



PUYALLUP TRIBE OF INDIANS



*****NOTICE*****

TO: PUYALLUP TRIBAL MEMBERS FROM: PUYALLUP TRIBAL COUNCIL

DATE: MAY 12, 2022

SUBJECT: Testimonial Privileges and Qualified Immunities Code

The intent of the Testimonial Privileges and Qualified Immunities Code is to establish rules regarding testimonial privilege and qualified immunities.

The Puyallup Tribal Constitution Article VI, Section 1(k) grants the Puyallup Tribal Council the authority to promulgate and enforce ordinances governing the conduct of members of the Puyallup Tribe, in order to provide for the maintenance of law and order and the administration of justice.

Tribal Council posts this legislation at appropriate locations in compliance with Section 2.12.040 of the "Code Adoption, Revision, and Distribution" Ordinance. The Code shall be posted for 30 days for public comment, ending on June 10th, 2022.

The Testimonial Privileges and Qualified Immunities Code will be posted for public comment at the following locations: Puyallup Tribal Administration Building, Puyallup Tribal Court, Puyallup Tribe's House of Respect, and the Kwawachee Counseling Center.

Comments must be forwarded to the Puyallup Tribal Council's Secretary. Additional copies are available upon request by calling Felecia Shue at: 253-573-7800 Ext. 6043.



Puyallup Tribe of Indians



PUYALLUP TRIBAL COUNCIL RESOLUTION NO. 230522

WHEREAS, the Puyallup Tribe has existed since creation as the aboriginal people who are the owners and guardians of their lands and waters; and

WHEREAS, the Puyallup Tribe is an independent sovereign nation, having historically negotiated with several foreign nations, including the United States in the Medicine Creek Treaty; and

WHEREAS, the Puyallup Tribal Council is the governing body of the Puyallup Tribe in accordance with the authority of its sovereign rights as the aboriginal owners and guardians of their lands and waters, reaffirmed in the *Medicine Creek Treaty*, and their *Constitution and By Laws*, as amended and approved by the Tribe and the Assistant Secretary of the Interior; and

WHEREAS, it is the duty of the Puyallup Tribal Council to promote the peace, safety, morals, and general welfare of the Puyallup Tribal Community; and

WHEREAS, the Puyallup Tribal Constitution Article VI, Section 1(k) grants the Puyallup Tribal Council the authority to promulgate and enforce ordinances governing the conduct of members of the Puyallup Tribe, providing for the maintenance of law and order and the administration of justice; and

WHEREAS, the Puyallup Tribal Council finds that it is in the best interest of the Puyallup Tribal community to protect Law Enforcement's physical and mental health as they relate to the important and essential duties Law Enforcement performs; and

WHEREAS, the Puyallup Tribal Council recognizes there are particular fields and relations in which the law has recognized immunities from suit or in which confidence is based and the preservation of this confidence is vital to aid the overall safety and public health of the community; and

WHEREAS, the Puyallup Tribal Council finds that it is in the best interest of the Puyallup Tribal community to enact PTC Chapter 4.20 related to testimonial privileges and immunities.

This Resolution adopts PTC Chapter 4.20 Testimonial Privileges and Qualified Immunities. The purpose of the enactment of this Code is to establish rules regarding testimonial privilege and qualified immunities.

NOW BE IT ENACTED by the Puyallup Tribal Council of the Puyallup Tribe, PTC Chapter 4.20 titled, "Testimonial Privileges and Qualified Immunities" is enacted as attached:

BE IT FURTHER RESOLVED, that the Tribal Council posts this legislation at appropriate locations in compliance with Section 2.12.040 of the "Code Adoption, Revision, and Distribution" Ordinance and seeks public comment within 30 days.

BE IT FURTHER RESOLVED, that at the end of the 30 day comment period, unless comments are received and changes made as a result of any comments received, this Code shall take immediate effect as herein adopted.

BE IT FINALLY RESOLVED, by the Tribal Council that it authorizes the Tribal Council Chairman (Bill Sterud), and in his absence, the Vice-Chairwoman (Sylvia P. Miller), to execute this Resolution and other such required implementing documents as are required on behalf of the Tribe.

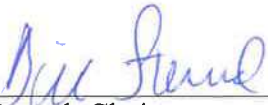
CERTIFICATION

I, Nadine Piatote, Secretary of the Puyallup Tribal Council of the Puyallup Reservation do hereby certify that the above Resolution was duly adopted at a Regular Meeting of the Puyallup Tribal Council held on the Puyallup Indian Reservation on the 3rd day of May, 2022, a quorum being present with a vote of 6 FOR, 0 AGAINST, 0 ABSTAINING, and 1 NOT VOTING its adoption.



Secretary, Puyallup Tribal Council

ATTEST:



Bill Sterud, Chairman or
Sylvia P. Miller, Vice-Chairwoman
Puyallup Tribal Council

Chapter 4.20

Testimonial Privileges and Qualified Immunities

Subchapter 1. Testimonial Privileges.

4.20.010 Purpose

The purpose of this Code is to clarify laws and rules as they relate to testimonial privilege and qualified immunities. There are particular fields and relations in which the law has recognized immunities from suit or in which confidence is based and the preservation of this confidence is vital to aid the overall safety and public health of the community. In any proceeding in the Puyallup Tribal Court or in any proceeding applying the law of the Puyallup Tribe, a person cannot be examined as a witness or is immune from civil law suits as described in this Code.

4.20.20 Advocate-Victim Privilege Applies in Domestic Violence Cases.

- (a) An advocate shall not, without consent from a victim of domestic violence, disclose confidential communication between the victim and the advocate.
- (b) An advocate shall not, without consent from a victim of domestic violence, disclose confidential written records and reports or both concerning the victim.
- (c) An advocate shall immediately report the abuse, neglect, or abandonment to the Tribal Social Services Department or Tribal Law Enforcement and Children's Protective Services as required under PTC 7.04.250, if they have reasonable cause to suspect that a child has been abused, neglected, or abandoned.
- (d) An advocate shall immediately report the abuse, neglect, or abandonment to Tribal Law Enforcement and Tribal Adult Protective Services, if they have reasonable cause to suspect that an elder has been abused, neglected, or abandoned.
- (e) As used in this subsection, "advocate" means an employee of or volunteer for a program for victims of domestic violence or other victims of crime who has a primary function of rendering advice, counseling, or assisting victims of domestic violence; supervising the employees or volunteers of the program; or administering the program.

4.20.030 Attorney-Client.

An attorney or spokesperson shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or by attorney or spokesperson in the course of giving legal advice on behalf of the client.

4.20.40 Clergyman, Chaplain or Priest.

- (a) A clergyman, chaplain, priest, or traditional spiritual advisor cannot, without the consent of the person making the confession, be examined as to any confession made to him or her in his or her professional role.

- (b) 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 elder abuse or neglect in judicial proceedings shall be immune from liability for reporting and/or testifying in good faith.

4.20.50 Doctor-Patient.

- (a) A licensed physician, surgeon, dentist, physician assistant, or registered nurse cannot, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending the patient which was necessary to enable him or her to prescribe or act for the patient.
- (b) This privilege shall not apply in the following situations:
 - (1) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse; and
 - (2) ninety days (90) 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.

4.20.060 Investigative Reports – Puyallup Tribal Council.

An investigator employed by the Puyallup Tribe cannot be examined in any civil case before the Courts of the Puyallup Tribe regarding an investigation performed at the request of the Puyallup Tribal Council without the formal consent in writing of the Puyallup Tribal Council to such examination. No written report produced as a part of an investigation performed at the request of the Puyallup Tribal Council may be utilized as evidence in any civil case before the Courts of the Puyallup Tribe without formal written consent of the Puyallup Tribal Council.

4.20.070 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.

4.20.080 Sponsor.

An individual who acts as a sponsor providing guidance, emotional support, and counseling in an individualized manner to a person participating in an alcohol or drug addiction recovery fellowship may not testify in any civil action or proceeding about any communication made by the person participating in the addiction recovery fellowship to the individual who acts as a

sponsor except with the written authorization of that person or, in the case of death or disability, the person's personal representative.

4.20.90 Law Enforcement Peer Support Group Counselor.

- (a) A peer support group counselor shall not, without consent of the law enforcement staff member, be compelled to testify about any communication made to the counselor by the staff member, while receiving counseling.
- (b) The counselor must be designated as such by the Puyallup Tribal Law Enforcement Department.
- (c) The privilege only applies when the communication was made to the counselor while acting in his or her capacity as a peer support group counselor.
- (d) The privilege does not apply if the counselor was an initial responding officer or firefighter, a witness, to the incident which prompted the delivery of peer support group counseling services to the law enforcement staff member.
- (e) For purposes of this section:
 - (1) "Law enforcement officer" means any officer sworn or authorized by the Puyallup Tribe of Indians.
 - (2) "Peer support group counselor" means a law enforcement staff member, r, who has received training to provide emotional and moral support and counseling to an staff member, who needs those services as a result of an incident in which the staff member, was involved while acting in his or her official capacity.
 - (3) "Law Enforcement Staff" means any commissioned (Sworn), non-commissioned, civilian or volunteer staff authorized to conduct Law Enforcement duties by the Puyallup Tribe of Indians.

4.20.100 Puyallup Tribal Council Privilege.

It is imperative that in order to aid in the effective functioning of government, the Puyallup Tribal Council 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 Puyallup Tribal Council on any subcommittee thereof, the members of the Puyallup Tribal Council shall be immune from civil liability for any acts or omissions committed or made in discharge of their official positions.

4.20.110 Spousal Privileges. Spousal Privileges Applies in Criminal Cases.

Spousal privilege is the manner of communication that husbands and wives share through words, looks, or behavior. Information shared between one or both of the spouses and another person is not privileged.

When spousal privilege exists, one spouse cannot be compelled by Court order to testify or share information that was acquired during the course of the marriage. However, during a criminal proceeding in which one spouse is alleged to be a victim of a crime perpetrated by the other spouse, spousal privilege shall not apply.

Subchapter 2. Qualified Immunities

4.20.120 Qualified Immunity for Tribal Government Officials.

When acting within the scope of their authority and on behalf of the Puyallup Tribe, 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 Law or Tribal Constitutional rights of which a reasonable person would have known.

4.20.130 Judicial Immunity, Prosecutorial Immunity, and Law Enforcement Immunity.

The Tribal Court shall recognize judicial immunity, prosecutorial immunity, and police officer immunity to the same extent as would be recognized by the federal courts.