



# Laws of the Confederated Salish and Kootenai Tribes, Codified

(CSKT Laws Codified)

January 1, 2000

(Revised March 21, 2013)

## Introduction

Since April 15, 2003, the Tribal Council of the Confederated Salish and Kootenai Tribes has amended Tribal Ordinance 103-A to provide needed substantive changes and minor editorial corrections to the CSKT Laws Codified. Copies of these Amendments (#s 6-30) are provided in the Appendix.

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**TITLE I****CHAPTER 1 - CONSTITUTION AND BYLAWS****Part 1 - Constitution****CONSTITUTION OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE  
FLATHEAD RESERVATION, AS AMENDED****PREAMBLE**

We, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, in order to establish a more responsible organization, promote our general welfare, conserve and develop our lands and resources, and secure to ourselves and our posterity the power to exercise certain rights of self-government not inconsistent with Federal, State, and local laws, do ordain and establish this Constitution for the Confederated Tribes of the Flathead Reservation.

**ARTICLE I—TERRITORY**

The jurisdiction of the Confederated Salish and Kootenai Tribes of Indians shall extend to the territory within the original confines of the Flathead Reservation as defined in the Treaty of July 16, 1855, and to such other lands without such boundaries, as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.

**ARTICLE II—MEMBERSHIP**

Section 1. Confirmation of Rolls. The membership of the Confederated Tribes of the Flathead Reservation is confirmed in accordance with the per capita rolls as from time to time prepared.

Section 2. Present Membership. Membership in the Tribes on and after the date of the adoption of this amendment shall consist of all living persons whose names appear on the per capita roll of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, as prepared for the per capita distribution as shown on the per capita roll paid in February 1959 together with all children of such members, born too late to be included on such per capita roll and prior to the effective date of this section who possess one-fourth (1/4) or more Salish or Kootenai Blood or both and are born to a member of the Confederated Tribes of the Flathead Indian Reservation. Subject to review by the Secretary of the Interior, the Tribal Council shall make any necessary corrections in this 1959 membership roll so that no one eligible for membership under prior constitutional provisions shall be excluded therefrom.

Section 3. Future Membership. Future membership may be regulated from time to time by ordinance of the Confederated Tribes subject to review by the Secretary of the Interior. Until and unless an ordinance is adopted any person shall be enrolled as a member who shall (a) apply, or have application made on his behalf, establishing eligibility under this provision; (b) show that he is a natural child of a member of the Confederated Tribes; (c) that he possesses one-quarter (1/4) degree or more blood of the Salish or Kootenai Tribes or both, of the Flathead Indian Reservation, Montana; (d) is not enrolled on some other reservation.

Section 4. Adoption. The Tribal Council shall have the power to enact and promulgate ordinances, subject to review by the Secretary of the Interior, governing the adoption of persons as members of the Confederated Salish and Kootenai Tribes.

Section 5. Loss of Membership. Membership in the Confederated Tribes may be lost (1) by resignation in writing to the Tribal Council; (2) by enrollment of the member with another Indian tribe; (3) by establishing a legal residence in a foreign country; (4) upon proof of lack of eligibility for enrollment, or fraud in obtaining enrollment, with due notice and opportunity to be heard and to defend before the Tribal Council, subject to appeal to the Secretary of the Interior, whose decision shall be confined to the record made in such proceeding which, if supported by substantial evidence, shall be binding.

Section 6. Definitions. Wherever the term “Indian Blood” shall have been used herein or in tribal ordinances, unless the context shall require a different meaning, it shall be determined to mean the blood of either or both the Kootenai or the Salish Tribes of the Flathead Reservation.

Section 7. Current Membership Roll. The membership roll of the Confederated Salish and Kootenai Tribes of the Flathead Reservation shall be kept current by striking therefrom the names of persons who have died or have lost membership pursuant to this Constitution and adding thereto the names of persons who shall have established eligibility or been adopted. The roll so prepared shall be the basis for determining the right of persons whose names appear thereon to share in annual per capita distribution of funds or in any other tribal property, subject to Secretarial approval.

Section 8. Rules of Procedure. The Tribal Council shall have the authority to prescribe rules to be followed in compiling a membership roll in accordance with the provisions of this article, the completed roll to be approved by the Tribal Council of the Confederated Salish and Kootenai Tribes. In case of distribution of tribal assets, the roll shall be submitted to the Secretary of the Interior for final approval as may be provided by law.

Section 9. Rights of Members are Prospective. No person shall be entitled to receive a per capita payment or share in any other tribal assets which were distributed prior to the date of his actual enrollment.

### **ARTICLE III—THE TRIBAL COUNCIL**

Section 1. The governing body of the Confederated Salish and Kootenai Tribes of the Flathead Reservation shall be the Tribal Council.

Section 2. The Council shall consist of ten councilmen to be elected from the districts as set forth hereafter, and Chiefs Martin Charlo and Eneas Paul Koostahtah.

Section 3. Representation from the districts hereby designated shall be as follows: Jocko Valley and Mission Districts, two councilmen each; Ronan, Pablo, Polson, Elmo-Dayton, Hot Springs-Camas Prairie, and Dixon, one councilman each.

Section 4. The Tribal Council shall have the power to change the districts and the representation from each district, based on community organization or otherwise, as deemed advisable, such change to be made by ordinance, but the total number of delegates shall not be changed as provided for in section 2 of article III of this Constitution.

Section 5. The Tribal Council so organized shall elect from within its own number a chairman, and a vice chairman, and from within or without its own membership, a secretary, treasurer, sergeant-at-arms, and such other officers and committees as may be deemed necessary.

Section 6. No person shall be a candidate for membership in the Tribal Council unless he shall be a member of the Confederated Tribes of the Flathead Reservation and shall have resided in the district of

his candidacy for a period of one year next preceding the election.

Section 7. The Tribal Council of the Confederated Tribes of the Flathead Reservation shall be the sole judge of the qualifications of its members.

#### **ARTICLE IV—NOMINATIONS AND ELECTIONS**

Section 1. The first election of a Tribal Council under this Constitution shall be called and supervised by the present Tribal Council within 30 days after the ratification and approval of this Constitution, and thereafter elections shall be held every two years on the third Saturday prior to the expiration of the terms of office of the members of the Tribal Council. At the first election, five councilmen shall be elected for a period of two years and five for a period of four years. The term of office of a councilman shall be for a period of four years unless otherwise provided herein.

Section 2. The Tribal Council or an election board appointed by the Council shall determine rules and regulations governing all elections.

Section 3. Any qualified member of the Confederated Tribes may announce his candidacy for the Council, within the district of his residence, notifying the Secretary of the Tribal Council in writing of his candidacy at least 15 days prior to the election. It shall be the duty of the Secretary of the Tribal Council to post in each district at least 10 days before the election, the names of all candidates for the Council who have met these requirements. Where more than two members have filed for an office, a Primary Election shall be held at least 30 days prior to the General Election. Only the two candidates for each office receiving the most votes at such Primary Election shall be eligible to run for office in the General Election. Where no more than two members have filed for an office, a Primary Election will be unnecessary.

Section 4. The Tribal Council, or a board appointed by the Council, shall certify to the election of the members of the Council within 5 days after the election returns.

Section 5. Any member of the Confederated Tribes of the Flathead Reservation who is 18 years of age or over and who has maintained a legal residence for at least one year on the Flathead Reservation shall be entitled to vote.

Section 6. The Tribal Council, or a board appointed by the Tribal Council, shall designate the polling places and appoint all election officials.

#### **ARTICLE V—VACANCIES AND REMOVAL FROM OFFICE**

Section 1. If a councilman or official shall die, resign, permanently leave the reservation, or be removed from office, the Council shall declare the position vacant and appoint a successor to fill the unexpired term, provided that the person chosen to fill such vacancy shall be from the district in which such vacancy occurs.

Section 2. Any councilman who is proven guilty of improper conduct or gross neglect of duty may be expelled from the Council by a two-thirds vote of the membership of the Council voting in favor of such expulsion, and provided further, that the accused member shall be given full and fair opportunity to reply to any and all charges at a designated Council meeting. It is further stipulated that any such member shall be given a written statement of the charges against him at least five days before the meeting at which he is to appear.



## ARTICLE VI—POWERS AND DUTIES OF THE TRIBAL COUNCIL

Section 1. The Tribal Council shall have the power, subject to any limitations imposed by the Statutes or the Constitution of the United States, and subject to all express restrictions upon such powers contained in this Constitution and attached Bylaws;

(a) To regulate the uses and disposition of tribal property, to protect and preserve the tribal property, wildlife and natural resources of the Confederated Tribes, to cultivate Indian arts, crafts, and culture, to administer charity; to protect the health, security, and general welfare of the Confederated Tribes.

(b) To employ legal counsel for the protection and advancement of the rights of the Flathead Confederated Tribes and their members, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior.

(c) To negotiate with the Federal, State, and local governments on behalf of the Confederated Tribes, and to advise and consult with the representatives of the Departments of the Government of the United States on all matters affecting the affairs of the Confederated Tribes.

(d) To approve or veto any sale, disposition, lease, or encumbrance of tribal lands and tribal assets which may be authorized or executed by the Secretary of the Interior, the Commissioner of Indian Affairs, or any other agency of the Government, *provided* that no tribal lands shall be sold or encumbered or leased for a period in excess of five years, except for Governmental purposes.

(e) To advise with the Secretary of the Interior with regard to all appropriation estimates or Federal projects for the benefit of the Confederated Tribes, prior to the submission of such estimates to the Congress.

(f) To manage all economic affairs and enterprises of the Confederated Tribes in accordance with the terms of a charter to be issued by the Secretary of the Interior.

(g) To make assignments of tribal lands to members of the Confederated Tribes in conformity with article VIII of this Constitution.

(h) To appropriate for tribal use of the reservation any available applicable funds in the tribal treasury, provided that any such appropriation in excess of \$25,000 shall be subject to review by the Secretary of the Interior.

(i) To promulgate and enforce ordinances, subject to review by the Secretary of the Interior, which would provide for assessments or license fees upon nonmembers doing business within the reservation, or obtaining special rights or privileges, and the same may also be applied to members of the Confederated Tribes, provided such ordinances have been approved by a referendum of the Confederated Tribes.

(j) To exclude from the restricted lands of the reservation persons not legally entitled to reside thereon, under ordinances which may be subject to review by the Secretary of the Interior.

(k) To enact resolutions or ordinances not inconsistent with article II of this Constitution governing adoptions and abandonment of membership.

(l) To promulgate and enforce ordinances which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the Confederated Tribes, and providing for the maintenance of law and order and the administration of justice by the establishment of an Indian Court, and defining its

powers and duties.

(m) To purchase land of members of the Confederated Tribes for public purposes under condemnation proceedings in courts of competent jurisdiction.

(n) To promulgate and enforce ordinances which are intended to safeguard and promote the peace, safety, morals, and general welfare of the Confederated Tribes by regulating the conduct of trade and the use and disposition of property upon the reservation, providing that any ordinance directly affecting nonmembers shall be subject to review by the Secretary of the Interior.

(o) To charter subordinate organizations for economic purposes and to regulate the activities of all cooperative and other associations which may be organized under any charter issued under this Constitution.

(p) To regulate the inheritance of real and personal property, other than allotted lands, within the Flathead Reservation, subject to review by the Secretary of the Interior.

(q) To regulate the domestic relations of members of the Confederated Tribes.

(r) To recommend and provide for the appointment of guardians for orphans, minor members of the Confederated Tribes, and incompetents subject to the approval of the Secretary of the Interior, and to administer tribal and other funds or property which may be transferred or entrusted to the Confederated Tribes or Tribal Council for this purpose.

(s) To create and maintain a tribal fund by accepting grants or donations from any person, State, or the United States.

(t) To delegate to subordinate boards or to cooperative associations which are open to all members of the Confederated Tribes, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power.

(u) To adopt resolutions or ordinances to effectuate any of the foregoing powers.

Section 2. Any resolution or ordinance which by the terms of this constitution is subject to review by the Secretary of the Interior, shall be presented to the Superintendent of the Reservation who shall, within ten days thereafter, approve or disapprove the same, and if such ordinance or resolution is approved, it shall thereupon become effective, but the Superintendent shall transmit of copy of the same, bearing his endorsement, to the Secretary of the Interior who may, within 90 days from the date of enactment, rescind said ordinance or resolution for any cause, by notifying the Council of such action: *Provided*, That if the Superintendent shall refuse to approve any resolution or ordinance submitted to him, within ten days after its enactment, he shall advise the Council of his reasons therefor, and the Council, if such reasons appear to be insufficient, may refer it to the Secretary of the Interior, who may pass upon same and either approve or disapprove it within 90 days from its enactment.

Section 3. The council of the Confederated Tribes may exercise such further powers as may in the future be delegated to it by the Federal Government, either through order of the Secretary of the Interior or by Congress, or by the State Government or by members of the Confederated Tribes.

Section 4. Any rights and powers heretofore vested in the Confederated Tribes but not expressly referred to in this Constitution shall not be abridged by this article, but may be exercised by the members of the Confederated Tribes through the adoption of appropriate bylaws and constitutional amendments.

## **ARTICLE VII—BILL OF RIGHTS**

Section 1. All members of the Confederated Tribes over the age of 18 years shall have the right to vote in all tribal elections, subject to any restrictions as to residence as set forth in Article IV.

Section 2. All members of the Confederated Tribes shall be accorded equal opportunities to participate in the economic resources and activities of the reservation.

Section 3. All members of the Confederated Tribes may enjoy without hindrance freedom of worship, speech, press, and assembly.

Section 4. Any member of the Confederated Tribes accused of any offense, shall have the right to a prompt, open, and public hearing, with due notice of the offense charged, and shall be permitted to summon witnesses in his own behalf and trial by jury shall be accorded, when duly requested, by any member accused of any offense punishable by more than 30 days' imprisonment, and excessive bail or cruel or unusual punishment shall not be imposed.

## **ARTICLE VIII—LAND**

Section 1. Land Transactions. Subject to any limitations imposed by this Constitution and Bylaws, to any applicable Federal statute and to the approval of the Secretary of the Interior, the Tribal Council may:

(1) Purchase or receive by gift or relinquishment land or any interest therein, and may lease, exchange (with or without the giving or receipt of other consideration), encumber, and assign tribal lands or any interest therein; and

(2) Adopt ordinances or resolutions governing any or all such transactions.

Section 2. Saving Clause. Nothing herein shall be held to impair rights heretofore acquired in any allotment or assignment held by any individual.

## **ARTICLE IX—REFERENDUM**

Section 1. Upon a petition of at least one-third (1/3) of the eligible voters of the Confederated Tribes, or upon the request of a majority of the members of the Tribal Council, any enacted or proposed ordinance or resolution of the Council shall be submitted to a popular referendum, and the vote of a majority of the qualified voters voting in such referendum shall be conclusive and binding on the Tribal Council, provided that at least thirty percent (30%) of the eligible voters shall vote in such election.

## **ARTICLE X—AMENDMENTS**

Section 1. This Constitution and Bylaws may be amended by a majority vote of the qualified voters of the Confederated Tribes voting at an election called for that purpose by the Secretary of the Interior, provided that at least thirty percent (30%) of those entitled to vote shall vote in such election; but no amendment shall become effective until it shall have been approved by the Secretary of the Interior. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment, at the request of two-thirds of the Council, or upon presentation of a petition signed by one-third (1/3) of the qualified voters, members of the Confederated Tribes.

## Part 2 - Bylaws

### BYLAWS, AS AMENDED

#### ARTICLE I—THE TRIBAL COUNCIL

Section 1. The Chairman of the Council shall preside over all meetings of the Council, perform all duties of chairman, and exercise any authority detailed to him, and he shall be entitled to vote on all questions.

Section 2. The vice chairman shall assist the chairman when called on so to do, in the absence of the chairman shall preside, and when so presiding shall have all the privileges, duties, and responsibilities of the chairman.

Section 3. The Council secretary shall forward a copy of the minutes of all meetings to the Superintendent of the Reservation and to the Commissioner of Indian Affairs.

Section 4. The duties of all appointed boards or officers of the organization shall be clearly defined by resolutions of the Council at the time of their creation or appointment. Such boards and officers shall report from time to time as required to the Council and their activities and decisions shall be subject to review by the Council upon petition of any person aggrieved.

Section 5. Newly elected members who have been duly certified shall be installed at the first regular meeting of the Tribal Council.

Section 6. Each member of the Tribal Council and each officer or subordinate officer, elected or appointed hereunder, shall take an oath of office prior to assuming the duties thereof, by which oath, he shall pledge himself to support and defend the Constitution of the United States and this Constitution and Bylaws. The following form of oath of office shall be given: "I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, to carry out faithfully and impartially, the duties of my office to the best of my ability; to cooperate, promote, and protect the best interests of my Tribe, in accordance with this Constitution and Bylaws."

Section 7. Regular meetings of the Tribal Council shall be held on the first Friday of January, April, July, and October, at 9:00 o'clock a.m., at the Flathead Agency.

Section 8. Special meetings may be called by a written notice signed by the chairman or a majority of the Tribal Council and when so called the Tribal Council shall have power to transact business as in regular meetings.

Section 9. No business shall be transacted unless a quorum is present which shall consist of two-thirds (2/3) of the entire membership.

Section 10. Order of business:

- (a) Call to order by chairman.
- (b) Roll call.
- (c) Reading of minutes of last meeting.
- (d) Unfinished business.
- (e) Reports.
- (f) New business.

(g) Adjournment.

Section 11. It shall be the duty of each member of the Tribal Council to make reports to the district from which he is elected, concerning the proceedings of the Tribal Council.

Section 12. The Tribal Council may prescribe such salaries for officers or members of the Council as it deems advisable, from such funds as may be available.

## **ARTICLE II—ORDINANCES AND RESOLUTIONS**

Section 1. All final decisions of the Council on matters of general and permanent interest to the members of the Confederated Tribes shall be embodied in ordinances. Such ordinances shall be published from time to time for the information and education of the members of the Confederated Tribes.

Section 2. All final decisions of the Council on matters of temporary interest (such as action on the reservation budget for a single year, or petitions to Congress or the Secretary of the Interior) or relating especially to particular individuals or officials (such as adoption of members, instructions for tribal employees or rules of order for the Council) shall be embodied in resolutions. Such resolutions shall be recorded in a special book which shall be open to inspection by members of the Confederated Tribes.

Section 3. All questions of procedure (such as acceptance of Committee reports or invitations to outsiders to speak) shall be decided by action of the Council or by ruling of the Chairman, if no objection is heard. In all ordinances, resolutions or motions the Council may act by majority vote, but all matters of importance shall be fully discussed and a reasonable attempt shall be made to secure unanimous agreement.

Section 4. *Legislative forms.*—Every ordinance shall begin with the words: “Be it enacted by the Council of the Confederated Salish and Kootenai Tribes—.”

Section 5. Every resolution shall begin with the words: “Be it resolved by the Council of the Confederated Salish and Kootenai Tribes—.”

Section 6. Every ordinance or resolution shall contain a recital of the laws of the United States and the provisions of this Constitution under which authority for the said ordinance or resolution is found.

## **ARTICLE III—RATIFICATION OF CONSTITUTION AND BYLAWS**

This Constitution and the attached Bylaws, when adopted by a majority vote of the voters of the Confederated Tribes voting at a special election called by the Secretary of the Interior, in which at least thirty (30) percent of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval, and shall be in force from the date of such approval.

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(Constitution and Bylaws of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, effective October 28, 1935; Amendment I, effective December 22, 1948; Amendments II, III, and IV, effective May 5, 1960; Amendments V and VI, effective May 16, 1974; Amendment VII, effective October 8, 1981.)

## APPENDIX

*Indian Civil Rights Act, 25 U.S.C. Section 1302.*

(a) In general

No Indian tribe in exercising powers of self-government shall—

- (1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;
- (2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (3) subject any person for the same offense to be twice put in jeopardy;
- (4) compel any person in any criminal case to be a witness against himself;
- (5) take any private property for a public use without just compensation;
- (6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense (except as provided in subsection (b));
- (7)
  - (A) require excessive bail, impose excessive fines, or inflict cruel and unusual punishments;
  - (B) except as provided in subparagraph (C), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 1 year or a fine of \$5,000, or both;
  - (C) subject to subsection (b), impose for conviction of any 1 offense any penalty or punishment greater than imprisonment for a term of 3 years or a fine of \$15,000, or both; or
  - (D) impose on a person in a criminal proceeding a total penalty or punishment greater than imprisonment for a term of 9 years;
- (8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;
- (9) pass any bill of attainder or ex post facto law; or
- (10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

(b) Offenses subject to greater than 1-year imprisonment or a fine greater than \$5,000

A tribal court may subject a defendant to a term of imprisonment greater than 1 year but not to exceed 3 years for any 1 offense, or a fine greater than \$5,000 but not to exceed \$15,000, or both, if the defendant

is a person accused of a criminal offense who—

- (1) has been previously convicted of the same or a comparable offense by any jurisdiction in the United States; or
- (2) is being prosecuted for an offense comparable to an offense that would be punishable by more than 1 year of imprisonment if prosecuted by the United States or any of the States.

(c) Rights of defendants

In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall—

- (1) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and
- (2) at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;
- (3) require that the judge presiding over the criminal proceeding—
  - (A) has sufficient legal training to preside over criminal proceedings; and
  - (B) is licensed to practice law by any jurisdiction in the United States;
- (4) prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government; and
- (5) maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding.

(d) Sentences

In the case of a defendant sentenced in accordance with subsections (b) and (c), a tribal court may require the defendant—

- (1) to serve the sentence—
  - (A) in a tribal correctional center that has been approved by the Bureau of Indian Affairs for long-term incarceration, in accordance with guidelines to be developed by the Bureau of Indian Affairs (in consultation with Indian tribes) not later than 180 days after July 29, 2010;
  - (B) in the nearest appropriate Federal facility, at the expense of the United States pursuant to the Bureau of Prisons tribal prisoner pilot program described in section 304(c) [1] of the Tribal Law and Order Act of 2010;
  - (C) in a State or local government-approved detention or correctional center pursuant to an agreement between the Indian tribe and the State or local government; or

(D) in an alternative rehabilitation center of an Indian tribe; or

(2) to serve another alternative form of punishment, as determined by the tribal court judge pursuant to tribal law.

(e) Definition of offense

In this section, the term “offense” means a violation of a criminal law.

(f) Effect of section

Nothing in this section affects the obligation of the United States, or any State government that has been delegated authority by the United States, to investigate and prosecute any criminal violation in Indian country.



## TITLE I

### CHAPTER 2 - COURTS

#### Part 1 - Establishment and Jurisdiction

**1-2-101. Establishment.** The judicial power of the Confederated Salish and Kootenai Tribes (hereinafter "the Tribes") is vested in the Tribal Court, and such divisions thereof as the Tribal Council may from time to time authorize by statute, and the Tribal Court of Appeals.

**1-2-102. Tribal Court.** The Tribal Court may hear and decide cases and controversies as provided by Tribal law, subject to any restrictions imposed by the Constitution, treaties, or laws of the United States. Final decisions and orders of the Tribal Court are subject to review by the Tribal Court of Appeals as provided in Sections 1-2-816 and 1-2-817 of this Code. Failure to legislate in any particular area shall not be deemed a cession of authority to any other government's jurisdiction.

**1-2-103. Criminal jurisdiction** The Tribal Court shall have criminal jurisdiction over any Tribal member, American or Canadian Indian, or Alaskan Native found within the Flathead Reservation and accused by the Tribes of the commission, within the Flathead Reservation, of an offense enumerated in Title II, Chapter 1, of this Code.

**1-2-104. Civil Jurisdiction.** (1) The Tribal Court of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, shall have jurisdiction of all suits wherein the parties are subject to the jurisdiction of this Court, and over all other suits which are brought before the Court by stipulation of parties not otherwise subject to Tribal jurisdiction. In suits brought by non-members against members of the Tribes or other persons subject to the jurisdiction of this Court, the complainant shall stipulate in his or her complaint that he or she is subject to the jurisdiction of the Tribal Court for purposes of any counterclaims which the defendant may have against him or her.

(2) To the fullest extent possible, not inconsistent with federal law, the Tribes may exercise their civil, regulatory and adjudicatory powers. To the fullest extent possible, not inconsistent with federal law, the Tribal Court may exercise subject matter and personal jurisdiction. The jurisdiction over all persons of the Tribal Court may extend to and include, but not by way of limitation, the following:

- (a) All persons found within the Reservation.
- (b) All persons subject to the jurisdiction of the Tribal Court and involved directly or indirectly in:
  - (i) The transaction of any business within the Reservation;
  - (ii) The ownership, use or possession of any property, or interest therein, situated within the Reservation;
  - (iii) The entering into of any type of contract within the Reservation or wherein any aspect of any contract is performed within the Reservation;
  - (iv) The injury or damage to property of the Tribes or a Tribal member.

(3) As used in this section, "person" means an individual, organization, corporation, governmental subdivision or agency, business trust, estate, trust, partnership, association, joint venture, or any other legal

or commercial activity. Nothing in this chapter waives any aspect of the Tribes sovereign immunity or related privileges.

(4) The Confederated Salish and Kootenai Tribes shall adopt appropriate laws and regulations governing conduct of Tribal members exercising Treaty rights within the open and unclaimed aboriginal territory outside the Flathead Reservation.

**1-2-105. Exclusive and concurrent jurisdiction.** The jurisdiction of the Tribal Court, as set out in Sections 1-2-103 and 1-2-104 is exclusive except:

(1) as may be provided otherwise by federal statute or the final order of a federal court, or

(2) where implementation of federal law, by Tribal agreement or otherwise, requires that Tribal Court jurisdiction be concurrent with that of the courts of the State of Montana, and where Tribal statute expressly sets forth such concurrence.

(3) Subject to the conditions and limitations expressed in Section 1-2-104(4), the laws and jurisdiction of the State of Montana, including the judicial system of the State, are hereby extended pursuant to, and subject to the conditions in, the Act of the Montana Legislature of February 27, 1963, Laws of Montana, 1963, Vol. 1, Chap. 81, p. 170, Sections 2-1-301 through 2-1-306, MCA, to Indians within the Flathead Reservation to the extent such laws and jurisdiction relate to the subjects following: (a) compulsory School Attendance; (b) Public Welfare; (c) Domestic Relations (except adoptions); (d) Mental Health, Insanity, Care of the Infirm, Aged and Afflicted, (e) Juvenile Delinquency and Youth Rehabilitation; (f) Adoption Proceedings (with consent of the Tribal Court), (g) Abandoned, Dependent, Neglected, Orphaned or Abused Children; (h) Operation of Motor Vehicles upon Public Streets, Alleys, Roads and Highways, and (i) All Criminal Laws of the State of Montana pertaining to felony offenses (Class E offenses in this Code).

(4) The effectiveness of Subsection (3) above is conditioned upon the following:

(a) Concurrent jurisdiction remains with the Tribal Court and in the Tribal Government (where applicable with Federal Courts) of all matters referred to in Subsection (3); and any matter initiated in either a State or Tribal Court shall be completed and disposed of in that Court, and shall not be subject to re-examination in the Courts of the other jurisdiction.

(b) No person, once convicted of a crime falling within the jurisdiction of the State or the Tribes pursuant to this Ordinance, shall be punished for the identical act in the Courts of the other jurisdiction, but shall be accorded the benefit of the doctrine of former jeopardy as if the separate jurisdictions were one.

(c) Ordinance 40-A (Revised) is subject to possible referendum of the eligible voters of the Confederated Tribes, and if a referendum is authorized and the Ordinance disapproved by a majority under the conditions set forth in Article IX, the Ordinance shall be void and of no effect to transfer jurisdiction to the State of Montana and its judicial system.

(d) All jurisdiction of the Confederated Tribes under its Constitution and Bylaws, and Ordinances enacted pursuant thereto, and of the Federal Government under the United States Criminal Code, and to the extent not expressly transferred by Subsection (3) above, remains in the Confederated Tribes and in the Federal Government respectively to the same extent as if Ordinance 40-A (Revised) had not been adopted.

(e) If any provision of the Act of the Montana Legislature of February 27, 1963, Vol.1, Chap. 81, or of the Ordinance 40-A (Revised) shall be held invalid, or if the Ordinance be held to extend a jurisdiction more

extensive that set forth therein, or if any condition herein be not complied with or be invalid or ineffective, then the entire Ordinance 40–A (Revised) shall be held to be void and of no effect from the beginning.

(f) In the event of any alleged violation of the Civil Rights of Tribal members by operation of this Ordinance 40–A (Revised) the Tribal member may seek redress in the Tribal Court system and the Tribal Council reserves the right to conduct an independent investigation of the occurrence and to review the Ordinance upon validation of any such alleged act.

(g) It is further provided that any sentences or convictions, lawfully inflicted under the provisions of the Ordinance 40–A (Revised) shall not be affected by subsequent cancellation or voiding of the Ordinance.

**1-2-106. Question of jurisdiction.** When, pursuant to this code, a party to an action raises a question of the Tribal Court’s jurisdiction to hear an action presented, the Tribal Court shall hold other proceedings in the action in abeyance pending a timely ruling on the jurisdictional questions raised. A decision on jurisdiction by the Tribal Court shall be considered a final order from the Tribal Court for the purposes of an appeal to the Tribal Court of Appeals pursuant to Part 8, 1-2-817. Scope of jurisdiction in a civil case.  
(Rev. 4-1-04)

**1-2-107. Cases involving a question of Tribal jurisdiction.** In any action, suit or proceeding in the Tribal Court to which the Confederated Salish and Kootenai Tribes or an agency, officer or employee of the Tribes is not a party, wherein the adjudicatory or regulatory jurisdiction of the Confederated Salish and Kootenai Tribes is drawn into question, the Clerk of Court shall certify in writing such fact to the Managing Attorney of the Tribal Legal Department. The Managing Attorney shall be entitled to intervene on behalf of the Tribes as a matter of right, but shall be under no obligation to do so. Should the Managing Attorney chose to intervene, the Tribes shall have all the rights and liabilities of a party, provided, however, that the Tribes waive no defenses pertaining to governmental immunity, liability, damages or monetary relief.  
(Rev. 10-1-09)

## **Part 2 - Tribal Court Judges**

**1–2–201. Number, compensation, and duties.** (1) The Tribal Court shall be presided over by a Chief Judge and by such Associate Judges, including part-time or temporary Judges, the Tribal Council deems just and necessary to carry out the duties of the Tribal Court.

(2) The Judges shall be compensated by salaries as established in an approved Tribal Council pay plan and as set forth in written contracts signed by both the applicable Judge and the Chairman on behalf of the Tribes.

(3) The term of each judicial contract shall coincide with the term of appointment for that judge. The contract shall specify the Judge’s compensation, in accordance with the approved pay plan, along with the Judge’s specific duties. Each judicial contract shall be subject to all provisions of this Part. (Rev. 4-15-03)

**1–2–202. Appointment, staggered terms, and advertisement.** (1) Each Tribal Court Judge shall be appointed by a majority of a quorum of the Tribal Council for a term of four years. Any applicable term shall begin on October 1 of the calendar year. The terms of the Tribal Court Judges shall be staggered in relation to each other.

(a) To create the staggered terms, the Tribal Council shall make initial variable term judicial appointments to fill all judicial positions the Tribal Council currently deems appropriate for the Tribal Court. These variable judicial terms shall all begin on October 1, 2000.

(b) The first judicial appointment the Tribal Council makes pursuant to this Part shall be for a term of four years. The second appointment shall be for a term of three years, the third appointment for a term of two years and the fourth appointment for a term of one year. If more than four judges are to be appointed, the Tribal Council may fill more than one vacancy by appointment in any particular year to meet the purpose of this provision.

(c) After these initial variable term judicial appointments are made to create the staggered terms, each judicial appointment the Tribal Council thereafter makes shall be for a period of four years.

(2) At the end of a judicial term, the incumbent Tribal Judge may be eligible for reappointment by the Tribal Council. However, sixty (60) days before the expiration of any particular judicial term, the Tribal Council shall publically advertise that a judicial appointment is to be filled. The Tribal Council shall solicit applications from interested individuals who maintain they are qualified to fill the judicial position. The Tribal Council shall then proceed to fill the judicial position by appointment and contract with an applicant the Tribal Council believes is best qualified to fulfill the judicial duties and responsibilities.

(3) Should a vacancy occur in a judicial position during a judicial term, the balance of the unexpired judicial term shall be filled by the Tribal Council pursuant to the process contained in subsection (2) above.

(4) No judicial appointment shall become effective until the contract as required under Section 1-2-201(2) is signed and entered into by both the applicable Judge and the Tribes.

(5) A person shall be eligible to serve as a Tribal Court Judge only if the person (i) is a member of the Confederated Salish and Kootenai Tribes, and (ii) has never been convicted of a felony, or, within one year then last past, of a misdemeanor, with the exception of minor traffic violations.

(6) No Judge shall be qualified to preside in any case where she or he has any direct, personal interest or where he or she is prejudiced for or against any of the parties in the action. Nor shall any Judge be qualified to act in any case where any relative by marriage or blood in the first or second degree is a party unless all parties to the action waive this provision.

(7) All Tribal Court Judges shall protect and preserve the high standards of the Tribal judiciary and shall abide by the Model Code of Judicial Conduct adopted by the American Bar Association as it now exists and as it may from time to time be amended.

(8) Qualified individuals with judicial experience may from time to time be appointed by the Chief Judge to sit as Tribal Court judges on individual cases where appointment of an outside judge is called for. Such pro tempore appointments need not be Tribal members. *(Rev. 4-15-03)*

**1-2-203. Removal of a Judge of the Tribal Court.** A Judge of the Tribal Court may be suspended, dismissed or removed for cause by the Tribal Council. Cause shall be defined as malfeasance in office, corruption, neglect of duty, or conviction of a felony or misdemeanor, excluding minor traffic violations. A Judge charged by a majority of a quorum of the Tribal Council with conduct constituting cause for suspension, dismissal, or removal shall be given personal, written notice of the basis for the charge and be given adequate time to prepare a defense. The Judge shall then be given a full hearing before the Tribal Council with an adequate opportunity to present a defense, including the production of witnesses and other evidence in the Judge's behalf and an opportunity to cross-examine witnesses against the charged Judge.

An affirmative vote of seven members of the Tribal Council is necessary to suspend, dismiss or remove a Judge from office.

**1-2-204. Substitution of Judges** Where cause exists, a party to a proceeding may make a timely and sufficient affidavit that the assigned Judge has a personal bias or prejudice either against the party or in favor of any adverse party. Such Judge shall proceed no further therein. The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed at the earliest opportunity, and not less than ten days before the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith. The Chief Judge shall review the affidavit and upon finding cause shall assign another Judge to hear such proceeding. *(Rev. 1-27-00) (Rev. 3-21-10)*

### **Part 3 - Court Administration**

**1-2-301. Duties of the Chief Judge.** (1) The Chief Judge shall designate one Judge to preside over the Small Claims division of Tribal Court, one Judge to preside over the Traffic Court division of Tribal Court, and one Judge to preside over the Youth Court division of Tribal Court. The same Judge may be designated to preside over more than one subdivision.

(2) The Chief Judge shall establish and maintain a system of assignment of cases, other than Small Claims and Youth Court cases, among the Judges. In the event of disqualification, recusal or other inability of a Judge assigned to a case to serve, the next Judge who would have been assigned in the system established by the Chief Judge shall hear and decide the case. However, if no full-time Judge is qualified or able to hear the case, the Chief Judge may select a temporary or part-time Judge as replacement Judge, as provided in Section 1-2-201.

(3) In all criminal proceedings and in civil matters that require assistance, the Chief Judge shall appoint a bailiff, who, within the context of the proceeding, shall have the authority of a Tribal law enforcement officer to keep the peace and shall have such other courtroom duties as the Chief Judge may prescribe. A bailiff may be an employee of the Court or of the Law Enforcement Department and may be appointed on a case-by-case basis or for a regular term.

(4) Except as provided in Section 1-2-302, the Chief Judge oversees general administration of the Tribal Court, including management of caseload, expenditures, library, records management, and the presentation of an annual budget proposal to the Tribal Council. In consultation with the Clerk of Court, Court administrative and research tasks may be delegated by the Chief Judge to one or more Court employees and, within the limits of the Court's budget and with the approval of the Tribal Council, consultants may be employed by the Chief Judge by written contract.

(5) The Chief Judge may seek and, with the approval of the Tribal Council, accept funds made available through gift, grant, or contract to assist, improve, or enhance Tribal court operations.

**1-2-302. Appointment and duties of Clerk of Court.** (1) There is established the office of Clerk of Court, which shall be filled by appointment to a four-year term by a majority of a quorum of the Tribal Council in accordance with policies, rules, and classifications of the Tribal Personnel system.

(2) As the budget for administering the Court may permit, the Clerk of Court may employ, in accordance with the Tribal Personnel System, such deputies and court reporters as may be required to assist in fulfilling the duties of the Clerk.

(3) The Clerk shall collect fees and fines paid to the Court and deposit the same within a week of collection with the Executive Treasurer. The Clerk shall make a certified accounting of the same annually to the Tribal Council. The clerk shall be bonded in an amount sufficient to cover the average annual revenues derived from fees and fines paid to the Court.

(4) As required by statute or otherwise where appropriate, the Clerk shall prepare and make available to unrepresented parties forms, approved by the Chief Judge, for pleadings and service of process.

(5) The Clerk shall prepare all documents and ledgers incidental to the functions of the Tribal Court and, upon request and payment of a reasonable fee, shall certify copies of the public record of proceedings as true and accurate representations of the official Court record.

(6) The Clerk, or the Clerk's designee, shall attend all proceedings of the Court and keep a record of the same. Unless a court reporter is present to record the proceedings, the Clerk, the Clerk's designee, or the Court shall tape record, maintain, and archive the recordings of all criminal and civil actions. However, proceedings in the Tribal traffic and small claims courts shall be tape recorded and maintained for a period of only 20 days after entry of judgment unless a timely appeal is filed in the manner provided in this Code.

(7) The Clerk shall keep a current docket numbering system and shall preserve and protect the original, official records of all Court proceedings.

(8) The Clerk shall keep, compile, and submit records of Court proceedings to the Bureau of Indian Affairs at such times and in such detail as may be required by federal law.

(9) The Clerk shall make available for inspection and, for a reasonable fee, provide copies of all records of Court proceedings not designated confidential by law. *(Rev. 4-15-03)*

#### **Part 4 - Representation by Counsel**

**1-2-401. Declaration of Policy.** (1) Every person appearing as a party before Tribal Court, except as otherwise provided for proceedings associated with Small Claims, has a right to be represented by an attorney or other person admitted to practice before the Court at the person's own expense.

(2) An indigent defendant accused of a criminal offense punishable by imprisonment has a right to representation by the Tribal Defender's Office.

(3) Other persons are entitled to representation by the Tribal Defenders Office pursuant to the policies of that Office as approved by the Tribal Council.

**1-2-402. Indigence Defined.** An individual accused by the Tribes of a criminal offense shall be determined to be indigent if he or she presents to the Tribal Defenders Office a statement documenting that his or her income is less than 200% of the current standard for poverty contained in the Federal Poverty Income Guidelines. If the individual's income is between 200% and 300% of that standard, he or she may elect to have the Tribal Defenders Office represent them for a fee to be determined by the Tribal Defenders

Office and approved by the Tribal Council, but shall not be entitled to representation by that Office in the absence of making that election. If the individual's income is over 300% of the current standard for poverty contained in the Federal Poverty Income Guidelines then he or she shall be responsible for retaining and paying their own attorney or advocate, and shall not be entitled to representation by the Tribal Defenders Office.

### **Part 5 - Admission to Practice in Tribal Court**

**1-2-501. Attorneys.** (1) An attorney in good standing who is admitted to practice before the Montana Supreme Court shall be admitted to practice before the Tribal Court and the Tribal Appellate Court upon submission of an application for admission to practice and payment of an annual fee set by the Chief Judge and due by January 1<sup>st</sup> of each year. Application for admission to practice will be made on a form provided by the Clerk of Court and will include the applying attorney's agreement to act as an officer of the Tribal Court in any action or proceeding in which the attorney appears, and to conduct legal practice in accord with the Rules of Professional Conduct as adopted by the Tribal Council.

(2) An attorney not admitted to practice in Montana and not previously admitted to practice before the Tribal Court, but admitted to practice and in good standing before the courts of another state, may be admitted to practice before the Tribal Court, for the purposes of a single case or controversy, upon:

(a) association in that case with an attorney who is admitted to practice before the Tribal Court;

(b) certification by the admitted attorney of the qualifications of the attorney from out-of-state and of association for purposes of the specified case or controversy; and

(c) submission of an application and fee, as provided in (1) above.

(3) An attorney employed by the Tribes shall be admitted to practice before the Tribal Court and Tribal Appellate Court without filing an application or paying a fee.

(4) All attorneys admitted to practice before the Tribal Court and Tribal Appellate Court shall be subject to disciplinary action for violations of the Rules of Professional Conduct or other professional standards. *(Rev. 4-15-03)*

**1-2-502. Law Students.** A student enrolled in an accredited School of Law in the United States may be admitted to practice before the Tribal Court if an attorney admitted to practice before the Tribal Court requests the admission in writing and agrees to supervise and assume responsibility for the student's practice.

**1-2-503. Admission Required Prior to Filing Papers.** No pleading, motion, brief, or other paper in any action or proceeding or appeal will be accepted for filing by the Clerk of Court from an attorney or law student who has not been first admitted to practice before the Tribal Court.

**1-2-504. Tribal Court Advocates.** An individual employed by the Confederated Salish and Kootenai Tribes as a Tribal Court advocate (hereafter "advocate") shall be admitted to practice before the Tribal Court upon employment and certification by a Tribal attorney that the advocate is qualified to represent individuals in actions and proceedings before the Tribal Court.

**1-2-505. Child Support Investigators.** A Child Support Investigator for the Tribes or the State of Montana may file papers and appear in Tribal Court for the limited purposes of seeking a Child Support Order, having a Foreign Judgment recognized, or applying for a Writ of Execution or Garnishment.

**1-2-506. Pro Se and Tribal Member Representation.** (1) Any adult, who has not been adjudged incompetent, and who wishes to commence an action or who is a named party to an action or proceeding in Tribal Court, may represent himself or herself in person. A corporation, firm, association, or other organized entity, except a partnership, may be represented by its chief executive officer or by an employee who has been authorized in writing by the chief executive officer to represent the entity in an action or proceeding. A partnership may be represented by a general partner or by an employee who has been authorized in writing by a general partner to represent the partnership. A person representing a corporation, firm, association, other organized entity, or a partnership pursuant to this section shall file such written authorization with the Court along with its first pleading and shall serve a copy of the same upon the opposing party or such party's counsel of record.

(2) An adult Tribal member who wishes to commence an action or who is a named party to an action or proceeding may be represented without remuneration by another Tribal member who is neither an attorney nor an advocate and who has not been convicted of a felony nor been adjudged incompetent. The party enlisting such representation shall so inform the Court in writing and shall acknowledge sole responsibility for all pleadings, motions, and other papers submitted on the party's behalf and for the timeliness thereof and shall acknowledge that all notices incident to the proceedings will be sent to the party and not to the Tribal member representative. *(Rev. 4-15-03)*

## **Part 6 - Juries and Witnesses**

**1-2-601. Composition of venire.** The Tribal Council each year shall prepare a list of eligible jurors. Such eligible jurors shall be residents of the Flathead Reservation and enrolled members of the Tribes who are qualified to vote in elections of the Council.

**1-2-602. Selection of jury panels.** (1) By October 1st of each year, the Tribal Records Manager shall provide the Clerk of Court with the names of all Tribal members eligible for jury duty. The Clerk of Court shall randomly select 1,000 names from the list. The Clerk shall send juror questionnaires to each one and this group shall comprise the jury pool for the next calendar year. The Clerk shall notify each person of his or her selection and of grounds and methods for the person's excuse from the jury pool. By December 15th, the Clerk of Court shall randomly select 50 names from the pool to serve as the jury panel for January trials. This procedure shall be followed in subsequent months. Each month the Clerk of Court shall make available to counsel involved in jury trials scheduled for that month the questionnaires of the 50 persons selected for that month's panel. The Court shall by Rule of Court specify grounds and procedures for excuse from jury duty.

(2) The Court may summon a panel for purposes of selecting a jury for a particular case or to provide for the availability of a jury in several cases to be tried within a specified period of time, not to exceed one month. *(Rev. 1-27-00)*

**1-2-603. Composition of a jury for a civil action.** (1) A jury shall consist of six persons and an alternate selected from a summoned panel. The Clerk of Court shall notify parties to a case to be tried to a jury of the names and addresses of the summoned panel no later than 10 days prior to the commencement of the trial.



2) Each party to a case is entitled to three peremptory challenges and one peremptory challenge in the event that an alternate juror is selected, unless a lesser number is agreed to by the parties in writing.

3) Each party shall have unlimited challenges for cause, on the basis of lack of qualifications, partiality, or otherwise acceptable reasons, which include the following:

a) having a family relationship within the first or second degree to any party, or to the person allegedly injured;

(b) standing, in relation to a party or person injured, as guardian, ward, employer, employee, debtor, creditor, attorney, client, or being a member of the family of either party, person insured, shareholder, partner, trustor, trustee, or beneficiary;

(c) having been a party adverse to another party in a prior civil action or having complained against or been accused by a party in a criminal prosecution;

(d) having served as a juror or been a witness in a previous trial between the same parties;

(e) having an interest in the event of the action, or in the main question involved in the action;

(f) having a pre-existing opinion or belief as to the merits of the action; or

(g) having a state of mind evincing bias against or in favor of either party or the person injured.

Whether or not cause exists shall be determined by the presiding Judge.

(4) Each challenge must be tried and determined by the Court at the time the challenge is made.

**1-2-604. Civil verdicts.** After all parties have rested their cases, the Judge shall instruct the jury in the law governing the case and the jury shall bring in a verdict for the plaintiff or the defendant in a civil case. The jury shall be instructed by the Judge in all civil cases that they are to find for the party who has established the position she or he alleges by the burden of proof established by law. The Judge shall render judgment in accordance with the verdict and the existing law. If a jury is unable to reach a unanimous verdict, the Judge may authorize a verdict by a majority vote.

**1-2-605. Jurors' compensation and reimbursement.** (1) Each juror and alternate juror selected shall be paid the sum of \$50.00 plus mileage to and from the Court for each day, or part-day, spent in the business of the Court at the Tribal Complex at Pablo, Montana. Each panel member summoned and appearing but not selected as a juror or alternate shall be paid their mileage to and from the Court.

(2) Each panel member summoned for selection as a juror and each juror and alternate shall be reimbursed for meals and for mileage traveled within the reservation in connection with the service, unless meals and transportation are provided by the Court, at its option. *(Rev. 4-15-03)*

**1-2-606. Juries in civil cases.** (1) In actions at law or in any civil case where monetary damages are prayed for and may be awarded by law, except a matter filed as a small claim, a party may demand a jury trial. Such demand must be made to the presiding Judge, with notification to the other party or parties, no later than 15 working days prior to the time set for trial.

(2) Costs of a jury trial in a civil matter shall be reimbursed to the Court by the party demanding the jury trial. Such costs may be a part of the award if the demanding party prevails. Payment shall be made upon presentation of a statement by the Clerk setting forth said costs, including the cost of summoning a panel, the cost of compensation to panel members, jurors, and alternates, and the costs of meals and mileage of panel members, jurors, and alternates. Taking into consideration the resources of the demanding party and whether there is a reasonable likelihood that the demanding party will prevail, the presiding Judge may require that the demanding party post a bond guaranteeing payment to the Court in an amount not to exceed \$5,000 in the event that the demanding party is not the prevailing party.

**1-2-607. Power to subpoena witnesses.** A Judge of the Tribal Court has the power to issue subpoenas to compel the attendance of witnesses and the production of documents either on the Court's own motion or on the request of any party to a case, which shall bear the signature of the Judge issuing the subpoena.

**1-2-608. Compensation of witnesses.** (1) Each witness, except an expert witness, answering a subpoena to appear in a civil trial shall be paid by the party requesting the subpoena, or by the Court if the subpoena was issued on its own motion, the sum of \$50.00 for each day, or part-day, that his or her presence is required in Court or at any deposition location and for transportation costs to and from Court or the deposition location, at the same rate as that established for jurors in Section 1-2-606, or, if travel by air is necessary, at the lowest practicable rate then available for airfare.

(2) An expert witness may be paid a reasonable fee by the party calling the expert. If the Court, on its own motion, finds it necessary in the interests of justice to call an expert witness, it shall pay the witness a reasonable fee, not to exceed the expert's regular hourly rate for such service, and assure that the expert is available for interview by the parties prior to any testimony by the expert.

(3) If attorney's fees and costs are permitted by statute or by agreement of the parties to be awarded to the prevailing party, the Court may also order the award of witness fees and transportation costs to the prevailing party.

**1-2-609. Service of subpoenas.** Service of subpoena shall be made by a competent person who is at least 18 years of age and not a party to the action. Proof of service of subpoena shall be filed with the Clerk of Court by noting on the subpoena the return date, time and place that it was served.

**1-2-610. Effect of failure to obey a subpoena.** If a witness fails to obey a subpoena, an order to show cause why the person should not be found in contempt of Court shall immediately issue.

**1-2-611. Privileged confidentiality in certain relations.** There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following enumerated cases:

(1) Spousal privilege. 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.

(2) Attorney-client privilege. (a) An attorney or Court advocate 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.

(b) 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) Confessions made to member of 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 to which he belongs.

(4) Doctor-patient privilege. 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.

(5) Speech-language pathologist, audiologist-client privilege. A speech-language pathologist or audiologist cannot, without the consent of his client, be examined in a civil action as to any communication made by the client to him.

(6) Psychologist-client privilege. The confidential relations and communications between a psychologist and his client shall be placed on the same basis as provided by law for those between an attorney and his client. Nothing in any act of the Tribal Council shall be construed to require such privileged communications to be disclosed.

(7) Information gathered by psychology teachers and observers. Any person who is engaged in teaching psychology in any school or who, acting as such, is engaged in the study and observation of child mentality shall not, without the consent of the parent or guardian of such child being so taught or observed, testify in any civil action as to any information so obtained.

(8) Confidential communications by student to employee of educational institution. A counselor, psychologist, nurse, or teacher employed by any educational institution cannot be examined as to communications made to him in confidence by a duly registered student of such institution. However, this provision shall not apply where consent has been given by the student, if not a minor, or, if he is a minor, by the student and his parent or legal guardian.

(9) Mediator privilege. Except as otherwise provided by law, a person acting as a mediator in a mediation cannot, without the consent of the parties to the mediation, be examined in a civil action as to any communication made by a party to him during the course of the mediation.

(10) Media Confidentiality. Extent of privilege.

(a) Without his or its consent no person, including any newspaper, magazine, press association, news agency, news service, radio station, television station, or community antenna television service or any person connected with or employed by any of these for the purpose of gathering, writing, editing, or disseminating news may be examined as to or may be required to disclose any information obtained or prepared or the source of that information in any legal proceeding if the information was gathered, received, or processed in the course of his employment or its business.

(b) A person described in subsection (a) may not be adjudged in contempt by a judicial, legislative, administrative, or any other body having the power to issue subpoenas for refusing to disclose or produce the source of any information or for refusing to disclose any information obtained or prepared in gathering, receiving, or processing information in the course of his or its business.

(11) Licensed Social Workers. A licensee may not disclose any information acquired from clients consulting in the licensee's professional capacity except:

- (a) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;
- (b) that he need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in his professional opinion reveals a threat of imminent harm to the client or others;
- (c) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation thereto in any investigation, trial, or other legal proceeding in which the commission of such crime is the subject of inquiry;
- (d) that if the client or his personal representative or guardian brings an action against a licensee for a claim arising out of the social worker-client relationship, the client is considered to have waived any privilege;
- (e) to the extent that the privilege is otherwise waived by the client; and
- (f) as may otherwise be required by law.

(12) Public Accountants.

- (a) Except by permission of the client, person, firm, or corporation engaging a certified or licensed public accountant or an employee of the accountant or by permission of the heirs, successors, or personal representatives of the client, person, firm, or corporation and except for the expression of opinions on financial statements, a certified public accountant, licensed public accountant, or employee thereof may not be required to disclose or divulge or voluntarily disclose or divulge information that the certified or licensed accountant or an employee may have relative to and in connection with any professional services as a public accountant. The information derived from or as a result of professional services is considered confidential and privileged.
- (b) The provisions of this section do not apply to the testimony or documents of a public accountant furnished pursuant to a subpoena in a court of competent jurisdiction, pursuant to a board proceeding, or in the process of any board-approved practice review program.

(13) 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. *(Rev. 4-15-03)*

**1-2-612. Waiver of privilege.** (1) Except as provided in subsection (2), dissemination in whole or in part does not constitute a waiver of provisions of Section 1-2-611.

(2) If the person claiming the privilege testifies, with or without having been subpoenaed or ordered to testify or produce the source, before a judicial, legislative, administrative, or other body having the power to issue subpoenas or judicially enforceable orders, he does not waive the provisions of Section 1-2-611 unless the person voluntarily agrees to waive the privilege or voluntarily discloses the source in the course of his testimony. Except as provided in this subsection, the provisions of Section 1-2-611 may not be waived.

### **1–2–613. Privileged and Confidential Information.**

1. In order to more efficiently process the information, the Tribes established an Information Technology (IT) Department with responsibility for operating and maintaining Tribal computer systems by centralizing computer and information services.

2. The centralization of services and the establishment of the IT Department necessitates that employees and contractors working with the IT Department have access to servers, workstations, and other types of information gathering and processing equipment.

3. It is necessary that the various Tribal departments and entities that use the IT Department be able to maintain the confidentiality of the information stored on their computers and other electronic information processing equipment.

4. In order to safely and effectively operate and maintain Tribal infrastructure, the Tribes established a Tribal Maintenance Department with responsibility for repairing, cleaning, and maintaining Tribal buildings. In the course of their employment, employees of the Tribal Maintenance Department may inadvertently become privy to privileged or confidential information.

5. In order to facilitate performance of these essential governmental functions, the Tribes now enact the following addition to the CSKT Laws Codified as Section 1-2-613:

(a) Any privileged or confidential information stored in any electronic format by any Tribal employee, department or entity does not cease to be privileged or confidential because it is stored on Tribal computers or other Tribal electronic data storage system, nor does it cease to be privileged or confidential because the Tribal Information Technology Department, including its managers, employees, contractors, and agents, access such information in the course of their employment.

(b) Any privileged or confidential information stored in any format by any Tribal employee, department or entity does not cease to be privileged and confidential because it is stored in Tribal storage equipment or fixtures, nor does it cease to be privileged or confidential because the Tribal Maintenance Department, including its managers, employees, contractors, and agents access such information in the course of their employment. *(Rev. 3-22-05)*

### **Part 7 - Rules of Practice in Actions and Proceedings Before the Tribal Court**

**Rule 1. Application.** Except as otherwise provided herein, the following rules apply in all actions and proceedings before the Tribal Court as follows:

(1) Rules 1 through 19 apply, according to their terms, in all actions and proceedings where any party is represented by an attorney or by a Tribal Court Advocate.

(2) Compliance with Rules 6(1), 7, 11(2), 13(3) and Rules 14 through 19 is not required when all parties represent themselves or are represented by a Tribal member who is not an attorney or a Tribal Court Advocate.

### **Rule 2. Assignment of Judges.**

(1) Assignment of Trial Judge. A judge will be assigned to each docketed case by the Chief Judge of Tribal Court or by the Clerk of Court, if the Chief Judge so directs. A judge may recuse himself or herself for good cause. The Chief Judge may excuse a judge from one or more assignments for reasons of efficient judicial administration. If the Chief Judge determines, on the basis of the pleadings before trial, that the interests of justice would best be served by the appointment of a visiting judge with experience in the legal areas to be litigated, the Chief Judge may substitute such appointment for any assignment already made.

(2) Presiding Judge. Once assigned and unless recused, excused, disqualified, or replaced by a visiting judge, a judge will preside over all proceedings in a case. Pretrial proceedings will be calendared by the Clerk of Court for the presiding judge and the cause will be set for trial as provided by Rule 3.

### **Rule 3. Trial Scheduling.**

(1) Civil Trial Scheduling. The Clerk of Court shall keep a trial calendar upon which all civil causes shall be entered. Within 30 days of the filing of last required responsive pleading, Plaintiff's counsel or the Plaintiff, if unrepresented, shall prepare and serve on opposing counsel and any unrepresented parties and file with the Court a proposed scheduling order. Along with the proposed scheduling order, Plaintiff's counsel or the Plaintiff, if unrepresented, shall certify to the Court that reasonable efforts have been made to consult with all opposing counsel or unrepresented parties concerning the proposed schedule and shall indicate whether or not opposing counsel and/or the unrepresented parties, if any, have agreed to the proposed schedule. Opposing counsel or unrepresented parties shall have 10 days after service of the proposed scheduling order in which to file objections thereto and to submit a counter proposed scheduling order stating the reasons why Plaintiff's proposed schedule is unacceptable. Such objections and counter proposed scheduling order shall be served upon Plaintiff's counsel or the Plaintiff, if unrepresented. Plaintiff's counsel or the Plaintiff, if unrepresented, shall have 10 days after service of the objections and counter proposed schedule in which to respond to the objections and counter proposed scheduling order setting forth the reasons why Defendant's counter proposed schedule is unacceptable. If no objections or counter proposed scheduling order are timely filed, the presiding judge shall enter a scheduling order adopting the Plaintiff's proposed schedule. If objections and a counter proposed scheduling order are timely filed and Plaintiff's counsel or the Plaintiff, if unrepresented, fails to file a timely response thereto, the presiding judge shall enter a scheduling order adopting the counter proposed schedule. If Plaintiff's counsel or the Plaintiff, if unrepresented, files a timely response to the objections and counter proposed scheduling order, the presiding judge may enter a scheduling order on its own or may elect to order a scheduling conference. Any proposed schedule filed pursuant to this Rule shall set forth dates for joinder of necessary parties and amendments to the pleadings, for pretrial conferences, if any, for closing discovery, for exchanging lists of witnesses and exhibits, for filing pretrial motions, and, if the matter is set for a jury trial, for filing jury instructions, or, if the matter is set for a bench trial, filing proposed findings of fact and conclusions of law pursuant to Rule 19 of these Rules of Practice. In addition, the proposed schedule shall indicate the estimated length of the trial and shall include a blank date for commencing the trial to be filled in by the presiding judge. The presiding judge may modify the scheduling order upon a showing of good cause. In the event that no counsel or unrepresented party files a proposed scheduling order within 60 days of the last required responsive pleading, the presiding judge may issue an order to show cause why the case should not



**SCHEDULING ORDER**

The Court hereby enters the following Scheduling Order and it is hereby **ORDERED** that the schedule set forth below shall govern these proceedings except upon motion of the parties and for good cause:

\_\_\_\_\_ All amendments to the pleadings shall be filed and other necessary parties shall be joined.

\_\_\_\_\_ Discovery shall close.

\_\_\_\_\_ The parties shall exchange copies of exhibits and lists of witnesses. All pretrial motions other than motions in limine shall be filed and briefing shall take place according to the Rules of Civil Procedure. Any party desiring a hearing upon any motion shall file a written request with the Court requesting such hearing no later than the due date for the reply brief on the motion. Absent such a written request for hearing all motions will be deemed submitted on the briefs.

\_\_\_\_\_ The Final Pretrial Conference shall be held at \_\_\_\_\_ o'clock \_\_\_\_ .m.

The parties shall file a Pre-Trial Order with the Court no later than ten (10) days prior to trial. All motions in limine shall be filed no later than ten (10) days prior to trial. If the case is set for a jury trial, the parties shall file jury instructions and serve the same upon all adverse parties as provided by Tribal Law no later than ten (10) days prior to trial. If the case is set for a Bench trial, the parties shall file proposed Findings of Fact and Conclusions of Law with the Court and serve a copy of the same upon all adverse parties no later than five (5) days prior to trial.

It is estimated that the trial of the case will take \_\_\_\_\_ days.

\_\_\_\_\_ The case is set for trial before the Court \_\_\_ with/ \_\_\_ without a jury. Trial shall commence at nine o'clock (9:00) a.m. unless otherwise ordered by the Court.

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Tribal Court Judge



CERTIFICATE OF SERVICE

I do hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ a true and correct copy of the foregoing "SCHEDULING ORDER" was served upon the following persons by depositing the same in the U.S. Mail, postage prepaid and addressed as follows, or by hand delivery:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CLERK OF THE TRIBAL COURT

By \_\_\_\_\_  
Deputy Clerk of Tribal Court

(2) Criminal Trial Scheduling. The Clerk of Court shall keep a trial calendar upon which all criminal causes shall be entered. The Tribal Prosecutor and Defense counsel shall jointly prepare and file a proposed pretrial memorandum and order for approval and issuance by the presiding judge in substantially the following form: (Rev. 4-15-03) (Rev. 3-21-13)

IN THE TRIBAL COURT OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD INDIAN RESERVATION

CONFEDERATED SALISH AND	)	
KOOTENAI TRIBES,	)	Cause No. _____
	)	
Plaintiff,	)	PRETRIAL MEMORANDUM and
-vs-	)	ORDER
	)	
_____ ,	)	
Defendant.	)	

Pursuant to CSKT Laws Codified § 2-2-809(4) the Parties submit this Pretrial Memorandum for the Court's consideration.

**1. Criminal Charges.**

The Defendant in this case is charged with:

\_\_\_\_\_

**2. Stipulations.**

The following facts are agreed and need not be proven at trial:

\_\_\_\_\_  
\_\_\_\_\_

The parties may enter into additional written Stipulations which must be filed with the Court at least five days prior to trial.

### 3. Discovery.

#### a. Exhibits.

The parties intend, at this time, to offer the following exhibits at trial. The listing of a proposed exhibit on this Memorandum does not constitute an admission by either party that the opposing party's exhibits are admissible. Either party may add exhibits of real evidence without Court approval up to the close of discovery. After the close of discovery, the parties may add such exhibits only by mutual agreement, or with the approval of the Court. The parties must disclose demonstrative exhibits at least ten days in advance of trial or may add exhibits by mutual agreement or with approval of the Court.

Prosecution:

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Defense:

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#### b. Witnesses.

The parties intend, at this time, to call the witnesses listed below. Up to ten days before trial, witnesses may be added by either party without Court approval by filing a written notice of additional witnesses. After that date, the parties may add witnesses only by mutual agreement or with Court approval. The parties may not call any other witnesses, except for rebuttal purposes. The obligation for both parties to disclose witnesses or exhibits they intend to use at trial is a continuing one.

Prosecution:

Fact Witnesses

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Expert Witnesses

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A written summary of any expert's anticipated testimony, the basis and reasons for their opinions, and a copy of their qualifications shall be provided by close of discovery.

Character Witnesses

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Defense:

Fact Witnesses

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Expert Witnesses

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A written summary of any expert's anticipated testimony, the basis and reasons for their opinions, and a copy of their qualifications shall be provided by \_\_\_\_\_.

Character Witnesses

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c. Other Discovery.

Disclosure by Prosecution.

The Prosecution shall disclose all evidence it intends to use in its case in chief, along with all materials listed in Section 2-2-804(3), CSKT Laws Codified, prior to the close of discovery.

The Prosecution states that there \_\_\_\_\_ has, or \_\_\_\_\_ has not been any electronic surveillance of any conversation to which the Defendant was a party.

There \_\_\_\_\_ was, or \_\_\_\_\_ was not an investigative subpoena executed in connection with the case.

There \_\_\_\_\_ was, or \_\_\_\_\_ was not an informant involved. If there was, the informant is identified as:

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The Defendant specifically requests notice of the time, date, and place the alleged offense was committed. The Prosecution states that such information, for alibi purposes, is provided in the Complaint, or is as follows: \_\_\_\_\_

The Prosecution shall provide written notice of any evidence of other crimes, wrongs, or acts, that it intends to offer under Rule 404(b) of the Federal Rules of Evidence, at least two weeks prior to the close of discovery. The notice shall describe the evidence in sufficient detail to inform the Defendant of the date, time, place, and witnesses to the alleged incidents, and shall also state the purpose for which such evidence shall be offered.

The Prosecution anticipates taking the following depositions:

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The Defendant makes the following specific requests for discovery:

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**Disclosure by Defense.**

The Defense shall disclose all evidence it intends to use in its case in chief, along with all materials listed in Section 2-2-805(2), CSKT Laws Codified, prior to the close of discovery.

The Prosecution requests the Defendant comply with the following requests pursuant to Section 2-2-805(1), CSKT Laws Codified: names, addresses, telephone numbers and statements of any defense witnesses except Defendant; copies of any defense exhibits; reports of any defense expert witnesses.

The Defendant's competency to stand trial or his mental condition at the time of the alleged offense(s) \_\_\_\_\_ is, or \_\_\_\_\_ is not at issue.

At the close of discovery, the Defendant shall give written notice to the Prosecution of the intent to introduce evidence at trial of good character or of any affirmative defenses. The notice must be in writing, filed with the Court, and comply with the requirements of Section 2-2-805(3)(b), CSKT Laws Codified.

The Defense anticipates taking the following depositions:

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Discovery shall close on: \_\_\_\_\_

**4. Pretrial Motions.**

All pretrial motions shall be filed by \_\_\_\_\_. Motions to Sever (Section 2-2-806, CSKT Laws Codified) and Motions to Suppress (Sections 2-2-802 and 2-2-803) must be filed at least ten days prior to trial. All defense motions raising matters listed in Section 2-2-801, CSKT Laws Codified, shall be deemed waived if not raised prior to trial, unless the judge grants relief from such waiver. Motions in limine or other trial motions should be filed at least five days prior to trial, unless the Court approves a later filing on a showing of good cause.

**5. Plea Agreements.**

Final plea bargain offers shall be given to the Defendant no later than eight working days prior to trial. It is understood that plea agreements entered into up to five days prior to trial will be reviewed by the Court, and approved if not unconscionable. After that time plea agreements will receive heightened scrutiny with no assurances being given of the acceptability of such plea agreements.

**6. Trial.**

This case is set for trial on \_\_\_\_\_. This case will be tried by \_\_\_\_\_ the Court, or \_\_\_\_\_ a jury. Trial is expected to last \_\_\_\_\_ day(s). If the case is set for a jury trial, proposed written jury instructions shall be filed five days prior to the trial in accord with Section 2-2-1106 of the CSKT Laws Codified. Objections to proposed written jury instructions shall be filed three days before trial and the settlement hearing on jury instructions shall be held on the record on the day before trial. If the Defendant does not maintain contact with his attorney, except for good cause shown, the Defendant's right to a jury trial will be waived and the case tried by the Court sitting without a jury.

**7. Motion for continuance.** A continuance of a trial date shall accord with Section 2-2-808 of the CSKT Laws Codified. The defendant or the Tribes may file a written motion for continuance, or the Court may continue the proceedings on its own motion. If a party so moves less than 10 days before a scheduled

hearing or trial, the Court requires that the motion be supported by an affidavit, whether or not the motion is opposed by the adverse party. This section, however, shall be applied in a manner which insures criminal cases are tried with due diligence consistent with the rights of the defendant to a speedy trial.

Dated this \_\_\_ day of \_\_\_\_\_, 2012.

Dated this \_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Prosecutor

\_\_\_\_\_  
Counsel for Defendant

The foregoing schedule is Approved and Ordered this \_\_\_\_\_ day of \_\_\_\_\_, 2012, for Cause No. \_\_\_ - \_\_\_\_\_ -CR

\_\_\_\_\_  
Judge of the Tribal Court

#### **Rule 4. Court Records.**

(1) Definition. Court records consist of all papers and documents filed with the Clerk of Court in connection with any action or proceeding, as well as the minutes and transcripts constituting the record of any trial or hearing. A judge's work papers, including without limitation notes, drafts, and research done at the judge's request, and papers or documents relating solely to Court administration are not Court records within the meaning of this rule.

(2) Public Records. Except as provided in (3) below, Court records are public records and are available for inspection and for copying upon payment of the established copying charge.

(3) Confidential Records. Records and files identified as confidential may not be opened except by order of the Court.

(4) No Withdrawal of Records. No Court records may be withdrawn from the custody of the Clerk of Court.

**Rule 5. Computation of Time.** Except with regard to criminal sentencing or unless the context plainly requires otherwise, whenever time limitations are expressed in days under Tribal law, the day of service and Saturdays, Sundays, and Tribal legal holidays are excluded from the computation. If a filing or payment deadline falls on a day that the Clerk of Court Office is closed, the time is extended to the next succeeding Tribal workday. No additional time is allowed for delivery by mail or otherwise except by permission of the presiding judge. *(Rev. 4-15-03) (Rev. 3-21-13)*

#### **Rule 6. Copies and Filing Fees.**

(1) Provision of Copies to Court. Parties shall furnish to the Clerk of Court all necessary copies of any pleadings or other papers constituting or containing a notice to other parties which must, by law or rule, be given by the Court in the context of an action or proceeding.

(2) Payment of Filing Fee. Except as may be otherwise provided, no complaint, petition, motion, application, or other legal paper or document shall be filed by the Clerk of Court without being accompanied by the appropriate filing fee; provided, however, that the Chief Judge or acting Chief Judge of Tribal Court may waive the filing fee upon a well-documented showing of grave need by an applicant. Tribal attorneys and advocates and other attorneys appearing pro bono need not pay filing fees.

(3) Filing Fee Schedule. The current filing fee and copying fee schedule as set by Order of the Chief Judge of Tribal Court is published separately and is available from the Clerk of Court.

**Rule 7. Format of Papers Presented for Filing**. (1) Nonconforming papers may not be accepted for filing.

(2) "Papers" means all pleadings, motions, briefs, other documents, and copies, except exhibits.

(3) All papers shall be:

(a) typewritten, printed, or the equivalent in a typeface or letter size not smaller than pica;

(b) on standard quality unglazed white paper, 8 & 1/2 X 11 inches in size;

(c) printed on only one side;

(d) with lines unnumbered or numbered consecutively from the top;

(e) double spaced;

(f) with pages numbered consecutively at the bottom and bound firmly at the top.

(4) Matters such as property descriptions or direct quotes may be single spaced.

(5) Extraneous documents in the above format and not readily conformable may be filed in their original form and length.

(6) Additions, deletions, or interlineations shall be initialed by the Clerk of Court or by a judge at the time of filing.

(7) All copies served shall conform to the original as filed.

(8) The first page of all papers shall conform to the following illustration: *(Rev. 3-21-13)*

Name of counsel  
 Complete mailing address  
 Telephone number

IN THE TRIBAL COURT OF THE CONFEDERATED SALISH AND KOOTENAI  
 TRIBES OF THE FLATHEAD RESERVATION, PABLO, MONTANA

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_____	)	Cause No. _____
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	(or other pleading or motion,
_____	)	completely titled)
Defendant.	)	

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**Rule 8. Commencement of Civil Actions.** (1) A civil action shall be commenced in Tribal Court by the filing of a statement of claim which shall be in ordinary language and state the grievance for which relief is requested and the nature of the relief requested. A complaint shall be signed by the plaintiff or his or her attorney or Tribal representative.

(2) Upon the filing of a complaint, the Clerk of Court shall issue a summons, to which shall be attached a copy of the complaint, directing the defendant to answer the complaint or otherwise appear and defend. The summons shall notify the defendant that failure to answer or otherwise appear and defend may cause judgment by default to be rendered against the defendant for the relief demanded in the complaint.

**Rule 9. Service of Process in Civil Actions.** (1) A plaintiff is responsible for service of the complaint and summons upon the named defendant(s). A plaintiff is also responsible for filing a return of service with the Clerk of Court. Whenever possible, the complaint and summons shall be served on the defendant by personal service. Personal service may be made by a law enforcement officer or by any adult who is not a party to the action or counsel.

(2) If, after diligent search and inquiry, the defendant can not be personally served, process may be served by mail. Service by mail shall be by registered or certified mail with return receipt requested. All service by mail shall be confirmed by the Court at the time of trial or at the time of the entering of a default judgment, and shall be supported by affidavit from the plaintiff. The affidavit shall include the original return receipt signed by the defendant, a description of documents served on the defendant, and a statement that a diligent search and inquiry was made in an effort to serve the defendant personally.

(3) If, after diligent search and inquiry, the defendant can not be personally served or served by mail, process may be served by publication in the following actions: dissolution, child custody, child support, change of name, eviction, or civil suit brought by the Tribes or a Tribal organization for the collection of an established debt. In such cases, the plaintiff shall file an affidavit with the Clerk of Court prior to any service by publication. The affidavit shall include a statement that the plaintiff has, after diligent search and inquiry, been unable to effect service of process on the defendant. After receiving such an affidavit, the Clerk of Court shall issue a Summons by Publication authorizing service by publication. The Summons by Publication shall be valid for 40 days from the date of issuance, and thereafter void. The other requirements for service by publication are as follows:

(a) The Summons by Publication shall be published in two consecutive issues of the Tribal newspaper and in at least one other newspaper published within the exterior boundaries of the Flathead Reservation at least once each week for three consecutive weeks. The Summons by Publication shall: contain the name of the Court and the names of the parties; be directed to the defendant; state the name and address of the plaintiff's counsel, if any, otherwise the plaintiff's address; state that the defendant has 15 days from the last date of publication in which to answer and defend; inform the defendant that failure to answer and defend will result in judgment by default; explain the object of the complaint; and, in an action in which the title to or any interest in or lien upon real property is involved, the publication shall also contain a general or legal description of the property involved.

(b) Service by publication is complete on the date of the last publication of the summons. A copy of each publication of service, certified by the publisher as to date and accuracy of publication, shall be filed by the plaintiff with the Clerk of Court.

(c) At the time of trial or entering of default judgment, the plaintiff shall submit evidence to the Court that the foregoing service by publication procedures were satisfied.

(d) Service by Publication in Child Abuse and Neglect proceedings shall be as prescribed in Sections 3-2-304, 3-2-305 and 3-2-306, *CSKT Laws Codified*.

(4) Where service upon a defendant can not be made within the Flathead Reservation, service of process outside the Reservation may be made personally, by mail, or by publication as described in this section with the same force and effect as though service was made within the Reservation. In such cases, the Summons by Publication shall be published in two consecutive issues of the Tribal newspaper and in the newspaper published within the area where the defendant was last known to be found at least once each week for three consecutive weeks. (Rev. 1-27-00) (Rev. 4-15-03) (Rev. 9-6-07) (Rev. 3-21-13)

**Rule 10. Pleading in Civil Actions.** Except as provided in Section 4-2-601 and following, there shall be a complaint and an answer, and other pleadings deemed necessary. A defendant shall file an answer within 15 days of receiving service of the complaint and summons unless the time is extended in the discretion of the Court. Upon filing of an answer, the defendant shall serve a copy of the answer upon the plaintiff by depositing same in the U.S. Mail, postage prepaid, addressed according to the address contained in the complaint. The same timing and procedures shall apply to a plaintiff against whom a counterclaim is asserted and to any party against whom a cross-claim is asserted, with the time calculated from service upon such plaintiff or defendant of the answer asserting the counterclaim or cross-claim. (Rev. 4-15-03)

**Rule 11. Jurisdictional Allegations and Defenses in Civil Actions.**

(1) Complaint.

(a) Subject to the exception in (b) below, a complaint shall contain a statement of jurisdictional facts. Such statement shall set forth, at a minimum, the status of the parties as to Tribal membership or Indian descent if individuals, or Indian ownership if a business, the place of residence or principal place of business of each party, the place where the cause of action accrued, the status and location of any indispensable parties, and other facts tending to show a relationship of the cause of action to the interests of the Tribes or Tribal members. If the plaintiff is not a Tribal member, the complaint shall also contain plaintiff's consent to the personal jurisdiction of the Tribal Court for purposes of any counterclaim or cross-claim that may be asserted in the context of the filed action.



(b) A complaint need not include a statement of jurisdictional facts if all parties are enrolled members of the Confederated Salish and Kootenai Tribes residing within the external boundaries of the Flathead Reservation, or are legal entities organized under Tribal law, and the cause of action arose within the exterior boundaries of the Flathead Reservation.

(2) Answer or Other First Responsive Pleading.

(a) If the defendant wishes to deny jurisdictional facts alleged by the plaintiff or to allege different or additional facts, such allegations shall be made by way of an answer or other first responsive pleading.

(b) A defense of lack of personal jurisdiction must be raised by a defendant in the answer or other first responsive pleading or it is waived.

**Rule 12. Defenses and Objections in Civil Actions.** The Federal Rules of Civil Procedure shall apply to the defenses and objections allowed and the manner of presenting same to the Court; however, the judges shall not be limited to these defenses and objections if in the judge's discretion it is deemed that the interests of justice would be better served by allowing otherwise.

**Rule 13. Ex Parte Matters.**

(1) Application for Orders. Extensions of time to further plead, file briefs, continue a hearing on a motion, and other permissible ex parte matters may be granted by order of the Court upon written application, stating the grounds for the requested order and certifying the notice to opposing parties as provided in (2) below.

(2) Certificate of Notice. Prior to the issuance of an ex parte order, the counsel or unrepresented party seeking such order must file a written certification with the Court declaring that opposing counsel and any unrepresented party has been contacted, or that a diligent effort has been made to contact said counsel or unrepresented party, to give reasonable notice of the substance of the order sought. Such certification shall also include information as to whether opposing counsel or any unrepresented adverse party opposes the motion.

(3) Form of Order. All requests for extension of time or continuance or other ex parte matters shall be accompanied by an appropriate form of order.

(4) Emergency Orders. Nothing in this Rule limits the equitable powers of the Court to issue, upon petition, such emergency orders as may be necessary to preserve the status quo or to maintain law and order in the context of a civil case or controversy until the earliest time that the matter may be heard. No emergency or temporary ex parte order shall relieve the party seeking such order of the burden of proof of allegations made in the application or pleading except in those matters where the burden of proof is expressly transferred by Tribal law or by the general rules of law governing the exercise of a court's equitable or extraordinary powers.

(5) Counseling. Nothing in this Rule precludes any judge from counseling with any Tribal member with respect to individual problems which are not the subject of a pending action or proceeding in Tribal Court. If an action or proceeding involving the same subject matter and persons as those discussed during counseling is later filed, the judge shall recuse himself or herself from the action or proceeding. (Rev. 3-21-13)

**Rule 14. Motions.**

(1) Form and Content. Unless otherwise approved by the presiding judge, all motions shall be in writing and shall indicate the precise nature of the relief requested.

(2) Motion to Dismiss a Civil Action for Failure to State a Claim. If not supported by a brief within 5 days of filing, a motion to dismiss a civil action for failure to state a claim upon which relief may be granted shall be summarily denied and an additional 15 days granted in which to further plead.

(3) Briefs. Upon filing a motion or within 5 days thereafter, the moving party shall file a supporting brief indicating, at a minimum, the precise legal points, statutes, and other authorities relied upon, and citing the specifically relevant portions or pages of the statute or other authority. The brief may be accompanied by supporting affidavits or other documents. Within 10 days after the filing of a brief by a moving party, an adverse party shall file an answering brief, which may also be accompanied by appropriate supporting affidavits or other documents. Within 5 days thereafter, the moving party may file a reply brief which shall be directed only to issues raised in the answering brief. All motions and briefs shall be served upon all parties to the action at the time of filing. For the presiding judge's reference, complete copies of key authority asserted to be dispositive upon an issue shall be attached to all briefs filed with the court.

(4) Effect of Failure to File Briefs. Failure to file a brief may subject the motion to summary ruling. Failure to file a brief within 5 days of the filing of a motion shall be deemed an admission that the motion is without merit. Failure to file an answering brief by the adverse party within 10 days shall be deemed an admission that the motion is well taken. Reply briefs by the moving party are optional. In cases where no reply brief is filed, the moving party shall notify the Clerk of Court that the matter is submitted and ready for decision or for argument.

(5) Oral Argument.

(a) The presiding judge may order oral argument or a hearing on a motion upon a request by a party or on the Court's own motion. The judge may limit the amount of time permitted for oral argument.

(b) All motions shall be deemed submitted on briefs unless, within 10 days from the filing of the last responsive brief, the motion is noticed for hearing. At least 5 days' notice shall be given for any hearing on a motion.

(6) Motions to Alter or Amend, for New Trial, or for Relief From Judgment or Order. A motion to alter or amend a judgment or order, a motion for a new trial, or a motion for relief from a judgment or order shall be deemed denied if the Court fails to rule upon the motion within 40 days from the date the motion is filed.

*(Rev. 4-15-03)*

**Rule 15. Pretrial Conference and Pretrial Memorandum And Order.**

Unless otherwise ordered by the presiding judge, a pretrial conference shall be held in all contested cases. Plaintiff's counsel shall convene a conference of all counsel, not later than 5 days prior to the pretrial conference deadline, for the purpose of preparing a pretrial memorandum and order. If counsel can agree upon and file a pretrial memorandum and order before the deadline for the pretrial conference, the scheduled pretrial conference will be vacated. In the event of a dispute as to the contents of the order, such dispute shall be presented to the judge for resolution at the pretrial conference.

**Rule 16. Discovery in Civil Actions.**

- (1) Unless otherwise limited by order of the Court, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.
- (2) Parties may obtain discovery according to the applicable Federal Rules of Civil Procedure, except Rule 26(a)(1)-(4), or in whatever manner and scope the presiding judge deems most appropriate.
- (3) Depositions upon oral examinations and interrogatories, requests for documents, requests for admissions, and answers and responses thereto will not be routinely filed. If a party or any interested person submits an ex parte request that any of the named documents be filed, the Court may order filing of the documents. When any motion is filed making reference to discovery, the moving party shall submit all relevant unfiled documents with the motion.

**Rule 17. Change of Counsel.**

- (1) Counsel representing a party in any action or proceeding may be changed at any time upon:
  - (a) the written consent of both the party and counsel filed with the Clerk of Court and entered in the minutes, or
  - (b) an order of the Court which may be granted upon written application by either the party or counsel if the applicant has given notice of the application.
- (2) Timely written notice of a change of counsel shall be given to the adverse party.

**Rule 18. Jury Instructions and Verdict Forms.**

- (1) Submission. All proposed jury instructions and verdict forms shall be filed and a copy served upon opposing parties at the time set forth in the pretrial order. Thereafter, additional instructions may be allowed to prevent manifest injustice.
- (2) Citation of Authorities. Each proposed jury instruction shall be submitted in two forms. One form of each proposed jury instruction shall contain citation of authority supporting the statement of law therein and the other form of each shall be presented without any citation.
- (3) Form. All proposed jury instructions and verdict forms shall be on 8 & ½ X 11 inch paper and shall indicate the party on whose behalf it is requested. Each instruction shall be numbered consecutively. Only the jury instructions containing citation of authority may be firmly bound.
- (4) Request for Special Findings by Jury. Whenever a party requests special findings by a jury, counsel shall file the requested findings in proper form for submission to the jury and serve a copy upon opposing parties.

**Rule 19. Findings of Fact and Conclusions of Law.** In civil cases where the Court is the trier of fact, counsel for the parties and any unrepresented party shall submit proposed findings of fact and conclusions of law no later than 5 days prior to trial and shall serve a copy of the same upon all counsel of record and any unrepresented party. *(Rev. 4-15-03)*

**Rule 20. Orders, Judgments or Decrees.**

(1) Presentation of Order, Judgment or Decree. It is the duty of any counsel or unrepresented party seeking an order, judgment, or decree to file a proposed form of the order, judgment, or decree at the time of applying for same. A proposed judgment or decree may be combined with proposed findings of fact and conclusions of law in cases where the Court shall sit as the trier of fact.

(2) Filing. Whenever an order, judgment, or decree is signed by the presiding judge, it shall be delivered to the Clerk of Court and immediately issued and filed in the records of the Court.

(3) Cancellation and Filing of Instrument. In all cases in which a judgment is entered upon a written instrument, such as, without limitation, a promissory note or a contract, the instrument must be presented to the Clerk of Court at the time judgment is granted. The Clerk shall note in ink across the face of the instrument the fact of the entry of judgment and its date. The Clerk shall sign the entry and cancel and file the instrument. The instrument shall not be removed from Court records except by order of the Court in writing setting forth the facts of such removal. *(Rev. 4-15-03)*

**Rule 21. Exceptions Unnecessary.** Formal exceptions to rulings or orders of the Tribal Court are unnecessary. It is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor. If a party has no opportunity to object to a ruling or order at the time it is made and can satisfy the Court of Appeals as to this fact, the absence of an objection does not thereafter prejudice the party. *(Rev. 4-15-03)*

**Part 8 - Court of Appeals**

**1-2-801. Establishment and Composition.** (1) There is established a Court of Appeals to hear and decide appeals on the law taken from judgments, orders, or rulings of the Tribal Court or original proceedings as provided in Section 1-2-815 of this Code. The Court of Appeals is comprised of a Chief Justice and four Associate Justices

(2) Unless a request for a rehearing en banc is made and granted as provided in Rule 21 of the Rules of Appellate Procedure, an appeal or an original proceeding in the Court of Appeals will be heard and decided by a panel of three Justices, two of whom will be attorneys. The panel members will be chosen by rotation, unless another method of selection is prescribed by Court rule. A vacancy on a panel will be filled by appointment by the Chief Justice from among the remaining Justices or if, for reason of recusement, disqualification, or other unavoidable absence, no Justice is available, by appointment of a visiting judge or judges with qualifications corresponding to those of the absent member(s) of the panel.

**1-2-802. Administration.** (1) The Chief Justice is responsible for the administrative and fiscal management of the Court of Appeals and for the presentation of its annual budget proposal to the Tribal

Council. In connection with such management, the Chief Justice may, on behalf of the Court of Appeals, apply for grants and contracts to provide supplementary funding. If such applications require Tribal matching funds for their implementation, prior approval of the Tribal Council is required.

(2) There is an office of Appellate Administration, comprised of an Appellate Administrator and such other personnel as may, from time to time, be approved by the Tribal Council in connection with its approval of the Court's budget. The Appellate Administrator is appointed by the Tribal Council, which shall determine whether the position is full-time or part time on the basis of the workload of the Court and which shall establish the Administrator's compensation. If the workload is insufficient to occupy the Administrator's full time, the Council may combine the Office with another Tribal administrative function and the Administrator may perform such other function in addition to the duties prescribed herein or assigned by the Chief Justice. The Administrator is subject to the direction and supervision of the Chief Justice in the performance of duties herein assigned and such other responsibilities as may be delegated or assigned to the Administrator by the Chief Justice.

(3) Permanent records of proceedings and decisions of the Court of Appeals will be maintained by the Appellate Administrator. Records of proceedings and decisions of the Court of Appeals will be compiled chronologically, indexed by subject matter, docket number, and caption, and made available to the public by the Appellate Administrator. The Chief Justice may order the periodic publication of the decisions of the Court of Appeals and provide for the distribution of the same to law libraries, other appropriate repositories, and subscribers.

**1-2-803. Time and format of decision.** All decisions, orders, or judgments of the Court of Appeals shall be rendered in writing by a majority of the Justices hearing the appeal or special proceeding and filed with the Appellate Administrator within 60 days of the date of oral argument or of stipulation by the parties that the matter will be decided on briefs, without oral argument.

The Justices hearing the matter shall select one Justice, by consensus, from within the panel to be the primary author of the opinion. The Justice selected to author the opinion shall render a draft opinion for review by the remaining panel members by no later than 45 days after the oral argument or after the date of stipulation to hear the matter on the briefs without oral argument. Failure of the primary author to meet the 45 day time frame above shall constitute neglect of judicial duties and may result in removal.

A Justice who concurs in the result of the majority decision, but not in its reasoning, may file a concurring opinion simultaneously with the majority opinion. A Justice who dissents from the result of the decision may file a simultaneous dissenting opinion. Copies of a ruling and opinion by the Court of Appeals shall be delivered to the parties by the Appellate Administrator within one working day of its filing. Delivery may be made personally or by depositing a copy in the U.S. Mail, first class postage prepaid. (*Rev. 4-1-04*)

**1-2-804. Basis of decision.** Every decision shall be based on the record established in the court below and on the law.

**1-2-805. Effect of decision.** A decision by a simple majority of a panel of the Court of Appeals (or of the full Court upon rehearing en banc) is final and binding upon the parties as to all issues and claims that were raised or might have been raised at trial or upon appeal.

**1-2-806. Times of convening.** The Court of Appeals will convene in regular session to hear and decide appeals for four weeks a year, which shall be the second week of February, April, June, and October. As necessary, the Chief Justice may call a special session of the Court of Appeals, schedule and assign opinion preparation, and adjourn a regular or special session when the business of the Court is concluded.

**1–2–807. Rules of Court.** To supplement the Rules of Appellate Procedure at Title I, Chapter 2, Part 9, the Court of Appeals, with the approval of the Tribal Council, may adopt such rules of practice, procedure, and administration as may improve or facilitate Court operations.

**1–2–808. Appointment of Justices.** One Chief Justice and four Associate Justices of the Court of Appeals shall be appointed by the Tribal Council.

**1–2–809. Term and oath of office.** The Chief Justice shall be appointed for a four year term, and each Associate Justice shall be appointed for a three year term. Prior to assuming his or her duties, each Justice shall at the next regular Tribal Council meeting after appointment take the oath of office prescribed by Article I, Section 6 of the Bylaws of the Confederated Salish and Kootenai Tribes.

**1–2–810. Qualifications.** (1) Three Justices, including the Chief Justice, shall be attorneys at law, qualified to practice before the Tribal Court, with not less than 5 years' experience in the practice of law or on the bench, or a combination or the equivalent thereof. Indian preference will be applied in the selection of these Justices.

(2) Two Justices shall be enrolled Tribal members who have relevant education or experience in law or a law-related field, and who are familiar with Tribal law, customs and tradition and with legal research and writing.

(3) A Justice may not simultaneously serve in another position within the Tribal justice system. Otherwise, a person is not disqualified from appointment to the Court of Appeals for the reason that he or she is otherwise employed, provided that the nature of the employment does not interfere with judicial duties and is neither inherently prejudicial to the exercise of the appellate function nor likely to give rise to an appearance of impropriety.

**1–2–811. Vacancies and removal.** (1) In the event that a Justice, by reason of resignation or otherwise, fails or is unable to complete an appointed term, the Tribal Council shall fill the vacancy by appointment for the balance of the unexpired term. If necessary, pending such appointment, the Chief Justice may designate a substitute judge as provided in Section 1–2–813. Pending Council appointment, a vacancy in the office of Chief Justice will be filled by an Acting Chief Justice selected from among the Associate Justices by their majority vote.

(2) A Justice may be removed from office during his or her appointed term, after adequate notice to the Justice and an opportunity to be heard, by an affirmative vote of seven members of the Tribal Council, for reasons of misconduct in office, neglect of judicial duties, mental or physical incapacity, or conviction by a court of competent jurisdiction of a felony or misdemeanor, excluding minor traffic offenses. (*Rev. 4-1-04*)

**1–2–812. Additional powers and duties of Justices.** (1) In addition to the powers and duties expressed in or necessarily implied from this Part and the Rules of Appellate Procedure,

(a) each Justice has the emergency powers, pending review by the full Court of Appeals,

(i) upon the Justice's own motion or that of a party, to issue a citation for criminal or civil contempt of court or other sanction as may be appropriate in the circumstances to a person appearing before the Court whose conduct is disruptive, contemptuous, or otherwise sanctionable, or to a person disobeying an order of the Court,

- (ii) to order the Tribal police to provide for and to maintain the order and security of the courtroom,
- (iii) to stay execution of a trial court sentence, judgment, or imposition of sanctions pending appeal, and
- (iv) to issue a writ of habeas corpus.

(b) Each Justice has the duty

(i) if a lay Justice, to participate in inservice instruction, training, or consultation with other Justices of the Court and with organizations offering short courses in appellate work. Topics of such in-service education shall include, but are not limited to, such matters as appellate court jurisdiction and procedures, procedures for original or special proceedings in the Court of Appeals, limitations on the appealability of issues of law and fact, remedies, and options for disposition of matters heard,

(ii) if an attorney Justice, to assist with the in-service training of lay Justices,

(iii) to attend bench conferences dealing with the cases to which the Justice is assigned and to prepare or to oversee the preparation of bench memoranda as assigned, and

(iv) to protect and preserve the high standards of the Tribal judiciary, and to abide by the Model Canons of Judicial Ethics of the American Bar Association.

(2) A bench memorandum of law shall be prepared, prior to a bench conference, for each appeal taken. Such memorandum shall be produced in a timely fashion by a Justice who is an attorney and a member of the panel assigned to the case. If sufficient funds are available, the responsible Justice may delegate the preparation of a memorandum of law to an individual or firm qualified to provide legal research assistance.

**1-2-813. Disqualification, recusement, and unavoidable absence.** (1) (a) Within 10 days of the time a party to a proceeding is notified by the Appellate Administrator of the membership of the panel that is assigned to determine the matter, the party may move the Court of Appeals for the disqualification of a Justice so assigned. One such motion shall be granted as a matter of right for each party to the proceeding.

(b) A party may move at any time that one or more Justices be disqualified from a panel for bias or other good cause shown. Such motion shall be supported by an affidavit and, if opposed by a party or a Justice, shall be heard by a panel of Justices other than those sought to be disqualified.

(c) A Justice shall disclose on the record information that the Justice believes the parties or their lawyers might consider relevant to the question of disqualification, even if the Justice believes there is no real basis for disqualification.

(d) A Justice shall disqualify himself or herself in a proceeding in which the Justice's impartiality might reasonably be questioned, including, but not limited to instances where

(i) the Justice has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(ii) the Justice individually or as a fiduciary, or the Justice's spouse, parent or child wherever residing, or any other member of the Justice's family residing in the Justice's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other than a de minimis interest that could be substantially affected by the proceeding;

(iii) the Justice or the Justice's spouse, or a person related to the Justice in the first or second degree of consanguinity or affinity

(A) is a party to the proceeding or an officer, director or trustee of a party;

(B) is acting as a lawyer in the proceeding;

(C) is known by the Justice to have a more than de minimis interest that could be substantially affected by the proceeding;

(D) has been, or to the Justice's knowledge is likely to be, a material witness in the proceeding.

(E) A Justice disqualified by the terms of subsection (d) above may disclose on the record the basis of the disqualification and may ask the parties and their lawyers to consider, out of the presence of the Justice, whether to waive disqualification. If, following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the Justice, all agree that the Justice should not be disqualified, and the Justice is willing to participate, the Justice may participate in the proceedings. The agreement shall be incorporated in the record of the proceeding.

(2) (a) Upon the disqualification, recusal, or unavoidable absence of a Justice other than the Chief Justice, the Chief Justice shall fill the vacancy

(i) by appointment of a Justice with qualifications corresponding to those of the absent Justice, or

(ii) if no Justice is available, by appointment of a substitute judge with corresponding qualifications.

(b) A substitute judge may be a trial judge of the Tribal Court who had no contact with the case below, or a visiting judge.

(c) In the event that the Chief Justice is disqualified, unavoidably absent, or has recused himself or herself from a proceeding, a substitute Justice or judge, as conditioned in subsection (2)(a)(i) and (ii), shall be appointed by a majority vote of the Associate Justices to serve as Acting Chief Justice for purposes of the proceeding and any associated administration or management of the Court of Appeals.

**1-2-814. Compensation.** (1) The base retainer salary to be paid to each Justice of the Court of Appeals shall not be less than \$10,000 per year for the Chief Justice or \$5,000 per year for each Associate Justice. This sum may be increased from time to time by the Tribal Council upon the recommendation of the Chief Justice in connection with the Council's approval of an annual budget for the Court of Appeals. The base retainer salary will compensate Justices for services associated with regular sessions of the Court of Appeals, and the Chief Justice for administrative oversight of Court operations.

(2) A Justice may be additionally compensated for work, such as research and writing, associated with special sessions of the Court or generated by complex cases in regular sessions and assigned by the Chief Justice, at an hourly rate, to be established annually in connection with the Court budget. Eight hours of each day spent in travel or training time or in attendance at national or regional judges' conferences will be compensated at half the hourly rate established by the Council for extra hours of work.

(3) Justices may be reimbursed for off-Reservation travel or training necessitated by their judicial duties and approved by the Chief Justice at the regular Tribal mileage and per diem rates.



(4) A visiting judge, designated by the Chief Justice, or selected as provided in Section 1–2–813, to hear a case or cases in the absence of a Justice or a vacancy on the bench, may be compensated and reimbursed as provided in subsections (2) and (3) above.

(5) One-fourth of the base retainer salary for each Justice will be paid quarterly (in April, June, September, and December). Any additional compensation and reimbursement for expenses incurred for travel or training will be paid to a Justice or a visiting judge within 30 days of submission to the Appellate Administrator of a billing statement and receipts for expenses paid.

**1–2–815. Original jurisdiction.** (1) The Court of Appeals is an appellate court, but it is empowered to hear and determine such original and remedial writs as may be necessary or proper to the complete exercise of its jurisdiction. The institution of such original proceedings in the Court of Appeals is sometimes justified by circumstances of an emergency nature, as when a cause of action or a right has arisen under conditions making due consideration in the Tribal Court and due appeal to the Court of Appeals an inadequate remedy, or when supervision of the trial court other than by appeal is deemed necessary or proper.

(2) The Court of Appeals shall have original and exclusive jurisdiction over all matters involving extraordinary writs of habeas corpus, mandamus, and prohibition.

**1–2–816. Scope of appeal in criminal cases.** (1) Except as otherwise specifically authorized, the Tribal prosecutor may not appeal a criminal case. The Tribal prosecutor may appeal from any Tribal Court order or judgment which results in

- (a) the dismissal of a case,
- (b) any modification of a jury verdict,
- (c) granting a new trial,
- (d) quashing an arrest or search warrant,
- (e) the suppression of evidence,
- (f) the suppression of a confession or admission, or
- (g) imposing a sentence that is contrary to law.

(2) The defendant may take an appeal only from a final judgment of conviction and order after judgment which affects the substantial rights of the defendant.

(3) On appeal from a judgment, the Court of Appeals may review the verdict or decision and any alleged error objected to which involves the merits or necessarily affects the judgment.

**1–2–817. Scope of jurisdiction in civil cases.** The Court of Appeals has exclusive jurisdiction over appeals by an aggrieved party from a judgment or order in the following cases:

- (1) From a final judgment entered in an action or special proceeding commenced in the Tribal Court or brought into the Tribal Court from another court or administrative body;

(2) From an order granting a new trial; or refusing to permit an action to be maintained as a class action; or granting or dissolving an injunction; or refusing to grant or dissolve an injunction; or dissolving or refusing to dissolve an attachment; from an order directing the delivery, transfer, or surrender of property; from any special order made after final judgment; and from such interlocutory judgments or orders in actions involving the custody, guardianship, or conservatorship of minors or incompetent persons as may determine permanently, and not on an emergency or temporary basis pending further proceedings, the rights, interests and responsibilities of the respective parties and direct the disposition of the person or property of the minor or incompetent person in accordance with the determination;

(3) From a judgment or order granting or refusing to grant, revoking or refusing to revoke, letters testamentary, or of administration, or of guardianship; or admitting or refusing to admit a will to probate, or against or in favor of the validity of a will, or revoking or refusing to revoke the probate thereof; or against or in favor of setting apart property, or making an allowance to a spouse or child; or against or in favor of directing the partition, sale, or conveyance of real property, or settling an account of an executor or administrator or guardian; or refusing, allowing, or directing the distribution of any estate, or the payment of a debt, claim, legacy, or distributive share.

**1–2–818. Commencement and conduct of original proceedings.** Proceedings to obtain a writ of habeas corpus, mandate, or prohibition or other remedial writs or orders shall be commenced originally in the Court of Appeals and conducted as provided in this Part. All papers filed shall conform to the requirements of Rule 12 of the Rules of Appellate Procedure.

(1) Notice to trial judge. If an application for a writ or an order is directed against a ruling of a trial judge, the application and all further documents relating to the ruling must be served upon the judge. Such application shall, in its title, contain the name of the judge who issued the ruling.

(2) Filing of applications. An original application may be made to the Court of Appeals at any time. The moving party's application and all supporting documents shall be filed with the Appellate Administrator.

(3) Contents of application. The application for the issuance of the above writs or orders must set forth, in addition to the other requisite matters, the particular questions and issues anticipated to be raised in the proceeding and also the fact which renders it necessary and proper that the writ should issue originally from the Court of Appeals. Each application shall also set forth as exhibits a copy of each judgment, order, notice, pleading, document, proceeding, or court minute referred to in the application, or which is necessary to make out a prima facie case or to substantiate the application or conclusion or legal effect. A memorandum of authorities must be filed with the application. Counsel shall file with the Appellate Administrator the original court file, unless for some reason the same is not available.

(4) Court consideration. (a) A panel of three Justices, as provided in Section 1–2–801(2) of this Code, shall consider whether to accept jurisdiction of an extraordinary writ at a bench conference, which may be held by telephone, within 5 days of the receipt of the application.

(b) As promptly as possible thereafter, the panel shall, on the basis of the application, dismiss the application for want of jurisdiction, accept jurisdiction, or order a response reserving the question of jurisdiction.

(c) Only in extraordinary cases will the Court grant oral argument to determine the necessity and propriety of accepting jurisdiction.

(d) Unless oral argument is ordered by the Court in order to establish jurisdiction, the court will enter an appropriate order forthwith. Such order may dismiss the application, grant the relief requested, order a hearing on the application, or issue any other writ or order deemed appropriate in the circumstances.

(5) Adversary hearing. When ordered by the Court, an adversary hearing on the application shall be held at the time fixed by the order. The oral argument shall be conducted in the same manner as in the argument of appeals, with the same time limits for presentation, and with the applicant opening and closing the argument. Each party shall serve and file briefs in full conformance with Rules of Appellate Procedure 12 and 15 and according to the time schedule set forth in the order, in no event later than 24 hours prior to the time fixed for oral argument.

### **1–2–819. Writs of mandamus and prohibition.**

#### (1) Definitions.

(a) Mandamus. A writ of mandamus or mandate may be issued to any lower tribunal, corporation, board, or person to compel the performance of an act that the law specially enjoins as a duty resulting from an office, trust, or station or to compel the admission of a party to the use and enjoyment of a right to which the party is entitled and from which the party is unlawfully precluded by the lower tribunal, corporation, board, or person.

(b) Prohibition. The writ of prohibition is the counterpart of the writ of mandate. It arrests the proceedings of any tribunal, corporation, board, or person exercising judicial functions when such proceedings are without or in excess of the jurisdiction of such tribunal, board, corporation, or person.

(2) Application of rules of procedure. Except as otherwise provided in this Ordinance or inconsistent herewith, the federal rules of evidence and civil procedure relative to new trials and the Rules of Appellate Procedure herein apply to the proceedings mentioned in this Part.

#### (3) Procedure for obtaining, serving, and enforcing writ.

(a) A writ of mandamus or of prohibition must be issued upon affidavit, on the application of the party beneficially interested.

(b) A writ of prohibition may be issued by the Court of Appeals to any lower tribunal or to a corporation, board, or person in all cases in which there is not a plain, speedy, and adequate remedy in the ordinary course of law.

(c) The writ may be either alternative or peremptory. The alternative writ must be first issued if no 10–day (or shorter, if the Court so allows) notice of the application is given by the applicant to the adverse party. If the application is upon due notice, a peremptory writ may be issued in the first instance.

(d) An alternative writ of mandamus or prohibition must state generally the allegation against the party to whom it is directed and,

(i) if mandamus, command such party, immediately after the receipt of the writ or at some other specified time, to do the act required to be performed or to show cause before the court at a specified time and place, why he or she has not done so, or

(ii) if prohibition, command such party to desist or refrain from further proceedings in the action or matter specified therein until the further order of the Court of Appeals and to show cause before such Court, at a specified time and place, why such party should not be absolutely restrained from further proceedings in such action or matter.

(e) A peremptory writ must be in similar form to an alternative writ, except that the words requiring the party to show cause why he should not be absolutely commanded to do the act or to be restrained, etc., must be omitted and a return day inserted.

(f) The writ must be served in the same manner as a summons in a civil action, except when otherwise expressly directed by order of the Court of Appeals.

(g) When a peremptory mandate or prohibition has been issued and directed to any lower tribunal, corporation, board, or person upon whom and writ has been personally served has, without just excuse refused or neglect to obey the writ, the Court may, upon motion, impose a fine not exceeding \$10,000. In case of persistence in a refusal of obedience, the Court may order the party to be imprisoned until the writ is obeyed and may make any orders necessary and proper for the complete enforcement of the writ.

### **1-2-820. Procedure upon return of writ of mandate or prohibition.**

(1) Time for return and hearing. Writs of mandate or of prohibition issued by the Court of Appeals may, in the discretion of the Court, be made returnable and hearing thereon may be heard at any time.

(2) Answer of adverse party. On the return of the alternative or on the day on which the application for the writ is noticed, the party on whom the writ or notice has been served may show cause by answer, under oath, made in the same manner as an answer to a complaint in a civil action.

(3) When jury trial may be had. (a) If an answer is made which raises a question of fact essential to the determination of the matter and affecting the substantial rights of the parties or the supposed truth of the allegation upon which the application for the writ is based, the Court may, in its discretion, order the question to be tried before a jury and postpone the argument until the trial can be had. The question to be tried must be distinctly stated in the order for trial. The order may also direct the jury to assess any damages which the applicant may have sustained if it finds for him or her. At trial, the applicant is not precluded by the answer from any valid objection to its sufficiency and may contradict it by proof, either in direct denial or by way of avoidance.

(b) If a jury is required, the jury is to be selected by the Appellate Administrator in the same manner in which a jury is selected in the Tribal Court. The conduct of the trial must be the same as in Tribal Court, and the Appellate Administrator has the same authority to issue process and enter orders and judgments as the Clerk of the Tribal Court.

(c) If no answer be made, the case must be heard on the papers of the applicant. If the answer raises only questions of law or puts in issue immaterial statements not affecting the substantial right of the parties, the Court must proceed to hear or fix a day for hearing the argument of the case.

### **1-2-821. Judgment on writs of prohibition and mandate.**

(1) Default not permitted. Neither a writ of prohibition nor a writ of mandate may be granted by default. The case must be heard by a panel of the Court of Appeals whether the adverse party appears or not.

(2) Judgment for applicant. If judgment is given for the applicant:

- (a) the applicant may recover the damages which he or she has sustained, as found by the Court or by the jury, together with costs;
- (b) an execution may issue for such damages and costs; and
- (c) a peremptory mandate must be awarded without delay.

**1-2-822. Writ of Habeas Corpus.**

(1) Availability of writ. (a) Except as provided in subsection (1)(b), every person within the jurisdiction of the Tribes imprisoned or otherwise restrained of liberty may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from imprisonment or restraint.

(b) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense by a court of competent jurisdiction and has exhausted the remedy of appeal, nor is it available to attack the legality of an order revoking a suspended or deferred sentence. Moreover, a person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.

(c) When a person is imprisoned or detained in custody by the Tribes on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.

(2) Issuance of writ.

(a) Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or be some person on the petitioner's behalf. It must specify:

- (i) that the petitioner is unlawfully imprisoned or restrained of liberty;
- (ii) why the imprisonment or restraint is unlawful; and
- (iii) where or by whom the petitioner is confined or restrained.

(b) All parties must be named if they are known or otherwise described so that they may be identified.

(c) The petition must be verified by the oath or affirmation of the party making the application.

(3) Granting of the writ. Any Justice of the Court of Appeals may grant a writ of habeas corpus upon petition by or on behalf of any person restrained of liberty within the Justice's jurisdiction. If it appears to such Justice that a writ ought to issue, it shall be granted without delay, and may be made returnable to the Court of Appeals.

(4) Time of issuance and requirements for service. (a) A writ of habeas corpus or any associated process may be issued and served on any day, at any time.

- (b) The writ must be served upon the person to whom it is directed. If the writ is directed to a Tribal agency or employee, a copy of the writ must be served upon the Tribal prosecutor.
- (c) The writ must be served by a Tribal policeman, or any other person directed to do so by the Justice or the Court, in the same manner as a civil summons, except where otherwise expressly directed by the Justice or the Court.
- (5) Return of the writ, hearing, appeal. (a) Return. (i) The person upon whom the writ is served shall make a return and state in that return:
- (A) whether the petitioner is in that person's custody or under that person's power of restraint; and
- (B) if the petitioner is in custody or otherwise restrained, the authority for and cause of the custody or restraint; or
- (c) if the petitioner has been transferred to the custody of or otherwise restrained by another, to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.
- (ii) The return must be signed and verified by oath unless the person making the return is a sworn Tribal officer making a return in an official capacity.
- (b) Appearance and hearing.
- (i) The person commanded by the writ shall bring the petitioner before the Court as commanded by the writ unless the petitioner cannot be brought before the court without danger to the petitioner's health. Sickness or infirmity must be confirmed in an affidavit by the person having custody of the petitioner. If the Court is satisfied with the truth of the affidavit, the Court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present.
- (ii) Unless the Court postpones the hearing for reasons of the petitioner's health, the Court shall immediately proceed to hear and examine the return. The hearing may be summary in nature. Evidence may be produced and compelled as provided by the laws governing criminal procedures and evidence.
- (c) Refusal to obey the writ is contempt. If the person commanded by the writ refuses to obey, that person must be adjudged to be in contempt.
- (d) Disposition of petitioner. If the Court finds in favor of the petitioner; an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the Court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

## **Part 9 - Rules of Appellate Procedure**

**Rule 1. Notice of Appeal.** (1) An appeal shall be taken by filing a notice of appeal with the Appellate Administrator, with a copy to the Clerk of the Tribal Court within 20 days of the date of the final judgment or order of the trial court. Failure of an appellant to timely file a notice of appeal is ground for dismissal of the appeal.

(2) Appeals may be consolidated by order of the Court of Appeals upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(3) The notice of appeal shall specify the party or parties taking the appeal, and shall designate the judgment, order, or part of either appealed from.

(4) The Appellate Administrator shall serve notice of the filing of a notice of appeal by mailing a copy thereof, together with a copy of the Rules of Appellate Procedure to counsel of record for each party other than the appellant, or, if a party is not represented by counsel to the party at his last known address. The Administrator shall note on each copy served the date on which the notice of appeal was filed. If an appellant is represented by counsel, such counsel shall provide the Administrator with sufficient copies of the notice of appeal to permit the Administrator to comply with the requirements of this rule. Failure of the Administrator to serve notice shall not affect the validity of the appeal. The Administrator shall note in the appellate docket the names of the parties to whom copies have been mailed, with the date of mailing.

**Rule 2. Stay of Judgment or Order Pending Appeal.** (1) When a criminal defendant files a notice of appeal, any order or judgment resulting in:

(a) imprisonment;

(b) payment of a fine or restitution; or

(c) probation shall be stayed by the trial court pending the posting of reasonable bond as ordered by the Court of Appeals.

(2) The filing of a notice of appeal by the Tribal prosecutor in a criminal case does not stay any order or judgment of the trial court pending decision of the Court of Appeals.

(3) In a civil matter, upon the filing of a notice of appeal, a party may apply to the Chief Justice ex parte for a stay of execution of the judgment or order. The Chief Justice may grant said stay for such period of time and under such conditions as the Chief Justice deems proper, including restraining a party from disposing of, encumbering, or concealing property. The Chief Justice may also order the applicant to provide to the court a surety bond, conditioned for the satisfaction of the judgment or order in full together with costs, interest, and damages for delay, if the appeal is dismissed or if the judgment is affirmed.

(4) In an action involving the suspension or termination of parental rights brought under Title III, Chapter 2, of this Code, an appeal of a court order or decree does not stay the order or decree appealed from and does not divest the presiding Tribal Court judge of jurisdiction to take steps that are necessary in the best interests of the child and in order to protect the health and safety of the child. The appellate court may order a stay upon application and hearing if suitable provision is made for the care and custody of the child. If the appeal results in the reversal of the order appealed, the legal status of the child reverts to the child's legal status before the entry of the order that was appealed. The child's prior legal status remains in effect until further order of the Tribal court unless the appellate court orders otherwise. (Rev. 9-6-07)

**Rule 3. Record on Appeal.** (1) The original papers and exhibits filed in the Tribal Court, any transcript of the proceedings, and a certified copy of the minute entries prepared by the Clerk of Court shall constitute the record on appeal in all cases.

(2) Within 5 days after filing the notice of appeal, the appellant shall order from the court reporter a transcript of such parts of the proceedings not already on file as the appellant deems necessary for inclusion

in the record. The transcript shall be filed and certified with the Clerk of the Tribal Court as part of the record on appeal within 20 days of the filing of the notice of appeal. In all cases where the appellant intends to urge insufficiency of evidence to support the order or judgment appealed from, it shall be the duty of the appellant to order the entire transcript of the evidence and proceedings. Whenever the appellant appeals a specific finding of fact by the trial court on the ground of insufficiency of evidence, the appellant shall be under a duty to include in the transcript all evidence relevant to such finding. Unless the entire transcript is to be provided, the appellant shall, within the 5-day period, file and serve on the respondent a description of the parts of the transcript which he or she intends to present on appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary he shall, within 5 days after such filing and service, order such parts from the reporter or procure an order from the Chief Justice requiring the appellant to do so. The cost of producing the transcript shall be borne by the appellant unless the chief Justice waives the transcript cost by granting leave to proceed in forma pauperis or for other good cause shown. In the event of such a waiver, the Tribal Court shall provide the transcript. Costs of a transcript are among the costs of appeal that may be awarded by the Court of Appeals to a prevailing party as provided in Rule 21, and if a prevailing appellant's costs have been waived by the Chief Justice, the award will be applied to the transcript costs borne by the Tribal Court.

(3) If no record of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may, within 10 days of the hearing or trial or such time extended as the Chief Justice may allow, prepare a statement of the evidence or proceedings from the best available means, including his or her recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 10 days after service. Thereupon, the statement and any objections or proposed amendments shall be submitted for settlement and approval to the trial judge, and as settled and approved shall be included by the Clerk of the Court in the record on appeal.

**Rule 4. Transmission of the Record on Appeal.** (1) The record on appeal, including the transcript necessary for the determination of the appeal, shall be transmitted to the Appellate Administrator within 30 days after the filing of the notice of appeal unless the time is extended to a date certain for good cause shown by the Chief Justice upon application of a party.

(2) When the record is complete for purposes of the appeal, the Clerk of Court shall transmit a certified copy to the Appellate Administrator. The Appellate Administrator shall immediately transmit a complete copy of the record to each Justice who will hear the appeal and to any visiting or substitute judge. Documents in bulky containers and physical exhibits will not be transmitted, although a party may move the Chief Justice to make such materials available to the Court at the time when the appeal is first considered at a bench conference by the panel of Justices who will hear the appeal.

**Rule 5. Docketing the Appeal and Filing the Record.** (1) At the time of filing the notice of appeal, the appellant shall pay to the Clerk of the Tribal Court a fee of \$25 for filing and transmitting the record on appeal, unless the fee is waived by the Chief Justice upon the granting of leave to proceed in forma pauperis or for other good cause shown. Failure to pay the filing fee, unless waived, is ground for dismissal of the appeal.

(2) On the date on which the record on appeal is transmitted to the Court of Appeals, the Appellate Administrator will docket the appeal and file the record in a repository. An appeal shall be docketed and filed under the title given to the action in the trial court with such addition as necessary to indicate the identity of the appellant. The Appellate Administrator shall immediately give notice to all parties of the date on which the record was filed and the appeal docketed.



**Rule 6. Effect of Dismissal.** The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from unless the dismissal is expressly made without prejudice to another appeal.

**Rule 7. Harmless Error.** No judgment or order shall be reversed upon appeal by reason of any error committed by the trial court affecting the interests of the appellant where the record shows that the same result would have been attained had the trial court not committed an error or errors.

**Rule 8. Ruling against Respondent May Be Reviewed.** Whenever the record on appeal in a civil case shall contain any order, ruling, or proceeding of the trial court against the respondent, affecting the respondent's substantial rights on the appeal of said cause, the Court of Appeals shall consider such orders, rulings, or proceedings, and shall reverse or affirm the cause on appeal according to the substantial rights of the respective parties, as shown upon the record.

**Rule 9. Remedial Powers of the Court of Appeals in Civil Cases.** In a civil case, where the proceedings were not stayed, and when the judgment or order is reversed or modified, the Court of Appeals may make complete restitution of all property and rights lost by the erroneous judgment or order, so far as such restitution is consistent with protection of a purchaser of property at a sale ordered by the judgment, or had under process issued upon the judgment.

**Rule 10. Certification of Judgment to Clerk of the Tribal Court.** When judgment is rendered upon the appeal, it must be certified by the Appellate Administrator to the Clerk of the Tribal Court. The Clerk of Court shall enter the certificate into the records of the Tribal Court. Also, in cases of appeal from a judgment, the Clerk must enter a minute of the judgment of the Court of Appeals on the docket against the original entry; and in cases of appeal from an order, the Clerk must enter a minute against the entry of the order appealed from, containing a reference to the certificate, with a brief statement that such order has been affirmed, reversed, or modified by the Court of Appeals on appeal.

**Rule 11. Appeals in Forma Pauperis.** An indigent party who desires to proceed on appeal in forma pauperis shall file with the Appellate Administrator a motion for leave so to proceed together with an affidavit showing the party's inability to pay the fees and costs of the appeal or to give security therefor, the party's belief that the party is entitled to redress, and a statement of the issues the party intends to present on appeal. If the motion is granted the Chief Justice may waive the payment of fees or costs or the giving of security therefor.

**Rule 12. Filing and Service.** (1) Papers required or permitted to be filed with the Court of Appeals must be placed in the custody of the Appellate Administrator within the time fixed for filing. The Administrator shall note upon each such paper or document the time of filing and transmit the same to the Justices and any substitute judge designated to hear the matter.

(2) Copies of all papers filed by any party shall, at or before the time of filing, be served by the party or a person acting for him or her on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing. Papers presented for filing shall contain a certification of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service.

(3) Except as otherwise provided in these rules, a signed original and three copies of all papers shall be filed with the Appellate Administrator.

**Rule 13. Motions.** Unless another form is prescribed by these rules, an application for an order or other relief shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought. Counsel shall also note therein that opposing counsel has been contacted concerning the motion and whether opposing counsel objects to the motion. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. The Court of Appeals may authorize disposition of motions by a single Justice. If a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within 7 days after service of the motion, or within such time as the Court may direct.

**Rule 14. Computation and Extension of Time.** In computing any period of time prescribed by these rules,

- (1) Saturdays, Sundays, and Tribal legal holidays are excluded from the computation, and
- (2) the day from which the designated period of time begins to run shall not be included, but the last day of the period is included.

For good cause shown, the Chief Justice may order an extension of the time prescribed by these rules. All motions or orders for extension of time shall include a date certain on or before which date the act for which an extension of time is requested must be performed.

**Rule 15. Briefs.** (1) An appellant's brief shall be filed and served within 20 days of the date the record is filed and transmitted. The brief will contain under appropriate headings in the order indicated:

- (a) A table of contents and a table of laws, decisions, and other authorities cited, with references to the pages of the brief where they are cited;
- (b) A statement of the legal issues presented for review;
- (c) A statement of the nature of the case and of the judgment or order appealed from;
- (d) A legal argument, which shall contain the contentions of the appellant with respect to the issues presented and the reasons therefor, together with citations to the authorities and pages of the record relied on;
- (e) A short conclusion, stating the precise relief sought; and
- (f) A copy of the judgment, order, findings of fact, conclusions of law, or decision in question, together with the memorandum opinion, if any.

(2) Respondent's brief shall be filed and served within 20 days after service of the appellant's brief and shall conform to the requirements of subsection (1)(a) through (d) of this rule. A statement of the issues or of the case need not be made if the respondent is satisfied with the statements of the appellant.

(3) Within 14 days of service of the Respondent's brief, the appellant may file a reply brief. Any reply brief must be confined to new matter raised in the brief of the respondent. No further briefs may be filed except with leave of the Chief Justice.

(4) Except by permission of the Chief Justice, briefs shall not exceed 50 pages, double spaced, on 8 ½ x 11 inch paper, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, etc.

(5) A signed original and three copies (except as otherwise provided in these rules) of each brief shall be filed with the Appellate Administrator. The brief will contain a certification of service to each party separately represented, and will not be accepted for filing absent such certification.

(6) If an appellant fails to file a brief within the time provided by this rule, or within the time extended, the respondent may move for dismissal of the appeal. If a respondent fails to file a brief, he or she will not be heard at oral argument except by permission of the court.

**Rule 16. Oral Arguments.** (1) Except in the case of an extraordinary writ or other special or emergency proceeding when the Chief Justice may schedule a special session of the Court, the Chief Justice will set the time and place at which oral argument will be heard during the next regular convening of the appellate bench after the time for filing and service of appellant's reply brief has expired. The Appellate Administrator shall advise all parties of the time and place of hearing. Any request for postponement of the hearing must be made by motion to the chief Justice no later than 10 days prior to the time scheduled for hearing and may be granted for good cause shown.

(2) At oral argument, 45 minutes will be allowed appellant and 35 minutes to respondent. Arguments of multiple parties or amici curiae for appellant or respondent shall be allocated by the parties to conform to these limits. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(3) The appellant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case, and the closing argument shall be limited to rebuttal of respondent's argument.

(4) If counsel for a party fails to appear, the court may hear arguments on behalf of a party whose counsel is present, and the case will be decided on the briefs and the argument heard. If no counsel appears for any party, the case will be decided on the briefs.

(5) By agreement of the parties, a case may be submitted for decision on the briefs.

**Rule 17. Return and Remand.** (1) A judgment on appeal shall be entered in full by the Appellate Administrator in the appellate records and transmitted to the Clerk of Court for entry in the records of the case in the trial court.

(2) When a judgment on appeal includes a remand to the court below for further findings of fact, conclusions, or amendment of the trial court judgment or order in keeping with the decision of the Court of Appeals, trial court jurisdiction over the matter is reinstated for the purpose of such further proceedings as may be appropriate. Any party may appeal any amended or modified judgment of the trial court on remand that is not in accord with the appellate decision or instructions or that incorporates new findings or conclusions alleged to be in error.

**Rule 18. Entry and Notice of Appellate Orders, Judgments, or Decisions.** A notation of an order, judgment or decision of the Court of Appeals in its docket constitutes entry thereof. Upon entry, the Appellate Administrator shall promptly mail to all parties a copy of the order, judgment, or decision, and notice of the date of entry.

**Rule 19. Interest on Civil Judgments.** If a judgment for money is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was rendered in the trial court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the trial court, the mandate shall contain instructions with respect to interest.

**Rule 20. Costs on Appeal.** (1) If not otherwise provided by the Court in its decision, costs on appeal and in original proceedings will automatically be awarded to the successful party against the other party; provided however, that costs awarded to plaintiff or relator in special proceedings to review trial court rulings, orders, or judgments will ordinarily be assessed against the real party in interest, namely, the party interested in upholding the trial court's action, rather than against the Tribes or the trial judge.

(2) Costs incurred in the printing or producing of briefs and appendices, in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for the cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing notice of appeal shall be taken by the Appellate Administrator as costs of the appeal in favor of the party entitled to costs under this rule.

(3) The Appellate Administrator shall, in all civil cases, include in the order of judgment of affirmance, reversal, or modification on appeal or for the issuance of a writ in an original or special proceeding, and in remand, peremptory writ, or judgment, a clause awarding the costs in accordance with this rule or the special order of the Court of Appeals to be recovered by claim as provided by law; and the Administrator shall also furnish therewith an itemized statement of such costs as have been paid by the Administrator or by the Tribal Court.

**Rule 21. Petitions for Rehearing en Banc.** (1) Except as otherwise provided in this rule, a petition for rehearing before all five Justices may be filed within 10 days after the appellate decision has been rendered by filing an original and five copies of the petition with the Appellate Administrator. The adverse party will have 7 days thereafter in which to serve and file an original and five copies of any objections to rehearing en banc.

(2) No rehearing is allowed for an original proceeding where the entire Court considered the application and participated in the issuance of the order, judgment, or writ.

(3) A petition for rehearing en banc may be presented on the following grounds and no others:

(a) that some fact, material to the decision, or some question decisive of the case submitted by counsel, was overlooked by the Court;

(b) that the decision is in conflict with an express statute or controlling decision; or

(c) that the Court employed inappropriate procedures or considered facts outside the record on appeal.

(4) Within 15 days after receipt of the petition and any objections and upon consultation with his or her colleagues, the Chief Justice may grant or deny the petition for rehearing en banc. If granted, the parties shall submit briefs as provided in Rule 17 on the issues permitted to be raised and the matter will be scheduled for argument unless the parties agree that the matter will be decided on briefs.

**Rule 22. Voluntary Dismissal.** If the parties sign and file with the Appellate Administrator an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and whatever fees are due, the Administrator shall enter the case dismissed, and shall give to each party a copy of the

agreement filed. An appeal may be dismissed on motion of the appellant upon such terms as to costs as may be agreed upon by the parties or fixed by the Chief Justice.

## TITLE II

### CHAPTER 1 - TRIBAL OFFENSES

#### Part 1 - General Preliminary Provisions

**2-1-101. Purpose and construction.** The provisions of this Chapter shall be construed in accordance with Tribal customs as well as to achieve the following general principles and purposes:

- (1) to forbid and prevent the commission of offenses and give fair warning of conduct which is declared to be an offense;
- (2) to adequately define the conduct and mental state which constitute an offense and to safeguard permitted conduct;
- (3) to prescribe penalties which are proportionate to the seriousness of the offense and which permit recognition of differing rehabilitative needs of individual offenders while at the same time recognizing the need of the entire Reservation Community to protect itself from offenders;
- (4) to prevent arbitrary and oppressive treatment of persons accused or convicted of offenses and to promote the correction and rehabilitation of such persons; and
- (5) to protect any Tribal member or other person residing on the Reservation whose health or welfare may be adversely affected or threatened due to abuse, neglect or exploitation by family, household members, or other person in a legal or contractual position of providing physical, mental, or medical assistance and support to the affected person.

**2-1-102. Civil actions not barred.** The Code of Tribal Offenses does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered. Civil injury is not merged into the criminal offense.

**2-1-103. Exclusiveness of offenses.** No conduct constitutes an offense unless so declared by this Code of Tribal Offenses, by any Tribal ordinance, or by specific Montana law incorporated by reference into this Code of Tribal Offenses. The elements of any offense as contained in this code are the sole elements required for conviction in Tribal Court. Extraneous elements required by other jurisdictions shall not be considered by the judge or jury in reaching a verdict of guilt or innocence. However, this provision does not affect the power of the Tribal Court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment, or decree.

**2-1-104. Prosecution for multiple offenses.** When the conduct of an offender establishes the commission of more than one offense, the offender may be prosecuted separately for each offense. The offender, however, may not be convicted of more than one offense if:

- (1) one offense is included in the other;
- (2) one offense consists only of conspiracy or some other form of preparation for committing the offense;
- (3) inconsistent findings of fact are required to establish the commission of the offenses;

(4) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(5) the offense is defined to prohibit a continuing course of conduct and the offender's course of conduct was interrupted, unless the law provides that the specific periods of such conduct constitute separate offenses.

**2-1-105. Limitation on prosecutions based on same transaction.** No person, once convicted of a crime falling within the jurisdiction of the State of Montana or the Tribes shall be punished for the identical act in the courts of the other jurisdiction, but shall be accorded the doctrine of former jeopardy as if the separate jurisdictions were one.

**2-1-106. Lesser included offenses.** (1) An offender may be convicted of an offense included in an offense charged without having been specifically charged with the lesser included offense. An offense is included when:

(a) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) it consists of attempt or solicitation to commit the offense charged or to commit an offense otherwise included therein; or

(c) it differs from the offense charged only in that it is a less serious injury or risk of injury to the same person, property, or Tribal interest, or a lesser kind of culpability suffices to establish its commission.

(2) The Tribal Court need not charge the jury with respect to an included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting the defendant of the lesser included offense.

**2-1-107. Burden of proof.** The defendant in a criminal proceeding is presumed to be innocent until each element of the offense with which the defendant is charged is proved beyond a reasonable doubt. In the absence of such proof, the defendant shall be acquitted.

**2-1-108. Classification of offenses: exclusive and concurrent jurisdiction.** Offenses shall be designated as Class A, Class B, Class C, Class D, or Class E offenses. The Tribes shall exercise exclusive jurisdiction over Class A, Class B, Class C, and Class D offenses. The Tribes shall exercise concurrent jurisdiction with the State of Montana over Class E offenses where the State has a comparable offense in its code, and exclusive jurisdiction if the State has no comparable offense.

**2-1-109. Time limitations.** (1) Unless otherwise specified by statute:

(a) prosecution for any Class A, Class B, Class C, or Class D offense must be commenced within one year after the alleged offense is committed;

(b) prosecution for any Class E offense must be commenced within two years after the alleged offense is committed;

(c) if the victim is a minor or has a mental disorder at the time the offense occurred, prosecution must be commenced within one year after the legal disability terminates.

(2) The period of limitation does not run under the following conditions:

(a) during any period in which the offender is not usually and publicly residing within this Reservation or is beyond the jurisdiction of the Tribal Court;

(b) during any period in which the offender is a public officer and the offense charged is theft of public funds while in public office; or

(c) during a prosecution pending against the offender for the same conduct even if the prosecution is dismissed.

(3) An offense is committed either when every element occurs or, if the offense is based upon a continuing course of conduct, when the course of conduct is terminated. The time starts to run on the day after the offense is committed.

(4) A prosecution is commenced when a complaint is filed.

**2-1-110. Sentencing.** (1) A person convicted of an offense may be sentenced as follows:

(a) for a conviction of a Class A offense heard in Tribal Traffic Court, the offender may only be sentenced to pay a fine or some other sentence not involving imprisonment;

(b) for a conviction of a Class B offense, the offender may be sentenced to imprisonment for a period not to exceed 10 days, or a fine not to exceed \$100, or both, unless another sentence is specified by statute;

(c) for a conviction of a Class C offense, the offender may be sentenced to imprisonment for a period not to exceed 60 days, or a fine not to exceed \$250, or both, unless another sentence is specified by statute;

(d) for a conviction of a Class D offense, the offender may be sentenced to imprisonment for a period not to exceed 180 days, or a fine not to exceed \$500, or both, unless another sentence is specified by statute; or

(e) for conviction of a Class E offense, the offender may be sentenced to imprisonment for a period not to exceed one year, or a fine not to exceed \$5,000, or both, unless another sentence is specified by statute;

(2) The fines listed above may be imposed in addition to any amounts ordered paid as restitution.

(3) Any person adjudged guilty of an offense under this Code shall be sentenced in accordance with this section and Section 2-2-1203, unless otherwise specified.

**2-1-111. Mental state.** A person is not guilty of an offense unless the person acts purposely, knowingly, or negligently, as the Code may provide, with respect to each element of the offense, or unless the person's acts constitute an offense involving strict liability.

**2-1-112. Strict liability.** A person may be guilty of an offense without having the requisite mental state only if the Code provision defining the offense clearly indicates the Council's purpose to impose strict liability for the conduct described.



**2-1-113. Temporary orders of protection.** (1) Whether or not the Tribal Prosecutor files a complaint charging the offense, a person may apply to the Tribal Court for an order of protection if the Prosecutor has reason to believe that a person is a victim of one of the following offenses committed by a person over whom the Tribal Court has jurisdiction: abuse of an elderly or vulnerable person, assault, aggravated assault, intimidation, domestic abuse, criminal endangerment, negligent endangerment, unlawful restraint, kidnaping, aggravated kidnaping, arson, stalking, sexual assault, incest, or sexual intercourse without consent.

(2) The petition for a protective order against a suspected offender shall be accompanied by an affidavit of the alleged victim setting out facts constituting sufficient reason to believe that the suspected offender has committed one of the offenses listed in subsection (1).

(3) The petition may request an order of protection containing any or all of the following provisions for relief of the alleged victim:

(a) prohibiting the suspected offender from assaulting, threatening, abusing, harassing, following, stalking, or disturbing the peace of the alleged victim;

(b) directing the suspected offender to avoid any contact with the alleged victim by staying at least 500 yards from the person, residence, work place, or vehicle of the alleged victim and from the children of the alleged victim and the children's school or daycare facility;

(c) directing the suspected offender to avoid any contact with identified family members of the alleged victim or any identified witness to or other identified victim of the suspected offense;

(d) directing the suspected offender to refrain from taking, hiding, selling, transferring, or disposing of any property in which the alleged victim has an interest;

(e) directing the suspected offender to give the alleged victim possession of necessary personal property;

(f) prohibiting the suspected offender from removing any children of the alleged victim from the jurisdiction of the Court; or

(g) granting temporary custody of children of the alleged victim solely to the alleged victim.

(4) Upon a finding that the alleged victim is in danger of harm if the Court does not act immediately, the Court shall issue a temporary order of protection granting some or all of the relief requested and such other relief as may be appropriate in the circumstances. The protective order shall not apply to contacts initiated by the petitioning alleged victim.

(5) Within 14 days from the date the Court issues a temporary protection order, a hearing must be conducted. At the hearing, the Court shall determine whether good cause exists for the temporary order of protection to be continued, amended, or made permanent. *(Rev. 4-15-03)*

**2-1-114. Definitions.** Unless otherwise specified in a particular section, the following general definitions shall apply in this Chapter:

(1) "Abuse" includes, but is not limited to:

(a) the infliction of physical or mental injury; or

(b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of a person.

(2) "Acts" has its usual and ordinary meaning and includes any voluntary bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(3) "Another" means a person or persons, as defined in this Code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage.

(5) "Bodily harm" or "bodily injury" means physical pain, illness or any impairment of physical condition.

(6) "Citation" means a written direction that is issued by a law enforcement officer and that requests a person to appear before the court at a stated time and place to answer a charge for the alleged commission of an offense.

(7) "Cohabit" means to live together in an arrangement whereby the parties voluntarily assume the rights, duties and obligations which are normally manifested by married persons.

(8) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or persons, or the same property.

(9) "Conduct" means an act or series of acts and the accompanying mental state.

(10) "Conviction" means a judgment or sentence entered upon a plea of guilty or no contest, or upon a verdict or finding of a defendant's guilt rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. Once a conviction has been expunged, it is no longer considered a conviction under Tribal law.

(11) "Deceit" means:

(a) creating or confirming in another an impression which is false and which the offender does not believe to be true;

(b) failing to correct a false impression which the offender previously had created or confirmed;

(c) preventing another from acquiring information pertinent to the disposition of the property involved;

(d) selling or otherwise transferring or encumbering property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property whether such impediment is of value or is not a matter of official record; or

(e) promising performance which the offender does not intend to perform or knows will not be performed. Mere failure to perform, without additional evidence, is not conclusive proof that the offender did not intend to perform.

(12) "Deprive" means to withhold the property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value; or

(c) with the purpose to restore it only upon payment of a reward or other compensation.

(13) "Felony" means a Class E offense.

(14) "Force" means the infliction, attempted infliction, or threatened infliction of bodily harm by a person, or the commission or threat of any other crime by a person against the complainant or another which causes the complainant to reasonably believe that the person has the present ability to execute the threat, thereby causing the complainant to submit.

(15) "Harm" means the loss, disadvantage, or injury or anything so regarded by the individual affected, including loss, disadvantage, or injury to any person or entity in which the individual has a recognized interest.

(16) "Intoxicating substance" means any drug or any alcoholic beverage, including but not limited to any beverage containing  $\frac{1}{2}$  of 1% or more of alcohol by volume, which, when used in sufficient quantities, ordinarily or commonly produces intoxication.

(17) "Involuntary act" means any act which is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not consciously or habitually a product of the effort or determination of the actor.

(18) "Knowingly" – A person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(19) "Law enforcement officer" means any person who by virtue of his or her office of public or Tribal employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his or her authority.

(20) "Mental Disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. It does not include an abnormality manifested only by repeated criminal or other antisocial behavior.

(21) "Misdemeanor" means a Class A, Class B, Class C, or Class D offense.

(22) "Negligently" A person acts negligently with respect to an element of an offense when the person should be aware of a substantial and unjustifiable risk that the element presently exists or will result from his or her conduct. The risk must be of such a nature and degree that the person's failure to perceive it involves a gross deviation from the standard of care that a reasonable person would observe in the same situation, considering the nature and purpose of the person's conduct and the circumstances known to her or him.

(23) "Obtain or exert unauthorized control" means a person acting without lawful authority:

(a) tries to bring about a transfer of interest or possession in property, whether to the offender or to another; or

(b) tries to secure the performance of labor or services, whether for the offender's benefit or the benefit of another; or

(c) takes, carries away, sells, conveys or transfers title to, interest in or possession of property.

(24) "Occupied structure" means any building, vehicle or other place suited for human occupancy or night lodging of persons or for carrying on business regardless of whether a person is actually present. Each unit of a building consisting of 2 or more units separately secured or occupied is a separate occupied structure.

(25) "Offense" means a crime for which a sentence of labor, time in jail, a fine, restitution, or other penalty provided by law may be imposed.

(26) "Official detention" means arrest, detention in any facility for custody of persons under charge or conviction of a crime, or any other detention for law enforcement purposes.

(27) "Owner" means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(28) "Person" an individual, association, corporation, partnership, or other legal entity.

(29) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(30) "Premises" includes land, buildings, and appurtenances thereto.

(31) "Property" means anything of value to the owner. Property includes but is not limited to:

(a) real estate, money and commercial instruments;

(b) written instruments representing or embodying rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

(c) things growing on, or affixed to, or found on land, or part of or affixed to any building;

(d) birds, fish, livestock and other animals ordinarily kept in a state of confinement; and

(e) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine-or-human-readable form,

computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(32) "Property of another" means real or personal property in which a person other than the offender or a government has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(33) "Protective order" is a court order restraining a person from engaging in the commission or continuance of some act which may result in irreparable harm to another.

(34) "Public place" means any place to which the public has access.

(35) "Purposely". A Person acts purposely with respect to a result or to conduct described by a statute defining an offense when:

(a) if the element of the offense involves the nature of his or her conduct or a result thereof, it is his or her conscious object to engage in conduct of that nature or to cause such a result; and

(b) if the element of the offense involves the attendant circumstances, he or she is aware of the existence of such circumstances or he or she believes or hopes that they exist.

(36) "Reasonable apprehension" is deemed to exist in any situation where a person knowingly points a firearm at or in the direction of another person, whether or not the offender believes the firearm to be loaded. In all other circumstances, "reasonable apprehension" is a question of fact to be determined by the trier of fact.

(37) "Restitution" means a requirement, as a condition of a sentence, that an offender repay the victim or the Tribes in money or services.

(38) "Serious bodily harm" or "serious bodily injury" means bodily injury which creates a risk of death, causes serious permanent or protracted loss or impairment of the function or process of any bodily member or organ, causes permanent disfigurement, or causes a serious mental disorder.

(39) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party or for the purpose of satisfying the defendant's aggressive impulses.

(40) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party or for the purpose of satisfying the defendant's aggressive impulses. Any penetration, however slight, is sufficient.

(41) "Solicit" or "solicitation" means to command, authorize, urge, incite, request or advise another to commit an offense.

(42) "Statute" means any Tribal Code section, Tribal ordinance, or adopted section of the Montana Code Annotated.

(43) "Tamper" means to interfere with something improperly, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(44) "Threat" means a menace, however communicated, to:

- (a) inflict physical harm on any person, or on the property of another;
- (b) subject any person to physical confinement or restraint;
- (c) commit any criminal offense;
- (d) falsely accuse any person of a criminal offense;
- (e) expose any person to hatred, contempt, or ridicule;
- (f) harm the credit or business reputation of any person;
- (g) reveal any information sought to be concealed by the person threatened;
- (h) take an unauthorized action as an official against anyone or anything, withhold an official action, or cause the withholding of an official action; or
- (i) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(45) "Tribes" refers to the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

(46) "Underage person" means a person who is below the age designated by the particular section of the statute.

(47) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than \$1,000 by the standards set forth in subsection (a), its value is considered to be an amount less than \$1,000.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(48) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provisions for transport of an operator.

(49) "Weapon" means any instrument, firearm, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily harm.

(50) "Witness" means any person whose testimony is desired in any official proceeding or in any investigation.

*(Rev. 1-27-00) (Rev. 4-15-03)*

## **Part 2 - Liability Principles**

**2-1-201. Conduct and result.** (1) Conduct is the cause of a result if:

(a) without the conduct the result would not have occurred; and

(b) any additional causal requirements imposed by the specific code provision are satisfied.

(2) If knowingly or purposely causing a result is an element of an offense and the result is not within the contemplation or purpose of the offender, either element can nevertheless be established if:

(a) the final result differs from the contemplated result only in the respect that a different person or different property is affected or that the injury or harm caused is less than originally contemplated; or

(b) the result involves the same kind of harm or injury as contemplated but the precise harm or injury is different or occurred in a different way, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

(3) If negligently causing a particular result is an element of an offense and the offender is not aware or should not have been aware of the probable result, negligence can nevertheless be established if:

(a) the actual result differs from the probable result only in the respect that a different person or different property is affected or that the actual injury or harm is less; or

(b) the actual result involves the same kind of injury or harm as the probable result, unless the actual result is too remote or accidental to have a bearing on the offender's liability or the gravity of the offense.

**2-1-202. Voluntary act.** An element of every offense is a voluntary act, which includes an omission to perform a duty which the person is mentally, physically and financially capable of performing.

**2-1-203. Responsibility.** A person who is in an intoxicated or drugged condition is criminally responsible for her or his conduct unless such conduct is involuntarily produced and deprives the person of the capacity to appreciate the criminality of the conduct or to conform her or his conduct to the requirements of the law.

**2-1-204. Accountability.** (1) A person is legally accountable for the conduct of another when:

- (a) having a mental state described by the code provision defining the offense, the person causes another to perform the conduct, regardless of the legal capacity or mental state of the other person;
- (b) the code provision defining the offense makes the person accountable;
- (c) either before or during the commission of an offense with the purpose to promote or facilitate such commission, the person solicits, aids, abets, agrees, or attempts to aid such other person in the planning or commission of the offense.

(2) However, a person is not accountable if:

- (a) the person is a victim of the offense committed; or
- (b) before the commission of the crime the person terminates her or his efforts to promote or facilitate the commission of the crime and takes steps to negate the effect or otherwise prevent the commission of the offense.

(3) A person may not be found guilty of an offense on the testimony of one responsible or legally accountable for the same offense unless that testimony is corroborated by other evidence that in itself and without the aid of the testimony of the one responsible or legally accountable for the same offense, tends to connect the defendant with the commission of the offense.

### **Part 3 - Affirmative Defenses and Justifiable Use of Force**

**2-1-301. Consent.** (1) The complainant's or victim's consent to the performance of the conduct constituting an offense or to the result is an affirmative defense which must be proved by the defendant by a preponderance of the evidence.

(2) Consent is ineffective if:

- (a) it is given by a person who is not legally authorized to approve of the conduct constituting an offense;
- (b) it is given by a person who by reason of youth, mental impairment, or mental incapacitation is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged;
- (c) it is induced by force, duress, or deception; or(d) it is against public policy to permit the conduct or the resulting harm, even though consent was given.

**2-1-302. Compulsion.** A person is not guilty of an offense by reason of conduct which he or she performs under the compulsion of threat or menace of the imminent infliction of death or serious bodily harm if he or she reasonably believes that death or serious bodily harm will be inflicted upon him or her if he or she does not perform such conduct. Compulsion is an affirmative defense which must be proved by the defendant by a preponderance of the evidence.



**2-1-303. Entrapment.** A person is not guilty of an offense if his or her conduct is incited or induced by a public servant or his or her agent for the purpose of obtaining evidence for the prosecution of such person. However, this section is inapplicable if a public servant or his or her agent merely affords to such person the opportunity or facility for committing an offense in furtherance of criminal purpose which such person has originated. Entrapment is an affirmative defense which must be proved by the defendant by a preponderance of the evidence.

**2-1-304. Self-defense.** (1) A person is justified in the use of force or threat to use force against another when and to the extent the person reasonably believes that such conduct is necessary to:

- (a) defend herself or himself or another against such other's imminent use of unlawful force;
  - (b) prevent or terminate such other's unlawful entry into or attack upon an occupied structure; or
  - (c) prevent or terminate the offender's trespass on, or other tortious or criminal interference with, either real or personal property lawfully in the person's possession, or which the person has a legal duty to protect, or in the possession of another who is a family or household member.
- 2) A person is justified in the use of force likely to cause death or serious bodily harm only if the person reasonably believes such force is necessary to prevent imminent death or serious bodily harm to herself or himself or another person.
- (3) The defendant has the burden of producing sufficient evidence to raise a reasonable doubt of his or her culpability when the defendant raises self-defense as an affirmative defense.

**2-1-305. Use of force by aggressor.** Self-defense is not available to a person who (1) is attempting to commit, committing, or escaping after the commission of an offense; or

- (2) knowingly or purposely provokes the use of force against herself or himself, unless:
  - (a) such force is so great that the person reasonably believes there is imminent danger of death or serious bodily harm and the person has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant; or,
  - (b) in good faith, the person withdraws from physical contact with the assailant and clearly indicates to the assailant the desire to withdraw and terminate the use of force but the assailant continues or resumes the use of force.

**2-1-306. Use of deadly force.** A law enforcement officer, or any person acting under the officer's command to aid and assist, is justified in using deadly force when the officer is performing a legal duty or the execution of legal process and reasonably believes the use of force is necessary to protect herself or himself or others from imminent danger to life.

**2-1-307. Resisting arrest.** A person is not authorized to use force to resist arrest which the person knows is being made by a law enforcement officer or by a private person summoned and directed by a law enforcement officer to make the arrest, even if the person believes the arrest is unlawful and the arrest is in fact unlawful.

#### Part 4 - Inchoate Offenses

**2-1-401. Conspiracy.** (1) A person commits the offense of conspiracy when, with the purpose that an offense be committed, the person agrees with another to the commission of the offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement has been committed by the person or by a co-conspirator.

(2) (a) "Act in furtherance" is any course of conduct which makes it more probable than not that an act towards the commission of an offense will occur and the person's present conduct is not terminated.

(b) Proof of an "act in furtherance" may be drawn from the circumstances surrounding the involved parties' actions and does not require direct proof of an agreement.

(3) It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired:

(a) has not been prosecuted or convicted;

(b) has been convicted of a different offense;

(c) is not amenable to justice;

(d) has been acquitted; or

(e) lacked the capacity to commit the offense.

(4) A person convicted of conspiracy shall be punished not to exceed the maximum sentence provided for the offense which is the object of the conspiracy.

**2-1-402. Solicitation.** (1) A person commits the offense of solicitation when, with the purpose that an offense be committed, he commands, encourages, or facilitates the commission of that offense.

(2) A person convicted of solicitation shall be punished not to exceed the maximum provided for the offense solicited.

**2-1-403. Attempt.** (1) A person commits the offense of attempt when, with the purpose to commit a specific offense, the person does any act towards the commission of such offense.

(2) It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the offense attempted.

(3) A person convicted of attempt shall be punished not to exceed the maximum sentence provided for the offense attempted.

(4) A person shall not be liable under this section if, under circumstances manifesting a voluntary and complete renunciation of the criminal purpose, the person avoided the commission of the offense attempted by abandoning the criminal effort.

(5) Proof of the completed offense does not bar conviction for the attempt.

## Part 5 - Offenses Involving Damage to the Person

**2-1-501. Homicide.** (1) A person commits the offense of homicide by purposely, knowingly, or negligently causing the death of another human being.

(2) Homicide is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-502. Aiding or soliciting suicide.** (1) A person commits the offense of aiding or soliciting a suicide by purposely aiding or assisting another in taking his or her own life.

(2) The fact suicide was not successfully carried out is not a defense.

(3) Aiding or soliciting suicide is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-503. Assault.** (1) A person commits the offense of assault by:

(a) knowingly or purposely causing bodily harm to another;

(b) negligently causing bodily harm to another with a weapon;

(c) knowingly or purposely making physical contact of an insulting or provoking nature with an individual; or

(d) knowingly or purposely causing reasonable apprehension of bodily harm in another.

(2) "Reasonable apprehension" is deemed to exist in any situation where a person knowingly points a firearm at or in the direction of another person, whether or not the person pointing the firearm believes the firearm to be loaded. In all other circumstances "reasonable apprehension" is a question of fact to be determined by the trier of fact.

(3) Except as provided in subsection (4), assault is a Class D offense over which the Tribes have exclusive jurisdiction.

(4) If the victim is less than 14 years old and the offender is an adult, the assault is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-504. Aggravated assault.** (1) A person commits the offense of aggravated assault by knowingly or purposely causing:

(a) serious bodily harm to another;

(b) bodily harm to another with a weapon;

(c) reasonable apprehension of serious bodily harm in another by use of a weapon; or

(d) bodily harm to a law enforcement officer or a person who is responsible for the care or custody of a prisoner.

(2) Aggravated assault is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-505. Intimidation.** (1) A person commits the offense of intimidation by attempting to have another person perform or refrain from performing a specific act by threatening, under circumstances producing a fear that the threat will be carried out, to:

- (a) inflict bodily harm on the person threatened or any other person;
- (b) subject any person to physical confinement or restraint; or
- (c) commit any Class E offense.

(2) Intimidation is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-506. Mistreating prisoners.** (1) A person commits the offense of mistreating prisoners, if, being responsible for the care or custody of a prisoner, he purposely or knowingly,

- (a) assaults or otherwise injures a prisoner; or
- (b) intimidates, threatens, endangers, or withholds reasonable necessities from the prisoner; or
- (c) violates any civil right of a prisoner.

(2) Mistreating prisoners is a Class D offense over which the Tribes have exclusive jurisdiction.

**2-1-507. Negligent vehicular assault.** (1) A person who negligently operates a motor vehicle under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, and who causes bodily injury to another, commits the offense of negligent vehicular assault.

(2) Negligent vehicular assault is a Class D offense over which the Tribes have exclusive jurisdiction.

**2-1-508. Negligent endangerment.** (1) A person who negligently engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of negligent endangerment.

(2) Negligent endangerment is a Class D offense over which the Tribes have exclusive jurisdiction.

**2-1-509. Criminal endangerment.** (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment.

(2) For the purposes of this Section, "knowingly" means that the person is aware of the high probability that the conduct in which he or she is engaging, whatever that conduct may be, will cause a substantial risk of death or serious bodily injury to another.

(3) Criminal endangerment is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-510. Stalking.** (1) A person commits the offense of stalking if the person purposely or knowingly causes another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly:

(a) following the stalked person; or

(b) harassing, threatening, or intimidating the stalked person, in person or by phone, by mail, or by other action, device, or method.

(2) This section does not apply to an activity protected by the Tribal Constitution or the Indian Civil Rights Act.

(3) For the first offense, a conviction of stalking is a Class D offense over which the Tribes have exclusive jurisdiction. A second or subsequent offense or a first offense against a victim who was under the protection of a protective order directed at the offender, is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana. A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

(4) Upon presentation of credible evidence of violation of this section, a protective order may be granted restraining a person from engaging in the activity described in subsection (1).

(5) For the purpose of determining the number of convictions under this section "conviction" means:

(a) a conviction as defined in Section 2-1-113(9).

(b) a conviction for violation of a statute of a state or tribe similar to this section.

(6) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person.

**2-1-511. Abuse of an elderly or vulnerable person.** (1) A person commits the offense of abuse of an elderly or vulnerable person by knowingly or purposely, physically or mentally, abusing or exploiting an elderly or vulnerable person.

(2) "Exploiting" means the unjust use of an individual's money or property for another's advantage by means of duress, menace, fraud, or undue influence.

(3) "Elderly or vulnerable person" means a Tribal member or other person residing on the Reservation who is:

(a) 60 years of age or older;

(b) determined by the Tribal Court to be an elder; or

(c) otherwise unable to protect herself or himself from abuse, neglect, or exploitation because of a mental disorder or physical impairment, or frailties or dependencies brought about by age or disease or alcoholism.

(4) Abuse of an elderly or vulnerable person is a Class D offense over which the Tribes have exclusive jurisdiction. (Rev. 4-15-03)

**2-1-512. Robbery.** (1) A person commits the offense of robbery if, in the course of committing a theft, the person:

(a) inflicts bodily harm upon another;

(b) threatens to inflict bodily harm upon any person;

(c) purposely or knowingly puts any person in fear of immediate bodily harm; or

(d) commits or threatens to commit any Class E offense other than theft.

(2) "In the course of committing a theft" includes acts which occur in an attempt to commit theft, in the commission of a theft, or in flight after the attempt or commission of a theft.

(3) Robbery is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-513. Unlawful restraint.** (1) A person commits the offense of unlawful restraint by knowingly or purposely, and without lawful authority, restraining another so as to interfere substantially with another's liberty.

(2) Unlawful restraint is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-514. Kidnapping.** (1) A person commits the offense of kidnapping by knowingly or purposely, and without lawful authority, restraining another person by:

(a) secreting or holding the person in a place of isolation; or

(b) using or threatening to use physical force against the other person.

(2) Kidnaping is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-515. Aggravated kidnaping.** (1) A person commits the offense of aggravated kidnaping if he or she knowingly or purposely and without lawful authority restrains another person by either secreting or holding him or her in a place of isolation or by using or threatening to use physical force, with any of the following purposes:

(a) to hold for ransom or reward or as a shield or hostage;

(b) to facilitate commission of any felony or flight thereafter;

(c) to inflict bodily injury on or to terrorize the victim or another; or

(d) to interfere with the performance of any governmental or political function.

(2) Aggravated kidnaping is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-516. Terrorism.** (1) A person commits the offense of terrorism when he or she knowingly or purposely:

a) threatens to destroy or damage any structure, conveyance, or other real or personal property within the Reservation Boundaries;

b) attempts or conspires to destroy or damage any structure, conveyance, or other real or personal property within the Reservation Boundaries; or

c) creates a substantial risk of serious bodily injury to any other person by destroying or damaging any structure, conveyance, or other real or personal property within the reservation boundaries.

(2) Terrorism is a Class E offense over which the Tribes have exclusive jurisdiction.

#### **Part 6 - Sex Crimes**

**2-1-601. Sexual assault.** (1) A person commits the offense of sexual assault by knowingly making sexual contact with another without consent.

(2) "Without consent", as used in this section and in section 2-1-602, means:

(a) the victim is compelled to submit by force against himself, herself, or another, or

(b) the victim is incapable of consent because he or she is:

(i) mentally defective or incapacitated;

(ii) physically helpless; or

(iii) less than 16 years old.

(c) As used in subsection (2)(a), the term "force" means:

(i) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(ii) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

(3) Except as provided in subsection (4), sexual assault is a Class D offense over which the Tribes have exclusive jurisdiction.

(4) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender commits a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

(5) An act "in the course of committing sexual assault" shall include an attempt to commit the offense or flight after the attempt or commission.

**2-1-602. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent.

(2) Sexual intercourse without consent is a class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-603. Indecent exposure.** (1) A person who, for the purpose of arousing or gratifying the person's own sexual desire or the sexual desire of any person, exposes the person's genitals under circumstances in which the person knows the conduct is likely to cause affront or alarm commits the offense of indecent exposure.

(2) Indecent exposure is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-604. Sexual abuse of children.** (1) As used in this section, the following definitions apply:

(a) "Sexual conduct" means actual or simulated:

(i) sexual intercourse, whether between persons of the same or opposite sex;

(ii) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;

(iii) bestiality;

(iv) masturbation;

(v) sadomasochistic abuse;

(vi) lewd exhibition of the genitals, breasts, pubic or rectal area of any person; or

(vii) defecation or urination for the purpose of the sexual stimulation of the viewer.

(b) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

(c) "Visual medium" means;

(i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(ii) any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite, transmission, or other method.



- (2) A person commits the offense of sexual abuse of children if he or she knowingly:
- (a) employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;
  - (b) photographs, films, videotapes, or records a child engaging in sexual conduct, actual or simulated;
  - (c) persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated;
  - (d) processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises material consisting of or including a photograph, photographic negative, undeveloped film, videotape, or recording representing a child engaging in sexual conduct, actual or simulated; or
  - (e) finances any of the activities described in subsections (1)(a) through (1)(d) knowing that the activity is of the nature described in those subsections.
- (3) Sexual abuse of children is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.
- (4) For purposes of this section, "child" means any person less than 16 years old.

**2-1-605. Incest.** (1) A person commits the offense of incest if he or she has sexual contact as described in section 2-1-113(39) or sexual intercourse with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) Incest is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-606. Provisions generally applicable to sexual crimes.** (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he or she reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

(2) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this part except evidence of the victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.

(3) If the defendant proposes for any purpose to offer evidence described in subsection (2), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (2).

(4) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

(5) Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent.

### **Part 7 - Offenses Against the Family**

**2-1-701. Domestic abuse.** (1) A person commits the offense of domestic abuse if the person:

- (a) knowingly or purposely causes bodily injury to a family member, or partner;
  - (b) knowingly or purposely causes reasonable apprehension of bodily injury to a family member, or partner;
  - (c) negligently causes bodily injury with a weapon to a family member, or partner; or
  - (d) knowingly violates a protective order issued by the Tribal Court regarding a family member, or partner.
- (2) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.
- (3) "Partner" means spouses, former spouses, and persons who have been or are currently in a dating or ongoing intimate relationship.
- (4) For a first conviction for domestic abuse, the offense is classified as a Class D offense over which the Tribes have exclusive jurisdiction.
- (5) For a second conviction for domestic abuse, the offense is classified as a Class D offense over which the Tribes have exclusive jurisdiction.
- (6) For a third or subsequent conviction for domestic abuse, the offense is classified as a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana. *(Rev. 1-27-00) (Rev. 4-15-03)*

**2-1-702. Prostitution.** (1) A person commits the offense of prostitution if such person knowingly engages in or agrees or offers to engage in sexual intercourse with another person, not his or her spouse, for compensation, whether such compensation is paid or to be paid.

(2) Prostitution is a Class B offense over which the Tribes have exclusive jurisdiction.

**2-1-703. Aggravated promotion of prostitution.** (1) A person commits the offense of aggravated promotion of prostitution if he or she purposely or knowingly commits any of the following acts:

- (a) compels another to engage in or promote prostitution;
- (b) promotes prostitution of a child under the age of 18 years, whether or not he or she is aware of the child's age;

(c) promotes the prostitution of one's child, ward, or any person for whose care, protection, or support he or she is responsible.

(2) Aggravated promotion of prostitution is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-704. Bigamy.** (1) A person commits the offense of bigamy if, while married, the person knowingly contracts or purports to contract another marriage unless at the time of the subsequent marriage:

(a) the person believes on reasonable grounds that the prior spouse is dead;

(b) the person and the prior spouse have been living apart for 5 consecutive years throughout which the prior spouse was not known by the person to be alive;

(c) a court has entered a judgment purporting to terminate or annul a prior marriage and the person does not know the judgment to be invalid; or

(d) the person reasonably believes she or he is legally eligible to marry.

(2) Bigamy is a Class B offense over which the Tribes have exclusive jurisdiction.

**2-1-705. Failure to support or care for dependent person.** (1) A person commits the offense of failure to support or care for a dependent person by knowingly:

(a) refusing or neglecting to furnish food, shelter, or proper care, which the person is physically and financially able to provide to any person recognized as legally dependent upon the person;

(b) endangering the health, welfare or emotional well being of any child under the person's care; or

(c) failing to provide financial support, which the person is legally obligated to provide and the person is financially able to provide.

(2) Failure to support or care for a dependent person is a Class D offense over which the Tribes have exclusive jurisdiction.

(3) It is not a defense to a charge of failure to support that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the spouse, child, or other dependent.

(4) A person commits the offense of aggravated failure to support if:

(a) the person has left the Reservation to avoid the duty of support; or

(b) the person has been previously convicted of the offense of failure to support.

(5) Aggravated failure to support is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-706. Contributing to the delinquency of an underage person.** (1) The term underage person as used here denotes a person who is below the age designated by the particular section of the statute. A person commits the offense of contributing to the delinquency of an underage person by knowingly:

- (a) selling, giving, supplying or encouraging the use of any intoxicating substances by a person under the age of 21;
- (b) selling or giving explosives to a person under the age of 18;
- (c) assisting, promoting, or encouraging a person under the age of 16 to
  - (i) abandon her or his place of residence without the consent of the minor's parents or legal guardian,
  - (ii) enter a place of prostitution,
  - (iii) engage in sexual conduct,
  - (iv) commit, participate, or engage in a criminal offense.

(2) For a first conviction for contributing to the delinquency of an underage person, the offense is classified as a Class C offense over which the Tribes have exclusive jurisdiction.

(3) For a second conviction for contributing to the delinquency of an underage person, the offense is classified as a Class D offense over which the Tribes have exclusive jurisdiction.

(4) For a third or subsequent conviction for contributing to the delinquency of an underage person, the offense is classified as a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-707. Failure to send children to school.** (1) A person commits the offense of failure to send children to school by repeatedly neglecting or refusing, without good cause to send any child of school age under the person's care to school.

(2) For a first conviction of failure to send children to school, the offense is classified as a Class B offense over which the Tribes have exclusive jurisdiction.

(3) For a second or subsequent conviction of failure to send children to school, the offense is classified as a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-708. Custodial interference.** (1) A person commits the offense of custodial interference when, with the intent to deprive another person or public agency of any custodial rights, the person maliciously takes, detains, entices, or conceals, either within or outside the exterior boundaries of the Reservation, any person under the age of 16, any incompetent person or any person entrusted by authority of law to the custody of another person or institution.

(2) Expenses incurred in locating and regaining physical custody of the person taken, enticed or kept in violation of this section are "pecuniary damages" for purposes of restitution.

(3) Custodial interference is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-709. Visitation interference.** (1) A person who has legal custody of a minor child commits the offense of visitation interference if he or she knowingly or purposely frustrates the visitation rights of a person entitled to visitation under an existing court order.

(2) Visitation interference is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-710. Curfew violation.**

(1) Every person under the age of 18 years is subject to curfew times as follows:

(a) 10:00 p.m. until 6:00 a.m. the following morning Sunday through Thursday, and

(b) 12:00 midnight until 6:00 a.m. the following morning on Friday and Saturday.

(2) Parents or guardians of children under the age of 18 are responsible for curfew compliance. Exceptions are permitted if the child is under the immediate supervision of a parent, guardian, or other adult approved by the parent or guardian. A child may attend authorized school functions without such supervision.

(3) Any parent, guardian or custodian who knowingly, purposely or negligently fails to obey curfew regulations commits the offense of curfew violation.

(4) For a first conviction of Curfew violation, the offense is classified as a Class B offense.

(5) For a second conviction of Curfew violation, the offense is classified as a Class C offense.

(6) For a third of subsequent conviction of Curfew violation, the offense is classified as a Class D offense. *(Rev. 4-27-04) (Rev. 12-23-04) (Rev. 3-22-05)*

## **Part 8 - Offenses Against Property**

**2-1-801. Arson.** (1) A person commits the offense of arson by knowingly or purposely using fire or explosives

(a) to damage or destroy a building or occupied structure of another without consent; or

(b) in a manner which places another person in danger of death or bodily harm, including a firefighter responding to or at the scene of the fire or explosion.

(2) Arson is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-802. Negligent arson.** (1) A person commits the offense of negligent arson if he or she purposely or knowingly starts a fire or causes an explosion, whether on his own property or property of another, and thereby negligently

(a) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene, or

(b) places property of another in danger of damage or destruction.

(2) Negligent arson as defined above in (1)(b) is a Class C offense over which the Tribes have exclusive jurisdiction. Negligent arson as defined above in (1)(a) is a Class E offense over which the Tribes and the State of Montana have concurrent jurisdiction.

**2-1-803. Criminal mischief.** (1) A person commits the offense of criminal mischief by knowingly or purposely:

(a) injuring, damaging, or destroying any property of another without his or her consent;

(b) tampering with the property of another or Tribal property without consent, so as to endanger or interfere with the use of the property; or

(c) damaging or destroying property in an attempt to defraud an insurer;

(2) If the verified damage amount does not exceed \$1,000, criminal mischief is a Class C offense over which the Tribes have exclusive jurisdiction.

(3) If the verified damage amount is greater than \$1,000, criminal mischief is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-804. Trespass.** (1) A person commits the offense of trespass by knowingly or purposely and without express or implied privilege

(a) entering or remaining in an unoccupied structure;

(b) entering or remaining in or upon the premises of another;

(c) entering any vehicle or any part thereof; or

(d) allowing livestock to occupy or graze on the cultivated or enclosed land of another.

(2) A privilege to enter may be extended

(a) by explicit invitation, license, or permission from the landowner or any other authorized person,

(b) by a landowner's failure to give notice that the lands are restricted, or

(c) by law.

(3) Access to Tribal lands, waters, and natural resources by persons who are not Tribal members is restricted as provided by Tribal and federal law. Tribal members crossing Reservation lands in order to exercise hunting and fishing rights retained by treaty do so with privilege.

(4) Notice restricting entry onto non-Tribal lands must be placed on a post, structure, or natural object by marking it with written notice or with not less than 50 square inches of fluorescent orange paint, except

that when metal posts are used the top one-third of the post must be painted. Notice must be placed at all normal points of access to the property. A privilege to enter may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person.

(5) Trespass is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-805. Burglary.** (1) A person commits the offense of burglary by knowingly entering or remaining in an occupied structure, without privilege to be there, with the purpose of committing an offense therein.

(2) Burglary is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-806. Theft.** (1) A person commits the offense of theft by knowingly and purposely obtaining or exerting unauthorized control, including by threat or deception, over the property of the owner or by obtaining control over stolen property knowing the property to have been stolen by another, and the person

(a) has the purpose of depriving the owner of the property,

(b) uses, conceals, or abandons the property in such a manner as to deprive the owner of the property, or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(2) A pawnbroker or dealer who buys and sells secondhand merchandise and allows stolen property to be sold, bartered or otherwise disposed of after a Tribal police officer has requested him to hold the property for 30 days commits the offense of theft.

(3) If the verified value of the property does not exceed \$1,000, theft is a Class C offense over which the Tribes have exclusive jurisdiction.

(4) If the verified value of the property is greater than \$1,000, theft is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-807. Theft of lost or mislaid property.** (1) A person commits the offense of theft by obtaining control over lost or mislaid property when the person

(a) knows or learns the identity of the owner or knows, is aware, or learns of a reasonable method of identifying the owner; or

(b) fails to take reasonable measures to restore the property to the owner; and

(c) has the purpose of depriving the owner permanently of the use or benefit of the property.

(2) Theft of lost or mislaid property is a Class B offense.

**2-1-808. Theft of labor or services or use of property.** (1) A person commits the offense of theft when he or she obtains use of property, labor or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor, or services.

(2) If the verified value of the labor or services or use of property does not exceed \$1,000, its theft under this Section is a Class C offense over which the Tribes have exclusive jurisdiction.

(3) If the verified value of the labor or services or use of property is greater than \$1,000, its theft is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-809. Failure to return rented or leased property.** (1) A person commits the offense of failure to return rented or leased property if, without notice to and permission of the lessor, the person knowingly and purposely fails to return such property after the time provided for such return in the rental agreement, provided that the date and time when return of the property is required and the penalty prescribed in this section is clearly stated, in bold print, in the written agreement.

(2) Obtaining rental or leased property through the use of false identification constitutes prima facie evidence of the commission of this offense.

(3) Failure to return the rental property within 72 hours after written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time the rental agreement was entered into or personally served on the renter or lessee, constitutes prima facie evidence of the commission of this offense.

(4) If the verified value of the rented or leased property does not exceed \$1,000, failure to return rental property is a Class C offense over which the Tribes have exclusive jurisdiction.

(5) If the verified value of the rented or leased property is greater than \$1,000, failure to return rental property is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-810. Aiding the avoidance of telecommunications charges.** (1) A person commits the offense of aiding the avoidance of telecommunications charges when he or she knowingly publishes the number or code of an existing, canceled, revoked expired, or nonexistent telephone credit card with the purpose of avoiding payment of lawful telecommunications charges.

(2) Aiding the avoidance of telecommunications charges is a Class B offense over which the Tribes have exclusive jurisdiction.

(3) For purposes of this section, the term "publish" means to communicate information to any one or more persons, either orally in person, by telephone, radio, or television, or in a writing of any kind, including but not limited to a letter, memorandum, circular, handbill, newspaper or magazine article, or book.

**2-1-811. Unauthorized acquisition or transfer of food stamps.**

(1) A person commits the offense of unauthorized acquisition or transfer of food stamps if he or she knowingly

(a) acquires, purchases, possesses, or uses any food stamp or coupon that he or she is not entitled to; or

(b) transfers, sells, trades, gives, or otherwise disposes of any food stamp or coupon to another person not entitled to receive or use it.



(2) The unauthorized acquisition or transfer of food stamps with a value of less than \$1,000 is Class C offense over which the Tribes have exclusive jurisdiction.

(3) The unauthorized acquisition or transfer of food stamps with a value of greater than \$1,000 is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-812. Waste, sale or trade of food distribution program foods.**

(1) A person commits the offense of waste, sale or trade of food distribution program foods (commodities) if he or she knowingly

(a) wastes the foods by discarding them,

(b) sells the foods to another for money, or

(c) trades the foods for other items or services.

(2) Waste, sale or trade of food distribution program foods is a Class B offense over which the Tribes have exclusive jurisdiction.

**2-1-813. Unauthorized use of motor vehicle.**

(1) A person commits the offense of unauthorized use of a motor vehicle by knowingly operating the vehicle of another without the his or her consent.

(2) It is a defense that the offender reasonably believed that the owner would have consented to the offender's operation of the motor vehicle if asked.

(3) Unauthorized use of a motor vehicle is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-814. Unlawful use of a computer.** (1) A person commits the offense of unlawful use of a computer by knowingly or purposely

(a) obtaining the use of a computer, computer system, or computer network without consent of the owner;

(b) altering or destroying or causing another to alter or destroy a computer program or computer software without consent of the owner; or

(c) obtaining the use of, or altering or destroying a computer, computer system, computer network, or any part thereof, for the purpose of obtaining money, property, or computer services from the owner of the computer, computer system, computer network, or from any other person.

(2) If the verified value of the property used, altered, destroyed, or obtained does not exceed \$1,000, unlawful use of a computer is a Class C offense over which the Tribes have exclusive jurisdiction.

(3) If the verified value of the property used, altered, destroyed, or obtained is greater than \$1,000, unlawful use of a computer is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-815. Issuing a bad check.** (1) A person commits the offense of issuing a bad check when the person issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing it will not be honored by the depository.

(2) If the person issuing the check or other order has an account with the depository, failure to make good the check or other order within 15 days after written notice of nonpayment has been received by the issuer is prima facie evidence that the person knew it would not be paid by the depository.

(3) Issuing a bad check for services, labor, or property obtained not exceeding \$1,000 is a Class C offense over which the Tribes have exclusive jurisdiction.

(4) Issuing a bad check for services, labor, or property obtained or attempted to be obtained exceeding \$1,000 is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-816. Defrauding creditors.** (1) A person commits the offense of defrauding secured creditors if he or she knowingly destroys, conceals, encumbers, transfers, removes from the Reservation, or otherwise deals with property subject to a security interest with the purpose to hinder enforcement of that interest.

(2) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation.

(3) Defrauding creditors is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-817. Deceptive practices.** (1) A person commits the offense of deceptive practices by knowingly or purposely

(a) causing another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred,

(b) making, directing another to make, or accepting a false or deceptive statement regarding the person's financial condition for the purpose of procuring a loan or credit;

(c) making or directing another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property, or

(d) obtaining or attempting to obtain property, labor, or services through the use of an invalid credit card.

(2) Deceptive practices is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-818. Deceptive business practices.** (1) A person commits the offense of deceptive business practices if, while in the course of engaging in a business, occupation, or profession, the person knowingly or purposely

(a) uses or possesses for use a false weight or measure or any other device for falsely determining or recording any quantity or quality,

(b) sells, offers, exposes for sale, or delivers less than the represented quantity of any commodity or service,

(c) takes or attempts to take more than the represented quantity of any commodity or service when furnishing the weight or measure,

(d) sells, offers, or exposes for sale adulterated commodities,

(e) sells, offers, or exposes for sale mislabeled commodities, or

(f) makes a deceptive statement regarding the quantity or price of goods in any advertisement addressed to the public.

(2) Deceptive business practices is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-819. Forgery.** (1) A person commits the offense of forgery when, with purpose to defraud, the person knowingly falsely signs, makes, executes, or alters any written instrument.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.

(3) Except as provided in subsection (4), forgery is a Class C offense over which the Tribes have exclusive jurisdiction.

(4) If the forgery is part of a common scheme, or if the value of the property, labor, or services obtained or attempted to be obtained exceeds \$1,000, the offense is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-820. Obscuring the identity of a machine.** (1) A person commits the offense of obscuring the identity of a machine if he or she

(a) removes, defaces, alters, destroys, or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any machine, vehicle, electrical device, or firearm with the purpose to conceal, misrepresent, or transfer any such machine, vehicle, electrical device, or firearm, or

(b) possesses with the purpose to conceal, misrepresent, or transfer any machine, vehicle, device, or firearm knowing that the serial number or other identification number or mark has been removed or otherwise obscured.

(2) Obscuring the identity of a machine is a Class C offense over which the Tribes have exclusive jurisdiction.

(3) The fact of possession or transfer of any such machine, vehicle, electrical device, or firearm creates a presumption that the person knew the serial number or other identification number or mark had been removed or otherwise obscured.

**2-1-821. Illegal branding or altering or obscuring a brand.** (1) A person commits the offense of illegal branding or altering or obscuring a brand if he or she marks or brands any commonly domesticated hooved animal or removes, covers, alters, or defaces any existing mark or brand on any commonly domesticated hooved animal with the purpose to obtain or exert unauthorized control over said animal or with the purpose to conceal, misrepresent, transfer, or prevent identification of said animal

(2) Illegal branding or altering or obscuring a brand is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

### **Part 9 - Offenses Against Public Administration**

**2-1-901. Definitions.** For purposes of this Part, the following definitions apply:

(1) "Administrative proceeding" means any Tribal proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(2) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested.

(3) "Official proceeding" means a proceeding heard or that may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(4) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(5) "Tribal public servant" means any officer or employee of the Tribal government including but not limited to a member of the Tribal Council, a judge, anyone who has been elected or designated to become a Tribal public servant, or any person serving as a juror, administrator, executor, personal representative, guardian, or court-appointed fiduciary.

**2-1-902. Bribery.** (1) A person commits the offense of bribery by knowingly or purposely offering, conferring, agreeing to confer upon another, soliciting, accepting, or agreeing to accept from another, any benefit, including pecuniary benefit, as consideration for:

(a) the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a Tribal public servant or voter,

(b) the recipient's decision, vote, recommendation, or other exercise of official discretion in a Tribal judicial or administrative proceeding, or

(c) a violation of a known duty as a Tribal public servant.

(2) It is not a defense that a person whom the offender sought to bribe was not qualified to act in the desired way.

(3) Bribery is a Class D offense over which the Tribes have exclusive jurisdiction.

(4) A person convicted of the offense of bribery shall forever be disqualified from holding any position as a Tribal public servant.

**2-1-903. Improper influence in official matters.** (1) A person commits the offense of improper influence by purposely or knowingly:

(a) threatening harm to any person, the person's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person's decision, opinion, recommendation, vote or other exercise of discretion as a Tribal public servant or voter;

(b) threatening harm to any Tribal public servant, to the Tribal public servant's spouse, child, parent, or sibling, or to the public servant's property with the purpose to influence the Tribal public servant's decision, opinion, recommendation, vote or other exercise of discretion in a judicial or administrative proceeding;

(c) threatening harm to any Tribal public servant, the public servant's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person to violate her or his duty, or

(d) privately talking about the circumstances of a pending or potential controversy with any Tribal public servant who has or will have official discretion in a judicial or administrative proceeding or any other communication with such Tribal public servant designed to influence or with the potential to influence the outcome of such proceedings on the basis of considerations other than those authorized by Tribal law.

(2) It is not a defense that a person whom the offender sought to influence was not qualified to act in the desired way.

(3) Improper influence in official matters is a Class D offense over which the Tribes have exclusive jurisdiction.

**2-1-904. Compensation for past official behavior.** (1) A person commits an offense under this section if he knowingly solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a Tribal public servant, given a decision, opinion, recommendation, or vote favorable to another, for having exercised a discretion in another's favor, or for having violated his or her duty. A person commits an offense under this section if he or she knowingly offers, confers, or agrees to confer compensation which is prohibited by this section.

(2) Compensation for past official behavior is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-905. Gifts to Tribal public servants by persons subject to their jurisdiction.** (1) No Tribal public servant in any department or agency exercising a regulatory function, conducting inspections or investigations, carrying on a civil or criminal litigation on behalf of Tribal government, or having custody of prisoners shall solicit, accept or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation, or custody or against whom such litigation is known to be pending or contemplated.

(2) No Tribal public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the government shall solicit, accept, or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim, or transaction.

(3) No Tribal public servant having judicial or administrative authority and no Tribal public servant employed by a Tribal court having such authority or participating in the enforcement of its decision shall

solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such Tribal public servant or tribunal with which he or she is associated.

(4) This section shall not apply to:

(a) fees or payments prescribed by law to be received by a Tribal public servant or any other benefit for which the recipient gives legitimate consideration or to which he or she is otherwise entitled; or

(b) trivial benefits incidental to personal, professional, or business contacts and involving no substantial risk of undermining official impartiality.

(5) No person shall knowingly confer or offer or agree to confer any benefit prohibited by subsections (1) through (3).

(6) An offense committed under this section is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-906. Perjury.** (1) A person commits the offense of perjury by knowingly making in any Tribal judicial or administrative proceeding a false statement under oath or equivalent affirmation, or by swearing or affirming the truth of a false statement previously made when the statement is material to the proceedings.

(2) Perjury is a Class D offense over which the Tribes have exclusive jurisdiction.

**2-1-907. False swearing.** (1) A person commits the offense of false swearing by knowingly making a false statement under oath or equivalent affirmation, or swearing or affirming the truth of such a statement previously made when the person does not believe the statement to be true and:

(a) the falsification occurs in an official proceeding;

(b) the falsification is purposely made to mislead a Tribal public servant in performing his or her official function; or

(c) the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(2) False swearing is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-908. Unsworn falsification to authorities.** (1) A person commits an offense under this section if, with purpose to mislead a Tribal public servant in performing his or her official function, he or she

(a) makes any written false statement which he or she does not believe to be true,

(b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading,

(c) submits or invites reliance on any writing which he or she knows to be forged, altered, or otherwise lacking in authenticity, or

(d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he or she knows to be false.

(2) Unsworn falsification is a Class B offense over which the Tribes have exclusive jurisdiction.

**2-1-909. False alarms to agencies of public safety.** (1) A person commits an offense under this section if he or she knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, Tribal or otherwise, official or volunteer, which deals with emergencies involving danger to life or property.

(2) False alarms to public agencies is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-910. False reports to law enforcement officers.**

(1) A person commits the offense of giving false reports to law enforcement officers by knowingly

(a) giving false information to any law enforcement officer with the purpose to implicate another,

(b) reporting to a law enforcement officer an offense or other incident within their concern, knowing that the alleged offense or incident did not occur, or

(c) pretending to furnish such officers with information relating to an offense or incident when the person does not have information relating to such offense or incident.

(2) Giving false reports to law enforcement officers is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-911. Tampering with witnesses, informants, or physical evidence.** (1) A person commits the offense of tampering if, believing that an official proceeding or investigation is pending or about to be instituted, the person knowingly or purposely attempts to or does

(a) induce or otherwise cause a witness or informant to testify or inform falsely,

(b) withhold any testimony, information, document or other material evidence,

(c) cause a witness to elude legal process summoning the witness to testify or supply evidence, or

(d) alter, destroy, conceal, or remove any record, document, or other physical object in order to impair its availability or reliability in such proceeding or investigation.

(2) Tampering is a Class D offense over which the Tribes have exclusive jurisdiction.

**2-1-912. Impersonating a Tribal public servant.** (1) A person commits the offense of impersonating a Tribal public servant by knowingly and purposely pretending to hold a position as a public servant of the Tribes as a means of inducing another to submit to the person's authority or otherwise act in reliance upon such representation.

(2) Impersonating a Tribal public servant is a Class B offense over which the Tribes have exclusive jurisdiction.

**2-1-913. False claims to Tribal agencies.** (1) A person commits an offense under this section if he or she purposely and knowingly presents for allowance or for payment a claim already paid by another or a false or fraudulent claim, bill, account, voucher, or writing to a Tribal agency, Tribal public servant, or to a contractor authorized to allow of pay claims presented to a Tribal agency, if genuine.

(2) A false claim is a Class D offense over which the Tribes have exclusive jurisdiction, except as may be provided otherwise by federal law.

**2-1-914. Resisting arrest.** (1) A person commits the offense of resisting arrest by knowingly preventing or attempting to prevent a law enforcement officer from making an arrest by:

(a) using or threatening to use physical force or violence against the law enforcement officer or another;  
or

(b) using any other means which creates a risk of causing physical injury to a law enforcement or another.

(2) It is no defense to a charge of resisting arrest that the arrest was unlawful, provided the law enforcement officer was acting under the color of his or her official authority.

(3) Resisting arrest is a Class D offense over which the Tribes have exclusive jurisdiction.

**2-1-915. Obstructing a law enforcement officer or other Tribal public servant.** (1) A person commits the offense of obstructing a law enforcement officer or other Tribal public servant if he or she knowingly obstructs, impairs, or hinders the enforcement of the criminal law, the preservation of the peace, or the performance of a Tribal governmental function.

(2) It is no defense to a charge under this section that the law enforcement officer or other Tribal public servant was acting in an illegal manner, provided he was acting under the color of his or her official authority.

(3) Obstructing a law enforcement officer or other Tribal public servant is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-916. Obstructing justice.** (1) For the purpose of this section, "an offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a Tribal offense.

(2) A person commits the offense of obstructing justice if, knowing another person is an offender, he or she purposely:

(a) harbors or conceals an offender;

(b) warns an offender of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law;

(c) provides an offender with money, transportation, a weapon, disguise, or other means of avoiding discovery or apprehension;

(d) prevents or obstructs, by means of force, deception, or intimidation, anyone from performing an act that might aid in the discovery or apprehension of an offender;



(e) supports, by act of concealment, alteration, or destruction, any physical evidence that might aid in the discovery or apprehension of an offender; or

(f) aids an offender who is subject to detention to escape from such detention.

(3) Obstructing justice is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-917. Violation of a protective order.** (1) A person to whom a protective order is directed commits the offense of violating a protective order by, with knowledge of the order, knowingly or purposely engaging in any conduct proscribed by the protective order or by failing to meet any requirement of the order.

(2) The person requesting the protective order or for whose protection it was issued may not be charged with violation of this section.

(3) The person against whom the protective order is directed may not be convicted of a violation of the order if the person who requested the protective order initiates the contact.

(4) Violation of a protective order is a Class D offense over which the Tribes have exclusive jurisdiction, except as provided by 2-1-701 concerning multiple violations of a protective order involving a family or household member. *(Rev. 1-27-00) (Rev. 3-21-13)*

**2-1-918. Escape.** (1) A person commits the offense of escape by:

(a) unlawfully removing herself or himself from official detention or failing to return to detention following temporary leave granted for a specific purpose or limited time period;

(b) aiding another person to escape from official detention; or

(c) knowingly procuring, making, possessing or providing a person in official detention with anything which may facilitate escape.

(2) Escape is a Class D offense over which the Tribes have exclusive jurisdiction.

**2-1-919. Providing contraband.** (1) A person commits the offense of providing contraband by knowingly providing a person in official Tribal detention with alcoholic beverages, implements of escape or any other items or substances which the person knows are unlawful or improper for the detainee to possess.

(2) Providing contraband is a Class D offense over which the Tribes have exclusive jurisdiction.

**2-1-920. Bail-jumping.** (1) A person commits the offense of bail-jumping if, having been released on bail, or on the person's own recognizance, by Tribal Court order or other lawful Tribal authority upon condition that the person subsequently appear on a charge of an offense, the person fails, without just cause, to appear in person or by counsel at the time and place lawfully designated for the person's appearance.

(2) Bail-jumping constitutes a Class D offense over which the Tribes have exclusive jurisdiction.

**2-1-921. Criminal contempt.** (1) A person commits the offense of criminal contempt by knowingly engaging in any of the following conduct:

- (a) disorderly, contemptuous, or insolent behavior committed during the sitting of the Tribal Court or the Court of Appeals, in the immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due its authority;
  - (b) breaching the peace by causing a disturbance directly tending to interrupt the proceedings of the Tribal Court or the Court of Appeals;
  - (c) purposely disobeying or refusing any lawful process or other mandate of Tribal Court or the Court of Appeals;
  - (d) unlawfully refusing to be sworn as a witness in any Tribal Court proceeding or, after being sworn, refusing to answer any legal and proper questions;
  - (e) purposely publishing a false or grossly inaccurate report of a Tribal Court proceeding; or
  - (f) purposely failing to obey any mandate, process, or notice relative to serving as a juror.
- (2) Criminal contempt is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-922. Official misconduct.** (1) A Tribal public servant commits the offense of official misconduct when in his or her official capacity he or she commits any of the following acts:

- (a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;
  - (b) knowingly performs an act in his or her official capacity which he or she knows is forbidden by law;
  - (c) with the purpose to obtain advantage for himself or herself or another, performs an act in excess of his or her lawful authority;
  - (d) solicits or knowingly accepts for the performance of any act a fee or reward which he or she knows is not authorized by law.
- (2) Official misconduct is a Class D offense over which the Tribes have exclusive jurisdiction.
- (3) A public servant who has been charged as provided in this section may be suspended from his or her office without pay pending final judgment.

## **Part 10 - Offenses Against Public Order**

**2-1-1001. Disorderly conduct.** (1) A person commits the offense of disorderly conduct by knowingly disturbing the peace of another by:

- (a) knowingly uttering fighting words with a direct tendency to violence, challenging to fight, or fighting;
- (b) making loud or unusual noises;

- (c) using physically threatening, profane, or abusive language;
- (d) discharging firearms, except at a shooting range during established hours of operation;
- (e) obstructing vehicular or pedestrian traffic on a public way without good cause;
- (f) rendering the free entrance or exit to public or private places impassable without good cause; or
- (g) disturbing or disrupting any lawful assembly or public meeting after having been asked to cease such disturbance or disruption or leave the premises by one in authority at the assembly or meeting.

(2) Disorderly conduct is a Class B offense over which the Tribes have exclusive jurisdiction.

**2-1-1002. Riot.** (1) A person commits the offense of riot if he or she purposely disturbs the peace by engaging in an act of violence as part of an assemblage of five or more persons, which act or threat presents a clear and present danger of or results in damage to property or injury to persons.

(2) Riot is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-1003. Public nuisance.** (1) A person commits the offense of public nuisance by knowingly creating, conducting, or maintaining a public nuisance.

(2) "Public nuisance" includes, but is not limited to:

- (a) a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property;
- (b) persons gathering on any premise for the purpose of engaging in unlawful conduct;
- (c) a condition making passage of any public right-of-way, or waters used by the public, dangerous; or
- (d) a person appearing in a public place in an intoxicated condition such that the person is unable to care for himself or herself.

(3) Uses of Reservation lands and waters by Tribal members or the Tribes, whether agricultural operations or otherwise, existing prior to nearby residential or commercial development or population increase, will not be considered a public nuisance.

(4) Public nuisance is a Class A offense over which the Tribes have exclusive jurisdiction which will be handled in Tribal Traffic Court.

**2-1-1004. Creating a hazard.** (1) A person commits the offense of creating a hazard by knowingly:

- (a) discarding in any place where it might attract children a container having a compartment with a capacity of more than 1.5 cubic feet and an attached door or lid that automatically locks or otherwise securely fastens when closed and cannot be easily opened from the inside;

(b) maintaining any property under her or his control in a manner which could attract children and which constitutes a potential health or safety hazard to the children, without taking proper steps to restrict access to the area;

(c) failing to cover or fence with suitable protective materials a well, cistern, cesspool, mine shaft, or other hole of a depth of 4 or more feet and a width of 12 or more inches located upon property in the person's possession; or

(d) being the owner or otherwise having possession of any property owning or possessing any property upon which industrial, construction, or farming equipment is located and allowing the equipment to be maintained or operated in an unsafe manner or condition.

(2) Creating a hazard is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-1005. Illegal possession or use of liquor.**

(1) A person commits the offense of illegal possession or use of liquor by knowingly and purposely:

(a) manufacturing, purchasing, transporting, or possessing any intoxicating beverage for the purpose of sale or resale, trade or barter, without appropriate licenses or permits, or in violation of any Tribal law regulating the possession and use of intoxicants;

(b) possessing, using, or being under the influence of any intoxicating beverage while under 21 years of age; or

(c) consuming, possessing, or transporting any intoxicating beverage within or into designated pow-wow grounds during any pow-wow duly authorized by the Tribal Council.

(2) A first or second offense of illegal possession or use of liquor under (1)(b) above is a Class A offense over which the Tribes have exclusive jurisdiction which shall be referred to Tribal Traffic Court.

(3) A third or subsequent offense of illegal possession or use of liquor under (1)(b) above is a Class C offense over which the Tribes have exclusive jurisdiction which shall be referred to Tribal Criminal Court and shall require a chemical dependency assessment and completion of the assessment recommendations.

(4) An offense of illegal possession or use of liquor under (1)(a) or (1)(c) above is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-1006. Harming a police dog.** (1) A person commits the offense of harming a police dog if he or she purposely or knowingly shoots, kills, or otherwise injures a police dog being used by a Tribal law enforcement officer in discharging or attempting to discharge any legal duty in a reasonable and proper manner.

(2) Harming a police dog is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-1007. Causing animals to fight.** (1) A person commits the offense of causing animals to fight by:

- (a) owning, possessing, keeping, or training any animal with the intent that such animal fight or engage in an exhibition of fighting with another animal;
- (b) allowing or causing any animal to fight with another animal or causing any animal to menace or injure another animal for the purpose of sport, amusement, or gain;
- (c) knowingly permitting any act in violation of subsection (1)(a) or (1) (b) to take place on any premises under the person's charge or control, or aids or abets any such act; or
- (d) participating in any exhibition in which animals are fighting for the purpose of sport, amusement, or gain.

2) Causing animals to fight is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-1008. Cruelty to animals.** (1) A person commits the offense of cruelty to animals if, without justification, the person knowingly or negligently subjects an animal to mistreatment or neglect by:

- (a) overworking, beating, tormenting, injuring, or killing any animal;
- (b) carrying any animal in a cruel manner;
- (c) failing to provide an animal in the person's custody with proper food, drink, or shelter; or
- (d) abandoning any helpless animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure, or become a public charge.

(2) A first offense of cruelty to animals is a Class B offense over which the Tribes have exclusive jurisdiction which will be referred to Tribal Traffic Court.

(3) A second or subsequent offense of cruelty to animals is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

(4) Sentencing may also include:

- (a) Forfeiture of the animals;
- (b) Payment of any vet costs;
- (c) Prohibition or limitation on future ownership of animals; and
- (d) Treating, boarding or disposing of the animals.

(5) Nothing in this section prohibits:

- (a) a person from humanely destroying an animal for just cause; or
- (b) the use of commonly accepted agricultural and livestock practices on livestock.

**2-1-1009. Maintaining a Vicious Dog.** (1) It is a criminal offense to maintain a vicious dog.

(2) A vicious dog is defined as one which bites, attempts to bite, harasses, or chases any human being without provocation or which harasses, chases, bites, or attempts to bite livestock or any domestic pet.

(3) A Law Enforcement Officer may restrain, quarantine, or otherwise control any vicious dog upon a reasonable suspicion that there was a violation of this section.

(4) Strict Liability is imposed under this section.

(5) Maintaining a Vicious Dog is a Class A offense over which the Tribes have exclusive jurisdiction.- which shall be referred to Tribal Traffic Court. In addition to the penalties allowed under this code, the Court shall order a person convicted of Maintaining a Vicious Dog to make restitution for any expense incurred by the Tribes for controlling the vicious dog under subsection (3) and may order the vicious dog destroyed.

### **Part 11 - Communications Offenses**

**2-1-1101. Promoting obscene acts or materials.** (1) A person commits the offense of promoting obscene acts or materials when, with knowledge of the obscene nature thereof, he or she purposely or knowingly:

(a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under the age of 18;

(b) presents or directs an obscene play, dance, or other performance, or participates in that portion thereof which makes it obscene, to anyone under the age of 18;

(c) publishes, exhibits, or otherwise makes available anything obscene to anyone under the age of 18;

(d) performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of 18;

(e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of 18;

(f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if:

(a)(i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;

(ii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and

(b) taken as a whole, the material

- (i) applying contemporary community standards, appeals to the prurient interest in sex;
  - (ii) portrays conduct described in subsection (2)(a) in a patently offensive way; and
  - (iii) lacks serious literary, artistic, political, or scientific value.
- (3) In any prosecution for an offense under this section, evidence shall be admissible to show:
- (a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;
  - (b) the artistic, literary, scientific, educational, or other merits of the material;
  - (c) the degree of public acceptance of the material in the community;
  - (d) appeal to prurient interest or absence thereof in advertising or other promotion of the material; or
  - (e) the purpose of the author, creator, publisher, or disseminator.
- (4) Promoting obscene acts or materials is a Class D offense over which the Tribes have exclusive jurisdiction.

**2–1–1102. Public display or dissemination of obscene material to minors.** (1) A person having custody, control or supervision of any commercial establishment or newsstand may not knowingly or purposely:

- (a) display obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material; provided, however, that a person is considered not to have displayed obscene material to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor;
- (b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material; or
- (c) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors.

(2) A person does not violate this section if:

- (a) he or she had reasonable cause to believe the minor was 18 years of age. "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, or other official or apparently official card or document purporting to establish that the person is 18 years of age;
- (b) the person is, or is acting as, an employee of a public school, college, or university or a retail outlet affiliated with the serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;

(c) the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;

(d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or

(e) the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance.

(3) Public display or dissemination of obscene material to minors is a Class D offense over which the Tribes have exclusive jurisdiction.

**2-1-1103. Violation of privacy in communications.** (1) A person commits the offense of violating privacy in communication who knowingly or purposely:

(a) communicates with any person by telephone and uses any obscene, lewd or profane language, suggests any lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of any person, intending that the communication terrify, intimidate, threaten, harass, annoy, or offend the person;

(b) uses a telephone to extort anything of value from any person or to disturb by repeated telephone calls the peace, quiet, or right of privacy of any person at the place where the telephone call or calls are received;

(c) records or causes to be recorded any conversation by use of hidden electronic or mechanical devices which reproduce conversation without the knowledge of all parties to the conversation, unless

(i) the transcribing or recording is carried out pursuant to Sections 2-2-211 through 2-2-214 of this Code.

(ii) the recording is of a person speaking at a public meeting, or

(iii) the person making the recording has given warning that the conversation is being recorded, or

(d) reading or disclosing any communications addressed to another person without the permission of such person, unless directed by a court order to read or disclose such communications.

(2) Violating privacy in communications is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-1104. Bribery in contests.** (1) A person commits the offense of bribery in contests if he or she purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's failure to use his or her best efforts in connection with any professional or amateur athletic contest, sporting event, or exhibition; or

(b) any benefit as consideration for a violation of a known duty as a person participating in, officiating, or connected with any professional or amateur athletic contest, sporting event, or exhibition.



(2) Bribery in contests is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

### **Part 12 - Weapons Offenses**

**2-1-1201. Carrying concealed weapon.** (1) A person commits the offense of carrying a concealed weapon by knowingly carrying or bearing a dirk, dagger, pistol, revolver, slingshot, sword cane, billy club, knuckles made of any metal or other hard substance, knife having a blade at least 4 inches long, non-safety type razor, or any other deadly weapon which is wholly or partially covered by the clothing or wearing apparel of the person carrying the weapon.

(2) Subsection (1) does not apply to:

- (a) any law enforcement officer of the Tribes;
- (b) a person authorized by a judge of the Tribal Court to carry a concealed weapon;
- (c) a person permitted under state law to carry a concealed weapon; or
- (d) the carrying of arms on one's own premises or at one's home or place of business.

(3) Carrying a concealed weapon is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-1202. Possession of deadly weapon by prisoner.** Every prisoner committed to the Tribal jail, who while at the jail, while being conveyed to or from the jail, or while under the custody of prison or jail officers, or employees, purposely or knowingly possesses or carries upon his person or has under his custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of metal or hard substance, knife, razor not including a safety razor, or other deadly weapon is guilty of a Class D offense over which the Tribes have exclusive jurisdiction.

**2-1-1203. Carrying a concealed weapon while under the influence.** 1) A person commits the offense of carrying a concealed weapon while under the influence if he or she purposely or knowingly carries a concealed weapon while under the influence of an intoxicating substance. For the purpose of this statute "under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a weapon is impaired. It is not a defense that the person is permitted to carry a concealed weapon under Section 2-1-1201(2).

(2) Carrying a concealed weapon while under the influence is a Class D offense over which the Tribes have exclusive jurisdiction. *(Rev. 3-21-13)*

**2-1-1204. Carrying concealed weapon in a prohibited place.** (1) A person commits the offense of carrying a concealed weapon in a prohibited place if he or she purposely or knowingly carries a concealed weapon in:

- (a) a building owned or leased by the federal, state, local government, or Tribes or any governmental entity;
- (b) a bank, credit union, savings and loan institution, or similar institution; or

(c) a commercial establishment in which alcoholic beverages are sold, dispensed, and consumed.

(2) It is not a defense that the person had the permission of the Tribal Court or a state permit to carry a concealed weapon.

(3) Carrying a concealed weapon in a prohibited place is a Class D offense over which the Tribes have exclusive jurisdiction.

**2-1-1205. Carrying or bearing a switchblade knife.** (1) Every person who knowingly carries or bears upon his or her person, who carries or bears within or on a motor vehicle or other means of conveyance operated by him or her or who owns, possesses, uses, stores, gives away, sells, or offers for sale a switchblade knife shall be guilty of a Class C offense.

(2) A bona fide collector whose collection is registered with the Tribal Police is exempted from the provisions of this section.

(3) For the purpose of this section, a switchblade knife is defined as any knife which has a blade 1 and ½ inches long or longer which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife.

(4) Carrying or bearing a switchblade knife is a Class C offense over which the Tribes have exclusive jurisdiction and which will be heard in Tribal Traffic Court. *(Rev. 1-27-00)*

**2-1-1206. Reckless or malicious use of explosives.** (1) Every person who shall recklessly or maliciously use, handle, or have in his or her possession any explosive substance whereby any human being is intimidated, terrified, or endangered shall be guilty of a Class C offense.

(2) "Explosive" means any chemical compound that is commonly used or intended for the purpose of producing a destructive effect and which contains compounds or ingredients in such proportions, quantities, or packing that ignition by fire, friction, concussion, percussion, or a detonator of any part of the compound or mixture may cause a destructive effect on surrounding objects or persons.

(3) Reckless or malicious use of explosives is a Class C offense over which the Tribes have exclusive jurisdiction.

**2-1-1207. Possession of a destructive device.** (1) A person who, with the purpose to commit a Class E offense, has in his or her possession any destructive device on a public street or highway, in or near a theater, hall, school, college, church, hotel, Tribally-owned building, or any other public building, or private habitation, in, on or near any aircraft, railway passenger train, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of the offense of possession of a destructive device.

(2) "Destructive device" as used in this section includes, but is not limited to the following weapons:

(a) a projectile containing an explosive or incendiary material or any other similar chemical substance, including but not limited to that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns;

(b) a bomb, grenade, explosive missile, or similar device or a launching device therefor;

(c) a weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefor, other than a shotgun or shotgun ammunition;

(d) a rocket, rocket-propelled projectile, or similar device of a diameter greater than .60 inch or a launching device therefor and a rocket, rocket-propelled projectile or similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes; or

(e) a breakable container which contains a flammable liquid with a flash point of 150 degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(3) Possession of a destructive device is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-1208. Possession of explosives.** (1) A person commits the offense of possession of explosives if he or she possesses, manufactures, transports, buys, or sells an explosive compound, flammable material, or timing, detonating, or similar device for use with an explosive compound or incendiary device and

(a) has the purpose to use such explosive material or device to commit an offense, or

(b) knows that another has the purpose to use such explosive material or device to commit an offense.

(2) Possession of explosives is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-1209. Possession of a silencer.** (1) A person commits the offense of possession of a silencer if he or she possesses, manufactures, transports, buys, or sells a silencer and has the purpose to use it to commit an offense or knows that another person has such a purpose.

(2) Possession of a silencer is a Class E offense over which the Tribes have concurrent jurisdiction with the State of Montana.

**2-1-1210. Possession of a sawed-off firearm.** (1) A person commits the offense of possession of a sawed-off firearm if he or she knowingly possesses a rifle or shotgun that when originally manufactured had a barrel length of:

(a) 16 inches or more and an overall length of 26 inches or more in the case of a rifle; or

(b) 18 inches or more and an overall length of 26 inches or more in the case of a shotgun; and

(c) the firearm has been modified in a manner so that the barrel length, overall length, or both are less than specified in subsection (1)(a) or (1)(b).

(2) The barrel length is the distance from the muzzle to the rear-most point of the chamber.

(3) This section does not apply to firearms possessed:

- (a) for educational or scientific purposes in which the firearms are incapable of being fired;
  - (b) by a person who has a valid federal tax stamp for the firearm, issued by the Bureau of Alcohol, Tobacco, and Firearms; or
  - (c) by a bona fide collector of firearms if the firearm is a muzzle loading, sawed-off firearm manufactured before 1900.
- (4) Possession of a sawed-off firearm is a Class D offense over which the Tribes have exclusive jurisdiction.

**2-1-1211. Firing firearms.** (1) Except as provided in subsections (2) and (3), every person who purposely shoots or fires off a gun, pistol, or any other firearm within the limits of any town, city, Tribal housing or community area, or any private enclosure which contains a dwelling house is guilty of a Class A offense over which the Tribes have exclusive jurisdiction and which will be heard in Tribal Traffic Court.

(2) Firearms may be discharged at an indoor or outdoor rifle, pistol, or shotgun shooting range located within the limits of a town, city, Tribal housing or community area, or an enclosure that contains a private dwelling.

(3) Subsection (1) does not apply if the discharge of a firearm is justifiable under Part 3 of this Chapter.

**2-1-1212. Use of firearms by children under 14 years.** (1) Unless a child is accompanied by a person having charge or custody of the child or under the supervision of a qualified firearms safety instructor who has been authorized by the parent or guardian, it is unlawful for a parent, guardian, or other person having charge of custody of a minor child under the age of 14 years to permit the minor child to carry or use in public any firearms.

(2) "Public places" means any place to which the public, Tribal licensees or invitees, or any group of substantial size has access.

(3) Any parent, guardian, or other person having charge or custody of a minor child under the age of 14 years violating the provisions of this section is guilty of a Class A offense over which the Tribes have exclusive jurisdiction and which will be heard in Tribal Traffic Court.

### **Part 13 - Traffic Violations**

**2-1-1301. Violation of Montana traffic laws.** (1) A person commits a traffic violation by violating any law contained in the following sections of the Montana Code Annotated:

(a) Title 61:

Chapter 1	in entirety
Chapter 3	Part 3, Section 61-3-601
Chapter 5	in entirety

Chapter 6	Sections 61–6–103, 133, 151 and Part 3
Chapter 7	in entirety, except Sections 61–7–115,–116, and–117
Chapter 8	in entirety, except Parts 1 and 8
Chapter 9	in entirety
Chapter 13	in entirety

(b) Sections 23–2–601, 631, and 641.

(2) Subsection (1) of this section is subject to the following conditions:

(a) all amendments to the above–mentioned provisions of the Montana Code Annotated shall operate to amend this Code until Tribal law provides otherwise.

(b) nothing in this section shall diminish the authority of the Tribal Council to delete, amend, or supplement the above–mentioned provisions of the Montana Code Annotated;

(c) "county" or "city" jail as used in the Montana Code shall be construed to mean Tribal jail or other jail authorized by the Tribal Council to receive prisoners;

(d) references to State law enforcement officials used in the Montana Code shall be construed to mean Tribal law enforcement officers;

(e) references to State department of public health and human services used in the Montana Code shall be construed to refer to either the Montana department of public health and human services, or Tribal Health and Human Services Department;

(f) references to diagnosis and patient placement rules adopted by the department of public health and human services shall be construed to mean the rules of the relevant department referenced in the (e) above;

(g) references to justice court or state district court in the Montana Code shall be construed to mean Tribal Court.

(3) The penalties imposed by the Tribal Court for traffic violations shall be those set forth in the above referenced sections of the Montana Code, except that no Tribal Court penalty may exceed one year labor or jail time or a fine of \$5,000, or both.

**2–1–1302. Tribal Traffic Court.** Any violation of Title 61 of the Montana Code Annotated which does not carry the possibility of a jail sentence shall be heard in Tribal Traffic Court.

**2–1–1303. Tribal Driver Improvement Program.** Nothing in this Part shall prohibit the Tribes from developing and instituting their own driver improvement program to allow for reinstatement of driving privileges for Tribal members.

## Part 14 - Offenses Involving Dangerous Drugs

**2-1-1401. Drug violations.** (1) A person commits a drug violation by violating any provision in Chapter 9 of Title 45 of the Montana Code Annotated.

(2) The Tribes will have exclusive jurisdiction over any misdemeanor offense in Chapter 9 of Title 45 of the Montana Code Annotated.

(3) Any offense classified as a misdemeanor under subsection (2) above is a Class D offense over which the Tribes have exclusive jurisdiction.

(4) The Tribes and the State of Montana shall have concurrent jurisdiction over any felony offense in Chapter 9 of Title 45 of the Montana Code Annotated and which shall be classified as a Class E offense.

**2-1-1402. Possession, manufacture, delivery, or advertisement of drug paraphernalia.** (1) "Drug paraphernalia" means all equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a dangerous drug.

(2) In determining whether an object is drug paraphernalia, the Tribal Court shall consider, in addition to all other logically relevant factors, the following:

(a) statements by an owner or by anyone in control of the object concerning its use;

(b) prior convictions, if any of an owner or of anyone in control of the object, under any state or federal law relating to any controlled substance or any dangerous drug;

(c) the proximity of the object, in time and space, to a direct violation of this section, although lack of proximity does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia;

(d) the existence of any residue of dangerous drugs on the object;

(e) direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this section;

(f) instructions, oral or written, provided with the object concerning its use;

(g) descriptive materials accompanying the object which explain or depict its use;

(h) national and local advertising concerning its use;

(i) the manner in which the object is displayed for sale;

(j) whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a dealer of tobacco products;

(k) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(l) the existence and scope of legitimate uses for the object in the community; and

(m) expert testimony concerning its use.

(3) A person commits the offense of criminal possession, manufacture, delivery, or advertisement of drug paraphernalia if he or she knowingly

(a) uses or possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grown, harvest, manufacture, compound, convert, produce process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug;

(b) delivers, possesses with intent to deliver, or manufactures with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug;

(c) delivers drug paraphernalia to a person under 18 years of age, who is at least 3 years his or her junior; or

(d) places in any newspaper, magazine, handbill, or other publication any advertisement knowing or under circumstances where one reasonable should know that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(4) A violation of subsection (3)(a),(b),(c), or (d) is a Class C offense over which the Tribes have exclusive jurisdiction.

(5) Practitioners and agents acting in the course of a professional practice are exempt from this section.

## TITLE II

### CHAPTER 2 - CRIMINAL PROCEDURE

#### Part 1 - General Preliminary Provisions

**2-2-101. Purpose and construction.** The provisions of this chapter shall be construed in accordance with Tribal custom as well as to achieve the following general goals:

- (1) to provide for the just determination of every criminal proceeding;
- (2) to protect the rights of individuals; and
- (3) to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

**2-2-102. General definitions.** Unless otherwise specified in a particular section, the following definitions shall apply to this chapter:

- (1) "Arraignment" means the formal act of calling a defendant into open court in order that the defendant may enter a plea on the charge(s) against her or him.
- (2) "Arrest" means formally taking a person into custody in accordance with the manner authorized by law.
- (3) "Bail" means the security given, in the form of cash, stocks, bonds, real property, or any other form of approved collateral, for the primary purpose of insuring the presence of the defendant in a pending criminal proceeding.
- (4) "Charge" means a written statement presented to the Court accusing a person of commission of an offense, and includes a complaint or information.
- (5) "Citation" means a written direction that is issued by a law enforcement officer and that requests a person to appear before the court at a stated time and place to answer a charge for the alleged commission of an offense.
- (6) "Conditional release" means releasing a defendant from lawful custody, pending a criminal proceeding, after placing specific restrictions or regulations on the activities and associations of the defendant.
- (7) "Contents", when used with respect to oral, wire, radio, television, satellite, or computer communications, means not only the actual words or substances of the communication, but any information concerning the implied or intended meaning of the communication, the existence of the communication, and the identities of the parties to the communication as well.
- (8) "Contraband" means any property which is unlawful in itself, used for any unlawful purpose, or used in connection with or derived from any unlawful property or transaction.
- (9) "Conviction" means a judgment or sentence entered upon a plea of guilty or no contest, or upon a verdict or finding of a defendant's guilt rendered by a legally constituted jury or by a court of competent



jurisdiction authorized to try the case without a jury. Once a conviction has been expunged, it is no longer considered a conviction under Tribal law.

(10) "Coroner" means a law enforcement officer, or other person designated by the Tribal Council, to inquire into the causes and circumstances of any death occurring due to violence or unexplainable causes.

(11) "Counsel" means an attorney or a Tribal Advocate.

(12) "Defendant" means a person who has been charged by the Tribes of allegedly violating a Tribal law and is appearing before the Tribal Court as a result of the charge or charges.

(13) "Elder" or "older person" means a Tribal member or other individual residing on the Reservation who is

(a) 60 years of age or older;

(b) determined by the Court to be an elder, or

(c) at least 45 years of age and unable to protect himself or herself from abuse, neglect, or exploitation because of a mental disorder or physical impairment or because of frailties or dependencies brought about by age or disease or alcoholism.

(14) "Family member" or "household member" means a spouse, former spouse, person related by blood or marriage, person residing with the offender due to adoption or foster placement, any person currently cohabiting with the offender at any time during the year immediately preceding the commission of any alleged abuse.

(15) "Frisk" means an external patting of a person's outer clothing.

(16) "Included offense" means an offense that:

(a) is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged; or

(c) differs from the offense charged only in the respect that a less serious injury or risk to the same person, property, or Tribal interest or a lesser kind of culpability suffices to establish its commission.

(17) "Indian" means a person who is enrolled in a federally recognized Indian tribe or who is recognized as a Canadian Indian.

(18) "Judgment" means an adjudication by the Tribal Court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, the judgment includes the sentence pronounced by the Court.

(19) "Law enforcement officer" means any person who by virtue of his or her office or employment by the Tribes or by another government is vested by law with a duty to

(a) enforce Tribal or federal civil regulatory laws,

(b) maintain public order, or

(c) make arrests for offenses while acting within the scope of his or her authority.

(20) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. It does not include an abnormality manifested only by repeated criminal or other antisocial behavior.

(21) "Notice to appear" means a written document, issued by a clerk of the Tribal Court or a law enforcement officer, requesting the named person to appear before a judge at the stated time and date in Tribal Court to answer a charge for the alleged commission of an offense.

(22) "Offender" means a person who has been convicted of an offense enumerated in Chapter 1 of this Title.

(23) "Offense" means a violation of a penal statute contained in the Code of Criminal Offenses, Chapter 1, Title II, of the CSKT Laws, Codified.

(24) "Parole" means the release from jail of a prisoner by the Court prior to the expiration of the prisoner's term, subject to any conditions imposed by the Court and the supervision of the Tribal Probation Officer.

(25) "Personal recognizance" means the release from lawful custody of a defendant upon his or her promise to appear in court at all appropriate times.

(26) "Probation" means the release by the Tribal Court without imprisonment, of an offender a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the Tribal Court, and subject to supervision by the Tribal Probation Officer or his or her designee upon direction of the Court.

(27) "Sentence" means the punishment imposed on an offender by the court and may include incarceration, labor on Tribally-owned property while incarcerated, restitution, or any combination thereof, together with participation in any rehabilitative programs ordered by the court.

(28) "Statement" means

(a) a writing signed or otherwise adopted or approved by a person;

(b) a mechanical, electronic, or other recording of a person's oral communications or a transcript thereof;  
or

(c) a writing containing a verbatim record as a summary of a person's oral communication(s).

(29) "Subpoena" means a court order commanding a person to:

(a) appear at a certain time and place to give testimony upon a certain matter; or

(b) produce specific books, records, papers, documents, or other objects as may be necessary and proper;  
or

(c) do both (a) and (b).

(30) "Summons" means a written order issued by the court that commands a person to appear before the court at a stated time and place to answer a charge for the offense set forth in the order.

(31) "Temporary roadblock" means any structure, device, or other method used by law enforcement officers to control the flow of traffic through a point on a highway or road whereby all vehicles may be slowed or stopped.

(32) "Witness" means a person whose testimony is desired in a criminal action, prosecution or proceeding.

**2-2-103. Criminal jurisdiction.** (1) An Indian defendant is subject to prosecution in Tribal Court for any offense enumerated in Chapter 1 of this Title or another Tribal statute committed totally or partially within the exterior boundaries of the Flathead Reservation.

(2) An offense is committed partially within the Flathead Reservation if either the conduct which is an element of the offense or the result which is an element occurs within the exterior boundaries of the Flathead Reservation.

(3) An offense based on an omission to perform a duty imposed by Tribal law is committed within the exterior boundaries of the Flathead Reservation, regardless of the location of the defendant at the time of the omission.

**2-2-104. Rights of defendant.** (1) In all criminal proceedings, the defendant shall have the following rights:

- (a) to be released from custody pending trial upon payment of reasonable bail;
  - (b) to appear and defend in person, by Tribal Defender, by tribal member, or by private counsel obtained at defendant's own expense, as provided in Section 2-2-504.
  - (c) to be informed of the nature of the charges pending against her or him and to have a copy of those charges;
  - (d) to confront and cross examine all prosecution or hostile witnesses;
  - (e) to compel by subpoena:
    - (i) the attendance of any witnesses necessary to defend against the charges; and
    - (ii) the production of any books, records, documents, or other things necessary to defend against the charges;
  - (f) to have a speedy public trial by judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant, as provided in Section 2-2-1001;
  - (g) to appeal any final decision of the Tribal Court to the Tribal Court of Appeals;
  - (h) not to be twice put in jeopardy by the Tribal Court for the same offense; and
  - (i) not to be required to testify.
- (2) No inference may be drawn from a defendant's exercise of the right not to testify.

**2–2–105. Subsequent prosecutions.** (1) A subsequent prosecution will not constitute double jeopardy when the previous prosecution was properly terminated under any of the following circumstances:

- (a) the defendant consents to the termination or waives, by motion an appeal upon a judgment of conviction or otherwise, the right to object to the termination of the prosecution;
  - (b) the Tribal Court finds that a termination, other than by acquittal, is necessary because:
    - (i) it is impossible to proceed with the trial in conformity with the law;
    - (ii) there is a legal defect in the proceeding that would make any judgment entered upon a verdict reversible as a matter of law;
    - (iii) prejudicial conduct, in or outside the courtroom, makes it impossible to proceed with the trial without injustice to either the defendant or the Tribes;
    - (iv) the jury cannot agree upon a verdict; or
    - (v) a false statement of a juror on voir dire prevents a fair trial;
  - (c) the former prosecution occurred in a court which lacked jurisdiction over the defendant or the offense;
  - (d) the subsequent prosecution was for an offense which was not completed when the former prosecution began; or
  - (e) there was a transfer of jurisdiction to another authority.
- (2) The following actions will not constitute an acquittal of the same offense if the complaint was:
- (a) dismissed for insufficiency in form or substance;
  - (b) dismissed without prejudice upon a pretrial motion; or
  - (c) discharged for want of prosecution without a judgment of acquittal.

## **Part 2 - Investigative Procedures**

**2–2–201. Investigative subpoenas.** (1) Whenever the Tribal Prosecutor has a duty to investigate alleged unlawful activity, a judge may cause a subpoena to be issued commanding a specified person to appear before the Tribal Prosecutor or a designated agent of the Prosecutor and give testimony and produce such books, records, papers, documents, and other objects as may be necessary and proper to the investigation.

(2) No person subpoenaed under this provision is required to give testimony or produce any evidence which may incriminate her or him, unless granted immunity.

(3) An investigative subpoena may only be issued by a judge when supported by an affidavit of the Prosecutor sufficient to show that the administration of justice requires the testimony or information being sought.

**2-2-202. Relief from improper subpoena.** A person aggrieved by a subpoena issued pursuant to this part may, within a reasonable time, file a motion to dismiss the subpoena and, in the case of a subpoena duces tecum, to limit its scope. The motion must be granted if the subpoena was improperly issued or, in the case of a subpoena duces tecum, if it is overly broad in its scope.

**2-2-203. Conduct of investigative hearing.** (1) Before a judge, the prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness is indigent as defined in Section 1-2-402, the witness entitled to representation by the Tribal Defenders Office. Failure to obey, without just cause, a subpoena served under this part is punishable for contempt of court.

(2) Proceedings conducted under this part are secret except to the extent that they supply probable cause for arresting or charging a defendant in a subsequent criminal action or are admissible in a later criminal trial. A person who divulges the contents of the Prosecutor's affidavit or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part.

**2-2-204. Self-incrimination -- immunity.** (1) No person subpoenaed to give testimony pursuant to this part may be required to make a statement or to produce evidence that may be personally incriminating.

(2) The prosecutor may, with the approval of the judge who authorized the issuance of the subpoena, grant a person subpoenaed immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from the testimony or evidence against that person in a criminal prosecution.

(3) Nothing in this part prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in the prosecutor's sole discretion, that the best interest of justice would be served by granting immunity.

(4) After being granted immunity, no person may be excused from testifying on the grounds that the testimony may be personally incriminating. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

(5) Nothing in this part requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law.

**2-2-205. Authorization for search and seizure.** A search of a person, object, or place may be made and evidence, contraband, and persons may be seized when a search is made:

(1) by the authority of a search warrant; or

(2) in accordance with federally judicially recognized exceptions to the warrant requirement.

**2–2–206. Scope of search after arrest.** When a lawful arrest is effected, a law enforcement officer may make a reasonable search of the person arrested and the area within such person's immediate presence, without a search warrant, for the purpose of:

- (1) protecting the officer from attack;
- (2) discovering and seizing the fruits of the crime;
- (3) discovering and seizing instruments, articles, or other property which may have been used in the commission of the offense, or which may constitute evidence of the offense, in order to prevent its destruction; or
- (4) preventing the person from escaping.

**2–2–207. Execution of a search warrant.** (1) A "search warrant" is a court order:

- (a) in writing;
  - (b) in the name of the Tribes;
  - (c) signed by a judge;
  - (d) particularly describing the premises, property, place, or person to be searched and the instruments, articles, or items to be seized; and
  - (e) directed to a specific law enforcement officer commanding the officer to search for and seize the person or property designated in the warrant and bring the person or property before a judge.
- (2) Every judge has the authority to issue warrants for the search of persons, premises, and property and the seizure of goods, instruments, articles, or items.
  - (3) Search warrants shall only be executed by law enforcement officers between the hours of 6:00 a.m. and 10:00 p.m., unless the issuing judge otherwise authorizes the warrant to be served anytime day or night.
  - (4) Before entering the premises named in a search warrant, the law enforcement officer shall give appropriate notice of her or his identity, authority and purpose to the person to be searched, or to the person in apparent control of the premises to be searched.
  - (5) Before undertaking any search or seizure pursuant to the warrant, the executing law enforcement officer shall read and give a copy of the original or duplicate original warrant to the person to be searched, or to the person in apparent control of the premises to be searched. If the premises are unoccupied or there is no one in apparent control, the law enforcement officer shall leave a copy of the warrant suitably affixed to the premises.
  - (6) If the warrant is executed, a duplicate copy and a receipt for all articles taken shall be left with any person at the place from which any items were seized. The inventory of the items shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the applicant for the warrant.

(7) Failure to give or leave a receipt of all items seized shall not render the seized property inadmissible at any subsequent trial.

(8) Only reasonable and necessary force may be used to execute a search warrant.

(9) The executing officer shall return the warrant to the Tribal Court within the time limit shown on the face of the warrant. A warrant is only effective within 10 days of the date of issuance. Warrants not executed within such time limits are void.

(10) A warrant issued under this section shall not be held invalid due to minor irregularities in the warrant which do not substantially affect any rights of a person named in the warrant.

**2-2-208. Grounds for a search warrant.** (1) No search warrant shall issue except upon a written or oral sworn statement of a law enforcement officer or Tribal prosecutor, based upon reliable information and stating facts sufficient to support probable cause to believe that an offense has been committed, particularly describing the place, object or persons to be searched and who or what is to be seized, which sufficiently shows probable cause exists to indicate a search will discover:

(a) stolen property, embezzled property, contraband or otherwise criminally possessed property;

(b) property which has been or is being used to commit a criminal offense; or

(c) property which constitutes evidence of the commission of a criminal offense.

(2) When a warrant is requested based on oral testimony, communicated by telephone or otherwise, a judge shall:

(a) immediately place the requesting person(s) under oath;

(b) record by voice recording device if available, or otherwise make a verbatim record, of the requesting person's statement and certify the accuracy of this record;

(c) enter on an original warrant the grounds indicating probable cause exists to issue a warrant and the scope of the search warrant as requested or as modified;

(d) sign the original warrant and enter on the face of the original warrant the exact time when the warrant was ordered to be issued; and

(e) direct the requesting party to:

(i) prepare a document identical to the original warrant to be known as a duplicate original warrant;

(ii) sign the duplicate original warrant on behalf of the judge; and

(iii) enter the exact time of execution on the face of the duplicate original warrant.

(3) A judge may require the applicant to furnish further testimony or documentary evidence in support of the application for the warrant.

**2-2-209. Scope of search.** (1) The scope of any search shall only include those areas specifically authorized by the warrant and is limited to the least restrictive means reasonably necessary to discover the persons or property specified in the warrant.

(2) Upon discovery of the person or property named in the warrant, the law enforcement officer shall take possession or custody of the person or property and search no further under the authority of the warrant.

(3) If, in the course of an authorized search, the law enforcement officer discovers property not specified in the warrant and the officer has probable cause to believe the discovered property constitutes evidence of the commission of a criminal offense, the officer may also take possession of that property.

**2-2-210. What may be seized with search warrant.** A warrant may be issued under this section to search for and seize any:

(1) evidence;

(2) contraband; or

(3) person for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained.

**2-2-211. Seizures related to controlled substances.** (1) As used in this statute "controlled substance" means any substance designated as a dangerous drug pursuant to Section 2-1-1401.

(2) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of 2-1-1401;

(b) all money, raw materials, products and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of 2-1-1401 except items used or intended for use in connection with quantities of marijuana in amounts of less than 60 grams;

(c) all property that is used or intended for use as a container for anything enumerated in subsection (a) or (b) of this section;

(d) all books, records, research products and materials, including formulas, microfilm, tapes and data, that are used or intended for use in violation of 2-1-1401; and

(e) all drug paraphernalia as defined in 2-1-1402(1).

(3) All property subject to forfeiture under subsection (2) of this section may be seized by an officer under a search warrant. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search warrant issued for another purpose;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the Tribes in a criminal proceeding or a forfeiture proceeding based on this chapter;



(c) the officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the officer has probable cause to believe that the property was used or is intended to be used in violation of 2-1-1401.

(4) Controlled substances that are possessed, transferred, offered for transfer, manufactured, prepared, cultivated, compounded, or processed in violation of 2-1-1401 and that are seized under the provisions of this part are contraband and shall be summarily forfeited to the Tribes. Controlled substances which are seized or come into the possession of the Tribes and the owners of which are unknown are contraband and shall be summarily forfeited to the Tribes.

**2-2-212. Procedures for seizures related to controlled substances.** (1) Property seized pursuant to Section 2-2-211 (2)(a), (c), (d), or (e) is subject to summary forfeiture.

(2) Property seized pursuant to Section 2-2-211 (2)(b) is subject to the following procedure. An officer who seizes such property shall, within 45 days of the seizure, file a petition to institute forfeiture proceedings with the Clerk of the Court. The Clerk shall issue a summons at the request of the petitioner, who shall cause the same to be served upon all owners or claimants of the property as provided by the civil procedures of this Code.

(3) Within 14 days after the service of the petition and summons, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property described in the petition to institute forfeiture proceedings. No extension of the time for filing the answer may be granted and failure to answer within 14 days bars the owner or claimant from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

(a) If a verified answer to the petition is not filed within 14 days after the service of the petition and summons, the court upon motion shall order the property forfeited to the Tribes.

(b) If a verified answer is filed within 14 days, the forfeiture proceeding must be set for hearing without a jury no sooner than 60 days after the answer is filed. Notice of the hearing must be given in the manner provided for service of the petition and summons.

(c) An owner of property who has a verified answer on file may prove that the use of the property occurred without his or her knowledge or consent;

(d) A claimant of a security interest in the property who has a verified answer on file must prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business within the Flathead Reservation under any applicable law relating to financial institutions, loan companies or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner, purchaser, or person in possession of the property when it was brought to such person.

(4) If the court finds that the property was not used for the purpose charged or that the property was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as of the date of the seizure.

(5) If the court finds that the property was used for the purpose charged and that the property was used with the knowledge or consent of the owner, the property shall be disposed of as follows:

(a) If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of this part to forfeit only the right, title, or interest of the owner. If the amount due the secured creditor is less than the value of the property, the property, if it is sold, must be sold at public auction by the Tribal police, or the police may return the property to the secured creditor without an auction.

(b) If no claimant exists and the Law and Order Department wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold.

(c) If a claimant who has presented proper proof of his or her claim exists and the Law and Order Department wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

(6) In making a disposition of property under this part, the court may take any action to protect the rights of innocent persons.

(7) Whenever property is seized, forfeited and sold under the provisions of this part, the net proceeds of the sale must be distributed as follows:

(a) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property,

(b) the remainder, if any, to the Tribal Police Drug Enforcement Fund, and

(c) if the property was seized as a result of the cooperative efforts of the Tribal police and the Mission Mountain Drug Task Force, the remainder, if any, to the funds of the respective agencies in proportion to their involvement.

**2-2-213. Disposition of seized property not associated with a drug-related crime.** (1) A hearing may be requested before the Tribal Court within 10 working days of any seizure to determine the disposition of all property seized by law enforcement officers.

(2) Upon satisfactory proof of ownership, the property shall be delivered to the owner, unless such property is contraband or is to be used as evidence in a pending case.

(3) Non-contraband property taken as evidence shall be returned to the owner after final judgment has been rendered.

(4) Non-contraband property may be returned to the owner prior to final judgment upon application to and at the discretion of the court.

(5) Property confiscated as contraband or taken as evidence and of unknown ownership and unclaimed for six months shall become the property of the Tribes and may be:

- (a) destroyed;
- (b) sold at public auction;
- (c) retained for the benefit of the Tribes;
- (d) lawfully disposed of as ordered by the Tribal Court; or
- (e) otherwise disposed of in accordance with Tribal Law.

**2-2-214. Investigative stop.** In order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person, a law enforcement officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense.

**2-2-215. Stop and frisk.** A law enforcement officer who has lawfully stopped a person under Section 2-2-214:

- (1) may frisk the person and take other reasonable steps necessary for protection if the officer has reasonable cause to suspect that the person is armed and presently dangerous to the officer or another person present;
- (2) may take possession of any object that is discovered during the course of the frisk if the officer has probable cause to believe the object is a deadly weapon;
- (3) may demand the name and present address of the person; and
- (4) shall inform the person, as promptly as possible under the circumstances and in any case before questioning the person, that the officer is a law enforcement officer, that the stop is not an arrest but rather a temporary detention for an investigation, and that upon completion of the investigation, the person will be released if not arrested.

**2-2-216. Roadblocks.** (1) Law enforcement officers may use a temporary roadblock in order to apprehend a person suspected of committing a criminal offense.

(2) Unless exigent circumstances exist justifying a departure from the requirements given below, the minimum requirements to be met by law enforcement officers when establishing roadblocks include:

- (a) establishing a roadblock at a point on the highway clearly visible at a distance of not less than 100 yards in either direction;
- (b) placing a sign on the center line of the highway at the point of the roadblock displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than 50 yards in both directions either in daytime or darkness;
- (c) placing a flashing or intermittent beam of light, which is visible to oncoming traffic for at least 100 yards, on the side of the road at the point of the roadblock; and

(d) placing warning signs, which will attract an oncoming driver's attention, at least 200 yards prior to the roadblock indicating that all vehicles should be prepared to stop.

**2-2-217. Duration of stop.** A stop authorized under Section 2-2-214 and Section 2-2-216 may not last longer than is necessary to effectuate the purpose of the stop.

### **Part 3 - Commencing Prosecution**

**2-2-301. Citation.** Prosecution for all Class A offenses shall be initiated by citation issued by a law enforcement officer upon Probable cause where the officer has attested to the truth of the allegations contained in the citation under oath.

**2-2-302. Complaint.** (1) All criminal prosecutions for Class B, Class C, Class D, and Class E offenses shall be initiated by complaint.

(2) The complaint is a written statement of the essential facts constituting the offense charged.

(3) Application for leave to file a complaint shall be made by a Tribal prosecutor to a judge. An application shall either be by affidavit supported by such evidence as the judge may require or be based on the sworn oral statement of a Tribal prosecutor made on the record. When leave to file a complaint has been granted, a warrant or summons may issue for the defendant's arrest or appearance. The Tribal prosecutor shall file the complaint within 30 days after leave of court is granted.

(4) The complaint shall contain:

(a) the name of the person accused, if known, or a description sufficient to identify the person accused of committing the alleged offense;

(b) the general location where the alleged offense was committed;

(c) the name and code citation of the alleged offense;

(d) a short, concise statement of the specific acts or omissions to act constituting an offense;

(e) the person, if any, against whom the alleged offense was committed, if known, except in the case of a sexual offense or an offense involving a minor;

(f) the date and approximate time of the commission of the alleged offense, if known; and

(g) the signature of a Tribal prosecutor.

(5) No minor omission from or error in the form of the complaint shall be grounds for dismissal unless the defendant is shown to be significantly prejudiced by the omission or error.

(6) A specific Class of an offense need not be included in the complaint. If a factual allegation is contained in the complaint which will supply the information needed to determine the degree of the offense, the Judge may use that information to determine bail. If no factual allegation is made, the

offense shall be considered the least degree possible under the offense charged, for the purposes of setting bail.

(7) The judge issuing the complaint shall examine the complainant under oath to:

(a) ascertain the validity of the complaint;

(b) determine whether probable cause exists to believe that the defendant has committed the crime alleged; and

(c) decide whether an arrest warrant or a summons should issue.

**2-2-303. Amending the complaint.** (1) A complaint may be amended in matters of substance at any time prior to arraignment without leave of the Tribal Court.

(2) A complaint may be amended in matters of substance at any time not less than 5 days before trial with leave of the Tribal Court.

(3) When the prosecution seeks leave to amend a complaint as to a matter of substance, the prosecutor shall file:

(a) a motion for leave to amend stating the nature of the proposed amendment;

(b) a copy of the proposed complaint, as amended; and

(c) an affidavit setting forth facts and circumstances sufficient to show probable cause exists to justify the amended complaint.

(4) If the motion is timely filed and the amended complaint is supported by probable cause, the court shall grant leave to amend.

(5) The defendant shall be arraigned on the amended complaint without unreasonable delay.

(6) The defendant shall be given a reasonable period of time to prepare for trial on the amended complaint.

(7) The court may permit a complaint to be amended as to form at any time before a verdict or a finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

(8) No charge may be dismissed because of a formal defect which does not tend to prejudice any substantial right of the defendant.

**2-2-304. Joinder and severance of offenses and defendants.** (1) Two or more offenses or different statements of the same offense may be charged in the same complaint in separate counts, or alternatively, if the offenses charged are of the same or similar character and are based on the same transactions connected together or constituting parts of a common scheme or plan. Allegations made in one count may be incorporated by reference in another count.

(2) The Tribal Court may order that different offenses or counts set forth in the complaint be tried separately or consolidated.

(3) The prosecution is not required to elect between the different offenses or counts set forth in the complaint and the defendant may be convicted of any number of the offenses charged, except as provided in section 2-2-306. Each offense of which the defendant is convicted must be stated in the verdict or the finding of the Tribal Court.

**2-2-305. Discharge of codefendant.** (1) When two or more persons are included in the same charge, the Tribal Court may, at any time prior to the defendants presenting their cases and upon application of the prosecutor, direct any defendant be discharged so that the defendant may be a witness for the prosecution.

(2) When two or more persons are included in the same complaint and the Tribal Court determines that there is insufficient evidence to prosecute one of the named defendants, the Tribal Court must discharge that defendant before the evidence is closed so that the discharged defendant may be a witness for the codefendant.

**2-2-306. Multiple charges from the same transaction.** (1) When the same transaction may establish the commission of more than one offense, a person charged with conduct may be prosecuted for each offense.

(2) A person may not, however, be convicted of more than one offense if:

- (a) one offense is included in the other;
- (b) one offense consists only of a conspiracy or other form of preparation to commit the other;
- (c) inconsistent findings of fact are required to establish the commission of the offenses;
- (d) the offenses differ only in that one is defined to prohibit a specific instance of conduct; or
- (e) the offense is defined to prohibit a continuing course of conduct, and the defendant's course of conduct was interrupted, unless the law provides that the specific periods of the conduct constitute separate offenses.

#### **Part 4 - Arrest and Related Procedures**

**2-2-401. Method of arrest.** (1) An arrest is made by actually restraining the person to be arrested or by that person voluntarily submitting to the custody of the person making the arrest.

(2) All necessary and reasonable force may be used in making an arrest, but the person arrested shall not be subject to any greater restraint than is necessary to hold or detain the person.

(3) All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest.

**2-2-402. Time of making arrest.** An arrest may be made any day of the week and at any time of the day or night. A person, however, cannot be arrested in her or his home or private dwelling at night for a Class A, Class B, or Class C offense without an arrest warrant specifically permitting arrest at night except for an offense involving damage to a person and the provisions of 2-2-403 are followed.

**2-2-403. Arrest by law enforcement officer.** (1) A law enforcement officer may arrest a person within the exterior boundaries of the Flathead Reservation under the following circumstances:

(a) when the officer has a warrant commanding that the person be arrested or when the officer believes on reasonable grounds that a warrant for the person's arrest has been issued by the Tribal Court or that a warrant for the person's arrest has been issued in another jurisdiction;

(b) when the person has committed an offense in the officer's presence; or

(c) when the officer has probable cause, as reflected by stated and provable facts, to believe the person to be arrested has committed an offense and exigent circumstances require an immediate warrantless arrest in order to prevent the person from

(i) fleeing the jurisdiction or concealing himself or herself to avoid arrest;

(ii) destroying or concealing evidence of the commission of an offense;

(iii) injuring another person; or

(iv) damaging property belonging to another.

(2) When an arrest is made without an arrest warrant, the arresting officer must inform the person to be arrested, as soon as practicable, of his or her authority to make the arrest and the reasons for making the arrest.

(3) A law enforcement officer may arrest a person, including at her or his place of residence, without an arrest warrant if the officer has probable cause to believe the person is committing or has committed abuse against an elder, family member, or household member, regardless of whether the offense took place in the responding law enforcement officer's presence.

(4) Arrest is the preferred response in situations:

(a) involving bodily harm to an elder, family member or household member;

(b) involving use or threatened use of a weapon against an elder, family member or household member; or

(c) where there appears to be imminent danger of bodily harm to another.

(5) If an arrest is made without a warrant, the Court shall make a determination of the existence of probable cause for the arrest within 48 hours of the arrest.

(6) For any class of offense, in lieu of making a custodial arrest, a law enforcement officer may issue a citation requiring the defendant to appear in Tribal Court at a designated time and on a designated date.

(7) An arrest made outside the boundaries of the Flathead Reservation shall be valid if made pursuant to the laws of the jurisdiction where the arrest occurred.

**2-2-404. Arrest warrants.** (1) An arrest warrant shall be issued by a judge, based on a sworn complaint or affidavit showing there is probable cause to believe an offense has been committed and the named person has committed the offense. The warrant shall:

- (a) be in writing in the name of the Tribes;
  - (b) set forth the nature of the offense;
  - (c) command the person against whom the sworn complaint or affidavit was made be arrested, or a description of the person as well as any alias used by the person;
  - (d) be signed by a judge; and
  - (e) include any bail amount, if deemed appropriate by the issuing judge.
- (2) A law enforcement officer shall, as soon as practicable, inform the person named in the arrest warrant of:
- (a) her or his authority to make the arrest;
  - (b) the intention to arrest the person;
  - (c) the grounds for the arrest;
  - (d) the existence of an arrest warrant; and
  - (e) the amount of bail, if specified in the warrant.
- (3) A copy of the arrest warrant must be shown to the person arrested, as soon as practicable.
- (4) An arrest made pursuant to a warrant shall not be dismissed due to minor irregularities in the warrant which do not substantially affect any rights of the arrested person.

**2-2-405. Notice of rights prior to interrogation.** (1) Prior to questioning any person in custody, a law enforcement officer must inform the person in clear and unequivocal terms of the following rights:

- (a) that the person has the right to remain silent;
  - (b) that anything said by him or her can and will be used against the person in any subsequent court proceedings;
  - (c) that the person has the right to legal counsel or representation as provided in Sections 2-2-503, prior to answering any questions; and
  - (d) that if, at any point during questioning, the person indicates that she or he wishes to remain silent the questioning will cease.
- (2) Any statement obtained in violation of these rights may not be admitted into evidence.
- (3) The fact that a person chooses to remain silent cannot be used against her or him in any subsequent criminal proceedings.

**2-2-406. Summons.** (1) The Tribal Court may or, upon request of a prosecutor, shall issue a summons instead of an arrest warrant.



- (2) The summons may be served personally or by first-class mail.
- (3) A summons shall:
  - (a) be in writing in the name of the Tribes;
  - (b) state the name of the person summoned, along with that person's address, if known;
  - (c) set forth the nature of the offense charged;
  - (d) set the date issued;
  - (e) command the person to appear in Tribal Court at a specified date and time; and
  - (f) be signed by a judge.

**2-2-407. Written report when no arrest made in abuse situation.** When a law enforcement officer is called to the scene of a reported incident of elder or domestic abuse but does not make an arrest, the officer shall file a written report with the commanding officer stating the reasons for deciding not to make an arrest.

**2-2-408. Notice of rights in abuse situation.** (1) Whenever a law enforcement officer is called to the scene of a reported incident of domestic abuse, the officer shall advise the injured party, if present, of the availability of services in the community and give the injured party immediate notice of legal rights and remedies available.

(2) The notice given by the law enforcement officer must include furnishing the injured party with a copy of the following statement:

IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the Tribal Prosecutor's Office can file criminal charges against your abuser. You also have the right to go to court and file a petition requesting:

- (a) that your abuser be restrained from further abuse;
- (b) that the abuser leave the household and stay away for a period of time;
- (c) that your abuser be restrained from transferring any property except in the usual course of business;
- (d) that you be granted temporary custody of your child or children; or
- (e) that your abuser be restrained from interfering with your custody of your child or children;

**2-2-409. Extradition.** (1) If a Tribal law enforcement officer arrests an individual based on a warrant issued by the State of Montana, or a reasonable belief that a warrant has been issued by the State of Montana, the Tribes may hold such individual for up to forty-eight hours, after any Tribal sentence has been served, for transport by State officials. If State officials do not retrieve the defendant within that time, he or she shall be released. The defendant shall be entitled to bail at the amount set in the State warrant.

(2) If a Tribal law enforcement officer arrests an individual pursuant to Section 2-2-403 above based on a warrant from a jurisdiction other than the State of Montana, or based on a reasonable belief that a warrant has been issued by a jurisdiction other than the State of Montana, he shall be entitled to a hearing before the Tribal Court on the following issues:

- (a) whether such warrant exists; and
- (b) whether the individual arrested is the person named in the warrant; and
- (c) whether the court issuing the warrant had jurisdiction to issue the warrant; and
- (d) whether the arrest by Tribal law enforcement was lawful.

After being fully informed of his or her rights, the defendant may, in writing, waive the right to a hearing. If not waived, the hearing shall be held within two days of the arrest, and the defendant shall have the right to be represented by the Tribal Defenders Office. Prior to the hearing the defendant shall be entitled to bail at the sum set in the warrant.

(3) If at the hearing the Court does not find these factors to be established by the Tribal Prosecutor by clear and convincing proof, it shall order the defendant immediately released. If at the hearing the Court finds these factors to be established by the Tribal Prosecutor by clear and convincing proof, it shall order the defendant held for a reasonable time not to exceed ten days, after any Tribal sentence has been served, for the other jurisdiction to retrieve the defendant. After the hearing the defendant may be admitted to bail in an amount set by the Tribal Court, on the condition that he or she surrender himself or herself at a specified time, and on such additional restrictions as the Court deems appropriate. If such other jurisdiction does not retrieve the defendant within that time, the defendant shall be released.

(4) Nothing in this section shall be considered to limit or restrict an individual's right to seek a writ of habeas corpus under Section 1-2-722.

### **Part 5 - Initial Appearance, Presence of Defendant, and Right to Counsel**

**2-2-501. Initial appearance.** (1) A person arrested, whether with or without a warrant, must be taken before a judge of the Tribal Court for an initial appearance within two working days following the arrest.

(2) A person not arrested shall appear for an initial appearance at the time and place designated in the citation or summons. (*Rev. 1-27-00*)

**2-2-502. Duty of court at initial appearance.** (1) The judge shall inform the defendant of:

- (a) the charge or charges against him or her;
- (b) the maximum penalty allowed under Tribal Law for the offense;
- (c) the defendant's right to counsel provided by the Tribal Defender's Office pursuant to Section 2-2-504 or to obtain private counsel at her or his own expense.
- (d) the right to call any witness on her or his behalf;

- (e) the right to request a jury trial;
  - (f) the right to remain silent and that any statement made by her or him may be used in evidence against her or him at any subsequent court proceedings;
  - (g) the general circumstances under which the defendant may obtain pretrial release;
  - (h) the right to cross-examine the Tribes' witnesses; and
  - (i) the right to have up to 10 working days before arraignment.
- (2) The judge shall admit the defendant to bail as provided by Section 2-2-602 of this Code.

**2-2-503. Presence of defendant.** Unless otherwise set forth in this chapter, a defendant shall be present at all stages of the proceedings. The Court in its discretion may allow the defendant to appear through counsel.

**2-2-504. Right to counsel.** (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel, and must be asked if the aid of counsel is desired.

(2) If the defendant desires counsel and is indigent as defined in Section 1-2-402, and if the court desires to retain imprisonment as a sentencing option or if the interests of justice so require, the court shall assign the Tribal Defender's Office to provide counsel to the defendant.

(3) If the defendant wishes to obtain private counsel, the court shall grant a reasonable time prior to arraignment for defendant's attorney to enter an appearance in the cause.

(4) A defendant may waive the right to counsel when the court ascertains that the waiver is made knowingly, voluntarily, and intelligently in writing.

## **Part 6 - Bail**

**2-2-601. Release prior to criminal proceedings.** A person charged with any offense is bailable before conviction and shall be released from custody by the court upon reasonable conditions that ensure the appearance of the defendant and protect the safety of the community or of any person.

**2-2-602. Release or detention.** (1) The release or detention of the defendant must be determined immediately upon the defendant's initial appearance.

(2) The criteria for determining the conditions of release include, but are not limited to the following:

- (a) defendant's employment status and work history;
- (b) defendant's financial condition;
- (c) the nature and extent of defendant's family relationships and ties to the Reservation community;
- (d) defendant's past and present residences;

- (e) names of individuals personally agreeing to assure defendant's court appearance;
  - (f) the nature and circumstances of the current charge, including whether the offense involved the use of force or violence;
  - (g) the defendant's prior criminal record, if any, and whether, at the time of the current arrest or offense, the defendant was on probation, on parole, or on other release pending trial, sentencing, or appeal for an offense;
  - (h) the defendant's record of appearance at court proceedings; and
  - (i) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release.
- (3) The Court may in its discretion grant temporary release from custody under any conditions the Court deems appropriate.

**2-2-603. Release on own recognizance and reasonable bail.** (1) Any person in custody, if otherwise eligible for bail, may be released on his personal recognizance subject to such conditions as the court may reasonably prescribe to assure his appearance when required.

- (2) In all cases, the amount set for bail must be reasonable.
- (3) Reasonable bail reflects an amount which is:
  - (a) sufficient to ensure the presence of the defendant in any pending criminal proceeding;
  - (b) sufficient to assure compliance with the conditions set forth in a bail or release order; and
  - (b) not oppressive.

**2-2-604. Conditions upon defendant's release.** (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including, but not limited to the following conditions:

- (a) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;
- (b) the defendant may not commit an offense during the period of release;
- (c) the defendant shall maintain employment or, if unemployed, actively seek employment;
- (d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;
- (e) the defendant shall avoid all contact with an alleged victim of the crime and any potential witness who may testify concerning the offense;
- (f) the defendant shall comply with a specified curfew;

- (g) the defendant may not possess a firearm, destructive device, or other dangerous weapon;
- (h) the defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;
- (i) the defendant shall report on a regular basis to a designated agency or individual, or both;
- (j) the defendant shall furnish bail; or
- (k) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

**2-2-605. Bail schedule.** (1) The Chief Judge of the Tribal Court shall establish and post a schedule of bail for offenses to be used by law enforcement officers.

(2) A law enforcement officer may accept bail on behalf of the Tribal Court whenever the amount of bail is specified in the warrant of arrest or in accordance with the posted bail schedule.

(3) When a law enforcement officer accepts bail, based on an arrest warrant or current bail schedule, the officer shall give a signed receipt to the offender setting forth the bail received and the name of the person posting the bail. At the earliest time practicable, the law enforcement officer shall deliver the bail and duplicate copy of the bail receipt to the Tribal Court; obtaining a receipt for the bail delivered from a Clerk of Court.

(4) The Chief Judge of the Tribal Court shall replace any existing bail schedule with a revised bail schedule by January 31 of each year.

(5) Bail may be specifically set by a judge for any offense not listed on the posted bail schedule.

**2-2-606. Changing bail or conditions of release.** (1) Upon application by the Tribes or the defendant, the Tribal Court may increase or reduce the amount of bail, alter the conditions in the bail or release order, or revoke bail.

(2) Reasonable notice of such application must be given to the opposing parties or their attorneys by the applicant.

**2-2-607. Forms of bail.** (1) Bail may be furnished in the following ways, as the court may require:

- (a) by a deposit with the court of an amount equal to the required bail of cash or other personal property approved by the court;
- (b) by pledging real estate situated within the Reservation with an unencumbered equity, not exempt, owned in fee simple by the defendant or sureties at a value double the amount of the required bail;

- (c) by posting a written undertaking by the defendant and by two sufficient sureties; or
  - (d) by posting a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of the surety company.
- (2) The amount of the bond must ensure the appearance of the defendant at all times required through all stages of the proceeding and remain in effect until final sentence is pronounced in open court.
- (3) Nothing in this part prohibits a surety from surrendering the defendant in a case in which the surety feels insecure in accepting liability for the defendant.

**2-2-608. Property and surety bonds.** (1) If property posted as a condition of release is personal property, the defendant or sureties shall file a sworn schedule that must contain a list of the personal property, including a description of each item, its location and market value, and the total market value of all items listed.

- (2) If the property is real estate the defendant or sureties shall file a sworn schedule that must contain a legal description of the property, a description of any encumbrance on the property, including the amount of each encumbrance and its holder, and the market value of the unencumbered equity owned by the defendant or sureties;
- (3) If the property is a written undertaking with sureties, each surety must be a Reservation resident and worth the amount specified in the undertaking, exclusive of property exempt from execution; but the court may allow more than two sureties to justify severally and in amounts less than that expressed in the undertaking if the whole justification is equivalent to the amount required.
- (4) If the property posted is a commercial bond, it may be executed by any domestic or foreign surety company that is qualified to transact surety business in Montana. The undertaking must state the following:
- (a) the name and address of the surety company that issued the bond;
  - (b) the amount of the bond and the unqualified obligation of the surety company to pay the court should the defendant fail to appear as guaranteed; and
  - (c) a provision that the surety company may not revoke the undertaking without good cause.
- (5) The court may examine the sufficiency of an undertaking and take any action it considers proper to ensure that a sufficient undertaking is posted.

**2-2-609. Release of bail.** When all conditions of release have been satisfactorily performed and the defendant has been discharged from any obligations imposed by the Tribal Court, the court shall return any security posted by the defendant to satisfy bail requirements.

**2-2-610. Violation of a release order.** (1) If a defendant violates a condition of release, including failure to appear, the prosecutor may make a motion to the court for revocation of the order of release. The court may issue a warrant for the arrest of a defendant charged with violating a condition of release and declare the bail to be revoked. Upon arrest, the defendant must be brought before the court without unnecessary delay and the court shall conduct a hearing and re-determine bail. On finding probable cause

that the defendant has violated a tribal, state, or federal law, or on finding a violation of any other release condition by clear and convincing evidence, the Court may:

- (a) reinstate the original release order on the same conditions and amount of bail; or
  - (b) revoke the original bail, increase the amount of the bail and modify the conditions of release; or
  - (c) revoke the defendant's release for any period of time, up to 10 days, and then reinstate release on the original conditions and bail or on such conditions and bail as the Court deems appropriate. Such time shall not be credited as time served under Section 2-2-1210 or 2-2-1211.
- (2) This section provides the exclusive remedy for a violation of a release order. A defendant may not be charged with contempt or found in contempt for violation of a release order.
- (3) Neither a cash bond nor a commercial bond may be forfeit for violation of release conditions, except for failing to appear for court proceedings without a lawful excuse.
- (4) Notice of an order of forfeiture must be mailed to the defendant and the defendant's sureties at their last-known address(es) within 10 working days of the date of the order or the bond becomes void. *(Rev. 1-27-00) (Rev. 3-21-13)*

**2-2-611. Forfeiture order.** (1) If within 90 days of the forfeiture order, the defendant, or the defendant's surety, appears and presents evidence justifying the defendant's failure to appear or otherwise meet the conditions found in the release order, the Tribal Court may direct the forfeiture of the bail to be discharged upon such terms as are just.

(2) If the forfeiture order is not discharged by the Tribal Court, the court shall proceed with the forfeiture of bail as follows:

- (a) if money has been posted as bail, the court shall pay the money to the Tribal Executive Treasurer; or
  - (b) if other property is posted as a condition of release, the property must be sold in the same manner as property sold in civil actions. The proceeds of the sale must be used to satisfy all court costs and prior encumbrances, if any, and from the balance, a sufficient sum to satisfy the forfeiture must be paid to the Tribal Executive Treasurer.
- (3) If a surety bond has been posted as bail, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions. *(Rev. 1-27-00)*

**2-2-612. Surrender of defendant.** (1) At any time before the forfeiture of bail:

- (a) the defendant may surrender to the court or any Tribal law enforcement officer; or
  - (b) the surety company may arrest the defendant and surrender the defendant to the court or to any Tribal law enforcement officer.
- (2) The law enforcement officer will detain the defendant in the officer's custody and shall file a certificate, acknowledging the surrender, in court. The court may then order the bail exonerated.

## Part 7 - Arraignment of the Defendant

**2-2-701. Joint defendants.** Defendants who are jointly charged may be arraigned separately or together in the discretion of the court.

**2-2-702. Procedure on arraignment.** (1) A defendant shall be arraigned in open Tribal Court whenever a complaint has been filed by a Tribal prosecutor. Arraignment consists of reading the charge, unless the defendant waived the reading, and supplying a copy of it to the defendant and calling on the defendant to plead to the charge.

(2) If a defendant waives his or her right to counsel in writing, the court may arraign the defendant at the initial appearance.

(3) Prior to accepting any plea at the time of arraignment, the presiding judge must: (a) verify that the person appearing before the Tribal Court is the defendant named in the complaint, and that the defendant's true name appears on the complaint and if different from the name used on the complaint, order the complaint amended to reflect the true name;

(b) determine whether the defendant has a mental disorder that would prevent the defendant from understanding the charges, the penalties, or the effects of a plea, and, if the determination is that defendant has a mental disorder, the arraignment may be continued until the defendant is able to proceed; and

(c) allow a reasonable time, not less than 1 day, if the defendant requires it, to answer or plead to the complaint by incorporating appropriate pretrial motions into the answer, or otherwise.

**2-2-703. Plea alternatives.** (1) A defendant shall enter a plea of guilty, not guilty, or, if the judge agrees, no contest, to all charges each charge contained in the complaint. A plea of no contest may be accepted by a judge only after due consideration of the views of the parties and interest of the Tribes in the effective administration of justice.

(2) The court may not accept a plea of guilty or no contest without first determining: (a) that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty results from prior discussions between the prosecutor and the defendant or the defendant's attorney;

(b) that the defendant understands the following: (i) the nature of the charge for which the plea is offered, any mandatory minimum penalty, the maximum penalty, and, when applicable, that the court may require the defendant to make restitution to the victim; (ii) the defendant will be giving up his or her right to a trial;

(c) that if the defendant pleads guilty in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted; and

(d) that, in charges for which imprisonment is a possible penalty, there is a factual basis for the plea.

(3) A defendant pleading not guilty must inform the judge at the time of arraignment if a jury trial is requested.



(4) If a defendant voluntarily enters a plea of guilty the judge may impose a sentence at that time or, on the court's own motion or the request of either party, schedule a sentencing hearing in order to allow sufficient time for the involved parties to obtain any information deemed necessary for the imposition of a just sentence.

(5) Prior to the imposition of any sentence, the judge shall allow the defendant an opportunity to inform the court of any extenuating or mitigating circumstances which should be considered by the court in imposing penalties.

(6) With the approval of the court and the consent of the prosecutor, a defendant may enter a plea of guilty or no contest, reserving the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant must be allowed to withdraw the plea.

*(Rev. 1-27-00)*

**2-2-704. Record of arraignment.** The Clerk of Court shall prepare and keep a record of all arraignment proceedings.

**2-2-705. Plea agreement procedure.** (1) A prosecutor and counsel for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecutor will do one of the following:

(a) move for dismissal of other charges; or

(b) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding on the court.

(2) A plea bargain agreement may be entered into anytime prior to a verdict or finding of guilt by judge or jury.

(3) Final plea bargain offers shall be given to the defendant no later than 8 working days prior to trial. Plea bargains entered into up to 5 days prior to trial will be reviewed by the court and approved if not unconscionable. After that time, plea bargains will receive heightened scrutiny with no assurance being given of the acceptability of such plea bargains.

(4) If a plea agreement has been reached by the parties, the court shall, on the record, require a disclosure of the agreement in open court at the time the plea is offered.

**2-2-706. Telephonic change of plea.** In exceptional circumstances and at its discretion, the court may accept a defendant's change of plea through a recorded telephonic proceeding.

## **Part 8 - Pretrial Motions and Discovery**

**2-2-801. Pretrial defenses and objections.** (1) Except for good cause shown, any defense objection, or request which is capable of determination without trial on the general issues must be raised before trial by motion to dismiss or for other appropriate relief. All motions must be in writing and must

be supported by a statement of the relevant facts upon which the motion is being made unless otherwise directed by the judge.

(2) Failure of a party to raise defenses or objections or to make requests that must be made prior to trial, except lack of jurisdiction or the failure of a complaint to state an offense which must be noticed by the court at any time during the pendency of a proceeding, constitutes a waiver of the defense, objection, or request. The court, for good cause shown, may grant relief from any waiver provided in this section.

(3) Motions in Limine should be made at least 5 days before trial, unless good cause is shown.

**2-2-802. Suppression of evidence.** (1) A defendant aggrieved by an unlawful search and seizure may move to suppress as evidence anything obtained by the unlawful search and seizure. The motion must be filed at least 10 days before trial, unless good cause is shown for waiving this time restriction.

(2) The motion must specify the evidence sought to be suppressed and the grounds upon which the motion is based.

(3) When the motion to suppress challenges the admissibility of evidence obtained without a warrant, the prosecution has the burden of proving, by a preponderance of the evidence, that the search and seizure were valid.

(4) If the motion is granted, the evidence is not admissible at trial.

**2-2-803. Motion to suppress confession or admission.** (1) A defendant may move to suppress as evidence any confession or admission given by her or him on the ground that it was not voluntary or that was otherwise obtained in violation of his or her rights.

(2) The motion must be filed at least 10 days before trial, unless good cause is shown for waiving this time restriction.

(3) If the allegations of the motion state facts which, if true, show that the confession or admission was not voluntarily made or was otherwise obtained in violation of the defendant's rights, the Tribal Court shall conduct a hearing on the merits of the motion. The prosecution must prove by a preponderance of the evidence that the confession or admission was not obtained in violation of the defendant's rights.

(4) The issue of admissibility of the confession or admission may not be submitted to the jury. If the confession or admission is determined to be admissible, the circumstances surrounding the making of the confession or admission may be submitted to the jury as bearing upon the credibility or the weight to be given to the confession or admission.

(5) If the motion to suppress is granted, the confession or admission may not be admitted into evidence by the prosecution at the time of trial. (*Rev. 1-27-00*)

**2-2-804. Disclosure by prosecution.** (1) At the time of the initial appearance, the prosecutor shall disclose to the defendant the name of the person, if any, against whom the offense was committed if not disclosed in the complaint.

(2) At the arraignment or as soon thereafter as practicable the defendant may request notice of all evidence the prosecutor intends to use in the prosecution case-in-chief at trial.

(3) Upon defendant's request, any of the following information or evidence which is within the possession, custody, or control of the Tribal Prosecutor is subject to disclosure and production and may be copied or photographed, as appropriate for the item, by the defendant:

(a) any relevant written or recorded statement made by the defendant while in the custody of the Tribes and of any person who will be tried with the defendant;

(b) the names, addresses, and statements of all persons whom the prosecutor may call as witnesses in the case in chief.

(c) the defendant's prior criminal record, if any;

(d) any books, papers, documents, photographs, tangible objects, drawings of buildings or places, or other physical or demonstrative evidence which is intended for use by the prosecution at trial;

(e) any written reports of or statements of experts who have personally examined the defendant or any evidence in the particular case, together with results of physical examinations, scientific tests or experiments, or comparisons; and

(f) all material or information that tends to mitigate or negate the defendant's guilt as to the offense charged or that would tend to reduce the defendant's potential sentence.

(4) At the same time, the prosecutor shall inform the defendant of, and make available to the defendant for examination and reproduction, any written or recorded material or information within the prosecutor's control regarding:

(a) whether there has been any electronic surveillance of any conversation to which the defendant was a party;

(b) whether an investigative subpoena has been executed in connection with the case; and

(c) whether the case has involved an informant and, if so, the informant's identity.

(5) Attorney work product of the Tribal Prosecutor's office is not subject to disclosure and production.

(6) The Prosecution shall provide written notice of any evidence of other crimes, wrongs, or acts, that it intends to offer under Rule 404(b) of the Federal Rules of Evidence, at least two weeks prior to the close of discovery. The notice shall describe the evidence in sufficient detail to inform the Defendant of the date, time, place, and witnesses to the alleged incidents, and shall also state the purpose for which such evidence shall be offered.

(7) The obligations imposed by this section are continuing.

**2-2-805. Disclosure by defendant.** (1) At any time after the filing of a complaint, the defendant, in connection with the particular offense charged, shall upon written request of the prosecutor and approval of the court:

(a) appear in a lineup;

(b) speak for identification by witnesses;

(c) be fingerprinted, palm printed, footprinted, or voiceprinted;

- (d) pose for photographs not involving reenactment of an event;
  - (e) try on clothing;
  - (f) provide handwriting samples;
  - (g) permit the taking of samples of the defendant's hair, blood, saliva, urine, or other specified materials that involve no unreasonable bodily intrusions; and
  - (h) submit to reasonable physical or medical examination where the examination does not involve psychological or psychiatric evaluation.
- (2) Except as provided in Section (4), not later than the close of discovery upon request of the prosecution or at another time as the court for good cause may permit, the defendant or defendant's counsel shall make available to the prosecutor for testing, examination, or reproduction:
- (a) the names, addresses, and statements of all persons, other than the defendant, whom the defendant may call as witnesses in the defense case in chief;
  - (b) the names and addresses of experts whom the defendant may call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by these experts in connection with the particular case;
  - (c) all papers, documents, photographs, and other tangible objects that the defendant may use at trial.
- (3) (a) At the close of discovery as set forth in the Pre-Trial Order, or at a later time as the Court shall so permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of good character or of any affirmative defenses.
- (b) The notice must specify for each defense the names and addresses of the persons, other than the defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports or statements made by them, including all reports and statements concerning the results of physical examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a privileged report or statement unless the defendant intends to use the privileged report or statement, or the witness who made it, at trial.
- (4) Attorney work product of defense counsel is not subject to disclosure or production.
- (5) The obligations imposed by this section are continuing.

**2-2-806. Severance.** (1) A defendant may move for severance of defendants or charges. Such motion shall be filed at least 10 days prior to trial unless otherwise directed by the Tribal Court.

(2) If it appears that the defendant is prejudiced by a joinder of related prosecutions or defendants in a single charge, or by a joinder of separate charges or defendants for trial, the Tribal Court may order separate trials, grant a severance of defendants, or provide any other relief as justice may require.

**2-2-807. Notice of alibi.** (1) At the time of the pretrial conference or order, the prosecutor shall provide a written statement of the time, date, and place at which the alleged offense was committed.

(2) If a defendant intends to rely upon a defense of alibi, the defendant will so notify the prosecutor, in writing, within 10 days of receiving the information required by subsection (1).

(3) Defendant's notice of alibi defense shall state the specific place or places where the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses the defendant intends to call to establish such alibi.

**2-2-808. Motion for continuance.** The defendant or the Tribes may file a written motion for continuance, or the court may continue the proceedings on its own motion. If a party so moves less than 10 days before a scheduled hearing or trial, the Tribal Court may require that the motion be supported by an affidavit, whether or not the motion is opposed by the adverse party. This section, however, shall be applied in a manner which insures criminal cases are tried with due diligence consistent with the rights of the defendant to a speedy trial.

**2-2-809. Pretrial conference.** (1) Any party may move the Tribal Court for one or more conferences to consider such matters as will promote a fair and expedient trial.

(2) In the interest of justice, the Tribal Court may order a pretrial conference based on its own motion.

(3) At the conclusion of any pretrial conference, the presiding judge shall prepare and file a memorandum of the matters agreed upon. No admissions made by the defendant or defendant's counsel at the conference shall be used against the defendant unless the admissions are reduced to writing and signed by the defendant and the defendant's counsel.

(4) In the interest of judicial economy, the Court may order the parties to prepare a proposed pretrial order, without a pretrial conference, for the Court's signature. (*Rev. 3-21-13*)

**2-2-810. Pretrial diversion.** (1)(a) At any time, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(i) that the defendant may not commit any offense;

(ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(iii) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense;  
or

(v) any other reasonable conditions, including voluntary exclusion from the reservation.

(b) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.

(c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

**2-2-811. When depositions may be taken.** (1) A deposition may be taken if it appears that a prospective witness:

(a) is likely to be either unable to attend or otherwise prevented from attending a trial or hearing;

(b) is likely to be absent from the state at the time of the trial or hearing; or

(c) is unwilling to provide relevant information to a requesting party and the witness's testimony is material and necessary in order to prevent a failure of justice. The court shall, upon motion of any party and proper notice, order that the testimony of the witness be taken by deposition and that any designated books, papers, documents, or tangible objects, not privileged, be introduced at the time the deposition is taken.

(2) The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the court, taking into account the convenience of the parties and of the witness.

(3) If it appears upon the affidavit of counsel for a party that good cause exists to believe that a witness will not respond to a subpoena and the administration of justice requires, a judge may issue an arrest warrant commanding the arrest of a material witness. The arrest warrant must further order a deposition to be taken without unnecessary delay. A person may not be imprisoned for the purpose of securing testimony in any criminal proceeding longer than is necessary to take the person's deposition.

**2-2-812. Procedure for taking depositions.** (1) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice must state the name and address of each person to be examined. On motion of the party upon whom the notice is served, the court for cause shown may extend or shorten the time or change the place for taking the deposition.

(2) A deposition must be taken in the manner provided in civil actions. However, a deposition may not be taken of a party defendant without the defendant's consent, and the scope and manner of examination and cross-examination must be restricted as would be allowed in the trial itself.

(3) The deposition must be filed with the court making the order and held until the trial. Either party shall make available to the other party or the other party's counsel for examination and use at the taking of the deposition any relevant, nonprivileged statement of the witness being deposed that is in the possession of either party.

(4) Objections to deposition testimony or evidence may be reserved for subsequent determination by the court.

(5) Unless a defendant in custody has waived, in writing, the right to be present at the taking of a deposition, the officer having custody of the defendant must be notified of the time and place set for the deposition. The officer having custody shall produce the defendant and keep the defendant in the presence of a witness during the deposition.

(6) A defendant not in custody who fails to appear, without good cause, at the taking of a deposition after being notified of the time and place set for the deposition will be considered to have waived the right to be present. The waiver includes a waiver of any objection to the taking and use of the deposition based upon that right.

(7) Whenever a deposition is taken at the instance of the prosecution or whenever a deposition is taken at the instance of a defendant who is unable to bear the expense of taking a deposition, the court shall direct that the cost of the transcript of the deposition be paid by the Tribes.

**2-2-813. Use of depositions at trial.** Any deposition may be used by any party for any purpose allowed by the Federal Rules of Evidence.

**2-2-814. Subpoenas.** A Judge of the Tribal Court has the power to issue subpoenas to compel the attendance of witnesses and the production of documents either on the Court's own motion or on the request of any party to a case, which shall bear the signature of the Judge issuing the subpoena. The subpoenas may direct the attendance of witnesses or the production of documents or evidence at a specified date, time, and location. Subpoenas under this section may be issued for purposes of discovery, for pretrial hearing, or for a trial or post trial proceeding.. (Rev. 1-27-00)

#### **Part 9 - Mental Disorder**

**2-2-901. Mental disorder.** As used in this chapter, the term " mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. It does not include an abnormality manifested only by repeated criminal or other antisocial behavior.

**2-2-902. Evidence of mental disorder admissible as an affirmative defense.** Evidence that the defendant suffered from a mental disorder is admissible to prove that the defendant could not appreciate the criminality of his conduct. This is an affirmative defense which the defendant has the burden of proving by a preponderance of the evidence.

**2-2-903. Mental disorder excluding fitness to proceed.** A person who, as a result of a mental disorder, is unable to understand the proceedings against the person or to assist in the person's own defense may not be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures.

**2-2-904. Examination of defendant.** (1) If the defendant or the defendant's counsel files a written motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the Court, prosecution, or defense counsel, the Court shall appoint at least one qualified psychiatrist or licensed clinical psychologist to examine and report upon the defendant's mental condition.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding 60 days or a longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist or licensed clinical psychologist retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination, any method may be employed that is accepted by the medical or psychological profession for the examination of those alleged to be suffering from a mental disorder. The cost of the examination must be paid by the Tribes. (Rev. 1-27-00)

**2-2-905. Prosecution's right to examination.** (1) When the defense discloses the report of the examination to the prosecution or files a notice of the intention to rely on a defense of mental disorder, the prosecution is entitled to have the defendant examined by a qualified psychiatrist or licensed clinical psychologist.

(2) The report must be disclosed to the defense within 10 days of its receipt by the prosecution. (*Rev. 1-27-00*)

**2-2-906. Access to defendant for examination.** If either the defendant or the prosecution wishes the defendant to be examined by a qualified psychiatrist or licensed clinical psychologist selected by the one proposing the examination in order to determine the defendant's fitness to proceed or whether the defendant was able to appreciate the criminality of his conduct, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination.

**2-2-907. Report of examination.** (1) A report of the examination must include: (a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the defendant suffers from a mental disorder and may require commitment or has a disability that is expected to continue indefinitely that is attributable to mental retardation, or related neurological conditions or illnesses;

(c) if the defendant suffers from a mental disorder, an opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is an element of the offense charged; and

(e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental disorder, to appreciate the criminality of the defendant's conduct.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report must state that fact and must include, if possible, an opinion as to whether the unwillingness of the defendant was the result of a mental disorder. (*Rev. 1-27-00*)

**2-2-908. Psychiatric or psychological testimony upon trial.** (1) Upon trial, any psychiatrist or licensed clinical psychologist who reported under this part may be called as a witness by the prosecutor or by the defense. Both the prosecution and the defense may summon any other qualified psychiatrist or licensed clinical psychologist to testify, but no one who has not examined the defendant is competent to testify to an expert opinion with respect to the mental condition of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(2) When a psychiatrist or licensed clinical psychologist who has examined the defendant testifies concerning the defendant's mental condition, the psychiatrist or licensed clinical psychologist may make a statement as to the nature of the examination and the medical or psychological diagnosis of the mental condition of the defendant. The expert may make any explanation reasonably serving to clarify the expert's examination and diagnosis, and the expert may be cross-examined as to any matter bearing on the expert's competency or credibility or the validity of the expert's examination or medical or psychological diagnosis.



**2-2-909. Form of verdict and judgment.** When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason that due to a mental disorder could not appreciate the criminality of his conduct, the verdict and the judgment must state that reason.

**2-2-910. Admissibility of statements made during examination or treatment.** A statement made for the purposes of psychiatric or psychological examination or treatment provided for in this section by a person subjected to examination or treatment is not admissible in evidence against the person at trial on any issue other than that of the person's mental condition. It is admissible on the issue of the person's mental condition, whether or not it would otherwise be considered a privileged communication, only when and after the defendant presents evidence that due to a mental disorder the defendant could not appreciate the criminality of his conduct.

**2-2-911. Determination of fitness to proceed -- effect of finding of unfitness.** (1) The issue of the defendant's fitness to proceed may be raised by the Court, by the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it must be determined by the Court. If neither the prosecutor nor the defendant's counsel contests the finding of the report, the court may make the determination on the basis of the report. If the finding is contested, the Court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to an appropriate institution for so long as the unfitness endures.

(b) The institution shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan, the institution may petition the court for an order requiring compliance. The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the Tribes have proven an overriding justification for the order and that the treatment being ordered is medically appropriate.

(c) The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4), and the prosecutor shall petition the court in the manner provided in Title III, Chapter 4, of this Code, to determine the disposition of the defendant pursuant to those provisions, except as provided in subsection (3), below.

(3) If the court determines that the defendant lacks fitness to proceed because the defendant has a disability that is expected to continue indefinitely that is attributable to mental retardation, or related neurological conditions or illnesses, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title III, Chapter 5, of this Code.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation of the defendant.

(5) The expenses of sending the defendant to an appropriate institution, of keeping the defendant there, and of bringing the defendant back are chargeable to the Tribes. ~~(Rev. 4-15-03)~~

**2-2-912. Proceedings if fitness regained.** When the court, on its own motion or upon the application of the prosecution or the defendant or the defendant's legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding must be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from serious mental illness set forth in Ordinance 98, order the defendant committed to an appropriate institution.

**2-2-913. Commitment upon finding of not guilty by reason of mental disorder.** (1) When a defendant is found not guilty for the reason that due to a mental disorder the defendant could not appreciate the criminality of his conduct, the court shall order a predisposition investigation, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial must be considered by the court in making its determination.

(2) The court shall evaluate the nature of the offense with which the defendant was charged. If the offense:

(a) involved a substantial risk of serious bodily injury or death, or actual bodily injury the court may find that the defendant suffers from a mental disorder that renders the defendant a danger to the defendant or others. If the court finds that the defendant presents a danger to the defendant or others, the defendant may be committed to an appropriate mental health facility for custody, care, and treatment. However, if the court finds that the defendant has a disability that is expected to continue indefinitely that is attributable to mental retardation, or related neurological conditions or illnesses, the prosecutor shall petition the court in the manner provided in Title III, Chapter 5, of this Code.

(b) charged did not involve a substantial risk of serious bodily injury or death, actual bodily injury, the court shall release the defendant. The prosecutor may petition the court in the manner provided in Title III, Chapter 5, of this Code.

(3) A person so committed must have a hearing within 180 days of confinement to determine the person's present mental condition and whether the person must be discharged or released or whether the commitment may be extended because the person continues to suffer from a mental disorder that renders the person a danger to the person or others. The hearing must be conducted by the court that ordered the commitment. The court shall cause notice of the hearing to be served upon the person, the person's counsel, the prosecutor, and the court that originally ordered the commitment. The hearing is a civil proceeding, and the burden is upon the Tribes to prove by clear and convincing evidence that the person may not be safely released because the person continues to suffer from a mental disorder that causes the person to present a substantial risk of:

(a) serious bodily injury or death to the person or others; or

(b) an imminent threat of bodily injury to the person or others.

(4) According to the determination of the court upon the hearing, the person must be discharged or released on conditions the court determines to be necessary or must be committed to appropriate mental health facility for custody, care, and treatment.

(5) A professional person shall review the status of the person each year. At the time of the annual review, the defendant, or his counsel, may petition for discharge or release of the person. Upon request for a hearing, a hearing must be held pursuant to the provisions of subsection (3). *(Rev. 4-15-03)*

**2-2-914. Discharge or release upon motion.** (1) If the director of the appropriate mental health facility believes that a person committed may be discharged or released on condition without danger to the person or others because the person no longer suffers from a mental disorder that causes the person to present a substantial risk of serious bodily injury or death to the person or others, a substantial risk of an imminent threat of bodily injury to the person or others, the director shall notify the defendant's counsel, who shall make application for the discharge or release of the person in a report to the Tribal Court and shall send a copy of the application and report to the prosecutor.

(2) The person committed may also make application to the court for discharge or release as part of the person's annual treatment review.

(3) The court shall then appoint at least one person who is either a qualified psychiatrist or licensed clinical psychologist to examine the person and to report as to the person's mental condition within 60 days or a longer period that the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings on the examinations, the court may have the person confined in any mental health facility located near the place where the court sits that may be suitable for the temporary detention of persons suffering from a mental disorder.

(4) The committed person or the person's attorney may secure a professional person of the committed person's choice to examine the committed person and to testify at the hearing. If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons, the court shall appoint an additional professional person to perform the examination. Whenever possible, the court shall allow the committed person or the person's attorney a reasonable choice of an available professional person qualified to perform the requested examination. The professional person must be compensated by the Tribes.

(5) If the court is satisfied by the report filed under subsection (1) and the testimony of the reporting psychiatrist or licensed clinical psychologist that the committed person may be discharged or released on condition because the person no longer suffers from a mental disorder that causes the person to present a substantial risk of serious bodily injury or death to the person or others, a substantial risk of an imminent threat of physical injury to the person or others the court shall order the person's discharge.

(6) (a) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released on the grounds that the person no longer suffers from a mental disorder that causes the person to present a substantial risk of:

(i) serious bodily injury or death to the person or others; or

(ii) an imminent threat of bodily injury to the person or others.

(b) A hearing is considered a civil proceeding, and the burden is upon the Tribe to prove by clear and convincing evidence that the person may not be safely discharged or released because the person continues to suffer from a mental disorder that causes the person to present a substantial risk of:

- (i) serious bodily injury or death to the person or others; or
  - (ii) an imminent threat of physical injury to the person or others.
- (c) According to the determination of the court upon the hearing, the committed person must then be discharged or released on conditions that the court determines to be necessary or must be recommitted, subject to discharge or release only in accordance with the procedures provided in this part.

**2–2–915. Application for discharge or release by committed person.** A committed person may make application for discharge or release to the Tribal Court by which the person was committed, and the procedure to be followed upon the application is the same as that prescribed in the preceding section. However, an application by a committed person need not be considered until the person has been confined for a period of not less than 6 months from the date of the order of commitment, and if the determination of the court is adverse to the application, the person may not be permitted to file a further application until 1 year has elapsed from the date of any preceding hearing on an application for the person's release or discharge.

**2–2–916. Revocation of conditional release.** (1) The court may order revocation of a person's conditional release if the court determines after hearing evidence that:

- (a) the conditions of release have not been fulfilled; and
  - (b) based on the violations of the conditions and the person's past mental health history, there is a substantial likelihood that the person continues to suffer from a mental disorder that causes the person to present a substantial risk of:
    - (i) serious bodily injury or death to the person or others; or
    - (ii) an imminent threat of bodily injury to the person or others.
- (2) The court may retain jurisdiction to revoke a conditional release for no longer than 5 years.
- (3) If the court finds that the conditional release should be revoked, the court shall immediately order the person to be recommitted, subject to discharge or release only in accordance with the procedures provided in this part.

## **Part 10 - Trial**

**2–2–1001. Right to a jury trial.** (1) A defendant charged with a Class B, Class C, Class D, or Class E offense has a right to trial by jury of six fair and impartial jurors.

(2) A defendant may waive the right to a jury trial in a written voluntary statement to the Court.

(3) A defendant must maintain contact with his or her counsel. By failing to maintain contact with counsel, a defendant waives his or her right to a jury trial.

**2-2-1002. Priority on the Tribal Court calendar.** (1) Prosecutions against defendants held in custody must be disposed of in advance of prosecutions against defendants released on bail, unless otherwise directed by the Tribal Court.

(2) Criminal actions take precedence over civil actions when determining a hearing or trial date.

**2-2-1003. Questions of law and fact.** (1) Issues of fact shall be submitted to the jury, unless a defendant has waived the right to a jury trial. Where there is no jury, issues of fact shall be submitted to the judge.

(2) All questions of law must be decided by the judge.

**2-2-1004. Rules of evidence in criminal cases.** Unless otherwise directed by a specific code provision, the Federal Rules of Evidence apply in criminal actions. Privileges will be those recognized under Tribal Law.

**2-2-1005. Trial preparation time.** The defendant is entitled to reasonable time, as determined by the judge, to prepare for trial after entering a plea of not guilty.

**2-2-1006. Burden of proof.** A plea of not guilty requires that the prosecution prove beyond a reasonable doubt that the crime alleged was committed and that the defendant committed every necessary element of it.

**2-2-1007. Order of trial.** (1) In a jury trial, after selecting and empanelling the jurors, the Tribal Court shall state the nature of the charges and generally instruct the jurors as to their duties.

(2) Unless waived, the prosecution and the defense will be afforded an opportunity to make an opening statement, prior to the presentation of any evidence or testimony. The defense may reserve her or his opening statement until after the prosecution has presented its case in chief.

(3) After presenting the opening statement(s), the prosecution must offer evidence supporting the allegations contained in the complaint. The defense shall be given an opportunity to cross-examine any witness called by the prosecution.

(4) After the prosecution has rested its case, the defense may give any reserved opening statement and present any defenses or evidence relating to the allegations contained in the complaint. The prosecution shall be given an opportunity to cross-examine any witness called by the defense.

(5) Rebuttal evidence may be presented by the prosecution after the conclusion of the defense case when appropriate, and, if necessary, surrebuttal evidence may be offered by the defense.

(6) No new evidence may be presented after the prosecution and the defense have rested their cases, unless allowed by the judge in the interest of justice.

(7) In a trial by jury, after the close of evidence and before the closing statements arguments are given, the instructions on the law of the case, as submitted in writing by the prosecution and defense shall be considered singly by the court and each one shall be:

(a) given as requested or proposed by counsel,

(b) refused based on stated grounds, or

(c) given with modification by the judge to the jury.

All instructions shall be in writing and filed as part of the record.

(8) After the judge reads the instructions to the jury and gives the jury a copy of the same, the prosecution and the defense may make a closing argument. The prosecution precedes the defense and may also make a rebuttal closing argument.

(9) The jury, or the judge if the case is tried without a jury, shall render a verdict upon the conclusion of the case. If the case is tried to a judge, the verdict shall set forth the court's findings of fact, conclusions of law and a judgment of guilty or not guilty. If the case is tried to a jury, the verdict shall be guilty or not guilty in accordance with the facts and the jury instructions.

**2-2-1008. Insufficient evidence.** If the Tribal Court determines at the close of the prosecution's case in chief, or at the conclusion of the case, that the evidence presented is insufficient to sustain a conviction for the charged offense or offenses, the Tribal Court may, on its own motion or on the motion of the defense, dismiss the action and discharge the defendant. No new trial may be granted unless the judgment of acquittal is vacated or reversed on appeal.

## Part 11 - Juries

**2-2-1101. Motion to discharge a jury panel.** (1) Any objection to the manner in which the venire has been selected or drawn shall be raised by motion to discharge the jury. The motion shall be made at least 7 days prior to the trial date.

(2) The motion shall be made in writing supported by an affidavit which shall state facts which show that the venire was improperly selected or drawn.

(3) If the motion states facts which would show that the venire was improperly selected or drawn, it shall be the duty of the Tribal Court to conduct a hearing. The burden of proof shall be on the movant.

(4) If the Tribal Court finds that the jury was improperly selected or drawn, the court shall order the jury discharged and the selection or drawing of a new jury.

**2-2-1102. Examination of prospective jurors.** (1) After sending summons and at least 10 days before trial, the Clerk of Court shall notify the prosecution and defense the names and addresses of the members of the jury panel.

(2) In selecting a jury from among the panel members, the initial questioning of the jurors shall be conducted by the judge in order to determine whether each prospective juror is capable of being fair and impartial. Questions to be asked by the court include whether a panel member:

(a) is directly related to any person involved in the action, including, but not limited to, the defendant, defense counsel, arresting officer, alleged victim, or any prospective witness;

(b) is or has been involved in any business, financial, professional, or personal relationship with a party or alleged victim;

(c) has had any previous involvement in a civil or criminal lawsuit or dispute with a party or alleged victim;

(d) has a financial or personal interest in the outcome of the action before the court;

(e) has formed an opinion as to the defendant's guilt; or

(f) has a belief that the punishment fixed by law is too severe for the offense charged.

(3) Any panel member whom the Tribal Court determines incapable of acting with impartiality and without prejudice to the rights of either party shall be excused.

(4) After questioning by the judge, the prosecutor and defendant or defense counsel may question the panel members to determine impartiality. Either party may question the panel members concerning the nature of the burden of proof in criminal cases and the presumption of innocence. The judge may limit the prosecutor's and defendant's or defense counsel's examination of a panel member when the judge believes such examination to be improper.

**2-2-1103. Challenges.** (1) The prosecution and defense shall have unlimited challenges for cause. Each challenge must be tried and determined by the Court at the time the challenge is made.

(2) The prosecution and defense shall have three peremptory challenges and one peremptory challenge in the event that an alternate juror is selected, unless a lesser number is agreed to by the parties in writing.

(3) All challenges must be made to the Tribal Court before the jury is sworn. When a potential challenge for cause is discovered after the jury is sworn and before the introduction of any evidence, the Tribal Court may allow a challenge for cause to be made.

**2-2-1104. Conduct of jury during trial.** (1) Once empaneled, jurors shall be instructed by the judge that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial, or to form or express any opinion thereon, until the issues of the case are finally submitted to them.

(2) At each adjournment recess prior to submission of the case to the jury, the judge shall instruct the jurors as to whether they may separate or must remain in the care of the bailiff or other proper officer of the court.

**2-2-1105. View of relevant place or property.** (1) Upon request by the prosecution or defense, the Court may allow the jury to view any place or property deemed pertinent to the just determination of the case.

(2) If viewing of a place or property is deemed appropriate, the Court shall place the jury under the custody of the bailiff, or other proper officer of the court, who shall then transport the jury to the viewing place.

(3) The place or property will be shown to the jury by a person appointed by the court for that purpose, and the jurors may personally inspect the same.

(4) The bailiff, or other proper officer of the court, must insure that no person speaks or otherwise communicates with the jury, on any subject connected with the trial, while viewing the place or property or traveling to or from the viewing site.

(5) After the jury has viewed the place or property, the bailiff, or other proper officer of the court, shall return the jurors to the courtroom without unnecessary delay or at a specified time, as directed by the court.

**2-2-1106. Jury instructions.** (1) General instructions may be furnished by the Tribal Court. Both the defendant and the prosecutor shall file special instructions to be given to the jury. Such proposed instructions shall be reduced to writing, signed by the party offering the instructions and delivered to the judge at least 5 days before trial unless a different time is established by the judge. For good cause shown, the parties may supplement or withdraw instructions at the close of evidence.

(2) All jury instructions shall adequately inform the jurors of:

(a) which decisions are made by the jury and which by the presiding judge;

(b) the issues of fact in the case;

(c) the rules of law to be applied to the issues of fact;

(d) the burden of proof with respect to each issue of fact; and

(e) the proof needed to discharge that burden.

(3) The party not offering a proposed instruction shall be allowed reasonable opportunity to examine the proposed instruction and object to it. The objection must specifically state on what grounds the instruction is not an accurate statement of the law or is not an appropriate instruction for this particular case and, therefore, should not be given.

(4) A dispute regarding a proposed jury instruction must be settled outside of the jury's presence by the court which may hold a settlement hearing.

(5) A record must be made at a hearing to settle instructions.

(6) A party may not appeal as error any portion of the instructions or omission from the instructions unless an objection was made specifically stating the matter objected to, and the grounds for the objection, at the settlement of instructions or in writing prior to a settlement hearing.

(7) The presence of the defendant is not required during the settlement of instructions.

(8) After all evidence has been presented, and before closing arguments, the court shall give both general and specific instructions to the jurors.

(9) For the record, but not for the jury, the court shall mark or endorse each instruction in such a manner that it shall distinctly appear what proposed instructions were rejected, what were given in whole and what were modified, together with the court's reasons for giving as requested, as modified, or refusing a proposed instruction.



(10) All proposed instructions are part of the court record. All objections to jury instructions must be noted on the court record, as well as the Tribal Court's reasons for either giving as requested, as modified, or refusing a proposed instruction. (*Rev. 3-21-13*)

**2-2-1107. Jury deliberations.** (1) After closing arguments, the court shall commit the jury to the care of a bailiff or other officer of the court who shall keep the jurors together and prevent communication between the jurors and others.

(2) Upon retiring to deliberate, the jurors shall select a juror as foreperson.

(3) After the jury has retired for deliberation, if there is any disagreement among the jurors as to the testimony or if the jurors desire to be informed on any point of law arising in the cause, they shall notify the bailiff or the officer appointed to keep them together, who shall then notify the court. The information requested may be given, in the discretion of the court, after consultation with the parties.

**2-2-1108. Items that may be taken into jury room.** Upon retiring for deliberation, the jurors may take with them the written jury instructions read by the court, notes of the proceedings taken by themselves, and all exhibits that have been received as evidence in the cause that in the opinion of the court will be necessary.

**2-2-1109. Activity of the court during jury's absence.** While the jury is absent, the court may adjourn or conduct other business, but it must be open for every purpose connected with the cause submitted to the jury until a verdict is returned or the jury discharged.

**2-2-1110. Form of verdict.** (1) The jury shall return a verdict as instructed by the court and for each offense charged. The verdict must be unanimous in all criminal actions. The verdict must be signed by the foreperson and returned by the jury to the judge in open court.

(2) When two or more defendants are involved in the case before the jury, the jurors may reach a verdict regarding any one of the defendants. If the jury cannot agree with respect to all the defendants, the defendant or defendants as to whom it does not agree may be tried again.

**2-2-1111. Polling the jury.** When a verdict is returned, but before it is recorded, the jury shall be polled at the request of any party or upon the court's own motion. If the results of the poll show that the verdict does not reflect unanimous concurrence by each juror, the jury may be directed to return for further deliberations or may be discharged at the court's discretion.

**2-2-1112. Conviction of lesser included offense.** (1) When it appears to the jury beyond a reasonable doubt that the defendant has committed an offense but there is reasonable doubt as to whether he or she is guilty of a given offense or one or more lesser included offenses as provided in subsections (2), (3), and (4) of this section, he or she may only be convicted of the greatest included offense about which there is no reasonable doubt.

(2) The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included in the offense charged.

(3) A lesser included offense instruction must be given when there is a proper request by one of the parties and the jury, based on the evidence, could be warranted in finding the defendant guilty of a lesser included offense.

(4) When a lesser included offense instruction is given, the court shall instruct the jury that it must reach a verdict on the crime charged before it may proceed to a lesser included offense. Upon request of the defendant at the settling of instructions, the court shall instruct the jury that it may consider the lesser included offense if it is unable after reasonable effort to reach a verdict on the greater offense.

**2-2-1113. Discharging jurors.** When the jury has reached a verdict or has determined that it shall be unable to either acquit or find the defendant guilty, even with additional deliberation, the court shall discharge the jurors from service.

**2-2-1114. Motion for a new trial.** (1) Within 20 days of a guilty verdict, the defendant may file with the court, and serve upon the prosecution, a written motion for a new trial. The motion must specify the grounds for a new trial.

(2) After hearing the motion for a new trial, the court may, in the interest of justice:

(a) deny the motion;

(b) grant a new trial; or

(c) modify or change the verdict or finding by finding the defendant guilty of a lesser included offense or not guilty.

(3) The granting of a new trial places the parties in the same position as if there had been no trial.

## **Part 12 - Sentence and Judgment**

**2-2-1201. Rendering judgment and pronouncing sentence.** (1) This Part controls all sentencing in all circumstances. Changes in Montana Law do not apply unless expressly adopted by Tribal Council.

(2) The judgment shall be rendered in open court.

(3) If the verdict or finding is not guilty, judgment shall be rendered immediately and the defendant shall be discharged from custody or from the obligation of his or her bail bond.

(4) (a) If the verdict or finding is guilty, sentence shall be pronounced and judgment rendered within a reasonable time.

(b) When the sentence is pronounced, the judge shall clearly state for the record his or her reasons for the sentence imposed.

**2-2-1202. Sentencing considerations.** (1) Sentences imposed upon those convicted of crime must be based primarily on the following:

(a) the crime committed;

(b) the prospects of rehabilitation of the offender, including the possible resources and needs of the offender's dependents, if any;

- (c) the circumstances under which the crime was committed;
- (d) the criminal history of the offender; and
- (e) alternatives to imprisonment of the offender.
- (f) the ability of the defendant to pay a fine.

**2-2-1203. Imposition of sentence.** (1) No sentence shall be imposed until:

- (a) the offender and the offender's counsel have had an opportunity to examine any pre-sentence report and to cross-examine the preparer of such report on the basis for any sentencing recommendations contained in the report,
- (b) the prosecution and defense have had an opportunity to present evidence, witnesses, and an argument regarding the appropriateness of a sentencing option; and
- (c) the offender has had the opportunity to speak on his or her own behalf and to present any information likely to mitigate the pending sentence.

(2) Sentencing shall be imposed on all offenses pursuant to Tribal law. To the extent that any Montana statute incorporated into Tribal law provides a penalty that conflicts with Tribal sentencing law, Tribal sentencing law will control.

(3) An offender found guilty of an offense may be sentenced to one or more of the following penalties:

(a) deferred imposition of sentence with reasonable restrictions and conditions monitored by the Tribal Probation Officer, and with the following characteristics:

(i) the record of the offense shall be expunged upon satisfactory performance by the offender of the restrictions and conditions of deferral for a period not to exceed one year for Class A, Class B, Class C, and Class D offenses and three years for a Class E offense, and

(ii) imposition of sentence will occur immediately upon violation of a restriction or condition of the deferral;

(b) suspended execution of all or part of a sentence for one year for Class A, Class B, Class C, and Class D offenses and three years for a Class E offense, with the offender being placed on probation under reasonable restrictions and conditions for the period of suspension, and with a violation of a restriction or condition resulting in execution of the suspended portion of the sentence;

(c) imprisonment for a period of time not to exceed the maximum permitted for the offense;

(d) a fine in an amount not to exceed the maximum permitted for the offense;

(e) community service;

(f) any diagnostic, therapeutic, or rehabilitative measures, treatments, or services deemed appropriate;

(g) restitution to a victim of an offense for which the offender was convicted; or

(h) a person may be allowed to serve home arrest at the person's expense, but will not be eligible for parole under Section 2-3-302.

(4) The court may impose any or all of the following restrictions or conditions as part of a sentence, suspended or otherwise, or a deferred imposition of sentence, for rehabilitative purposes or to protect the Reservation community:

(a) prohibiting the offender from owning or carrying a dangerous weapon;

(b) restricting the offender's freedom of movement;

(c) restricting the offender's freedom of association;

(d) requiring the offender, if employed, to remain employed and, if unemployed, to actively seek employment; and

(e) any requirement or limitation intended to improve the mental or physical health or marketable skills of the offender.

(5) Unless the Tribal Court otherwise directs in its pronouncement of sentence, all sentences stemming from offenses occurring in the same transaction or course of conduct shall run concurrently and not consecutively.

(6) Any monies paid to the Tribes or to the victim of an offense as a result of this provision shall be paid through the Clerk of Court.

(7) Where the Court in its discretion deems it appropriate, a form of traditional punishment may be imposed in addition to or in place of any punishment provided in this Code.

**2-2-1204. Execution of sentence.** (1) If the offender is sentenced to imprisonment, the court shall deliver a Detention Order or Judgment outlining the specific requirements of detention to the Tribal law enforcement officers serving as Tribal jailers. The offender shall be discharged from custody by the Tribal law enforcement officers after satisfactorily fulfilling the conditions of the imposed sentence or upon earlier order of the court.

(2) If judgment is rendered imposing a fine only, the offender must be discharged after making acceptable arrangements to pay the fine within the period of time specified by the court. The Tribal Court may also allow the offender to perform community service to offset any fine or allow the offender to be imprisoned until the fine is satisfied, applying \$50.00 for every day served, unless a different amount is otherwise established by Tribal Council. If no such permission is included in the sentence, the fine shall be paid prior to formal release.

(3) If judgment is rendered imposing both imprisonment and a fine, the offender shall be discharged after fulfilling the requirements of subsections (1) and (2) of this section.

(4) The Court may in its discretion grant temporary release from custody under any conditions the Court deems appropriate.

**2-2-1205. Restitution.** (1) When restitution is ordered, the court shall specify the amount, method and payment schedule imposed upon the offender. Before restitution may be ordered, the defendant shall

receive notice of the amount and terms requested and shall be entitled to a hearing upon his or her timely request.

(2) The fact that restitution was ordered is not admissible as evidence in a civil action and has no legal effect on the merits of a civil action.

(3) Except as otherwise provided in this subsection, restitution paid by an offender to an injured person must be deducted from any monetary award granted to said injured person in a civil action arising out of the facts or events which were the basis for the restitution. The court trying the civil action shall determine the amount of any reduction due to payment of restitution by an offender under this section. However, in the event that criminal and civil actions against an offender arising from the same transaction or events are heard in courts of different jurisdictions, one of which is the Tribal Court, the Tribal Court shall adjust offender's payments within its jurisdictional control for restitution or otherwise to assure that an injured party does not recover twice for the same harm.

(4) An offender may petition for modification of sentence imposing restitution and request a hearing on the matter. The injured person shall be given notice by the offender of any proposed modification and afforded an opportunity to be heard on the proposed modification. *(Rev. 4-15-03)*

**2-2-1206. Payment of fines and restitution.** (1) All monies collected as the result of a fine imposed by the Tribal Court shall be paid through the Clerk of Court. Upon receiving the monies, the Clerk shall:

- (a) issue a receipt to the paying person;
- (b) credit the account of the offender, noting whether the fine is paid in full or what balance, if any, remains due; and
- (c) transfer the monies to the general fund of the Tribes, unless otherwise specifically directed by a provision of this Code.

(2) All monies collected for restitution shall be paid through the Clerk of Court. Upon receiving the monies the Clerk shall:

- (a) issue a receipt to the paying person;
- (b) credit the account of the offender, noting whether the restitution is paid in full or what balance, if any remains due; and
- (c) transfer the monies to the person to whom restitution is to be paid. *(Rev. 3-21-13)*

**2-2-1207. Revocation of parole or suspended or deferred sentence.** (1) If a petition requesting revocation has been filed and a revocation hearing held, the Tribal Court may revoke a defendant's parole or suspension or deferral of sentence if a preponderance of the evidence shows the imposed conditions of the parole, or suspension, or deferral of sentence have been violated.

(2) A petition seeking revocation of a parole or a suspended sentence or imposition of a sentence previously deferred must be filed during the period of parole, suspension or deferral, or within 5 days after the period of parole, suspension, or deferral ends if the offender's violation of a condition of parole or probation occurred within the final 48 hours prior to the end of the period. Expiration of a parole or

the time ordered under a suspended or deferred sentence prior to a hearing for revocation does not deprive the Tribal Court of jurisdiction to rule on the revocation petition.

(3) This is the exclusive remedy for violation of a condition of parole, or suspended or deferred sentence.

**2-2-1208. Dismissal and expungement after deferred sentence.** Whenever the court has deferred the imposition of sentence and after expiration of the period of deferral and after the defendant's successful completion of any conditions of deferral, upon motion by the court, the defendant, or the defendant's counsel, the court shall allow the defendant to withdraw his or her plea of guilty or strike the verdict or judgment expunging the court records of all record of the proceedings by entering an order of dismissal of charges and expungement, inscribing each record of the proceedings with the word "Expunged" and sealing the file.

**2-2-1209. Failure to pay a fine.** (1) If a defendant sentenced to pay a fine or restitution fails to make payment as ordered, the Court or the Prosecutor may move that the offender show cause why the offender's nonpayment should not be treated as contempt of court. Notice of a show cause hearing on the contempt charge shall be served on the offender by law enforcement officers at least five days prior to the date set for hearing. Notice shall also be served on the victim if the show cause was issued for failure to pay restitution.

(2) Unless the offender shows that the nonpayment was not attributable to an intentional refusal to obey a Tribal Court order or the offender's failure to make a good faith effort to make the ordered payments, the Tribal Court may find the offender in contempt and order the person incarcerated until the fine is satisfied. Time served shall be credited against the fine at the rate of \$50.00 per day unless otherwise set by the Tribal Council.

(3) If the Court determines that the offender's nonpayment does not constitute contempt, the Court may modify the original sentence, judgment, or order, allowing the offender additional time to pay the fine or restitution or reducing the amount owed. *(Rev. 4-15-03)*

**2-2-1210. Credit for time served.** If a defendant has served any of the defendant's sentence under a commitment based upon a judgment that is subsequently declared invalid or that is modified during the term of imprisonment, the time served must be credited against any subsequent sentence received upon a new commitment for the same criminal act or acts. This does not include time served pursuant to Section 2-2-610(1)(c). *(Rev. 1-27-00)*

**2-2-1211. Credit for incarceration prior to conviction.** (1) Any person incarcerated on a bailable offense and against whom a judgment of imprisonment is rendered must be allowed credit for each day of incarceration prior to or after conviction, except that the time allowed as a credit may not exceed the term of the prison sentence rendered. This does not include time served pursuant to Section 2-2-610(1)(c).

(2) Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of the offense must be allowed a credit for each day of incarceration prior to conviction, except that the amount allowed or credited may not exceed the amount of the fine. The daily rate of credit for incarceration is \$50.00 per day unless otherwise set by the Tribal Council. This does not include time served pursuant to Section 2-2-610(1)(c). *(Rev. 1-27-00)*

## **Part 13 - Traffic Court Procedure**

*(Enacted 4-15-03.)*

**2-2-1301. Purpose.** The Traffic Court is a division of the Tribal Court of the Confederated Salish and Kootenai Tribes. The procedure in this part is intended to provide for the just determination of traffic cases through a simple and uniform process and the elimination of unnecessary expense and delay.

**2-2-1302. Traffic Court Proceedings.** All proceedings in Traffic Court shall be held before a Judge of the Tribal Court designated to hear such cases. Traffic Court Trials shall be tape recorded, and the tape shall be maintained for a period of 20 days after entry of Judgment, but the tape will not be archived unless a timely appeal is filed in the manner provided by this Code.

**2-2-1303. Presumption of Innocence and Burden of Proof.** Traffic Court defendants shall be presumed innocent until proven guilty or until a plea of guilty or no contest is entered. A plea of not guilty requires that the Tribes prove beyond a reasonable doubt that the defendant committed the cited traffic offense.

**2-2-1304. Defendants Rights in Traffic Court.** All defendants in Traffic Court matters shall have the following rights:

- (1) the right to be informed of the charge(s) against the defendant and the maximum penalty allowed under Tribal law for each charge;
- (2) the right to have assistance from or be represented by an attorney (at the defendants own expense) or to have another Tribal member speak on the defendant's behalf (see Tribal Member Representation, §1-2-506 of this code);
- (3) the right to plead either guilty, not guilty, or no contest, and if the defendant pleads guilty or no contest, to have the Judge immediately sentence the defendant as provided in the CSKT Laws Codified or if the Defendant pleads not guilty to have the Judge immediately schedule a trial of the charge(s);
- (4) the right to a prompt, open and public trial before the Judge and at that hearing to cross-examine the Tribes witnesses and to call witnesses and present relevant evidence on the defendant's behalf;
- (5) the right to remain silent and, if the defendant chooses to remain silent, the right to have no inference drawn from the defendant's silence;
- (6) the right to be advised that any statement made by the defendant may be used in evidence against the defendant;
- (7) the right to request that the Court issue subpoenas for witnesses;
- (8) the right to appeal the Judge's final judgment to the Tribal Appellate Court within 20 days of the date of final judgment.

**2-2-1305. Initial Appearance in Traffic Court.** (1) A defendant shall make an initial appearance in Traffic Court on the date and time specified on the traffic citation. If the defendant is under the age of eighteen (18) years, a parent or guardian must accompany the defendant to the initial appearance, be available to advise the defendant, and sign applicable forms with the defendant.

- (2) At the Initial Appearance, the judge shall advise the defendant of his or her rights and of the Traffic Court procedures for appearance.
- (3) After informing the defendant of the charge(s) and possible penalties, the judge shall ask the defendant how he or she pleads.
- (4) If the defendant pleads guilty or no contest, the judge shall then proceed to sentencing. After the judge informs the defendant of the sentence, the defendant may make arrangements for the payment of any fines imposed. A Judgment form shall be completed and signed by the judge and a copy shall be provided to the Defendant. The Judgment shall announce the Judgment rendered, sentence imposed, and the fine payment deadline.
- (5) If the defendant pleads not guilty, the judge shall schedule a date and time for a Traffic Court Bench Trial. Jury trials are not provided in Traffic Court.
- (6) If the defendant pleads not guilty, the judge shall order the citing officer to provide the defendant with a written report describing the circumstances of the offense. The report shall be provided at least 10 days before the trial.

**2-2-1306. Forfeiture of Bond in lieu of Appearance.** A defendant may pay and forfeit the scheduled bond for the cited offense and thereby be relieved of the obligation to appear. Forfeiture of the bond shall constitute a conviction on the cited offense and shall require no further proceedings. (*Rev. 3-21-13*)

**2-2-1307. Traffic Court Bench Trials.** (1) Traffic Court Bench Trials shall be held in the Tribal Courtroom on the date and time set in the Scheduling Order. Either the defendant or the citing officer may request a continuance of the bench trial which shall be granted for good cause by the Court.

- (2) The citing officer and the defendant each bear the responsibility of notifying the witnesses they wish to call to testify at the bench trial. Upon request by either party, the Court shall issue subpoenas for any witness whose testimony is necessary for a just adjudication of the case at trial.
- (3) Traffic Court Bench Trials shall be recorded as provided in § 2-2-1301 of this code and all witnesses shall be sworn before being allowed to testify.
- (4) The citing officer shall present the Tribes' case first. The citing officer may testify and present evidence to the Court. The Defendant may cross-examine the citing officer and any witnesses called by the citing officer.
- (5) After the citing officer has presented the Tribes' case, the defendant may then present his or her case to the Court. The defendant may elect to testify, but may not be required to testify. The defendant may call witnesses to testify on his or her behalf and may present other evidence regarding the charge(s). The citing officer may cross-examine the defendant's witnesses.
- (6) After the defendant has concluded his or her case, the parties may make concluding arguments before the Court.
- (7) On the record, after considering the testimony and evidence presented at trial, the judge shall find the defendant either guilty or not guilty on the charge(s). If the defendant is found guilty, the judge shall announce the sentence for each offense and the deadline for payment of fines or the completion of other penalties. The defendant may enter into a payment schedule agreement with the Court.



**2-2-1308. Failure to Appear.** (1) If a defendant fails to appear in Traffic Court on the date and time scheduled for initial appearance or on the date and time scheduled for trial, the Judge may issue a warrant for the defendant's arrest.

(2) If a juvenile defendant fails to appear in Traffic Court on the date and time scheduled for initial appearance or on the date and time scheduled for trial, the judge may issue a Summons for the defendant and for the defendant's parent or guardian to appear and show cause for non-appearance.

(3) If a juvenile defendant and the defendant's parent or guardian fail to appear after having been summonsed to show cause, the Judge may issue a warrant for the arrest of the defendant's parent or guardian for contempt and may further refer the matter to Juvenile Court for action.

**2-2-1309. Sentencing in Traffic Court.** Traffic Court may only hear cases involving violations punishable by a fine or other penalty which does not include jail time. No one appearing in Traffic Court may be sentenced to serve time in jail unless he or she is found in contempt. Violations cited into Traffic Court which carry a possible jail sentence shall be transferred to the Criminal Court Division.

**2-2-1310. Appeal.** Decisions rendered in Tribal Traffic Court may be appealed according to the Rules of Appellate Procedure.

**2-2-1311. Record of Convictions.** The Clerk of Court shall submit a record of conviction to the Montana Department of Motor Vehicles for all Tribal Traffic Court convictions which become part of defendant's driving record.

## TITLE II

### CHAPTER 3 - PROBATION AND PAROLE

#### Part 1 - Administration

**2-3-101. Establishment of Department of Tribal Probation and Parole.** There is established a Tribal Department of Probation and Parole (hereafter "the Department"), the purposes of which include the protection of the Reservation community by providing for the acceptance of custody and the supervision and rehabilitation of juvenile and adult offenders placed on probation or released on parole by the Tribal Court.

**2-3-102. Organization of the Department.** The Department is managed by a Department Head, subject to the supervision of the Tribal Executive Secretary, and is comprised of adult probation officers, juvenile probation officers, community service officers, support staff, and such other personnel as may be deemed necessary and approved by the Tribal Council by means of its budgeting process.

**2-3-103. Powers and duties of juvenile probation officers.** The powers and duties of juvenile probation officers are those set forth in the Tribal Juvenile Justice Code, Ordinance 99A.

**2-3-104. Definitions.** As used in this Chapter, unless the context otherwise requires, the following definitions apply:

- (1) "Notice to the probationer or parolee" is the personal service of a warrant or a summons and petition for revocation of the parole or probation to a supervised offender.
- (2) "Parole" means the release to the community of an adult prisoner as provided by law prior to the expiration of the prisoner's term, subject to the conditions imposed by the Court and subject to the supervision of the Department upon direction of the Court.
- (3) "Probation" means the release by the Court without imprisonment of an adult offender found guilty of a crime upon verdict or plea, subject to conditions imposed by the Court and subject to the supervision of the Department upon direction of the Court.
- (4) "Supervised offender" is an adult offender (a) sentenced to probation, (b) whose sentence is deferred, or (c) released from incarceration subject to conditions imposed by the Court and subject to the supervision of the Department.

**2-3-105. Adult Probation Duties of the Department.** The duties of the Department are:

- (1) To undertake investigations and make reports, including a pre-sentence investigations and reports, which may include alternative sentencing recommendations, requested by the Tribal Court;
- (2) To supervise an adult probationer or parolee when requested to do so by a court of competent jurisdiction, in accord with the conditions set by the court;
- (3) To assure that a copy of the conditions of probation or parole is signed by the supervised offender and given to him or her;

- (4) To regularly advise and consult with the supervised offender to encourage him or her to improve his or her condition;
- (5) To keep records and report on the progress of persons supervised as the court may require;
- (6) To identify and, where necessary, mobilize Tribal or community programs to which supervised offenders may be assigned for evaluation, treatment, or rehabilitation, or for the purpose of performing community services, and to monitor the execution and progress of any such court-ordered assignment; and
- (7) To cooperate with all agencies, Tribal, public and private, that are concerned with the treatment or welfare of persons on probation or parole.

**2-3-106. Powers of the Department of Adult Probation.** (1) An adult probation officer, in his or her supervision of an adult offender, is vested with all the authority of a Tribal law enforcement officer, including, without limitation,

- (a) the authority to carry firearms, including concealed firearms, when necessary,
- (b) the authority to request a judge of the Tribal Court to issue a warrant for arrest of the supervised offender or for search and seizure of the offender's person or property,
- (c) the authority to arrest a supervised offender without a warrant for violation of a condition of probation or parole and commit the offender to Tribal jail by presenting to the Tribal police a written statement that the offender has, in the judgment of the officer, violated the conditions of his or her release, and
- (d) the authority to conduct a search without warrant upon reasonable cause.

(2) The Department may:

- (a) recommend to the Tribal Council for adoption rules for the conduct of adults placed on parole or probation, except that the Department may not recommend, and the Council may not adopt, any rule conflicting with conditions of parole or probation imposed by a court of competent jurisdiction; and
- (b) adopt requirements for the training of adult probation officers.

## **Part 2 - Probation**

**2-3-201. Declaration of purpose and policy.** The Tribal Council finds and declares that probation is a desirable disposition of appropriate criminal cases because:

- (1) It provides a framework by which the Tribes can supervise positive rehabilitative measures imposed on an offender by a court;
- (2) The offender remains under the purview of the Court while engaging in the educational, therapeutic and community restorative pursuits that add up to a successful rehabilitation;

- (3) It maximizes the liberty of the individual while at the same time vindicating the authority of the law and effectively protecting the public from further violations of the law;
- (4) It affirmatively promotes the rehabilitation of the offender by continuing normal community contacts; and
- (5) It minimizes the impact of the conviction upon innocent dependents of the offender.

**2-3-202. Penalty upon revocation of probation or parole.** (1) A person who is found, after a hearing, to have violated a condition of his or her probation may be required:

- (a) In the case of probation during a suspended sentence, to serve in the Tribal jail up to the entire period for which execution of sentence was suspended; or
  - (b) In the case of deferred imposition of sentence, to serve such sentence as may be imposed by the Court after a sentencing hearing.
- (2) Parole is not available to a supervised offender whose probation is revoked, but appellate review of the trial court's revocation decision may be had on the ground that the supervised offender was deprived of liberty without due process of law.

**2-3-203. Arrest for violation of a condition of probation.** (1) As provided in Section 2-3-106(1)(b) and (c), an adult probation officer may arrest a supervised offender for violation of a condition of probation. Any probation officer may arrest the prisoner without a warrant or may deputize any other officer with power to arrest to do so by giving him or her a written statement setting forth that the prisoner has, in the judgment of the probation officer, violated the conditions of his release. The written statement delivered with the prisoner by the arresting officer to the Tribal jail shall be sufficient warrant for the detention of the probationer or conditional release. Pending hearing upon a charge of violation the prisoner may be incarcerated in the Tribal jail.

- (2) In the event of such arrest, the probation officer shall forthwith cause to be filed a petition for revocation of probation, which shall include, but not be limited to, facts showing the basis for the arrest and for revocation of probation.
- (3) An arrested probationer is entitled to determination of probable cause for the grounds for his or her arrest within 48 hours, exclusive of weekend and holidays, of the time of arrest.
- (4) If probable cause is found for the arrest, the arrested probationer shall be held in the Tribal jail without bail until the probation revocation hearing is held.

**2-3-204. Probation revocation hearing.** (1) A probationer is entitled to a hearing before the Court prior to revocation of probation within 10 days of the date of notice of revocation or the date of arrest for violating a condition of probation, unless good cause for delay exists. The burden is on the party asking for the delay to show that good cause exists.

- (2) The subject matter of a revocation hearing is limited to alleged knowing violation(s) of probation condition(s). A violation of a condition is deemed to be a knowing violation if the probationer signed, and was given a copy of, the conditions of probation.
- (3) Supervised offenders do not have a right to a jury trial at a revocation hearing.

(4) If the probationer admits to violating a condition of probation, the Court, after the probationer has had the opportunity to offer testimony or evidence regarding any circumstances tending to mitigate the violation, may revoke the probation.

(5) If the probationer does not admit to violating a condition of probation, the prosecutor has the burden of proving by a preponderance of the evidence that the probationer violated a condition of the probation. Prosecution evidence may not be suppressed on the ground that, if an admission of a violation, no warning was given of a right not to incriminate oneself.

(6) The probationer has a right to counsel and may call witnesses or introduce evidence in his or her own behalf and may cross examine any prosecution witness. Hearsay evidence is admissible, although a decision to revoke probation may not be based solely on hearsay evidence. The prosecutor may show any aggravating circumstances, and the probationer may show any mitigating circumstances.

(7) The Court shall determine the appropriate disposition of a petition for revocation by balancing the probationer's interest in liberty, employment, family ties, responsibilities, health, or community ties against the Tribes' interest in rehabilitation, public safety, victim(s)' rights, and the probationer's duty to comply with each condition of probation.

(8) An order revoking probation shall be in writing and shall contain findings of fact, including, but not necessarily limited to, those required in subsection (7), and conclusions of law supporting the revocation.

### Part 3 - Parole

**2–3–301. Duties of the Adult Probation and Parole Officer.** (1) The adult probation and parole officer shall retain custody of all persons placed on parole and shall supervise the persons during their parole periods in accordance with the conditions set by the Court.

(2) The adult probation and parole officer shall review and monitor a person who is eligible for parole in preparing a parole plan. The officer shall make a report of the officer's efforts and findings to the Court prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of parole must be signed by the parolee and given to the parolee and to the parolee's probation and parole officer, who shall report on the parolee's progress to the Court as may be necessary or desirable.

(4) To assist parolees the adult probation and parole officer may, in addition to other services, provide the following:

- (a) Employment counseling and job placement;
- (b) family and individual counseling and treatment placement;
- (c) financial counseling;
- (d) vocational and educational counseling and placement; and
- (e) referral services to any appropriate agency.

**2-3-302. Eligibility for parole.** An offender sentenced to confinement in the Tribal correctional facility for 40 days or more on any conviction or combination of convictions, who has served at least one-half of the imposed sentence, and whose confinement is not the result of a probation or parole violation, may file a petition for parole with the Tribal Court.

**2-3-303. Parole hearing.** The Court shall hold a hearing on the petition within 10 days of its filing. All persons desiring to speak at the hearing shall be heard, including, but not limited to law enforcement officers, the Tribal prosecutor, family and friends of the offender, the offender and the offender's attorney, any victim of the offense for which the offender was sentenced in incarceration, and immediate, adult, family members of such victim. Notice of hearing shall be given to all parties at least 5 days prior to the hearing.

**2-3-304. Granting parole.** (1) In determining whether to grant parole, the Court shall consider all pertinent information including, but not limited to, the following:

- (a) The circumstances and nature of the offense;
- (b) The past criminal record of the petitioner;
- (c) The past employment record of the petitioner;
- (d) The conduct of the petitioner during imprisonment;
- (e) The results of any physical or psychological reports; and
- (f) The petitioner's employment status, family and community ties and responsibilities, and health, which may be balanced against the Tribes' interest in rehabilitation, public safety, and victim's rights.

(2) The order granting parole shall set forth:

- (a) The duration of parole;
- (b) The conditions of parole;
- (c) Commitment to the custody of the adult probation and parole officer; and
- (d) The consequences of violating a condition of parole.

**2-3-305. Penalty for violation of a condition of parole.** Any person who violates a condition of parole may be apprehended and required to serve the remainder of the original sentence. Further parole in this instance is not allowed.

**2-3-306. Arrest of alleged parole violator.** Any parole officer may arrest the prisoner without a warrant or may deputize any other officer with power to arrest to do so by giving him or her a written statement setting forth that the prisoner has, in the judgment of the parole officer, violated the conditions of his release. The written statement delivered with the prisoner by the arresting officer to the Tribal jail shall be sufficient warrant for the detention of the parolee or conditional release. Pending hearing upon a charge of violation the prisoner may be incarcerated in the Tribal jail.

**2-3-307. Determination of probable cause after arrest.** An arrested parolee is entitled to a determination within 48 hours, exclusive of weekends and holidays, of whether there is probable cause to believe that the arrested parolee has committed acts which would constitute a violation of parole conditions. *(Rev. 1-27-00)*

**2-3-308. Parole revocation hearing.** (1) Upon a finding of probable cause or waiver of the hearing or upon issuance of a notice of parole violation by the Adult Probation Officer, the Officer shall file a petition for revocation of parole with the Court. Such petition must be filed within the parole period and served upon the parolee.

(2) The parolee is entitled to a revocation hearing within 10 days of arrest for a parole violation or receipt of a notice of revocation unless the court finds that good cause for delay exists.

(3) The subject matter of the hearing is limited to alleged violation(s) of condition(s) of parole.

(4) The parolee has no right to a jury trial when a violation of a condition of parole is alleged.

(5) Unless the parolee admits the parole violation, the Adult Probation Officer or Tribal Prosecutor must prove by a preponderance of the evidence that the parolee violated a condition of his or her parole. Evidence that the parolee violated a condition of parole is not excludable on the grounds that the parolee was not warned of his or her right not to incriminate himself or herself prior to admitting a violation.

(6) A parolee has the right to legal counsel.

(7) A parole may not be revoked based solely on hearsay, but hearsay testimony may be admitted.

(8) A parole revocation is appealable on the grounds that the revocation deprived the parolee of liberty without due process of the laws. The court's refusal to revoke a parole is not appealable by or on behalf of the Tribe.

## TITLE III

### CHAPTER 1 - DOMESTIC RELATIONS

#### Part 1 – General Provisions

**3-1-101. Marriages.** The Tribal Court of the Confederated Salish and Kootenai Tribes shall have jurisdiction over marriages of Indians residing on the Flathead Reservation and of other persons who consent to the Court's jurisdiction. Judges of the Tribal Court are authorized to perform marriage ceremonies.

**3-1-102. Annulment.** (1) The Tribal Court of the Confederated Salish and Kootenai Tribes shall have jurisdiction to hear and determine matters of annulment upon the application of one of the parties:

- (a) when either party to the marriage shall be incapable of consenting thereto.
  - (b) when the consent was obtained by force or fraud.
  - (c) when the party making application was of unsound mind at the time of the marriage.
  - (d) when either party was at the time of the marriage incapable of consummating the marriage and the incapacity is continuing.
  - (e) when the marriage was invalid on one of the grounds as set in Section 40-1-402 of the Montana Code Annotated, which grounds are incorporated herein by reference.
- (2) If, after termination of any of the foregoing defects, the parties shall continue to live together as husband and wife, the marriage shall not subsequently be subject to annulment because of such defect.
- (3) Procedures for annulment must be instituted by the party laboring under the disability or upon whom the force or fraud is imposed.
- (4) The legitimacy of children conceived or born prior to judgment shall be conclusive only as against the parties to the action and those claiming under them.

**3-1-103. Divorce or separation.** (1) A marriage may be dissolved by divorce or legal separation in the Tribal Court of the Confederated Salish and Kootenai Tribes for incompatibility of the parties for whatever reason using the guidelines of the Uniform Marriage and Divorce Act set forth in the Montana Code Annotated.

(2) During the pendency of proceedings for divorce or legal separation or for annulment, the Tribal Court may order:

- (a) the husband and wife to provide for the separate maintenance of his or her spouse and children as the Court may deem just upon application therefor;
- (b) the care, custody and maintenance of the minor children of the marriage,
- (c) the restraint of either spouse from in any manner threatening or interfering with the other or the minor children.



(3) In addition to the dissolution of marriage by decree, the Tribal Court shall have the power to impose judgment as follows:

(a) for future custody and care of the minor children of the marriage as may be in the interest of the children.

(b) for the recovery from either spouse and to allow for the care and custody of such children an amount of money that may be just and proper for the party to contribute toward the education and support of the children.

(c) for the recovery from either spouse an amount of money or personal property as may be just and proper for the party to contribute to the maintenance of the other.

(d) for the recovery and delivery to each of the parties any of their personal property in the possession or control of the other at the time of the giving of judgment.

(e) or whatever equitable distribution of marital property as the Court deems just and proper based on considerations of age of the parties, health, education and skills, financial circumstances of each, and the duration of the marriage.

(f) for the restoration of the maiden name of the wife.

(4) If a party requests a decree of legal separation rather than a decree of divorce, the Court shall grant the decree in that form unless the other party objects and a legal separation shall convert into a divorce decree upon request of either party. *(Rev. 4-15-03)*

**3-1-104. Procedure.** (1) All proceedings for the annulment, separation or divorce shall be commenced in the manner provided in Rule 8 of the Rules of Practice, Title I, Ch. 2, Part 7, of the CSKT Laws Codified.

(2) The complaint shall allege the grounds for annulment; or in a proceeding for separation or divorce that the parties are incompatible; and shall set forth:

(a) the age, occupation and residence of each party and his/her length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements exist in that either the parties are Indian or that the parties have consented to the Court's jurisdiction;

(d) the names, ages and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support, custody and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(3) Either or both parties to the marriage may initiate the proceeding. If one party commences the proceeding, the other party must be served in the manner set forth in Rule 9 of the Rules of Practice, Title I, Ch. 2, Part 7, of the CSKT Laws Codified, and may, within fourteen days after the date of service, file a verified response. No decree may be entered until twenty days after the date of service.

(4) The Court may join additional parties proper for the exercise of its authority to implement this act.  
(Rev. 4-15-03)

**3-1-105. Separation agreement.** The parties in an action for legal separation or divorce may enter into a separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody and visitation of their children. The terms of the separation agreement, except those providing for support, custody and visitation of the children, are binding on the Court, unless the Court finds the agreement to be unconscionable.

**3-1-106. Adoption.** Adoption may occur either formally, as approved by the Court, or informally, as a traditional adoption.

(1) **Formal Adoption.** The Tribal Court shall have jurisdiction to hear, pass upon and approve applications for family adoption of or by members of the Confederated Salish and Kootenai Tribes, and other Protected Children as defined by Section 3-2-102 (18).

(a) Adoption proceedings shall be initiated by filing a petition with the Court, which shall conduct the proceedings in a manner that shall assure that all concerned parties, including minors, shall have proper notice of hearings, and be accorded the right to professional counsel or lay representative at their own expense, the opportunity to introduce evidence, to be heard on their own behalf, and to examine witnesses.

(b) A petition for adoption shall be signed by petitioners, witnessed by a Clerk of the Tribal Court, and shall specify:

(i) the full names, ages and place of residence of the petitioners, and if married the place and date of the marriage;

(ii) when the petitioners acquired to intend to acquire custody of the child and from what person or agency;

(iii) the date and place of birth of the child, if known;

(iv) the name used for the child in the proceeding, and if a change in name is desired, the new name;

(v) a full description and statement of value of all property owned or possessed by the child; and

(vi) facts, if any, which excuse consent on the part of a parent, to the adoption.

(c) Any surviving natural parent must consent in writing, unless the Court determines that the necessity of consent has been waived by acts of a natural parent that constituted willful abandonment of the child, or if the parent has been judicially deprived of the custody of the child on account of abuse or neglect.

(d) The person or persons seeking to adopt the child shall appear before the Court and be examined and the Court may require a report to be prepared by Tribal Social Services Department (TSSD) or a public agency or person designated by the Court to make such a report on the qualifications of the adoptive person or persons.

(e) If the child is over the age of 14 years, the child must also appear before the Court and consent in writing to such adoption.

(f) Unless the Court shall otherwise order, all hearings held in proceedings under this Chapter shall be confidential and shall be held in closed court without admittance of any person other than interested parties and their counsel. All papers, records and files pertaining to the adoption shall be kept as a permanent record by the Court and withheld from inspection. No person shall have access to such records except an order of the Judge of the Court for good cause shown.

(g) After the Court has heard all the facts in such an adoption proceeding, and believes that it is in the best interests of the child to be adopted, it shall enter an order accordingly, which may be interlocutory or final, and cause the order to be kept in the records of the Confederated Salish and Kootenai Tribes, the Bureau of Indian Affairs, and the appropriate agency of the State of Montana for statistical reporting.

(h) Upon entry of an Order of Adoption, the relation of parent and child and all rights, duties, and other legal consequences of the natural relation of child and parent shall thereafter exist between the adopted child and the adoptive parents. Unless otherwise ordered by the court, the child shall be entitled to inherit real and personal property from the adoptive parent or parents, and the kindred of the adoptive parent or parents, according to the customs of the Tribes, and the adoptive parent or parents shall be entitled to inherit property from the adopted child as if the adopted child was their natural child. Unless otherwise ordered by the court, the rights, duties, and obligations, including the rights of inheritance, between the child and child's natural parents shall be canceled. However, the order shall state that the court has determined questions of inheritance and residual parental rights and determined that certain specified inheritance rights shall be continued between the natural parents and the child.

(2) Informal or Traditional Adoption. An informal adoption, or traditional adoption, may be created by placement of the child by the natural parent or parents with another person or family, without court involvement.

(a) Such an adoption must be voluntarily entered into by the natural parent or parents involved and the custodian, and shall be recognized as a legal adoption. The natural parent or parents consenting to the adoption must do so with knowledge of the permanent nature and effect upon their natural parent right.

(b) No informal adoption may be created without the consent of each living, natural parent of the child unless that natural parent's parental rights have been previously terminated by order of the Tribal Court, or some other court of competent jurisdiction. A non-consenting parent may petition the Court at any time within two (2) years of the discovery of the creation of the informal adoption, and request the Court to deny the adoption, or for such other appropriate relief as the parent believes may be in the best interests of the child and consistent with the rights of the natural parent under the laws of the child's Tribe and this code. Upon filing of such a petition, the Court shall hold a hearing in accordance with Section 3-1-106 (1) and the matter shall thereafter be determined in accordance with the preceding rules for determination of a formal adoption petition.

(c) By agreement between the natural parent or parents and the adoptive parent, or by order of the court, certain residual rights may be maintained by the natural parents of the child. The extent and nature of the residual rights shall be determined by the agreement of the natural parents and adoptive parent, or by order of the court, in the case of the filing of a petition under this part. Residual rights shall be in accordance with this chapter.

(d) Following the effective creation of an informal adoption, the relation of parent and child and all rights, duties and other legal consequences of the natural relation of the child and the parent shall be in accordance with Section 3-1-106 (1) (h), as specified for formal adoptions. *(Rev. 9-6-07) (Rev. 3-21-13)*

**3-1-107. Probate, descent and distribution.** (1) When any member of the Tribes dies, leaving property other than an allotment, or other trust property subject to the jurisdiction of the United States, any person claiming to be an heir of the decedent may petition the Tribal Court of the Confederated Salish and Kootenai Tribes to have the Court determine the heirs of the decedent and to divide among the heirs such property of the decedent. The Court may, on its own motion, initiate probate proceedings after a reasonable time if the heirs and/or other interested parties have neglected to file a petition with due diligence for commencement of probate. No determination of heirs shall be made unless all possible heirs known to the Court, the Tribes, the Bureau of Indian Affairs and the claimant shall have been notified of the suit and given full opportunity to come before the Court and defend their interests. Possible heirs who are not residents of the Flathead Reservation must be notified by registered mail and a copy of the notice must be preserved in the record of the case.

(2) When any member of the Tribes dies, leaving a will disposing only of property other than an allotment or other trust property subject to the jurisdiction of the United States, the Tribal Court shall, at the request of any person named in the will, determine the validity of the will after giving notice to appear in Court to all persons who might be heirs of the decedent. A will shall be deemed by the Court to be valid if the decedent had a sane mind and understood what he/she was doing when he/she made the will and was not subject to any undue influence, and if the will was made in accordance with the laws of the State of Montana. If the Court determines the will to be validly executed, it shall order the property described in the will to be given to the persons named in the will or their heirs.

(3) In under either of the two preceding Sections of this Chapter, the Tribal Court may, in its discretion, appoint from among the survivors of a decedent, an administrator of the estate, who will take possession and control of the property of the decedent until the administration of the estate has been completed and he/she has been discharged by Order of the Court.

(4) Prior to distribution of assets, the Court may direct that publication or other method of notice to creditors be given. Creditors may file a written statement of a claim with time and manner directed by the Court in its order of notification. (*Rev. 4-15-03*) (*Rev. 1-24-13*)

**3-1-108. Change of name.** The Tribal Court of the Confederated Salish and Kootenai Tribes shall have the authority to change the name of any person upon petition of the person or upon the petition of the parents of the minor. Any Order issued by the Court for change of name shall be kept as a permanent record, and copies shall be filed with the Tribal Office, Bureau of Indian Affairs and the appropriate agency of the State of Montana for statistical reporting. (*Rev. 1-24-13*)

**3-1-109. Grandparent Contact.** (1) Purpose. Elders are very important and highly respected within our tribal structure. They are the caretakers of our rich culture and traditions. Therefore, the Confederated Salish and Kootenai Tribes in recognition wish to emphasize elder's rights and protection by making them a part of our laws.

(2) Visitation Rights of Grandparents. The Court, in its discretion, may grant visitation rights with or without petition by the grandparents, the great grandparents, or any other person defined by law or custom of the tribes if it is in the best interest of the grandchild(ren).

(3) Petition for Visitation Rights by Grandparents. The grandparents, the great grandparents or any other person defined by law or custom of the tribes if it is in the best interest of the grandchild(ren) may petition the Court for grandchild(ren) visitation rights in the following circumstances:

- (a) The parents of the child(ren) are divorced, legally separated or no longer in a relationship; or
  - (b) An action for divorce or separate maintenance has been commenced by one of the parents of the child(ren); or
  - (c) The parent of the child(ren), who is the child of the grandparent, has died.
- (4) Visitation Right Exceptions. The preceding provisions cited in Section 1, 2, and 3, inclusive, do not apply if the child(ren) has/have been placed for adoption with a person other than the child(ren)'s stepparent or grandparent. Any grandparent visitation rights granted pursuant Section 1, 2, or 3, inclusive, prior to placement for adoption of the child(ren), are terminated upon the adoption, except in the case of an open adoption. *(Rev. 11-29-12) (Rev. 3-21-13)*

## **Part 2 – Paternity**

(Enacted 01/24/13)

**3-1-201. Purpose.** The purpose of this chapter is to ensure that the father of each Salish and Kootenai child or child residing on the Flathead Reservation is identified and paternity established in order to protect the best interest of all children regarding such matters as customs and traditions of the tribe, survivorship and inheritance, health, support, and social security benefits. Indian children are the most vital and valued resource to the continued existence, the future, and integrity of the Confederated Salish and Kootenai Tribes. The Tribes have a compelling interest in promoting and maintaining the health and well being of all Salish and Kootenai children.

### **3-1-202. Jurisdiction.**

- (1) The Tribal Court shall have jurisdiction over any action to determine paternity under this Title.
- (2) Any person who has sexual intercourse within the lands of the Flathead Reservation with a person who is a member or is eligible to become a member of the Confederated Salish and Kootenai Tribes thereby submits to the jurisdiction of the Tribal Court as to an action brought under this Title with respect to a child who may have been conceived by that act of intercourse.
- (3) In addition to any other method provided by statute, personal jurisdiction may be acquired by personal service of summons outside the Reservation or by service in accordance with the tribal law as now or hereafter amended.

**3-1-203. Applicability.** All civil proceedings pertaining to the establishment, enforcement or modification of child support obligations shall comply with this Title.

**3-1-204. General Provisions.** (1) Statute of Limitations. No statute of limitations applies to an action to establish paternity.

(2) Determination of Maternity. The provisions of this chapter may be applied to determinations of maternity.

**3-1-205. Rules of Procedure in Paternity Proceedings.** (1) Any paternity action under this chapter is a civil action governed by Part 7 Rules of Practice in Actions and Proceedings before the Tribal Court utilizing the Federal Rules of Civil Procedure.

(2) All proceedings in this section shall assure that concerned parties, including minors, shall have proper notice of hearings, and be accorded the right to professional counsel or lay representative at their own expense, the opportunity to introduce evidence, to be heard on their own behalf, and to examine witnesses. If the alleged father does not appear after notice through service of process, the hearing may be held and decree rendered in his absence.

(3) Any hearings or trial held under this section shall be in closed Court without admittance of any person other than those necessary to the action. All papers, records of files, other than the part of the permanent record of the Court or of a file of any agency, are subject to inspection only upon consent of the Court and all interested parties, or in exceptional cases only upon an Order of the Court for good cause shown.

(4) A judgment of the Tribal Court establishing the identity of the father of the child shall be conclusive of the fact in all subsequent determination of inheritance by the Court.

**3-1-206. Definitions.**

(1) “Alleged Father” means any man who might be the biological father of a child.

(2) “Adult Child” means a child eighteen (18) years or older.

(3) “Child” means a person who is less than eighteen (18) years old who has not been emancipated by order of a court of competent jurisdiction or by legal marriage.

(4) “Court” means the Tribal Court of the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

(5) “Genetic Testing” means a DNA paternity test or other approved genetic testing by an accredited laboratory used to establish that the alleged father is the child's biological father with a probability of paternity of 99% or higher.

(6) “Party” means the parent, guardian, child, Tribe, or Confederated Salish and Kootenai Tribes Child Support Enforcement Program to whom certain rights accrue, including, but not limited to, with certain restrictions and limitations; the right to be notified of proceedings; to retain counsel or, in some cases, to secure Court-approved spokespersons; to appear and present evidence; to call, examine, and cross-examine witnesses; the unlimited or restricted right to discovery and the inspection of records; and the right to request a hearing or appeal a final order.

(7) “Paternity” means fatherhood. 'Establishing paternity' means identifying the father of a child and legally determining that he is the father.

(8) “Presumption” means a fact assumed to be true under law.

**3-1-207. Presumption of Paternity.** (1) A man is presumed to be the natural father of a child if:

(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or dissolution, or after a decree of separation is entered by a court; or

(b) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born within three hundred (300) days after the termination of cohabitation; or

(c) After the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

(i) He has acknowledged his paternity of the child in writing filed with the Confederated Salish and Kootenai Tribes Child Support Enforcement Program and the Confederated Salish and Kootenai Tribal Court; or

(ii) With his consent, he is named as the child's father on the child's birth certificate; or

(iii) He is obligated to support the child under a written voluntary promise or by court order;

(d) He acknowledges his paternity of the child in a writing filed with the Confederated Salish and Kootenai Tribes Child Support Enforcement Program and the Confederated Salish and Kootenai Tribal Court, who shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the Confederated Salish and Kootenai Tribes Child Support Enforcement Program and the Confederated Salish and Kootenai Tribal Court. If another man is presumed under subsection (a), (b), (c), or (d) of this section to be the child's father, such acknowledgment shall give rise to the presumption of paternity only with the written consent of the otherwise presumed father or after such other presumption has been rebutted.

(e) A presumption under this section may be rebutted in an appropriate action by a preponderance of evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man or an order of the Court disestablishing paternity.

**3-1-208. Good Cause Not to Establish Paternity.** (1) A woman may be excused from submitting to genetic testing or from identifying or locating the father of her child when there is good cause not to reveal his identity or location. The Court may hold a closed, ex-parte hearing to determine whether good cause exists. "Good cause" may include, but is not limited to:

(a) Cases involving domestic violence:

(b) Cases involving incest or rape; or

(c) Cases where identification of the father is not in the best interest of the child.

**3-1-209. Artificial Insemination.** (1) **Husband and Child Relationship.** If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of the child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the Confederated Salish and Kootenai Tribes Child Support Enforcement Program, where it shall be kept confidential and in a sealed file.

(b) **Donor and Child Relationship.** The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived, unless the donor and the woman agree in writing that said donor shall be the father. The agreement must be in writing and signed by the donor and the woman. The physician shall certify their signatures and the date of the insemination and file the agreement with the Confederated Salish and Kootenai Tribes Child Support Enforcement Program, where it shall be kept confidential and in a sealed file.

(c) **Administrative Record.** The failure of the licensed physician to perform any administrative act required by this section shall not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only in exceptional cases upon an order of the Court for good cause shown.

**3-1-210. Agreed Paternity Order.** (1) The parties may submit an agreed order establishing the paternity of a child. Before deciding whether to approve the agreed order, the judge shall discuss the agreed order with each party and shall:

(a) Explain the proposed agreed order in detail and the consequences of the order and of the person's failure to comply with agreed terms;

(b) Assure that the person's consent to the proposed agreed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person;

(c) Explain the person's right to a spokesperson at their own expense;

(d) Explain the burden of proof as to each issue;

(e) Explain that once the person agrees to the proposed order and it is signed and entered by the Court, it will be too late for the person to change his or her mind.

(2) If the Court finds that any consent was not truly voluntary, the agreed order shall not be entered and the case shall proceed to a hearing.

**3-1-211. Paternity Petition.** (1) **Generally.** A paternity proceeding under this Title may stand alone as a separate proceeding or it may be joined with an action to determine child support at the request of the alleged father or the child's mother. Paternity proceedings may also be joined with an action for



divorce, dissolution, annulment, declaration of invalidity, separate maintenance, child-parent relationship, support, or any other civil action in which paternity is an issue including proceedings in Juvenile Court.

(2) Who May File Petition. A petition to request the Court to establish paternity may be filed by:

- (a) An adult child, or, a child's legal guardian;
- (b) The child's natural mother;
- (c) An alleged father of the child; or
- (d) Any tribal agency with an interest in determining parentage.

(3) Contents of Petition. A petition to establish paternity, prepared on a form approved by the Court, shall state:

- (a) The names, ages, addresses, and tribal affiliations, if any, of the natural mother, the alleged father(s), the child, all others who have legal rights of custody, visitation, or support of the child, and of the petitioner;
- (b) Whether the natural mother and the alleged father are or were married, and the dates of marriage, separation, and divorce, if any; (c) Whether the natural mother and alleged father agree that the alleged father is the natural father of the child; and
- (d) Whether there are other courts or administrative paternity proceedings or state paternity affidavits concerning the child or whether parental rights have been terminated.
- (e) A certified copy of the child's birth certificate shall be attached to the petition or provided to the Court at least ten (10) days before the first hearing.
- (f) An affidavit setting forth the factual basis for the alleged paternity for each child.

(4) Service and Summons. All parties, including the child if over eighteen (18) years of age, the biological mother, and the man alleged in the petition to be the natural father, shall be served with the petition and a summons. The summons shall notify the party that the party must respond to the summons and petition by filing an answer with the Court and serving it on all parties. The summons shall further notify the party that, if the written response is not filed with the Court within twenty-one (21) days after receipt of the summons and petition, the Court may, without that party's response, enter a judgment of paternity by default only if it has admitted evidence of genetic testing statistically proving that the man alleged in the petition is the biological father.

**3-1-212. Paternity Hearing.** (1) The following rules shall apply to paternity hearings:

- (a) Only those persons the Court finds to have a legitimate interest in the proceedings may attend hearings under this chapter. The Confederated Salish and Kootenai Tribes Child Support Enforcement Program staff may be present at paternity hearings;

(b) The mother of the child and the alleged father may be compelled to testify or to provide DNA samples at the paternity hearing;

(c) Testimony of a health care provider concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged for purposes of admitting this evidence;

(d) The parties shall provide testimony on how the costs of paternity testing shall be paid and the Court will make a determination based on this testimony. If the testing was paid by the Confederated Salish and Kootenai Tribes Child Support Enforcement Program, the Tribes may waive all or part of the costs or request reimbursement. Parties who have testing done by non-tribal agencies shall bear all associated costs.

(e) The Court may enter a judgment of paternity by default only if it has admitted evidence of genetic testing statistically proving that the man alleged in the petition to be the natural father is the biological father.

**3-1-213. Evidence Relating to Paternity.** (1) Genetic tests are the preferred method of establishing paternity. Evidence relating to paternity may include:

(a) Genetic test results, weighted in accordance with evidence of the statistical probability of the alleged father's paternity;

(b) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(c) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(d) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the Court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(e) Any other evidence relevant to the issue of paternity of the child.

**3-1-214. Genetic Testing.** (1) In all paternity proceedings, the Court shall require the child, mother, and alleged father(s) to submit to genetic tests, unless good cause exists not to require such testing. The following requirements apply to genetic testing under this section:

(a) Lab Accredited. The tests shall be performed by an accredited paternity genetic testing lab that performs legally and medically acceptable tests, approved by the Confederated Salish and Kootenai Tribes Child Support Enforcement Program as an accredited genetic testing laboratory of reputable standing.

(b) Admission into Evidence. Unless a party objects to the results of genetic tests in writing at least five (5) days before the hearing, the tests shall be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity.

(c) Affidavit of Genetic Expert. The results of genetic tests must be accompanied by an affidavit from the expert describing the expert's qualifications and analyzing and interpreting the results as well as documentation of the chain of custody of the genetic samples.

(d) Contempt of Court. Failure to submit to genetic tests when required by the Court may constitute civil contempt of Court.

**3-1-215. Paternity Order.** The judgment or order of the Court determining whether or not a respondent is a parent of a child shall be based on a preponderance of the evidence. If the judgment or order of the Court establishes a different father than that on the child's birth certificate, the Court shall send the order to the Department of Vital Statistics of the state in which the child was born.

**3-1-216. Disestablishment of Presumed Paternity.** A man presumed to be a child's father under Section 3-2-207 of this chapter may bring an action for the purpose of declaring the nonexistence of the father and child relationship only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party. Any other interested party may bring an action at any time for the purpose of declaring the existence or nonexistence of the father and child relationship. Regardless of its terms, no agreement between an alleged or presumed father and the mother or child shall bar an action under this section. If an action under this section is brought before the birth of the child, all proceedings may be stayed until after the birth, except service of process and discovery, including the taking of depositions.

**3-1-217. Paternity Records.** The records filed in a paternity action shall be confidential. Only parties to the case may obtain copies.

**3-1-218. Paternity Established by other Jurisdictions.** Properly issued court and administrative orders, judgments, or decrees of other tribes, states, or federal agencies establishing paternity will be given full faith and credit. Such orders will be considered properly issued when the issuing court or administrative agency had personal jurisdiction over the person claimed to be bound by the foreign order, subject matter jurisdiction over the matter, proper service of process under the law of the issuing jurisdiction was made on such person, and the order was issued according of the laws of that jurisdiction and does not violate the public policy of the Confederated Salish and Kootenai Tribes. Such orders will be recognized in accordance with the procedures set out in Ordinance 4-3-204 through 4-3-207. The Court shall not, however, recognize any paternity judgments entered by default in the absence of evidence of genetic testing statistically proving that the man alleged is actually the biological father.

### **Part 3 - Child Support** (Enacted 01/24/13)

**3-1-301. Purpose.** The purpose of this chapter is to establish child support guidelines and procedures for the enforcement of child support and to provide for the reciprocal recognition and enforcement of child support orders and judgments. The establishment of these guidelines and procedures is in the best interests of Indian families, and especially Indian children, who have a right and need to receive support from their parents.

**3-1-302. Jurisdiction.** The Tribal Court shall have jurisdiction over any action to establish or enforce child support under this Title.

**3-1-303. General Provisions.** (1) Statute of Limitations. The statute of limitations for the enforcement of child support is tolled from the child's birth until the child reaches the age of eighteen (18) or nineteen (19) if still enrolled in high school. Under extraordinary circumstances, and under the discretion of the Court, a child support obligation may continue for an adult child until the age of twenty-four (24) for educational or medical expenses. Factors to be considered include income of the parents, aptitude and ability of the adult child and parental expectations.

**3-1-304. Procedure for Child Support Proceedings.** Any child support action under this chapter is a civil action governed by the Confederated Salish and Kootenai Civil Rules of Tribal Court.

**3-1-305. Definitions.**

- (1) "Alleged Father" means any man who might be the biological father of a child.
- (2) "Child" means a person who is less than eighteen (18) years old who has not been emancipated by order of a court of competent jurisdiction or by legal marriage.
- (3) "Child Support" means the financial obligation that non-custodial parent owes toward his or her children, whether such obligation is established through a judicial or administrative process or by stipulation of the non-custodial parent. The financial obligation of a non-custodial parent shall be met through the payment of monies and/or through the provision of other services or resources, as ordered by the Court or as agreed by the parties.
- (4) "Confederated Salish and Kootenai Tribes Child Support Enforcement Program" means the Tribe's program designated by the Confederated Salish and Kootenai Tribal Council to administer and enforce this code.
- (5) "Guidelines" and/or "Schedule" means the Confederated Salish and Kootenai Tribes Child Support Enforcement Programs' child support guidelines and schedule approved by the Confederated Salish and Kootenai Tribal Council. These guidelines may be modified upon approval from the Tribal Council.
- (6) "Court" means the Confederated Salish and Kootenai Tribal Court of the Flathead Reservation.
- (7) "Custodial Parent" means the person who holds legal custody of the child or children pursuant to a court order, or who exercises primary physical custody of the child or children on the basis of an agreement between the parents or by the absence of one parent. A legal guardian with primary physical custody of the child or children and standing in the position of the parent shall have the same rights to child support as a custodial parent.
- (8) "Employer" means all persons or entities who agree to compensate another for services performed.
- (9) "Non-custodial parent" means a parent of a child, whether or not conceived during the course of marriage, who does not hold legal custody of the child pursuant to a court order, or who does not

exercise physical custody of the child on the basis of agreement between the parents or by the absence of one parent.

(10) “Obligor” means the person with an obligation to pay child support.

(11) “Obligee” means the person or agency with the right to receive child support.

(12) “Party” means the parent, guardian, child, Tribe, or Confederated Salish and Kootenai Tribes Child Support Enforcement Program to whom certain rights accrue, including, but not limited to, with certain restrictions and limitations; the right to be notified of proceedings; to retain counsel or, in some cases, to secure Court-approved spokespersons; to appear and present evidence; to call, examine, and cross-examine witnesses; the unlimited or restricted right to discovery and the inspection of records; and the right to request a hearing or appeal a final order.

(13) “Parenthood” means the position, function, and standing of a parent.

(14) “TANF” means the Temporary Assistance to Needy Families program, whether administered by the Confederated Salish and Kootenai Tribes, or another Tribe or a State.

**3-1-306. CSKT Tribal Child Support Enforcement Program.** (1) The Confederated Salish and Kootenai Tribes Child Support Enforcement Program are established to carry out the purposes set out in this chapter. The Program shall be operated in compliance with Title IV-D of the Federal Social Security Act (42 U.S.C. § 651) for the establishment of paternity, establishment and modification of child support obligations, enforcement of child support obligations, and location of custodial and non-custodial parents.

(a) Authority. Upon request of the parent, an obligee, and obligor, or a tribal or state agency with authority to make such a request, the Confederated Salish and Kootenai Tribes Child Support Enforcement Program may initiate legal action; join a legal action; or otherwise act to establish parenthood of a child, locate a non-custodial parent, or to establish, modify, or enforce a child support obligation. In such an action, the Confederated Salish and Kootenai Tribes Child Support Enforcement Program do not represent the requesting party or any other party to the action, but instead acts on behalf of the child.

(i) Upon the request of the Confederated Salish and Kootenai Tribes Child Support Enforcement Program, the Tribes, any of its agencies, enterprises, or businesses, and any employer operating within the boundaries of the Flathead Reservation shall provide information to assist it in locating obligees, their income, and their assets. The Confederated Salish and Kootenai Tribes Child Support Enforcement Program is further authorized to seek a subpoena from the Court to obtain the names, addresses, employment information, and other necessary data regarding an obligor.

(ii) An attorney representing the Confederated Salish and Kootenai Tribes Child Support Enforcement Program has an attorney-client relationship only and exclusively with the Tribes and with the Confederated Salish and Kootenai Tribes Child Support Enforcement Program. The attorney does not have an attorney-client relationship with any applicant for or recipient of child support services. Any communication between the attorney and a mother, father, alleged father(s), child, or any other party in a paternity or child support action shall not be considered privileged or confidential unless specifically required by tribal or federal law.

(b) Confidentiality. The Confederated Salish and Kootenai Tribes Child Support Enforcement Program shall keep confidential all information and records in its possession except when release is necessary to carry out its duties.

(c) Confederated Salish and Kootenai Tribes Child Support Registry. The Confederated Salish and Kootenai Tribes Child Support Enforcement Program shall maintain the Confederated Salish and Kootenai Tribes Child Support Registry for receipt and disbursement of child support payments.

(d) Program Recommendations and Assistance. The Confederated Salish and Kootenai Tribes Child Support Enforcement Program shall prepare a recommendation about the child support and health insurance obligation for each case, using a form developed by the Program. In making its recommendation, the Confederated Salish and Kootenai Child Support Enforcement Program shall be guided by the Tribes Child Support Guidelines and Schedule. The Program's recommendation shall be filed with the petition whenever possible. The Program shall make assistance available to parents in developing agreements for child support and health insurance. Parents may obtain these services before they file a petition or they may be referred by the Court.

**3-1-307. Confidentiality.** (1) Generally. The Court may order that the address and other location information regarding a party or child shall not be released if the Court finds that release of such information is reasonably likely to result in physical or emotional harm to the child or to the party. In such instance, the information shall not be available for public view and the Court may designate those persons who are allowed access.

(2) Hearings. Only those persons the Court finds to have a legitimate interest in the proceedings may attend hearings under this chapter. Confederated Salish and Kootenai Tribes Child Support Enforcement Program staff may be present at child support hearings.

(3) Financial Records. The Court shall make provision for the confidentiality of financial records filed by the parties, so that they are secure from view by the general public but may be reviewed by the parties to the case and the Confederated Salish and Kootenai Tribes Child Support Enforcement Program, solely for the purpose of establishing, modifying, enforcing, or distributing child support.

### **3-1-308. Petition for Child Support.**

(1) Who May File. Any parent, guardian, emancipated child, or agency authorized to enforce the child support laws of the Confederated Salish and Kootenai Tribes may file a petition for establishment of child support under this chapter. The child support petition may be filed as a separate proceeding, or in connection with a petition for:

- (a) Dissolution or annulment;
- (b) Paternity; or
- (c) Child custody.

(2) Contents of Petition. A petition for establishment of child support shall contain:

- (a) The name, address, tribal affiliation, date and place of birth, and social security number of the petitioner, the responding party, and the child for who support is requested;
- (b) The child support obligation requested or agreed upon;
- (c) The proposed provision of health insurance for the child;
- (d) Any proposed work-related day care or extraordinary medical or educational expenses;
- (e) The date proposed for the child support obligation to begin;
- (f) The proposed frequency of payment;
- (g) A statement whether child support payments should be made by wage withholding or by direct deposit to the Confederated Salish and Kootenai Tribes Child Support Enforcement Program;
- (h) A proposed parenting plan, if any, or if custody is shared, the percentage of a year that each parent has physical custody of the child;
- (i) an affidavit attesting that the petitioner swears that he or she believes that the male party is the father of the child, or a statement that the parties agree that the male party is the father of the child;
- (j) a statement whether any of the following proceedings involving the parents or the child are pending or have taken place in any court or administrative agency, and if so, the date, name, and place of the court or agency:
  - (i) Child custody proceeding;
  - (ii) Child support proceeding;
  - (iii) Paternity establishment or disestablishment proceeding;
  - (iv) Proceeding requesting a domestic violence protective order or no-contact order; or
  - (v) Proceeding requesting a restraining orders involving the child or a party;
- (k) A statement whether either parent has ever received state or tribal public assistance, and if so, the date(s) and name of the state or tribe providing assistance;
- (l) All financial information required by the Confederated Salish and Kootenai Tribes Child Support Enforcement Program;
- (m) authorization for the release of all financial records to the Confederated Salish and Kootenai Tribal Court and the Confederated Salish and Kootenai Tribes Child Support Enforcement Program;
- (n) A statement regarding which parent should be allowed to claim the child as a dependent for income tax purposes; and

(o) The recommendation of the Confederated Salish and Kootenai Tribes Child Support Enforcement Program regarding child support and health insurance coverage.

(3) Service and Summons. The petitioner shall serve a copy of the petition and summons upon the parent against whom child support is to be established. The summons shall inform the respondent of the following:

(a) That an answer must be filed with the Court and served on the petitioning party within twenty-one (21) days of the date of service of the petition;

(b) That if the respondent fails to enter a defense to the petition challenging the authority of the Court to hear the matter by the date of the hearing, the hearing shall proceed on the basis of the petitioner's evidence;

(c) That an order of child support may obligate the respondent to pay child support until the age of majority under the statute of limitations under Section 3-1-303 above;

(d) That if the obligor fails to pay child support under an order, the Court may authorize publication of an obligor's name in a local newspaper and/or suspension or denial of an obligor's licenses for failure to pay child support;

(e) That respondent's employer or others with evidence of the parent's income may be subpoenaed to provide the Court with records of his or her income;

(f) That if there is no reliable evidence of the respondent's income, income will be imputed according to the Tribes Child Support Guidelines and Schedule;

(g) That if the parent's income is reduced as a matter of choice and not for reasonable cause, the Court will attribute income up to the parent's earning capacity; and

(h) That he or she may enter into an agreed child support order as allowed in this Title.

**3-1-309. Notice to Child Support Program.** The Court shall provide all notices of hearings in any marriage dissolution, child custody proceeding or paternity action involving child support. However, it shall be the responsibility of the Petitioning Party to provide the Confederated Salish and Kootenai Tribes Child Support Enforcement Program with a copy of the petition, response, financial information and all other documents filed with the Court

**3-1-310. Setting the Initial Child Support Hearing.** When the Court receives a petition for child support, it may set a hearing date which may not be more than twenty-eight (28) calendar days after the petition was received, unless continued for good cause.

**3-1-311. Agreed Child Support Order.**

(1) Generally. In lieu of a contested hearing under this chapter, the parties may enter into an agreement as to the level of child support obligation in accordance with this section. The Court may only approve an agreement for a deviation from the Tribes Child Support Guidelines and Schedule under the procedures established in Section 3-3-320, below.



(2) Role of Child Support Program. The Confederated Salish and Kootenai Tribes Child Support Enforcement Program shall assist the parties to develop the agreement under the Tribes Child Support Guidelines and Schedule.

(3) Form. The signed and notarized agreement shall be submitted to the Court for approval and entry of the order. The agreed order shall have the same force as any other order issued by the Court.

(4) Court Review. The Court may hold a hearing to review the agreed order and ensure that the parties understand the terms of the proposed order. If the Court finds that any consent was not truly voluntary, the agreed order shall not be entered and the case shall proceed to a hearing.

**3-1-312. Child Support Hearing.** The Court shall review the contents of the petition and hear any additional evidence in order to establish the child support obligation by applying the Tribes Child Support Guidelines and Schedule to the circumstances of the parties. The standard of proof for establishment of the amount of the child support obligation shall be by a preponderance of the evidence.

**3-1-313. Child Support Order.** (1) Generally. Payments under a child support order shall be made to the Confederated Salish and Kootenai Tribes Child Support Enforcement Program for distribution to the custodial parent or other obligee. The Court may, however, order payments to be made elsewhere if there is a showing that it is in the best interests of the child.

(2) Content. A child support order shall include:

(a) The child support obligation of one or both parties, including:

(i) The amount of cash to be paid to the other party;

(ii) The amount of the cash payment which is allocated to work-related day care or health insurance, if any;

(iii) The amount of non-cash services or resources to be provided to the other party, if any; and

(iv) The amount to be paid to third parties for day care, health insurance, or extraordinary expenses, if any.

(b) The date the child support obligation begins;

(c) The frequency of child support payments;

(d) The duration and amount of any pre-filing child support obligation;

(e) a statement that each party shall notify the Confederated Salish and Kootenai Tribes Child Support Enforcement Program of any change of employer or change of address within ten (10) days of the change;

(f) A statement that the child support order is final for purposes of appeal.

**3-1-314. Default Child Support Order.** (1) If the respondent fails to appear or otherwise defend, the Court may enter a default child support order upon request of the Petitioner. The Court may enter a default child support order based upon the evidence contained in the child support petition and the recommendation of the Confederated Salish and Kootenai Tribes Child Support Enforcement Program, and upon finding the following:

- (a) The respondent was given proper service of the petition and summons and proper notice of the hearing; and
  - (b) The petitioner has stated, under oath, that he or she believes that the male party is the father of the child.
- (2) The default order may be suspended or vacated upon a showing of good cause or disestablishment of paternity.

**3-1-315. Modification of Child Support Orders.** (1) When there has been a substantial change in the income of the paying party or other factors that determined the original support obligation, a party may request, by motion, modification of a Confederated Salish and Kootenai Tribal Court child support order.

(a) Motion for Modification. A motion for a modification of child support shall be accompanied by an affidavit setting forth the factual basis for the motion and the modification requested. The moving party shall serve the other parties who would be affected by the modification request with the motion and notice of hearing. The Court may set a hearing no sooner than fourteen (14) days after service of the motion.

(b) Modification Hearing. The moving party has the burden to prove the grounds for modification of the order. Grounds for modification of a child support order include:

- (i) A substantial increase or decrease in the gross income that was the basis of the current support order;
- (ii) A change in custody of a child;
- (iii) A change in the Tribes Child Support Guidelines and Schedule; or
- (iv) Other substantial change in circumstance that justifies a modification.

(c) Financial Information. Both parties shall file updated financial information forms at least ten (10) days before the modification hearing, except that:

- (i) In agreed modification orders, no financial information need be filed with the Court; and;
- (ii) A party is not required to provide his or her financial information as part of the Court record provided the party has made full and complete financial disclosure to the Confederated Salish and Kootenai Tribes Child Support Enforcement Program and the program has certified that it has reviewed the financial information and its recommendation is based upon that information.

**3-1-316. Enforcement of Child Support Orders.** (1) Motion to Enforce Child Support Order. An obligee or the Confederated Salish and Kootenai Tribes Child Support Enforcement Program may file a motion for the Court to enforce payment of a child support order. The petitioner must serve the obligor with a copy of the motion and notice of the hearing. The Court shall set a show cause hearing after the respondent receives notice of the enforcement action.

(2) Enforcement Hearing. If the moving party meets the burden of proving that the child support obligation is at least thirty (30) days overdue in an amount equal to one month's child support obligation or that the party has a history of non-compliance, by a preponderance of the evidence, the Court shall set a show cause hearing and may find an obligor in civil contempt and order any of the remedies available at law, including, but not limited to:

(a) Wage withholding;

(b) Attachment of assets;

(c) Garnishment;

(d) Attachment of per capita, Individual Indian Money (IIM) account, and/or lease income;

(e) Verification of income; and

(f) Proof of reasonable efforts to secure employment.

(3) The Court may order further hearings to monitor compliance with all child support orders.

(4) In addition to other remedies, the Court may issue an order to an employer trustee, financial agency, other person, or corporation on the reservation over whom the Court has jurisdiction, to withhold and pay over to the Tribal Child Support Enforcement Program or the person designated by the Court or the parent, money due or to become due. The Judge must include a statement in the order that, should the obligor fail to make a support payment, the obligor's income is subject to being withheld.

(g) Employers may not take any discharge, refuse to employ, or take disciplinary action against an obligor parent due to a wage withholding requirement or request. In the event that any employer has engaged in the above actions shall be fined in an amount not to exceed \$500.00.

(h) Income withholding. The Judge must include a statement in the order that should the obligated party fail to make a support payment, his/ her income is subject to be withheld.

(i) Employers who fail to withhold child support as ordered are liable for the full amount that should have been withheld. The Tribal Child Support Enforcement Program may also pursue a civil contempt, which shall carry a fine of up to \$500.00 for each contempt.

(5) Voluntary income assignments, excepting Tribal per capita dividends, may be completed and signed by the obligor. Tribal Child Support Enforcement Program shall send the standardized form to the individual in control of the funds being assigned by the obligor.

(6) Income Withholding. Tribal Child Support Enforcement Program will work to establish, modify, and enforce Child Support for all cases in the jurisdiction of the Tribal Court and in any case that is appropriately referred from a foreign jurisdiction. All Child Support Obligations will be based on the Child Support Guidelines and Schedule unless there is a finding by the Court that the application of these guidelines would be unjust or inappropriate in a particular case, or that deviation is in the best interest of the child(ren).

(7) In the event that there are Child Support arrears in a case, an additional 20% of current order should be ordered to be applied toward the liquidation of any overdue support. In cases where this is not a current Child Support Order, up to 10% of the non-custodial parent's gross income can be ordered to pay back arrears (for the custodial parent, Tribal or State debt).

(8) Income shall not be subject to withholding in any case where the total amount to be withheld exceeds the maximum amount permitted under the above-mentioned act.

G) The maximum part of the aggregate disposable earnings of any person for any work week which is subject to garnishment or income assignment for the support of a minor child(ren) shall not exceed:

(i) Fifty percent (50%) of such person's disposable earnings for that week, if such person is supporting his spouse or a dependent child(ren) other than the child(ren) with respect to whose support such order is used; and

(ii) Sixty percent (60%) of such person's disposable earnings for that week if such person is not supporting a spouse or dependent child(ren). The fifty percent (50%) specified in paragraph one (1) of this subsection shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in paragraph two (2) of this subsection shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or income assignment to enforce a support order with respect to a period which is prior to the twelve (12) week period which ends with the beginning of such work week.

(9) To avoid improperly collecting Child Support, the Tribal Child Support Enforcement Program will immediately terminate income withholding and any other collection action on closed cases. In the event that Child Support is improperly withheld, the Tribal Child Support Enforcement Program will immediately refund the payment and amend the Notice of Collections to ensure proper accounting.

(10) When a case has been closed, the Tribal Child Support Enforcement Program or designee will immediately terminate any income withholding in cases where there is no longer a current order for support and all arrearage's have been satisfied.

(11) (a) In the event that a participant feels that there is good cause not to require income withholding, the Tribal Child Support Enforcement Program shall advise the participant that they should present the case to the Judge, who may enter a finding to disallow a withholding.

(b) Participants may also enter a signed agreement that provides for an alternative arrangement for payment, which will be entered into the Court's record. However, in the event that payments become

delinquent, the Tribal Child Support Enforcement Program will proceed with collection actions that may include income withholding.

(c) All Child Support Orders must provide for automatic income withholding as necessary to comply with the order. Income shall not be subject to withholding in any case where the Court finds that there is good cause not to require the withholding or where there is a signed agreement between the participants that provides for an alternative arrangement that is entered into the Court's record.

(12) Tribal Child Support Enforcement Program has included into the Title IV-D plan that the only basis for contesting a withholding is a mistake in fact, in which means an error in the amount of current or overdue support or the identity of the alleged non-custodial parent is in question.

(13) The Tribal Child Support Enforcement Program shall utilize the standard Federal Income withholding form in contacting the employer to provide a notice of withholding order. In addition, staff shall follow up with the employer to make sure that they have received, reviewed, and understood the form. The Tribal Child Support Enforcement Program shall alert them of the potential penalties for failing to withhold or discriminating against the employee with a withholding order. The Tribal Child Support Enforcement Program shall establish a cooperative working relationship with the employer to make the collection of withholding smoother for all parties involved.

(14) In cases where a non-custodial parent has multiple withholding orders, the amounts withheld and collected shall be allocated in an equitable manner across all withholding orders. In no case shall one order be given preference over another order to the extent that the second order is not implemented as required.

(15) Inter-governmental cases: (a) If a case is referred to the Tribal Child Support Enforcement Program from another jurisdiction, the Tribal Child Support Enforcement Program shall assist in providing services under the Full Faith and Credit for Child Support Orders Act (USC 173B); however, the Court retains authority to review the foreign Court order for proper jurisdiction.

(b) The Tribal Child Support Enforcement Program shall extend the full range of Child Support services to respond to all requests from outside jurisdictions.

(c) The Tribal Child Support Enforcement Program is responsible for receiving and processing income withholding orders from States, Tribes, and other entities, and ensuring orders are properly and promptly served on employers within the Tribe's jurisdiction.

**3-1-317. Child Support Guidelines and Schedule.** (1) The Confederated Salish and Kootenai Tribes Child Support Enforcement Program shall establish child support guidelines and a schedule for adoption by the Tribal Council. The guidelines shall set the scale of minimum child support contributions and shall be used to determine the amount an obligor parent must pay for support of his or her child pursuant to this chapter. The guidelines shall place a duty for child support upon either or both parents based on their respective financial resources and the custodial arrangements for the child(ren). The guidelines and schedule must, at a minimum:

(1) Gross and adjusted gross income;

- (2) Be based on specific descriptive and numeric criteria and result in a computation of an amount of child support that is sufficient to meet the basic needs of the child;
- (3) Provide a sufficient basis to support written findings for the award of child support;
- (4) Provide for a minimum amount of monthly child support, not less than \$25.00 per child to establish the principal that every parent, regardless of income, has an obligation to provide financial support for a child; and
- (e) Establish a median income based on the tribe's government minimum wage to be imputed as income when the Court has no reliable evidence for a person upon which to base a child support award.

The Confederated Salish and Kootenai Tribes Child Support Enforcement Program shall review its guidelines and schedule at least once every four (4) years to ensure that they remain current and shall make recommendations for revisions, as appropriate, to the Tribal Council.

**3-1-318. Determination of Income.** (1) Gross Income. Gross income shall include income from any source, and may include, but is not limited to, income from salaries, wages, treaty income, commissions, stipends, bonuses, dividends, severance pay, taxable per capita payments, interest, trust income, including income received from land held in trust by the United States or subject to a restriction against alienation, annuities, deferred compensation, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, gaming winnings, prizes, and spousal maintenance. Notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a support obligation, gross income also includes periodic payments from pension programs, retirement programs, and insurance policies. A specific cash value shall be assigned to non-cash benefits. Seasonal income, overtime income, or fluctuating income shall be averaged. When income from a full-time job is consistent with income during the marriage, income earned as the result of overtime hours or a second job may be disregarded.

(a) Exclusions. Gross income shall not include the following: benefits received from means-tested public assistance programs including, but not limited to, TANF, supplemental security income, food stamps, or any other program exempted by federal law; income of a parent's new spouse; and sums received as child support.

(b) Self-Employment. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income means gross receipts minus ordinary and necessary expenses required to produce income.

(c) Underemployment. If a parent is unemployed or working below full earning capacity, the Court may consider the reasons. Among other factors, the Court may consider whether the parent declined to accept or pursue employment or training opportunities, and the parent's job skills, training, work history, education, health, and age. If the Court finds that earnings are reduced as a matter of choice and not for reasonable cause, the Court shall attribute income to a parent up to his or her earning capacity.

(d) Imputed Income. If the Court has no reliable evidence concerning a parent's income, the Court shall impute income as set forth in the Tribes Child Support Guidelines.

(2) Adjusted Gross Income Adjusted gross income includes gross income minus the following deductions:

- (a) United States incomes taxes;
- (b) Tribal, state, or local income taxes;
- (c) FICA;
- (d) Health insurance premiums to the extent paid by an obligor for the benefit of the child;
- (e) Child support paid for another child to the extent actually paid;
- (f) Court ordered spousal maintenance to the extent actually paid;
- (g) Mandatory union and professional dues, and mandatory pension plan payments; and
- (h) The amount of reasonable expense of an obligor for preexisting, jointly acquired debt of the parents to the extent payment of the debt is actually made. When a deduction for debt service is made, the Court may provide for prospective upward adjustments of support based on the anticipated reduction or elimination of the debt service.

**3-1-319. Pre-filing Child Support Obligations.** The Court may not order payment for support provided or expenses incurred more than five (5) years prior to the commencement of a child support action. Any period of time in which the responsible party has concealed himself or avoided the jurisdiction of the Court under this chapter shall not be included within the five-year period. \_

**3-1-320. Deviation from Child Support Guidelines and Schedule.** (1) The Court may order child support in an amount different from that which is provided in the Tribes Child Support Guidelines, only if:

- (a) The party requesting deviation shows by a preponderance of the evidence that application of the guidelines is inappropriate, unjust, or causes substantial hardship in the particular case;
- (b) Deviation is in the best interest of the child;
- (c) The court enters written findings of the reasons justifying deviation under this subsection; and;
- (d) The court sets out in its order what the monthly support obligation would have been under the schedule without the deviation and what the Court is ordering as the monthly support obligation with the deviation.

**3-1-321. Sovereign Immunity.** Nothing in this Ordinance shall be construed as a waiver of sovereign immunity of the Confederated Salish and Kootenai Tribes.

### TITLE III

#### CHAPTER 2 - CHILD ABUSE AND NEGLECT

(Enacted 9-6-07)

##### Part 1 - General Provisions and Definitions

**3-2-101. Policy.** The Confederated Salish and Kootenai Tribes (Tribes) recognize Indian children as the Tribes' most important resource, and declare it to be the policy of the Tribes to treat Indian children in accordance with their paramount importance. Indian children shall be entitled to a permanent, physical and emotional environment necessary to promote their successful development into productive, responsible adults. It is the policy of the Tribes to prevent the unwarranted break-up of Indian families by adopting procedures that recognize family member rights while utilizing the best interests of the child standard. Finally, it is the policy of the Tribes, when permanent out-of-home placements are necessary, that those placements be accomplished through guardianship and adoption in the child's extended family; legal adoption outside the Tribes shall be the least preferred alternative.

**3-2-102. Definitions.**

(1) "Adult" means any person who has reached his or her eighteenth (18th) birthday or has otherwise been emancipated by a court of competent jurisdiction.

(2) "Best Interests of the Child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(3) "Child" means any person under 18 years of age, and for implementation of the title IV-E program, Allows the agency to provide foster care, adoption and, if applicable, guardianship assistance for eligible children up to 21 years of age if the child meets certain criteria established in section 475(8)(B) of the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351).

(4) "Child Abuse or neglect" means:

(a) An Abused Child: One who has suffered or is likely to suffer a physical injury inflicted upon the child by other than accidental means, which causes or creates a substantial risk of death, disfigurement, impairment of bodily functions or serious physical or emotional harm, as determined by appropriate medical or professional personnel. The following are examples of circumstances in which a child could be found to be an abused child, but as such are not intended to be all-inclusive:

(i) A child who has been excessively beaten or suffered other unusual or inappropriate corporal punishment;

(ii) A child who suffers injury to his or her psychological functioning, as determined by an appropriate professional person, as a result of psychological or other abuse;

(iii) A child who has been subjected to obscene or indecent sexual activities as sure, guidance, or approval of the child's parent or guardian;



(iv) A child who has been a passenger in a vehicle driven by an intoxicated person, with the knowledge or approval of the child's parent or guardian; and

(v) A child exposed to the criminal distribution of dangerous drugs as prohibited by Section 2-1-1401 (Mont. Code Ann. § 45-9-101 (2005)), the criminal production or manufacture of dangerous drugs, as prohibited by Section 2-1-1401 (Mont. Code Ann. § 45-9-110), the operation of an unlawful clandestine laboratory, as prohibited by Section 2-1-1401 (Mont. Code Ann. § 45-9-132), or consumption of dangerous drugs by the parent or custodian while in the physical presence of a child. For the purposes of this subsection "dangerous drugs" means the compounds and substances described in Section 2-1-1401 (Mont. Code Ann. § 50-32-101).

(b) A Neglected Child: One whose parent or custodian fails to provide such food, clothing, shelter, medical attention, hygiene, education, or supervision as the child needs for development, although the parent or custodian was able to furnish such needs or has refused Tribal or other assistance for furnishing such needs, and such failure is likely to result in serious harm to the child as determined by appropriate medical or professional persons.

(c) An abandoned infant: One whose parent abandons the child outside of legal adoption.

(5) "Child Custody Proceeding" means any voluntary or involuntary court action, informal or formal, but not including dissolution/divorce actions, that may result in the temporary or permanent removal of a child from his or her parents, guardian or guardian. This definition shall not involve delinquency proceedings, except such proceedings involving acts which would not be deemed a crime if committed by an adult, or custody proceedings or parenting plans undertaken as a result of divorce.

(6) "Confederated Tribes" means the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

(7) "Court" means the Tribal Court of the Confederated Salish and Kootenai Tribes, unless another court of competent jurisdiction is clearly specified or intended.

(8) "Tribal Social Services Department (TSSD)" means the Tribal Social Services Department of the Confederated Salish and Kootenai Tribes, which is under the supervision of the Department of Human Resource Development, and may be also known as Tribal Social Services Department (TSSD).

(9) "Domicile" means the place considered to the child's home, according to the traditions and customs of the child's Tribe, or the place where the child is living and is expected to continue living for an indefinite period of time.

(10) "Expert Witness" means a witness who is either:

(a) A member of the Tribal community who is an acknowledged expert on the cultural or spiritual traditions of the child's tribe; or

(b) A professional person having a recognized education in medical, sociological, spiritual, or other fields which the court may determine relevant in child custody proceedings.

(11) "Extended Family" means any person related by blood, marriage, or other affiliation, to the child having significant contacts with the child and who is viewed as an extended family member in accordance with the customs of the child's Tribe. Grandparents shall be given preference when extended family is

sought for temporary placement of children (such as foster care) and permanent placement of children (such as guardianship and adoption).

(12) “Foster Care” means the placement of a child to reside with another family or person for a specified period of time.

(13) “Guardianship” means a judicially created relationship between the child and relative which is intended to be permanent and self-sustaining as evidenced by the transfer to the relative of the following parental rights with respect to the child: Protection; Education; Care and control of the person; custody of the person, and; decision making.

(14) “Guardian ad Litem” means a person appointed by the Tribal Court to protect the legal rights and best interests of the child in a Tribal Court proceeding.

(15) “ICWA” means the Indian Child Welfare Act, Public Law 95-608, 25 U.S.C. Section 1901 et seq. (1978).

(16) “Indian Youth or Indian Child” means a child of Indian descent who is either enrolled or enrollable in an Indian tribe, band, community or who is a biological descendant of an enrolled member and has significant contacts or identification with an Indian community.

(17) “Parent” means any biological father or mother of an Indian child or any person who has adopted an Indian child by legal or traditional means.

(18) “Permanency” means reunification of the child with the child’s parent, adoption, placement with a legal guardian, placement with a fit and willing extended family member as defined in Section 3-2-102 (10), or placement in another planned permanent living arrangement, until the child reaches 18 years of age unless extended by court order.

(19) “Protected Child(ren)” also means ward(s) of the court.

(20) “Putative Father” means the alleged biological father of a child born out of wedlock.

(21) “Reservation” means the Flathead Reservation of the Confederated Salish and Kootenai Tribes.

(22) “Residence” means the place where the child is presently living.

(23) “Shelter Care” means the residential care of children in a shelter care facility or group home approved by Tribal Social Services Department (TSSD).

(24) “Tribal Advocate” means a person who is allowed to represent another person in a Tribal Court proceeding according to qualifications set out by the Tribes’ Code provision.

(25) “Tribal Child” means, for jurisdictional purposes under this Code, a child of Indian descent who is either enrolled or enrollable in an Indian tribe, band, community or who is a biological descendant of an enrolled member and has significant contacts or identification with an Indian community. *(Rev. 9-13-12)*

**3-2-103. Jurisdiction.** The Tribal Court shall have jurisdiction over any child custody proceedings involving an Indian child residing or domiciled within the Flathead Reservation or having significant contacts with the Reservation community. The court shall have exclusive jurisdiction over all child

custody proceedings involving any Indian child who is a Tribal member of the Confederated Salish and Kootenai Tribes who resides or is domiciled within the Flathead Reservation or is a protected child of the Tribes.

(1) Transfers to Tribal Court Jurisdiction. In any case where a court transfers legal custody of an Indian child subject to this jurisdiction to the Confederated Salish and Kootenai Tribal Court, to Tribal Social Services Department (TSSD) of the Confederated Salish and Kootenai Tribes, to any person other than a natural parent of the child, or to any agency or institution of the Tribes, the Tribal Court shall reserve jurisdiction over all future child custody proceedings involving that child, unless otherwise specified by a Tribal Court order, and the child shall become a Protected Child of the Tribes.

(2) Limitation of Jurisdiction. For purposes of Tribal Court jurisdiction, a Protected Child of the Tribes shall be a ward of the Tribal Court, and such wardship status shall continue until terminated by the Tribal Court or until the child reaches the age of eighteen (18) years, unless extended by the court. All children who are wards of the court by previous action of the Confederated Salish and Kootenai Tribal Court, or for any other reason, at the time of the adoption of this Code shall be considered Protected Children of the Tribes. *(Rev. 9-13-12)*

**3-2-104. Rights and Responsibilities of Parents.** Parents shall have the following rights and responsibilities:

- (1) Right to legal representation as defined in Section 3-2-110;
- (2) Right to notice to court proceedings as defined in Sections 3-2-604;
- (3) Right to application of procedural safeguards in the removal of the child from the home of his or her parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents.
- (4) Responsibility to provide adequate food, clothing, shelter, medical attention, hygiene, consistent public or private school attendance or adequate home schooling, and supervision for the care of the child(ren) when within the home, or financial support when the child is placed outside of the home.
- (5) Responsibility to assist and support the court in implementing the court's orders concerning a child under the court's jurisdiction, being subject to the court's contempt powers if they fail to do so; and
- (6) If so ordered by the court, the responsibility to pay for assessments and related costs, that may arise under this chapter, including the possibility that the person may be required to reimburse the Tribes for costs attributable to the supervision, care, custody, and treatment of the child including: participation in counseling, treatment, or other support services. The court may order payment of assessments, related costs and reimbursements to be paid from per capita distributions to parents. *(Rev. 9-13-12)*

**3-2-105. Guardian ad Litem.** In every Tribal Court judicial proceeding, upon the motion of any party or on its own motion, the court may appoint a Guardian ad Litem to protect the legal rights and best interests of the child.

- (1) The guardian ad litem is charged with the representation of the child's best interests and shall perform the following general duties:
  - (a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect;

- (b) to interview or observe the child who is the subject of the proceeding;
  - (c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or guardians;
  - (d) to make written reports to the court concerning the child's welfare;
  - (e) to appear and participate in all proceedings to the degree necessary to adequately represent the child's best interests and make recommendations to the court concerning the child's welfare;
  - (f) to ascertain and report to the court the wishes and/or desires of the child with respect to any action contemplated or taken by the parties or the court; and
  - (g) to perform other duties as directed by the court.
- (3) Information contained in a report filed by the guardian ad litem or testimony regarding a report filed by the guardian ad litem is not hearsay when it is used to form the basis of the guardian ad litem's opinion as to the best interests of the child.
- (4) Any party may petition the court for the removal and replacement of the guardian ad litem if the guardian ad litem fails to perform the duties of the appointment.

**3-2-106. Subpoena Power.** Any party or the attorney or advocate for a party or the Tribal Court on its own motion may cause a subpoena to be served on a person whose testimony or appearance is desired. It is not necessary to tender advance fees to the person served a subpoena in order to compel attendance.

**3-2-107. Legislative Case Review and Advisory Committees.** Legislative case review, advisory and other committees appointed from time to time by the Tribal Council shall be governed by the manual guidance adopted under Section 3-2-108 of this part.

**3-2-108. Duties of TSSD.** The Tribal Social Services Department (TSSD) shall perform the following duties.

- (1) Within 180 days of adoption of this chapter, Tribal Social Services shall develop and recommend to the Tribal Council draft manual guidance to implement the requirements of this chapter. Upon approval by the Tribal Council, TSSD shall publish such manual guidance for comment. TSSD shall consider comment received and then recommend to Council final manual guidance to implement the requirements of this part.
- (2) Tribal Social Services shall research, identify, and recommend to the Tribal Council such financial resources, cooperative agreements, memorandums of agreement, and other programs that may be available to support Tribal Social Services activities and responsibilities.
- (3) Tribal Social Services has the primary responsibility to provide the protective services Authorized by this chapter and has the authority pursuant to this chapter to take temporary or permanent custody of a child when ordered to do so by the court.
- (4) Tribal Social Services shall respond to reports of known or suspected child abuse or neglect

twenty-four (24) hours a day, seven (7) days a week.

(5) Tribal Social Services shall make reasonable efforts to prevent removal of a child from the child's home and to reunify families that have been separated by the court. Reasonable efforts include but are not limited to voluntary protective services agreements, development of individual written case management plans specifying Tribal Social Services efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case management plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

(6) Tribal Social Services shall establish and maintain licensing standards for tribal foster family homes and child care institutions. *(Rev. 9-13-12)*

**3-2-109. Confidentiality.** All court files and documents prepared in child custody proceedings governed by this chapter shall be held confidential, unless otherwise specified in this chapter. This shall include reports to Tribal Social Services Department (TSSD), police officers, or other tribal personnel involved in child custody proceedings, summaries or records of hearings held hereunder, the names of children, families, or witnesses involved in proceedings under this chapter. All such records shall be kept in a secure place by the clerk of the court, and shall be released only to judges, tribal advocates, social workers, or other tribal agencies and officers of the court, or any party to an action concerning the child, involved in any proceeding or official action concerning the child. No other release of such information shall be allowed without an order of the Tribal Court Judge. All records of child court proceedings shall be physically sealed when the child reaches the age of eighteen (18) years of age unless otherwise extended by the court. Nothing in this section shall prohibit a tribal entity from reporting and releasing information to the public for the purposes of locating a child reported missing for any reason. *(Rev. 9-13-12)*

**3-2-110. Representation.** At their own expense, parents or guardians may be represented at each stage of child custody proceedings by an attorney or lay advocate. In a proceeding for termination of parental rights, the Tribal Court will determine if the parent or guardians meet the definition of indigence as defined in Section 1-2-402, *CSKT Laws Codified*, and if so, the judge may appoint a tribal advocate for the parent or guardian, if so requested and if an advocate is available.

**3-2-111. Federal Rules of Evidence.** The Tribal Court shall apply federal rules of evidence in all proceedings, except where otherwise indicated.

**3-2-112. Appeals.** Any order of the court involving the suspension or termination of parental rights, and any final order of the court, may be appealed according to the rules and practices of the Appeals Court of the Confederated Salish and Kootenai Tribes, Title 1, Chapter 2, Part 9, "Rules of Appellate Procedure," *CSKT Laws Codified*. Judicial decisions and orders shall not be appealed to the Tribal Council.

## **Part 2 - Reports and Investigations of Child Abuse and Neglect**

**3-2-201. Reports of Child Abuse and Neglect.** Tribal Law and Order personnel and/or Tribal Social Services Department (TSSD) shall respond to reports of child abuse and neglect as follows.

(1) Upon the receipt of any report or information, from any source, regarding a tribal child who may be a child in immediate danger of harm, it shall be the duty of Tribal Social Services Department (TSSD) to immediately respond. Tribal Social Services Department (TSSD) shall determine whether there is immediate danger of harm and substantiate the immediate danger of harm to the child due to parental, or guardian abuse resulting from or connected with abuse of alcohol, drugs, physical assault or sexual assault, and if necessary take action to remove the child from immediate harm. Tribal Social Services Department (TSSD) may request Tribal Law and Order personnel to accompany them on a response visit. If criminal charges are filed as a result of an investigation of child abuse or neglect, the Tribal Law and Order Department shall advise Tribal Social Services Department (TSSD) of the results of ongoing investigations.

(2) Upon the receipt of any report or information, from any source, regarding a tribal child who is being abused or neglected and deemed a child who is in need of care, and where there is no information causing a reasonable person to conclude there is a threat of immediate or apparent danger of harm, it shall be the duty of Tribal Social Services Department (TSSD) to investigate or cause to be investigated the report of abuse and neglect as set forth in the manual guidance. *(Rev. 9-13-12)*

**3-2-202. Responsibility and Confidentiality of Reporting.** Any individual who knows or suspects that a tribal child is in need of care should report to Tribal Social Services Department (TSSD), Tribal law enforcement personnel, the Tribal Court, or Centralized Intake (operated by the State of Montana). The following individuals must report any known or suspected case of a tribal child who may be in need of care: physicians, surgeons, dentists, podiatrists, chiropractors, nurses, dental hygienists, optometrists, medical examiners, emergency medical technicians, paramedics, health care providers, teachers, school counselors, instructional aides, teacher's aids, teacher's assistants, bus drivers, administrative officers, supervisors of child welfare, truancy officers, child-care workers, head-start teachers, public assistance workers, workers in group homes or residential or day-care facilities, social workers, psychiatrists, psychologists, psychological assistants, licensed or un-licensed marriage, family or child counselors, persons employed in the mental health profession, law enforcement officers, probation officers, workers in juvenile rehabilitation detention facilities, and persons employed in a public agency responsible for enforcing statutes and judicial orders. *(Rev. 9-13-12)*

**3-2-203. Administrative Appeal of Case Substantiation.** The Tribal Social Services Department (TSSD) Program Manager shall issue a written decision on the investigation of reports of child abuse or neglect with notice to the affected parties. The decision may be appealed in writing to the TSSD Department Head within thirty (30) days of the issuance of the determination.

(1) The TSSD Department Head shall review the determination and issue an appeal decision within 30 days of receipt of the appeal. If the determination is reversed, DHRD shall remove the documentation from all computerized tracking systems. If the determination is upheld the case shall proceed following the requirements of this code.

(2) The decision shall not be appealed to the Tribal Council, nor discussed in Tribal Council meetings.

(3) Administrative appeal of the substantiation letter does not suspend the time frames specified in this statute. *(Rev. 9-13-12)*

**3-2-204. Immunity from Liability.** (1) Anyone investigating or reporting any incident of child abuse or neglect under Section 3-2-201, participating in resulting judicial proceedings, or furnishing hospital or medical records as required by Section 3-2-205 is immune from any liability, civil or criminal that might otherwise be incurred or imposed unless the person was grossly negligent or acted in bad faith or with malicious purpose or provided information knowing the information to be false.

(2) A person who provides information pursuant to Section 3-2-202 that is substantiated by TSSD Social Services or a person who uses information received pursuant to Section 3-2-202 that is substantiated by Tribal Social Services Department (TSSD) to refuse to hire or to discharge a prospective or current employee, volunteer, or other person who through employment or volunteer activities may have unsupervised contact with children is immune from civil liability unless the person acted in bad faith or with malicious purpose. *(Rev. 9-13-12)*

**3-2-205. Admissibility and Preservation of Evidence.** (1) In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding for which the report or its contents are sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report may not be excluded on the ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child granted by Section 1-2-611 (3), (4), (5), (6), (7), (8), and (11), except the attorney-client privilege granted by Section 1-2-611 (2) (a) and (b) all in *CSKT Laws Codified*.

(2) A physician, either in the course of providing medical care to a minor or after consultation with TSSD Social Services, the prosecutor, or a law enforcement officer, may require x-rays to be taken when, in the physician's professional opinion, there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section must be paid by the appropriate financial resource, or referred to the Tribes if no other financial resource is available. *(Rev. 9-13-12)*

### **Part 3 - Emergency Protective Care**

**3-2-301. Emergency Protective Care.** Whenever a Tribal police officer or Tribal Social Services Department (TSSD) worker has probable cause to believe that a child is in immediate danger of harm and that the removal of the child from the child's home residence is necessary to avoid harm, and if the court is unavailable to issue a custody order, or if the issuance of a custody order would involve a delay that would contribute to the risk of harm to the child, the police officer or Social Services worker may take the child into emergency protective care.

(1) Upon the removal of a child into emergency protective care, the Tribal police officer or TSSD Social Services worker shall:

(a) Immediately notify the child's parents or guardian of such removal, and the reasons therefore. If attempts to so notify the child's parents and guardian are unsuccessful, then best efforts shall immediately be made to notify the child's nearest relatives.

(b) Immediately notify the Tribal Social Services Department (TSSD) of such removal.

(c) If return of physical custody of the child can be accomplished without danger of harm to the child, the child shall be returned to the parents or guardian.

(d) If the return of the child to the child's parents or guardian is impossible or would involve continued risk of such harm to the child, then the child shall be placed in the physical custody of a responsible adult member of the child's extended family if such a person is available and if placement can be accomplished without risk of harm to the child. In order to protect the privacy of the parents or guardian, the Tribal police officer or TSSD social worker shall contact the child's relatives only to the extent necessary to investigate the case and determine whether appropriate placement can be made within the extended family.

(e) If emergency care as set forth above is not available, then the child shall be placed with a secure home, family, or shelter care facility having been approved for such placement by Tribal Social Services Department (TSSD). A child shall not be placed in a jail facility or other environment where the child is in contact with persons in such a facility accused or convicted of a crime or delinquent act.

(f) Upon placement of the child, the Tribal police officer or Tribal Social Services Department (TSSD) worker shall make a report to the Division Manager of Tribal Social Services Department (TSSD) containing a summary of the circumstances surrounding the emergency care and the basis therefore.

(g) In no case shall emergency protective temporary care extend beyond seventy-two (72) hours, exclusive of weekends and holidays.

(h) At the expiration of this period, Tribal Social Services Department (TSSD) shall:

(i) cause the child to be returned to the child's parents or guardian;

(ii) offer intervention services;

(iii) enter into a voluntary agreement or diversion process as referenced in Section 3-2-402;

(iv) have the child brought before a Tribal Court Judge for an emergency hearing to determine further placement of the child pending further proceedings in the case; or

(v) file a petition for protective services pursuant to Section 3-2-302. *(Rev. 9-13-12)*

### **3-2-302. Petition for Emergency Protection and Emergency Protective Services.**

(1)(a) In a case in which a child has been removed under Section 3-2-301 (1) (d), the prosecutor shall file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and the facts establishing probable cause that a child is abused or neglected or in danger of being abused or neglected.

(c) A petition for immediate protection and emergency protective services must be supported by an affidavit signed by a representative of Tribal Social Services Department (TSSD) stating in detail the facts upon which the request is based. The petition or affidavit of Tribal Social Services Department (TSSD) must contain information regarding statements, if any, made by the parents detailing the parents' statement of the facts of the case. The parents, if available in person or by electronic means, must be given an opportunity to present evidence to the court before the court rules on the petition.



(d) The petition for immediate protection and emergency protective services must include a notice advising the parents, parent, guardian, or other person having physical custody of the child that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with a social worker concerning emergency protective services. Reasonable accommodation must be made in scheduling an in-person meeting with the social worker.

(2) The person filing the petition for immediate protection and emergency protective services has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under Section 3-2-610:

(a) the right of entry by a peace officer or TSSD social worker;

(b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home or institution;

(c) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;

(d) the requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home, if the perpetrator is subject to Tribal Court jurisdiction;

(e) a requirement that the parent provide Tribal Social Services Department (TSSD) with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

(f) a requirement that the parent provide Tribal Social Services Department (TSSD) with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and

(g) any other temporary disposition that may be required in the best interests of the child.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with Tribal Social Services Department (TSSD) until further order.

(5) The petition shall be served as provided on the legal guardian and the person from whom the child was removed. *(Rev. 9-13-12)*

### **3-2-303. Show cause hearing – order.**

(1)(a) A show cause hearing must be conducted within twenty (20) days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to Section

3-2-401 or unless an extension of time is granted by the court, in either event no longer than sixty (60) days. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

(b) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) At the show cause hearing, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel. The court may permit testimony by telephone, audiovisual means, or other electronic means.

(3) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights as delineated in Sections 3-2-104 and 3-2-303 (2), and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing.

(4) The court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether Tribal Social Services Department (TSSD) has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to Section 3-2-104 (5); and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(5) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(6) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(7) Adjudication of a child as a child in need of care may be made at the show cause hearing if the requirements of Section 3-2-302 (2) and (3) are met. If not made at the show cause hearing, adjudication under Sections 3-2-608 and 3-2-609 must be made within the time limits required by Section 3-2-608 (1)

unless adjudication occurs earlier by stipulation of the parties pursuant to Section 3-2-401 and order of the court.

(8) If the determination concerning reasonable efforts to prevent the removal is not made as specified above, the child is not eligible under the title IV-E foster care maintenance payments program for the duration of that stay in foster care. *(Rev. 9-13-12)*

**3-2-304. Service of Process – Service by Publication – Effect.** (1) Except as otherwise provided in this chapter, service of process must be made as provided in the Federal Rules of Civil Procedure.

(2) If a person cannot be served personally or by certified mail, the person may be served by publication as provided hereinafter in this section. Publication constitutes conclusive evidence of service, and a hearing must then proceed at the time and date set, with or without the appearance of the person served by the publication. At or after the hearing, the court may issue an order that will adjudicate the interests of the person served by publication.

(3) If a parent cannot be identified or found prior to the initial hearings allowed by Sections 3-2-302 and 3-2-303, the court may grant the following relief, pending service by publication on the parent who cannot be identified or found and based upon service of process on only the parent, guardian, or other person having legal custody of the child;

- (a) immediate protection;
- (b) temporary investigative authority; and
- (c) temporary legal custody.

**3-2-305. Service by Publication – Summons – Form.** (1) Before service by publication is authorized in a proceeding under this chapter, Tribal Social Services Department (TSSD) shall file with the court an affidavit stating that, after due diligence, the person cannot be identified or found and stating the diligent efforts made to identify, locate, and serve the person. The affidavit is combined with any other affidavit filed by Tribal Social Services Department (TSSD). Upon complying with this subsection, Tribal Social Services Department (TSSD) may obtain an order for the service to be made upon the party by publication. The order may be issued by either the judge or the clerk of court.

(2) Service by publication must be made by publishing notice three times, once each week for three (3) successive weeks:

- (a) in a newspaper in a community in which the publication can reasonably be calculated to be seen by the person, based upon the last-known address or whereabouts, if known, of the person if in the state of Montana; or
- (b) if no last-known address exists, if the last-known address is outside Montana, or if the identify of the person is unknown, in a newspaper in the county in which the action is pending, if a newspaper is published in the county, and, if a newspaper is not published in the county, in a newspaper published in an adjoining county and having a general circulation in the county.

(3) Service by publication is complete on the date of the last publication required by subsection (2).

(4) A summons required under this chapter must:

(a) be directed to the parent, legal guardian, other person having legal custody of the child, or any other person who is required to be served; and

(b) be signed by the clerk of court, be under the seal of the court, and contain:

(i) the name of the court and the cause number;

(ii) the initials of the child who is the subject of the proceedings;

(iii) the name of the child's parents, if known;

(iv) the time within which an interested person shall appear;

(v) Tribal Social Services Department (TSSD)'s address;

(vi) a statement in general terms of the nature of the proceedings, including the date and place of birth of the child, the date and place of the hearing, and the phone number of the clerk or the court in which the hearing is scheduled; and

(vii) notification apprising the person served by publication that failure to appear at the hearing will constitute a denial of interest in the child, which denial may result, without further notice of this proceeding or any subsequent proceeding, in a judgment by default being entered for the relief requested in the petition. *(Rev. 9-13-12)*

**3-2-306. Putative Fathers – Service by Publication – Continuation of Proceedings.** (1)

Reasonable efforts must be made to resolve issues of paternity, if any, as early as possible in proceedings under this chapter. Tribal Social Services Department (TSSD) shall make every reasonable effort to obtain service of process of a petition on a putative father as defined in Section 3-2-304 (1).

(2) If a putative father cannot be served personally, the putative father may be served by publication as provided in Sections 3-2-304 and 3-2-305.

(3) Regardless of the provisions of subsections (1) and (2), if a putative father cannot be identified or found prior to the initial hearings, the court may grant the following relief, pending service by publication on the putative father and based upon service of process on only the parent, guardian, or other person having legal custody of the child:

(a) immediate protection;

(b) temporary investigative authority; and

(c) temporary legal custody.

(4) Throughout the proceedings, the court, in its discretion, may order Tribal Social Services Department (TSSD) to continue to attempt to identify, locate and serve a putative father.

(5) A court may order termination of the parental rights of a putative father under this chapter based on service by publication provided for in Section 3-2-306, if the provisions of subsections (2), (3) and (4) are met. *(Rev. 9-13-12)*

#### **Part 4 - Cooperative/Diversion Alternatives.**

**3-2-401. Stipulations.** Subject to the approval by the court, the parties may stipulate to any of the following:

- (1) the child meets the definition of a child in need of care by the preponderance of the evidence;
- (2) a service treatment agreement, if the child has been adjudicated a child in need of care;
- (3) the disposition; or
- (4) extension of timeframes contained in this chapter, except for the time frame contained in Section 3-2-701 (permanency hearing).

**3-2-402. Voluntary Protective Services Agreement.** (1)(a) Tribal Social Services Department (TSSD) may provide voluntary protective services by entering into a written voluntary protective services agreement with a parent or other person responsible for a child's welfare for the purpose of keeping the child safely in the home.

(b) Tribal Social Services Department (TSSD) shall inform a parent or other person responsible for a child's welfare who is considering entering into a voluntary protective services agreement that the parent or other person may have another person of the parent's or responsible person's choice present whenever the terms of the voluntary protective services agreement are under discussion by the parent or other person responsible for the child's welfare and Tribal Social Services Department (TSSD). Reasonable accommodations must be made regarding the time and place of meetings at which a voluntary protective services agreement is discussed.

(2) A voluntary protective services agreement may include provisions for:

- (a) a family group decision making meeting and implementation of a safety plan developed during the meeting;
- (b) a professional evaluation and treatment of a parent or child, or both;
- (c) a safety plan for the child;
- (d) in-home services aimed at permitting the child to remain safely in the home;
- (e) temporary relocation of a parent in order to permit the child to remain safely in the home;
- (f) a thirty (30)-day temporary out-of-home protective placement; or
- (g) any other terms or conditions agreed upon by the parties that would allow the child to remain safely in the home or allow the child to safely return to the home within the thirty (30)-day period, including referrals to other service providers.

(3) A voluntary protective services agreement is subject to termination by either party at any time. Termination of a voluntary protective services agreement does not preclude Tribal Social Services Department (TSSD) from filing a petition pursuant to Section 3-2-601 in any case in which Tribal Social Services Department (TSSD) determines that there is a risk of harm to a child.

(4) If a voluntary protective services agreement is terminated by a party to the agreement, a child who has been placed in a temporary out-of-home placement pursuant to the agreement must be returned to the parents within two (2) working days of termination of the agreement unless a petition for emergency protective services is filed by Tribal Social Services Department (TSSD). *(Rev. 9-13-12)*

**3-2-403. Voluntary Placement Agreement Limitation.** In the event the child is not returned to the family home within 120 days after removal and the child's removal from the home is based on a voluntary agreement signed by both parents and Tribal Social Services Department (TSSD), the Tribal Social Services Department (TSSD) worker shall submit a Report to Court to the Tribal Social Services Department (TSSD) Advocate or Tribal Attorney to initiate Temporary Protective Care Proceedings pursuant to Section 3-2-601. *(Rev. 9-13-12)*

**3-2-404. Informal Adjustment Conference.** (1) It shall be the duty of Tribal Social Services Department (TSSD), the Tribal Advocates, and the Tribal Court to encourage satisfactory, out-of-court solutions to cases under this Code prior to the final disposition hearing.

(2) Any party to a proceeding may request an informal adjustment conference. The request shall be granted one time as a matter of right and thereafter at the discretion of the court. The request may be made at any time, after the filing of a petition, up to the court's issuance of the order following final disposition hearing.

(3) Such parties may be present at the conference as the court may direct. The Judge may be present. Alternatives to further proceedings may be discussed.

(4) Any disposition of the case pursuant to such a conference must be voluntarily agreed to by all parties to the proceedings. If such disposition is agreed to, the court shall enter a conference agreement, and this shall have the effect of a court order.

(a) The conference agreement must address whether TSSD Social Service made reasonable efforts to reunify the family and whether it is contrary to the welfare/best interests of the child to remain in or return to the family home.

(b) The conference agreement may include the following dispositions:

(i) release of the child to the parent or guardian with no further action, and dismiss the case;

(ii) suspend the proceedings for a specified time, releasing the child to the parent, guardian, or other person as the court may direct, with appropriate remedial conditions; or

(iii) order final disposition of the case.

(5) The informal adjustment conference granted as a matter of right must occur within ten (10) working days of the request for the conference and an informal adjustment conference granted at the discretion of the court must both occur within ten (10) working days of the court's decision to allow the conference.

(6) An informal adjustment conference granted by the court (as a matter of right or in the court's discretion), or a conference agreement entered by the court shall not postpone or otherwise delay the permanency hearing as provided for in Section 3-2-701. *(Rev. 9-13-12)*

### Part 5 - Temporary Investigative Authority

**3-2-501. Temporary Investigative Authority.** Tribal Social Services Department (TSSD) Advocate or a Tribal Attorney may petition the court for authorization to conduct an investigation into allegations of child abuse or neglect when necessary. An order for temporary investigative authority may not be issued for a period longer than ninety (90) days. *(Rev. 9-13-12)*

**3-2-502. Burden of Proof.** The person filing the petition has the burden of presenting evidence establishing probable cause of the issuance of an order for temporary investigative authority after the show cause hearing if applicable.

### Part 6 - Temporary Protective Care

**3-2-601. Petition for Temporary Protective Care.** All court proceedings under this part shall be initiated by a petition entitled "Petition for Declaration of Child in Need of Care." Such petition shall be prepared and filed by the Tribal Social Services Department (TSSD) Advocate or a Tribal Attorney, and shall be accompanied by a Report to Court with findings of the designated Tribal Social Services Department (TSSD) worker recommending Temporary Protective Care.

(1) The petition shall contain the following information:

- (a) The name and birth date of the child;
- (b) The name of the parents or guardian of the child;
- (c) The basis of the court's jurisdiction;
- (d) An allegation that the child is a child in need of care, and a plain statement of facts supporting this allegation;
- (e) Any facts relevant to the present physical or legal custody of the child;
- (f) A summary of efforts made by Tribal Social Services Department (TSSD) or others to prevent or eliminate the need for removal of the child from the family home;
- (g) An allegation that it is contrary to the welfare of the child to remain in the home without an order granting temporary custody of the child with Tribal Social Services Department (TSSD);
- (h) Whether temporary custody of the child is requested by Tribal Social Services Department (TSSD);
- (i) A statement of any other relief requested by Tribal Social Services Department (TSSD), including termination of any parental or guardian rights or appointment of a substitute guardian.

(2) Petition shall be accompanied by a Report to Court from Tribal Social Services Department (TSSD) which details facts supporting the petition. *(Rev. 9-13-12)*

**3-2-602. Reasonable Efforts Unnecessary.** Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if Tribal Social Services Department (TSSD)

obtains a judicial determination that such efforts are not required because the court determined that the parent has:

- (a) subjected the child to aggravated circumstances, including but not limited to torture, chronic abuse, or sexual abuse, or chronic, severe neglect of a child;
- (b) committed, aided abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;
- (c) committed aggravated assault against a child;
- (d) committed neglect of a child that resulted in serious bodily injury or death; or
- (e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue. *(Rev. 9-13-12)*

**3-2-603. Permanency Plan When Reasonable Efforts Not Necessary.** In the event the court determines that reasonable efforts to prevent removal or reunify are not required, Tribal Social Services Department (TSSD) shall submit a Report to Court to the Tribal Social Services Department (TSSD) Advocate or Tribal Attorney within fifteen (15) days of the judicial determination (excluding weekends and holidays) which sets forth a permanency plan (as specified in Section 3-2-611 (3)). A hearing to present the permanency plan to the court shall be held within thirty (30) days from the time of the judicial determination that reasonable efforts to prevent removal or reunify were not required. *(Rev. 9-13-12)*

**3-2-604. Notice.** Written notice of any initial hearing or other hearing held under this chapter shall be given, at least five (5) days prior to hearing date, to all parents or legal guardians of the child, and to other persons as the court may direct. A copy of the petition shall also be served no later than five (5) days prior to the hearing.

**3-2-605. Service.** Service for this section shall be made pursuant to the procedures specified in Section 3-2-304.

**3-2-606. Intervention in Proceedings.** Intervention into the proceedings shall be allowed as follows:

- (1) Any extended family member shall be allowed to intervene as an interested party.
- (2) Community counselors, spiritual leaders, and other persons may be allowed to intervene as interested parties at the discretion of the court. Where applicable, the court shall follow the traditions and customs of the child's Tribe regarding the involvement of such interested persons.
- (3) Notice of intervention shall be served by mail, by the clerk of the court, upon all parties to the proceedings at least five (5) days prior to hearing. Such notice may be excused by the court if the court determines that lack of notice has not detrimentally affected the other parties. If the court finds such detrimental effect, the court may:
  - (a) deny intervention; or
  - (b) continue the hearing date for an appropriate time. *(Rev. 9-13-12)*



**3-2-607. Right to Notice and Comment.** The Tribal Court shall ensure that foster parents, pre-adoptive parents, and extended family caregivers of a child in foster care under the responsibility of the court are notified of any proceeding with respect to the child and are provided a right to be heard in any proceeding affecting the temporary or permanent placement of that child. *(Rev. 9-13-12)*

**3-2-608. Adjudication – temporary disposition – findings – order.** (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within ninety (90) days of a show cause hearing held pursuant to Section 3-2-303. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to Section 3-2-401 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to Section 3-2-401, and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under Section 3-2-601 if the court determines by a preponderance of the evidence that the child is a child in need of care. Except as otherwise provided in this part, the Tribal Rules of Practice and the Federal Rules of Evidence apply to the adjudication and adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in Tribal Social Services' intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the affected child is admissible according to Federal Rules of Evidence.

(4)(a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to Sections 3-2-302 or 3-2-303 must be vacated.

(b) If the child is adjudicated a child in need of care, the court shall set a date for a dispositional hearing to be conducted within twenty (20) days, as provided in Section 3-2-609, and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in Section 3-2-609 (3).

(5)(a) Following the adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether reasonable efforts to prevent or eliminate the need for removal of the children from the family home, and/or reasonable efforts to allow the children to return or remain in the family home have been made by Tribal Social Services Department (TSSD) and the specific efforts put forth;

(iii) whether it is contrary to the welfare of the children to return or remain in the family home without the services offered by Tribal Social Services Department (TSSD) and the reasons therefore.

(b) The court shall enter a temporary order, including but not limited to the following:

(i) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing;

(ii) that Tribal Social Services Department (TSSD) shall evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

- (iii) that the perpetrator of the alleged child abuse or neglect be removed from the home, if the perpetrator is under the jurisdiction of Tribal Court, in order to allow the child to remain in the home;
- (iv) that Tribal Social Services Department (TSSD) shall continue efforts to notify the noncustodial parent; and
- (v) any other relief deemed appropriate by the court. *(Rev. 9-13-12)*

**3-2-609. Disposition – hearing – order.** (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to Section 3-2-401, or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within twenty (20) days after an adjudicatory order has been entered under Section 3-2-608. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to Section 3-2-401, and unforeseen personal emergencies.

(2)(a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under Section 3-2-608. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least five (5) working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by Section 3-2-608 (5) (a).

(3) If a child is found to be a child in need of care under Section 3-2-608 (4) (b), the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of Tribal Social Services Department (TSSD) to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;

(c) transfer temporary legal custody to Tribal Social Services Department (TSSD);

(d) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by Tribal Social Services Department (TSSD) unless Tribal Social Services Department (TSSD) consents and informs the court that resources are available for payment. Tribal Social Services Department (TSSD) is the payor of last resort after all family, insurance, and other resources have been examined;

(e) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by Tribal Social Services Department (TSSD) unless Tribal Social Services Department (TSSD) consents and informs the court that resources are available for the proposed care and treatment. Tribal Social Services Department (TSSD) is the payor of last resort after all family, insurance, and other resources have been examined pursuant to Section 3-2-104 (5).

(4) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, Tribal Social Services Department (TSSD) shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) If the court finds that reasonable efforts are not necessary pursuant to Section 3-2-602 or subsection 3 (b) of this section, a permanency hearing must be held within thirty (30) days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the time limitations of this section are not met, the court shall review the reasons for failure and order an appropriate remedy that considers the best interests of the child. *(Rev. 9-13-12)*

**3-2-610. Service Treatment Plans.** (1) The court may order a treatment plan if:

- (a) the parent or parents admit the allegations of an abuse and neglect petition;
- (b) the parent or parents stipulate to the allegations of abuse or neglect pursuant to Section 3-2-401; or
- (c) the court has made an adjudication under Section 3-2-608 (2) that the child is a child in need of care.

(2) Every treatment plan must contain the following information:

- (a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;
- (b) the treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the treatment plan must include but is not limited to the conditions or requirements that must be established for the safe return of the child to the family.
- (c) the projected time necessary to complete each of the treatment objectives;
- (d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan, including Tribal Social Services Department (TSSD) specific responsibilities to make reasonable efforts to assist the parents in their efforts toward reunification; and
- (e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

(3) A treatment plan may include but is not limited to any of the following remedies, requirements, or conditions:

- (a) the right of entry into the child's home for the purpose of assessing compliance with the terms and conditions of a treatment plan;

- (b) the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;
  - (c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment or counseling;
  - (d) the requirement of either the child or the child's parent or guardian to obtain and follow through with alcohol or substance abuse evaluation and counseling, including evaluation and treatment for alcohol and drug abuse, if necessary;
  - (e) the requirement that either the child or the child's parent or guardian be restricted from associating with or contacting any individual who may be the subject of a Tribal Social Services Department (TSSD) investigation;
  - (f) the requirement that the child be placed in temporary medical or out-of-home care;
  - (g) the requirement that the parent, guardian, or other person having physical or legal custody furnish services, or apply for services that the court may designate.
- (4) A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court.
- (5) A treatment plan must contain a notice provision advising parents:
- (a) of timeliness for hearings and determinations required under this chapter;
  - (b) that the Tribe is required by federal and Tribal laws to hold a permanency hearing to determine the permanent placement of a child no later than twelve (12) months after a judge determines that the child has been abused or neglected or twelve (12) months after the first sixty (60) days that the child has been removed from the child's home;
  - (c) that if a child has been in foster care for fifteen (15) of the last twenty-two (22) months, Tribal law presumes that an alternative permanent living arrangement for the child in the best interests of the child and the Tribes are required to file a petition to effectuate such permanent living arrangement; and
  - (d) that completion of a treatment plan does not guarantee the return of a child and that completion of the plan without a change in behavior that caused removal in the first instance may result in termination of parental rights. *(Rev. 9-13-12)*

**3-2-611. Permanency Planning.** Concurrent with temporary protective care Tribal Social Services Department (TSSD) shall conduct planning for a permanent living arrangement for the child in need of care. Such permanent living arrangement can be reunification with parents, long term custody, guardianship with a fit and willing extended family member, and/or adoption as specified in Section 3-2-801 (7).

- (1) A child is considered to have entered foster care the earlier of:
- (a) the date of the first judicial finding that the child has been abused or neglected, or;
  - (b) sixty (60) days after the date from when the child was removed from the family home.

(2) In the event Temporary Protective Care is not terminated within eleven (11) months from the date that a child is considered to have entered foster care, Tribal Social Services Department (TSSD) shall submit a Report to Court to the Tribal Social Services Department (TSSD) Advocate or Tribal Attorney which sets forth a permanency plan for permanent placement of the child.

(3) The Report to the Court prepared by the TSSD Social worker shall contain the following information:

(a) Tribal Social Services Department (TSSD) worker's efforts to effectuate the permanency plan for the child;

(b) Options for the child's permanent placement;

(c) Statement of the reasons for excluding higher priority options; and

(d) Statement of the proposed Permanency Plan, including specific time lines for achieving the plan.  
(Rev. 9-13-12)

**3-2-612. Permanency Placement Options.** Permanent placement options for any child in need of care placed in temporary protective care shall be in the following order of priority:

(a) with the parent or parents;

(b) a member of the child's extended family as defined in Section 3-2-102(10);

(c) an Indian foster home licensed, approved by Tribal Social Services Department (TSSD), or specified by the Indian child's tribe;

(d) a foster home licensed, approved, or specified by the Indian child's tribe;

(e) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(f) an institution for children approved by Tribal Social Services Department (TSSD). (Rev. 9-13-12)

### **Part 7 - Long-Term Care - Permanent Living Arrangement**

**3-2-701. Permanency hearing.** The court shall hold a permanency hearing as follows:

It is the goal of the Salish and Kootenai Tribes to create permanency for its children who are unable to remain with their birth family and are under the supervision of Tribal Social Services. To further that goal, it is the intent of CSKT that no more than 30% of the total number of children in foster care will have been in care for 24 months or more. TSSD will strive to locate a permanent home for any child who has been in care for more than one year, will identify priorities in placement alternatives, will develop strategies to place children in permanent homes and work to eliminate barriers to the identified strategies.

(1) The court shall hold a permanency hearing as follows.

(a) The court shall hold a permanency hearing within thirty (30) days of a determination that

reasonable efforts to provide preservation or reunification services are not necessary under Sections 3-2-602 or 3-2-609 (3) (b).

(b) The court shall hold a permanency hearing no later than twelve (12) months after the initial court finding that the child has been subjected to abuse or neglect or twelve (12) months after the child's first 60 days of removal from the home, whichever comes first.

(c) Within twelve (12) months of a hearing under subsection (1) (b) and every twelve (12) months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court shall conduct a hearing and issue a finding as to whether Tribal Social Services has made reasonable efforts to finalize the permanency plan for the child.

(d) A permanency hearing is not required if the proceeding has been dismissed, the child was not removed from the home, the child has been returned to the child's parent or guardian, or the child has been legally adopted or appointed a legal guardian.

(e) The permanency hearing may be combined with a hearing that is required in other sections of this part or with a review held pursuant to Sections 3-2-608 (2) or 3-2-609 (6) if held within the applicable time limits. If a permanency hearing is combined with another hearing or a review, the requirements of the court related to the disposition of the other hearing or review must be met in addition to the requirements of this section.

(2) At least five (5) working days prior to the permanency hearing, Tribal Social Services shall submit a report regarding the child to the entity that will be conducting the hearing for review. The report must address the TSSD Social Service's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least five (5) working days prior to the permanency hearing, the guardian ad litem or an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) Before or at the permanency hearing, the court shall consult with the child, in an age-appropriate manner, regarding the proposed permanency or transition plan for the child. In any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, procedural safeguards shall be applied to assure the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.

(5) The court's order must be issued within twenty (20) days after the permanency hearing. If a member of the child's extended family has requested that custody be awarded to that family member, or that a prior grant of temporary custody with that family member be made permanent, Tribal Social Services shall investigate and determine if awarding custody to that family member is in the best interests of the child. The Tribal Social Services shall provide the reasons for any

denial to the court. If the court accepts the Tribal Social Services' custody recommendation, the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied custody requests it to be included.

(6) The court shall approve a specific permanency plan for the child and make written findings on:

(a) whether the permanency plan is in the best interests of the child;

(b) whether Tribal Social Services has made reasonable efforts to finalize the plan;

(c) other necessary steps that Tribal Social Services is required to take to effectuate the terms of the plan; and

(d) whether termination of parental rights is in the best interests of the child.

(7) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection (8).

(8) Permanency options include:

(a) reunification of the child with the child's parent or guardian;

(b) adoption;

(c) appointment of a guardian pursuant to Section 3-2-903; or

(d) long-term custody if the child is in a planned permanent living arrangement and if it is established by a preponderance of the evidence, which is reflected in specific findings by the court that:

(i) the child is being cared for by a fit and willing relative;

(ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

- (A) the child has been adjudicated a child in need of care;
- (B) Tribal Social Services has made reasonable efforts to reunite the parent and child, further efforts by Tribal Social Services would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;
- (C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the best interests of the child; and
- (D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.
- (9) The court may terminate a planned permanent living arrangement upon petition of the birth parents or Tribal Social Services if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served.
- (10) In the case of a child who will not be returned to the parent, the court shall consider in state and out of state placement options. In the case of a child placed out of the state in which the home of the parent(s) of the child is located, the court shall determine whether the out of state placement continues to be appropriate and in the best interests of the child.
- (11) In the case of a child who has attained the age of 16, the court shall consider the services needed to assist the child to make the transition from foster care to independent living. *(Rev. 9-13-12)*

## **Part 8 - Termination of Parental Rights**

**3-2-801. Methods of Termination of Parental Rights.** The following shall be the exclusive methods of termination of parental rights:

- (1) Voluntary relinquishment of parental rights; or
- (2) Involuntary termination.

In the involuntary suspension or termination of parental rights, the Tribal Court shall determine whether suspension of parental rights or termination of parental rights is preferred based on the best interests of the child. Parental rights of a natural or adoptive parent may be severed permanently. Upon the permanent termination of parental rights, the person assuming the traditional parental rights shall be deemed an adoptive parent. *(Rev. 9-13-12)*

**3-2-802. Involuntary Termination of Parental Rights.**

- (1) The process for involuntary termination of parental rights shall be initiated by the filing of a petition entitled "Petition to Terminate Parental Rights." The petition shall contain the following information:



- (a) the name, age, and residence of each living parent of the child;
  - (b) the name, age and current residence of the child;
  - (c) the jurisdictional basis of the Tribal Court over the matter;
  - (d) a statement of facts indicating that termination of parental rights is in the best interests of the child;
  - (e) any facts related to the physical care or custody of the child, past or present, which may be Relevant to the petition; and
  - (f) recommendations for inheritance rights of the child and natural parents, including proposed disbursement of the child's Per Capita payments, and recommendations for residual rights of the parents, including visitation and communication as specified in Section 3-2-803.
- (2) Each parent not having voluntarily consented to relinquishment of parental rights shall be Given written notice of the proceedings pursuant to Section 3-2-304.
- (3) No termination of parental rights may be ordered unless the court determines by proof beyond a reasonable doubt that the continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child. No termination of parental rights may be ordered unless, in addition, the court determines that the risk of serious emotional or physical damage to the child will continue due to circumstances that are irremediable by further efforts of the court and Tribal Social Services.
- (4) When the Tribes files or joins in a petition to terminate parental rights, it concurrently begins to identify, recruit, process, and approve a qualified adoptive family for the child. *(Rev. 9-13-12)*

**3-2-803. Inheritance and Residual Rights.** The termination of parental rights shall not adversely affect the child's rights and privileges as an Indian, nor as a member of any tribe to which the child is entitled to membership, nor shall it affect the child's enrollment status with the child's tribe, nor shall it interfere with child's cultural level and traditional and spiritual growth as a member of the Indian community.

- (1) If the court terminates parental rights, the court shall include in its order that the court has considered the question of inheritance and residual parental rights, and the court shall determine as follows:
- (a) Consideration of inheritance rights:
    - (i) that the inheritance rights of the child and natural parents have been terminated; or
    - (ii) that the inheritance rights of the child or natural parents, or both, shall be continued, with such conditions as the court may place; and

(b) Determination of parental rights:

(i) that all of the natural parents' rights to the child have been terminated; or

(ii) that the natural parents may enjoy certain residual parental rights. Such parental right may include:

(A) the right to communication;

(B) the right to visitation;

(C) the right or obligation to contribute to support or education;

(D) the right to be consulted regarding the child's religious affiliation, major medical treatment, marriage, or other matters of major importance in the minor child's life; or

(E) such other residual rights as the court may deem appropriate, considering the circumstances.

(2) The court may grant similar residual rights to extended family members upon the termination of parental rights.

(3) Nothing in this Code shall prohibit a parent whose parental rights have been terminated under judicial process to petition the court to restore the parent to certain residual parental rights.

*(Rev. 9-13-12)*

**3-2-804. Timelines and Exceptions.**

(1) The Tribe will file a petition (or, if such a petition has been filed by another party, seek to be joined as a party to the petition) to terminate the parental rights of a parent(s):

(a) whose child has been in foster care under the responsibility of the Tribe for 15 of the most recent 22 months. The petition must be filed by the end of the child's fifteenth (15<sup>th</sup>) month in foster care. In calculating when to file a petition for termination of parental rights, the Tribe:

(i) Will calculate the 15 out of the most recent 22 month period from the date the child entered Foster care as defined at section 475(5)(F) of Title IV-E of the Social Security Act.;

(ii) Will use a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during a 22 month period;

(iii) Will not include trial home visits or runaway episodes in calculating 15 months in foster care, and;

(iv) Only applies section 475(5)(E) of Title IV-E of the Social Security Act to a child once if the Tribe does not file a petition because one of the exceptions below applies.

(b) whose child has been determined by a court of competent jurisdiction to be an abandoned infant (as defined under Tribal law). The petition to terminate parental rights is made within 60 days of the judicial determination that the child is an abandoned infant, or;

(c) who has been convicted of one of the following felonies (Murder of another child or parent, voluntary manslaughter of another child of the parent, aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or such a voluntary manslaughter or a felony assault that results in serious bodily injury to the child or another child of the parent) . Under such circumstances, the petition to terminate parental rights is to be made within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required.

(2) The Tribe may elect not to file or join a petition to terminate the parental rights of a parent of This section if:

(a) At the option of the Tribe, the child is being cared for by a relative;

(b) Documentation is available to the court that a compelling reason for determining that filing such a petition would not be in the best interests of the individual child, or;

(c) The Social services agency has not provided to the family, consistent with the time period in the case plan, services that the Tribe deems necessary for the safe return of the child to the home, when reasonable efforts are required. *(Rev. 9-13-12)*

**3-2-805. Voluntary Relinquishment of Parental Rights.** A parent may voluntarily relinquish parental rights by appearing before a Judge and knowingly and voluntarily without influence of fraud or duress, execute a written consent to relinquish parental rights, pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. Section 1902, et. seq., (ICWA) and the Tribal Children’s Code. *(Rev. 9-13-12)*

**3-2-806. Adoption Following Voluntary Relinquishment of Parental Rights or Involuntary Termination of Parental Rights.** The court may allow adoption of a child whose parents have had their parental rights terminated or relinquished in accordance with the provisions of Section 3-1-106, *CSKT Laws Codified.* *(Rev. 9-13-12)*

## **Part 9 – Suspension of Parental Rights.**

**3-2-901. Methods of Suspension of Parental Rights.** The following shall be the exclusive methods of suspension of parental rights:

(a) Voluntary consent to suspension of parental rights, or;

(b) Involuntary suspension of parental rights.

In the involuntary suspension of parental rights, the Tribal Court shall determine whether suspension of parental rights or termination of parental rights is preferred based on the best

interests of the child. (Rev. 9-13-12)

**3-2-902. Involuntary Suspension of Parental Rights.** Parental rights may be suspended involuntarily.

(1) The process for involuntary suspending parental rights shall be initiated by the filing of a Petition entitled "Petition to Suspend Parental Rights." The petition shall contain the following information:

- (a) The name, age, and residence of each living parent of the child;
- (b) The name, age and current residence of the child;
- (c) The jurisdictional basis of the Tribal Court over the matter;
- (d) A statement of facts indicating that suspension of parental rights is in the best interests of the child;
- (e) Any facts related to the physical care or custody of the child, past, or present, which may be relevant to the petition, and;
- (f) Each parent not having consented to the suspension of parental rights shall be given written notice of the proceedings pursuant to Section 3-2-304.

(2) The court shall hold a hearing upon the petition and shall determine if clear and convincing evidence exists to find that continued custody of the child by the parent is likely to result in serious emotional or physical damage to the child that will continue due to circumstances that are irremediable by further efforts of the court and Tribal Social Services.

(3) If the court suspends the parental rights, the court shall enter an order which contains the following:

- (a) The jurisdiction of the court;
- (b) The duration of the suspension;
- (c) A factual finding that suspension of parental rights is in the child's best interests, and;
- (d) Specific residual rights of the parents. Such parental right may include:
  - (i) the right to communication;
  - (ii) the right to visitation;
  - (iii) the right or obligation to contribute to support or education;

(iv) the right to be consulted regarding the child’s religious affiliation, major medical treatment, marriage, or other matters of major importance in the minor child’s life; or

(v) such other residual rights as the court may deem appropriate, considering the circumstances.

(e) The court may grant similar residual rights to extended family members upon the suspension of parental rights. *(Rev. 9-13-12)*

**3-2-903. Voluntary Consent to Suspension of Parental Rights.** Parents may voluntarily consent to suspend their parental rights.

(1) A parent may execute a written consent for suspension of parental rights. Such consent shall be executed before an adult witness and shall not be invalidated by reason of the minority of the consenting parent.

(a) The written consent shall state the name and date of birth of the consenting parent and each child included in the voluntary consent;

(b) The written consent shall set forth the duration of the consent to suspension of parental rights;

(c) The written consent shall set forth any residual rights that the consenting parent is requesting, including but not limited to communication, visitation, contact and information. *(Rev. 9-13-12)*

**3-2-904. Customary Adoption or Guardianship Following Voluntary Consent to Suspension of Parental Rights or Involuntary Suspension of Parental Rights.** The court may allow customary adoption or guardianship of a child whose parents have had their parental rights suspended or have consented to suspension of parental rights in accordance with the provisions of Part 10 or Part 11 of this Chapter. *(Rev. 9-13-12)*

## **Part 10 - Guardianship**

**3-2-1001. Guardianship.** A formal guardianship may be created by petition and order of the court.

(1) The process for creation of a guardianship shall be initiated by the filing of a petition entitled “Petition for Guardianship.” The petition shall be filed in the name of the proposed guardians and shall contain the following information:

(a) The name, age and residence of each living parent of the child;

(b) The name, age, and residence of the child;

(c) The name, age, and residence of the proposed guardian(s);

(d) The jurisdictional basis of the Tribal Court over the matter;

(e) A statement of the facts indicating that guardianship is in the best interests of the child;

(f) The duration of the proposed guardianship;

(g) Whether the guardianship is consented to by each living parent of the child, and if not, any facts excusing such consent, including any facts related to the physical care or custody of the child, past or present, which may be relevant to the petition;

(h) A full statement of the value of any property of the child's, or of which the child is expected to become entitled to during the duration of the guardianship, and recommendation for the disposition of Per Capita payments during the guardianship period. *(Rev. 9-13-12)*

(2) **Summary Order.** The written consent of each parent consenting to the guardianship shall be filed with the petition. If each living parent has consented to the guardianship in writing as provided in Section 3-2-903, and the court determines that the guardianship is in the best interests of the child, the court may enter a summary order of guardianship without holding a hearing on the Petition.

(3) **Hearing required.** If the guardianship has not been consented to in writing by each living Parent of the child, a hearing must be held to determine if the guardianship is in the best interests of the child. Each such parent not having consented shall be given written notice of the proceedings pursuant to Section 3-2-304.

(a) At the hearing, if a non-consenting parent appears and contests the guardianship, the petition shall be denied unless the court determines, upon clear and convincing evidence, that the guardianship is in the best interests of the child, and the non-consenting parent is unable to furnish a home for the child which is more beneficial to the needs and the normal development of the child than the home of the proposed guardian. *(Rev. 9-13-12)*

**3-2-1002. Order of Guardianship.** Upon a determination that the petition should be granted, the court shall enter an order of guardianship. Such order shall contain the following:

(1) the jurisdictional basis of the court;

(2) the name of the guardian or guardians;

(3) the duration of the guardianship;

(4) a factual finding that the guardianship is in the best interests of the child and the reasons therefor,

(5) an order requiring the guardian to obtain authorization of the Court prior to change of residency off-reservation and/or out-of-state; and

(6) any specific conditions of guardianship, including residual rights of the parents. *(Rev. 9-13-12)*

**3-2-1003. Termination of Guardianship.**

- (1) The guardianship shall terminate upon any of the following:
- (a) The duration specified in the order;
  - (b) The further order of the court, terminating guardianship, following a Petition to Terminate Guardianship having been filed, written notice provided to all parties of the date and time of hearing, and a hearing being held, or;
  - (c) The death of the guardian or other circumstances creating a practical inability of the guardian to care for the child.
- (2) Upon termination of the guardianship, all legal parental rights shall be returned to the person, persons or agency having such rights prior to the creation of the guardianship. *(Rev. 9-13-12)*

**Part 11 – Customary Adoption**

**3-2-1101. Customary Adoption.** A customary adoption may be created by petition and order of the court. The basis for a customary adoption shall be determined by the proposed customary parent’s relationship to the child. If the court determines that the proposed customary parent is a member of the child’s extended family or community, or otherwise has significant ties or bond to the child, the court may order a customary adoption.

- (1) The process for creation of a customary adoption shall be initiated by the filing of a petition Entitled “Petition for Customary Adoption.” The petition shall be filed in the name of the Proposed customary parents and shall contain the following information:
- (a) The name, age and residence of each living parent of the child;
  - (b) The name, age, and residence of the child;
  - (c) The name, age, and residence of the proposed customary parent(s);
  - (d) The jurisdictional basis of the Tribal Court over the matter;
  - (e) A statement regarding the relationship of the proposed customary parent(s) to the child;
  - (f) A statement of the facts indicating that customary adoption is in the best interests of the child;
  - (g) The duration of the proposed customary adoption;
  - (h) Whether the customary adoption is consented to by each living parent of the child, and if not,

any facts excusing such consent, including any facts related to the physical care or custody of the child, past or present, which may be relevant to the petition;

(i) A full statement of the value of any property of the child's, or of which the child is expected to become entitled to during the duration of the customary adoption, and recommendation for the disposition of Per Capita payments during the customary adoption period.

(2) **Summary Order.** The written consent of each parent consenting to the customary adoption shall be filed with the petition. If each living parent has consented to the customary adoption in writing as provided in Section 3-2-903, and the court determines that the proposed customary parent is a member of the child's extended family or community, or otherwise has significant ties or bond to the child, and further that the customary adoption is in the best interests of the child, the court may enter a summary order of customary adoption without holding a hearing on the Petition.

(3) **Hearing required.** If the customary adoption has not been consented to in writing by each Living parent of the child, a hearing must be held to determine if the customary adoption is in the Best interests of the child.

(a) Each such parent not having consented shall be given written notice of the proceedings pursuant to Section 3-2-304.

(b) At the hearing, if a non-consenting parent appears and contests the customary adoption, the petition shall be denied unless the court determines, upon clear and convincing evidence, that the customary adoption is in the best interests of the child, and the non-consenting parent is unable to furnish a home for the child which is more beneficial to the needs and the normal development of the child than the home of the proposed customary parent(s). *(Rev. 9-13-12)*

**3-2-1102. Order of Customary Adoption.** Upon a determination that the petition should be granted, the court shall enter an order of customary adoption. Such order shall contain the following:

(1) The jurisdictional basis of the court;

(2) The name of the customary parent(s);

(3) The duration of the customary adoption;

(4) A factual finding that the customary parent is a member of the child's extended family or community, or otherwise has significant ties or bond to the child;

(5) A factual finding that the customary adoption is in the best interests of the child and the reasons therefor, and;

(6) Any specific conditions of the customary adoption, including rights of the parents. *(Rev. 9-13-12)*



## **Part 12 - Referrals Under the Indian Child Welfare Act**

**3-2-1201. Purpose.** The purpose of this Part is to provide for the speedy and effective procedures for the processing of referrals under the Indian Child Welfare Act of 1978 from State or Tribal Courts, in order to best protect the interests of the child of the Confederated Salish and Kootenai Tribes and the interests of the Tribes. It is intended that the Tribes will investigate cases referred to them, and will act to transfer to the Tribal Court those cases in which transfer is in the best interests of the child. The procedures found in this Section are aimed at producing a thoughtful and wise decision in the matter of transfers. *(Rev. 9-13-12)*

**3-2-1202. Receipt of Referrals.** Referral of cases shall be received by the person or persons who shall be designated, from time to time, to the Secretary of Interior and upon the Federal Register, to receive such referrals. Upon receipt of referral, each person so receiving shall immediately deliver the referral to the Chief Judge of the Tribal Court, or in the absence of the Chief Judge to a designated Associate Judge of the Tribal Court, and shall immediately also deliver a copy of the referral to the Clerk of the Tribal Court. *(Rev. 9-13-12)*

**3-2-1203. Duties of the Clerk of Court.** The Clerk of the Tribal Court, upon receipt of such referral by a Tribal Judge, shall document in a record all essential information relevant to the referral, including:

- (1) the source of the referral;
- (2) the names and addresses of the child and parent, guardian, or guardian;
- (3) the date of the referral;
- (4) the form of the scheduled proceedings in the outside court; and
- (5) the Tribal affiliation and blood quantum of the child, if known. *(Rev. 9-13-12)*

**3-2-1204. Duties of the Chief Judge of the Tribal Court.** The Chief Judge of the Tribal Court, or such Associate Judge as the Chief Judge may designate, shall receive referral and, in consultation with the Tribal Attorney where practicable, shall immediately determine if it is necessary to request the twenty (20) day extension to prepare the case, and, if so, shall direct the Tribal Attorney to so request. *(Rev. 9-13-12)*

**3-2-1205. Investigation of Referral.** (1) Upon receipt of referral and request of the twenty (20) day extension, the Chief Judge shall investigate the referral or direct appropriate Tribal personnel to assist in the investigation. The investigation shall include the following.

- (a) Contact appropriate sources to determine the child's membership status of the Tribes.
- (b) Investigate and determine whether the child custody referral is one properly referred to the Tribes under the Indian Child Welfare Act.
- (c) Contact the parent or guardian of the child, and notify them of the fact of referral to the Tribes and the Tribes' considering transfer of the case to Tribal jurisdiction. Contact shall be made by personal delivery of the notice of the parent or the guardian, where practicable. Where such personal service is not practicable, then notice shall be given by registered mail with return receipt requested.

(d) Contact social, medical, legal, or other sources to obtain necessary information regarding the circumstances of the case;

(e) Make a decision as to whether the transfer of the case would be appropriate and in the best interests of this child. The court may consider the past and present residences of the child, the child or the child's family ties with the Tribes or the Tribal community, any special conditions of the child in the ability of Tribal or reservation facilities to deal with such conditions, whether jurisdiction should be taken before or after the adjudication state of the proceedings, considering the location of witnesses, documents, and other evidence and the existence of subpoena and other process limitations of Tribal jurisdictions;

(f) Consider continuity in the child's surroundings and emotional contact;

(g) Determine the wishes of the child's family, extended family, and other interested persons; and

(h) Notify the parent, guardian, or guardian of the child, and all other interested persons having contacted the Tribal Court, of the decision regarding transfer. Notification to parent, guardian, or guardian shall be by registered mail, return receipt requested.

(2) If the Chief Judge of the Tribal Court shall determine that the transfer is in the best interests of the child, the said Chief Judge shall file or cause to be filed a petition with the referring court for transfer of jurisdiction to the Tribal Court. In addition, the court shall cause to be filed with the referring court a notice of willingness to accept jurisdiction, such affidavits, consents of parent or parents, and other documentation as may be necessary.

(3) Determine whether, without transfer, the court should intervene in the proceedings in the referring court, and, if so, cause such intervention procedures to be initiated.

(4) The Chief Judge of the Tribal Court shall complete the above duties within ten (10) days after receiving the notice of referral, unless request has been made, in writing by registered mail, for the twenty (20) day extension as provided in the Indian Child Welfare Act. *(Rev. 9-13-12)*

**3-2-1206. Proceedings upon transfer.** When transfer of a case has been made by a referring court, the Chief Judge of the Tribal Court shall immediately notify Tribal Social Services Department (TSSD) and a petition under this chapter shall be filed at the earliest practicable date. *(Rev. 9-13-12)*

## TITLE III

### CHAPTER 3 - YOUTH

(Enacted 8-23-05)

#### Part 1 - Purpose, Definitions, and Jurisdiction

**3-3-101. Purpose.** This Chapter shall be liberally interpreted and construed to fulfill the following expressed purposes:

- (1) To preserve and retain the family unit whenever possible. To provide for the care, protection, and wholesome mental and physical development of youth offenders who are within the provisions of this code;
- (2) To recognize that alcohol and substance abuse among youths is a disease which is both preventable and treatable;
- (3) To prevent and reduce youth delinquency with a system of adjudication that provides:
  - (a) immediate, consistent, enforceable, and avoidable consequences of youth's actions;
  - (b) a program of supervision, care, treatment and rehabilitation, detention, and competency development, consistent with the protection of the reservation;
- (4) To achieve the purposes of this code utilizing the family unit whenever possible and to separate the youth from the family unit only when necessary for the youth's welfare or to protect public safety;
- (5) to recognize youth and parental/guardian responsibility and accountability through restitution ordered by the Court in appropriate cases;
- (6) To provide judicial and other procedures through which the provisions of this code are executed and enforced and in which the parties are assured a fair hearing and their civil and other legal rights are protected under the Indian Civil Rights Act of 1968 and statutory rights under the Law and Order Code of the Confederated Salish and Kootenai Indian Tribes of the Flathead Reservation, Montana;
- (7) To provide a continuum of services for youths and their families from prevention to residential treatment, with emphasis whenever possible on prevention, early intervention and community-based alternatives; and
- (8) To provide a forum where an Indian youth who is an enrolled or enrollable member of the Confederated Salish and Kootenai Tribes and is charged in other jurisdictions may be referred for adjudication and/or disposition.

**3-3-102. Definitions.** The following definitions shall apply to this Code. Where his or her is used in this Code it is meant to include both genders.

- (1) "Adjudicatory Hearing" means a proceeding in the Youth Court to determine whether a youth has committed a specific "youth offense" or is a "youth in need of supervision" as set forth in a petition.

- (2) “Adult” means an individual who is 18 years of age or older.
- (3) “Advocate” means an attorney or advocate.
- (4) “Alcohol or Substance Abuse Emergency Shelter or Halfway House” means an appropriately licensed and supervised emergency shelter or halfway house for the care and treatment of youth with regard to alcohol and/or substance abuse problems.
- (5) “Consent Decree”: At any time after the filing of a “youth offender” petition, and before the entry of a judgment, the Youth Court may, on motion of the youth presenter or that of counsel for the youth, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with the youth probation officer and agreed to by all parties affected. The Youth Court’s order continuing the youth under supervision under this section shall be known as a “consent decree”.
- (6) “Contact”: means any physical or sustained sight or sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees.
- (7) “Counsel”: An attorney or advocate.
- (8) “Court” or “Youth court”: See definition of Youth Court I and II.
- (9) “Custodian”: A person, other than a parent or guardian, to whom legal custody of the youth has been given.
- (10) “Deferred agreement” means an agreement which suspends a “juvenile offender” or “youth in need of supervision” proceeding prior to filing a petition and continues the youth under supervision or probation under terms and conditions negotiated with the juvenile officer and agreed to by all parties.
- (11) “Delinquent Youth” means a youth who:
- (a) Has committed an offense which, if committed by an adult, would constitute a criminal offense;
  - (b) Having been placed on formal court probation as a delinquent youth or a youth in need of supervision, violates any conditions of his probation.
- (12) “Detention” means exercising authority over a youth by physically placing them in any secure youth facility designated by the Youth Court where their movement is restricted.
- (13) “Dispositional Hearing” means a proceeding in the Youth Court to determine how to resolve a case after the youth has been adjudicated a youth offender.
- (14) “Domicile” means a person's permanent home, legal home or main residence. The domicile of a youth is generally that of the custodial parent or where the parent or guardian consider to be their permanent home. Domicile for purposes of jurisdiction is established at the time of the alleged acts.
- (15) “Foster home” means placement with a family whose home has been licensed by Tribal Social Services to accept placement of youth.
- (16) “Group home” means a residential facility which is licensed to care for youth.

(17) “Guardian” means a person, other than a parent, having the duty and authority to provide care, shelter, and control of a youth.

(18) “Guardian Ad Litem” means a person appointed at the discretion of the Youth Court or upon the recommendation of Juvenile Probation to represent and protect the legal rights and interests of a youth in a Youth Court proceeding when the youth has no parent or guardian appearing on his behalf or their interests conflict with those of the youth.

(19) “Indian Youth” and “Youth” refers to a youth who is an enrolled or enrollable member of the Confederated Salish and Kootenai Tribes; is an enrolled or enrollable member of a federally recognized tribe residing on the Flathead Reservation;

(20) “Judge” when used without further qualifications, means the Judge of the Tribal Youth Court.

(21) “Juvenile officer” means the youth probation officer.

(22) “Legal Custody” means the legal status created by order of a court of competent jurisdiction that gives a person the duty to:

(a) Have physical custody of the youth; and

(b) Determine with whom the youth shall live and for what period; and

(c) Protect, train, and discipline the youth; and

(d) Provide the youth with food, shelter, education, and ordinary medical care.

(e) An individual granted legal custody of a youth shall personally exercise his rights and duties as parents or guardian unless otherwise authorized by the Court entering the order.

(23) “Parent” includes a natural or adoptive parent.

(24) “Probation” means a legal status created by court order or under this code whereby an offender is under prescribed conditions and under the supervision of a person designated by the court. An offender on probation is subject to return to court for further proceedings in the event of his failure to comply with any of the prescribed conditions of probation.

(25) “Protective supervision” means a legal status created by court order under which an offender is permitted to remain in his home or is placed with a relative or other suitable individual, where supervision and assistance is provided by the court. (A health or social services agency or some other agency designated by the court).

(26) “Restitution” means monetary payment to the victim or services provided to the victim or the general community, made pursuant to an informal adjustment, consent decree, deferred agreement, or other Youth Court order.

(27) “Secure Youth Detention Facility” means a facility which:

(a) Contains locked cells or rooms;

(b) Restricts the movement of those placed in the locked cells or rooms; and

(c) Complies with the other requirements of the Juvenile Justice and Delinquency Prevention Act. 42 U.S.C. 5601 et. seq.

(28) “Serious crime” means a crime committed by a youth, which if committed by an adult would be a Class D and/or Class E offense and is an offense against a person, an offense against property or an offense involving dangerous drugs.

(29) “Status Offense” means an offense committed by a youth which if committed by an adult would not constitute a criminal offense. Status Offenses include but are not limited to the following:

(a) Violating any applicable law regarding use of alcoholic beverages or tobacco by minors, except that traditional cultural use of tobacco shall not be a youth offense;

(b) Disobeying the reasonable and lawful demands of his or her parents, or guardian or is ungovernable and beyond their control;

(c) While subject to compulsory school attendance, being truant from school;

(d) Being a runaway; or

(e) Violating curfew.

(30) “Transfer of Jurisdiction” means transferring a youth from the jurisdiction of the Tribal Youth Court according to chapter 1-3 of this code which results in the termination of the initial court’s jurisdiction over that offense.

(31) “Tribal Council” means the Tribal council of the Confederated Salish and Kootenai Tribes.

(32) “Tribal Court” means the adult court for the Confederated Salish and Kootenai Tribes.

(33) “Tribal Social Services” means the social services department of the Confederated Salish and Kootenai Tribes.

(34) “Youth” see “Indian Youth” definition.

(35) “Youth Court I” means the Court established by the CSKT to hear status offenses and Class A offenses other than traffic offenses.

(36) “Youth Court II” means the Court established by the CSKT to hear all other proceedings in which a petition has been filed alleging that a youth is a delinquent youth or a youth in need of supervision, including status offenses and Class A offenses arising out of the same transaction as Class B, C, D or E offenses, and including status offenses committed by youths adjudicated or charged in Youth Court II.

(37) “Youth facility” means any youth facility (other than school) that cares for youth or may restrict their movement, including secure youth detention facilities, alcohol or substance abuse emergency shelter or halfway houses, foster homes, group homes, and shelter homes.

(38) “Youth in need of Care” means a youth who is dependent, abused or neglected.

(39) “Youth in need of Supervision” means a youth who commits an offense prohibited by law which if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) Violates any Tribal, Montana municipal, State, or federal law regarding use of alcoholic beverages or tobacco by minors, except that traditional cultural use of tobacco shall not be a youth offense;

(b) Disobeys the reasonable and lawful demands of his parents, or guardian or is ungovernable and beyond their control;

(c) Being subject to compulsory school attendance, is truant from school; or

(d) Has committed any of the acts of a delinquent youth but whom the Youth Court in its discretion chooses to regard as a youth in need of supervision;

(e) Is a Runaway; or

(f) Violates Curfew.

(40) “Youth Offender”: A youth who commits a “Youth Offense” or a “Status Offense” prior to the youth’s eighteenth (18th) birthday.

(41) “Youth Offense”: A violation of the law and order code of the Confederated Salish and Kootenai Tribes, or equivalent city, state or federal law, which is committed within the exterior boundaries of the Flathead Indian Reservation by a person who is under the age of eighteen (18) at the time the offense was committed.

(42) “Youth Presenter”: The youth presenter or youth presenting officer or youth petitioner or any other person who performs the duties and responsibilities set forth in his job description, in accordance with the Tribes' Personnel Rules, Regulations, and Procedures. *(Rev. 7-25-06) (Rev. 5-14-08) (Rev. 3-21-13)*

**3-3-103. Jurisdiction of the Youth Court.** The Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation have established a court known as the Confederated Salish and Kootenai Tribal Youth Court. The court has exclusive original jurisdiction over all proceedings established in this code in which an Indian youth is residing in or domiciled on the reservation, alleged to be a “Youth Offender” or “Youth in Need of Supervision,” as defined in Section 3-3-102 of this Chapter, unless the Youth Court transfers jurisdiction to the Tribal Adult Court or a State District Youth Court according to this code. Youth Court does not have jurisdiction over traffic or fish and game offenders, these matters are referred to the appropriate Tribal Court division.

**3-3-104. Severability.** If any provision or application of this code is held invalid, such invalidity shall not affect the remaining code provisions or application thereof.

## **Part 2 - Transfer to Adult Tribal Court or State District Youth Court**

**3-3-201. Transfer of Jurisdiction to Adult Tribal Court.** The Youth presenter shall have discretionary authority to file the cause in Adult Tribal Court, based on input provided by the Juvenile Probation Office and consistent with the factors set forth in subsection 2 below.

- (1) A juvenile offender may be transferred to Adult Tribal Court only if:
  - (a) the offender is sixteen (16) years of age or older,
  - (b) is alleged to have committed a serious crime, and
  - (c) is an enrolled member of the CS&KT or other federally recognized tribe.
- (2) The Youth presenter shall consider the following factors to determine transfer.
  - (a) the nature and seriousness of the alleged offense,
  - (b) the youth's nature and condition as evidenced by his/her age, mental and/or physical condition,
  - (c) the youth's past record of offenses, and
  - (d) the youth's contact with the Tribe.
- (3) Transfer report. The juvenile officer shall prepare a transfer report for the Youth Court Presenter to consider that addresses the issues described in subsections 1 and 2 above. This report shall be attached to the motion of transfer.

### **3-3-202. Transfer of Jurisdiction to State District Youth Court.**

The Youth presenter shall have discretionary authority to transfer a juvenile offender to State Youth District Court based on input provided by the Juvenile Probation Office and consistent with the factors set forth in subsection 2 below.

- (1) A juvenile offender may be transferred to State Youth District Court only if:
  - (a) the offender is alleged to have committed a serious crime: and/or
  - (b) transfer will access services or funding for the youth not available through the Tribe.
- (2) The Youth presenter shall consider the following factors to determine transfer:
  - (a) the nature and seriousness of the alleged offense,
  - (b) the youth's nature and condition as evidenced by his/her age, mental and/or physical condition,
  - (c) the youth's past record of offenses,
  - (d) availability of funding for treatment, and
  - (e) services that are available through state youth district court that are not available through Tribal Youth Court.



(3) Transfer report. The juvenile officer shall prepare a transfer report for the Youth Court Presenter to consider that addresses the issues described in subsections 1 and 2 above. This report shall be attached to the notice of transfer for review and approval of the Court. The notice shall identify transfer of the allegations as well as transfer of supervisory responsibilities of Tribal juvenile probation office to the State juvenile probation services to ensure continued compliance with the Court's prior dispositions.

(4) Nothing in this section shall prohibit the juvenile officer from participating in the State court proceeding or youth placement committee as provided for in state law.

### **Part 3 - Youth Court Procedure**

**3-3-301. Non-criminal proceedings.** Any adjudication regarding the status of any individual within the jurisdiction of the Youth Court is not criminal in nature and may not be deemed a criminal conviction unless the cause is transferred to the Adult Tribal Court pursuant to this Chapter.

**3-3-302. Use in other proceedings.** The adjudication, disposition, and evidence presented to the Youth Court is inadmissible as evidence against the youth in any proceeding in another court, including the Adult Tribal Court.

**3-3-303. Rules of procedure.** The Youth Court procedures are governed by the Tribal Court rules of procedure that do not conflict with this Chapter.

**3-3-304. Confidentiality.** (1) All juvenile proceedings shall be open to the public unless the Court finds good cause to close the proceeding. Good cause to close the proceeding includes but is not limited to:

- a. Detention hearings as set forth in Part 7;
- b. To protect the victim's identity or rights; or
- c. For the safety of the youth or other parties.

If the Court should find good cause exists to close the proceedings, only the parties, their counsel, witnesses, and other persons requested by the parties or the youth Court shall be admitted.

(2) Proceedings in Youth Court I: All citations and dispositional decrees and orders on file with the clerk of court are public records and are open to public inspection or disclosure unless such records are sealed pursuant to a Court order or until the records are sealed pursuant to Section 3-3-306.

(3) Proceedings in Youth Court II.

A. All petitions, pleading files, decrees, and orders, on file with the clerk of court are public records and are open to public inspection unless such records are sealed pursuant to a Court Order or until the records are sealed pursuant to Section 3-3-306.

B. Offense reports, victim witness statements are open only to the following:

- a. the youth court, tribal prosecutor and counsel for the youth;
- b. representatives of any agency providing supervision and having legal custody of a youth;
- c. state district youth court probation office and/or county attorney, for purposes of transfer pursuant to Section 3-3-202 of this Chapter;
- d. mental health programs for purposes of assessment and/or treatment of the youth;
- e. chemical dependency programs for purposes of assessment and/or treatment of the youth;
- f. a social services agency for purposes of child protection investigation;
- g. the victim of the offense;
- h. the youth who is subject of the report and his/her parent(s) or guardian;
- i. any other person, by order of the court, having a legitimate interest in the case or in the work of the court.

(4) Unless otherwise provided by law, social, medical and psychological records, youth assessment materials, pre-dispositional studies, and supervision records of probationers are open only to the following:

- a. the youth court, tribal prosecutor and counsel for the youth;
- b. representatives of any agency providing supervision and having legal custody of a youth;
- c. state district youth court probation office and/or county attorney, for purposes of transfer pursuant to Section 3-3-202 of this Chapter;
- d. a social services agency for purposes of child protection investigation;
- e. any other person, by order of the court, having a legitimate interest in the case or in the work of the court.

**3-3-305. Youth Court Records.** A record of all hearings under this code shall be made and preserved.

**3-3-306. Disposition of records.** Youth Court and law enforcement records shall be sealed when the youth reaches the age of eighteen (18), unless the case is an on going case. Youth records shall be destroyed three (3) years after jurisdiction over the youth ends. After that time the Youth Court personnel shall respond to all record inquiries as if no records ever existed.

#### **Part 4 - Youth Court Authority.**

**3-3-401. Scope of Youth Court Authority.** The Youth Court may:

- (1) cooperate fully with any federal, state, Tribal, public, or private agency in order to participate in any diversion, rehabilitation or training program(s) and to receive grants-in-aid to carry out the purposes of this code. This authority is subject to the approval of the Tribal council;
- (2) utilize any social service that is furnished by any Tribal, federal, or state agency provided that it is economically administered without unnecessary duplication and expense;
- (3) accept or decline transfers from other states or Tribal Courts involving alleged delinquent youth or alleged status offenders for the purposes of adjudication and/or disposition.

**3-3-402. Powers and duties of the Youth Court.** The Youth Court shall have the same powers and duties as the Tribal Court, including, but not limited to, the contempt power, the power to issue arrest or

custody warrants, the power to issue subpoenas, and the power to issue search warrants. The rules on disqualification or disability of a Youth Court judge shall be the same as those which govern Tribal Court judges.

**3-3-403. Additional Youth Court personnel.** The Youth Court may appoint additional Personnel including a Guardian Ad Litem or Court Appointed Special Advocates, or referees as it deems appropriate or upon recommendation by juvenile probation.

**3-3-404. Status Offenses.** Youths under the age of 18 may be cited for Status Offenses. Status Offenses shall be referred to Youth Court I or Youth Court II pursuant to Section 3-3-102 (35) and 3-3-102 (36) for disposition. *(Rev. 7-14-09) (Rev. 3-21-13)*

**3-3-405. Youth Curfew Violation.** (1) Every person under the age of 18 is subject to curfew times as follows:

- a. 10:00 p.m. until 6:00 a.m. on the following morning Sunday through Thursday, and;
- b. 12:00 midnight until 6:00 a.m. the following morning on Friday and Saturday.

(2) A person under the age of 18 commits the offense of Youth Curfew Violation by being abroad on the public streets, roadways, or lands of the Flathead Reservation during the above listed curfew times without prior approval of a parent or guardian. Return travel directly from a school activity to the youth's residence is not a curfew violation.

(3) Youths may be cited for Youth Curfew Violation notwithstanding any violation of Section 2-1-710, CSKT Laws Codified. *(Rev. 7-14-09) (Rev. 3-21-13)*

**3-3-406 Runaway.** (1) A person under the age of 18 commits the offense of Runaway as follows:

- a. by leaving a Court Ordered placement without authority to do so; or
- b. by leaving home without the consent of a parent or guardian or a custodian having legal custody of the youth and being reported by the parent/guardian/custodian as having run away. *(Rev. 7-14-09) (Rev. 3-21-13)*

**3-3-407. Truancy.** A person under the age of 16, who is subject to compulsory school attendance, commits the offense of Truancy by being absent from school without prior approval of a parent or guardian. *(Rev. 7-14-09) (Rev. 3-21-13)*

## **Part 5 - Rights of Youth**

When a youth is questioned by a Law Enforcement or Juvenile Officer upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of supervision, the following requirements must be met. The rights of youth pursuant to this section are applicable under the Youth Code and are not applicable in Traffic Court.

**3-3-501. Right against self-incrimination.** (1) The youth must be advised of his right against self-incrimination and his right to counsel.

(2) The youth may waive these rights under the following situations:

- (a) when the youth is 16 years of age or older, the youth may make an effective waiver;
  - (b) when the youth is under the age of 16 years and the youth and a parent or guardian agree, they may make an effective waiver; and
  - (c) when the youth is under the age of 16 years and the youth and his parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.
- (3) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth, that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified. To determine placement, the youth may be questioned to determine the following:
- (a) To determine his or her name;
  - (b) To determine the name of his/her parent, or legal custodian; or
  - (c) To conduct medical assessment and treatment for alcohol or substance abuse under Section 3-3-202 of this Chapter, when the youths health or well-being is in serious jeopardy.

**3-3-502. Admissibility of evidence.** In a Youth Court I or II proceeding:

- (1) An out-of-court statement that would be inadmissible in a criminal matter in Tribal Court shall not be received in evidence;
- (2) Evidence seized or obtained in violation of youths recognized rights shall not be received in evidence;
- (3) Unless advised by counsel or an effective waiver was made by the youth, the statements of a youth while in custody of a juvenile officer, law enforcement officer, or defender, including statements made during a preliminary inquiry, shall not be received in evidence;
- (4) A valid out-of-court admission or confession by the youth is insufficient to support a finding that the youth committed the acts alleged unless it is corroborated by other evidence;

**3-3-503. Fingerprints and photographs.** (1) A youth may be fingerprinted or photographed for criminal identification purposes:

- (a) if arrested for conduct alleged to be unlawful that would be a felony if committed by an adult;
  - (b) pursuant to a search warrant, supported by probable cause, issued by a Tribal Youth Court judge; or
  - (c) upon the order of the Tribal Youth Court judge, after a petition alleging delinquency has been filed in which the unlawful act alleged would constitute a felony if the act had been committed by an adult; or
  - (d) for minors who are runaways for identification purposes only.
- (2) Fingerprint records and photographs may be used by Tribal juvenile probation and Tribal law and order for comparison and identification purposes in any other investigation.

**3-3-504. Right to appointed counsel.** (1) In all “Youth Court II proceedings” the youth shall be represented by counsel at all stages of the proceedings.

(2) If counsel is not retained for the youth, or if it does not appear that counsel will be retained, the Youth Court shall appoint counsel for the youth.

**3-3-505. Explanation of rights.** At the youth’s initial appearance before the Youth Court II, the Youth Court shall inform the youth alleged to be a “youth offender” or a youth in need of supervision and the youth’s parent, guardian or custodian of the following:

- (1) The allegations against him or her;
- (2) The right to an advocate or attorney, as set forth in Section 3-3-504;
- (3) The right to testify or remain silent and that any statement made may be used against him or her;
- (4) The right to cross examine witnesses;
- (5) The right to subpoena witnesses and to introduce evidence on his or her own behalf; and
- (6) The possible consequences if the allegations in the petition are found to be true.

**3-3-505. Parental Responsibility.** (1) a youth’s parents or guardians are obligated to assist and support the youth court in implementing the court’s orders concerning a youth under youth court jurisdiction, and the parents or guardians are subject to the court’s contempt powers if they fail to do so.

(2) The Court will advise the youth’s parents or guardians of obligations, including possible assessments and related costs, that may arise under this chapter, including the possibility that the person may be required to reimburse the Tribe for costs attributable to the adjudication, disposition, costs of detention, supervision, care, custody, and treatment of the youth and may be required to participate in counseling, treatment, or other support services.

## **Part 6 - Procedure for Taking a Youth Offender into Custody**

**3-3-601. Taking a youth into custody.** A law enforcement officer may take a youth into custody when:

- (1) The youth commits a “youth offense” in the presence of the officer; or
- (2) The officer has probable cause to believe a youth detained has been committed:
  - a. a youth offense; or
  - b. a violation of the youth’s probation; or
  - c. a violation of a Tribal court order; or
  - d. a violation of a court order issued by a court of competent jurisdiction.
- (3) An appropriate custody order, warrant authorization to detain, pick up and hold order, or other recognized order has been issued by the Youth Court, or other appropriate court, with permission of the Tribal Youth Court, authorizing the taking of a particular youth, as follows:

- a. Upon presentation of an application to the Youth Court; and
- b. Finding of probable cause by the Youth Court.

**3-3-602. Provision of rights.** At the time the youth is taken into custody, the arresting officer shall give the following warning:

- (1) The youth has a right to remain silent;
- (2) Anything the youth says can be used against the youth in court;
- (3) The youth has a right to the presence of his or her parent, guardian, custodian and counsel during questioning.

**3-3-603. Release or delivery from custody.** A law enforcement officer shall have discretionary authority to do the following after taking a youth into custody prior to questioning:

- (1) Release the youth to the youth's parent or guardian;
- (2) Release the youth to a relative or other responsible adult designated by the juvenile probation officer, if the youth's parent, guardian or custodian consents to the release or parent either isn't capable to consent or can't be located;
- (3) Deliver the youth to a licensed youth facility as designated by the juvenile probation officer or to a medical facility if the youth is believed to need prompt medical treatment; or
- (4) Hold the youth in the Tribal Jail in a designated juvenile holding facility or other area separate from physical or sustained sight or sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees, for a period not to exceed 24 hours pending delivery to a licensed youth facility, a Court appearance, or release to a parent or guardian. *(Rev. 2-21-06) (Rev. 3-7-06) (Rev. 7-25-06) (Rev. 3-21-13)*

**3-3-604. Review for need of continued custody.** Prior to delivery of a youth to the youth facility, the juvenile officer or juvenile official (as designated by the Youth Court) shall review the need for continued custody, and release the youth to his parent, guardian or custodian with instructions to appear at the hearing on a date to be set by the Youth Court, unless;

- (1) The act is serious enough to warrant continued detention; and
- (2) There is probable cause to believe the youth has committed the offense(s) alleged; or
- (3) There is reasonable cause to believe the youth will commit a serious act causing damage to a person or property; or
- (4) The youth's parent or guardian is unsuitable for or is unwilling or unable to accept return custody of the youth.

**3-3-605. Notifications to family.** Upon taking a youth into custody, the juvenile officer or Law enforcement officer shall immediately notify the youth's parent, guardian or custodian. All reasonable efforts shall be made to advise the parent, guardian or custodian of the reason for taking the youth into custody and the place of continued custody. Such reasonable efforts shall include telephone and personal contacts at the home or place of employment. If notification cannot be provided to the youth's parent,

guardian or custodian, the notice shall be given to a member of the extended family of the parent, guardian, custodian or youth's extended family.

**3-3-606. Criteria for selecting a youth facility.** If the juvenile officer or juvenile official determines that there is a need for continued custody of the youth in accordance with Section 3-3-604, the following criteria shall be used to determine the appropriate youth facility for the youth:

- (1) A youth may be detained in a secure youth detention facility if:
  - (a) The youth is a fugitive from another jurisdiction wanted for a felony offense, with a copy of warrant or pick up and hold delivered immediately to the juvenile office; or
  - (b) The youth is uncontrollable and has committed a serious physical assault on the arresting officer or on other security personnel while resisting arrest or detention; or
  - (c) The youth is charged with committing a "Serious Crime", which would be an offense if the youth were an adult or equivalent state or federal offenses; or
  - (d) The youth is already detained or on conditional release for another "youth offense"; or
  - (e) The youth has demonstrated a recent record of willful failure to appear at Youth Court proceedings; or
  - (f) The youth requests in writing that he be given protection by being confined in a secure youth detention facility and there is a present and immediate threat of serious physical injury to the youth;
  - (g) The youth violates his formal probation.
- (2) A youth may be housed in a youth facility (other than a secure detention facility) as designated by the Youth Court only if the following conditions exist:
  - (a) One of the conditions described in subsection (1) above exists; or
  - (b) The youth is unwilling to return home or to the home of an extended family member; or
  - (c) The youth's parent, guardian, custodian, or an extended family member is unavailable, unwilling, or unable to permit the youth to return to their home.

### **Part 7 - Youth Offender Detention Hearing.**

**3-3-701. Requirement of detention hearing.** When a youth has been taken into continued custody as provided for under Section 3-3-604, a detention hearing shall be convened by the Youth Court within forty-eight (48) hours of the youths initial detention, excluding weekends and Tribal holidays, but not to exceed seventy-two (72) hours in any event. The detention hearing shall take place in person.  
(Rev. 8-3-04)

**3-3-702. Purpose of the detention hearing.** The purpose of the detention hearing is to determine:

- (1) Whether probable cause exists to believe the youth committed the alleged "youth offense"; and

(2) Whether continued detention is necessary pending further proceedings.

**3-3-703. Notice of detention hearing.** When a time for the detention hearing has been set, notice shall be immediately given to the youth, the youths counsel, and reasonable effort has been made to locate the youth's parent, guardian or custodian. The notice shall contain:

- (1) The name of the Youth Court;
- (2) The title of the proceedings;
- (3) A brief statement of the "youth offense" the youth is alleged to have committed; and
- (4) The date, time, and place of the detention hearing.

**3-3-704. Detention hearings.** (1) Detention hearings shall be conducted by the Youth Court separate from other proceedings.

(2) As previously stated in Section 3-3-304, if the Court should find good cause exists to close the proceedings, the general public shall be excluded from the proceedings. Only the parties, their counsel, witnesses, and other persons requested by the parties or the Youth Court shall be admitted.

**3-3-705. Notification of rights at detention hearing.** At the commencement of the detention hearing, the Youth Court shall notify the youth and the youth's parent, guardian, or custodian of their rights under Part 5 of this Chapter.

**3-3-706. Findings at detention hearing.** The Youth Court shall issue a written finding stating the reasons for release or continued detention of the youth. If the Youth Court determines that there is a need for continued detention, the Youth Court shall specify where the youth is to be placed until the adjudicatory hearing.

**3-3-707. Rehearing of detention matter.** The Youth Court shall rehear a detention matter within ten (10) days or less if:

- (1) The youth is not released at the first detention hearing;
- (2) Counsel for the youth was not notified of the hearing and did not appear or waive appearance at the hearing; and
- (3) A motion for a rehearing and a declaration stating the relevant facts has been filed with the Youth Court.



## **Part 8 - Youth Court I Procedure**

**3-3-801. Purpose.** The Youth Court I is a division of the Tribal Court of the Confederated Salish and Kootenai Tribes. The procedure in this part is intended to provide just adjudication of citations of lesser offenses by youth through a simple and uniform process and the elimination of unnecessary expense and delay.

**3-3-802. Youth Court I Proceedings.** All proceedings in Youth Court I shall be commenced by citation and held before a Judge of the Tribal Court designated to hear such cases. Youth Court I proceedings shall be tape recorded and the tape shall be maintained for the duration of the case.

**3-3-803. Required Appearance by the Youth's Custodial Parent or Guardian.** Copies of citations for Status or Class A offenses shall be served upon the cited youth's custodial parent or guardian and shall require the appearance of that parent or guardian at all proceedings on the citation.

**3-3-804. Youth Rights in Youth Court I.** All youth in Youth Court I matters shall have the following rights:

- (1) the right to be informed of the offense that is alleged to have been committed (cited offense) by the youth and the possible penalties provided for under Section 3-3-805 Dispositional Alternatives;
- (2) the right to have assistance from or be represented by an attorney (at the youth's own expense) or to have another Tribal member speak on the youth's behalf (see Tribal Member Representation, § 1-2-506 of this code);
- (3) the right to admit or to deny or to assert no contest, and if the youth admits or asserts no contest to the cited offense, to have the Judge immediately sentence the youth as provided for under Section 3-3-805 Dispositional Alternatives or if the youth denies the cited offense to have the Judge immediately schedule a bench trial of the cited offense;
- (4) the right to a prompt bench trial before the Judge and at the trial to cross-examine the Tribes witnesses and to call witnesses and present relevant evidence on the youth's behalf;
- (5) the right to remain silent and, if the youth chooses to remain silent, the right to have no inference drawn from the youth's silence;
- (6) the right to be advised that any statement made by the youth may be used in evidence against the youth;
- (7) the right to request that the Court issue subpoenas for witnesses to appear or evidence produced for the bench trial;
- (8) the right to appeal the Judge's final judgment to the Tribal Appellate Court within 20 days of the date of final judgment.

**3-3-805. Dispositional Alternatives.** When it finds that a youth has committed the cited offense, the Youth Court I may make and record any of the following orders by disposition:

- (1) Permit the youth to remain with his or her parents, guardian or custodian;

- (2) Place the youth in legal custody of a relative or other suitable person;
- (3) Order the youth to pay restitution;
- (4) Place the youth in the protective supervision of juvenile probation (as defined in Section 3-3-102);
- (5) Place the youth on probation;
- (6) Impose a fine;
- (7) Order the youth to complete community service;
- (8) Require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;
- (9) Require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;
- (10) Order confiscation of the youth's driver's license, not to exceed 90 days;
- (11) Order the youth to pay a contribution covering all or a part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;
- (12) Order the youth to pay a contribution covering all or part of the costs of victim's counseling;
- (13) In addition to any disposition by the Youth Court I under this section, a youth who commits a first alcohol offense, shall be fined an amount not less than \$100 and not to exceed \$300 and:
  - A. shall be ordered to perform 20 hours of community service;
  - B. shall be ordered, and youth's parent, parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course, if one is available; and
  - C. if the youth has a driver's license, must have the license confiscated by the court for 30 days, or until the youth completes the community-based substance abuse information course not to exceed 9 months.
- (14) In addition to any disposition by the Youth Court I under this section, a youth who commits a second alcohol offense, shall be fined an amount not less than \$200 and not to exceed \$600 and:
  - A. shall be ordered to perform 40 hours of community service;
  - B. shall be ordered, and youth's parent, parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course, if one is available; and
  - C. if the youth has a driver's license, must have the license confiscated by the court for 6 months, or until the youth completes the community-based substance abuse information course not to exceed 12 months;
  - D. shall be required to complete a chemical dependency assessment. The youth shall be ordered to comply with all treatment recommendations made in the assessment.
- (15) In addition to any disposition by the Youth Court I under this section, and notwithstanding the penalties imposed in Section 2-1-110 for alcohol offenses committed by a person of 18 years of age or older, a youth who commits a third or subsequent alcohol offense, shall be fined an amount not less than \$300 and not to exceed \$900 and:
  - A. shall be ordered to perform 60 hours of community service;

B. shall be ordered, and youth's parents, parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course, if one is available; and  
 C. if the youth has a driver's license, must have the license confiscated by the Court for 6 months, or until the youth completes the community-based substance abuse information course not to exceed 12 months;  
 D. shall be required to complete a chemical dependency assessment. The youth shall be ordered to comply with all treatment recommendations made in the assessment.

(16) Any other disposition the court deems appropriate. *(Rev. 5-14-08)*

**3-3-806. Initial Appearance in Youth Court I.** (1) A youth shall make an initial appearance in Youth Court I on the date and time specified on the citation. The youth's custodial parent or guardian must appear with the youth at the initial appearance to be available to advise the youth and sign applicable forms with the youth.

(2) At the Initial Appearance, the judge shall advise the youth of his or her rights and of the Youth Court I procedures for appearance.

(3) After informing the youth of the cited offenses and possible penalties, the judge shall ask the youth to admit or deny or assert no contest to the cited offense.

(4) If the youth admits or asserts no contest to the cited offense, the judge shall then proceed to sentencing. After the judge informs the youth of the sentence, the youth may make arrangements for the payment of any fines imposed. A judgment form shall be completed and signed by the judge and a copy shall be provided to the youth. The Judgment shall announce the Judgment rendered, sentence imposed, and the fine payment deadline.

(5) If the youth denies the cited offense, the judge shall schedule a date and time for a Youth Court I bench trial before a judge. Jury trials are not provided in Youth Court I cases.

(6) If the youth denies the cited offense, the judge shall order the citing officer to provide the youth with a written report describing the circumstances of the offense. The report shall be provided at least 10 days before the trial.

**3-3-807. Tribes' Burden of Proof.** At the bench trial the Tribes must prove beyond a reasonable doubt that the youth committed the cited offense.

**3-3-808. Youth Court I Bench Trials.** (1) Youth Court I bench trials shall be held in the Tribal Courtroom on the date and time set in the Scheduling Order. Either the youth or the citing officer may request a continuance of the bench trial which shall be granted for good cause by the Court.

(2) The citing officer and the youth each bear the responsibility of notifying the witnesses they wish to call to testify at the bench trial. Upon request by either party, the Court shall issue subpoenas for any witness whose testimony is necessary for a just adjudication of the case.

(3) Youth Court I bench trials shall be recorded as provided in § 3-3-305 of this code and all witnesses shall be sworn before being allowed to testify.

(4) The citing officer shall present the Tribes' case first. The citing officer may testify and present evidence to the Court. The Youth may cross-examine the citing officer and any witnesses called by the citing officer.

(5) After the citing officer has presented the Tribes' case, the youth may then present his or her case to the Court. The youth may elect to testify, but may not be required to testify. The youth may call witnesses to testify on his or her behalf and may present other evidence regarding the cited offense. The citing officer may cross-examine the youth's witnesses.

(6) After the youth has concluded his or her case, the parties may make concluding arguments before the Court.

(7) On the record, after considering the testimony and evidence presented at trial, the judge shall determine whether the Tribes met their burden of proving beyond a reasonable doubt that the youth committed the cited offense. If the judge finds that it was proven that the youth committed the cited offense, the judge shall announce the judgment and sentence for each cited offense and the deadline for payment of fines or the completion of other penalties. The youth may then enter into a payment schedule agreement with the Court.

**3-3-809. Failure to Appear.** (1) If a youth or the youth's custodial parent or guardian fails to appear in Youth Court I on the date and time scheduled for initial appearance or on the date and time scheduled for the bench trial, the judge may issue a summons for the youth or custodial parent or guardian to appear and show cause for non-appearance.

(2) If the youth fails to appear after having been summonsed to show cause, the Judge may issue a warrant for the detention of the youth and refer the matter to Youth Court II for action.

(3) If the youth's custodial parent or guardian fails to appear after having been summonsed to show cause, the Judge may issue a warrant for the arrest of the youth's custodial parent or guardian for contempt.

**3-3-810. Judgments in Youth Court I.** Youth Court I may only hear cases involving youth cited for Status or Class A offenses punishable by a fine or other penalty which does not include detention.

**3-3-81. Appeal.** Final judgments rendered in Tribal Youth Court I may be appealed according to the Rules of Appellate Procedure.

**3-3-812. Record of Judgments.** The Clerk of Court shall keep a record of all Tribal Youth Court I judgments subject to the provisions of Section 3-3-304, 3-3-305 and Section 3-3-306 of this code.

## **Part 9 - Youth Court II Procedure**

**3-3-901. Purpose.** The Youth Court II is a division of the Tribal Court of the Confederated Salish and Kootenai Tribes. The procedure in this part is intended to provide just adjudication of citations charging more serious and related offenses by youth within the Court's jurisdiction.

### **A. Initiation of Proceedings**

**3-3-902. Investigation by a juvenile officer.** Within a reasonable time, exclusive of weekends and holidays, of the detention hearing or the release of the youth to his or her parent, guardian, or custodian,

the juvenile officer shall make an investigation to determine whether the interest of the youth and the public require that further action be taken. Based on the investigation, the juvenile officer(s) shall:

- (1) Recommend that no further action be taken;
- (2) Recommend to the youth and the youth's parent, guardian, or custodian that they appear for an informal adjustment conference under Sections 3-3-903 and 3-3-904;
- (3) Recommend that the youth presenter file a petition under this Chapter; or
- (4) Request the youth presenter begin a transfer under Section 3-3-201.
- (5) After considering the factors in 3-3-202(2), request the youth presenter file a notice with the Youth Court that the Tribes are declining jurisdiction in order to allow the state to prosecute the case or assume responsibilities of the youth's disposition order.

**3-3-903. Informal Adjustment Conference.** (1) During the course of the investigation under Section 3-3-902, the juvenile officer shall confer with the youth and the youth's parent, guardian or custodian for the purpose of effecting adjustments or agreements that make the filing of a formal petition unnecessary.

- (1) During the course of the investigation under Section 3-3-801, the juvenile officer shall confer with the youth and the youths parent, guardian or custodian for the purpose of effecting adjustments or agreements that make the filing of a formal petition unnecessary.
- (2) The juvenile officer shall consider the following factors in determining whether to proceed informally or to file a petition:
  - (a) The nature and seriousness of the offense;
  - (b) Previous number of contacts with the police, juvenile officer, or the Youth Court;
  - (c) The age and maturity of the youth;
  - (d) The attitude of the youth regarding the offense;
  - (e) The willingness of the youth to participate in a voluntary program; and
  - (f) The participation and input from the youths parent, guardian or custodian.
- (3) After conducting a preliminary investigation, the juvenile officer shall hold an informal conference with the youth and the youth's parent, guardian or custodian to discuss alternative courses of action.
- (4) The juvenile officer shall inform the youth, and the youth's parent, guardian or custodian, of their basic rights under Part 5 of this Chapter.
- (5) Based on the information obtained during the preliminary investigation, the juvenile officer may enter into a written deferred agreement with the youth and the youth's parent, guardian, or custodian, specifying the particular conditions to be observed during an informal adjustment period, not to exceed twelve (12) months. The youth and the youth's parent, guardian or custodian shall be informed that the

informal adjustment agreement is voluntary and they may terminate the adjustment process at any time and petition the Youth Court for a hearing in the case.

- (6) The youth shall be permitted to be represented by counsel at the informal conference.
- (7) If the youth does not desire to participate in an informal adjustment agreement, the juvenile officer shall recommend that the youth presenter file a petition under Section 3-3-904.
- (8) Upon the successful completion of the informal adjustment agreement, the case shall be closed and no further action will be taken.
- (9) If the youth fails to successfully complete the terms of the informal adjustment agreement, the juvenile officer may recommend that a petition be filed under Section 3-3-904.

**3-3-904. Filing and content of petition.**

(1) Petition. Formal “youth offender” proceedings shall be initiated by a petition filed by the youth presenter on behalf of the Tribe and in the interests of the youth. The petition shall be entitled,

“In the matter of \_\_\_\_\_, a youth” and shall set forth with specificity:

- (a) The name, birth date, residence, and Tribal affiliation of the youth;
- (b) The names and residences of the youth’s parent, guardian or custodian;
- (c) A citation to the specific section(s) of this code which gives the court jurisdiction over the proceedings;
- (d) A citation to the criminal statute or other law or ordinance which the youth is alleged to have violated;
- (e) A plain and concise statement of facts upon which the allegations are based, including the date, time and location at which the alleged acts occurred;
- (f) A statement alleging the youth to be a delinquent youth or a youth in need of supervision; and
- (g) Whether the youth is in custody and if so, the place of detention and time he was taken into custody.

(2) Time of filing.

- (a) Upon the recommendation of the juvenile officer, the youth presenter shall file a petition within forty-eight (48) hours, exclusive of weekends and holidays, if the youth is in custody.
- (b) Upon the recommendation and receipt of the report of the juvenile officer as provided for under Section 3-3-902, the youth presenter shall file a petition within twenty (20) days if the youth has been previously released to a parent, guardian, custodian, relative, or responsible adult.

**3-3-905. Issuance of summons.** After a “youth offender” petition has been filed, the Youth Court shall direct the issuance of summons to:

- (1) The youth; and

(2) The youth's parent, guardian or custodian;

**3-3-906. Content of the summons.** The summons shall contain the name of the Youth Court, the title of the proceedings, and the date, time, and place of the hearing. The summons shall also advise the parties of their applicable rights under Part 5 of this Chapter. A copy of the petition shall be attached to the summons.

**3-3-907. Service of the summons.** A law enforcement official or appointee of the Youth Court, shall serve summons upon the youth at least five (5) days prior to the hearing. If the summons cannot be delivered personally, to the youth's parents, custodian or guardian, the Youth Court may deliver it by registered mail. A party, other than the youth, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

#### **B. Youth Offender Consent Decree.**

**3-3-908. Availability of consent decree.** At any time after the filing of a "youth offender" petition, and before the entry of a judgment, the Youth Court may, on motion of the youth presenter or that of counsel for the youth, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with the juvenile officer and agreed to by all parties affected. The Youth Court's order continuing the youth under supervision under this section shall be known as a "consent decree".

**3-3-909. Objection to consent decree.** If the youth objects to a consent decree, the Youth Court shall proceed to initial, adjudication and disposition of the case. If the youth does not object, but an objection is made by the youth presenter after consultation with the juvenile officer, the Youth Court shall, after considering the objections and the reasons given, determine whether it is appropriate to enter a consent decree and may, in its discretion, enter the consent decree.

**3-3-910. Failure to fulfill terms and conditions.** If, either prior to discharge by the juvenile officer or expiration of the consent decree, the youth fails to fulfill terms of the decree, the youth presenter may file a petition to revoke the consent decree. Proceedings on the petition to revoke shall be conducted pursuant to this Part. If it finds the youth has violated the terms of the consent decree, the Youth Court may:

- (1) Extend the period of the consent decree; or
- (2) Order the Youth Court presenter to proceed with adjudication.

**3-3-911. New youth offense complaint.** If a new "youth offender" complaint is filed against the youth before discharge or expiration of the consent decree and the juvenile officer has conducted a preliminary inquiry, and authorized the filing of a petition the youth presenter, upon a finding that informal adjustment is not in the best interest of the youth and public, may;

- (1) File a petition to revoke the consent decree; or
- (2) File a petition on the basis of the new complaint which has been filed against the youth.

**3-3-912. Dismissal of youth offender petition.** A youth who is discharged or completes a period of supervision without reinstatement of the original "youth offense" shall not proceed again, in any court, for the same offense alleged in the petition or an offense based upon the same conduct. The original petition

shall be dismissed with prejudice. Nothing in this section precludes a civil suit against the youth for damages arising from this conduct.

### C. Youth Offender Proceedings.

The following proceedings are subject to the Confidentiality provisions, previously set forth in Section 3-3-304.

**3-3-913. Initial Hearing.** (1) The Youth Court shall conduct a separate hearing on “youth offender” petitions.

(2) The Youth Court shall conduct an Initial hearing for the purpose of advising the youth of his or her rights, ensuring that the youth understands his or her rights, reading of petition, ensuring that the youth understands the allegations contained in the petition, and for the youth to enter an admission or denial to the allegations in the petition.

(3) The initial hearing shall be held within ten (10) days of the filing of the Petition if the youth is in custody. If the youth was released from detention or the youth was never detained, the initial hearing shall be held within a reasonable time and shall be set by the court.

(4) Notice of the initial hearing shall be given to the youth and the youth’s parent, guardian or custodian, the youth’s counsel and any other person the Youth Court deems necessary at least five (5) days prior to the hearing in accordance with this Part.

(5) At this hearing, the youth and the youth’s parent, guardian or custodian shall have the applicable rights listed in Part 5 of this Chapter.

(6) Admission of allegations.

(a) If the youth admits the allegations of the petition, the Youth Court shall consider a disposition pursuant to 3-3-926 Dispositional Alternatives, only after a finding that:

(i) The youth fully understands his or her rights under Part 5 of this Chapter, and fully understands the consequences of his admission; and

(ii) The youth voluntarily, intelligently, knowingly, admits all facts necessary to constitute a basis for Youth Court action, and no facts are apparent to the court which if found to be true, would be a defense to the allegation.

(b) If the Youth Court finds that the youth has validly admitted the allegations contained in the petition, the Youth Court shall make and record its finding and schedule a disposition hearing in accordance with Subsection E of this part. Additionally, the Youth Court shall specify in writing whether the youth is to be continued in an out-of-home placement pending the dispositional hearing.

(7) Denial of allegations. If the youth denies all or some of the allegations of the petition, the Youth Court may order any disposition as deemed appropriate under Section 3-3-926 or continue with the proceedings as set forth below.

**3-3-914. Scheduling Orders.** Scheduling of further proceedings shall be done informally between the parties. If the youth is not in custody, a proposed order setting forth the witnesses of both parties, the date that discovery will be complete, and a date that all pretrial motions will be filed, shall be submitted to the Youth Court within thirty (30) days of the initial hearing. If the youth is in custody, the proposed



order shall be submitted to the Youth Court within ten (10) days of the initial hearing. Upon receipt of the proposed order, the Youth Court shall set a date for the adjudicatory hearing as set forth in Section 3-3-915.

**3-3-915. Adjudicatory Hearing.** (1) If the youth remains in custody, the Youth Court shall hold the adjudicatory hearing within thirty (30) days of receipt of the proposed scheduling order.

(2) If the youth is released from custody or was not taken into custody, then the adjudicatory hearing shall be held within a reasonable time and shall be set by the Youth Court.

(3) Except in cases of continued custody, notice of the adjudicatory hearing shall be given to the youth and the youth's parent, guardian or custodian, the youth's counsel and any other person the Youth Court deems necessary at least twenty (20) days prior to the hearing.

**3-3-916. "Youth offender" finding after adjudicatory hearing.**

(1) If the Youth Court finds on the basis of proof beyond a reasonable doubt that the allegation contained in the petition are true, the Youth Court shall make a record of its finding and schedule a disposition hearing in accordance with Subsection E of this Part. Additionally, the Youth Court shall specify in writing whether the youth is to be continued in an out-of-home placement pending the dispositional hearing.

(2) If the Youth Court finds that the allegations of the "youth offender" petition have not been established beyond a reasonable doubt, it shall dismiss the petition and order the youth released from any detention imposed in connection with the proceedings.

**D. Youth Offender Predisposition Studies:  
Reports and Examinations**

**3-3-917. Predisposition study and report.** The Youth Court may direct the juvenile officer to prepare a written predisposition study and report for the Youth Court concerning the youth, the youth's family, environment, and any other matter relevant to the need for treatment or other appropriate disposition of the case when:

- (1) The youth has been adjudicated as a "youth offender"; or
- (2) When the youth has admitted the allegation of the petition; or
- (3) When juvenile probation is requesting long term placement.

**3-3-918. Contents of predisposition study and report.** The report shall contain a specific plan for the youth, aimed at resolving the problems presented in the petition. The report shall contain a detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the youth under the proposed plan. Preference shall be given to the dispositional alternatives which are least restrictive of the youth's freedom and are consistent with the interests of the community.

**3-3-919. Medical assessment and treatment.** At any time the Youth Court may order a medical, psychological, or chemical dependency assessment of a youth arrested, detained or adjudicated for a "youth offense" to determine the mental or physical state of the youth so that appropriate steps can be taken to protect the youth's health and well-being.

**3-3-920. Transfer for diagnosis.** The Youth Court may order that a youth adjudicated as a “youth offender” be transferred to an appropriate facility for a period of not more than sixty (60) days for purposes of diagnosis, with direction that the Youth Court be given a written report at the end of that period indicating the plan of intervention which appears most suitable.

**3-3-921. Submission of reports.** Evaluation, assessment, dispositional reports and other material to be considered by the Youth Court in a youth hearing shall be submitted to the Youth Court no later than ten (10) days before the scheduled hearing date for disposition. Copies will be provided to Youth Court Presenter and Youths Counsel. The Court may exclude from the copies of the predisposition report which it distributes to the parties any information obtained under a promise of confidentiality, or any other information that if disclosed might result in harm to the defendant or other persons. In the event the Court excludes such information, however, the Court must inform the Youth in writing, at least five days before the disposition hearing, of the general nature of the information and the reasons for its exclusion from the report. Notwithstanding, the foregoing, the Youth shall have the right to the disclosure of the excluded information if:

- (1) the Court intends to rely in part on the information in making its decision on the disposition for the Youth; and
- (2) the Youth establishes that the disclosure of the information is essential to the presentation of Youth at disposition.

#### **E. Youth Offender Disposition Proceedings**

**3-3-922. Purpose and conduct of disposition hearing.** Unless the youth waives the right to a separate hearing the Youth Court shall hold disposition hearings separate from other proceedings. The disposition hearing shall be conducted to determine how to resolve a case after it has been determined that the youth has committed a specific “youth offense”. The Youth Court shall make and record its dispositional order in accordance with this Chapter. At the disposition hearing, the youth shall have the rights listed in Part 5 of this chapter, and the Confidentiality provisions set forth previously in Section 3-3-304 shall apply.

**3-3-923. Time limitations on disposition hearings.** If the youth remains in custody, the disposition hearing shall be held within ten (10) days after the adjudicatory hearing unless directed by the Youth Court otherwise. If the youth is released from custody or was not taken into custody, then the disposition hearing shall be held within a reasonable time after the adjudicatory hearing.

**3-3-924. Notice of disposition hearing.** Notice of the disposition hearing shall be given to the youth and the youth’s parent, guardian or custodian, the youths counsel and any other person the Youth Court deems necessary for the hearing at least five (5) days prior to the hearing in accordance with Section 3-3-907.

**3-3-925. Evidence and reports.** In the disposition hearing, the Youth Court may consider all relevant material information. The Youth Court shall consider any predisposition report, physician’s report or social study it may have ordered. The Youth Court shall afford the youth, the youth’s parent, guardian or custodian and the youth’s counsel an opportunity to controvert the factual contents and conclusions of the report. The Youth Court shall also consider any alternative predisposition report or recommendations prepared by the youth or the youth’s counsel.

**3-3-926. Disposition alternatives.** When it finds a youth is a “youth offender” the Youth Court may make and record any of the following orders of disposition, subject to conditions and limitations the Youth Court may prescribe:

- (1) Permit the youth to remain with his or her parents, guardian, or custodian;
- (2) Place the youth in the legal custody of a relative or other suitable person;
- (3) Order the youth to pay restitution;
- (4) Place the youth in the protective supervision of juvenile probation or other appropriate agency (as defined in Section 3-3-102);
- (5) Place the youth on probation;
- (6) Place the youth in a youth facility designated by the Youth Court, including alcohol or substance abuse emergency shelter or half way house, foster home, group home, shelter home, or secure youth detention facility;
- (7) Impose a fine;
- (8) Order the youth to complete Community service;
- (9) Require the youth, the youth’s parents or guardians, or the persons having legal custody of the youth to receive counseling services;
- (10) Require the medical and psychological evaluation of the youth, the youth’s parents or guardians, or the persons having legal custody of the youth;
- (11) Order a placement committee to convene to consider the youth’s placement options;
- (12) Order confiscation of the youth’s driver’s license, not to exceed 90 days;
- (13) Order the youth to pay a contribution covering all or a part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;
- (14) Order the youth to pay a contribution covering all or part of the costs of a victim’s counseling;
- (15) In addition to any disposition by the Youth Court II under this section, and notwithstanding the penalties imposed in Section 2-1-110 for alcohol offenses committed by a person of 18 years of age or older, a youth who commits a third or subsequent alcohol offense, shall be fined an amount not less than \$300 and not to exceed \$900 and:
  - A. shall be ordered to perform 60 hours of community service;
  - B. shall be ordered, and youth’s parent, parents or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance abuse information course, if one is available; and
  - C. if the youth has a driver’s license, must have the license confiscated by the court for 6 months, or until the youth completes the community-based substance abuse information course not to exceed 12 months.
  - D. shall be required to complete a chemical dependency assessment. The youth shall be ordered to comply with all treatment recommendations made in the assessment.

(16) Any other disposition the court deems appropriate.

**F. Review, Modification, Revocation, Extension and Termination of Dispositional Orders**

**3-3-927. Mandatory review of disposition order.** The Youth Court shall hold a hearing to review, modify, revoke, or extend a disposition order upon the motion of:

- (1) The youth;
- (2) The youths parent, guardian, or custodian;
- (3) The youths counsel;
- (4) The youths counselor;
- (5) The juvenile officer;
- (6) The youth presenter;
- (7) The institution, agency, or person vested with the legal custody of the youth or responsibility for protective supervision; or
- (8) The Youth Court on its own motion.

**3-3-928. Hearing to modify, revoke, or extend disposition order.** A hearing to modify, revoke, or extend the disposition order shall be conducted according to Subsection E of this Part.

**3-3-929. Automatic termination of disposition order.** All disposition orders shall automatically terminate when the youth reaches eighteen (18) years of age. Unless otherwise ordered by the Youth Court the disposition order shall not, however, extend beyond the youth's nineteen (19) birthday. The records concerning the youth shall be destroyed according to Section 3-3-306.

**Part 10 - Youth Appeals.**

**3-3-1001. Who can appeal.** Any party to a Youth Court hearing may appeal a final Youth Court order, including all transfer, adjudication and/or disposition order, except that the Tribe cannot appeal an adjudication order.

**3-3-1002. Stay of order or disposition by appeal.** Upon application to the Youth Court, a final order or disposition of a hearing may be stayed by such appeal.

**3-3-1003. Conduct of proceedings.** All appeals shall be conducted in accordance with the Tribal Code and Tribal Court rules of procedure so long as those provisions are not in conflict with the provisions of this Chapter.

## TITLE III

### CHAPTER 4 - MENTAL HEALTH

#### Part 1 - Statement of Policy, Purpose and Definitions

**3-4-101. Statement of Policy.** It is the policy of the Confederated Salish and Kootenai Tribes to promote the health, safety, culture, and general welfare of the Tribal Community; to recognize mental illness as a disease subject to a variety of treatment alternatives and choices; and to recognize that the person who has a mental illness is entitled to the opportunity to heal in the least restrictive and most culturally relevant environment.

**3-4-102. Purpose.** The purpose of this part of the Chapter is to:

- (1) secure each person who may be mentally ill, seriously mentally ill or suffering from a mental disorder such care and treatment as will be suited to the needs of the person and to insure that such care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal and cultural integrity;
- (2) accomplish this goal whenever possible in a community-based setting;
- (3) accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is seriously mentally ill as to require institutionalized care; and
- (4) assure that due process of law is accorded any person coming under the provisions of this Chapter.  
(Rev. 4-15-03)

**3-4-103. Definitions.** For the following purposes of this Chapter, the following definitions will apply:

- (1) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be seriously mentally ill.
- (2) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.
- (3) "Mental health facility" or "facility" means a public hospital or licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the Tribes. No correctional institution or facility or jail may be used as a mental health facility within the meaning of this part.
- (4) "Mentally ill" means suffering from a mental disorder which has not resulted in self-inflicted injury or injury to others or the imminent threat thereof but which:
  - (a) has resulted in behavior that creates serious difficulty in protecting the person's life or health even with the available assistance of family, friends, or others;
  - (b) is treatable, with a reasonable prospect of success and is consistent with the least restrictive course of treatment as provided in this code, at or through the facility to which the person is to be committed;
  - (c) has deprived the person of the capacity to make an informed decision concerning treatment;

(d) has resulted in the person's refusing or being unable to consent to voluntary admission for treatment; and

(e) poses a significant risk of the person's becoming seriously mentally ill, within the meaning of this section, or will, if untreated, predictably result in further serious deterioration in the mental condition of the person. Predictability may be established by the patient's medical history.

(5) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his or her life or health. For this purpose, injury means physical injury. No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he or she is an epileptic, developmentally disabled, senile or suffering from a mental disorder, unless that condition causes the person to be seriously mentally ill.

(6) "Professional person" means a person who is a licensed medical doctor with Board Certification in Psychiatry or a person with a doctoral degree in Clinical Psychology or a person who meets criteria established by the Tribal Mental Health Department for certification as a Mental Health Professional in accordance with Tribally-approved Mental Health policies.

(7) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(8) "Friend of respondent" means any person willing and able to assist a seriously mentally ill person or person alleged to be seriously mentally ill in dealing with the legal system who will be appointed by the Court after the filing of a petition for an involuntary commitment. *(Rev. 4-15-03)*

## **Part 2 - Treatment and Procedures**

**3-4-201. Voluntary Admission.** Provisions of this Chapter section may not be construed to limit the right of any person to make a voluntary application for admission at any time to any mental health facility. Required procedures for admission will include the following:

(1) An application for admission to a mental health facility shall be in writing on a form prescribed by the facility and admission approved by the Tribal Mental Health Department. The application must have further approval of a professional person.

(2) An application for voluntary admission shall give the facility the right to detain the applicant for no more than five (5) days, excluding weekends and holidays, past his or her written request for release.

(3) Any person voluntarily entering or remaining in any mental health facility shall enjoy all the rights secured to a person involuntarily committed to the facility. *(Rev. 4-15-03)*

**3-4-202. Standards for Detention for Emergency Situation.** The following standards shall apply for emergency detention situations:

(1) When an emergency situation exists, a Tribal officer may take any person, subject to the jurisdiction of the Tribal Court, who appears to be seriously mentally ill and as a result of serious mental illness to be

a danger to himself or herself or others into custody only for sufficient time, but not to exceed the next regular business day, to contact a professional person for emergency evaluation. If practical, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person held in custody appears to be seriously mentally ill and that an emergency situation exists, then the person may be detained for up to two (2) regular business days. At that time, the professional person shall release the detained person or file his or her findings with the Tribal Prosecutor, who, if he or she determines probable cause to exist, shall file the petition provided for in Section 3-4-205 in the Tribal Court. In either case, the professional person shall file a report to the Court explaining his or her actions.

(3) The officer who detains a person under this section shall inform that person of the following: “You are being detained in a special facility to protect you from harming yourself or others. The Tribal Police has authority to hold you until a professional person assesses your condition.” *(Rev. 4-15-03)*

### **3-4-203. Detention to be in Least Restrictive Environment.**

A person detained pursuant to this Chapter shall be held in the least restrictive environment required to protect the life and physical safety of the person detained or to protect the life and physical safety of members of the public. Under no circumstances may a person be detained under this section be placed in a Tribal jail cell. *(Rev. 4-15-03)*

**3-4-204. Procedural Rights.** The person who is subject to an action under this Chapter shall be guaranteed the following rights in addition to and in recognition of other rights guaranteed by applicable federal and tribal law:

- (1) The right to five (5) working days notice in advance of a hearing upon a commitment petition concerning the person, or other Court proceeding concerning the person.
- (2) The right to be present at any hearing, to offer evidence, and to present witnesses in any proceeding concerning the subject. There is no right to a jury trial at any mental health hearing.
- (3) The right in any hearing, to cross-examine witnesses.
- (4) The right to be represented by a Tribal attorney authorized to practice in Tribal Court appointed by the Court, or the right to a private attorney at their own expense. There is no right to waive counsel.
- (5) The right to have a “friend of respondent” appointed by the Court.
- (6) The right to remain silent.
- (7) The right to have the evidence presented against the person judicially reviewed on questions of sufficiency of the evidence.
- (8) The right to view and copy all relevant documents on file with the Court concerning the pending case.
- (9) The right to be examined by a professional person of the person’s choice when such person is willing and reasonably available. Such exam will be paid by Tribal Health.

(10) The right to refuse any but lifesaving medication as determined by a professional person for up to twenty-four (24) hours prior to any hearing held pursuant to this act.

(11) The right to appeal final orders of the Court.

(12) The right to be informed of these rights by the Tribal Judge at the initial hearing. *(Rev. 4-15-03)*

**3-4-205. Petition for Commitment.** A person subject to the jurisdiction of the Tribal Court may be committed to a mental health treatment facility for a period of no more than three (3) months upon an appropriate verified petition in the Tribal Court, establishing by proof that the respondent is seriously mentally ill. In addition to such showing, the following must be set forth in the petition:

(1) The name and address of the person filing the petition, and the petitioner's interest in the case.

(2) The name of the respondent (person to be committed) and, if known, the address, age, gender, marital status, and occupation of the respondent.

(3) The name and address of respondent's nearest known relative.

(4) The name and address of any person known or believed to be legally responsible for the care, support, and maintenance of the respondent.

(5) Any facts supporting the allegation of serious mental illness.

(6) The name, address and telephone number of any known attorney or advocate who has represented the person in the past.

(7) A statement of the respondent's rights which shall be in conspicuous print and identified by a suitable heading.

**3-4-206. Who May File a Petition to Commit.** A Tribal Court Prosecutor, upon the written request of any person having direct knowledge of facts, may file a petition in the Tribal Court if he or she believes probable cause exists based on medical evidence to commit an individual alleged to be seriously mentally ill.

**3-4-207. Court Proceedings.** Upon filing the petition, the Tribal Court Judge shall examine the petition for probable cause which will be based on a medical assessment. Based upon the findings of the medical assessment contained in the petition:

(1) If the Judge does find probable cause, counsel shall be immediately appointed for the respondent and the respondent shall be brought forthwith before the court with his counsel for an initial hearing within twenty-four 24 hours of detention. The Judge shall appoint a friend of the respondent and a professional person, and shall fix a date for a hearing on the petition no later than five (5) days after this initial hearing, including weekends and holidays unless the fifth day falls upon a weekend or holiday. The desires of the respondent shall be taken into consideration in the appointment of the friend of respondent and in the confirmation of the appointment of the attorney.

(2) A copy of the petition and of the notice of the hearing on the petition, including the date fixed by the Court, shall be personally served on the person whose commitment is sought (respondent). A copy of the petition and of the notice of the hearing, including the date fixed by the Court, shall be served either



personally or by any other means allowed under the law on the respondent's next of kin, a parent or legal guardian if the respondent is a minor, the "friend of respondent" if one has been appointed, the respondent's attorney and any other person the Court believes advisable.

(3) The Court shall appoint a professional person to assess the respondent prior to the initial hearing. Such appointed professional person shall be present for the initial hearing and provide testimony before the Court.

**3-4-208. Detention of Respondent pending hearing or trial - jail prohibited.** Detention by jail of a respondent is prohibited. If circumstances warrant detention of a respondent, the respondent shall be informed of his or her rights and the following prerequisites met:

(1) The Court may not order detention of a respondent pending the hearing unless requested by the Tribal Prosecutor and only on a showing of probable cause for the detention. Respondent may then request a detention hearing which must be held before transportation to a detention facility.

(2) In the event of detention, the respondent must be detained in the least restrictive setting necessary to assure his or her presence and assure his or her safety and the safety of others.

(3) If the respondent is detained, he or she has the right to be examined additionally by a professional person of his or her choice. Unless objection is made by the respondent, he or she must continue to be evaluated and treated by the professional person pending the hearing.

(4) A respondent may not be detained in a jail or other correctional facility pending a hearing on a petition for a commitment or trial to determine whether the respondent should be committed to a mental health facility.

**3-4-209. Request for Jury Trial.** *(Repealed 4-15-03.)*

**3-4-210. Hearing on Petition for Commitment.** A hearing on Petition for Commitment shall consist of:

(1) The standard of proof in any hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts of evidence and clear and convincing evidence as to all other matters, except that mental disorders shall be evidenced to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others shall be evidenced by overt acts, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(2) The professional person upon whose judgment the petition was based must be present for the hearing and subject to cross-examination. The hearing shall be governed by the Tribal Court Rules of Civil Procedure. The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but must be verified by the professional person at the hearing before formal admission into evidence.

(3) The professional person may testify as to ultimate issue of whether the respondent is seriously mentally ill. This testimony is insufficient unless accompanied by evidence from the professional person or others that:

(a) the respondent is suffering from a mental disorder; and

(b) the mental disorder has resulted in self-inflicted injury or injury to others or the imminent threat thereof or has deprived the person afflicted of the ability to protect his or her life or health.

(c) If, upon hearing or trial, it is determined that the respondent is not seriously mentally ill with the meaning of this part, he or she shall be discharged and the petition dismissed.

(d) If it is determined that the respondent is seriously mentally ill within the meaning of this part, the court shall:

(i) order outpatient therapy; or

(ii) order the respondent be placed in the care and custody of his or her relative or guardian or some other appropriate place other than an institution;

(iii) commit the respondent to a facility for a period of not more than three (3) months; or

(iv) make some other appropriate order for treatment.

(e) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

(f) If it is determined that the respondent is not seriously mentally ill but is mentally ill within the meaning of this part, the Court shall:

(i) order outpatient therapy not to exceed thirty (30) days; or

(ii) order the respondent be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution not to exceed thirty (30) days; or

(iii) make some other appropriate order for treatment other than commitment. (*Rev. 4-15-03*) (*Rev. 3-21-13*)

**3-4-211. Appeal Procedure.** Appellate review of any order of short-term evaluation and treatment or long-term commitment may be had by appeal to the Tribal Appellate Court in the same manner as other civil cases, except that the appeal may be taken at any time within ninety (90) days of the actual service of the commitment order, or within ninety (90) days after discharge, whichever is later.

**3-4-212. Diversion of Certain Mentally Ill Persons from Jail.** If a tribal jail inmate is determined by a professional person to be seriously mentally ill after referral from the Tribal Law and Order Department, Tribal Mental Health shall arrange for appropriate mental health treatment which may include:

(1) a request for services from a crisis intervention program;

(2) referral to the nearest community health center; or

(3) transfer to a private mental health facility or hospital equipped to provide treatment and care of persons who are seriously mentally ill.

**3-4-213. Establishment of Patient Treatment Plan - Patient's Rights.** An individualized treatment plan shall be developed for all persons ordered to treatment.

(1) A person ordered to treatment under Section 3-4-210 shall have an individualized treatment plan developed by Tribal Mental Health. This plan shall be developed by appropriate professional persons, which shall include a psychiatrist, and shall be implemented no later than ten (10) days after a person's admission. Each individualized treatment plan shall contain:

- (a) a statement of the nature of the specific problems and specific needs of the patient;
- (b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of commitment;
- (c) a description of intermediate and long-range treatment goals, with a projected timetable for their attainment;
- (d) a statement and rationale for the plan of treatment for achieving these intermediate and long-range goals;
- (e) a specification of staff responsibility and a description of proposed staff involvement with the patient in order to attain these treatment goals;
- (f) criteria for release to less restrictive treatment conditions and criteria for discharge; and
- (g) a notation of any therapeutic tasks and labor to be performed by the patient.

(2) An after care plan shall be developed by a professional person as soon as practicable after the patient's admission to the facility with an emphasis on reservation based services.

(3) Tribal Mental Health shall be responsible for supervising implementation of this treatment plan, integrating various aspects of the treatment program, and recording the patient's progress and coordinating with other programs providing mental health treatment.

(4) A patient has the right:

- (a) to ongoing participation, in a manner appropriate to the patients capabilities, in the planning of mental health services to be provided and in the revision of the plan;
- (b) to a reasonable explanation of the following, in terms and language appropriate to the patient's condition and ability to understand:
  - (i) the patient's general mental condition and, if given a physical examination, the patient's physical condition;
  - (ii) the objectives of treatment;
  - (iii) the nature and significant possible adverse effects of recommended treatments;
  - (iv) the reasons why a particular treatment is considered appropriate;
  - (v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, or providers of mental health services; and

(c) not to receive treatment established pursuant to the treatment plan in the absence of the patient's informed, voluntary, and written consent to the treatment, except treatment during an emergency situation if the treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional.

(5) In the case of a patient who lacks the capacity to exercise the right to consent to treatment, the right must be exercised on behalf of the patient by a guardian appointed by the Court.

**3-4-214. Examination Following Commitment.** No later than thirty (30) days after a patient is committed to a mental health facility, the professional person in charge of the facility or his or her appointed, professionally qualified agent shall reexamine the committed patient and shall determine whether he or she continues to require commitment to the facility and whether a treatment plan complying with this part has been implemented. If the patient no longer requires commitment to the facility in accordance with the standards for commitment, he or she must be released immediately unless he or she agrees to continue with treatment on a voluntary basis.

**3-4-215. Crisis Intervention.** The Confederated Salish and Kootenai Tribal Mental Health Program shall establish a crisis intervention program to provide twenty-four (24) hour emergency intervention by a professional person for alleged seriously mentally ill persons, mentally ill persons and persons with mental disorders. Such intervention shall include assessment, forwarding reports to the Prosecutor's office for a Petition to Commit, admission arrangements to a mental health treatment facility, and direct services.

**3-4-216. Confidentiality of Records.** (1) All Court records and proceedings under this Chapter shall be confidential and privileged information. The captions and text of documents filed with the Court pursuant to this Chapter shall refer to the respondent patient by abbreviations of his or her full name.

(2) All information obtained and records prepared in the course of providing any services under this part to individuals under any provision of this part shall be confidential and privileged matter and shall remain confidential and privileged after the individual is discharged from the facility. Except as otherwise provided by Tribal or Federal law, information and records may be disclosed only:

(a) in communication between qualified professionals in the provision of services or appropriate referrals;

(b) when the recipient of services designates persons to whom information or records may be released, provided that if a recipient of services is a ward and his guardian or conservator designates in writing persons to whom records or information may be disclosed, such designation shall be valid in lieu of the designation by the recipient; except that nothing in this section shall be construed to compel a physician, psychiatrist, psychologist, social worker, nurse, attorney, or other professional person, to reveal information which has been given to him or her in confidence by members of a patient's family;

(c) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which he may be entitled;

(d) for research if the Tribal Health Department has promulgated rules for the conduct of research; such rules shall include but not be limited to the requirements that all researchers must sign an oath of confidentiality;

(e) to the courts as necessary to the administration of justice; and

(f) to persons authorized by an order of court, after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the records or information pursuant to the rules of civil procedure. *(Rev. 4-15-03)*

**3-4-217. Care and Treatment Following Release.** The Tribal Health Department and its agents have an affirmative duty to provide adequate transitional treatment and care for all patients released after a period of involuntary confinement. Transitional care and treatment possibilities includes but are not limited to psychiatric day care, treatment in the home by a visiting therapist, nursing home or extended care, a half-way house, outpatient treatment, and treatment in the psychiatric ward of a general hospital.

## TITLE III

### CHAPTER 5 - ADULT PROTECTION

#### Part 1 - General Provisions

**3-5-101. Purpose.** The purpose of this Chapter is to prevent harm to and promote the independence of elders and vulnerable adults at risk of abuse, neglect, sexual abuse, and exploitation who come within the jurisdiction of the Confederated Salish and Kootenai Tribes. Elders are recognized by the Confederated Salish and Kootenai Tribes as one of the most valued resources and custodians of the Tribes' history, culture and tradition. It is in the interest of the health, safety, and welfare of the Tribes and its people to provide procedures for protecting elder and vulnerable adult abuse. This Chapter shall be liberally interpreted and implemented in the least restrictive manner possible in order to achieve its purpose. *(Rev. 4-15-03)*

**3-5-102. Eligibility.** Adult protective services may be provided to any elder or vulnerable adult identified as being at risk of abuse, neglect, sexual abuse, and/or exploitation. Adult protective services are available on a voluntary and time-limited basis for those elders or vulnerable adults not declared incapacitated by the Tribal Court or a court of competent jurisdiction. Adult Protective Services may be court-ordered for those persons legally determined to be unable to care for themselves and/or to lack the capacity to understand the nature of the services offered.

**3-5-103. Civil nature of Chapter.** The provisions of this Chapter are civil and regulatory in nature and are intended to provide assistance and protection to elders and vulnerable adults who may be at risk of abuse, sexual abuse, neglect, and/or exploitation. This Chapter does not affect any applicable provisions of Title II of this Code. *(Rev. 4-15-03)*

**3-5-104. Procedural rights.** (1) All rights as set forth herein and in the Indian Civil Rights Act shall be enforced strictly during proceedings under this Chapter. The Court shall appoint an attorney, physician, and visitor on behalf of any elder or vulnerable adult whose capacity is being questioned.

(2) No hearing shall be held unless notice has been given to the elder or vulnerable adult and other interested parties, including the elder or vulnerable adult's family and caretaker. The elder or vulnerable adult and all other interested parties shall have the right to appear, to be heard fully, and to present evidence unless the Tribal Court determines that the elder or vulnerable adult's health would be at risk at such proceeding. The Tribal Court shall publish a written statement of its findings in support of any issuing order.

(3) No elder or vulnerable adult shall be found to be abused, neglected or exploited solely on the grounds of environmental factors which are beyond the elder's, vulnerable adult's, or caretaker's control. Such factors include but are not limited to inadequate housing, furnishings, income, clothing, and medical care.

(4) Adult protective services will be provided based on the least restrictive alternative, and shall involve the input of the elder/vulnerable adult to the extent that said person is able.

(5) Adult protective service intervention will only be maintained until the risk is reduced or removed, or alternatively, until the elder or vulnerable adult declines to accept services provided that said elder or vulnerable adult is able to care for himself or herself and/or has the capacity to understand the nature of the services offered.

(6) An elder or vulnerable adult and/or caretaker shall be informed about an investigation of elder or vulnerable adult abuse, neglect or exploitation before it begins unless an emergency situation exists, in which case the elder or vulnerable adult and/or caretaker shall be informed as soon as possible, but no later than 72 hours after the investigation begins.

(7) The elder or vulnerable adult's caretaker may refuse adult protective services for himself or herself, but not for the elder or vulnerable adult.

(8) An elder, vulnerable adult, caretaker, or home occupant may refuse to allow the Designated Tribal Authority or the Tribal Police into their home and the Designated Tribal Authority or the Tribal Police shall so inform the elder, vulnerable adult, caretaker, or home occupant of this right and the right of the Designated Tribal Authority or the Tribal Police to seek a warrant before seeking entry.

(9) The elder or vulnerable adult in whose name any petition is filed shall be personally served with a copy of the petition pursuant to this code.

(10) An alleged at-risk or abused elder or vulnerable adult whose capacity is not in question shall have the right to defer civil court proceedings and have access to the Adult Protective Team. The Adult Protective Team may be utilized by an elder or vulnerable adult as an alternative to a civil court proceeding. *(Rev. 4-15-03)*

### **3-5-105. Definitions.**

(1) "Abuse" means the intentional infliction of physical or mental injury, unreasonable confinement, intimidation, cruel punishment, or deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an elder or a vulnerable adult.

(2) "Adult protective services" means activities, resources, and support provided to at-risk elders and vulnerable adults under this code to detect, prevent, reduce or eliminate abuse, neglect and exploitation, and to promote maximum independent living.

(3) "Caretaker" means an individual or institution that is required by law to provide or has assumed the responsibility for the care needed to maintain the physical or mental health of an elder or vulnerable adult. This responsibility may arise voluntarily, by contract, by receipt of payment for care, as a result of a familial relationship, or by order of the Confederated Salish and Kootenai Tribal Court or other court of competent jurisdiction. It is not the intent of this code to impose responsibility on an individual if the responsibility would not otherwise exist in law.

(4) "Designated Tribal authority" is the person or persons directed by the Confederated Salish and Kootenai Tribal Council to receive and investigate reports of elder and vulnerable adult abuse, neglect and/or exploitation; to assess and determine the need for protective services; and to coordinate the delivery of said services with the elder advocates and appropriate service agencies. Said person/persons shall be referred to as the Adult Protective Service Worker(s).

(5) "Elder" means a tribal member or other person eligible for services residing on the Flathead Reservation who is:

(a) 60 years of age or older; or

(b) determined by Tribal Court or Tribal custom to be an elder.

- (6) "Essential services" means those services or things necessary to sustain a person's life, physical and mental health, and general well-being, such as adequate food, clothing, shelter, and health care. It may include services or items considered essential under the person's customs, traditions or religion, including but not limited to access to traditional foods and access to religious ceremonies or services.
- (7) "Emergency situation" means a situation in which an elder or vulnerable adult is immediately at risk of death or injury as a result of abuse, neglect and/or exploitation, and is unable to consent to services which would remove the risk.
- (8) "Exploitation" means the unreasonable use of an elder or vulnerable adult or their money, property, or other resources by a caretaker or other person without the elder or vulnerable adult's consent or through fraud, misrepresentation, coercion, or duress.
- (9) "Incapacitated person" means any person determined by the Tribal Court or a court of competent jurisdiction to be impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause to the extent that he or she lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person or which cause has so impaired the person's judgment that she or he is incapable of realizing and making a rational decision with respect to his or her need for treatment.
- (10) "Informed consent" means the consent obtained for a proposed course of protective services action following a reasonable attempt to provide information to the elder, vulnerable adult, and/or caretaker which conveys, at a minimum, the risks, alternatives and outcomes of the various modes of protective service provisions available under the circumstances.
- (11) "Least restrictive alternative" means an approach which allows an elder or vulnerable adult independence and freedom from intrusion consistent with the elder's or vulnerable adult's needs by requiring that the least drastic and intrusive method of intervention be used when intervention is necessary to protect the elder or vulnerable adult from harm.
- (12) "Mental injury" means an identifiable and substantial impairment of a person's intellectual or psychological functioning or well-being.
- (13) "Neglect" means the failure to provide for oneself or the failure of a caretaker to provide, to the extent of legal responsibility, food, shelter, clothing, or services necessary to maintain the physical or mental health of an elder or vulnerable adult.
- (14) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.
- (15) "Sexual abuse" means any sexual involvement with an elder or vulnerable adult that the elder or vulnerable does not consent to, is physically and/or mentally incapable of voluntarily consenting to, or consents to as the result of intimidation, duress or fraud.
- (16) "Tribal police department" means the enforcement branch of the Confederated Salish and Kootenai Tribes.
- (17) "Vulnerable adult" means a tribal member or other person eligible for services residing on the Flathead Reservation who:



- (a) is at least 18 years of age and is declared by the Tribal Court or a court of competent jurisdiction to be incapacitated;
- (b) is at least 18 years of age and has been determined to be disabled by an agency such as the Social Security Administration, Vocational Rehabilitation Division, Veteran's Administration, or Medicaid; or
- (c) is at least 18 years of age and is suffering from a continuing disability or a disability that is expected to continue indefinitely that is attributed to mental retardation, or related neurological conditions or illnesses.

**3-5-106. Reports of abuse, neglect and exploitation - confidentiality.**

(1) Who must report.

(a) Personal knowledge or reasonable belief. All persons within the civil jurisdiction of the Confederated Salish and Kootenai Tribes unless excepted by privilege must report to the Designated Tribal Authority if they have knowledge of or a reasonable belief that abuse, neglect or exploitation of an elder or vulnerable adult has occurred or will occur. Said person include but are not limited to:

(i) All human and health professionals, including the community health representatives, dentists, physicians and Tribal Health and Human Services personnel;

(ii) Police officers;

(iii) Social workers, counselors and similar elder or vulnerable adult service providers;

(iv) Elected officials;

(v) Tribal or Federal employees involved with an individual elder's or a vulnerable adult's monies, real or personal property and/or well-being;

(vi) Employees or staff of private, tribal or state medical, retirement, group, foster or nursing home facilities located on the Flathead Reservation; and

(vii) Elder advocates, home health providers, or any other person working with elders or vulnerable adults.

(b) Employee. If a person is required to report as stated above but is an employee not authorized to report directly to the Designated Tribal Authority by a program, department or agency for which he or she works, said person shall make the report to the person designated by that program, department or agency to transmit such reports to the Designated Tribal Authority. The Designated Tribal Authority shall be notified, in writing, by the program, department or agency of the person or persons authorized to transmit such reports.

(2) Penalty for retaliation. Under the code, a person or entity who takes discriminatory, retaliatory or disciplinary action against an employee or other person who makes a report, against a person who cooperates with the agency to provide testimony or other information about a report, or against a victim of abuse, commits a violation of this code. The person who takes the discriminatory, retaliatory or disciplinary action is subject to a civil lawsuit by the person who made the report, the victim of abuse named in the report, or the person who cooperated with the Designated Tribal Authority. If the Court hearing the lawsuit decides in favor of the plaintiff, the plaintiff shall recover triple compensatory and

punitive damages or \$5,000.00, whichever is greater, from the person or entity that committed the violation.

(3) Failure to report; Civil Penalty; Damages; Criminal Liability. Any person who is required by this code to report suspected elder or vulnerable adult abuse, neglect, or exploitation and fails to do so is subject to a civil penalty of up to \$500.00 and/or 50–100 hours of community service for the benefit of elders or vulnerable adults. The Tribal Court shall assess the penalty only after petition, notice, opportunity for hearing, and a determination that the person had a mandatory duty to report, had good reason to suspect elder or vulnerable adult abuse, neglect or exploitation, and failed to report as required by this code. The person failing to report additionally is subject to any civil suit brought by or on behalf of the elder or vulnerable adult for damages suffered as a result of the failure to report and any criminal penalties set forth in the Confederated Salish and Kootenai Tribal Law and Order Code.

(4) Knowingly False Reporting; Civil Penalty; Damages; Criminal Liability.

Any person who makes a report of suspected elder abuse knowing it to be false is subject to a civil penalty of \$500.00 and/or 50–100 hours of community service for the benefit of elders or vulnerable adults. The Tribal Court shall assess the penalty only after petition, notice, opportunity for hearing, and a determination that the reporter made the report knowing it to be false. The person failing to report also is subject to any civil suit brought by or on behalf of the elder or vulnerable adult for damages suffered as a result of the failure to report and any criminal penalties set forth in the Confederated Salish and Kootenai Tribal Law and Order Code.

(5) Oral and Written Reports. Persons required to report shall make their report orally to the Designated Tribal Authority within three (3) working days of their observance of an incident of abuse, neglect or exploitation of an elder or vulnerable adult, unless the elder or vulnerable adult's immediate well-being is threatened, in which case the report should be made at the earliest time possible. Service providers will follow any oral report they make with a written report within five (5) working days. Other persons reporting shall be assisted by the Designated Tribal Authority in making a written report within five (5) working days of their oral report.

(6) Elder's or Vulnerable Adult's Confidentiality and Destruction of Records.

(a) Information contained in written reports and records of oral reports that includes the elder's or vulnerable adult's identity shall be kept confidential by the Designated Tribal Authority and shall not be released unless:

(i) the elder or vulnerable adult consents after being fully informed of the right to confidentiality, the nature of the information to be released, and the intended use of the information;

(ii) the information is needed for a court proceeding or police investigation;

(iii) the Tribal Court orders the release for good cause shown; or

(iv) agencies of the Tribal, State or Federal government that provide services to elders or vulnerable adults need to know the information in performance of their duties.

(b) The use of confidential information released shall be restricted to the purposes for which its use is authorized.

(c) The Designated Tribal Authority shall retain all substantiated written reports received and records of all substantiated oral reports received for a period of three (3) years, after which they shall be destroyed; any report deemed made in bad faith shall be destroyed immediately.

(7) Confidentiality of a Reporter's Identity; Immunity for a Reporter.

(a) The identity of a person filing a report shall be kept absolutely confidential and shall not be released unless essential for an administrative proceeding, court proceeding or police investigation, then only to be used for such purposes;

(b) Persons who are required or authorized to report are immune from liability arising from the report so long as the report was made in good faith and with reasonable suspicion ; and

(c) Any person who is sued in connection with the making of a report and prevails in the suit is entitled to recover reasonable attorney's fees and court costs as determined by the Court.

(8) Privileged Communication. No evidentiary privilege, except for the attorney–client privilege, may be raised as a justifiable defense or reason for failing to report suspected elder or vulnerable adult abuse, neglect or exploitation, or for failing to testify as required by this code.

### **3-5-107. Designated tribal authority's investigative action on reports.**

(1) Reports made to the Designated Tribal Authority.

(a) The Designated Tribal Authority, for purposes of this Chapter, shall receive all reports of elder or vulnerable adult abuse, neglect or exploitation.

(b) The Designated Tribal Authority shall investigate reports of elder or vulnerable adult abuse, neglect or exploitation, immediately referring criminal investigation matters as defined in this Code, to the Tribal Prosecutor. Matters not referred to the Tribal Prosecutor shall be completely investigated by the Designated Tribal Authority. Criminal matters appearing after the complete investigation shall be formally referred to the Tribal Prosecutor.

(2) Upon receipt of any report or information regarding an elder or vulnerable adult who may be in need of adult protective services, it shall be the duty of the Designated Tribal Authority to investigate or cause to be investigated the circumstances surrounding the report. This investigation shall include, but not be limited to: the elder or vulnerable adult's physical injury, emotional injury, financial injury, and all matters which, in the discretion of the Designated Tribal Authority, shall be relevant to the investigation.

(a) If from the report or investigation it appears that the elder or vulnerable adult is in need of essential services only and is not at risk of abuse, neglect and/or exploitation, the Designated Tribal Authority shall deliver a referral to the appropriate services agency for further action, including but not limited to: the Elder Advocates, the Adult Protection Team, Tribal Prosecutor, Tribal Health and Human Services, and Tribal Housing.

(b) If from the report or investigation it appears that the elder or vulnerable adult has been or is in a situation of abuse, neglect and/or exploitation, the Designated Tribal Authority shall investigate the matter as described in Subsection (3) of this Section to determine whether the elder's or vulnerable adult's present situation is an emergent situation or a non–emergent situation.

(3) The Designated Tribal Authority shall immediately investigate a report of elder/vulnerable adult abuse, neglect and/or exploitation and within 72 hours of the referral prepare a written report of the

investigation which shall include the information set out in Subsection (6) of this Section as well as the results of interviews, observations and assessments, and other fact finding. The Designated Tribal Authority shall conduct in-person interviews with the elder or vulnerable adult and/or caretaker of the elder or vulnerable adult, persons suspected of having committed the acts complained of, employees of agencies or institutions with knowledge of the elder or vulnerable adult's circumstances, and any other person that the Designated Tribal Authority believes to have pertinent information. The existence and contents of medical records and other reports of abuse, neglect, and/or exploitation shall be ascertained. A substantiated investigative report of the Designated Tribal Authority shall be filed with the Tribal Prosecutor within ten working days.

(4) Designated Tribal Authority's contact with the elder/vulnerable adult.

(a) The elder/vulnerable adult shall be contacted by the Designated Tribal Authority as soon as possible, but not later than three (3) working days after receipt of the initial written or oral referral. In emergency situations, as described in Section 3-5-110, contact with the elder/vulnerable adult shall be made immediately by the Tribal Police Department.

(b) Contact with the elder/vulnerable adult is authorized for the purposes of substantiating a report of abuse, neglect or exploitation, for talking to the elder/vulnerable adult, for informing the elder/vulnerable adult of protective services or other services available, and for evaluating the need for an Adult Protective Services Order or other intervention.

(5) Designated Tribal Authority's access to dwelling of an elder/vulnerable adult.

(a) Entry of a private dwelling or any other location where there is a reasonable expectation of privacy for the purpose of contacting an elder/vulnerable adult is not permitted unless:

(i) the elder/vulnerable adult, their caretaker, or the owner or occupant of the dwelling consents, provided that the person authorized to contact the elder/vulnerable adult first identifies himself or herself, his or her title, and the purpose of the visit;

(ii) there is reason to believe that the elder's/vulnerable adult's life may be in imminent danger or that there is imminent threat of bodily harm to the elder/vulnerable adult;

(iii) pursuant to a court order based on probable cause that the elder/vulnerable adult has been abused, neglected or exploited or may be in danger of being abused, neglected or exploited; or

(iv) there is a need to acquire evidence for use under this code which may be lost or destroyed due to the delay of obtaining a court order.

(b) Nothing in this sub-section shall be construed to limit or restrict police in hot pursuit of fleeing suspects as allowed under existing law.

(c) If the Designated Tribal Authority authorized to seek entry of a premises believes that the effort to obtain entry will be forcibly resisted or there is otherwise apparent danger for the Designated Tribal Authority, the assistance of the Tribal Police Department shall be available to assist with peaceable entry. If peaceable entry is not feasible, a court order may be obtained to restrain persons resisting entry.

(6) Every investigative report made by the Designated Tribal Authority shall be in writing and contain the following information:

- (a) the elder/vulnerable adult's name, address or location, and telephone number;
- (b) name, address or location, telephone number of the person(s) or agency who is suspected of abusing, neglecting, or exploiting the elder or vulnerable adult;
- (c) the nature and degree of capacity of the elder or vulnerable adult based on the Designated Tribal Authority's professional opinion and observation;
- (d) the name, address or location, and telephone numbers of witnesses;
- (e) the name, address or location, and telephone of a caretaker;
- (f) a description of the acts which are complained of; and
- (g) any other information that the Designated Tribal Authority believes might be helpful in establishing abuse, neglect, or exploitation.

(7) All investigative reports shall be maintained, filed and adequately kept to ensure confidentiality and safety by the Designated Tribal Authority, and shall remain on file for a period of three (3) years. *(Rev. 4-15-03)*

**3-5-108. Voluntary adult protective services.** (1) Adult protective services may be provided on a voluntary basis by the Adult Protective Services Worker when requested by or for any non-incapacitated abused or neglected elder or vulnerable adult and the elder or vulnerable adult is found by the Adult Protective Services Worker or Adult Protective Team to be in need of such services.

(2) Voluntary adult protective services shall include those essential and/or protective services necessary to reduce or eliminate the threat of harm and to promote continued independent living.

(3) Voluntary adult protective services are provided subject to available appropriations, resources, and staff, and only as determined necessary by the Adult Protection Worker.

(4) Voluntary adult protective services shall be provided on a time-limited basis and monitored by the Adult Protective Services worker or Adult Protection Team. Said services shall only be provided until the risk is eliminated or reduced, or until the elder/vulnerable adult refuses to accept such services.

(5) Voluntary services shall be based on the least restrictive alternative.

(6) An elder/vulnerable adult in need of voluntary services shall have a choice in selecting the services.

**3-5-109. Adult protective services order.** (1) The Tribal Court is authorized to issue an Adult Protective Services Order to elders or vulnerable adults that it or a court of competent jurisdiction determines to be incapacitated and at risk of abuse, neglect, or exploitation, pending notice and hearing. The Court shall have broad discretion within the bounds of the law, to fashion adult protective services orders so that the purposes of this code may be accomplished, including but not limited to the following kinds of protective orders:

- (a) Removing the person who has abused, neglected or exploited an elder or vulnerable adult from the elder's or vulnerable adult's home;

- (b) Restraining the person who has abused, neglected or exploited an elder/vulnerable adult from continuing such acts;
  - (c) Requiring an elder's or vulnerable adult's family, caretaker or any other person with a fiduciary duty to the elder or vulnerable adult to account for the elder's or vulnerable adult's funds;
  - (d) Requiring any person who has abused, neglected or exploited an elder or vulnerable adult to pay restitution to the elder or vulnerable adult for damages resulting from that person's wrongdoing;
  - (e) Appointing a legal representative;
  - (f) Appointing a representative payee, conservator, or guardian for the elder or vulnerable adult;
  - (g) Ordering the Designated Tribal Authority to prepare a plan for and deliver adult protection services which provide the least restrictive alternative for services, care, or treatment consistent with the elder's or vulnerable adult's needs; or
  - (h) Removing the elder or vulnerable adult from the place where the abuse, neglect or exploitation has taken or is taking place.
- (2) Contents of an Adult Protective Services Order. An Adult Protective Services Order shall contain the following information:
- (a) the name of the person to whom it is directed;
  - (b) the name, address or location, and condition of the elder or vulnerable adult;
  - (c) a conclusion of law and the relevant finding(s) that the elder or vulnerable adult is incapacitated;
  - (d) a conclusion of law and the relevant finding(s) that the elder or vulnerable adult is at risk of abuse, neglect, or exploitation;
  - (e) the restrictions or requirements imposed by the Court in sufficient detail;
  - (f) the date the adult protective services order is issued and the date the order expires or the time within which the protective order will be reviewed;
  - (g) the protective services which will reduce or eliminate the abuse, neglect, or exploitation;
  - (h) the consequences for failure to comply with the order; and
  - (i) the order shall also include a statement which states that a person bound by the order shall remain bound by it even if circumstances which prompted the order have changed, and that it is the responsibility of any person seeking to avoid the consequence of the order to request that the order be modified to reflect the changed circumstances. However, no such modification shall be made without a hearing at which the petitioner or representative of the petitioner is present.
- (3) Petition and Hearing of an Adult Protective Services Order.
- (a) The Tribal Prosecutor shall file petitions and present facts on behalf of the Confederated Salish and Kootenai Tribes for legal proceedings authorized or required by this code; and

(b) A hearing on a petition authorized or required by this code shall be conducted with the purpose of protecting the incapacitated elder or vulnerable adult only where necessary and only to the extent shown by the facts and using the least restrictive alternatives.

(4) Term of an Adult Protective Services Order.

(a) An Adult Protective Services Order shall be issued for a period not to exceed one (1) year; and

(b) The order may be extended at one (1) year intervals as many times as necessary to protect the elder or vulnerable adult, but only after a petition is filed by the party seeking an extension and notice, opportunity for hearing, and a determination based on clear and convincing evidence that such an extension is necessary for the protection of the elder or vulnerable adult.

**3-5-110. Emergency adult protective services order.** (1) The Tribal Court shall issue an Emergency Protection Order authorizing adult protective services on an emergency basis, upon petition supported by clear and convincing evidence that an elder or vulnerable adult:

(a) is allegedly incapacitated and cannot consent to protective services;

(b) is at risk of immediate physical harm; and

(c) no one is authorized by law or court order to give consent on an emergency basis.

(2) The Emergency Adult Protective Services Order shall:

(a) set forth a conclusion of law and the relevant finding(s) that the elder or vulnerable adult is incapacitated;

(b) set forth a conclusion of law and the relevant finding(s) that the elder or vulnerable adult is in immediate and imminent danger of abuse, neglect, or exploitation;

(c) set out the specific emergency services to be provided to the incapacitated elder or vulnerable adult to remove the conditions creating the emergency situation;

(d) provide only those services which will remove the emergency situation;

(e) designate the agency required to implement the order; and

(f) be issued for a maximum of 72 hours and may be renewed only once for a maximum of 72 hours provided the evidence shows a continuing emergency situation.

(3) The Tribal Court may authorize forcible entry by the Tribal Police Department to enforce the Emergency Adult Protective Services Order after it has been shown that attempts to gain voluntary access to the elder or vulnerable adult have failed.

(4) The petition for an Emergency Adult Protective Services Order shall contain the name and interest of the petitioner; the name, address or location and condition of the elder or vulnerable adult; the nature of the emergency; the nature of the elder or vulnerable adult's incapacity; the proposed protective services; the attempts, if any, to secure the elder or vulnerable adult's consent to protective services; and any other facts the petitioner believes will assist the Tribal Court.

(5) The Tribal Court shall hold a hearing on a petition for an Adult Protective Services Order within 72 hours after an Emergency Adult Protective Services Order is issued, weekends and holidays excluded.

(6) An Emergency Adult Protective Services Order can be set aside by the Tribal Court upon a petition of any party showing good cause.

(7) If the Designated Tribal Authority or law enforcement officer has good cause to believe that an emergency situation exists in which an elder or vulnerable adult who appears to be incapacitated is at risk of immediate and irreparable harm, and that the elder or vulnerable adult may be irreparably harmed during the procurement of an Emergency Adult Protective Services Order, the elder or vulnerable adult immediately may be taken into temporary protective custody, and where necessary transported for medical treatment or to an appropriate facility. Immediately after an elder or vulnerable adult is placed in protective custody, a petition for an Emergency Adult Protective Services Order shall be filed pursuant to the procedure set forth in this Section.

(8) Any person who acts in good faith pursuant to this Section is immune from civil or criminal suit based on that person's actions.

### **3-5-111. Procedures for determining incapacity.**

(1) Determinations regarding the capacity of an elder or vulnerable adult for the purposes of an action under this code must be made after petition; appointment of an advocate, physician, and visitor; notice; hearing; and a finding based on clear and convincing evidence that the elder or vulnerable adult is incapacitated in accordance with Section 3-5-104, Procedural Rights.

(2) In proceedings necessitating a declaration of incapacity, such as a hearing on a petition for Adult Protective Services or a petition for Emergency Protective Services, the Court shall first address the issue of incapacity and only upon a finding that the elder or vulnerable adult is incapacitated shall the Court proceed with the issue of whether judicial intervention is necessary because the elder or vulnerable has been or is at risk of abuse, neglect, and exploitation. *(Rev. 4-15-03)*

**3-5-112. Guardianship and conservatorship proceedings.** (1) The incapacitated elder or vulnerable adult or any person alleging an elder or vulnerable adult to be incapacitated, including the Designated Tribal Authority, may petition for a limited or full guardianship, or a conservatorship of an incapacitated elder or vulnerable adult who is unable to manage all or some of his/her own affairs for the purpose of promoting and protecting the well-being of the elder or vulnerable adult. The guardianship or conservatorship must be designed to encourage the development of maximum self-reliance and independence in the elder or vulnerable adult, and may be ordered only to the extent that the elder's or vulnerable adult's actual or mental limitations require it.

(2) A petition for guardianship shall state:

(a) The elder or vulnerable adult's name, birth date, residence, tribal affiliation, and enrollment number. If the elder or vulnerable adult is not living in his or her own home, then petitioner shall state the location where the elder or vulnerable adult has resided since leaving his or her own home, and the name and address of the person(s) or institution where the elder or vulnerable adult is presently located;

(b) Petitioner's name, birth date, residence, tribal affiliation, and the relationship to the elder or vulnerable adult;



- (c) A description of the physical and/or mental limitations that incapacitates the elder or vulnerable adult;
- (d) If a limited guardianship over the elder's or vulnerable adult's person is requested, then a description of the particular powers that the limited guardian is proposed to exercise and the particular areas of protection and assistance required;
- (e) If a guardianship or conservatorship of any or all property is requested, then a general description of the personal or non-trust property of the elder or vulnerable adult;
- (f) If a guardianship or conservatorship over any or all of the financial affairs is requested, then a general description of the income or other financial resources or personal property of the elder or vulnerable adult;
- (g) The names, addresses and relationship of the elder's or vulnerable adult's children, so long as such information is reasonably available, and any brothers, sisters, grandchildren or other parties who have been significantly involved in the care of the elder or vulnerable adult during the past three years;
- (h) Whether a guardian has been appointed for the elder or vulnerable in any other tribal or state proceeding;
- (i) The requested length of time for which the petitioner is requesting the guardianship or conservatorship; and
- (j) List any other person(s) and relationship to the elder or vulnerable adult, if any, who may be available to share the guardianship responsibilities with the petitioner.

### (3) Service of Petition and Notice of Hearing.

- (a) Before appointing a guardian or conservator, a notice of hearing and a copy of the petition shall be given personally to the elder or vulnerable adult over whom the guardianship or conservatorship is requested. A certificate of personal service shall be filed with the Tribal Court.
- (b) Notice and a copy of the petition shall be personally given to the elder or vulnerable adult's spouse residing within the exterior boundaries of the Flathead Reservation, if any, unless such person waives, in writing, the personal service of notice and petition.
- (c) By first-class United States mail, notice and a copy of the petition shall be given to: all children of the elder or vulnerable adult; the spouse of the elder or vulnerable adult if residing off the Flathead Reservation; any other person with whom the elder or vulnerable adult is living with; and the Confederated Salish and Kootenai Tribal Health and Human Services.
- (d) The Tribal Court, upon receipt of a petition for guardianship or conservatorship, shall appoint an advocate to represent the elder or vulnerable adult, a physician to examine the elder or vulnerable adult for the purposes of determining capacity, and a visitor.
- (e) A hearing on the petition shall be held not less than twenty and not more than forty days from the service of the notice and petition on the elder or vulnerable adult over whom the guardianship is requested. Following the hearing, the Court may appoint a full or limited guardian if it is satisfied that the person for whom the guardianship is sought is incapacitated and that judicial intervention in his/her personal freedom of action and decision is necessary to meet the essential requirements for health and safety.

(f) In the event of an emergency, where serious harm to the allegedly incapacitated elder's or vulnerable adult's health or property is likely to occur before a hearing can be held, the Court may appoint with or without notice a temporary guardian for the allegedly incapacitated elder or vulnerable adult for a specified period not to exceed six (6) months. The Court may not invest a temporary guardian with more powers than are required by the circumstances necessitating the appointment.

(g) Any guardian shall advise the Court by written report at least once a year or upon request of the Court on the parties involved or the actions of the guardian on behalf of the elder's or vulnerable adult's person or estate..

(h) No guardian may dispose of any of the elder's or vulnerable adult's property without advance approval from the Court.

**3-5-113. Adult protection team.** (1) Composition. The Adult Protection Team shall be comprised of a multi-disciplinary group of professionals representing various tribal disciplines and agencies who meet on a regular basis to assist in developing a case plan and coordination of protective services for elder's and vulnerable adult's who are victims of abuse, neglect, or exploitation.

(2) Purpose. The Adult Protection Team shall be charged with the responsibility of helping an elder or vulnerable adult resolve any civil conflict or problems that may prevent the proper care, treatment, and respect for the elder or vulnerable adult involved. The Adult Protection Team may suggest and encourage resolutions based on tribal custom and tradition.

(3) Appointment.

(a) The Adult Protection Team shall be chosen by the Confederated Salish and Kootenai Tribal Council;

(b) The Adult Protection Team shall be comprised of at least five people, but not more than seven (7) people; and

(c) The Adult Protection Team shall be composed of individuals who are knowledgeable in one or more of the following areas:

(i) Tribal culture;

(ii) Tribal Health and Human Services available to elders/vulnerable adults;

(iii) Legal remedies;

(iv) Available medical services; and

(v) Tribal administrative procedure.

(4) Adult Protection Team Time Limits. If the Adult Protection Team determines that it cannot be effective in helping resolve the elder or vulnerable adult's situation, it shall refer the matter back to the Designated Tribal Authority within 90 days of receipt of the case.

(5) Confidentiality. The case records and personal information regarding any elder or vulnerable adult that a member of the team provides shall be kept confidential and shall be used only by team members for the purpose of assessing the needs of the elder or vulnerable adult, and developing and monitoring a protective services plan.

**3-5-114. Regulations.** The Designated Tribal Authority shall coordinate with the Confederated Salish and Kootenai Tribal Health and Human Services and shall submit proposed rules and regulations to the Tribal Council of the Confederated Salish and Kootenai Tribes for adoption.

**3-5-115. Severability.** If any provision or application of this Chapter is held invalid, such invalidity shall not affect the remaining provisions or application thereof.

## TITLE IV

### CHAPTER 1 - CIVIL ACTIONS, LIMITATIONS, AND LIABILITY

#### Part 1 - Civil Actions

**4-1-101. No merger of civil and criminal actions.** Actions are of two kinds, civil and criminal. A civil action is prosecuted by one party against another for the enforcement or protection of a right or the redress or prevention of a wrong. Title II, above, defines and provides for the prosecution of a criminal action. When the violation of a right admits of both a civil and criminal remedy, the right to prosecute the one is not merged in the other.

**4-1-102. Availability of civil actions.** (1) Civil actions are those causes, within the jurisdiction of the Tribal Court, originating in:

- (a) Tribal law, including Tribal custom or tradition as defined by statute or by Tribal Court rule or decision,
  - (b) common law or equity, if not inconsistent with Tribal law, and
  - (c) federal or Montana statute, if the Tribal Court has the power to effectuate the statutory remedies, PROVIDED that
    - (i) if the cause is one accepted by the United States for litigation in federal court under the Federal Tort Claims Act, it may not be brought in Tribal Court,
    - (ii) if state court or federal court jurisdiction over the cause is concurrent with that of the Tribal Court and
      - (A) the cause is pending in the courts of the foreign jurisdiction, the Tribal Court shall dismiss any complaint with the same parties and raising the same issues as the foreign pending cause, or
      - (B) the cause was filed first or solely with the Tribal Court, but the interests of justice, of the parties, of judicial economy, and of comity are, in the judgment of the Court, paramount, the Tribal Court may stay or dismiss the action in deference to the more appropriate or convenient court of the foreign jurisdiction.
- (2) If the cause arising under a federal or Montana statute replaces a common law or equitable cause in the law of such jurisdiction, the statutory rights and remedies will govern.

**4-1-103. Bases for civil actions.** A civil action arises out of:

- (1) an obligation, which is a legal duty by which one person is bound to do nor not to do a certain thing and arises from contract or operation of law; or
- (2) an injury, which may be to a person or to property. An injury to property consists in depriving its owner of the benefit of it, which is done by taking, withholding, deteriorating, or destroying it. Every other injury is an injury to the person.

**4-1-104. Laws applicable in civil actions.** (1) In all civil actions, the Tribal Court shall first apply the applicable laws, Ordinances, customs and usages of the Confederated Salish and Kootenai Tribes and then shall apply applicable laws of the United States and authorized regulations of the Department of the

Interior. Where doubt arises as to customs and usages of the Tribes, the Tribal Court may request the advice of the appropriate committee which is recognized in the community as being familiar with such customs and usages. Any matter not covered by Ordinances, customs and usages of the Tribes or by applicable federal laws and regulations may be decided by the Court according to the laws of the State of Montana.

(2) Pursuant to 25 U.S.C.A. 483a(a), foreclosure or sale pursuant to terms of a mortgage or deed of trust to land shall be in accordance with Title 71, Chapter 1, Part 2, of the Montana Code Annotated, with the exception that under Tribal law a 90 day period to redeem shall be available to debtors in foreclosure actions.-(Rev. 4-15-03)

**4-1-105. When action accrues and commences.** For the purposes of statutes relating to the time within which an action must be commenced:

(1) a claim or cause of action accrues when all elements of the claim or cause exist or have occurred and the right to maintain an action on the claim is complete; and

(2) an action is commenced when the complaint is filed.

**4-1-106. Survival of cause of action and action for wrongful death.** (1) An action, cause of action, or defense does not abate because of the death or disability of a party or transfer of any interest therein, but whenever the cause of action or defense arose in favor of such party prior to his or her death or disability or transfer of interest, it survives and may be maintained by his or her successors in interest. If the action has not been begun or defense interposed, it may be commenced in the name of his or her successors in interest.

(2) When injuries to and the death of one person are caused by the wrongful act or neglect of another, the personal representative of the decedent's estate may maintain an action for damages against the person causing the death or, if such person be employed by another person who is responsible for his or her conduct, then also against such person.

(3) Actions brought under this section must be combined in one legal action, and any element of damages may be recovered only once.

**4-1-107. Action by parent or guardian for injury to child or ward.** Either parent may maintain an action for an injury to a minor child and a guardian for injury to a ward when such injury is caused by the wrongful act or neglect of another. Such action may be maintained against the person causing the injury or, if such person is employed by another person who is responsible for his conduct, also against such other person. If a parent or guardian brings such an action on behalf of a child, the statute of limitations set out in section 4-1-202(1) is not tolled during the child's minority.

**4-1-108. Action for work-related injury, disease or death.** (1) Workers compensation insurance in the form prescribed by the Tribal Government shall be the exclusive remedy for work-related claims of damage, injury, disease or death for tribal employees or individuals otherwise covered under the Tribes' compensation plan.

(2) Nothing in this section shall be construed to create an affirmative obligation of the Tribes to provide such coverage. (Rev. 8-18-05)

## Part 2 - Statutes of Limitation

**4-1-201. Period of limitation on civil actions.** (1) Except as otherwise provided by law, a civil action must be commenced within three calendar years of the time the cause of action accrued.

(2) Failure to commence an action within the time provided is a defense that may be waived by a party if not raised in the party's first pleading.

(3) Unless otherwise provided by statute, the period of limitation begins when the claim or cause of action accrues. Lack of knowledge of the claim or cause of action, or of its accrual, by the party to whom it has accrued does not postpone the beginning of the period of limitation.

(4) Where a right exists but a demand is necessary to entitle a person to maintain an action, the time within which the action must be commenced must be computed from the time when the demand is made, except that where the right grows out of the receipt or detention of money or property by an agent, trustee, attorney, or other person acting in a fiduciary capacity, the time must be computed from the time when the person having the right to make the demand has actual knowledge of the facts upon which that right depends.

(5) The period of limitation does not begin on any claim or cause of action for an injury to person or property until the facts constituting the claim have been discovered or, in the exercise of due diligence, should have been discovered by the injured party if:

(a) the facts constituting the claim are by their nature concealed or self-concealing; or

(b) before, during, or after the act causing the injury, the defendant has taken action which prevents the injured party from discovering the injury or its cause.

**4-1-202. Circumstances which extend period of limitation.** The period of limitation is extended in the following circumstances:

(1) If a person entitled to bring an action is, at the time the cause of action accrues, a minor, seriously mentally ill, or imprisoned on a criminal charge or under a sentence for a term less than for life, the time of such disability is not a part of the time limited for commencing the action. However, the time so limited cannot be extended more than 6 years by any such disability except minority. No person may avail himself of a disability unless it existed when his or her right of action accrued.

(2) When a cause of action accrues against a person who is subject to the jurisdiction of the Tribal Court but who is not found within the Flathead Reservation and cannot be served with process, the action may be commenced within three years after the defendant's return to the Reservation. But if, after the cause of action accrues a defendant departs from the Reservation and cannot be served with process, the time of his absence is not part of the time limited for the commencement of the action.

(3) If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced by the personal representative after the expiration of that time and within one year from the person's death. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof and the cause of action survives, an action may be commenced against the personal representative after the expiration of that time and within one year after the appointment of the personal representative.

(4) When the commencement of an action is stayed by injunction or other order of the court or judge or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.

(5) A written acknowledgment, signed by the party to be charged thereby, or a witnessed oral acknowledgment, or the part payment of a debt is sufficient evidence to cause the statute of limitations to begin running anew. Part payment is any payment of principal or interest.

### Part 3 - Liability

**4-1-301. Liability for negligence as well as willful acts.** Except as otherwise provided by law, everyone is responsible not only for the results of his willful acts but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person except so far as the latter has willfully or by want of ordinary care brought the injury upon himself or herself.

**4-1-302. Comparative negligence.** Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or injury to person or property if such negligence was not greater than the negligence of the person or the combined negligence of all persons against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence of the person recovering.

**4-1-303. Products liability.** (1) A person (including a manufacturer, wholesaler, or retailer) who sells a product in a defective condition unreasonably dangerous to a user or consumer or to the property of a user or consumer is liable for physical harm caused by the product to the ultimate user or consumer or to his property if:

(a) the manufacturer, wholesaler, or retailer, hereafter identified as "the seller", is engaged in the business of selling such a product; and

(b) the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold, except that this subsection does not apply to a claim for relief based upon improper product design.

(2) The provisions of subsection (1) apply even if:

(a) the seller exercised all possible care in the preparation and sale of the product; and

(b) the user or consumer did not buy the product from or enter into any contractual relation with the seller.

(3) Except as provided in this subsection, contributory negligence is not a defense to the liability of a seller, based on strict liability in tort, for personal injury or property damage caused by a defectively manufactured or defectively designed product. A seller named as defendant in an action based on strict liability in tort for damages to person or property caused by a defectively designed or defectively manufactured product may assert the following affirmative defenses against the user or consumer, the legal representative of the user or consumer, or any person claiming damages by reason of injury to the user or consumer:

(a) the user or consumer of the product discovered the defect or the defect was open and obvious and the user or consumer unreasonably made use of the product and was injured by it; or

(b) the product was unreasonably misused by the user or consumer and such misuse caused or contributed to the injury.

(4) The affirmative defenses referred to in subsection (3) of this Section mitigate or bar recovery and must be applied in accordance with the principles of comparative negligence.

#### **Part 4 - Tribal Governmental Immunity**

**4-1-401 Immunity from suit.** The Confederated Salish and Kootenai Tribes, as a sovereign government and landowner, and its elected Tribal Council in either their official or personal capacity, as well as Tribal officers, agents and employees acting within the scope of their authority, share sovereign immunity from suit and may not be made parties defendant to a lawsuit without the express, written consent of the Tribal Council. *(Rev. 4-15-03)*

**4-1-402 Limited waivers of immunity.** (1) The Confederated Salish and Kootenai Tribes, the Tribal Council, as well as its officers, agents and employees may be made a party defendant in a lawsuit in Tribal Court in the following circumstances:

(a) when a claim for injunctive, declaratory or mandamus relief is properly alleged for an abridgment or infringement by an action of Tribal government of any civil or constitutional right of an individual arising under the Tribal Constitution and Bylaws or the Indian Civil Rights Act (25 U.S.C. § 1302);

(b) when the Tribal Council enacts a Resolution or Ordinance providing a waiver of sovereign immunity for the purposes described therein or for judicial review of governmental implementation of the Resolution or Ordinance;

(c) when the Tribal Council authorizes intervention as a party in a lawsuit between other parties, but such authorization does not waive immunity to a counter-claim;

(d) when the Tribal Council enters into a written agreement with the United States pursuant to a federal law that requires the Tribes to purchase liability insurance, and thereby consents to a waiver of immunity to the policy limits; or

(e) when the Tribal Council enters into a written agreement expressly waiving immunity.

(2) Business corporations owned, in whole or in part, by the Tribes are authorized to sue and be sued according to the term of their articles of incorporation or charter. *(Rev. 4-15-03) (Rev. 8-18-05) (Rev. 3-21-13)*

#### **Part 5 - Defense and Indemnification of Tribal Officers, Agents and Employees**

**4-1-501. Purpose.** The purpose of this Part is to provide for the defense and indemnification of Tribal Council members, Tribal officers, agents, and employees civilly sued for their actions taken within the course and scope of their employment or official duties. As used hereafter in this Part, "employee" means Tribal Council members, Tribal officers, agents, and employees, but shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the Tribes.



**4-1-502. Scope.** In a noncriminal action brought against any employee for a negligent act, error, or omission, including alleged violations of any civil or constitutional right arising under the Tribal Constitution and Bylaws or the Indian Civil Rights Act, 25 U.S.C. § 1302, or other actionable conduct committed while acting within the course and scope of the employee's office or employment, the Tribes, except as provided in 4-1-506, shall defend the action on behalf of the employee and indemnify employee.

**4-1-503. Procedure.** Upon receiving service of a summons and complaint in a noncriminal action against him or her, the employee shall give prompt written notice to the supervisor, or to the Tribal Council in the case of elected or appointed employees, requesting a defense to the action. Except as provided in 4-1-506, the Tribes shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the Tribes. Within 10 days after receipt of notice, the Tribes shall notify the employee as to whether they will provide a direct defense. If the Tribes refuse or are unable to provide a direct defense, the defendant employee may retain other legal counsel. Except as provided in 4-1-506, the Tribes shall pay all reasonable expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable hereunder.

**4-1-504. Indemnification.** In any noncriminal action in which a Tribal government employee is a party defendant, the Tribes shall indemnify the employee for any money judgments or legal expenses, including attorney fees, either incurred by the employee or awarded to the claimant or both, to which the employee may be subject as a result of the suit, unless the employee's conduct falls within the exclusions provided in 4-1-506.

**4-1-505. Bar to other actions on same subject.** Recovery from the Tribes under the provisions of this Title constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error or omission or other actionable conduct gave rise to the claim. In any such action against the Tribes, the employee whose conduct gave rise to the suit in whole or in part is immune from liability for the same subject matter if the Tribes acknowledge or are bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in (b) through (d) of 4-1-506.

**4-1-506. Conduct not indemnified.** In a noncriminal action in which a Tribal employee is a party defendant, the Tribes shall neither defend nor indemnify the employee for any money judgment or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:

- (a) the conduct upon which the claim is based constitutes oppression, fraud, or malice, or for any other reason does not arise out of the course and scope of the employee's employment;
- (b) the conduct of the employee constitutes a criminal offense;
- (c) the employee compromised or settled the claim without the consent of the Tribes; or
- (d) the employee did not cooperate in the defense of the case.

**4-1-507. Disputed exclusions.** If no judicial determination has been made applying the exclusions described in 4-1-506, the Tribes may determine whether those exclusions apply. If there is a dispute as to whether the exclusions should apply and the Tribes decide they must clarify their obligation to the

employee arising under this section by commencing declaratory judgment action or other legal action, the Tribes shall provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in such action holding that the Tribes had no obligation to defend the employee.

**4-1-508. Treatment of Volunteers as Employees for Liability Purposes.** For the purposes of liability coverage under 25 U.S.C. § 450f(c) and the Federal Tort Claims Act (28 U.S.C. § 2671 et seq.), a volunteer, who is acting on behalf of the Confederated Salish and Kootenai Tribes in the Tribes' capacity as an Indian Self-Determination and Education Assistance Act contractor/compacter of federal activities, services, or programs, shall be considered an employee of the Tribes for purposes of the Indian Self-Determination and Education Assistance Act as amended (including the Tribal Self-Governance Act) and the Federal Tort Claim Act.

(a) Except as provided in this section, or as otherwise provided by law, a volunteer shall not be deemed to be an employee.

(b) Provision by the Tribal government of incidental expenses including, but not limited to, training, transportation, uniforms, lodging, awards (including nominal cash awards) and recognition, and subsistence costs for such volunteers shall not alter their status as volunteers, nor shall it alter their treatment as employees for the limited purposes of this ordinance. *(Enacted 2-24-05)*

## TITLE IV

### CHAPTER 2 - CIVIL REMEDIES

#### Part 1 - Traditional Remedies

**4-2-101. When available.** Where the relief requested by a party includes a traditional remedy or penalty and

- (1) all parties are Tribal members and all partake of the cultural heritage of the same tribe or band forming a part of the Confederated Tribes, or
- (2) all parties consent to the award of traditional remedies to the prevailing party, the court may grant the relief requested or any traditional remedy, statutory remedy, or combination of traditional and statutory remedies that it finds to be in the interests of justice.

**4-2-102. Objection to traditional relief.** If a complaint or counterclaim prays for the award of a traditional remedy or penalty, an opposing party may move in the first responsive pleading to strike or amend the prayer on grounds that the relief requested is not, in fact, traditional, or, if traditional, inappropriate to relieve the injury complained of. Such motion shall be treated in the same manner as other pretrial motions and may be the subject of an evidentiary hearing if requested by a party or deemed advisable by the court.

#### Part 2 - Damages

**4-2-201. Detriment defined.** Detriment is a loss or harm suffered to person or property.

**4-2-202. Right to compensatory damages.** Every person who suffers detriment from the unlawful act or omission of another may recover from the person at fault a compensation in money, which is called damages. Damages must, in all cases, be reasonable.

**4-2-203. Right to damages for future detriment.** Damages may be awarded in a judicial proceeding for detriment resulting after the commencement of the action and certain to result in the future.

**4-2-204. Limitation on tort recovery from Tribes and Tribally owned corporations.**

- (1) General provisions.
  - (a) In all instances, damages must be reasonable.
  - (b) Damages which are not specifically quantifiable cannot be recovered.
  - (c) Recovery is prohibited for emotional or mental distress.
  - (d) Recovery under any implied covenants is prohibited.
  - (e) Monetary judgments against officers, agents or employees of the Tribal government acting within the scope of their authority shall be treated as a judgment against the Tribes and shall be satisfied by the Tribal government, subject to the availability of funds in the Tribal treasury.

(2) Limitation on tort recovery. Except as may otherwise provided by law, when the government of the Confederated Salish and Kootenai Tribes has consented that it or its officials, agents, or employees may be named a party defendant in a lawsuit sounding in tort, or when a corporation in which the tribes are a owner is found liable under the terms of this ordinance, the damages available to a prevailing claimant are limited as follows:

(a) No punitive or exemplary damages may be recovered, except as provided by the Tribes' Wrongful Discharge law.

(b) For claims arising from a single transaction or occurrence, a plaintiff may not recover a total compensatory sum greater than Two Hundred and Fifty Thousand Dollars (\$250,000) or the maximum sum payable by an insurer under any policy required by federal law, whichever is less.

(c) Multiple plaintiffs whose claims arise from one transaction or occurrence may not recover a compensatory sum greater than Seven Hundred and Fifty Thousand Dollars (\$750,000) or the maximum sum payable by an insurer under an policy required by federal law, whichever is less.

(3) Interest on Judgments. In an action for damages not arising in contract, the award of interest on a judgment may be given at the discretion of the Court, but in no case shall interest exceed ten percent (10%) per annum on any unpaid balance. Interest shall commence accruing upon the date of final judgment.

(4) Severability. If any provision of this Ordinance, or the applicability thereof, is found to be ineffective by a court of final recourse of a competent jurisdiction after all parties have been heard, the remainder of this Ordinance shall not be affected thereby. *(Rev. 4-15-03)*

**4-2-205. Nominal damages when no appreciable detriment.** When a breach of duty has caused no appreciable detriment to the party affected, the party may yet recover nominal damages.

**4-2-206. Measures of particular damages.** (1) no person can recover a greater amount in damages for the breach of an obligation that he could have gained by the full performance thereof on both sides unless a greater recovery is specified by law.

(2) The value of an instrument in writing is presumed to be equal to that of the property to which it entitles the owner.

(3) Where the cost of repairing a motor vehicle exceeds its value, the measure of damages is the actual replacement value of the vehicle. Actual replacement value is the actual cash value of the vehicle immediately prior to the damage.

(4) For breach of contract, the measure of damages, except when otherwise provided by law, is the amount which will compensate the party aggrieved for all the detriment which was proximately caused thereby or in the ordinary course of things would be likely to result therefrom. Damages which are not clearly ascertainable in their nature and origin cannot be recovered for a breach of contract. Recovery is prohibited for emotional or mental distress alleged to be caused by a breach of contract.

(5) The detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation with interest thereon.

(6) For the breach of an obligation not arising from contract, the measure of damages, except as otherwise expressly provided by statute, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

(7) The detriment caused by the wrongful occupation of real property is deemed to be the value of the use of the property for the time of the occupation, not exceeding the 5 years next preceding the commencement of the action, and the costs of recovering possession.

(8) The detriment caused by the wrongful conversion of personal property is presumed to be the value of the property at the time of its conversion with the interest from that time and a fair compensation for the time and money properly expended in pursuit of the property.

**4-2-207. Collateral source reductions in actions arising from bodily injury or death.** (1) As used in this Section, the following definitions apply:

(a) "Collateral source" means a payment for something that is later included in a tort award and which is made to or for the benefit of a plaintiff or is otherwise available to the plaintiff:

(i) for medical expenses, hospitalization, home care, or disability payments under the federal Social Security Act, the Indian Health Care Act, or other federal, state, or Tribal law or program to implement such law;

(ii) under any health or disability insurance or automobile accident insurance that provides health benefits or income disability coverage, and any other similar insurance benefits available to the plaintiff, except life insurance;

(iii) under any contract or agreement of any person, group, organization, partnership, or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other health care services, except gifts or gratuitous contributions of assistance;

(iv) any contractual or voluntary wage continuation plan provided by an employer or other system intended to provide wages during a period of disability; and

(v) any other source, except the assets of the plaintiff or his or her immediate family.

(b) "Person" includes individuals, corporations, government entities, associations, firms, partnerships, and any other entity or aggregate of individuals.

(c) "Plaintiff" means a person who alleges that he or she sustained bodily injury, or on whose behalf recovery for bodily injury or death is sought, or who would have a beneficial, legal, or equitable interest in a recovery. The term includes a legal representative, a person with a wrongful death or surviving cause of action, a person seeking recovery on a claim for loss of consortium, society, assistance, companionship, or services, and any other person whose right of recovery or whose claim or status is derivative of one who has sustained bodily injury or death.

(2) In an action arising from bodily injury or death, when the total award against all defendants is in excess of \$10,000 and the plaintiff will be fully compensated for his damages, exclusive of court costs and attorney fees, a plaintiff's recovery must be reduced by any amount paid or payable from a collateral source.

(3) The jury shall determine its award without consideration of any collateral sources. After the jury determines its award, reduction of the award must be made by the trial judge at a hearing and upon a separate submission of evidence relevant to the existence and amount of collateral sources. Evidence is admissible at the hearing to show that compensable damages awarded to the plaintiff have been paid from a collateral source or that the plaintiff has been or may be reimbursed from a collateral source.

**4-2-208. Right to interest.** Every person who is entitled to recover damages is entitled also to recover interest thereon, except that no interest may be had in actions for recovery of damages arising from injury to person or property brought against a governmental entity. Interest accrues from the date that the right to recovery vests except during such time as the debtor is prevented by law or by the act of the creditor from paying the debt.

**4-2-209. Interest on torts.** (1) Subject to subsection (2) of this section, in an action for recovery on an injury, a prevailing claimant is entitled to interest at a rate of 10% on a recovery of damages in a sum certain.

(2) Interest may not be had on damages not capable of being made certain by calculation, including but not limited to future damages, until such damages are incurred and damages for

(a) pain and suffering

(b) injury to credit, reputation, or financial standing;

(c) mental anguish or suffering;

(d) punitive damages;

(e) loss of established way of life;

(f) loss of consortium; and

(g) attorney fees.

(3) If a jury is the trier of fact, it is to be advised by the court that the court will determine the amount of prejudgment interest due, if any, on a judgment.

**4-2-210. Interest on contracts.** A rate of interest, not to exceed 21%, agreed to by contract remains chargeable after a breach until the contract is superseded by a judgment or other new obligation. If no rate is stipulated, the trier of fact may award post judgment interest to the prevailing party at a rate of 10%.

**4-2-211. When award of interest discretionary.** In an action for the breach of an obligation not arising from contract and in every case of oppression, fraud, or malice, interest may be given in the discretion of the trier of fact.

**4-2-212. Waiver of interest by accepting principal.** Accepting payment of the whole principal waives all claim to interest.

**4-2-213. Punitive damages.** A trier of fact may award, in addition to compensatory damages, reasonable punitive damages for the sake of example and for the purpose of punishing a defendant, subject to the following exclusions and conditions:

- (1) Punitive damages may be expressly prohibited or limited by statute;
- (2) Punitive damages may not be recovered in any action arising from a contract, except that they are not prohibited in a products liability action;
- (3) Punitive damages may not be recovered, except as otherwise provided by statute, in any action against a governmental entity;
- (4) Punitive damages may not be recovered in any action unless the trier of fact has found that the defendant committed actual fraud or acted with actual malice.
  - (a) A defendant acts with actual malice if he or she has knowledge of facts or intentionally disregards facts that create a high probability of injury to the plaintiff and deliberately proceeds to act in conscious or intentional disregard of, or indifference to, the high probability of injury to the plaintiff.
  - (b) A defendant commits actual fraud for purposes of this section when the plaintiff has a right to rely on the representation of the defendant and suffers injury as a result of that reliance and if the defendant:
    - (i) makes a representation with knowledge of its falsity; or
    - (ii) conceals a material fact with the purpose of depriving the plaintiff of property or legal rights or otherwise causing injury.
- (5) All elements of the claim for punitive damages must be proved by clear and convincing evidence. Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. It is more than a preponderance of the evidence, but less than beyond a reasonable doubt.
- (6) After liability for punitive damages is determined by the trier of fact,
  - (a) if by a jury, the amount of damages must be determined by the jury in an immediate, separate proceeding, at which evidence of a defendant's financial affairs, financial condition, and net worth is admissible and must be considered,
  - (b) if by a judge, the judge shall clearly state his reasons for making the award in findings of fact and conclusions of law, demonstrating consideration of each of the following matters:
    - (i) the nature and reprehensibility of the defendant's wrongdoing;
    - (ii) the extent of the defendant's wrongdoing;
    - (iii) the intent of the defendant in committing the wrong;
    - (iv) the profitability of the defendant's wrongdoing, if applicable;
    - (v) the amount of actual damages awarded by the jury;

- (vi) the defendant's net worth;
  - (vii) potential or prior criminal sanctions against the defendant based upon the same wrongful act; and
  - (viii) any other circumstances that may operate to increase or reduce, without wholly defeating, punitive damages.
- (c) The judge shall review a jury award of punitive damages, giving consideration to each of the matters listed in subsection (6)(b) of this Section. If, after review, the judge determines that the jury award of punitive damages should be increased or decreased, he may do so. The judge shall clearly state his reasons for increasing, decreasing, or not increasing or decreasing the punitive damages award of the jury in findings of fact and conclusions of law, demonstrating consideration of each of the factors listed in subsection (6)(b) of this Section.

### **Part 3 - Specific Performance of Obligations**

**4-2-301. When specific performance may be required.** Specific relief may be given

- (1) when such relief could also be granted as a traditional remedy as provided in Sections 4-2-101 and 4-2-102, and
- (2) as provided in this Part.

**4-2-302. When specific performance of an obligation may be compelled.** The specific performance of an obligation may be compelled when:

- (1) the act to be done is in the performance, wholly or partly, of an express trust;
- (2) the act to be done is such that pecuniary compensation for its nonperformance would not afford adequate relief;
- (3) it would be extremely difficult to ascertain the actual damage caused by the nonperformance of the act to be done; or
- (4) it has been expressly agreed in writing by the parties to the contract that specific performance may be required by either party or that damages shall not be considered adequate relief.

**4-2-303. Obligations which cannot be specifically enforced.** The following obligations cannot be specifically enforced:

- (1) an obligation to render personal service or to employ another in the rendering of personal service;
- (2) an agreement to marry or live with another;
- (3) an agreement to perform an act which the party has no power to perform lawfully when required to do so;
- (4) an agreement to procure the act or consent of any third person; or



(5) an agreement the terms of which are too ambiguous to ascertain the precise act which is to be done.

**4-2-304. Right to specific performance mutual.** When either of the parties to an obligation is entitled to a specific performance thereof, the other party is also entitled to it, together with full compensation for any want of entire performance by the other party.

**4-2-305. Parties who cannot be compelled to perform.** Specific performance cannot be enforced against a party to a contract in any of the following cases:

- (1) if he or she has not received adequate consideration for the contract;
- (2) if it is not, as to him or her, just and reasonable; or
- (3) if the party's assent was
  - (a) obtained by the misrepresentations, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract or by any promise of such party which has not been substantially fulfilled, or
  - (b) given under the influence of mistake, misapprehension, or surprise.

**4-2-306. Parties who cannot obtain specific performance.** Specific performance cannot be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his or her part to the obligation of the other party except where his or her failure to perform is only partial and either entirely immaterial or capable of being fully compensated, in which case specific performance may be compelled upon full compensation being made for the default.

#### **Part 4 - Prejudgment Attachment**

**4-2-401. Cases in which property may be attached.** (1) Property may be attached in an action upon a contract, express or implied for the direct payment of money where the contract

- (a) is not secured; or
- (b) was originally secured and the security has, without any act of the plaintiff or the person to whom the security was given, become valueless.

**4-2-402. Property subject to attachment.** All property within the Flathead Reservation of the defendant not exempt from execution may be attached and, if judgment is recovered, sold to satisfy the judgment and execution. Property exempt from execution is exempt from attachment.

**4-2-403. Court record not public until writ returned.** In cases involving attachment, the Clerk of Court must not make public the fact of the filing of the complaint or the issuing of a writ of attachment until after the filing of return of service of attachment.

**4-2-404. Attachment book to be kept by Clerk of Court.** There must be kept by the Clerk of Court a book called the "attachment book", in which must be entered, in alphabetical order, the names of

all persons against whom any writ or notice of attachment has been filed. There must also be entered in said book the time such writ or notice was filed.

**4-2-405. Time for issuance of writ--notice.** A writ to attach the property of the defendant may be issued by the judge assigned to the case at the time of or after issuing summons and before answer, on approving an affidavit by or on behalf of the plaintiff showing the facts required in section 4-2-401, 4-2-406, and, if applicable, 4-2-407, and an undertaking as provided in section 4-2-408; and when the party seeking attachment has made a prima facie showing

- (1) in the case of real property, of his or her right to attachment and the necessity for seizure;
- (2) in the case of personal property,
  - (a) of his or her right to attachment and the necessity for seizure at a show cause hearing with at least 3 days' notice to the defendant; if the defendant cannot be found for personal service, notice shall be posted on the property and in three public places within the Reservation and within 10 miles of the location of the property; or
  - (b) of his or her right to attachment and the necessity for seizure and that the delay caused by notice and hearing would seriously impair the remedy sought by the party seeking possession. Evidence of such impairment must be presented in open court, and the court must set forth with specificity the reasons why such delay would seriously impair the remedy sought by the person seeking attachment.

**4-2-406. Plaintiff's affidavit.** When attachment of a defendant's property is sought, an affidavit must be made by the plaintiff or his authorized agent stating:

- (1) facts which show the defendant is indebted to the plaintiff in the manner specified in Section 4-2-401.
- (2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;
- (3) facts creating a reasonable belief that the defendant
  - (a) is leaving or about to leave the Reservation taking with him or her property, money, or other effects which might be subjected to payment of the debt;
  - (b) is disposing or about to dispose of his or her property which would be subject to execution; or
  - (c) is likely to suffer liens or encumbrances on his or her property which would be subject to execution; and
- (4) a particular description and the actual value of the property to be attached.

**4-2-407. Affidavit requirements when debt not yet due.** An action may be commenced and writ of attachment issued upon any debt for the payment of money before the same shall have become due when it shall appear by the affidavit, in addition to what is required in sections 4-2-401, 4-2-405, and 4-2-406,

- (1) that the defendant is leaving or is about to leave the Reservation, taking with him property, moneys, or other effects which might be subjected to the payment of the debt, for the purpose of defrauding his or her creditors, or

(2) that the defendant is disposing of his or her property or is about to dispose of his or her property, subject to execution, for the purpose of defrauding his or her creditors.

**4-2-408. Plaintiff's undertaking.** Before issuing the writ, the court must require a written undertaking by the plaintiff, with two or more sufficient sureties to be approved by the court, in a sum not less than double the amount claimed by the plaintiff if such amount be \$1,000 or under or, in case the amount claimed by the plaintiff exceeds \$1,000, then in a sum equal to such amount. In no case shall an undertaking be required exceeding the sum of \$20,000. The condition of such undertaking shall be to the effect that if the defendant recovers judgment or if the court finally decides that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant and all damages he may sustain by reason of issuing the attachment, not exceeding the sum specified in the undertaking.

**4-2-409. Form and content of writ -- defendant's undertaking to prevent levy.** (1) The writ must be directed to the Chief of the Tribal Police and must require him to:

(a) attach and safely keep all the property of the defendant within the Reservation not exempt from attachment, or so much thereof as may be sufficient to satisfy the plaintiff's demand, the amount of which must be stated in conformity with the complaint; or

(b) if the defendant gives to the police security by the undertaking of two sufficient sureties in an amount sufficient to satisfy the demand, without costs, take such undertaking.

(2) A defendant's undertaking accepted by the police must be to the plaintiff and must be approved in writing on the back thereof by the plaintiff or his or her attorney or, upon their refusal, by the judge issuing the writ.

**4-2-410. Custody of books and evidences of title.** The police must take into their custody all books of account, vouchers, and other papers relating to the personal property attached and all evidence of defendant's title to real property held in fee attached, which they must safely keep.

**4-2-411. Attachment of non-trust real property.** Real property or any interest therein belonging to the defendant, to which legal title is not held by the United States, and recorded on the books of a county in the name of the defendant or of any other person is attached by filing with the county clerk a copy of the writ, together with the description of the property attached and a notice that it is attached.

**4-2-412. Personal property capable of manual delivery.** Personal property capable of manual delivery must be attached by taking it into custody unless it is in the possession of a third person, in which case it may be attached as provided in Section 4-2-411.

**4-2-413. Debts, credits, and personal property in control of third person or not capable of manual delivery.** Upon receiving information in writing from the plaintiff or his or her attorney that any person has in his possession or under his control any credits or other personal property belonging to the defendant or is owing any debt to the defendant, the sheriff must serve upon such person a copy of the writ and a notice that such credits or other property or debts, as the case may be, are attached in pursuance of the writ. Debts and credits attached may be collected by the police if the same can be done without suit. A police receipt is a sufficient discharge for the amount paid.

**4-2-414. Duty to execute and security for police costs.** The Chief of Police must execute any writ of attachment directed to him without delay. The police may not attach more property than appears necessary to satisfy the plaintiff's demand. If the police will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of a writ shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ.

**4-2-415. Personal property subject to a security interest.**

(1) Personal property subject to a security interest may be taken on attachment, provided that, prior to the taking, the officer levying the writ pays or tenders to the secured party the amount of the security agreement debt and interest or deposits the same with the Clerk of the Court.

(2) Upon 15 days' written notice served upon a secured creditor by any creditor seeking a writ of attachment, a secured creditor shall file with the Clerk of Court an affidavit showing

(a) the amount of indebtedness then actually due and owing to the secured creditor,

(b) the amount of the original obligation,

(c) all additional advancement of money or property made by the creditor to the debtor on the principal obligation since the date of execution of the security agreement,

(d) all payments of principal or interest made by the debtor since the date of execution of the security agreement, and

(e) the balance then remaining due and unpaid to the secured party.

(3) If the secured creditor fails or refuses to file such an affidavit with the Clerk of the Court, the security agreement is of no force or effect as against an attaching creditor.

**4-2-416. Examination of defendant or person controlling property or debts -- order that property be delivered.** Any person owing debts to the defendant or having in his possession or under his control any credits or other personal property belonging to the defendant may be required to appear before the court and be examined on oath respecting the same. The defendant may also be required to attend for the purpose of being examined on oath respecting his property. After such examination, the court may order

(1) personal property capable of manual delivery in the hands or under the control of the defendant or a third person to be delivered to the Chief of Police on such terms as may be just in consideration of any liens thereon or claims against the property, and

(2) a memorandum to be given by the defendant quantifying and describing all other personal property.

**4-2-417. Sheriff to retain nonperishable attached property and proceeds of sales--claim by third person.** (1) The proceeds and other property attached by the police must be retained by the Chief of Police to answer any judgment that may be recovered in the action unless earlier subjected to execution upon another judgment issued prior to the issuing of the attachment.

(2) If personal property attached is claimed by a third person, the claimant shall deliver to the Chief of Police an affidavit stating his claim, ownership, and a description of the property. Unless the plaintiff, within 10 days of receiving notice of the filing of the affidavit with the Chief of Police, gives to the police

a good and sufficient bond indemnifying the Chief against loss or damage by reason of retaining said property, the Chief shall deliver the property to the claimant.

**4-2-418. Inventory of attached property -- cooperation of persons controlling credits or debts.** (1) The Chief of Police must make a full inventory of the property attached and return the same with the writ.

(2) To enable the Chief of Police to make a return of debts and credits attached, he must request, at the time of service of the writ, that the person owing the debt or having the credit give him a statement of the amount of the debt or credit. If such a statement is refused, the Chief of Police may apply upon one days' notice to the court for an order to compel the statement to be provided. If the order is granted, it shall also direct the payment of costs of the motion by the person refusing to supply the statement.

**4-2-419. Return of the writ.** The Chief of Police must return the writ of attachment with the summons if issued at the same time, otherwise, within 20 calendar days after its receipt, with a certificate of his proceedings endorsed thereon or attached thereto.

**4-2-420. Notice of right to post seizure hearing--quashing a writ.** (1) When a writ has been issued upon real property or upon a showing specified in Section 4-2-407, notice of the right to challenge the seizure of the property at a post seizure hearing shall be served personally on the defendant, or if the defendant cannot be found for personal service, notice shall be posted on the property and in three public places within the Reservation and within 10 miles of the property. Defendant must exercise the right to a post seizure hearing within 3 days after the seizure or 3 days after personal service or the posting of constructive notice, whichever is later.

(2) At such hearing the defendant may challenge the merit of the underlying action, the need for the prejudgment seizure of property, or both. The writ shall be quashed if the court makes a preliminary finding that:

- (a) the plaintiff cannot establish the prima facie validity of his claim; or
- (b) the plaintiff cannot establish by a preponderance of the evidence the need for the continued attachment of the defendant's property.

**4-2-421. Discharge of writ improperly issued.** (1) The defendant may also, at any time either before or after the release of the attached property or before an attachment shall have been actually levied, move, with reasonable notice to the plaintiff, to discharge the writ of attachment on the ground that the writ was improperly or irregularly issued.

(2) If it appears that the writ was improperly or irregularly issued, it must be discharged, but the court may allow the plaintiff to amend his or her affidavit or undertaking.

(3) Before issuing an order of discharge which releases from the operation of the attachment any or all of the property attached, the court shall require an undertaking by at least two sureties on behalf of the defendant to the effect that in case the plaintiff recovers judgment in the action, the defendant and the sureties will, on demand, pay to the plaintiff the full value of the property released.

(4) An order discharging or releasing attachment of real property by a defendant shall be filed in the office of the county clerk in which the notice of attachment was filed.

**4-2-422. Sale of attached property.** (1) If any of the property attached is perishable, the Chief of Police must sell it as property is sold on execution on a judgment.

(2) When property has been taken by an officer under a writ of attachment, a plaintiff On reasonable notice to the defendant or his attorney, may apply to the court for an order of sale. If it appears to the court that the interest of the parties will be best served by a sale, it may order that the property be sold in the same manner as an execution on a judgment and that the proceeds be deposited in the court to await judgment in the action.

(3) When the property sold under a writ of attachment is subject to a security agreement, the officer levying the writ must apply the proceeds of the sale as follows:

- (a) to the repayment of the sum paid to the secured party, with interest to the date of payment; and
- (b) the balance, if any, applied as proceeds of sales are applied in execution on a judgment.

(4) An attaching creditor is required to deliver to the debtor the security agreement and any note or other evidence of indebtedness secured thereby obtained from the secured party when the property is sold for the amount of the indebtedness under the security agreement or an amount in excess thereof.

**4-2-423. Judgment when debt not due.** (1) On trial of any cause brought under the provisions of 4-2-407, judgment may be rendered on a debt not due upon satisfactory proof to the court of the facts alleged in the affidavit for attachment. Such judgment shall include a rebate of interest from the date of the judgment until the date when the date would have become due.

(2) The defendant may object to the allegations of the affidavit required in 4-2-407, and if the plaintiff fails to substantiate any cause required to be alleged in the affidavit, the suit for debt or debts not due shall be dismissed.

**4-2-424. Disposition of attached property and proceeds of sales.** (1) If the defendant has judgment against the plaintiff, any undertaking received in the action, all of the proceeds of sales and money collected by the Chief of Police, and all property attached remaining with the police must be delivered to the defendant or his agent. The order of attachment shall be discharged and the property released.

(2) If the plaintiff has judgment against the defendant, the Chief of Police must satisfy it out of the property attached which has not been delivered to a party or a claimant, as herein before provided, or subjected to execution on another judgment recovered prior to the issuing of the attachment, if it be sufficient for that purpose:

- (a) by paying to the plaintiff the proceeds of all sales of perishable property or property order by the court to be sold, or of any debts or credits collected by the police, or so much thereof as is necessary to satisfy the judgment;
- (b) if any balance remain due and an execution shall have been issued on the judgment, by selling under the execution a sufficient amount of attached property to satisfy the balance, if enough of such property remains in the hands of the police. Notices of the sales must be given and sales conducted as in other cases of sales on execution.

(3) When the judgment is paid, the Chief of Police must deliver to the defendant the attached property remaining under police control and any proceeds of sales not applied to the judgment.

(4) If, after selling the attached property and applying the proceeds, together with the proceeds of any debt or credit collected by the Chief of Police, and deducting the police fee, any balance remains due on the judgment, the Chief of Police must collect the balance as upon executions in other cases.

## **Part 5 - Declaratory Judgments and Injunctions**

**4-2-501. Declaratory judgment -- creation of remedy.** In a case of actual controversy within its jurisdiction, the Tribal court, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

**4-2-502. Procedure for obtaining a declaratory judgment.** The procedure for obtaining a declaratory judgment pursuant to Section 4-2-501 shall be in accordance with the Federal Rules of Civil Procedure, and a trial by jury may be demanded. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

**4-2-503. Interpretation.** Except as may be otherwise provided by statute, sections 4-2-501, 4-2-502, and 4-2-504 shall be interpreted and construed to harmonize, as far as possible, with federal laws and interpretations of declaratory judgments.

**4-2-504. Further relief.** Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

**4-2-505. Definition of injunction.** An injunction is a court order requiring a person to refrain from a particular act.

**4-2-506. When injunction may not be granted.** An injunction cannot be granted:

- (1) to stay a judicial proceeding pending at the commencement of an action in which the injunction is demanded;
- (2) to prevent the lawful exercise of a Tribal office by the appropriate officer or officers;
- (3) to prevent a legislative act; or
- (4) to stay execution upon a valid and subsisting judgment after expiration of one year from the rendition of the judgment.

**4-2-507. Form and scope of injunction or restraining order.** An order granting an injunction or a restraining order shall:

- (1) set forth the reasons for its issuance;
- (2) be specific in its terms;
- (3) describe in reasonable detail, and not by reference to the complaint or any other document, the act or acts sought to be restrained; and
- (4) be binding only upon the parties to the action; their officers, agents, employees, and attorneys; and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

**4-2-508. Temporary restraining order.** When an application for an injunction is made upon adequate notice or an order to show cause, as provided in Section 4-2-511, the Tribal Court may enjoin the adverse party, until the hearing and decision of the application, by an order which is called a temporary restraining order.

**4-2-509. Grant of restraining order without notice.** (1) A temporary restraining order may be granted without written or oral notice to the adverse party or opposing attorney only if:

- (a) it clearly appears from specific facts shown by affidavit or by the verified complaint that a delay would cause immediate and irreparable injury to the applicant before the adverse party or the opposing attorney could be heard in opposition; and
- (b) the applicant or the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons supporting his or her claim that notice should not be required.

(2) Each temporary restraining order granted without notice must:

- (a) be endorsed with the date and hour of its issuance;
- (b) be filed immediately in the Clerk's office and entered in the record;
- (c) define the injury and state why such injury is irreparable and why the order was granted without notice; and
- (d) expire by its terms within such time after entry, not to exceed 10 calendar days, as the court fixes.

**4-2-510. Application for injunction to be heard without delay.** Whenever a temporary restraining order is granted without notice, the application for an injunction must be set for hearing at the earliest possible time and takes precedence over all matters. At the hearing the party who obtained the temporary restraining order shall proceed with the application for the injunction, or if he or she does not do so, the court or judge shall dissolve the temporary restraining order. On 2 days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion expeditiously.

**4-2-511. Notice of application for preliminary injunction.** (1) No preliminary injunction may be issued without reasonable notice to the adverse party of the time and place of the making of the application.



(2) Before granting an injunction order, the court shall make an order requiring cause to be shown, at a specified time and place, why the injunction should not be granted, and the adverse party may in the meantime be restrained as provided in Sections 4-2-507 through 4-2-509.

**4-2-512. Evidence required for issuance of preliminary injunction.** (1) Upon the hearing each party may present affidavits or oral testimony. An injunction order may not be granted on affidavits unless

(a) they are duly verified, and

(b) the material allegations of the affidavits setting forth the grounds for the order are made positively and not upon information and belief.

**4-2-513. Application to dissolve or modify an injunction -- hearing.** The party enjoined may apply to the court to dissolve or modify an injunction. The application may be made upon reasonable notice or upon an order to show cause returnable at a specified time or immediately after service thereof. The application must be supported by an affidavit showing that there is not sufficient ground for the injunction to continue or that the scope of the injunction is too broad. If, upon the hearing, it satisfactorily appears that there are not sufficient grounds for the injunction order, the order must be dissolved; or if it satisfactorily appears that the extent of the injunction order is too great, the order must be modified.

## **Part 6 - Repossession**

**4-2-601. Jurisdiction over Indian property.** Personal property owned by an Indian subject to the Tribal Court's jurisdiction may not be repossessed from within the exterior boundaries of the Flathead Reservation except pursuant to the provisions of this Part.

**4-2-602. Jurisdiction over parties seeking repossession.** By either attempting to repossess personal property owned by an Indian subject to the Tribal Court's jurisdiction from the exterior boundaries of the Flathead Reservation, or by pursuing remedies under the provisions of this Part, a person or business entity becomes subject to the Tribal Court's jurisdiction for the purposes of asserting defenses or counterclaims.

**4-2-603. Consent to repossession.** (1) Personal property may be repossessed without an Order of the Tribal Court if, at the time repossession is sought, the defendant voluntarily consents to the repossession in writing by signing a waiver that meets the following requirements:

(a) It must be in a readable type style of at least 14 point type; and

(b) It must contain this language:

### **CONSENT TO REPOSSESSION**

You may voluntarily consent to the repossession of this property if you believe that the repossession is lawful. If you have any questions about whether this action is lawful, you have the right to a hearing in the Tribal Court before the property can be repossessed. Please sign below to indicate your choice:

I, \_\_\_\_\_, waive my right to a hearing in the Tribal Court on the issue of whether repossession is lawful at this time. I voluntarily agree to the repossession of the following property:

(insert description of property to be repossessed)

I, \_\_\_\_\_, do not agree to the repossession of my property at this time. I request a hearing in the Tribal Court.

Signed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Debtor)

I, \_\_\_\_\_, representing the Creditor, \_\_\_\_\_, have read and explained this form to the Debtor before allowing the Debtor to sign above.

Signed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Signature of Creditor's agent)

(c) It must be filed with a Civil Complaint pursuant to Rule 8 of the Rules of Practice if a deficiency judgment is sought.

(2) If consent is not obtained in accordance with this section, a person or business entity seeking repossession of personal property must first obtain an Order of the Tribal Court under the provisions of this Part. This Part shall control the manner of repossession of personal property, notwithstanding contractual provisions between the parties to the contrary. Any contractual provisions that allow advance consent to repossession of personal property are void and of no effect. *(Rev. 4-15-03)*

**4-2-604. Repossession with foreign judgment.** If repossession of personal property is sought pursuant to a judgment of another jurisdiction, the Tribal Court retains the authority to inquire into the jurisdiction of the foreign Court to enter the judgment, pursuant to Section 4-3-205. *(Rev. 1-27-00)*

**4-2-605. Action for repossession commenced by filing complaint.** (1) An action to foreclose on personal property is commenced by filing a complaint in the Tribal Court. On verified allegations of the following elements, the Court shall issue an Order requiring the defendant to preserve the property at issue and not to remove it from the Flathead Reservation:

(a) The location of the property sought to be repossessed, if known.

(b) A description of the property in sufficient detail to identify it for the Court and those enforcing a repossession order.

(c) A description of the agreement which gives rise to the right to repossess the property. A copy of the agreement shall be attached to the complaint.

(d) Facts showing that the plaintiff is entitled to repossess the property, and that the matter is within the jurisdiction of the Tribal Court.

(e) Where applicable, the total amounts due and owing to the Plaintiff.

(f) Any claim for a deficiency judgment, if one exists after repossession of the subject property.

(g) The names of any other persons or business entities, if known, making a claim to an interest in the same property.

(2) The Order and the complaint for repossession shall be personally served on the defendant. If the plaintiff can show by verified affidavit to the Court's satisfaction that the subject personal property is in immediate danger of being concealed, damaged, destroyed, or removed from the Flathead Reservation, the Court may also order that the property be immediately surrendered to the Plaintiff to be stored on the Reservation pending a hearing.

*(Rev. 1-27-00) (Rev. 4-15-03)*

**4-2-606. Answer to complaint and hearing.** An answer to the Complaint must be filed within 10 days of service of the Complaint. If no answer is filed within this period of time, the plaintiff shall be entitled to an Order for immediate repossession of the property. If an answer is timely filed, a hearing shall be held within 10 days of the filing of the answer. At the hearing, the Court shall take evidence and determine if the plaintiff has made a prima facie case entitling it to relief, and that there do not appear to be any meritorious defenses or counterclaims. On making these findings, plaintiff shall be entitled to an order of repossession. *(Rev. 1-27-00)*

**4-2-607. Interlocutory relief.** If the defendant files an Answer raising defenses or counterclaims that appear to the Court to be meritorious, or presents evidence of the same at the hearing, then the Court may enter an order for any of the following relief:

(1) Impounding the property in the custody of the Plaintiff to be stored on the Reservation pending a final resolution of the case; or

(2) Requiring a bond to be posted by the plaintiff in an amount sufficient to cover the defendant's claims as a condition to issuing an order of repossession.

(3) Requiring a commercially reasonable disposition of the property under supervision of the Court, and payment of the proceeds into Court, pending final resolution of the case. *(Rev. 1-27-00)*

**4-2-608. Procedure after repossession.** (1) In all cases where repossession of property is permitted, a return shall be filed with the Court showing what action was taken on the repossession order, and how the property was disposed of by the plaintiff. The plaintiff shall fully account to the Court for the proceeds from the property.

(2) All repossessed property shall be disposed of in a commercially reasonable manner and the proceeds applied to the claims of the plaintiff. Any surplus shall be returned to the defendant, unless claims to the proceeds are made by others with security interests in the property or proceeds thereof, in which case the surplus shall be paid into the Tribal Court pending resolution of those claims. *(Rev. 1-27-00)*

**4-2-609. Relief for improper repossession.** (1) If personal property owned by an Indian subject to the Tribal Court's jurisdiction is repossessed from within the exterior boundaries of the Flathead Reservation in violation of the provisions of this Part, the affected person may bring an action to have the Court order the return of the property and to reinstate the underlying agreement. In addition, the affected person may seek actual damages caused by the unlawful repossession, or he may elect to bring an action for damages in an amount equal to twice the amount of the alleged underlying debt. In either event, the affected person shall also be entitled to costs and reasonable attorney fees if he prevails in the action.

(2) If suit is filed concerning the underlying debt in a jurisdiction other than the Tribal Court, then a violation of the procedures set forth in this part shall act as a complete defense to any claim for a deficiency judgment.

*(Rev. 1-27-00)*

## TITLE IV

### CHAPTER 3 - CIVIL JUDGMENTS

#### Part 1 - Civil Judgments and Records

**4-3-101. Definition.** "Judgment" includes a final trial court ruling on the merits, a decree, and any order from which an appeal lies. Every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

**4-3-102. Whose rights determined.** Subject to the provisions of Rule 54(b), Federal Rules of Civil Procedure, judgment may be given for or against one or more of several plaintiffs and for or against one or more of several defendants, and the court may, when the justice of the case requires, determine the ultimate rights of the parties on each side as between themselves.

**4-3-103. Judgment on findings by the court.** In all actions tried on the facts without a jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered. In granting or refusing interlocutory injunctions the court shall similarly set forth findings of fact and conclusions of law which constitute the grounds of its action. Findings of fact and conclusions of law are unnecessary in decisions on motions.

**4-3-104. Validity and effect of judgment.** (1) The requisites of a valid judgment are

- (a) adequate notice and an opportunity to be heard by persons whose interests are to be adjudicated,
- (b) the court must have territorial jurisdiction, and
- (c) the court must have subject matter jurisdiction.

(2) An objection of lack of adequate notice or opportunity to be heard may, in the absence of default, be waived by not raising the objection in the trial court.

(3) A trial court determination of territorial jurisdiction is conclusive if raised and adjudicated.

(4) A defense of lack of subject matter jurisdiction may be raised by any party or by the court at any time and cannot be waived.

(5) In considering the effect of a former adjudication in Tribal Court, the rules of res judicata are applicable to domestic and foreign judgments, including but not necessarily limited to, the concepts of barring relitigation and issue preclusion.

**4-3-105. Default.** (1) When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, the party entitled to a judgment by default shall apply to the court.

(2) A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment.

(3) No default of any party shall be entered, and no default judgment shall be entered against any party, except upon application of the opposing party. No judgment by default shall be entered when service has been by publication unless through a showing of evidence deemed satisfactory to the court, the

moving party demonstrates that other available methods of service were reasonably attempted and failed. No judgment by default shall be entered against a minor or incompetent person unless represented by a guardian, conservator, or other such representative who has appeared in the proceeding. If the party against whom the judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application.

(4) If, upon receipt of an application for a default judgment, the court finds that in order for it to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings as it deems necessary and proper.

(5) The provisions of this section apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim.

(6) No judgment by default shall be entered against the Confederated Salish and Kootenai Tribes or an official or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court. (*Rev. 4-15-03*)

**4-3-106. Setting aside default.** For good cause shown, the court may set aside a judgment of default.

**4-3-107. Offer of judgment.** At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the Clerk shall enter the judgment. An offer not accepted is deemed withdrawn and evidence thereof is not admissible.

**4-3-108. Records of judgments.** (1) The Clerk of Court shall keep with the records of the court a "judgment book" in which judgments must be entered.

(2) The Clerk shall also keep a docket. A docket is a book with each page divided into eight columns and headed as follows: judgment debtors; judgment creditors; time of entry of judgment; where entered in judgment book; date of taking appeal; judgment of appellate court; and time of entry of satisfaction of judgment. If the judgment is for relief other than money damages, the general character of the relief granted must be stated in the docket.

(3) The judgment book and the docket are open for public inspection during office hours of the Clerk of Court at no charge.

**4-3-109. Entry of judgment.** Upon a verdict by a jury or a decision by the court granting any relief or denying all relief, the Clerk shall prepare a form of judgment for the prompt approval and signature of the court. Each judgment shall be set forth on a separate document. Upon approval, the Clerk shall enter the judgment by placing it in its chronological order in the judgment book. Parties or their attorneys or representatives shall not submit forms of judgment except upon direction of the court, and these directions shall not be given as a matter of course.

**4-3-110. Docketing of judgment--period of lien.** (1) Immediately after the entry of the judgment in the judgment book, the Clerk must make the proper entries of the judgment under the appropriate heads in the docket.

(2) From the time the judgment is docketed, it becomes a lien upon the non-exempt property of the judgment debtor owned by him or her at the time of the judgment or which may be afterward acquired. The lien continues until the judgment is satisfied or for a period of 10 years, whichever first occurs. The judgments and court-ordered restitution referenced in Section 4-3-316(2)(b) of this Code are exempt from such time limitation. (*Rev. 4-15-03*)

**4-3-111. Entry of satisfaction of judgment in docket.** Satisfaction of a judgment shall be entered in the Clerk's docket upon an execution returned satisfied or upon an acknowledgment of satisfaction filed with the Clerk. An acknowledgment of satisfaction is made by endorsement of the judgment creditor or his or her attorney on the face or the margin of the record of the judgment. Whenever a judgment is satisfied in fact otherwise than by execution, the creditor or his or her attorney must give such endorsement. Upon motion, the court may compel the endorsement or may order the entry of satisfaction to be made without it.

## **Part 2 - Enforcement of Foreign Judgments**

**4-3-201. Definition.** "Foreign judgment" means a judgment, decree, or order of a court of the United States, of a State, or of a federally recognized Indian tribe.

**4-3-202. Filing and status of federal court judgment.** A copy of a federal court judgment, authenticated by the court of its origin, may be filed with the Clerk of Court. The Clerk shall treat the federal foreign judgment in the same manner as a judgment of the Tribal Court. A judgment so filed is subject to the same procedures of reopening, vacating, or staying as a judgment of the Tribal Court and may be enforced in like manner.

**4-3-203. Notice of filing of federal judgment.** (1) At the time of the filing of the federal court judgment, the judgment creditor or the creditor's attorney shall file with the Clerk of Court an affidavit setting forth the name and last-known post office address of the judgment debtor and judgment creditor. The affidavit must include a statement that the federal judgment is valid, enforceable, and not appealable, and the extent to which it has been satisfied.

(2) Promptly upon filing the federal judgment and affidavit, the judgment creditor or someone on his or her behalf shall mail notice of the filing of the judgment and affidavit, attaching a copy of each to the notice, to the judgment debtor and to the debtor's attorney of record, if any, each at his last-known address, by certified mail, return receipt requested. The notice must include the name and post office address of the judgment creditor and the judgment creditor's attorney, if any, within the Reservation. The judgment creditor shall file with the Clerk an affidavit setting forth the date upon which the notice was mailed.

(3) The federal judgment may not be executed upon by the judgment creditor earlier than 30 days after the date of mailing the notice of filing.

(4) If, during the 30-day period, the judgment debtor shows the Tribal Court any ground upon which a similar Tribal Court judgment would be stayed, the court will stay enforcement of the federal court judgment for an appropriate period.

**4-3-204. Filing and status of state court judgments and judgments of other tribal courts.**

In the interests of comity, a party in whose favor a state court judgment or the judgment of another tribal court was entered may bring an action for enforcement of the judgment in Tribal Court. Such action shall be commenced by the filing of a verified complaint, to which the authenticated foreign judgment and a copy of the entire record of the state court or tribal proceeding shall be attached. The complaint shall include

(1) jurisdictional facts sufficient for the court to determine that the state or tribal court had subject matter jurisdiction over the cause and personal jurisdiction over the defendant during the proceedings, and

(2) have attached an affidavit attesting to the existence of:

(a) adequate notice and an opportunity to be heard by persons whose interests were adjudicated, and

(b) proper jurisdiction over the parties and the subject matter in the court issuing the judgment. (*Rev. 4-15-03*)

**4-3-205. Grounds for declination of enforcement of state court judgment.** (1) A defendant in an action to enforce a state court judgment or the judgment of another tribal court may collaterally attack the judgment in a first responsive pleading on grounds of jurisdictional defects or infringement of the rights of the defendant under the federal Indian Civil Rights Act.

(2) If a defendant fails to file a responsive pleading, the court will subject the foreign judgment and record to strict scrutiny for jurisdictional or constitutional deficiencies. Such scrutiny may include an evidentiary hearing on any jurisdictional or constitutional issues raised on the face of the foreign judgment or record of proceedings.

(3) If the court finds jurisdictional or constitutional defects in the judgment or the record of the state or tribal court proceedings, it will decline to enforce the judgment.

**4-3-206. Decision and enforcement.** A ruling accepting or declining a state or tribal court judgment for enforcement shall be based upon findings of fact and conclusions of law. The court's ruling shall be filed with the Clerk of Court for entry in the judgment book and docket. If enforcement of the judgment is declined by the court, the Clerk shall transmit the findings and conclusions to the court issuing the judgment.

**4-3-207. Authentication of foreign judgment and court records.** An official record kept within the United States, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of that record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody.

**4-3-208. Fees.** Any person filing a foreign judgment or a complaint seeking to enforce a foreign judgment shall pay to the Clerk of Court a fee of \$75.



### Part 3 - Execution on Judgment

**4-3-301. Time limit for issuing execution.** (1) The party in whose favor judgment is given may, at any time within 10 years after the entry thereof, have a writ of execution issued for its enforcement.

(2) When the judgment is for the payment of child support, the party in whose favor the judgment is given may, at any time within 10 years after the termination of the support obligation or within 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, have a writ of execution issued for its enforcement. *(Rev. 4-15-03)*

**4-3-302. Renewal after 10 years.** A judgment may be renewed for an additional 10 years after the lapse of the initial 10 year term by motion or by a new judgment founded on supplementary pleadings filed within 40 days of such lapse. Except as provided in 4-3-316(2)(b) of this Code, such judgment may not be renewed a second time. *(Rev. 4-15-03)*

**4-3-303. Execution after death of a party.** Notwithstanding the death of a party after the judgment, execution may be issued or it may be enforced as follows:

(1) In case of the death of the judgment creditor, the judgment may be enforced upon application of the creditor's personal representative or successor in interest.

(2) In case of the death of the judgment debtor, if the judgment is for the recovery of non-exempt property or for the enforcement of a lien, execution may be issued with the same effect as if the judgment debtor were living.

**4-3-304. Compelling contribution or repayment.** (1) When property liable to an execution against several persons is sold and more than a due proportion is satisfied out of the proceeds of the sale of property of one or them, or one of them pays, without a sale, more than his share, he or she may compel contribution from the others. When a judgment is against several persons and is upon an obligation of one of them as surety for another and the surety pays the amount or any part of the judgment, the surety may compel repayment from the principal.

(2) The person so paying or contributing is entitled to enforce contribution or repayment if, within 10 days after the payment, he or she files with the Clerk of the Court notice of the payment and claim to contribution or repayment. The Clerk shall make an entry of the notice in the margin of the docket.

**4-3-305. Methods of enforcement.** (1) When the judgment is for money or the possession of non-exempt real or personal property, it may be enforced by a writ of execution.

(2) When the judgment requires the sale of property, it may be enforced by a writ reciting the judgment or its material parts and directing the Chief of the Tribal Police to execute the judgment and apply the proceeds as the judgment directs.

(3) When the judgment requires the performance of any other act than those designated in subsections (1) and (2) of this Section, a certified copy of the judgment may be served upon the party against whom the same is rendered or upon the person or officer required to obey the judgment, and obedience may be enforced by the court.

**4-3-306. Application for writ of execution.** A person in whose favor a judgment is rendered may apply to the court for a writ of execution. An application for a writ shall be directed to a judge of the Tribal Court. The application for the writ shall contain

- (1) the name, address, and telephone number(s) of the applicant,
- (2) the name and address of the person against whom the judgment is to be enforced, and, if the person is a Tribal member, the member's enrollment number,
- (3) the date of the judgment, a description of the property to be executed upon and its location, the principal amount owed if the judgment is for the payment of money, and any accumulated post judgment interest,
- (4) if personal property subject to a security interest is to be taken on execution, evidence that a deposit in the amount of the secured debt and interest, payable to the secured party, has been made with the filing officer with whom, pursuant to law, the financing statement has been filed,
- (5) a copy of the judgment,
- (6) a form of the writ, and
- (7) evidence of payment of a fee of \$75 to the Clerk of the Tribal Court upon the filing of the application.

**4-3-307. Execution Upon Property Subject to a Security Interest** (1) Notice to Secured Party A judgment creditor may execute upon personal property of the judgment debtor that is subject to a security interest but before any such property may be taken on execution the judgment creditor must serve written notice upon the secured party under any security agreement of record of the judgment creditor's intent to satisfy a judgment of said creditor against property of the debtor. The notice may be served by U.S. Mail directed to the secured party's last known address appearing of record or by personal service. Such notice must state the address and telephone number of the judgment creditor or its counsel of record and request that the secured party file or serve an affidavit within 15 days showing the amount of indebtedness then actually due and owing to the secured party; the amount of the original obligation for which the security agreement was given as security; all advancements of money or property on the principal obligation since the date of the execution of the security agreement; all payments of whatever kind, whether on principal or interest, made by the debtor to the date of the execution of the affidavit; and the balance then remaining due and unpaid to the secured party. If the secured party files an affidavit as requested in the office of the filing officer with whom the financing statement covering the security agreement is filed or serves such affidavit directly upon the judgment creditor or its counsel of record by U.S. Mail directed to the address contained in the notice received from the judgment creditor, before the judgment creditor may execute upon the personal property subject to the security interest, the officer levying the writ must pay or tender to the secured party the amount of the security agreement debt then remaining due and unpaid or must deposit such amount with the filing officer with whom the financing statement covering the security agreement is filed payable to the order of the secured party.

(2) Duty of Secured Party. The secured party under any security agreement of record shall, upon 15 days' notice in writing served upon him in the manner as described in paragraph (1) above by any judgment creditor seeking to satisfy a judgment, is required to file an affidavit in the office where the financing statement covering the security agreement is filed showing the amount of the indebtedness then actually due and owing to the secured party; the amount of the original obligation for which the security agreement was given as security; all additional advancements of money or property on the principal obligation since the date of the execution of the security agreement; all payments of whatever kind, whether on principal or

interest, made by the debtor to the date of the execution of the affidavit; and the balance then remaining due and unpaid to the secured party. If the secured party fails, refuses, or neglects within 15 days from the service of any notice in writing to file or serve the required affidavit in the manner as described in paragraph (1) above, the security agreement shall be of no force or effect against such judgment creditor upon the taking on execution of any property subject to the security agreement.

(3) If the amount shown to be due is paid to the filing officer or to the secured party in satisfaction of the security agreement by any execution creditor against the debtor, the secured party is required to surrender to the filing officer the security agreement and any note or other evidence of indebtedness secured thereby, which security agreement or other evidence of indebtedness shall be delivered by the secured party or filing officer to the execution creditor. *(Rev. 4-15-03)*

**4-3-308. Contents of writ.** The writ of execution must

(1) be issued in the name of the Confederated Salish and Kootenai Tribes, sealed with the seal of the Tribal Court and subscribed by a judge;

(2) be directed to the Chief of the Tribal Police, the Tribal Records Manager, or the employer of the judgment debtor, as prescribed in section 4-3-311;

(3) describe the judgment, stating the name and address of the applicant for the writ and of the person against whom the judgment is to be enforced, the date when the judgment was entered, and, if it is for money, the amount of the judgment and the amount actually due thereon, or if not for money, the amount of the execution stated in dollars and cents;

(4) describe in detail the property to be executed upon;

(5) require the Chief of the Tribal Police, the Tribal Records Manager or the employer of the judgment debtor, as appropriate, to act substantially as provided in Sections 4-3-310 and 4-3-312;

(6) contain directions to the levying officer as provided in Sections 4-3-316 and 4-3-317, or as may be required to complete the execution pursuant to law; and

(7) have copies of Sections 4-3-316 and 4-3-317 attached for presentation to the judgment debtor at the time of levying. *(Rev. 4-15-03)*

**4-3-309. Issuance of writ.** (1) Not less than 5 nor more than 10 days after the filing of an application for a writ of execution, the court will approve the application and issue the writ unless it finds, in writing, that incomplete or inaccurate information is contained in the application or the form of writ, that exempt property is proposed to be executed upon, or that the execution would be in contravention of the rights of a secured creditor.

(2) Upon subscription of the writ by the judge, the Clerk of Court shall docket the writ and transmit it or a certified copy of the same, with the application, to the levying officer.

**4-3-310. Execution in particular circumstances.** (1) A judgment rendered against debtors and sureties shall so state, and an execution shall direct the levying officer to make the amount due out of the non-exempt goods, lands, wages, or assets of the debtors, and only if the judgment cannot be so satisfied, to make the balance out of the non-exempt property, personal or real, of the sureties.

(2) If the writ of execution is against the property of a judgment debtor, it shall require the levying officer to satisfy the judgment, with interest, out of the non-exempt personal property of the debtor and, if sufficient personal property cannot be found, out of his non-exempt real property.

(3) If the writ of execution be against non-exempt real or personal property in the hands of personal representatives, heirs, devisees, legatees, or trustees, it shall require the levying officer to satisfy the judgment, with interest, out of such property.

(4) If the writ of execution be for the delivery of the possession of non-exempt real or personal property, it must require the levying officer to deliver the possession of the property, particularly describing it, to the party entitled to possession.

**4-3-311. To whom execution issued.** (1) In the circumstances where execution upon a Tribal member's per capita payment is permitted as provided in Section 4-3-316, the writ shall be issued to the Tribal Records Manager.

(2) Where the writ is against the non-exempt property of a judgment debtor or where it requires the delivery of non-exempt real or personal property, it must be issued to the Chief of the Tribal Police.

(3) Where the writ is against earnings or wages of a judgment debtor it may be called a writ of garnishment, and it must be issued to the debtor's employer in compliance with the requirements of Section 4-3-312(3) of the CSKT Laws Codified and 15 USC Sec. 1673. *(Rev. 4-15-03)*

**4-3-312. How writ executed.** (1) If the Chief of Tribal Police is the levying officer, he must execute the writ against the property of the judgment debtor no later than 60 days after receipt of the writ by levying on a sufficient amount of non-exempt property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than necessary to satisfy the judgment and accruing costs, the Chief of Police must levy only on such part of the property as the judgment debtor may select if the property selected is sufficient to satisfy the judgment and costs.

(2) If the levying officer is the Tribal Records Manager, where the writ is issued at least 21 days prior to a date certain established by the Tribal Council for a distribution of per capita payments, the writ shall be executed upon the per capita payment made upon the date certain, and upon each succeeding such payment until the judgment, with interest, is satisfied or expires. If the writ is issued to the Tribal Records Manager after the twenty-first day prior to the date certain established by the Tribal Council for a distribution of per capita payments, the Manager will execute upon the writ commencing with the next future per capita payment, if any, after the payment made upon the date certain, and upon such successive payments as may be sufficient to satisfy the judgment with interest or until such time as the judgment expires. In the event of multiple competing writs, the Tribal Records Manager shall prioritize and execute against the Tribal member's per capita payments according to Section 4-3-316(2) below. The Tribal Records Manager shall retain all writs issued against per capita payments until they are paid in full or until the Tribal member is no longer entitled to receive per capita payments.

(3) If the levying officer is an employer of the judgment debtor, the sum to be levied for each pay period is to be calculated as follows:

(a) Except as provided in subsections (b) and (c), the maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subjected to garnishment may not exceed the lesser of:

(i) the amount by which his or her disposable earnings for the week exceed 30 times the federal minimum hourly wage in effect at the time the earnings are payable; or

(ii) 25% of his or her disposable earnings for that week.

(b) The restrictions of subsection (a) of this Section do not apply in the case of an order or judgment for the maintenance or support of any person issued by a court of competent jurisdiction.

(c)(i) The maximum part of the aggregate disposable earnings of a judgment debtor for any workweek that is subject to garnishment to enforce a maintenance or support order described in subsection (b) of this Section may not exceed:

(ii) 50% of the judgment debtor's disposable earnings for that week if he or she is supporting a spouse or dependent child (other than a spouse or child for whom the order is issued); or

(iii) 60% of the judgment debtor's disposable earnings for that week if he is not supporting a spouse or dependent child.

(d) For purposes of this subsection, the definitions of earnings, disposable earnings, and garnishment are as set for in 15 U.S.C. Section 1672. *(Rev. 4-15-03)*

**4-3-313. Security for costs when property seized.** If the Chief of Police will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of a writ of execution shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ.

**4-3-314. Return of the execution.** (1) A writ of execution issued to the Chief of Police shall be made returnable to the Clerk of the Court not more than 60 days after imposition of the levy as provided in Section 4-3-311(1).

(2) A writ of execution issued to the Tribal Records Manager shall be made returnable to the Clerk of the Court not more than 30 days after the judgment is satisfied or within 6 years from the date of its issuance, whichever shall earlier occur.

(3) A writ of execution issued to an employer for the garnishment of the wages of a judgment debtor shall be made returnable to the Clerk of the Court not more than 30 days after the judgment is satisfied or within two years from the date of its issuance, whichever shall earlier occur.

**4-3-315. Clerk to record returned execution.** If property is levied upon, the Clerk of Court must record the execution and the return of the writ and certify the same as true copies in a book to be called the "execution book", which must be indexed with the names of the plaintiffs and defendants in execution alphabetically arranged, and kept open at all times during office hours for the inspection of the public, without charge.

**4-3-316. Property subject to execution -- limitations and exemptions.** (1) All goods, chattels, moneys, and other property, both real and personal, or any interest of the judgment debtor in such property, except exempt property as provided in section 4-3-317, are liable to execution subject to the limitations set out in subsections (2) and (3) of this subsection.

(2) Although per capita payments distributed by the Tribes are not the property of Tribal members until distributed, upon the Tribal Council's declaration of intended distribution in a sum certain on a date certain, a member's payment is subject to assignment by the member unless the payment is subject to execution and levy by the Tribal Records Manager in the following priority of circumstances:

- (a) on a judgment and order for child support;
- (b) on a judgment rendered in favor of the Confederated Salish and Kootenai Tribes or any Tribal entity;
- (c) for court-ordered restitution imposed as a sentence or a component of a sentence for a criminal offense or as a penalty ordered in connection with an adjudication of juvenile delinquency; or
- (d) on a valid judgment predating August 11, 1995, with a writ of execution issued as provided in Sections 4-3-308 and 4-3-309, or with a prior writ of execution and creditor's accounting as provided in the Resolution of the Tribal Council 95-200, dated August 11, 1995, which Resolution is superseded and repealed by this Ordinance.

(3) Only those earnings of a judgment debtor subject to garnishment as provided in Section 4-3-312 are liable to execution. *(Rev. 4-15-03)*

**4-3-317. Property exempt from execution.** A judgment debtor is entitled to exemption from execution on the following:

- (1) any assets or property, real or personal, within the Flathead Indian Reservation, to which the legal title is held by the United States of America for the benefit of the Confederated Salish and Kootenai Tribes or any individual Indian;
- (2) all lands, buildings, and grounds with the fixtures, equipment, furniture, books, papers, computers, and appurtenances pertaining to the public offices or for the use of the Confederated Salish and Kootenai Tribes or the public use of its members, and such property as may be necessary to carry out the governmental functions of any governmental entity with property located within the Reservation;
- (3) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;
- (4) personal property recognized by the Tribal Court or the Tribal Council as having significant spiritual, religious, or traditional value;
- (5) benefits the judgment debtor has received or is entitled to receive under
  - (a) federal social security
  - (b) federal, state or Tribal public assistance,
  - (c) veterans' disability programs
  - (d) unemployment compensation or workers' compensation programs,
- (6) a home,
- (7) maintenance and child support

- (8) the portion of a wage remaining after once being garnished;
- (9) the judgment debtor's interest, not exceeding a value of \$1,000 in any item or \$5,000 in the aggregate, in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops, and musical instruments,
- (10) the judgment debtor's interest, not to exceed \$2,500 in one motor vehicle, and
- (11) the judgment debtor's interest, not to exceed \$3,000 in aggregate value, in any implements, professional books, and tools, of the trade of the judgment debtor or a dependent of the judgment debtor.  
*(Rev. 4-15-03)*

**4-3-318. Effective date and application to pending proceedings.**

Chapters 1 through 3 of this Title apply to all civil actions filed on or after June 3, 1996, to judgments in proceedings pending on that date, and to post judgment procedures and limitations, and enforcements on judgments outstanding on that date.

## TITLE IV

### CHAPTER 4 - SMALL CLAIMS PROCEDURES

#### Part 1 - General Provisions

**4-4-101. Purpose.** It is the purpose of this Chapter to promote the disposition of small claims in Tribal Court without the necessity of a formal trial.

**4-4-102. Application and Parties.** (1) Procedures provided by this Chapter shall be applied by the Tribal Court sitting as the Small Claims Division of the Tribal Court in all actions for money damages, as follows:

- (a) when the amount claimed is not less than \$50, nor more than \$3000, exclusive of costs; and
  - (b) when the claim arises within the exterior boundaries of the Flathead Reservation; and
  - (c) when the parties are subject to the jurisdiction of the Tribal Court pursuant to Section 1-2-104 of this Code and applicable federal law.
- (2) A plaintiff in a small claims action may be an individual, partnership, corporation, association, firm, government agency or subdivision, guardian, conservator, or personal representative.
- (3) No plaintiff may file an assigned claim in the Small Claims Division.
- (4) By filing a claim pursuant to these procedures, a plaintiff consents to the jurisdiction of the Tribal Court for the purpose of adjudicating any counterclaim against him or her that the defendant may have. (Rev. 4-15-03)

**4-4-103. Representation.** (1) A party in a small claims proceeding may not be represented by an attorney or a Tribal Court Advocate unless every party is represented by an attorney or advocate. In the event that all parties are represented, each representative shall file a notice of appearance with the Clerk of Court no later than three (3) Tribal working days prior to the time set for hearing.

(2) An individual may represent himself or herself in a small claims action. A partnership may be represented by a partner or by an employee. Any other kind of organization may be represented by a member or an employee. (Rev. 4-15-03)

#### Part 2 - Procedure Before Trial

##### **4-4-201. Commencement of a small claims action and assistance to claimant.**

- (1) A small claims action is commenced whenever any person appears before the Clerk of Court and executes a sworn small claims complaint in substantially the same form as that set forth in Section 4-4-202.
- (2) The Clerk of Court shall assist any claimant who requests assistance in preparing his or her complaint. The Clerk of Court shall prepare, in plain language, instructions explaining the procedures for prosecuting and defending a small claim. The Clerk shall give the plaintiff a copy of the instructions when the plaintiff



appears to execute his or her complaint, and a copy must be attached to the order of court/notice to defendant.

**4-4-202. Form of Complaint, Order of Court, and Notice to Defendant.** The sworn complaint, the order of court, and the notice to defendant shall substantially conform to the appropriate sample forms included at the end of this Chapter. (Rev. 4-15-03) (Rev. 3-21-13)

**4-4-203. Hearing date.** The date for the appearance of the defendant to be set forth in the order shall be determined by the Clerk of Court and may not be more than 30 working days nor less than 15 working days from the date of the order. Service of the order and a copy of the sworn complaint shall be made upon the defendant not less than 7 working days prior to the date set for his or her appearance by the order. If the order is not timely served, the plaintiff may have a new appearance date set by the Clerk and a new order delivered to the process server. If necessary, repeated orders may be issued at any time within one year after the commencement of the action. If no service is accomplished within one year from the date of the complaint, the complaint will be dismissed without prejudice. (Rev. 4-15-03)

**4-4-204. Service on defendant, return of service, and notification to plaintiff.** (1) The original of the order and notice shall be shown to the defendant and a copy of it together with a copy of the sworn complaint shall be served upon the defendant in the same manner provided for service of process in civil actions generally.

(2) The process server shall, after effective service, remit the original order, with his or her signature and the time of service affixed thereto, to the Clerk of Court. Upon receipt of the returned original order, the Clerk shall mail a copy thereof, first class, postage prepaid, to the plaintiff.

**4-4-205. Removal from Small Claims Division and effect of failure to remove.** (1) Any action commenced in the small claims division of the Tribal Court may be removed to the trial court of the Tribal Court by a defendant upon the filing of a notice of removal, in substantially the same form as that provided in Section 4-4-206, with the Clerk of the Court within 5 working days of the service of the complaint and order, or by a plaintiff within 3 working days of the service of a counterclaim as provided in Section 4-4-207.

(2) From the time of the filing of the notice of removal, the small claims division has no further jurisdiction over the claim, and the trial court of the Tribal Court has and exercises the same jurisdiction as though the action had been originally commenced in that court.

(3) Upon the filing of a notice of removal, the Clerk of Court shall mail first class, postage prepaid, a copy of the notice to the other party in the action. The plaintiff is not required to replead unless the court so orders, and no additional fee is required of a plaintiff for the filing of the complaint or of a defendant for the filing of a Counterclaim. The time for the defendant to file an answer to the complaint commences upon the date of the filing of the notice of removal. All laws and rules governing proceedings originally commenced in the trial court of Tribal Court are applicable to removed proceedings.

(4) Failure to request removal within the time provided in subsection (1) constitutes a waiver of the right to trial by Jury and to representation by an attorney or by a Tribal Court Advocate, and the judge shall inform the parties of such fact prior to the hearing. *(Rev. 4-15-03)*

**4-4-206. Notice of removal.** A notice of removal shall substantially conform to the appropriate sample form included at the end of this Chapter. *(Rev. 4-15-03)*

**4-4-207. Defendant's counterclaim.** (1) The defendant may assert a counterclaim against the plaintiff arising out of the same transaction that is the subject matter of the plaintiff's claim by appearing before the Clerk of Court and executing a sworn small claims counterclaim in substantially the same form as set forth in subsection (3). The defendant shall cause the counterclaim to be served on the plaintiff not less than 3 working days before the date set for the hearing. Service shall be made in the same manner and according to the same terms and conditions in which service of the order of court and notice to defendant is made on the defendant. A defendant may not assert as a counterclaim any claim not arising out of the transaction that is the subject matter of the plaintiff's claim.

(2) A counterclaim or set-off may not exceed \$3000. If a counterclaim or set-off is asserted in excess of \$3000, the claim and counterclaim shall be removed to the trial court of the Tribal Court by the filing of a notice of removal by the Clerk of Court, and the action will proceed as provided in Section 4-4-205 (2).

(3) A counterclaim filed by a defendant shall substantially conform to the appropriate sample form included at the end of this Chapter. *(Rev. 4-15-03)*

**4-4-208. No further pleading.** No form of pleading other than the complaint, the order of the court and notice to defendant, and the counterclaim of the defendant, if there is one, is allowed. *(Rev. 4-15-03)*

**4-4-209. Fees.** The Clerk of Court shall collect a fee of:

- (1) \$25 from the plaintiff upon the filing of the sworn complaint; and
- (2) \$10 from the defendant upon the execution of a sworn counterclaim.

### **Part 3 - Proceedings at Hearing**

**4-4-301. Proceedings to be informal.** The hearing and disposition of small claims actions shall be informal.

**4-4-302. Witnesses, evidence, and subpoena power.** The plaintiff and the defendant may offer evidence in their behalf by witnesses appearing at such hearing or by written evidence, and the judge may direct the production of evidence as he or she considers appropriate. The small claims division has the subpoena power of Tribal Court. *(Rev. 4-15-03)*

**4-4-303. Burden of proof.** A plaintiff has the burden of proving his or her claim by a preponderance of the evidence and a defendant bears the burden of proof of his or her counterclaim by a preponderance of the evidence.

**4-4-304. Record of Proceedings.** The Clerk of Court shall keep a record of all pleadings, returns of service, and the judgment in a small claims action. All proceedings in Small Claims Court are held before a judge of Tribal Court designated to hear such cases. Proceedings in Small Claims Court are tape recorded

and the tape is maintained for a period of 20 days after entry of judgment but the tape will not be archived unless a timely appeal is filed in the manner provided by this Code. Decisions rendered in Small Claims Court may be appealed according to the Rules of Appellate Procedure. *(Rev. 4-15-03)*

#### **Part 4 - Judgment and Appeal**

**4-4-401. Entry of Judgment.** Upon the conclusion of the hearing, the judge shall make his or her findings and enter judgment. The entry of judgment shall be prepared by the Clerk of Court, and a copy of the same shall be mailed, first class postage prepaid, by the Clerk to the parties within 5 days of the conclusion of the hearing. The form of the judgment shall substantially conform to the appropriate sample form included at the end of this Chapter. *(Rev. 4-15-03)*

**4-4-402. Default Judgment and dismissal.** (1) A defendant's failure to appear at hearing may result in a default judgment against him or her and in a dismissal with prejudice of any counterclaim he or she may have filed.

(2) A plaintiff's failure to appear at hearing may result in a dismissal of his or her claim and, if a counterclaim has been filed in a default judgment against him or her on the counterclaim.

(3) Non-appearance by both parties at a hearing will result in dismissal of the action with prejudice. *(Rev. 4-15-03)*

**4-4-403. Execution on judgment.** Proceedings to enforce or collect a judgment are governed by the laws relating to execution upon Tribal Court judgments. *(Rev. 4-15-03)*

**4-4-404. Costs and interest.** The prevailing party in an action before the small claims division is entitled to costs. If a money judgment is awarded, the party in whose favor the judgment is entered will be entitled to interest on the judgment amount commencing on the date of entry of judgment and continuing until the principal balance and accumulated interest is paid in full, by execution on the judgment or otherwise. Interest will be at the rate agreed to by the parties or 10% per annum on the judgment amount and accumulated balance, whichever is less. *(Rev. 4-15-03)*

**4-4-405. Appeal to the Tribal Court of Appeals.** Judgments of the court of the Small Claims Division may be appealed according to the rules and practices of the Tribal Court of Appeals. *(Rev. 4-15-03)*

**4-4-406. Attorney's fees upon removal or appeal.** (1) If a either party removes a matter to the trial court under the provisions of Section 4-4-205 (1) and (2) but does not prevail in the trial court, the court may grant the other party reasonable attorney's fees, if any.

(2) A party may be represented upon appeal by an attorney and the court may grant the prevailing party reasonable attorney's fees in addition to costs of suit. *(Rev. 4-15-03)*

**APPENDIX OF FORMS TO BE USED IN SMALL CLAIMS COURT:** (Rev. 4-15-03)

(Name & Address of Plaintiff)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN THE SMALL CLAIMS DIVISION OF THE TRIBAL COURT  
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES

_____ ,	)	
Plaintiff,	)	Cause No. 00- _____ - SC
	)	
vs.	)	SMALL CLAIMS
	)	COMPLAINT
_____ ,	)	
Defendant.	)	

**COMES NOW** the Plaintiff named above, being first duly sworn, and upon oath complains that the Defendant is indebted to the Plaintiff in the sum of \$ \_\_\_\_\_ for

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, which sum is now due and owing, and remains unpaid despite demands for payment. The Plaintiff also seeks the award of the costs of this action.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY: \_\_\_\_\_, Plaintiff

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, Clerk of Tribal Court

IN THE SMALL CLAIMS DIVISION OF THE TRIBAL COURT  
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES

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	)	
Plaintiff,	)	Cause No. 00- _____ - SC
vs.	)	SMALL CLAIMS
	)	ORDER OF COURT AND
Defendant.	)	NOTICE TO DEFENDANT
	)	

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TO THE DEFENDANT NAMED ABOVE:

You are hereby directed to appear and answer the attached Small Claims Complaint against you at the courtroom of the Tribal Court in the Tribal Complex at Pablo, Montana, on the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, at \_\_\_ : \_\_\_ a.m. / p.m., or as soon thereafter as the matter may be heard, and to have with you all books, papers, and other evidence, as well as witnesses, you may need in presenting your defense and/or in proving your counterclaim. IF YOU FAIL TO APPEAR AT THE APPOINTED TIME, A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU FOR THE ENTIRE AMOUNT DEMANDED IN THE COMPLAINT AND FOR THE COSTS OF BRINGING SUIT.

You are hereby further notified that, within 5 working days of receiving this Order and Notice, you may request that this case be removed from the Small Claims Division and transferred to the civil trial court in Tribal Court to be formally heard under the law and procedure provided under Tribal law. Please carefully read the attached Complaint and Small Claims Instructions and Forms. You may also seek legal advice in deciding how to proceed.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_.

\_\_\_\_\_  
Judge of Tribal Court

RETURN OF SERVICE

I, \_\_\_\_\_, hereby certify that I am legally qualified to provide service in Cause No. \_\_\_\_\_ and that I personally served the SMALL CLAIMS COMPLAINT and SMALL CLAIMS ORDER OF COURT AND NOTICE TO DEFENDANT and SMALL CLAIMS INSTRUCTIONS AND FORMS upon the Defendant named therein at the place, date, and time given below.

Place served: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date served: \_\_\_\_/\_\_\_\_/20\_\_

Time served: \_\_\_\_ : \_\_\_\_ a.m. / p.m.

Signature of Process Server: \_\_\_\_\_

Address of Process Server: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name & Address of Plaintiff)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN THE SMALL CLAIMS DIVISION OF THE TRIBAL COURT OF  
THE CONFEDERATED SALISH AND KOOTENAI TRIBES

_____		)	
	Plaintiff,	)	Cause No. 00- _____ -SC
		)	
vs.		)	SMALL CLAIMS AFFIDAVIT AND
		)	REQUEST FOR SUMMONS BY
		)	PUBLICATION
_____	Defendant.	)	
_____		)	

The undersigned deposes and says that:

1. I am the Plaintiff in the above captioned action.
2. After diligent search and inquiry, I am unable to serve the above named Defendant either personally or by registered mail.
3. Therefore, I request that the Clerk of Court issue a Small Claims Summons By Publication as prescribed in Title I, Chapter 2, Part 7, Rule 9(3), of the CS&KT Laws Codified.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY: \_\_\_\_\_  
(Plaintiff's signature)

ACKNOWLEDGMENT

STATE OF MONTANA        )  
                                      : ss.  
COUNTY OF LAKE         )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me \_\_\_\_\_, a Notary Public for the State of Montana, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the above instrument, and acknowledged to me that he/ she executed the same.

IN WITNESS WHEREOF, I have set my hand and affixed my official seal.

(SEAL)

\_\_\_\_\_  
Notary Public for the State of Montana  
Residing at \_\_\_\_\_  
My Commission expires \_\_\_\_\_



IN THE SMALL CLAIMS DIVISION OF THE TRIBAL COURT OF  
THE CONFEDERATED SALISH AND KOOTENAI TRIBES

---

	)	
Plaintiff,	)	Cause No. 00- _____ -SC
vs.	)	SMALL CLAIMS
	)	SUMMONS BY
Defendant.	)	PUBLICATION
	)	

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TO THE DEFENDANT NAMED ABOVE:

You are hereby directed to appear and answer the above captioned Small Claims Complaint against you at the courtroom of the Tribal Court in the Tribal Complex at Pablo, Montana, on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_:\_\_ a.m. / p.m., or as soon thereafter as the matter may be heard, and to have with you all books, papers, and other evidence, as well as witnesses, you may need in presenting your defense and/or in proving your counterclaim. IF YOU FAIL TO APPEAR AT THE APPOINTED TIME, A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU FOR THE ENTIRE AMOUNT DEMANDED IN THE COMPLAINT (\$ \_\_\_\_\_) AND FOR THE COSTS OF BRINGING SUIT.

You are hereby further notified that, within 5 working days of receiving this Summons By Publication, you may request that this case be removed from the Small Claims Division and transferred to the civil trial court in Tribal Court to be formally heard under the law and procedure provided under Tribal law. You should immediately come to Tribal Court to read the Complaint and the Small Claims Instructions and Forms packet. You may also seek legal advice in deciding how to proceed.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

S/s \_\_\_\_\_  
CLERK OF TRIBAL COURT

(Name & Address of Defendant)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN THE SMALL CLAIMS DIVISION OF THE TRIBAL COURT  
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES

_____ ,	)	
Plaintiff,	)	Cause No. 00- _____ - SC
	)	
vs.	)	SMALL CLAIMS
	)	COUNTERCLAIM
_____ ,	)	
Defendant.	)	

**COMES NOW** the Defendant named above, being first duly sworn, and upon oath alleges that the Defendant is entitled to Counterclaim against the Plaintiff in this action in the sum of \$ \_\_\_\_\_ for

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_, which sum is now due, together with the Defendant's costs of this action.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY: \_\_\_\_\_, Defendant

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, Clerk of Tribal Court

Plaintiff's name and address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

RETURN OF SERVICE

I, \_\_\_\_\_, hereby certify that I am legally qualified to provide service in Cause No. \_\_\_\_\_ and that I personally served the SMALL CLAIMS COUNTERCLAIM upon the Plaintiff named therein at the place, date, and time given below.

Place served: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date served: \_\_\_\_ / \_\_\_\_ /20\_\_

Time served: \_\_\_\_ : \_\_\_\_ a.m. / p.m.

Signature of Process Server: \_\_\_\_\_

Address of Process Server: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Party's name and address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN THE SMALL CLAIMS DIVISION OF THE TRIBAL COURT  
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES

_____		)	
	Plaintiff,	)	Cause No. 00- _____ - SC
		)	
vs.		)	SMALL CLAIMS
		)	NOTICE OF REMOVAL
_____	Defendant.	)	
_____		)	

TO: \_\_\_\_\_, the above named Plaintiff / Defendant:

YOU ARE HEREBY NOTIFIED that the above captioned action is removed from the Small Claims Division of the Tribal Court and is now pending in the Civil Trial Court of the Tribal Court, pursuant to the procedures set forth in Section 4-4-205 of the *CS&KT Laws Codified*, and that any time previously set for hearing is now vacated.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Party

CERTIFICATE OF MAILING

I, \_\_\_\_\_, Clerk of Court, do hereby certify that I mailed a true and correct copy of the SMALL CLAIMS NOTICE OF REMOVAL to the named party at the address shown below by depositing same in the U.S. Mail, postage prepaid at Pablo, Montana, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Party's Name and Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Clerk of Court

By \_\_\_\_\_  
Deputy Clerk of Court

IN THE SMALL CLAIMS DIVISION OF THE TRIBAL COURT  
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES

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	)	
Plaintiff,	)	Cause No. 00- ____ -SC
vs.	)	SMALL CLAIMS
	)	JUDGMENT
Defendant.	)	

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The Plaintiff brought this action for money damages against the Defendant in the Small Claims Division of Tribal Court. The Complaint was filed on \_\_\_\_\_, \_\_\_\_\_, and was properly served upon the Defendant on \_\_\_\_\_, \_\_\_\_\_. The matter was heard in open court on \_\_\_\_\_, \_\_\_\_\_. At that hearing the Plaintiff appeared / did not appear and the Defendant appeared / did not appear. From the oral testimony and other evidence presented at the hearing, the Court finds in favor of the Plaintiff and issues Judgment against the Defendant.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the Plaintiff recover the sum of \$ \_\_\_\_\_ from the Defendant together with interest at the rate of \_\_\_ % per annum from the date of this Judgment until paid, and for the court costs of the Plaintiff in the amount of \$ \_\_\_\_\_, for a total current Judgment amount of \$ \_\_\_\_\_.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Judge of Tribal Court

CERTIFICATE OF MAILING

I, \_\_\_\_\_, Clerk of Court, do hereby certify that I mailed true and correct copies of the SMALL CLAIMS JUDGMENT to the parties first named therein at the addresses shown below by depositing same in the U.S. Mail, postage prepaid at Pablo, Montana, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Plaintiff:

Defendant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Clerk of Court

BY \_\_\_\_\_  
Deputy Clerk of Court

(Name & Address of Plaintiff or  
of Plaintiff's Attorney)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN THE SMALL CLAIMS DIVISION OF THE TRIBAL COURT  
OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
OF THE FLATHEAD RESERVATION

_____ ,	)	
	)	Cause No. 00 - _____ - SC
Plaintiff,	)	
	)	
vs.	)	SATISFACTION
	)	OF JUDGMENT
_____ ,	)	
	)	
Defendant.	)	

THIS SHALL CERTIFY that the JUDGMENT entered in the Small Claims Division of the Tribal Court of the Confederated Salish and Kootenai Tribes of the Flathead Reservation on the \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in favor of the Plaintiff, and against the Defendant, has been fully paid, settled, and satisfied, and the Clerk of Tribal Court shall enter satisfaction of record.

DATED this \_\_\_ day of \_\_\_\_\_, 20\_\_.

BY: \_\_\_\_\_  
(Plaintiff's or plaintiff's attorney's signature)

SO ORDERED this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Judge of Tribal Court



CERTIFICATE OF MAILING

I, \_\_\_\_\_, Clerk of Court, do hereby certify that I mailed true and correct copies of the SATISFACTION OF JUDGMENT to the parties first named therein at the addresses shown below by depositing same in the U.S. Mail, postage prepaid at Pablo, Montana, on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Plaintiff

Defendant

Tribal Records Manager

\_\_\_\_\_  
Clerk of Court

BY \_\_\_\_\_  
Deputy Clerk of Court

**APPENDIX OF AMENDMENTS TO TRIBAL ORDINANCE 103A**