;

(g) A brief statement of the facts explaining the reason the child is available for adoption and why the proposed adoption is in the best interest of the child;

(h) The full name to be given to the child upon adoption.

A true and correct copy of the child's birth certificate shall be attached to the petition.

50.24.04 Setting the Adoption Hearing

Upon receipt of the petition for adoption, the Court shall set a date for an adoption hearing which shall not be more than forty (40) days after the Court receives the petition.

50.24.05 Adoption Hearing - Summons

(a) Summons to appear at the adoption hearing shall be given at least twenty (20) days before the hearing. The notice shall include:
  (i) The nature of the proceedings of the court;
  (ii) The date, time, and place of hearing; and,
  (iii) A copy of the petition which has been filed.

(b) The following persons shall be served with the required notice:
  (i) The child's guardian, if any;
  (ii) The petitioner(s);
  (iii) Nisqually Children and Family Services;
  (iv) The child advocate, if one has been appointed.

(c) The notice shall be served in the manner provided in Section 50.10.01 of this Chapter.

50.24.06 Adoption Report - Preparation

Upon receipt of the petition for adoption Nisqually Children and Family Services shall prepare a written adoption report. In preparing the report, the Indian Child Welfare Department shall conduct a complete home study and shall consult with the child's

guardian, the petitioner(s) and all health, education and social services personnel who have had prior professional contact with the child. The adoption report shall contain the following information:

(a) The physical and mental condition of the child, the petitioner(s) and any other persons living in the petitioner's home;

(b) The circumstances of the voluntary or involuntary termination of the parent's rights to the child or of the parent's death;

(c) The home environment, family life, access to health services, and financial resources of the petitioner(s);

(d) The child's and petitioner's cultural heritage and tribal status;

(e) The marital status of the petitioner(s);

(f) The names and ages of the petitioner's children and of any other persons residing with the petitioner(s);

(g) A check of the criminal records, if any, of the petitioner(s) and anyone else residing in the home shall be requested from state and tribal law enforcement authorities and, if appropriate, from the BIA;

(h) Any evidence of alcohol and drug abuse in petitioner's household;

(i) Information from health, education, and social service personnel who have had prior professional contacts with the child and petitioner(s);

(j) The professional opinion of all persons consulted;

(k) Any other facts and circumstances relating to whether or not the adoption should be granted;

(l) A recommendation as to whether the proposed adoption would be in the best interest of the child.

50.24.07 Adoption Report - Service

Nisqually Children and Family Services shall mail or deliver the adoption report to the Court and to all parties to the proceeding at least five (5) days prior to the hearing.

50.24.08 Adoption Hearing - Procedure

(a) The adoptive parent(s) shall appear personally at the hearing. The Court may also require that the child appear personally at the hearing if it determines that to do so would assist the Court in making its determination.

(b) The Court shall examine and take testimony of the adoptive parents, the child, Nisqually Children and Family Services, and any person the Court has found to have a substantial interest in the child.

(c) The Court shall consider all other evidence it deems is relevant to the best interests of the child.

(d) In determining whether the proposed adoption would be in the best interest of the child, the Court shall consider the placement preferences established in Section 50.10.09.

50.24.09 Disposition

(a) The Court shall enter an Order of Adoption pursuant to the petition if it finds that:
  (i) The child is available for adoption;
  (ii) The petitioner(s) can provide appropriate and adequate parental care for the child;
  (iii) The adoption would be in the best interest of the child.

(b) If the Court finds that the adoption petition will not be in the best interests of the child, the petition shall be denied and suitable care shall be arranged for the child. The Court may request the tribal agencies, federal agencies or other agencies authorized to provide such services assist in the placement and the care of the child.

50.24.10 Effect of Adoption

(a) Any adoption pursuant to this Chapter shall give the new adoptive parents all the rights, duties and liabilities of a natural parent with respect to the adoptive child and the adopted child shall be subject to the care and control of the adoptive parents to the same extent that a natural child would be with full natural rights of inheritance according to law.

(b) Minor children adopted by order of the court shall assume the surname of the person by whom they are adopted, unless the court orders otherwise.

(c) Adoption shall have no effect on a child's membership in the Tribe or eligibility therefore.

50.24.11 Copy of Decree to Agencies

If a decree of adoption is entered, as soon as the time for appeal has expired, or if the adoption is affirmed on appeal, the Court Clerk shall transmit to the Washington State registrar of vital statistics a certified copy of the adoption decree along with any other forms required by the registrar. A copy shall also be sent to the Bureau of Indian Affairs.

50.25 NAME CHANGE

A parent who has not had their parental rights terminated, a child's legal guardian, or Nisqually Children and Family Services when the child is a ward of the Court, may file a petition to change the name of a child under the age of 18. Upon receipt of the petition for name change, the Court shall set a date for a hearing which shall not be more than forty (40) days after the Court receives the petition. The minor child's parents, legal guardian(s), and NCFSshall be served with the Petition and Summons in accordance with Section 50.10.01, above, at least twenty (20) days prior to the hearing and shall be notified of their opportunity to file an answer. The Court may grant the request for a name change if it is established by a preponderance of the evidence that the name change is in the best interest of the minor child. The Court shall evaluate the best interest of the child by looking at a variety of factors, which may include the child's preference (taking into consideration their age and experience), the effect of the proposed name change on the child's mental or emotional well-being, and the motives or interests of the parent or petitioner. The Court may deny a petition to change the name of a minor for any reason and may make any decision the Court deems necessary under the circumstances.

Historical and Statutory Notes

Section 50.25 added by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.26 PATERNITY

50.26.01 Purpose

The purpose of this section is to ensure that the father of each Nisqually child or child residing on the Nisqually Reservation is identified and paternity established in order to protect the best interest of all children regarding such matters as enrollment, customs and traditions of the tribe, survivorship and inheritance, health, support, and social security benefits. Indian children are the most vital and valued resource to the continued existence, the future, and integrity of the Nisqually Tribe. The Tribe has a compelling interest in promoting and maintaining the health and well-being of all Nisqually children.

50.26.02 Jurisdiction

The Court shall have jurisdiction over any action to determine paternity under this Title.

50.26.03 Presumption of Paternity

A man is presumed to be the natural father of a child if (a) he and the natural mother were married to each other at the time of the child's birth or if the child was born within three hundred (300) days after the marriage was terminated; (b) with the man's consent, he is named as the child's father on the child's birth certificate; or (c) a genetic test shows a statistical probability of at least 99.9% that the alleged father is the biological father.

The presumption may be overcome by a court decree based on clear and convincing evidence.

50.26.04 General Provisions

(a) An unwed father is not entitled to treatment as a parent under this Title unless his name appears on the child's birth certificate or his paternity is established under this Section.

(b) The procedures for establishment of paternity under this Chapter may be used even if an alleged father, or the mother, is dead or otherwise unavailable.

(c) The provisions of this Chapter may be applied to determinations of maternity.

(d) An action to establish paternity under this section is not barred by any agreement between an alleged or presumed father and the mother of the child.

(e) No statute of limitations applies to an action to establish paternity.

50.26.05 Agreed Paternity Order

The parties may submit an agreed order establishing the paternity of a child. Before deciding whether to approve the agreed order, the judge shall discuss the agreed order with each party and shall: (a) Explain the proposed agreed order in detail and the consequences of the order and of the person's failure to comply with agreed terms; (b) assure that the person's consent to the proposed agreed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person; (c) explain the person's right to a spokesperson at their own expense; (d) explain the burden of proof as to each issue; and (e) explain that once the person agrees to the proposed order and it is signed and entered by the Court, it will be too late for the person to change his or her mind. If the Court finds that any consent was not truly voluntary, the agreed order shall not be entered and the case shall proceed to a hearing.

50.26.06 Paternity Petition

(1) Generally. A paternity proceeding under this article may stand alone as a separate proceeding or it may be joined with an action for divorce, dissolution, annulment, declaration of invalidity, separate maintenance, child-parent relationship, support, or any other civil action in which paternity is an issue including youth in need of care proceedings.

(2) Who May File Petition. A petition to request the Court to establish paternity may be filed by:

(a) An adult child or a child's legal guardian;
(b) The child's natural mother;
(c) An alleged father of the child; or
(d) Any Tribal department or program with an interest in determining parentage.

(3) Contents of Petition. A petition to establish paternity, prepared on a form approved by the Court, shall state:

(a) The names, ages, addresses, and tribal affiliations, if any, of the natural mother, the alleged father(s), the child, all others who have legal rights of custody, visitation, or support of the child, and of the petitioner;
(b) Whether the natural mother and the alleged father are or were married, and the dates of marriage, separation, and divorce, if any;
(c) Whether the natural mother and alleged father agree that the alleged father is the natural father of the child; and
(d) Whether there are other Court or administrative paternity proceedings or State paternity affidavits concerning the child or whether parental rights have been terminated.

A certified copy of the child's birth certificate shall be attached to the petition or provided to the Court at least 10 days before the first hearing.

(4) Service and Summons. Upon receipt of the petition for guardianship, the Court shall set a date for a paternity hearing which shall not be more than forty (40) days after the Court receives the petition. All parties, including the child if over 18 years of age, the biological mother, and the man alleged in the petition to be the natural father, shall be served with the petition and a summons in accordance with Section 50.10.01, above. The summons shall notify the party that the party must respond to the summons and petition by filing an answer with the Court and serving it on all parties. The summons shall further notify the party that, if the written response is not filed with the Court within 21 days after receipt of the summons and petition, the Court may, without that party's response, enter a judgment of paternity by default only if it has admitted evidence of genetic testing statistically proving that the man alleged in the petition is the biological father.

50.26.07 Paternity Hearing

The following rules shall apply to paternity hearings:

(1) Only those persons the Court finds to have a legitimate interest in the proceedings may attend hearings under this article. Nisqually Children and Family Services staff may be present at paternity hearings.

(2) The mother of the child and the alleged father may be compelled to testify or to provide DNA samples at the paternity hearing.

(3) Testimony of a health care provider concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged for purposes of admitting this evidence.

(4) The parties shall provide testimony on how the costs of paternity testing shall be paid and the Court will make a determination based on this testimony. If the testing was paid by the Nisqually Tribe, the Tribe may waive all or part of the costs or request reimbursement.

(5) The Court may enter a judgment of paternity by default only if it has admitted evidence of genetic testing statistically proving that the man alleged in the petition to be the natural father is the biological father.

50.26.08 Evidence Relating to Paternity

Genetic tests are the preferred method of establishing paternity. Evidence relating to paternity may include:

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

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

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

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

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

50.26.09 Genetic Testing

In all paternity proceedings, the Court shall require the child, mother, and alleged father(s) to submit to genetic tests, unless good cause exists not to require such testing.

The following requirements apply to genetic testing under this section:

(1) Lab Accredited. The tests shall be performed by an accredited paternity genetic testing lab that performs legally and medically acceptable tests, approved by the Tribe or the Court.

(2) Admission into Evidence. Unless a party objects to the results of genetic tests in writing at least five days before the hearing, the tests shall be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity.

(3) Affidavit of Genetic Expert. The results of genetic tests must be accompanied by an affidavit from the expert describing the expert's qualifications and analyzing and interpreting the results as well as documentation of the chain of custody of the genetic samples.

(4) Contempt of Court. Failure to submit to genetic tests when required by the Court may constitute contempt of Court.

50.26.10 Paternity Order

The judgment or order of the Court determining whether or not a respondent is a parent of a child shall be based on a preponderance of the evidence. If the judgment or order of the Court establishes a different father than that on the child's birth certificate, the Court shall send the order to the Department of Vital Statistics of the state in which the child was born.

50.26.11 Disestablishment of Presumed Paternity

A man presumed to be a child's father under Section 50.26.03 above, may bring an action for the purpose of declaring the nonexistence of the father and child relationship only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party. Any other interested party may bring an action at any time for the purpose of declaring the existence or nonexistence of the father and child relationship. Regardless of its terms, no agreement between an alleged or presumed father and the mother or child shall bar an action under this section. If an action under this section is brought before the birth of the child, all proceedings may be stayed until after the birth, except service of process and discovery, including the taking of depositions.

If the Court finds there is a reasonable basis to question paternity, or upon agreement of the parties, it may order genetic testing.

As a matter of policy, the Nisqually Tribe discourages the disestablishment of paternity that has earlier been established under operation of law. The Court shall require the party seeking to disestablish paternity to establish by clear and convincing evidence that the presumed parent is not a genetic parent and that it is in the best interest of the child to disestablish paternity.

Best interest factors to be considered by the Court shall include: (a) The age of the child; (b) The length of time during which each individual assumed the role of parent of the child; (c) The nature of the relationship between the child and each individual; (d) The harm to the child if the relationship between the child and each individual is not recognized; (e) The basis for each individual's claim to parentage of the child; (f) Whether there is another presumed parent; and (g) Other equitable factors arising from the disruption of the relationship between the child and each individual or the likelihood of other harm to the child.

50.26.12 Paternity Records

The records filed in a paternity action shall be confidential. Only parties to the case may obtain copies.

Historical and Statutory Notes

Section 50.26 added by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.27 EMANCIPATION

50.27.01 Purpose

The purpose of this chapter is to provide a process for young people to petition the Court for emancipation.

50.27.02 Who May Petition

(a) Any child who is at least sixteen (16) years of age may petition the Court for an order of emancipation provided the following requirements are met:
   (i) The Court has jurisdiction over the child;
   (ii) The child is living separate and apart from his or her parents or guardian; or the child is a parent; or the child has special needs; or there exist special circumstances necessitating emancipation; and,
   (iii) The child is capable of arranging for his or her own support and the management of his or her own financial affairs.

(b) The Court Clerk shall deliver a copy of the petition to the Indian Child Welfare Department no later than three (3) days after the petition has been filed.

50.27.03 Petition for Emancipation - Contents

The petition for emancipation shall include:

(a) The name, date of birth, address, and tribal status of the child;

(b) The name, address, and tribal status of each living parent;

(c) The name and address of the child's custodian or guardian, if any;

(d) The reasons emancipation would be in the best interests of the child;

(e) The purposes for which emancipation is sought.

50.27.04 Consent

The child must obtain the consent of each living parent or guardian of the child who has control of the child's person or property. If the person who is to consent to the petition is unavailable or his or her whereabouts is unknown, or if a parent or guardian unreasonably withholds consent, the Court, acting in the best interests of the child, may waive this requirement of consent as to that parent or guardian.

50.27.05 Setting the Emancipation Hearing

Upon receipt of the petition for emancipation, the Court shall set a date for an emancipation hearing which shall not be more than sixty (60) days after the Court receives the petition.

50.27.06 Emancipation Hearing - Required Notice

(a) Notice of the emancipation hearing shall be given at least five (5) days before the hearing. The notice shall include:
  (i) The nature of the proceedings of the court;
  (ii) The date, time and place of hearing; and,
  (iii) A copy of the petition which has been filed.

(b) The following persons shall be served with the required notice:
  (i) The child;
  (ii) The child’s parent(s) or guardian; and
  (iii) Nisqually Children and Family Services .

(c) The notice shall be served in the manner provided in Section 50.10.01 of this Chapter.

50.27.07 Recommendation of Nisqually Children and Family Services

Nisqually Children and Family Services may file a recommendation with the Court on any petition for emancipation. A copy of the recommendation shall be provided to the child and his or her parent(s) or guardian.

50.27.08 Notice of Prior or Pending Court Actions

Nisqually Children and Family Services shall notify the Court if it is aware of any court orders or legal actions, in any jurisdiction, involving the child and which may be relevant to the emancipation proceedings (such as juvenile criminal proceedings, sentencing orders, parole; dependency proceedings; etc.). No emancipation shall be ordered if it would circumvent a valid criminal sentence ordered by any court of competent jurisdiction.

50.27.09 Unavailability of the Parties for Hearing

The Court may order emancipation even if all parties are not present at the hearing provided that notice was provided or attempted in accordance with this Title. If the child is unable to attend the hearing due to exceptional circumstances, the petition may be presented by a spokesperson for the child or by Nisqually Children and Family Services. In such cases, the child shall file an affidavit with the Court stating his or her understanding of the terms and consequences of the emancipation. If the Court finds that exceptional circumstances do not exist, a continuance shall be granted until the child can be present at the hearing.

50.27.10 Applicable Standard

The Court may remove the disabilities of minority as requested in the petition if the Court finds that it will be in the best interests of the child. Emancipation may be for general or limited purposes, and the Order of Emancipation shall specifically state the extent of the emancipation. A copy of the order shall be provided to the child, his/her parents or guardian, and to the Indian Child Welfare Department.

50.27.11 Power and Capacity of Emancipated Child

(a) An emancipated child 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:
    (i) The termination of parental or guardianship obligations of financial support, care, supervision, and any other obligation the parent, guardian or

any social service agency may have by virtue of the parent-child relationship or the minor status of the child;

(ii) The right to sue or be sued in his or her own name;

(iii) The right to retain his or her own earnings;

(iv) The right to establish separate residence or domicile;

(v) The right to enter into non-voidable contracts;

(vi) 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;

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

(viii) The right to give informed consent for receiving health care services.

(b) An emancipated child shall not be considered an adult for the purposes of:

(i) The adult criminal laws of the Tribe, unless the Tribe's Law and Order Code provides for such consideration regardless of the emancipated status of the child;

(ii) The Tribe's criminal laws when the emancipated child is a victim and the age of the victim is an element of the offense; or,

(iii) Specific constitutional and statutory age requirements regarding voting, use of alcoholic beverages, possession of firearms, and other health and safety regulations relevant to the child because of the child's age.

50.27.12 Emancipation Decree

Upon entry of an emancipation decree, the court shall provide the petitioner with a certified copy of the decree and instruct the petitioner to obtain a Washington driver's license or identification card which makes a notation of the child's emancipated status.

50.28 JUVENILE CURFEW

50.28.01 Purpose and Enforcement

To promote the health, safety and welfare of the residents of the Nisqually Indian Reservation, the Nisqually Tribe hereby adopts this chapter regulating juvenile curfew on the Reservation.

50.28.02 Violations by Children under Fourteen

Any child under the age of fourteen (14) years shall be cited for "Curfew Violation" if that child is found loitering on the streets, highways or other public places on the Nisqually Reservation without adult supervision between the hours of 9:00 P.M. and 5:30 A.M. on any night preceding a school day, or between the hours of 10:00 P.M. and 6:00 A.M. on any other night.

50.28.03 Violations by Children Ages Fourteen to Seventeen

Any child who is the age of fourteen (14) to seventeen (17) years, inclusive, shall be cited for "Curfew Violation" if that child is found loitering on the streets, highways or other public places on the Nisqually Reservation without adult supervision between the hours of 10:00 P.M. and 5:30 A.M. on any night preceding a school day, or between the hours of 12:00 midnight and 6:00 A.M. on any other night.

50.28.04 Contributing to the Delinquency of a Minor

Any parent or guardian in lawful physical custody of any child who violates Sections 50.28.02 and 50.28.03 shall be cited for "Contributing to the Delinquency of a Minor." If two (2) parents or guardians are in lawful physical custody of the child, they shall be jointly cited for one (1) civil offense.

50.28.05 Penalties for a Parent or Guardian

(a) Any parent or guardian found guilty of violating Section 50.28.04 by a preponderance of the evidence may be fined not more than one-hundred dollars ($100.00) and/or required to conduct community services for a period not to exceed twenty-five (25) hours and shall be assessed reasonable court costs.

(b) The Court may in its discretion suspend the fine and order the parent or guardian to attend such parenting counseling sessions as are available and as are deemed appropriate in view of the circumstances surrounding the offense, not to exceed three (3) months of weekly sessions.

50.28.06 Penalties for Children Ages Twelve to Seventeen

(a) Any child ages twelve (12) to seventeen (17) inclusive, found guilty of violating Sections 50.28.02 and 50.28.03 by a preponderance of the evidence may be fined not more than twenty-five dollars ($25.00). Alternatively, the Court may, in its discretion, and in view of the circumstances surrounding the offense, suspend the fine and require the child to submit to a deferred penalty plan as recommended by NCFS, who shall be notified of all citations issued to child under this chapter.

(b) The deferred penalty plan may include any one or a combination of the following:
   (i) Counseling;
   (ii) Maintenance of school grades at an average level of at least a "C".

(iii) Participation in extracurricular activities (sports, music, school-sponsored clubs, etc.); and
(iv) Community service with Tribal elders or child.

50.28.07 Fines

All fines collected under this ordinance shall be deposited as required by the Nisqually Law and Order Code but accounted for separately so that such fines, excluding court costs, can be spent on Tribal youth programs, as determined by the Tribal Council.

50.29 CUSTODIAL INTERFERENCE

50.29.01 Custodial Interference Defined

For the purposes of this Title a person is guilty of "custodial interference" if that person, with intent to deny access to a child by a parent, guardian, institution, agency, or other person having a lawful right to physical custody of such child, the person takes, entices, retains, detains, or conceals the child from the parent, guardian, institution, agency, or other person having a lawful right to physical custody of such child.

50.29.02 Custodial Interference - Defense

(a) It is a complete defense to a charge of custodial interference, if established by the defendant by a preponderance of the evidence, that:
(i) The defendants purpose was to protect the child, or himself or herself from imminent physical harm, that the belief of imminent physical harm was reasonable, and that the defendant sought the assistance of the court, law enforcement, or Nisqually Children and Family Services before committing the acts charged or within 24 hours thereafter;
(ii) The party having a lawful right to physical custody of the child has failed to exercise his or her rights to custody for an extended period of time; or,
(iii) The acts giving rise to the charges were consented to by the party having lawful right to physical custody.

(b) Consent of a child less than sixteen years of age does not constitute a defense to a charge of custodial interference.

50.29.03 Custodial Interference - Order to Show Cause

Facts constituting custodial interference may be presented to the Court by motion of any party or upon the Court's own motion. The Court may then order the person to appear to show cause why he or she should not be found to have committed custodial interference.

50.29.04 Custodial Interference - Power of the Court

If the Court finds by a preponderance of the evidence that a person has committed custodial interference, it may:

(a) Require the violator to pay a civil penalty, not to exceed $5000;

(b) Order restitution, to reimburse any party, including the Tribe for loss or injury caused by the custodial interference, including, but not limited to, expenses incurred in locating or returning the child;

(c) Order that the person return the child to the person having lawful custody.

50.30 RUNAWAY YOUTH

When a youth who is the subject of any proceeding under this Chapter is determined by the Court to be in runaway status, the Court may issue a warrant and order that the youth be picked up and:

(i) Returned to their parent, guardian or custodian;

(ii) Returned to their temporary foster care placement; or

(iii) Held at a juvenile detention facility.

Historical and Statutory Notes

Section 50.30 was added by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.31 CONTEMPT

50.31.01 Contempt - Defined

The following acts or omissions by any person constitute contempt of court:

(a) Disorderly, contemptuous, or insolent behavior toward the judge while holding court, tending to impair his or her authority, interrupting the due course of a hearing or other judicial proceeding, or being intoxicated in court;

(b) Disobedience to any lawful judgment, decree, order, subpoena, or other process of the Court;

(c) A breach of the peace, boisterous conduct or violent disturbance tending to interrupt the due course of a hearing or other judicial proceeding;

(d) Any other unlawful interference with the process or proceedings of the Court;

(e) Any fraudulent or willful interference with the attendance or testimony of a juror, witness or party to an action under this Title.

50.31.02 Contempt - Summary Punishment

When contempt is committed in the presence of the Court, it may be punished at that time. An order shall be prepared stating the contemptuous acts which occurred, that the person is guilty of contempt of court, and the punishment.

50.31.03 Contempt - Order to Show Cause

When contempt has not been committed in the presence of the Court, the facts constituting contempt must be presented to the Court by motion of any party or upon the Court's own motion. The Court may then order the person to appear to show cause why he or she should not be held in contempt of court.

50.31.04 Contempt - Power of the Court

If the Court finds by a preponderance of the evidence that a person has committed contempt, it may:

(a) Require the violator to pay a civil penalty not to exceed $5000, except that the Court may not impose a fine or any other sanction against the Nisqually Indian Tribe nor against its representative;

(b) Issue a warrant for a person's arrest for contempt upon failure to appear at any ordered conference or hearing; or

(c) Refer the matter to the Tribal Prosecutor.

(d) Order restitution, to reimburse any party, including the Tribe for loss or injury caused by the contemptuous act or omission.

50.31.05 Contempt - Imprisonment Until Act is Performed

When the contempt consists of the omission or refusal to perform an act which is yet in the power of the person to perform, he or she may be imprisoned until he or she has performed it. In such a case, the act must be specified in the warrant of commitment.

Historical and Statutory Notes

Subsection 50.31.04 amended by Tribal Council Resolution 71-2023, dated June 8, 2023.

CHAPTER II – JUVENILE JUSTICE

50.32 GENERAL PROVISIONS

50.32.01 Purpose

These juvenile justice procedures shall apply when a youth is charged with committing an act which would be a criminal offense under the laws of the Nisqually Indian Tribe if committed by an adult. The Tribe recognizes the unique needs of youth and their families in these situations. This Title is meant to facilitate the rehabilitation of youth offenders so that they will not continue on to become adult offenders. The Tribe believes that the successful rehabilitation of a youth is facilitated if the person(s) responsible for the care of the youth are involved in the process. This Title is also meant to provide penalties for parents, guardians, or custodians who fail to provide proper supervision and guidance to the youth during the rehabilitation process.

Historical and Statutory Notes

This Chapter was adopted October 29, 1996.

50.32.02 Severability

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

50.32.03 Jurisdiction

The Nisqually Tribal Court shall have jurisdiction over cases arising under this Title of the Nisqually Law and Order Code. The jurisdiction of the Tribal Court over persons and territory is limited only by federal law and the Constitution of the Nisqually Indian Tribe. The Tribal Court shall have the power to decide questions of jurisdiction which may be raised under this Title.

50.32.04 Repealer

This Title is to be interpreted to supersede and replace any conflicting provisions of all prior juvenile justice codes and laws of the Nisqually Indian Tribe.

50.32.05 Time Computation

In computing any period of time prescribed or allowed by this Title, or by rules of the Court, the day of the act, event or default from which the designated period of time

begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday or Tribal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and Tribal holidays shall not be counted in the computation.

50.32.06 Non-Criminal Proceedings

No adjudication upon the status of any youth in the jurisdiction of the Juvenile Court shall be deemed criminal or be deemed a conviction of a crime unless the Juvenile Court transfers jurisdiction to the Tribal Court according to section 50.32.08 of this Title.

50.32.07 Use in Other Proceedings

The adjudication, disposition, and evidence presented before the Juvenile Court shall be inadmissible as evidence against the youth in any proceeding in another Court, including the Tribal Court.

50.32.08 Transfer to Tribal Court

(a) An officer of the Court may file a petition requesting the Juvenile Court to transfer a youth to the jurisdiction of adult Tribal Court if the youth is sixteen (16) years of age or older and is alleged to have committed an act which would have been considered a serious crime if committed by an adult.

(b) The Juvenile Court shall conduct a hearing to determine whether jurisdiction of the youth should be transferred to Tribal Court. The transfer hearing shall be held within ten (10) days of the receipt of the petition by the Court. Written notice of the time, place and purpose of the hearing shall be given to the youth and the youth's parent(s), guardian, or custodian at least three (3) days prior to the hearing. At the commencement of the hearing the Court shall notify the youth and the youth's parent(s), guardian, or custodian of their rights under section 50.35.04 of this Title.

(c) The following factors shall be considered when determining whether to transfer jurisdiction of the youth to Tribal Court:
   (i) The nature and seriousness of the delinquent act with which the youth is charged;
   (ii) The nature and condition of the youth, as evidenced by his or her age, mental and physical condition; and
   (iii) The youth's past record of delinquent acts.

(d) The Juvenile Court may transfer jurisdiction of the youth to adult Court only if the Court finds clear and convincing evidence that both the following circumstances exist:

(i) There are no reasonable prospects for rehabilitation the youth through resources available to the Juvenile Court; and
(ii) The delinquent act(s) alleged committed by the youth evidence a pattern of conduct which constitutes a substantial danger to the public.

(e) A youth may be transferred to Tribal Court only if the Juvenile Court issues a written order after the conclusion of the transfer hearing which contains specific findings and reasons for the transfer in accordance with subsections (c) and (d) above. The written order terminates the jurisdiction of the Juvenile Court over the youth with respect to the delinquent act(s) alleged in the petition.

(f) No youth shall be prosecuted in Tribal Court for a criminal offense unless the case has been transferred to Tribal Court as provided in this section.

50.32.09 Transfers from Other Courts

The Juvenile Court may accept or decline transfers from other states or tribal courts involving alleged juvenile offenders for the purposes of adjudication and/or disposition.

50.32.10 Court Records

(a) A record of all hearings under this Title shall be made and preserved.

(b) All Court records made in juvenile delinquency hearings shall be confidential and may only be open to inspection by:
(i) The youth;
(ii) The youth's parent(s), guardian, custodian and/or custodian;
(iii) The youth's guardian ad litem;
(iv) The Youth Counselor;
(v) The Presenting Officer;
(vi) A Nisqually Children and Family Services caseworker involved in the case.

50.32.11 Law Enforcement Records

(a) Law enforcement records and files concerning a youth shall be kept separate from the records and files of adults.

(b) All law enforcement records concerning a youth shall be confidential and may only be open to inspection by:
(i) The youth;
(ii) The youth's parent(s), guardian, and/or custodian;

(iii) The youth's guardian ad litem;
(iv) The Youth Counselor;
(v) The Presenting Officer;
(vi) ANisqually Children and Family Services caseworker involved in the case.

50.32.12 Expungement

When a youth who has been the subject of a juvenile delinquency proceeding reaches the age of twenty-one (21), the Tribal Judge shall order the Court Clerk to destroy all Court records and law enforcement records of the juvenile. This section shall be retroactive to include records in existence prior to enactment of this Title.

50.33 DEFINITIONS

50.33.01 Definitions

(a) Court or Tribal Court means the Nisqually Tribal Court.

(b) Custodian means any person to whom temporary physical care, custody, and control of a youth has been transferred by the parent(s) of such youth.

(c) Delinquent Act means any act or omission by a youth which would be considered a crime under the laws of the Nisqually Indian Tribe if committed by an adult.

(d) Detention means the placement of a youth in a physically restrictive facility.

(e) Foster Home means a home outside a youth's extended family which receives youths for regular care during any or all of a twenty-four (24) hour day.

(f) Guardian means any person who has legal custody of a youth under Tribal law or custom or under State law.

(g) Guardian ad Litem means an adult appointed by the Court to represent the best interests of a youth during proceedings against the youth under this Title.

(h) Parent includes a biological or adoptive parent but does not include persons whose parental rights have been terminated, nor does it include an unwed father whose paternity has not been acknowledged or established.

(i) Probable Cause/Reason to Believe means circumstances that are sufficient to convince a reasonable person that the facts alleged are more likely true than false.

(j) Youth or Juvenile means:

(i) Any person under eighteen (18) years of age;
(ii) A person eighteen (18) years of age or older concerning whom proceedings are commenced under this Title prior to his or her eighteenth birthday.
(iii) A person eighteen years of age or older who is under the continuing jurisdiction of the Court under this Title.

(k) Youth Offender or Juvenile Offender means a person under eighteen (18) years of age who commits any act or omission which would be considered a crime under the laws of the Nisqually Indian Tribe if committed by an adult.

50.34 JUVENILE COURT PERSONNEL

50.34.01 Juvenile Court Judge

(a) The Juvenile Court Judge(s) shall be appointed in the same manner as the Tribal Court Judge(s).

(b) The Juvenile Court Judge(s) qualifications shall be the same as the qualifications for Tribal Court Judge(s).

(c) In carrying out the duties and powers specifically enumerated under this Title, judges of the Juvenile Court shall have the same duties and powers as judges of the Tribal Court, including, but not limited to, the contempt power, the power to issue arrest or custody warrants, and the power to issue search warrants.

(d) The rules on disqualification or disability of a Juvenile Court judge shall be the same as those rules that govern Tribal Court judges.

50.34.02 Presenting Officer

(a) The Tribal Council shall appoint a presenting officer to carry out the duties and responsibilities set forth in this Title. The presenting officer shall represent the Tribe in all proceedings under this Title.

(b) The qualifications of the presenting officer shall be the same as the qualifications for the official who acts as prosecutor for the Tribal Court.

50.34.03 Mediator

(a) The Tribal Court shall appoint mediators to carry out the duties and responsibilities set forth in this Title.

(b) Mediators shall be over eighteen (18) years of age and shall have knowledge of Tribal customs and traditions. Preference shall be given to Tribal elders and persons familiar with informal dispute resolution procedures.

50.34.04 Youth Counselor

(a) The Nisqually Business Committee shall appoint or hire one or more youth counselors to carry out the duties and responsibilities set forth in this Title.

(b) The Youth Counselor(s) must have an educational background and/or prior experience in the field of delivering social services to youth.

(c) The Youth Counselor(s) shall identify and develop resources on the reservation designed to enhance each youth's potential as a responsible member of the community.

(d) The Youth Counselor(s) shall not be employed or perform the duties of prosecutor or law enforcement official.

(e) When a youth is found by the Court to be a youth offender, the Youth Counselor shall prepare the predisposition report required by section 50.32.06 of this Title and shall oversee any disposition ordered by the Court. The Youth Counselor shall assist the family in meeting the requirements of the disposition order; however, primary responsibility for assuring that the disposition order has been followed remains with the youth and the youth's parent(s), guardian or custodian.

50.34.05 Guardian ad litem

(a) The Court may appoint a guardian ad litem to represent the interests of a youth in any proceeding where the Court finds that the youth does not have a parent(s), guardian or custodian willing and able to provide guidance and support to the youth during the proceeding.

(b) A guardian ad litem must be familiar with the rights of youth and the provisions of this Title.

(c) Appointment of a guardian ad litem does not alter a youth's right to legal counsel at his or her own expense.

50.35 RIGHTS OF PARTIES

50.35.01 Privilege Against Self-Incrimination

(a) A youth alleged to be a "juvenile offender" shall from the time of being taken into custody be accorded and advised of the privilege against self-incrimination.

(b) A youth may not waive his or her privilege against self-incrimination. Only the youth's parent(s), guardian, custodian or guardian ad litem may do so. Any statement made by a youth prior to a waiver of the youth's right to remain silent by his or her parent(s), guardian, custodian or guardian ad litem may not be used against the youth in any proceeding under this Title or in any other proceeding in Nisqually Tribal Court.

50.35.02 Fingerprinting and Photographs

A youth in custody shall not be fingerprinted or photographed for criminal identification purposes except by order of the Juvenile Court. If an order of the Juvenile Court is given, the fingerprints or photographs shall be used only as specified by the Court.

50.35.03 Right to Retain Counsel

In any proceeding under this Title, the youth and the youth's parent(s), guardian or custodian shall be advised by the Court and/or its representative that the youth and the youth's parent(s), guardian, or custodian may be represented by counsel at all stages of the proceedings.

50.35.04 Rights of Parties at Hearings

(a) At the youth's first appearance before the Juvenile Court, and at each subsequent appearance before the Court, the youth alleged to be a "juvenile offender" and the youth's parent(s), guardian, or custodian shall be informed by the Court of the following:
   (i) The allegations against the youth and the possible consequences if the allegations in the petition are found to be true;
   (ii) The right to have a legal representative advise and represent them at their own expense;
   (iii) The right to subpoena witnesses;
   (iv) The right to introduce, examine and cross-examine witnesses;
   (v) The right to discover, offer and inspect evidence;
   (vi) The right to present arguments and statements;
   (vii) A party need not be a witness against himself or herself.

(b) There is no right to trial by jury during any proceeding under this Title.

50.36 PARENTAL RESPONSIBILITY

50.36.01 Parental Responsibilities

(a) Any parent or legal guardian of a youth accused of committing a delinquent act shall have the following responsibilities:
   (i) To attend all Court hearings involving the youth. If the parent or guardian is unable to attend any hearing they must show cause to the Court as to why they should be excused;
   (ii) To insure that supervision and guidance is provided to the youth during all Court proceedings;
   (iii) To monitor the youth during any period of rehabilitation ordered by the Court.

(b) Any parent or legal guardian of a youth who does not comply with subsection (a) may be ordered to appear before the Court and show cause as to why they should not be fined in accordance with subsection (c).

(c) If, after a court hearing, the Court determines that a parent or legal guardian has failed to meet their responsibilities under this Title, the Court may impose a civil penalty not to exceed $500 for each occurrence.

(d) A showing that the parent or legal guardian has turned physical custody of the youth over to a custodian does not excuse the parent or legal guardian from responsibility under this Title. The parent or legal guardian may only be excused from responsibility if the youth is under the control of another person as the result of a court order.

50.37 TAKING A YOUTH INTO CUSTODY

50.37.01 Warrant

The Court may issue a warrant directing that a youth be taken into custody if:

(a) The Court finds probable cause to believe the youth committed a delinquent act under Nisqually Tribal law; and

(b) The Court finds probable cause to believe that if the youth is not taken into custody he or she will fail to appear for a hearing on the matter, or is likely to endanger himself/herself or others.

50.37.02 Custody

A youth may be taken into custody by a law enforcement officer if:

(a) The officer has reasonable grounds to believe that the youth has committed a delinquent act under Nisqually Tribal law; or

(b) A warrant has been issued by the Court ordering that the youth be taken into custody.

50.37.03 Law Enforcement Officer's Duties

A law enforcement officer who takes a youth into custody, pursuant to section 50.37.02 of this Title, shall proceed as follows:

(a) Explain the following rights to the youth prior to questioning:
  (i) The youth has the right to remain silent;
  (ii) The youth has the right to be represented by an attorney at his or her own expense and has the right to have the attorney present during questioning;
  (iii) The youth has the right to the presence of the youth's parent(s), guardian, or custodian during questioning;

(b) Release the youth to the youth's parent(s), guardian, or custodian and give such counsel and guidance as may be appropriate, unless the officer has reasonable cause to believe that detention or shelter care is necessary. Detention or shelter care shall only be deemed necessary if:
  (i) The youth is in danger of injury;
  (ii) The youth is under the influence of alcohol or controlled substances;
  (iii) The youth will not cease illegal conduct;
  (iv) Release of the youth is likely to result in injury to the youth or others; or,
  (v) A parent(s), guardian, or custodian of the youth is not available to receive custody of the youth.

(c) If the youth is not released, law enforcement shall make immediate and recurring efforts to notify the youth's parent(s), guardian or custodian that the youth has been taken into custody and the location of the youth.

(d) If the youth is not released, the youth shall be taken to a detention or shelter care facility in accordance with Section 50.37.04.

50.37.04 Detention and Shelter Care

(a) A youth alleged to be a juvenile offender may be detained, pending a Court hearing, according to the following order of preference, in:
  (i) The home of a responsible relative;
  (ii) A foster care home or facility on the reservation that has been approved by the Indian Child Welfare Committee;

(iii) A private family home on the reservation that has been approved by the Indian Child Welfare Committee;
(iv) A licensed foster care home or facility off the reservation that has been approved by the Indian Child Welfare Committee;
(v) A private family home off the reservation that has been approved by the Indian Youth Welfare Committee;
(vi) A juvenile detention facility operated by a federally recognized Indian tribe;
(vii) A juvenile detention facility operated by the State of Washington.

(b) A youth who is sixteen (16) years of age or older may be detained in a jail or other detention facility used for the detention of adults only if:
(i) A facility as described in subsection (a) is not available or would not assure adequate supervision of the youth;
(ii) Detention is in a cell separate from adults; and
(iii) Adequate supervision is provided twenty-four (24) hours a day.

50.37.05 Search and Seizure

Searches and seizures in connection with delinquent act(s) committed by a youth shall be conducted in the same manner and shall be subject to the same limitations as searches and seizures in connection with adult criminal offenses.

50.37.06 Emergency Medical Care

Any time after a youth is taken into custody until such time as the youth has been returned to his or her parent(s), guardian or custodian, law enforcement shall ensure that the youth has access to any needed emergency medical care. When law enforcement knows, or should reasonably know, that emergency medical care is needed, they shall transport the youth to Indian Health Services. If care is not available at Indian Health Services law enforcement shall transport the youth to another facility where the youth can receive medical attention. When a youth is transported to a facility other than Indian Health Services, law enforcement shall make a reasonable effort to follow the procedures necessary to ensure that Indian Health Services will cover the financial costs of the medical treatment.

HISTORICAL AND STATUTORY NOTES

Section 50.37.03(a) amended by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.38 INITIATING COURT PROCEEDINGS

50.38.01 Complaint

A complaint may be filed with the Court by a law enforcement officer or by a person who has knowledge of the facts alleged. The complaint shall be signed by the person who filed the complaint and shall contain:

(a) The name, birth date, and address of the youth who is the subject of the complaint, if known;

(b) The names and addresses of the youth's parent(s), guardian, or custodian;

(c) If the youth is in detention or shelter care, the place of detention or shelter care and the time he/she was taken into custody;

(d) A statement of the delinquent act which the youth is alleged to have committed;

(e) A concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged acts occurred; and

(f) A list of witnesses known to the person who files the complaint at the time the complaint is filed.

50.38.02 Petition

Proceedings under this Title shall commence upon the filing of a petition by the Presenting Officer on behalf of the Tribe. The petition shall contain the following information:

(a) Citation to the specific provision(s) of this Title which gives the Court jurisdiction over the proceedings;

(b) The name, birth date, and address of the youth who is the subject of the complaint, if known;

(c) The names and addresses of the youth's parent(s), guardian, or custodian;

(d) If the youth is in detention or shelter care, the place of detention or shelter care and the time he/she was taken into custody;

(e) A statement of the delinquent act which the youth is alleged to have committed;

(f) A concise statement of the facts upon which the allegations are based, including the date, time, and location at which the alleged acts occurred; and

(g) A list of witnesses known to the person who files the complaint at the time the complaint is filed.

50.38.03 Summons

(a) Upon filing a petition, the Presenting Officer shall issue a summons commanding the youth and the youth's parent(s), guardian or custodian to appear for a preliminary hearing. A summons shall be issued even if the youth is being held in custody.

(b) The summons shall contain:
- (i) The name of the Court;
- (ii) The title of the proceedings;
- (iii) A brief statement of the substance of the allegations against the youth;
- (iv) The date, time and place of the proceedings;
- (v) Notice to the youth and the youth's parent(s), guardian or custodian that they are required to attend the hearing and that if they fail to attend they may be charged with contempt of Court.

50.38.04 Service of Summons

(a) Any summons required by this Chapter may be served by any Tribal law enforcement officer or other person over eighteen (18) years of age appointed for such purpose. The summons shall be served at least five days prior to the date of the preliminary hearing unless the youth is being held in custody or the Court determines that an emergency hearing must be held. If the youth is being held in custody or the Court determines that an emergency hearing must be held the summons shall be served as far in advance of the hearing as possible.

(b) A separate summons shall be served upon each person being summoned.

(c) Service of a summons shall be made either:
- (i) by delivering a copy to the person named; or
- (ii) by leaving a copy at his or her residence with any competent person sixteen (16) years of age or older who resides there; or
- (iii) by sending a copy to the persons last known address by certified mail, return receipt requested and by regular mail. Service shall be considered complete three (3) days after the date of mailing.

(d) Proof of service of summons shall be filed with the Court Clerk by noting on the back of a copy of the summons the manner, date, time, and place that it was

served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the summons.

50.38.05 Failure to Appear

(a) If the alleged youth offender fails to appear at the preliminary hearing the Court shall issue a warrant for the youth to be taken into custody.

(b) Any person other than the alleged juvenile offender who has been issued a summons and who fails to appear at the preliminary hearing may be held in contempt of Court. The Court shall direct the Court Clerk to serve a second notice upon the absent party ordering them to appear before the Court at the next scheduled hearing and show cause as to why they should not be charged with contempt of Court. The second notice shall be served in the manner provided for service of summons in Section 50.38.04.

Historical and Statutory Notes

1. This Chapter was adopted October 29, 1996.

50.39 COURT PROCEEDINGS

50.39.01 Closed Hearings

All court hearings held under this Title shall be open hearings except as follows:

(a) Any hearing regarding a juvenile who is alleged to have committed a sexually abusive act shall be closed to the public. "Sexual abuse" includes, but is not limited to, incest, child molestation, indecent liberties, rape and any other acts which would be considered sex crimes if committed by an adult.

(b) Any hearing regarding a juvenile who is alleged to have committed a delinquent act which would be considered a crime against a person if committed by an adult may be closed by the Judge at the request of the alleged victim.

50.39.02 Admissibility of Evidence

(a) The rules of evidence in State and Federal Court shall not apply in proceedings under this Title.

(b) Where there is more than one kind of evidence about the same subject, the Judge shall give each item of evidence the importance (weight) which, according to the Judge's common sense and sense of fairness, that particular type of evidence deserves. For example, in oral testimony, the testimony of persons who testify

from personal knowledge, such as first hand observation of, or participation in, the event described shall be given more weight than the testimony of persons who only have knowledge of the event which they gained from other persons.

(c) Evidence admitted in proceedings under this Title must be related to the issues before the Court or to the weight and credibility which should be given other evidence. When questioned by the Judge or another party as to why certain evidence should be allowed, the party who wishes to present to the evidence shall:
(i) State the issue which he or she will use the evidence to resolve; and,
(ii) Explain how the evidence is relevant to the issue.

(d) When the relevance or reliability of the evidence is challenged, the Judge shall decide whether or not to use the evidence and shall explain the decision.

(e) Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition.

(f) Any statement made by a youth may not be used against the youth unless the youth's parent(s), guardian or custodian has waived the youth's right to remain silent prior to the time the statement was made.

(g) Statements made by the youth to a youth counselor, including statements during a preliminary inquiry, informal adjustment, or pre-dispositional study, shall not be admissible in any proceedings against the youth unless the youth consents to such admission after consulting with his or her parent(s), guardian, custodian or guardian ad litem.

50.39.03 Preliminary Inquiry

(a) If a youth is placed in detention or shelter care, pursuant to Section 50.37.03(b) of this Title, the Court shall conduct a preliminary hearing within seventy-two (72) hours for the purpose of determining:
(i) Whether probable cause exists to believe the youth committed the alleged delinquent act; and
(ii) Whether continued detention or shelter care is necessary pending further proceedings.

(b) If the youth has been released to his/her parent(s), guardian, or custodian, the Court shall conduct a preliminary inquiry within thirty (30) days after the receipt of the complaint for the sole purpose of determining whether probable cause exists to believe the youth committed the alleged delinquent act.

(c) If the youth's parent(s), guardian, or custodian is not present at the preliminary inquiry, the Court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent(s), guardian, or custodian.

(i) If the youth is not being held in a detention or shelter care facility and if it appears that further efforts are likely to produce the appearance of the youth's parent(s), guardian, or custodian, the Court may continue the proceedings for no more than thirty (30) days.

(ii) If the youth is being held in a detention or shelter care facility, or if it appears that the youth's parent(s), guardian, or custodian is/are unable or unwilling to provide effective support or guidance to the youth during the proceedings, the Court shall appoint a guardian ad litem to serve until final adjudication and disposition of the complaint.

(d) The Court shall hear testimony concerning:

(i) The circumstances that gave rise to the complaint and/or the taking of the youth into custody; and

(ii) The need for detention or shelter care.

(e) If the Court finds that probable cause exists to believe the youth committed the delinquent act, the youth shall be ordered by the Court to appear at a fact finding hearing which shall be held no later than thirty (30) days after the date of the Preliminary Hearing. The youth shall be released to his or her parent(s), guardian, or custodian unless the alleged act is serious enough to warrant detention or shelter care and:

(i) There is reasonable cause to believe that the youth will be unavailable for further proceedings if released; or

(ii) There is reasonable cause to believe that the youth will commit a serious act causing damage to person or property.

(f) The Court may release a youth, pursuant to subsection (e), to a relative or other responsible Tribal member, if the parent(s), guardian, or custodian consents to the release.

(g) If probable cause to believe the youth committed the alleged delinquent act is not found, the complaint shall be dismissed and the youth released.

50.39.04 Fact Finding Hearing

(a) The Court shall conduct a fact finding hearing for the sole purpose of determining whether the youth committed the alleged delinquent act.

(b) The Court shall hear evidence concerning the circumstances which give rise to the complaint.

(c) If the youth admits the allegations of the complaint, the Court shall proceed to the dispositional hearing only if the Court finds:

(i) The youth fully understood his/her rights as set forth in section 50.35.04 of this Title and fully understands the potential consequences of his/her admission(s);

(ii) The youth voluntarily, intelligently, and knowingly admits to all facts necessary to constitute a basis for Court jurisdiction; and

(iii) The youth has not, in his/her admission to the allegations, set forth facts which, if found to be true, constitute a defense to the allegations.

(d) If the allegations of the petition are sustained beyond a reasonable doubt, the Court shall find that the youth is a juvenile offender and shall schedule a dispositional hearing. If the Court finds that the allegations or any specific allegation is only supported by a preponderance of the evidence, the Court shall still find that the youth is a juvenile offender but dispositional alternatives available to the Court shall not include detention.

(e) If the allegations of the petition are not sustained by clear and convincing evidence, the complaint shall be dismissed and the youth released.

(f) A finding that a youth is a juvenile offender shall constitute a final order for purposes of appeal.

50.39.05 Fact Finding Hearing Continuances

Continuances of a fact finding hearing may be granted upon:

(a) Motion of the youth for good cause shown;

(b) Motion of the presenting officer that material evidence or witnesses are unavailable, a finding by the Court that the presenting officer has exercised due diligence to obtain the evidence or appearance of witnesses, and that reasonable grounds exist to believe that the evidence will become available or that the witnesses will appear; or

(c) Order of the Court during a period of mediation pursuant to Chapter 50.40 of this Title.

50.39.06 Predisposition Report

(a) The Presenting Officer, after consulting the Youth Counselor shall prepare a written report describing all reasonable and appropriate alternative dispositions. The report shall contain a specific plan for the rehabilitation of the youth designed to resolve the problems presented in the fact finding hearing.

(b) The report shall contain an explanation of the necessity of the proposed disposition plan and its benefits to the youth.

(c) Preference shall be given to the disposition alternatives which are listed in Section 50.39.08 of this Title. The alternatives least restrictive of the youth's freedom, consistent with the interests of the Tribe shall be selected.

(d) If the report recommends detention or shelter care, it shall state the specific reasons underlying its recommendation.

(e) The Presenting Officer shall provide the Court, the youth, and the youth's parent(s), guardian, custodian or guardian ad litem, with a copy of the report at least two (2) days prior to the disposition hearing.

50.39.07 Disposition Hearing

(a) A disposition hearing shall take place not more than sixty (60) days after the fact finding hearing.

(b) The Court shall take testimony and receive evidence concerning the proper disposition at the hearing.

(c) The Court shall consider the predisposition report submitted by the Presenting Officer. The Court shall also consider any alternative predisposition reports prepared by the youth, the youth's counsel, or the youth's parent(s), guardian, custodian, or guardian ad litem.

(d) The disposition order constitutes a final order for purposes of appeal.

50.39.08 Disposition Alternatives

(a) If a youth has been found to be a youth offender, the Court shall order a disposition containing one or more of the following alternatives for any term until the youth reaches the age of twenty-one (21):
   (i) Order the youth to spend a period of time with an adult who is knowledgeable about traditional tribal customs and values for training and instruction regarding such customs and values.
   (ii) Place the youth on probation, subject to conditions set by the Court. Such conditions may include, but are not limited to, drug and alcohol evaluation and treatment, anger management training, continued education, job training, participation in extracurricular activities (sports, music, schools sponsored clubs, etc.), and community service. A youth on probation shall be required to report to the Court on a regular basis regarding the

fulfillment of the conditions set by the Court. If the youth does not comply with the conditions set by the Court, the probation may be revoked and the youth may be fined or ordered to detention as set out in subsections (iv) and (v).

(iii) Order the youth to make restitution for any injury resulting from the offense.

(iv) Impose a fine not greater than the maximum fine that could be imposed on the youth had he or she been an adult at the time the criminal offense was committed.

(v) Order detention or shelter care for a period of time not to exceed the jail sentence that could have been imposed on the youth had he or she been an adult at the time the criminal offense was committed.

(vi) Order the parent(s), guardian or custodian of the youth to supervise the rehabilitation of the youth. Such supervision may include requiring the parent(s), guardian or custodian to accompany the youth when the youth is attending a training or treatment program ordered by the Court.

(vii) Order the parent(s), guardian or custodian of the youth to attend any programs (drug and alcohol evaluation and treatment, anger management, etc.) which the Court deems necessary to enable the parent(s), guardian or custodian to assist in the rehabilitation of the youth. If the parent(s), guardian or custodian does not comply with the Court's order, the Court may charge such person(s) with contempt of Court and shall refer the case to the Indian Child Welfare Department for youth-in-need-of-care proceedings.

(viii) Court-ordered assistance with tribal functions, a written and/or oral apology to the General Council or any body thereof, and/or a barring of up to six months from any specified tribal building or facility.

(b) It is the desire of the Nisqually Tribe to avoid detention of youth's whenever possible. Preference should be given to the other disposition alternatives. Detention shall be ordered only when the Court determines that one or more of the following conditions exist:

(i) The youth is a repeat offender and previous efforts at rehabilitation have been unsuccessful;

(ii) The youth has committed physical or sexual harm to another person and release of the youth is likely to result in continued harm to others; or

(iii) The youth has expressed unwillingness to participate in any rehabilitative programs.

HISTORICAL AND STATUTORY NOTES

1. Subsection (a)(ix) of this section added by Resolution 125-2009, dated October 27, 2009.

50.39.09 Modification of Disposition Order

(a) A disposition order of the Court may be modified, for good cause, upon a showing of change in circumstance. A motion for modification may be brought by the youth, the youth's parent(s), guardian, custodian, or guardian ad litem, or the presenting officer.

(b) At the hearing to review a disposition order, the Court shall review the performance of the youth and the youth's parent(s), guardian, or custodian, and shall review reports by the Presenting Officer and other person's providing assistance to the youth.

(c) If the request for review is based upon an alleged violation of a Court order, the Court shall not modify its order unless it finds clear and convincing evidence of the violation.

50.39.10 Deferred Court Procedures for Alcohol and Drug Offenses

A youth who is alleged to have committed a delinquent act while under the influence of drugs or alcohol may request to be considered for a deferred judgment program as described in the Tribe's criminal procedures for adult offenders. The procedures and requirements outlined in that Title shall also apply to deferred judgment proceedings under this Title.

50.39.11 Enforcement of Judgments

The Nisqually Tribal Court may utilize appropriate enforcement techniques, both before and after entry of judgments, to ensure collection of unpaid judgments including appropriation of funds due judgment debtor.

HISTORICAL AND STATUTORY NOTES

1. This section added by Resolution 126-2009, dated October 27, 2009.
2. Subsection 50.39.04 was amended by Tribal Council Resolution 71-2023, dated June 8, 2023.

50.40 MEDIATION OF DISPUTES

50.40.01 Request for Mediation

(a) At the time of the preliminary inquiry or any time thereafter prior to the fact finding hearing, any party may request that a mediation hearing be held.

(b) The request shall be in the form of a motion to the Court and shall include a proposed mediator for the hearing.

(c) The Judge shall allow a mediation hearing to be held if he or she finds that a mediator is available, that the parties are willing to attempt to resolve the dispute by informal means, and that the public interest will not be harmed by an informal resolution.

50.40.02 Mediator

(a) The Court shall appoint a mediator to preside over the mediation hearing. A mediator must be over eighteen (18) years of age and must be able to preside over the mediation in an impartial manner. Preference should be given to Tribal elders or other members of the Tribal community who have knowledge of informal dispute resolution procedures.

(b) The Court shall take into consideration the views of the parties in selecting a mediator for the hearing.

50.40.03 Time of Mediation Hearing

The date and time of the mediation hearing shall be set by the mediator after consultation with the parties. The mediation hearing must be held prior to the date set for the fact finding hearing.

50.40.04 Mediation Hearing

(a) The complainant, the youth, the youth's parent(s), guardian or custodian, the guardian ad litem, and all other parties necessary for resolution of the matter shall be allowed to attend the mediation hearing. No person shall be compelled involuntarily to participate in the hearing.

(b) All persons involved in the mediation hearing shall be allowed to speak at the hearing and may present any relevant evidence.

(c) The mediator shall be responsible for keeping order during the hearing and shall determine if any informal resolution can be reached.

50.40.05 Results of Mediation Hearing

(a) The mediator shall present the results of the mediation hearing to the Court at the time of the fact finding hearing or at any time prior thereto.

(b) If, after questioning the parties, the judge is satisfied that an informal resolution of the dispute has been reached, he or she may delay the fact finding hearing and order the parties to comply with the terms of the agreement. The Judge shall

dismiss the charges against the youth after all the terms of the agreement have been satisfied.

(c) If an agreement was not reached at the hearing or if the parties do not comply with the terms of the agreement, the Court shall proceed with trial. Anything spoken by the youth at the mediation hearing or the results thereof may not be used as evidence at the time of fact finding or during sentencing without the youth's consent.

50.41 DISCOVERY

50.41.01 Discovery by Youth

Upon request of the youth, at or before trial, or upon order by the Court, the Tribe shall give the youth the following:

(a) The names of witnesses the Tribe intends to present;

(b) Copies of, or access to, any documents, photographs, results and reports of examinations or tests, and objects which are within the custody or control of the Tribe and which the Tribe intends to use as evidence against the youth or which may be relevant to the youth's defense;

(c) Copies or written summaries of any statement made by the youth which the Tribe intends to offer as evidence against the youth.

50.41.02 Discovery by the Tribe

If the youth requests information as provided in section 50.41.01, then youth shall give the Tribe, upon the Tribe's request, the names of youth's witnesses, and copies or access to all evidence which the youth intends to use at any Court hearing.

50.41.03 Communication in Preparation for Trial

Nothing in this chapter shall require a party to provide the other with reports, memoranda, or other internal communications which were made by the party or by his or her representative solely in preparation for trial.

50.41.04 Response to Discovery Request

(a) A party who receives a request for information under this rule shall respond either with the information, with an indication when and where the information will be made available, or with an objection to the request within ten (10) days after he or

she receives the request. Failure to respond is grounds for a Court order requiring response.

(b) If the parties disagree about whether a party is required to provide information requested pursuant to this rule, the judge shall decide. The judge may impose reasonable conditions on the release of information requested under this rule.

50.42 SUBPOENA

50.42.01 Issuance of Subpoena

Upon request of any party or upon the Court's own initiative, the Court shall issue a subpoena to compel the attendance of witnesses, or the production of books, records, documents, or any other physical evidence which is relevant and necessary to the determination of the case, and where the production of which is not an undue burden on the person subpoenaed.

50.42.02 Contents of Subpoena

A subpoena shall bear the signature of a Tribal Judge and shall state the name of the Court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

50.42.03 Service of Subpoena

(a) A subpoena may be served at any time and place within or without the confines of the reservation.

(b) A subpoena may be served by any Tribal law enforcement officer or other person over eighteen (18) years of age appointed for such purpose. Service of a subpoena shall be made either:
   (i) by delivering a copy to the person named; or
   (ii) by leaving a copy at his or her residence with any competent person sixteen (16) years of age or older who resides there; or
   (iii) by sending a copy to the persons last known address by certified mail, return receipt requested and by regular mail. Service shall be considered complete three (3) days after the date of mailing.

(c) Proof of service of the subpoena shall be filed with the Court Clerk by noting on the back of a copy of the subpoena the manner, date, time, and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

50.42.04 Failure to Obey Subpoena

In the absence of a justification satisfactory to the Court, a person who fails to obey a subpoena may be found to be in contempt of Court and fined. A bench warrant may also be issued for his or her arrest.

CHAPTER III - DECISION MAKING AUTHORITY FOR TRIBAL ISSUES

50.43.01 Purpose

The purpose of this chapter is to provide a procedure for a parent or guardian to obtain a court order declaring that he or she has the authority to make decisions relating to the tribal issues of enrollment, relinquishment of enrollment, and/or distribution of per capita payments for a Nisqually minor.

Such an order may be obtained regardless of whether there is a prior court order establishing legal custody or guardianship of the minor.

This code is intended to establish decision making authority as it exists between parents and guardians. It is not intended to alter or diminish the Nisqually Tribe's authority to adopt rules and procedures related to enrollment, disenrollment and per capita distribution.

HISTORICAL AND STATUTORY NOTES

This chapter enacted by Tribal Council Resolution 125-2010, dated December 21, 2010.

50.43.02 Petition for Decision Making Authority - How to File

Any parent or guardian of a Nisqually minor may seek an order granting him or her authority to make enrollment and per capita distribution decisions for the minor by filing a petition with the Court. If petitioner is seeking decision making authority for more than one minor, a separate petition should be filed for each minor.

50.43.03 Petition for Decision Making Authority - Contents

The petition shall be a true and correct statement signed and sworn by the petitioner and shall include:

(a) The name, date of birth, address, and tribal status of the minor;

(b) The name, address, and tribal status of the parent or guardian seeking the custody declaration;

(c) The name, address, and tribal status of the minor's other natural parent, if such information is known;

(d) A statement as to whether any paternity proceedings or other custody or guardianship proceedings are currently taking place in regard to the minor;

(e) A statement as to whether there is a prior court order establishing legal custody or guardianship over the minor;

(f) A statement as to why it is in the best interest of the minor for the petitioner to be granted the authority to make decisions regarding enrollment and per capita distribution for the minor;

(g) Any additional information the parent believes would assist the Court in its decision.

50.43.04 Service of Petition/Court Procedure

(a) A petition for tribal decision making authority shall be served in the manner provided in section 50.10.01(b) upon any non-petitioning parent or legal guardian.

(b) The Court Clerk shall deliver a copy of the petition to the Tribal Chairman, the tribe's Chief Financial Officer and the head of the tribal Enrollment Department no later than three (3) days after the date on which the petition was filed.

50.43.05 Setting the Hearing

The Court Clerk shall schedule a hearing before the Nisqually Court to take place no later than sixty (60) days from the date the petition is filed. A notice of hearing shall be mailed or delivered to the petitioner and any person entitled to notice under section 50.43.04.

50.43.06 Preferences

In determining whether a parent or guardian should be given authority to make enrollment and per capita distribution decisions, the court shall be guided by the following principles:

(a) A parent or guardian who has received a previous order granting him or her legal custody or guardianship over the tribal member child shall be presumed to be the person who should be making the decisions.

(b) If neither of the child's parents has a court order awarding custody and there is no person with legal guardianship over the minor, the court shall take the following into consideration, but shall ultimately be guided by what is in the best interest of the child:
   (i) Which parent or guardian has physical custody of the child;
   (ii) How long the child has been in a particular parent or guardian's custody;
   (iii) The tribal status of each parent or guardian;
   (iv) Whether an individual's previous decisions regarding tribal issues have been in the best interest of the child;
   (v) Whether the parent or guardian's intentions for future decisions are in the best interest of the child.

(c) If the minor child is 16 years of age or older, the court may take the opinions of the minor into consideration when making its decision.

50.43.07 Order Granting Decision Making Authority for Tribal Issues

(a) The Court shall enter a written order declaring that the petitioner has the authority to make enrollment and per capita distribution decisions for a Nisqually minor if it determines that it is in the best interest of the child to do so.

(b) It shall be the responsibility of the parent receiving the order to provide a copy of the order to the Tribal Chairman, the tribe's Chief Financial Officer and the Enrollment Department.

50.43.08 Effective Date of Order

An order granting decision making authority shall become effective sixty (60) days after it is signed by the tribal court judge.

50.43.09 Duration of Order

An order granting decision making authority shall remain in effect until:

(a) The child reaches eighteen (18) years of age;

(b) The child marries or becomes otherwise emancipated prior to age eighteen; or,

(c) The Nisqually Court orders a modification of the order.

50.43.10 Sovereign Immunity Retained

The sovereign immunity of the Nisqually Indian Tribe and its officers, agents and employees shall in no manner be waived by the adoption of this Chapter.