

# **COQUILLE INDIAN TRIBAL CODE**

## **Chapter 640**

### **Part 6 – Public Safety and Justice**

#### **Children Generally**

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**640.001 Short Title.** Chapters 640 to 644 and reserved chapters 645 to 646 on delinquent children may be collectively referred to as the Coquille Juvenile Code or Juvenile Code.

**640.005 Juvenile Court.** The Juvenile Court, having jurisdiction over dependent and delinquent children, is a court of record and exercises jurisdiction as a court of general and equitable jurisdiction, and not as a court of limited or inferior jurisdiction. The Juvenile Court is called the Coquille Tribal Juvenile Court.

**640.010 Purpose and Construction.** (1) This chapter deals with miscellaneous issues related to children in general. Notwithstanding any other provision of law, this chapter will apply generally to all children.

(2) All chapters dealing with children shall be liberally construed to effectuate the purposes of the Juvenile Code and promote the jurisdiction of the court. Unless otherwise specified, the masculine shall include the feminine and the feminine shall include the masculine. Unless otherwise specified, the singular shall include the plural and the plural shall include the singular.

(3) All chapters dealing with children shall be interpreted in light of Coquille tribal laws, customs, and traditional child-rearing practices. In the absence of controlling law in this code or under the tribal laws, customs and practices of the Coquille Tribe, the court shall look first to federal law, specifically the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.), then to the law of other Indian tribes, then to Oregon state law for guidance in interpreting the Juvenile Code.

**640.015 Definitions.**

(1) **Abandoned child** means any child whose parent or guardian has left the child without reasonable arrangements for care and supervision such that the physical or emotional health of the child is affected; or where no parent is ready, willing and able to care for the child for a period of 6 consecutive months. Abandonment by a non-custodial parent shall be deemed to have occurred when the non-custodial parent has failed to maintain a normal parent-child relationship, including the failure to pay reasonable support, or make regular personal contact for 12 consecutive months without just cause. The term shall not mean incapacity due to incarceration, hospitalization or other physical or mental condition.

(2) **Best interests** means the preservation of the connection between a child and his or her culture, family and tribe in a setting that is stable, secure, safe, healthy, and emotionally, spiritually, socially and intellectually enriching with due regard of the special needs of the child, or the creation of such a connection if one does not already exist.

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- (3) **CASA** means Court Appointed Special Advocate who is a responsible adult, other than an attorney, who has volunteered to serve as an officer of the court and an advocate of the child, and who has been appointed by the court to so serve.
- (4) **Child** means any child under 18 years of age that is not married or otherwise emancipated, or if circumstances require, a child under 21 years of age.
- (5) **Child abuse** includes but is not limited to:
- (a) any case in which:
    - (i) a child is dead or exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling; and,
    - (ii) such condition is not justifiably explained or may not be the product of an accidental occurrence; or,
  - (b) any case in which a child is subjected to sexual assault, sexual molestation, sexual exploitation, sexual contact, or prostitution; or
  - (c) any case in which a child is physically assaulted, which shall include, but not be limited to: intentional, knowing or reckless infliction of physical injury to the child; intentional, knowing, reckless or negligent infliction of physical injury to the child by means of a deadly weapon; or
  - (d) any case in which a child's mental health is affected by an observable and substantial impairment in functioning caused by cruelty, with due regard to the culture of the child.
- (6) **Child neglect** means negligent treatment or maltreatment of a child by a person responsible for the child's welfare, under circumstances which indicate that the child's health and welfare is harmed or threatened by, but not limited to, the failure to provide adequate food, clothing, shelter, or medical treatment.
- (7) **Coquille child** means any child who is a member of the Coquille Tribe, or is eligible for membership in the Coquille Tribe and is the biological child of a Coquille tribal member.
- (8) **Court** means the Coquille Tribal Juvenile Court.
- (9) **Custodian** means a person who has physical custody of a child pursuant to tribal law or custom, or the laws of a state, or to whom temporary physical care, custody and

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control has been transferred by the parent or custodian of such child without order of the court.

- (10) **Extended family** means any person who is the child's grandparent, great-grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.
- (11) **Family violence** means:
- (a) any act or threatened act of violence or forceful detention, which results in physical or mental injury, or places the individual in fear of such harm; and
  - (b) such act is committed against the individual by:
    - (i) a person related by blood or marriage who is a spouse or husband, brother or sister, parent or child; or
    - (ii) a person residing with the individual.
- (12) **Social Services** means the Social Services Division of the Coquille Community Health Center.
- (13) **Indian child** means a child who is a member of an Indian Tribe; or
- (a) eligible for membership in an Indian Tribe and the biological child of a tribal member; or
  - (b) an Indian child as that term is defined by a state-tribal agreement.
- (14) **Indian country** means all lands owned by, held in trust for, leased, occupied or otherwise controlled by the Tribe or any instrumentality of the Tribe including any and all areas which may constitute the Indian country of the Tribe under an applicable provision of tribal or federal law.
- (15) **Indian Custodian** means any Indian person who has legal custody of an Indian child or Coquille child under tribal law or custom, or under state law; or to whom physical custody, care and control has been transferred by the parent of such Indian child.
- (16) **Indian person** means any person who is a member of an Indian Tribe as that term is defined by this Ordinance.
- (17) **Indian Tribe** means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by

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the United States Government because of their status as Indians, including any Alaska Native Village as defined in section 1603(c) of Title 43 to the U.S. Code (Alaska Native Claims Settlement Act).

- (18) **Local law enforcement** means any law enforcement authority that is authorized to conduct law enforcement activities within the exterior boundaries of the reservation or Indian country. When this term is used, a presumption is created that the term first means the Coquille Tribal Police.
- (19) **Parent** means the biological or adoptive parent of a child.
- (20) **Public or Private Official** means a physician, including any intern or resident; dentist; school employee; licensed practical nurse or registered nurse; peace officer; psychologist; clergyman; optometrist; chiropractor; naturopathic physician; licensed professional counselor or marriage and family counselor; firefighter or emergency medical technician; Court Appointed Social Advocate; Attorney; certified child care provider or foster care provider, or employee thereof; employee of the Department of Social Services or Coquille Community Health Center; a tribal or county health department; community or tribal mental health and developmental disabilities program; tribal or county juvenile department; or licensed alcohol and drug treatment program.
- (21) **Qualified expert** means any person who is:
- (a) a member of the child's tribe who is recognized by the tribal community as knowledgeable in tribal customs regarding familial organizations and child-rearing; or
  - (b) a lay person having substantial experience in the delivery of social services to Indian families and children, and has extensive knowledge of prevailing social and cultural standards and child-rearing practices within the child's tribe; or
  - (c) a professional with substantial experience in his or her field.
- (22) **Qualified Elder or Historian** means an individual who, because of his or her knowledge or experience, has been certified by the Coquille Tribal Council to testify as to the traditions and customs of the Coquille Tribe before any federal, state or tribal court or administrative body.
- (23) **Reservation** means the exterior boundaries of the Coquille Indian Tribe reservation in the State of Oregon, as that reservation is now or hereafter defined by the United States.

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(24) **Spiritual Healing** shall not be included under the definitions of abuse or neglect when any child is under care or treatment solely by spiritual means in accordance with the religious beliefs or practices of the child or the child's parent or custodian.

**640.020 Jurisdiction as to the child, parent or custodian.**

(1) The court shall have original and exclusive jurisdiction over any proceeding concerning a child alleged to be a dependent child, a child alleged to be delinquent, guardianships, emancipation, termination of parental rights and adoptions which involves:

(a) Any Coquille child who resides or is domiciled within the exterior boundaries of the reservation or Indian country; or

(b) Any Coquille child, regardless of residence or domicile; or

(c) Any child who is the child of a Coquille tribal member by adoption, step-parentage or other means and who resides or is domiciled within the exterior boundaries of the reservation or Indian country; or

(d) Any child who is a ward of the Court and is placed outside the exterior boundaries of the reservation or Indian country with any family member, in a foster home or in a youth facility; or

(2) The court shall have jurisdiction over any parent or custodian of a child that comes within the jurisdiction of the Coquille Indian Tribal Court in order to effectuate the purpose of this code.

(3) The exclusive and original jurisdiction of the Coquille Indian Tribal Court shall be the maximum allowed under applicable law. In a situation where applicable law does not allow exclusive jurisdiction by this Coquille Indian Tribal Court, the Coquille Indian Tribal Court shall have concurrent jurisdiction to the maximum extent allowed under federal law.

(5) The jurisdiction of the Coquille Indian Tribal Court shall be retained until the child turns 18 years of age or is otherwise emancipated unless wardship is terminated prior thereto. When the circumstances of the child require, jurisdiction may be maintained until the child reaches 21 years of age.

**640.025 Contempt.** In case of failure to comply with any order of the court, the court may proceed for contempt of court against the person failing to comply. A contempt proceeding shall proceed under the Coquille Rules of Civil Procedure.

**640.030 Paternity.** (1) All children born shall be deemed to be legitimate. On or after the date upon which this act becomes operative, no person, firm, corporation, agency,

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organization, hospital or health clinic, nor the Coquille Tribe and its agencies and employees, shall use the term "illegitimate" or "bastard" in referring to any child.

(2) Paternity shall be established or acknowledged pursuant to CITC chapter 743, Parent and Child Relationship.

**640.040 Right to notice of proceedings.** (1) The following persons are entitled to notice of any proceedings under the Juvenile Code:

- (a) the biological mother and father of the child;
- (b) the Indian custodian;
- (c) any person adjudicated by a competent court of law to be the legal father or mother;
- (d) any person who is recorded on a child's birth certificate as the father or mother;
- (e) any person who resided with the child in the last 6 months preceding the court action or the removal of the child from that home and who holds themselves out as the father or mother; and
- (f) any person who is identified by the mother as the father in a sworn statement.

(2) Such notice shall comply with the Coquille Rules of Civil Procedure except as otherwise provided for in the Juvenile Code. In addition, the notice shall inform the person, as is appropriate, that failure to appear at the hearing may result in a finding of non-paternity or of a denial of interest in the child, or that the court may proceed to terminate parental rights, adopt the child, appoint a guardian or make other changes in custody or parental rights.

**640.045 CASA; duties.** (1) The court or Social Services is authorized to establish or contract with an existing CASA program for the benefit of Indian children who come before the court.

(2) It shall be the duties of a CASA to investigate the child's circumstances, advocate for the child's best interests, and assist the child in obtaining a permanent, safe, homelike placement. The CASA has all the rights of a party including, but not limited to, the inspection of records, notice of proceedings and the questioning of witnesses.

### CHILD ABUSE REPORTING

**640.100 Reporting of child abuse; policy.** To further the interests of the Tribe in protecting its children from abuse, and to facilitate the use of the Social Services Division to prevent further abuse and stabilize the family, the Coquille Indian Tribal Council finds that it is necessary and in the public interest to require mandatory reports and investigations of abuse of children.

**640.110 Duty to report; exceptions; penalty.** (1) Although any person may report suspected abuse or neglect, a public or private official who has reason to believe that a child with whom the official comes in contact has suffered abuse or observes the child being subjected to conditions or circumstances which reasonably would result in abuse, or that any person with whom the official comes in contact with has abused a child shall report, no later than within 24 hours, the conditions or circumstances to local law enforcement or Social Services.

(2) A psychiatrist, psychologist, clergyman or attorney shall not be required to report if such information was obtained under privilege, as such privilege would be defined under legal standards relevant to the person asserting such privilege.

(3) A person who violates subsection (1) of this section commits a violation punishable by a fine not to exceed \$750.00.

**640.120 Form of report; whom to report to.** (1) Any person making a voluntary or mandatory report of abuse or neglect shall make an oral report by telephone or otherwise to local law enforcement or Social Services. Such report shall include, if known, name and address of the child and the parent or guardian, ages of the child, the nature and extent of the abuse or neglect, including any evidence of previous abuse or neglect, the name of the suspected abuser or negligent person, the explanations given for the situation and any other information that the person considers helpful.

(2) In all cases of reported abuse or neglect, when local law enforcement receives a report, it will notify Social Services. When Social Services receives a report of abuse, it will notify local law enforcement.

**640.130 Duty to investigate; notice to parents; physical examination; child's consent.**

(1) Upon receipt of an oral report of abuse or neglect, local law enforcement or Social Services shall immediately cause an investigation to be made to determine the nature and extent of the abuse or neglect.

(2) If an investigation determines that abuse or neglect has occurred, local law enforcement or Social Services shall take appropriate action, including, but not limited to, taking the child into protective custody, provision of remedial services or the filing of a petition for a dependent child.

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(3) If a child is taken into protective custody, the removing agency shall take reasonable steps to immediately notify the parent and custodian, regardless of the time of day, that the child has been taken into custody, the reasons why, and general information about the child's placement.

(4) If the investigation determines that the abuse has resulted in a criminal violation and the child is an Indian or the suspected abuser is an Indian, the Federal Bureau of Investigation shall be notified.

(5) If a local law enforcement officer or Social Services employee, when taking a child into protective custody, has reasonable cause to believe that the child has been abused physically or sexually, and that evidence of the abuse exists and is likely to disappear; he or she may petition the court, ex parte, to allow a physical examination for the purposes of preserving evidence, if the court finds it in the best interest of the child to have such an exam. However, a child of 11 years of age may refuse to consent to such an exam. If such an exam is ordered and consented to, it shall be conducted by a physician or licensed nurse trained to conduct such an investigation.

**640.140 Report; Photographing child during investigation.** (1) The results of an investigation shall be prepared in a written report that shall be submitted to Social Services within 36 hours of completion of the investigation. The report shall contain:

- (a) name, age, sex and address of the child that is the subject of the report; and
- (b) grade and the school in which the child is currently enrolled; and
- (c) the name, address and age of the child's parents or other person responsible for the child's care; and
- (d) the name, address and age of the alleged offender; and
- (e) the name and address of the person making the report; and
- (f) a brief narrative of the nature and extent of the child's injuries, the dates of the alleged abuse and any previously known or suspected abuse of the child or of the child's siblings; and
- (g) any other information that may be important to the investigation or disposition of the alleged abuse.

(2) As part of any investigation, local law enforcement or Social Services may photograph any child subject of the investigation for the purposes of documenting and

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preserving evidence of the child's injuries. Photographs so taken shall be made a part of the report.

**640.150 Immunity of person reporting.** Anyone making a report pursuant to 640.110 in good faith and with reasonable grounds for the making of a report shall have immunity from civil or criminal liability for making such report or for the content. The person making the report shall have the same immunity with respect to participating in any judicial proceeding resulting from such a report.

**640.160 Central registry of reports; confidentiality of records.** (1) When an investigation has shown reasonable cause to believe that a child was abused or neglected, regardless if the cause is known, such incident, together with the name of the child and the family shall be reported to the Central Registry of Child Abuse in Indian Country, pursuant to 25 U.S.C. § 3204, or in the absence of such registry, to the central registry for the State of Oregon.

(2) Notwithstanding any other provision of law, any and all reports of child abuse or neglect shall be kept confidential except when reports are required to be shared between tribal, federal and state agencies or as provided in subsection (3) of this section.

(3) Social Services shall release records of child abuse and neglect, except the name of an individual reporting pursuant to CITC 640.110, to:

(a) any law enforcement agency or child abuse registry of another tribe or state for the purposes of subsequent investigation of child abuse or neglect; or

(b) a physician requesting such information for the purposes of examination, care or treatment of a child who is the subject of a report; or

(c) the attorney of record for a child, parent or custodian in any proceeding involving the child; or

(d) a guardian ad litem, CASA, or court approved spokesperson for a child, parent or custodian in any proceeding involving the child; or

(e) a tribal or state child care licensing agency, but in such instance, only the name of the person suspected of abusing the child shall be released.

(4) Social Services may release a report of abuse or neglect to any person or agency when it has determined that such disclosure is necessary to investigate, prevent or treat child abuse and neglect, and that such disclosure is in the best interests of the affected child. A disclosure may also be made for research and statistical purposes if all names of the child, child's family and alleged abuser are removed from the reports to be released.

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(5) All records released under this section shall maintain their confidential nature and shall be kept confidential by the person or agency receiving such reports. Social Services may refuse any request under subsections (1) to (4) of this section for records, after Social Services has made a determination that the person or agency receiving the reports does not have sufficient control of the records to ensure confidentiality or has inappropriately released confidential material in the past.

(6) A person who violates subsection (1) or (5) of this section commits a violation punishable by a fine not to exceed \$750.00.

**640.170 Certain evidentiary privileges waived in child abuse cases.** In any judicial proceeding resulting from a report of abuse or neglect, any privilege between husband and wife, psychotherapist-patient, physician-patient, nurse-patient, social worker-client or to staff members of schools shall not be grounds to exclude evidence regarding child abuse or neglect, or the cause thereof.

**640.180 Law Enforcement Assistance.** Whenever this Code, or any action taken pursuant to this Code, requires the assistance of law enforcement personnel, such assistance may be provided by the Coquille Tribal Police; moreover, law enforcement personnel from other jurisdictions (city, county, state, federal or other tribal) are hereby expressly authorized to provide such assistance where required and requested, and where such assistance would not otherwise conflict with said law enforcement personnel's jurisdiction and/or grant of authority.

**640.200 Psychological parent.** A psychological parent under CITC chapter 743, Parent Child Relationship, shall have the same due process rights of a biological parent in a juvenile proceeding.

**640.250 Grandparent visitation.** The court shall determine the rights of a grandparent under CITC chapter 743, Parent Child Relationship, to have visitation with a grandchild when ordering an out of home placement for a child. Such visitation shall be continued unless the court finds that such visitation is not in the best interests of the child.

**640.300 Domicile and residence.** A child is conclusively presumed to be a resident or domicile of the country, state and/or tribe of the custodial parent and if there is no custodial parent, then of the mother. A child's domicile or residence shall not be changed for the purpose of divesting the Coquille Indian Tribal Court of its jurisdiction over a child. The court may restrain such a removal, as it deems necessary to protect the best interests of the child.

**640.400 Parent responsible for acts of child.** A parent is responsible for the acts of his or her child, regardless of that parent's status as a non-custodial parent, and shall pay any court ordered restitution. The court may modify the amount or type of restitution, as justice requires.

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**640.700 Severability.** The provisions of the Juvenile Code are severable. If any provision of the Juvenile Code or its application to any person or proceeding is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of the Juvenile Code.

**640.800 Appeals.** Reserved for future action. At present, the Coquille Tribal Court has no appellate court or mechanism for appeal.

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History of Amendments to Chapter 640 Children Generally:

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