

TITLE 8. FAMILY CODE

Chapter 8.6

YOUTH OFFENDERS

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8.6.1. Applicability. This chapter shall apply when a youth is alleged to have committed a delinquent act or status offense, as defined in §8.1.12 of this title. (Res. 2000-073 (part), passed Nov. 27, 2000)

8.6.2. Proceedings — Notice. In all proceedings involving a youth, notice of proceedings under this chapter shall be given to the youth; and his or her parent, guardian, or custodian; and their attorneys or legal advocates, if any, within the time limits prescribed for that particular proceeding. (Res. 2000-073 (part), passed Nov. 27, 2000)

8.6.3. Other Laws and Rules of Court Applicable. Where a process is not specified in this chapter, cases involving youth offenders shall proceed under the same provisions applicable to adults in like circumstances. (Res. 2000-073 (part), passed Nov. 27, 2000)

8.6.4. Rights of Youths. (a) Except as specifically set forth herein, youths appearing before the Suquamish Family Court shall have the same rights as adults appearing before the Tribal Court under like circumstances; provided, however, that a youth shall not be entitled to a jury trial under this chapter unless he or she is being tried as an adult.

(b) At the time a youth is taken into custody as a youth offender, the arresting officer shall give the following warnings:

(1) The youth has the right to remain silent.

(2) Anything the youth says can be used against him or her.

(3) The youth has the right to legal representation, and if the Court determines that the youth is indigent, a spokesperson will be provided at the Tribe's expense under Suquamish Tribal Code §3.8.15(b)(1).

(4) The youth has the right to the presence of his or her parent, guardian, custodian, legal representative, or probation/diversion officer during questioning. (Res. 2000-073 (part), passed Nov. 27, 2000)

8.6.5. Taking Youth into Custody. (a) Any Suquamish tribal law enforcement officer may take a youth into custody if there is probable cause to believe a delinquent act or status offense has been committed by the youth or if a warrant has been issued for the youth.

(b) The law enforcement officer shall give the youth the warnings listed in §8.6.4 and shall make reasonable efforts to contact the probation/diversion officer regarding placement of the youth.

(c) When a youth is taken into custody pursuant to a warrant, the youth shall be placed as set forth in the warrant.

(d) The probation/diversion officer or, if the probation/diversion officer is unavailable, the law enforcement officer shall determine the appropriate placement based on the facts of the case. The officer shall:

(1) Release the youth to his or her parent or custodian;

(2) Place the youth in a private family home, including the home of a responsible relative;

(3) Place the youth in a foster or shelter care facility approved by the Tribal Council or its designee;

(4) Detain the youth in a youth detention facility approved by the Tribal Council or its designee (a youth may not be detained in a jail for the detention of adults); or

(5) Place the youth in an appropriate medical or mental health facility after consultation with a qualified professional.

(e) Whenever an officer takes a youth into custody without the actual knowledge of the youth's parent, guardian, or custodian, both the officer and the probation/diversion officer shall begin immediate and recurring efforts to notify the youth's parent or guardian of the placement. (Res. 2000-073 (part), passed Nov. 27, 2000)

8.6.6. Youth Offender Hearings. Youth offender hearings shall be closed to all persons except the parties and their counsel and those witnesses called by the parties. The parent, custodian, or guardian shall be present at all hearings unless their presence is waived by the Court for good cause shown. (Res. 2000-073 (part), passed Nov. 27, 2000)

8.6.7. Records. (a) Court, police, and probation/diversion records pertaining to youth offenders shall be confidential, except as otherwise provided in this chapter. Records may be made available only to:

- (1) The youth;
- (2) The youth's attorney or spokesperson;
- (3) The youth's parent, custodian, or guardian;
- (4) The Suquamish tribal prosecutor, Suquamish probation/diversion officer, Suquamish law enforcement; or
- (5) Experts, social workers, and mental health counselors who are directly involved in the case.

(b) Notwithstanding the above, upon motion and service to all parties, the Court may authorize disclosure of records pursuant to the motion and upon other terms the Court deems just based upon a finding of compelling circumstances. (Res. 2000-073 (part), passed Nov. 27, 2000)

8.6.8. Release of Police/Probation Records to Other Law Enforcement Agencies. Records retained or produced by Suquamish law enforcement or the Suquamish probation/diversion officer may be released to another state, tribal, or federal law enforcement agency only when an investigation or case involving the youth in question is being pursued by the requesting agency and the agency makes the request in writing to the tribal prosecutor. (Res. 2000-073 (part), passed Nov. 27, 2000)

8.6.9. Remand to Trial as an Adult. A youth may be required to stand trial as an adult if:

- (a) The youth is sixteen (16) years of age or older at the time of the remand;
- (b) The youth is alleged to have committed a delinquent act; and

(c) The Court, upon consideration of the nature and seriousness of the acts alleged, the condition of the youth, and his or her past record determines that disposition of the case in the Suquamish Family Court will not serve the best interest of the youth and the public.

(d) The Court's order shall contain findings of fact and conclusions of law in support of its decision. (Res. 2000-073 (part), passed Nov. 27, 2000)

8.6.10. Parental Responsibility to Assist in Paying for Support of Incarcerated Youth.

The parent or guardian of a youth sentenced to serve time in juvenile detention is required to pay for supporting the youth while he or she is incarcerated. Daily support amounts shall be set by the Court, provided, however, that such support amounts shall not exceed actual incarceration costs. In setting daily support amounts, the Court shall consider the income of the parent or guardian. (Res. 2000-073 (part), passed Nov. 27, 2000)

8.6.11. Youth Diversion. (a) A youth is eligible for a maximum of two (2) diversions, except by special order of the Tribal Court. Any subsequent delinquent acts or status offenses will be prosecuted. A single diversion may encompass multiple offenses that are closely connected in time or circumstances.

(b) In the case of an individual eligible for a diversion, the diversion petition may accompany the youth offender complaint or may be filed at a subsequent time prior to adjudication.

(c) Contents of Petition. The petition for diversion shall contain the following:

(1) The name, age, and tribal status of the youth.

(2) The youth's date of birth.

(3) The name of the youth's parents, guardians, and/or custodians, if known.

(4) Factual allegations setting forth a prima facie case that a delinquent act or status offense was committed by the youth within the territorial jurisdiction of the Court. The requirements of this section may be met by reference to the complaint, provided that the body of the complaint meets the requirements of this section.

(5) A statement that, in the event the diversion is terminated, the investigative reports leading to the filing of the complaint are admissible as evidence against the youth.

(6) Recommendations regarding conditions of the diversion.

(7) The diversion petition shall be signed by the youth, the youth's parent or guardian, the probation/diversion officer, and the prosecutor. The Court will review the petition and decide whether to grant it.

(d) Certain crimes, even if committed by first-time offenders, will not be diverted. These crimes include:

- (1) Sexual offenses (STC Chapter 7.17 and §7.11.2);
- (2) All felonies or violent or assaultive behavior;
- (3) Desecration of religious sites (STC §7.7.10);
- (4) Tampering with physical evidence (STC §7.13.15); and
- (5) Firearm offenses (STC Chapter 7.19).

(e) If the youth does not successfully complete his or her diversion, the tribal prosecutor shall file a motion for termination of the diversion and a remand for adjudication. Such motion shall contain a notice to the youth that he or she has the right to request appointment of counsel.

(f) Challenge to Finding of Violation. Within thirty (30) days of service of a notice of termination, the Court shall conduct a hearing on the motion. If, after full opportunity for all parties to be heard, the Court finds that the youth has complied with the terms of the diversion petition, the Court shall enter an order denying the motion for termination. (Res. 2000-073 (part), passed Nov. 27, 2000)

8.6.12. Sentencing. In sentencing a youth offender, the Court may impose one or more of the following sanctions and/or jail time specified for a particular offense, provided that detention time imposed shall not exceed the maximum jail time which could be imposed upon an adult or the maximum as set forth for status offenses:

- (a) Detention;
- (b) Electronic home-monitoring;
- (c) Fines;
- (d) Costs, including costs for administration of electronic home monitoring;
- (e) Mandatory school attendance with proof of attendance and submission of grades to the Court on a regular basis;
- (f) Restitution;

- (g) Probation;
- (h) Community service hours if agreed to by the prosecutor;
- (i) Individual and/or family counseling;
- (j) Evaluation and treatment, including residential treatment, of alcohol abuse, other substance abuse, and mental illness;
- (k) Healing ceremonies, talking circles, sobriety drum, canoe society, or any other cultural event or program as may be appropriate; or
- (l) Any other alternative as may seem just to the Court.

The burden of the sentence shall fall primarily on the youth rather than on the parent, but the parent, guardian, or custodian may be required by the Court to supervise the youth and see that the sentence is carried out. If the Court finds, in the course of proceedings against a youth, that he or she is in need of care as defined by this title, the Court shall have broad powers to issue orders for the protection of the youth and to assist the family to provide better care for the youth. (Res. 2000-073 (part), passed Nov. 27, 2000)

8.6.13. Sealing/Expungement. (a) Upon closure of any youth offender case or upon the youth's eighteenth (18th) birthday, whichever occurs later, the Court shall order the court records of the case to be sealed. Court files in cases involving felony charges or any violent or assaultive behavior shall remain filed under seal. Such files may be unsealed upon the Court's order.

(b) The Court shall direct the court clerk to destroy court records of all other cases that have been sealed pursuant to this section. (Res. 2000-073 (part), passed Nov. 27, 2000)

8.6.14. Continuing Jurisdiction. The Suquamish Family Court shall have continuing jurisdiction over a case filed under this chapter, even if the youth turns eighteen (18) before the case is closed. (Res. 2000-073 (part), passed Nov. 27, 2000)