

CHAPTER 8
CHILD AND FAMILY PROTECTION

8-1 PURPOSE

8-1.01 The purposes of this chapter shall be the following:

(1) To provide for the welfare, care and protection of the children and families within the jurisdiction of the Court of the Kootenai Tribe of Idaho.

(2) To preserve the unity of Kootenai families by preventing the separation of families unless separation is necessary to prevent serious harm to a child;

(3) To prevent abuse, neglect or abandonment of children;

(4) To provide services for children and families, from abuse and neglect prevention to residential treatment, with emphasis on prevention, early intervention and community-based alternatives;

(5) To establish basic rights of children and families and to ensure fairness to all parties who come before the Court under this chapter;

(6) To provide a system of procedure and law that will help ensure that off-reservation courts will be willing to return tribal children to the reservation;

(7) To recognize and incorporate customs and traditions of the Kootenai Tribe of Idaho with regard to family practices and child rearing.

8-2 DEFINITIONS

8-2.01 As used herein, except as may be specifically provided otherwise, the following definitions shall apply.

(1) "Abandon or Abandonment" shall mean the failure of the parent, guardian or custodian to provide reasonable support and to maintain regular contact with a child. Failure to maintain a parental relationship with a child without just cause for a period of six (6) months shall constitute prima facie evidence of abandonment. Voluntary relinquishment of custody to extended family

members or voluntary consent to placement does not constitute abandonment.

(2) "Abuse" shall mean the infliction of physical, emotional or mental injury on a child, or the sexual abuse or sexual exploitation of a child and shall include failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that the child's physical health or emotional well-being is subject to serious harm.

(3) "Child" shall mean a person who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.

(4) "Domicile" shall mean a person's permanent home, legal home or place of permanent residence. The term domicile includes any place of residence where a person intends to establish a permanent home or any residence that a person considers to be their permanent home. The domicile of a child is that of the custodial parent or legal guardian.

(5) "Extended Family" shall be defined according to the tribal customs and traditions of the child's tribe.

(6) "Indian" shall mean any member of a federally recognized Indian tribe, band or community, or any Alaska Native, or a person considered by the community to be Indian.

(7) "Neglect" shall mean the failure of the parent, guardian or custodian to provide adequate food, clothing, shelter, medical care, education or supervision for the child's health and well-being. "Neglected" shall include "abandoned" children.

(8) "Probable Cause" shall mean a reasonable basis has been established to believe that the facts alleged are more likely to have occurred than to have not occurred.

(9) "Tribal Social Worker" shall mean the person duly appointed by the Tribe to enforce this chapter and any other ordinances and codes promulgated by the Tribe.

(10) "Tribal Law Enforcement" shall mean the officers and organization duly appointed by the Tribe to enforce this chapter and any other ordinances and codes promulgated by the Tribe.

(11) "Parent" shall include a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

(12) "Guardian" shall mean a person assigned by a court of law other than a parent, having duty and authority to provide care and control of a child.

(13) "Custodian" shall mean a person, other than a parent or guardian, to whom legal custody of a child has been given.

8-3 JURISDICTION

8-3.01 The Tribal Court shall have jurisdiction of all matters involving Indian child and family welfare arising on the lands of the Tribe pursuant to Chapter 8C the Uniform Child Custody Jurisdiction and Enforcement Act and applicable federal laws.

8-3.02 Application of the Indian Child Welfare Act.

(1) The Kootenai Tribal Court shall apply the policies of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, where they do not conflict with the provisions of this chapter and where they are consistent with the intent and purpose of this chapter.

(2) Unless they are consistent with the intent and purpose of this chapter, the standards and procedures applicable to state courts under the Indian Child Welfare Act shall not be binding upon the Tribal Court unless they are specifically made applicable by this chapter.

8-4 REPORTING PROCEDURES

8-4.01 Any person who suspects that a child has been abused, neglected or abandoned shall immediately report the suspicion to the tribal social worker, or tribal law enforcement.

8-4.02 Persons reporting suspicions that a child has been abused, neglected or abandoned, except

those specified in Section 8-4.04, may remain anonymous.

8-4.03 All persons reporting known or suspected instances of abuse or neglect, in good faith, shall be immune from civil liability and criminal prosecution.

8-4.04 Upon receipt of a report or upon learning of or suspecting abuse, the tribal social worker or tribal law enforcement officers shall make a written report to the Kootenai Tribal Court, which shall include the following information to the extent possible:

(1) Names, addresses, and tribal affiliation of the child and his parents, guardian, or custodian.

(2) The child's age.

(3) The nature and content of the child's abuse or neglect.

(4) Previous abuse or neglect of the child or the child's siblings, if known.

(5) The name, age, and address of the person alleged to be responsible for the child's abuse or neglect, if known.

(6) The name and address of the person or agency making the report.

8-5 INVESTIGATION

8-5.01 Upon receipt of written report from the tribal social worker or tribal law enforcement, the judge of the Kootenai Tribal Court shall evaluate the report for probable cause to investigate.

8-5.02 Upon a finding of probable cause, the Court shall issue an order of investigation.

8-5.03 No investigation shall commence without an order from the Court.

8-6 EMERGENCY REMOVALS

8-6.01 Except as provided below, no child shall be removed from the home of a child's parents, guardian or custodian without the consent of the parents, guardian or custodian or a specific order of the Court. The tribal social worker or tribal law enforcement shall have authority to remove a child under the following circumstances:

(1) When failure to remove the child may result in a substantial risk of death, permanent injury, or serious emotional harm, or;

(2) When the parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his own basic necessities of life, and that no satisfactory arrangement has been made by the parent, guardian or custodian to provide for such necessities; and

(3) When the person removing the child can ensure the safety and well-being of the child until the Kootenai Tribal Court assumes control of the matter.

8-7 NOTICE OF EMERGENCY REMOVAL

8-7.01 After a child is removed from the home under the provisions of Section 8-6 of this chapter, the person who removed the child shall immediately attempt to contact the Court and shall continue such attempts until contact is made.

8-7.02 The Court shall make all reasonable efforts to notify the parents, guardian or custodian within four (4) hours of receipt of notice that a child was removed. Reasonable efforts shall include personal, telephone and written contacts at the last known residence of the parents, guardian or custodian or at their place of employment, or other location where they are known to frequent regularly. If the parent, guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

8-8 NOTIFICATION OF RIGHTS

8-8.01 Notice of the following rights shall be given to all parties contemporaneous with the fulfillment of notice requirements of Section 8-7 of this chapter. All parties have a right to be represented by an advocate/attorney at their own expense in all proceedings under this code, to introduce evidence, to be heard on his or her own behalf, to examine witnesses, and to be informed of possible consequences if the allegations of the petition are found to be true. All parties shall be entitled to advance copies of court documents, including petitions and reports, unless deemed inappropriate by the Court.