



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Puget Sound Agency
2707 Colby Avenue, Suite 1101
Everett, Washington 98201

In Reply Refer To:
Division of Tribal Government

Honorable Teri Gobin, Chairperson
Tulalip Tribes
6406 Marine Drive
Tulalip, Washington 98271

Dear Chairperson Gobin:

We are in receipt of Tulalip Tribes Resolution 2023-270 Amending Tulalip Tribal Tax Code 2.05.120 General Privileges.

Resolution No. 2023-270 was adopted by the Board of the Tulalip Tribes of Washington on June 2, 2023, and received by us on June 6, 2023. The Resolution is accepted as reviewed and approved by the Superintendent on June 7, 2023. This resolution is in accordance with Article VI, Section 1(L) of the Tulalip Constitution.

The resolution is subject to a 90-day Secretarial review pursuant to your Constitution and was forwarded to and received by the Regional Office on June 7, 2023.

If you have any questions, please email Sharon Jackson at Sharon.jackson@bia.gov.

Sincerely,

Digitally signed by
JANINE VAN DUSEN
Date: 2023.06.09
11:46:39 -07'00'

Janine B. Van Dusen
Superintendent

THE TULALIP TRIBES OF WASHINGTON
RESOLUTION 2023-270

TULALIP TRIBES
ORIGINAL DOCUMENT

Tulalip Tribal Code 2.05.120 General Privileges

WHEREAS, the Board of Directors is the governing body of the Tulalip Tribes under the Constitution and Bylaws of the Tribes approved by the United States Commissioner of Indian Affairs and the Secretary of the Interior on January 24, 1936, pursuant to the Act of June 18, 1934 (48 Stat. 984, 25 U.S.C. 5123); and

WHEREAS, the Tulalip Board of Directors under Article VI, Section 1. (L) optional, include citation to subsection Art. VI, Sec. 1 of the Tribal Constitution desire to safeguard and promote the community's peace, safety and general welfare; and

WHEREAS, the Tulalip Board of Directors recognizes that client trust is a necessary component of a successful community-based advocate program, and that trust is built on a foundation of confidentiality; and

WHEREAS, a change in the law related to the protection of client information held by a community based advocate is required to bring the law in line with community expectations and current practice;

NOW THEREFORE BE IT ENACTED, by the Board of Directors of the Tulalip Tribes:

Tulalip Tribal Code 2.05.120, general privileges, Res. 2019-110, Res. 2010-10, and Ord. 49 § 1.12; and Tulalip Tribal Code 4.05.120, specific programs that work with children and the programs' role with children, Res. 2022-243, Res. 2020-554, Res. 2018-346, and Res. 2015-101; are hereby amended as indicated by the attached "track changes" code document. The Board further authorizes the Chair, or the Vice-Chair on their behalf, and Secretary to sign the attached "track changes" code document.

This ordinance shall be in full force and effect upon the sooner of its approval by the superintendent of the reservation or ten days following presentation to the superintendent of the reservation pursuant to the Tulalip Constitution Art.t VI, § 2.

THE TULALIP TRIBES OF WASHINGTON
RESOLUTION 2023- 270

ADOPTED by the Board of Directors of the Tulalip Tribes of Washington at a regular board meeting assembled on the 2 day of June, 2023 with a quorum present, by a vote of 5 For, 0 Against, and 0 Abstain.

THE TULALIP TRIBES OF WASHINGTON

Teri Gobin
Teri Gobin, Chair

ATTEST:

Debra L. Posey
Debra Posey, Secretary

CLEAN COPY

2.05.120 General privileges.

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, in any proceeding in the Tulalip Tribal Courts or in any proceeding applying the law of the Tulalip Tribes, a person cannot be examined as a witness in the following enumerated cases.

(1) Spousal. A husband cannot be examined for or against his wife without her consent or a wife for or against her husband without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other or to a criminal action or proceeding for a crime committed by one against the other, and further does not apply to a criminal action for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian.

(2) Attorney-Client. An attorney or spokesperson cannot, without the consent of his client, be examined as to any communication made by the client to him or his advice given to the client in the course of professional employment. A client cannot, except voluntarily, be examined as to any communication made by him to his attorney or Court advocate or the advice given to him by his attorney or Court advocate in the course of the attorney's or Court advocate's professional employment.

(3) Doctor-Patient. Except as provided in Rule 35, Federal Rules of Civil Procedure, a licensed physician, surgeon, or dentist cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient. This privilege shall not apply in the following situations:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse of the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to have waived the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as the Court may impose.

(4) Mental Health Professional-Client. The confidential relations and communications between a counselor, psychiatrist, or psychologist and his client shall be placed on the same basis as provided by law for those between an attorney and client.

(5) Investigative Reports – Board of Directors. An investigator employed by the Tulalip Tribes cannot be examined in any civil cause before the Courts of the Tulalip Tribes regarding an investigation performed at the request of the Tulalip Board of Directors without the formal consent in writing of the Tulalip Board of Directors to such examination. No written report produced as a part of an investigation performed at the request of the Tulalip Board of Directors

may be utilized as evidence in any civil case before the Courts of the Tulalip Tribes without formal written consent of the Board of Directors.

(6) Investigative Reports – Tribal Agencies. Any reports or information collected by Tribal Police or beda?chelh are privileged unless otherwise provided by statute or order of the Court.

(7) Interpreters. Any information that an interpreter gathers pertaining to any proceeding then pending shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless such person desires that such information be communicated to other persons.

(8) Clergy. A clergyman, priest, or traditional spiritual advisor cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church or religion to which he belongs.

(9) Secret Ballot in a Political Vote. The right of individuals to vote by secret ballot is fundamental. Where Tribal law requires elections for public office, the right of individuals to vote by secret ballot shall be guaranteed.

(10) Trade Secrets. A person may refuse to disclose or to prevent other persons from disclosing a trade secret owned by a person, if such refusal will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the Judge shall take such protective measures as the interests of the holder of the privilege and of the parties and the furtherance of justice may require.

(11) Privileges Not Applicable in Child or Elder Abuse Reporting. None of the privileges contained in this section shall apply to the extent that reporting or testimony is required by any law related to the mandatory reporting of child or elder abuse or neglect. All persons acting in good faith to report child abuse and who provide testimony directly related to child abuse or neglect in judicial proceedings shall be immune from liability for reporting and/or testifying in good faith.

(12) Tribal Representative or Agent – Tulalip Tribal Board of Directors. The confidential communications between (a) a representative or agent employed or designated by the Tulalip Tribal Board of Directors or the Tulalip Tribes and (b) Tulalip Tribal Board of Directors shall be placed on the same basis as provided by law for those between an attorney and client.

(13) The attorney-client privilege set forth in subsection (2) of this section applies regardless of whether the client is an individual, company, or a Tribal or governmental entity. When the client of the attorney is not an individual, the attorney-client privilege protects communications between an attorney and its client when such communications were made by or to any employees or a functional equivalent and: (a) they were made to in-house or outside counsel at the direction of company, Tribal or governmental superiors, (b) concerned matters within the scope of their duties, (c) the information was not readily available from upper-level management; and (d) the individuals were aware that they were being questioned in order for the company, Tribes, or government to receive legal advice.

(14) For the purposes of this section, “functional equivalent” shall mean a consultant or independent contractor hired or retained by a company, Tribes, or governmental entity who (a) has a continuous and close working relationship with the company, Tribes, or governmental entity; (b) has primary responsibility for a key company, Tribal, or governmental job or activity; and (c) has knowledge possessed by no one else at the company, Tribes, or governmental entity. By way of example, but not limitation, a representative or agent designated as such by the Tulalip Tribes shall be considered a functional equivalent under this section.

(15) Executive/Deliberative Process Privilege. No Tribal governmental entity, including the Tulalip Tribal Board of Directors and its subcommittees, shall be required to produce and a privilege applies to protect documents, such as advisory opinions, information, recommendations, and deliberations, that (a) reflect how Tribal government decisions are made or (b) are made during the internal decision-making processes. The executive/deliberative process privilege applies not only to documents, information, recommendations, and deliberations of the Tulalip Tribal Board of Directors and its subcommittees, but also to documents, information, communications, recommendations, and deliberations with employees and/or consultants in which opinions are expressed or policies formulated or recommended related to the deliberative process. The executive/deliberative process privilege as set forth herein is a codification of the common law.

(16) Board of Directors Privilege. It is imperative that in order to aid in the effective functioning of government, the Tulalip Tribal Board of Directors must perform their public duties untroubled by the fear or threat of suit and charge of malice. When acting within the scope of their responsibilities and duties as members of the Tulalip Tribal Board of Directors or on any subcommittee thereof, the members of the Tulalip Tribal Board of Directors shall be immune from civil liability for any acts or omissions committed or made in discharge of their official positions. The absolute immunity set forth herein is a codification of the common law.

(17) Qualified Immunity for Tribal Government Officials. When acting within the scope of their authority and on behalf of the Tulalip Tribes, Tribal government officials, officers, agents or employees when performing discretionary functions shall be immune from liability for civil damages insofar as their conduct does not violate clearly established Tribal Code or Tribal Constitutional rights to which a reasonable person would have known. An injured person’s sole recourse for any act or omission of any agent, employee, official, or officer acting on behalf of the Tribes and within the scope of their authority shall be a claim under Chapter 2.35 TTC. The qualified immunity recognized herein is the codification of common law.

(18) Community-Based Victim Advocates. An advocate may not, without the consent of the victim, be examined as to any communication made between the victim and the advocate.

(a) For purposes of this section, "advocate" means:

(i) Sexual assault advocates. An employee or volunteer of a community sexual assault program or tribal department who provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the victim to accompany the victim to the hospital or other health care facility

and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.

(ii) Domestic violence advocates. An employee or volunteer of Legacy of Healing or another community-based domestic violence program or human services program who provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to victims of domestic violence and who is not employed by, or under the direct supervision of, a law enforcement agency, a prosecutor's office, beda?chelh, or the child protective services section of the Washington Department of Children, Youth, and Families.

(ii) Child advocates. An employee or volunteer of an accredited children's advocacy center who provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to child victims of crime. The privilege belongs to the child if the child is 13 years or older. Otherwise, the privilege belongs to the child's parent(s) or legal guardian(s), except for a parent or guardian accused of abuse or neglect or legally restricted from contact with or decision making for the child cannot assert or waive the privilege.

(b) An advocate may disclose a communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. Any advocate participating in good faith in the disclosing of records and communications under this section shall have immunity from any liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this section, the good faith of the advocate who disclosed the confidential communication shall be presumed.

(c) This section does not relieve an advocate from the requirement to report or cause to be reported an incident under TTC 4.05.140.

4.05.120 Specific programs that work with children and the programs' role with children.

(1) beda?chelh. The primary objective of beda?chelh is safeguarding child welfare by working creatively to design integrated services promoting family and cultural preservation, health and resiliency in its children and families.

(a) In accordance with this belief, the priorities of beda?chelh are as follows:

(i) Secure for each child the mental, physical, educational, financial and emotional care and guidance that is in the best interest of the child and consistent with the customs, cultural values, and laws of the Tulalip Tribes; and

(ii) Whenever possible, preserve and strengthen family ties and a child's cultural and spiritual identity to help the child become a productive and well-adjusted community member.

(b) beda?chelh may include a variety of staff and service providers as required to address the needs and best interest of the child.

(2) Tulalip Child Placement Agency. The Tulalip Child Foster Care Agency is charged with recruiting, educating and licensing Tribal foster care homes consistent with Tribal and Federal law and as recognized by RCW 74.15.190. The Tulalip Child Placement Agency shall create policies and standard operating procedures consistent with this chapter, Tulalip laws and customs and Federal law.

(3) beda?chelh Advocacy Committee. The beda?chelh Advocacy Committee is composed of Tulalip community members who are appointed by the Tulalip Tribes Board of Directors and are charged with reviewing case issues as specified by and at the request of the parent/guardian respondent(s). The Committee has the authority to review case information only as related to the youth(s) in need of care and the parent/guardian who contacted the Committee. beda?chelh has discretion to not release information that is subject to an open investigation or is otherwise of such a sensitive or graphic nature that it would not serve the purpose identified in the parent/guardian's request for review or it would not be in the youths' best interest to disclose such information for review. In order to review any case related information that is related to or contains information regulated by the Health Insurance Portability and Accountability Act (HIPAA) appropriate releases must be signed. Upon case review and hearing from the parent/guardian and beda?chelh the Committee will make recommendations to beda?chelh on ways to proceed in accordance with law and policies.

(4) Child Advocacy Center. The Child Advocacy Center (CAC) is responsible for the coordination of the multi-agency investigation and intervention of child abuse allegations to minimize the number of interviews a child must undergo, to improve the quality of evidence collected and services provided to the child victim, to reduce any trauma associated with such an investigation, to improve the services that affected children and families experience and to overall provide a quality and effective intervention in child abuse cases.

(5) Tulalip Children's Advocacy Center Multidisciplinary Team. The Tulalip Tribes Children's Advocacy Center shall establish a Multidisciplinary Team (MDT) to protect the well-being of children and to advance and coordinate the prompt investigation of suspected cases of child abuse or neglect in a way that reduces the trauma of child victims. MDT meetings may be specific to criminal investigations or child protection investigations and process. The duties of the MDT 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 in civil and criminal proceedings.

(a) Information sharing among MDT members. Team members may share information about criminal child abuse investigations and case planning with other participants in the multidisciplinary team to the extent necessary to fulfil the purpose of the MDT. This

section is not intended to permit, direct, or compel team members to share information if sharing would constitute a violation of their professional ethical obligations or disclose privileged communications.

(b) Use and disclosure of information by MDT members. A member of the team may use or disclose records made available by other team members only as necessary for the performance of the member's duties as a member of the MDT. Every member of the MDT team who receives information or records regarding children and families in his or her capacity as a member of the team is subject to the same privacy and confidentiality obligations and confidentiality penalties as the person disclosing or providing the information or records. The information or records obtained by any team member must be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

ADOPTED Redline Ordinance Attachment below, by the Board of Directors of the Tulalip Tribes of Washington at a special board meeting assembled on the ____ day of _____, 2023, with a quorum present, by a vote of ____ For, ____ Against, and ____ Abstain.

THE TULALIP TRIBES OF WASHINGTON

Teri Gobin, Chairwoman

ATTEST:

Debra Posey, Secretary

ADOPTED Ordinance Attachment:

Redline "Track Changes" Ordinance Attachment

2.05.120 General privileges.

There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, in any proceeding in the Tulalip Tribal Courts or in any proceeding applying the law of the Tulalip Tribes, a person cannot be examined as a witness in the following enumerated cases.

(1) Spousal. A husband cannot be examined for or against his wife without her consent or a wife for or against her husband without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other or to a criminal action or proceeding for a crime committed by one against the other, and further does not apply to a criminal action for a crime committed by said husband or wife against any child of whom said husband or wife is the parent or guardian.

(2) Attorney-Client. An attorney or spokesperson cannot, without the consent of his client, be examined as to any communication made by the client to him or his advice given to the client in the course of professional employment. A client cannot, except voluntarily, be examined as to any communication made by him to his attorney or Court advocate or the advice given to him by his attorney or Court advocate in the course of the attorney's or Court advocate's professional employment.

(3) Doctor-Patient. Except as provided in Rule 35, Federal Rules of Civil Procedure, a licensed physician, surgeon, or dentist cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him to prescribe or act for the patient. This privilege shall not apply in the following situations:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse of the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to have waived the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as the Court may impose.

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(6) Investigative Reports – Tribal Agencies. Any reports or information collected by Tribal Police or beda?chelh are privileged unless otherwise provided by statute or order of the Court.

(7) Interpreters. Any information that an interpreter gathers pertaining to any proceeding then pending shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless such person desires that such information be communicated to other persons.

(8) Clergy. A clergyman, priest, or traditional spiritual advisor cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church or religion to which he belongs.

(9) Secret Ballot in a Political Vote. The right of individuals to vote by secret ballot is fundamental. Where Tribal law requires elections for public office, the right of individuals to vote by secret ballot shall be guaranteed.

(10) Trade Secrets. A person may refuse to disclose or to prevent other persons from disclosing a trade secret owned by a person, if such refusal will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the Judge shall take such protective measures as the interests of the holder of the privilege and of the parties and the furtherance of justice may require.

(11) Privileges Not Applicable in Child or Elder Abuse Reporting. None of the privileges contained in this section shall apply to the extent that reporting or testimony is required by any law related to the mandatory reporting of child or elder abuse or neglect. All persons acting in good faith to report child abuse and who provide testimony directly related to child abuse or neglect in judicial proceedings shall be immune from liability for reporting and/or testifying in good faith.

(12) Tribal Representative or Agent – Tulalip Tribal Board of Directors. The confidential communications between (a) a representative or agent employed or designated by the Tulalip Tribal Board of Directors or the Tulalip Tribes and (b) Tulalip Tribal Board of Directors shall be placed on the same basis as provided by law for those between an attorney and client.

(13) The attorney-client privilege set forth in subsection (2) of this section applies regardless of whether the client is an individual, company, or a Tribal or governmental entity. When the client of the attorney is not an individual, the attorney-client privilege protects communications between an attorney and its client when such communications were made by or to any employees or a functional equivalent and: (a) they were made to in-house or outside counsel at the direction of company, Tribal or governmental superiors, (b) concerned matters within the scope of their duties, (c) the information was not readily available from upper-level management; and (d) the individuals were aware that they were being questioned in order for the company, Tribes, or government to receive legal advice.

(14) For the purposes of this section, “functional equivalent” shall mean a consultant or independent contractor hired or retained by a company, Tribes, or governmental entity who (a) has a continuous and close working relationship with the company, Tribes, or governmental entity; (b) has primary responsibility for a key company, Tribal, or governmental job or activity; and (c) has knowledge possessed by no one else at the company, Tribes, or governmental entity. By way of example, but not limitation, a representative or agent designated as such by the Tulalip Tribes shall be considered a functional equivalent under this section.

(15) Executive/Deliberative Process Privilege. No Tribal governmental entity, including the Tulalip Tribal Board of Directors and its subcommittees, shall be required to produce and a privilege applies to protect documents, such as advisory opinions, information, recommendations, and deliberations, that (a) reflect how Tribal government decisions are made or (b) are made during the internal decision-making processes. The executive/deliberative process privilege applies not only to documents, information, recommendations, and deliberations of the Tulalip Tribal Board of Directors and its subcommittees, but also to documents, information, communications, recommendations, and deliberations with employees and/or consultants in which opinions are expressed or policies formulated or recommended related to the deliberative process. The executive/deliberative process privilege as set forth herein is a codification of the common law.

(16) Board of Directors Privilege. It is imperative that in order to aid in the effective functioning of government, the Tulalip Tribal Board of Directors must perform their public duties untroubled by the fear or threat of suit and charge of malice. When acting within the scope of their responsibilities and duties as members of the Tulalip Tribal Board of Directors or on any

subcommittee thereof, the members of the Tulalip Tribal Board of Directors shall be immune from civil liability for any acts or omissions committed or made in discharge of their official positions. The absolute immunity set forth herein is a codification of the common law.

(17) Qualified Immunity for Tribal Government Officials. When acting within the scope of their authority and on behalf of the Tulalip Tribes, Tribal government officials, officers, agents or employees when performing discretionary functions shall be immune from liability for civil damages insofar as their conduct does not violate clearly established Tribal Code or Tribal Constitutional rights to which a reasonable person would have known. An injured person's sole recourse for any act or omission of any agent, employee, official, or officer acting on behalf of the Tribes and within the scope of their authority shall be a claim under Chapter 2.35 TTC. The qualified immunity recognized herein is the codification of common law.

(18) Community-Based Victim Advocates. An advocate may not, without the consent of the victim, be examined as to any communication made between the victim and the advocate.

(a) For purposes of this section, "advocate" means:

(i) Sexual assault advocates. An employee or volunteer of a community sexual assault program or tribal department who provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the victim to accompany the victim to the hospital or other health care facility and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.

(ii) Domestic violence advocates. An employee or volunteer of Legacy of Healing or another community-based domestic violence program or human services program who provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to victims of domestic violence and who is not employed by, or under the direct supervision of, a law enforcement agency, a prosecutor's office, beda?chelh, or the child protective services section of the Washington Department of Children, Youth, and Families.

(ii) Child advocates. An employee or volunteer of an accredited children's advocacy center who provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to child victims of crime. The privilege belongs to the child if the child is 13 years or older. Otherwise, the privilege belongs to the child's parent(s) or legal guardian(s), except for a parent or guardian accused of abuse or neglect or legally restricted from contact with or decision making for the child cannot assert or waive the privilege.

(b) An advocate may disclose a communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. Any advocate participating in good faith in the disclosing of records and communications under this section shall have immunity from any liability, civil, criminal, or otherwise, that might result from the action. In any

proceeding, civil or criminal, arising out of a disclosure under this section, the good faith of the advocate who disclosed the confidential communication shall be presumed.

(c) This section does not relieve an advocate from the requirement to report or cause to be reported an incident under TTC 4.05.140.

4.05.120 Specific programs that work with children and the programs' role with children.

(1) beda?chelh. The primary objective of beda?chelh is safeguarding child welfare by working creatively to design integrated services promoting family and cultural preservation, health and resiliency in its children and families.

(a) In accordance with this belief, the priorities of beda?chelh are as follows:

(i) Secure for each child the mental, physical, educational, financial and emotional care and guidance that is in the best interest of the child and consistent with the customs, cultural values, and laws of the Tulalip Tribes; and

(ii) Whenever possible, preserve and strengthen family ties and a child's cultural and spiritual identity to help the child become a productive and well-adjusted community member.

(b) beda?chelh may include a variety of staff and service providers as required to address the needs and best interest of the child.

(2) Tulalip Child Placement Agency. The Tulalip Child Foster Care Agency is charged with recruiting, educating and licensing Tribal foster care homes consistent with Tribal and Federal law and as recognized by RCW 74.15.190. The Tulalip Child Placement Agency shall create policies and standard operating procedures consistent with this chapter, Tulalip laws and customs and Federal law.

(3) beda?chelh Advocacy Committee. The beda?chelh Advocacy Committee is composed of Tulalip community members who are appointed by the Tulalip Tribes Board of Directors and are charged with reviewing case issues as specified by and at the request of the parent/guardian respondent(s). The Committee has the authority to review case information only as related to the youth(s) in need of care and the parent/guardian who contacted the Committee. beda?chelh has discretion to not release information that is subject to an open investigation or is otherwise of such a sensitive or graphic nature that it would not serve the purpose identified in the parent/guardian's request for review or it would not be in the youths' best interest to disclose such information for review. In order to review any case related information that is related to or contains information regulated by the Health Insurance Portability and Accountability Act (HIPAA) appropriate releases must be signed. Upon case review and hearing from the

parent/guardian and ~~bedahel~~ the Committee will make recommendations to ~~bedahel~~ on ways to proceed in accordance with law and policies.

(4) Child Advocacy Center. The Child Advocacy Center (CAC) is responsible for the coordination of the multi-agency investigation and intervention of child abuse allegations to minimize the number of interviews a child must undergo, to improve the quality of evidence collected and services provided to the child victim, to reduce any trauma associated with such an investigation, to improve the services that affected children and families experience and to overall provide a quality and effective intervention in child abuse cases.

(5) ~~Tulalip Multi-Disciplinary Children's Advocacy Center Multidisciplinary Team~~. The Tulalip Tribes ~~Children's Advocacy Center~~ shall establish a ~~Multi-Disciplinary Multidisciplinary Team~~ (MDT) ~~for the purpose of child protection and criminal investigation to protect the well-being of children and to advance and coordinate the prompt investigation of suspected cases of child abuse or neglect in a way that reduces the trauma of child victims.~~ ~~Multi-Disciplinary Team~~ MDT meetings may be specific to criminal investigations or child protection investigations and process. The duties of the ~~Multi-Disciplinary Team~~ MDT 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 in civil and criminal proceedings.

(a) Information sharing among MDT members. Team members may share information about criminal child abuse investigations and case planning, with other participants in the multidisciplinary team to the extent necessary to fulfil the purpose of the MDT. This section is not intended to permit, direct, or compel team members to share information if sharing would constitute a violation of their professional ethical obligations or disclose privileged communications.

(b) Use and disclosure of information by MDT members. A member of the team may use or disclose records made available by other team members only as necessary for the performance of the member's duties as a member of the MDT. Every member of the MDT team who receives information or records regarding children and families in his or her capacity as a member of the team is subject to the same privacy and confidentiality obligations and confidentiality penalties as the person disclosing or providing the information or records. The information or records obtained by any team member must be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

2023-_____

Ordinance Summary

Legal privilege and information sharing by community-based advocates

Brief Summary of Ordinance

- Establishes privilege for community-based sexual assault advocates, domestic violence advocates, and child advocates.
- Advocates remain mandatory reporters; an advocate who reasonably suspect that a child has been abused, neglected, or abandoned must still report.
- Clarifies that information shared with the Children's Advocacy Center Multidisciplinary Team (MDT) must be held confidential.

Background

Privilege is a legal principle that protects information provided by a person to certain other persons. Well known examples include attorney-client privilege, doctor-patient privilege, and spousal privilege. Privileged communications cannot be disclosed, voluntarily or by court order, without the permission of the privilege holder. For example, an attorney cannot reveal information provided to them by a client cannot testify against their client without the client's permission (which is of course rarely given by the client). Privilege exists to strengthen the privileged relationship by encouraging full and honest sharing of information. Some privileges come from the common law, but today most privileges exist in statute. Statutory privilege is especially important in tribal courts where no body of common law exists.

At federal law and the laws of most states (including Washington) the relationship between community-based domestic violence and sexual assault advocates and their clients have legal privilege. System advocates (who work for police departments and prosecutor's office) do not have privilege. Information shared with a system advocate is legally discoverable as if it was shared with a police officer or prosecutor.

Summary of Ordinance

This ordinance establishes legal privilege for clients of sexual assault advocates, domestic violence advocates, and child advocates who work for community-based programs. Legacy of Healing advocates, as well as the advocates for state community-based advocacy programs, are afforded privilege under Tulalip law and in Tulalip Tribal Court. This ordinance brings Tulalip law in line with current practice and Washington State law with respect to community-based sexual assault and domestic violence advocates. The sexual assault and domestic violence advocate privilege belongs to the client.

This ordinance also establishes legal privilege for the child advocates who work for community-based programs. The child advocate privilege belongs to the child client if the client is 13 years or older. For younger children, the privilege belongs to the child's parents or legal guardians, except that a parent or guardian accused of abuse or neglect or legally restricted from contact with or decision making for the child cannot assert or waive the privilege.

Two exceptions exist for all three of the advocate privileges established by this ordinance:

- An advocate may disclose a communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person.
- An advocate remains a mandatory reporter and must disclose if they reasonably suspect that a child has been abused, neglected, or abandoned.

This ordinance clarifies that the purpose of the Child Advocacy Center Multidisciplinary Team (MDT) is to protect the well-being of children and to advance and coordinate the prompt investigation of suspected cases of child abuse or neglect in a way that reduces the trauma of child victims. This ordinance further clarifies that MDT members cannot share privileged information with each other and that MDT members may use or disclose records made available by other team members only as necessary for the performance of the member's duties as a member of the MDT.