

TITLE III
CHAPTER 2
CHILDREN

Part 1

General Provisions and Definitions.

3-2-101. Purpose. The Confederated Salish and Kootenai Tribes have enacted this Chapter, recognizing that Tribal children are the Tribes' most important resource and their welfare is of paramount importance to the Tribes. It is the purpose of this Chapter to provide and assure that each Tribal child within the jurisdiction of the Tribal Court shall receive the care and guidance needed to prepare such children to take their places as an adult member of the Tribes; to prevent the unwarranted break-up of Indian families by incorporating procedures that recognize the rights of children and parents or other custodial adults, and, where possible, to maintain and strengthen the family unit; to preserve and strengthen the child's individual, cultural, and Tribal identity. Wherever possible, family life shall be strengthened and preserved, and the primary efforts will be toward keeping the child with his or her family, and if this is not possible, then efforts shall be made toward maintaining the child's physical and emotional ties with the child's extended family and with the Tribal community.

3-2-102. Intent. It is the intention of the Tribes in enacting this Chapter to incorporate to the fullest extent possible the honored customs and traditions of the child's particular Tribe, consistent with the Indian Civil Rights Act, 25 U.S.C. Section 1301 *et seq.*, (1968), and with the needs and realities of Tribal members' lives and conditions upon the Flathead Reservation. Evidence may be adopted in any proceeding conducted pursuant to this Chapter of such customs and traditions. Where it is shown to the satisfaction of the judge having jurisdiction over the hearing that the customs and traditions of the child in particular Tribe are consistent with the provisions of this Chapter, then the judge shall adopt such customs and traditions for the purposes of the hearing and such customs and traditions shall have the effect of law governing that particular hearing.

3-2-103. Jurisdiction. The Tribal Court shall have jurisdiction over any child custody proceeding involving an Indian child residing or domiciled within the Flathead Reservation or having significant contacts with the Reservation community and over all Indian children who are members of the Confederated Salish and Kootenai Tribes. The Court shall have the 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.

3-2-104. Protected Children (Wards) of the Court. 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 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. 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. 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. Any Indian child having at least one parent who is an enrolled member of the Confederated Salish and Kootenai Tribes may become a Protected Child of the Tribes upon the certified consent of both of the child's natural parents. Such consent shall be certified under oath, before a Tribal Judge, the Tribal Clerk of Court, or a Public Notary of any State of the United States. Each such certification shall be filed and recorded by the Clerk of the Tribal Court. Such consent may later be withdrawn by the parents of the child by filing a Notice of Revocation of such consent with the Clerk of the Tribal Court. Upon the filing of such Notice of Revocation by each living parent of the child, the child shall no longer be a Protected Child of the Tribes.

3-2-105. Definitions.

- (1) "Adult" means any person who has reached his or her eighteenth (18th) birthday.
- (2) "Child" means any person less than eighteen (18) years of age.
- (3) "Child Custody Proceeding" means any voluntary or involuntary court action, informal or formal, but not including divorce actions, that may result in the temporary or permanent removal of a child from his or her parents, guardian or custodian. This definition shall not involve delinquency proceedings, except such proceedings involving acts which would not be deemed a crime if committed by an adult.
- (4) "Community Advisors" means those members of the Tribal community having knowledge of the cultural or spiritual traditions or ways of the child's Tribe who may be selected by the Court to counsel the child or the child's family. Whenever possible, Community Advisors shall be of the same Tribe as the child. Community Advisors may provide such counseling either as individuals or in groups according to the specifications of the Court and the traditions of the child's Tribe. Culture Committees will submit lists of people willing to serve as Advisors to Court.
- (5) "Confederated Tribes" means the Confederated Salish and Kootenai Tribes of the Flathead Reservation.
- (6) "Custodian" means a person other than a natural parent or adoptive parent who has legal custody or lawful physical custody of an Indian youth.
- (7) "Delinquent Child" means a child who has committed a delinquent act according to the provisions of the Codes of the Confederated Salish and Kootenai Tribes.
- (8) "Domicile" means the place considered to be 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.
- (9) "Emancipated Minor" means a person under the age of eighteen (18) years who supports him/herself or who is married and has been determined by the Court to be free from restrictions as a minor child.
- (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;
 - (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 and who has special expertise in Indian culture.
- (11) "Extended Family" means any person related by blood or marriage 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.
- (12) "Foster Care" means the placement of a child to reside with another family or person for a specified period of time.
- (13) "Guardian ad Litem" means a person appointed by the Tribal Court to represent and protect the legal rights and interests of the child in a Tribal Court proceeding.
- (14) "ICWA" means the Indian Child Welfare Act, Public Law 95-608, 25 U.S.C. ? 1901 et seq. (1978).

(15) "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.

(16) "Least Restrictive Alternative" means that the Court is directed to select the least drastic method of achieving its goal; that the restrictions placed on the child must be reasonably related to the Court's objectives and must be the least restrictive way, and the way least disruptive of the family unit, for achieving that objective.

(17) "Parent" means any biological father or mother of an Indian child or any person who has adopted an Indian child.

(18) "Protected Children" also means wards of the Court.

(19) "Reservation" means the Flathead Reservation of the Confederated Salish and Kootenai Tribes.

(20) "Residence" means the place where the child is presently living.

(21) "Shelter Care" means the residential care of children in a shelter care facility or group home approved by Tribal Social Services.

(22) "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.

(23) "Tribal Member" means, for jurisdictional purposes under this Code, an Indian child who is either of:

(a) An enrolled or enrollable member of the Confederated Salish and Kootenai Tribes; or

(b) A person of Indian descent having significant contacts or identification with the Tribal community, and is a descendant of a mother or father who is an enrolled or enrollable member of the Confederated Salish and Kootenai Tribes.

(24) "Tribal Social Services" means the Tribal Social Services Department of the Confederated Salish and Kootenai Tribes which is also known as the Family Assistance Division.

(25) "Youth" means any person less than eighteen (18) years of age.

(26) "Court" means the Tribal Court of the Confederated Salish and Kootenai Tribes, unless another court is clearly specified or intended.

3-2-106. Confidentiality. All Court files and documents prepared in child custody proceedings governed by this Code shall be held confidential, unless otherwise specified in this Code. This shall include reports to Social Services, 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 Code. 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 directly involved in a child custody proceeding. No other release of such information shall be allowed without an order of the Court Judge. All records of child Court proceedings shall be physically sealed when the child reaches the age of eighteen (18) years of age.
(Rev. 4-15-03)

3-2-107. Disposition of Records. *(Repealed 4-15-03.)*

3-2-108. Appeal. 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.

Part 2

Foster Care and Shelter Care.

3-2-201. Foster Care and Shelter Care. Foster care and shelter care standards and licensing shall be according to the provisions for such as established or amended by the Tribal Council.

Part 3

Youth in Need of Care.

3-2-301. Purpose. It is hereby declared to be the policy of the Confederated Salish and Kootenai tribes to insure that all Tribal youth are afforded an adequate physical and emotional environment to promote development, to compel, in proper cases, the parent or custodian of the youth to perform the moral and legal duties owed to the youth; to promote and facilitate necessary changes in the family environment whenever possible; and to establish a judicial process, where necessary to provide substitute care and supervision for children in need of care. To the best extent possible, efforts shall be made toward maintaining the child's identity and ties with his or her family and with the tribal community and provisions for the child's spiritual development shall remain a priority goal.

3-2-302. Reports and Action on Reporting. Upon the receipt of any report or information regarding a Tribal child who may be a youth in need of care, it shall be the duty of the Director of Tribal Social Services to investigate or cause to be investigated the circumstances surrounding the report, including the home environment of the child, any physical or emotional injuries suffered by the child, and all other matters which, in the discretion of the Director or appropriate Tribal personnel, shall be relevant to the investigation. If from the investigation it shall appear that there is probable cause to believe that the Tribal child is a youth in need of care, the Director shall deliver, or cause to be delivered, a summary of the investigation to the Tribal Social Services Advocate for further action. If from the investigation it shall appear that the child is in need of emergency protective care, the Director shall provide such emergency protective services. *(Rev. 4-15-03)*

3-2-303. Responsibility and Confidentiality of Reporting. (1) Any individual who knows or suspects that a child is a Tribal child in need of care should report case to the Tribal Social Services, Tribal police, or the Court. The following individuals must report any known or suspected case of a Tribal child who may be in need of care to Tribal Social Services: teachers, school personnel, social workers, medical professionals and other medical personnel, day care agency workers, Tribal Advocates, mental health personnel.

(2) Any information regarding the source of a report of a child in need of care will be kept confidential. Such reports shall not be admissible in evidence in any proceeding under this part. Information contained in such reports shall not be admissible in any proceeding under this part unless the reporter is voluntarily and personally present at the proceeding and testifies to personal knowledge of such information. However, any information contained in such report may be admissible in evidence if offered by some witness other than the reporter, and if such evidence is otherwise admissible under the rules of evidence of the Tribal Court.

3-2-304. Youth in Need of Care—Definitions. A youth in need of care means a child who has been found to be in one or more of the following situations:

(1) **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:

(a) A child who has been excessively beaten or suffered other unusual or inappropriate corporal punishment.

(b) 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.

(c) A child who has been subjected to obscene or indecent sexual activities as a result of pressure, guidance, or approval of the child's parent or custodian.

(d) 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 custodian.

(2) 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.

(3) A Delinquent Child: One who has been found in a Court or other appropriate proceeding, to have committed repeated delinquent acts, and whose parent or custodian is unable or unwilling to control such behavior.

(4) A Dependent Child: One who has no parent or custodian available, willing or able to care for the child. Nothing in these definitions shall be used to interfere with or prohibit the cultural and spiritual development and with traditional child-raising practices of the child's family or Tribe.

3-2-305. Temporary Protective Care.

(1) Authorization and duties of Tribal Police and Tribal Social Services.

Whenever a Tribal police officer or Tribal Social Services worker has reasonable grounds to believe that a child is in danger of serious and imminent physical or emotional 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 temporary protective care.

(2) Procedure Upon Removal of a Child. Upon the removal of a child into emergency protective care, the Tribal police officer or Social Services worker shall:

(a) Immediately notify the child's parents or custodian of such removal, and the reasons therefor. If attempts to so notify the child's parents or custodian are unsuccessful, then best efforts shall immediately be made to notify the child's nearest relatives.

(b) Immediately notify the Director of Social Services, or the Social Services personnel designated to take such notice, 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 custodian.

(d) If the return of the child to the child's parents or custodian 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 custodian, the Tribal police officer or Tribal 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 temporary protective 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. 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 for the reason of having been accused or convicted of a crime or delinquent act, unless such a placement is determined, by a Tribal Court Judge, to be necessary for the benefit of the child or to insure the child's continued presence in the area.

(f) Upon the placement of the child, the Tribal police officer or Social Services worker shall make and deliver a report to the Director of Tribal Social Services containing a summary of the circumstances surrounding the temporary protective care and the basis therefor.

3-2-306. Termination of Protective Care. In no case shall protective temporary care extend beyond 72 hours, exclusive of weekends and holidays. At the expiration of this period, the Director of Tribal Social Services shall:

(1) Cause the child to be returned to the child's parents or custodian; or

(2) 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. In the case of an emergency hearing, Tribal Social Services shall use best efforts to notify the child's parents or custodian of the time and place of the hearing, and inform the parent or custodian of the time and place of the hearing, and inform the parents or custodian of their right to attend the hearing and be heard. At the time of hearing, the Court shall determine the placement of the child pending further proceedings, and may appoint a Guardian ad Litem for the child. A Tribal Advocate may be appointed for the parents or custodian if so requested, and if the parents or custodian cannot afford one. Such continued protective custody pursuant to an emergency hearing order shall extend no longer than is necessary for the filing of petition, notification of interested parties and the holding of a preliminary hearing as set forth in this part.

3-2-307. Initiation of Proceedings Petition. All Court proceedings under this part shall be initiated by a petition entitled "Petition for Declaration of Youth in Need of Care." Such petition shall be prepared and filed by the Tribal Social Services Advocate, the Tribal Attorney, or some other Tribal Advocate. The petition shall contain the following information:

(1) The name and birth date of the youth;

(2) The name of the parents or custodian of the youth;

(3) The basis of the Court's jurisdiction;

(4) An allegation that the youth is a youth in need of care, and a plain statement of facts supporting this allegation;

(5) Any facts relevant to the present physical or legal custody of the youth;

(6) A summary of any efforts which have been made by Tribal Social Services or others to divert the case from the Court system to community groups or advisors;

(7) Whether temporary custody of the youth is requested by Tribal Social Services;

(8) A statement of any other relief requested by Tribal Social Services, including termination of any parental or custodian rights or appointment of a substitute custodian.

3-2-308. Guardian ad Litem. Upon the filing of a petition, the Clerk of the Tribal Court shall immediately notify a Court judge, and the Court may appoint a Guardian ad Litem if one has not already been appointed, or other qualified person to act as a Tribal advocate in the proceedings upon the petition and represent the youth.

3-2-309. Notice. Written notice of any initial hearing or other hearing held under this Section shall be given, at least five (5) days prior to hearing date, to all parents or legal custodians 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.

3-2-310. Intervention. 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. 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.

3-2-311. Initial Hearing. (1) Within ten (10) days of the filing of the petition, an initial hearing shall be conducted unless another time has been set for good cause. All hearings under this Section shall be in closed Court, including only officers of the Court, the child, parents, custodians, social services person net, and such other persons who, in the discretion of the Court, may aid in the proceedings or have sufficient interest in the case. Upon the request of a parent, custodian, or the child, the hearing may be open to the public if the Court determines that the benefit of public hearing outweighs the right of privacy of the parties involved in the proceedings.

(a) The parents or custodians of the child shall be advised of:

(i) The nature of the charges;

(ii) The factual allegations therefor;

(iii) The present custodial situation;

(iv) The relief requested by Tribal Social Services;

(v) The right to be represented by legal counsel at their own expense and the right to request a Tribal Advocate appointed at the Tribe's expense if the parent or custodian cannot afford representation and if an advocate is available;

(vi) The right to request an informal adjustment conference. If an informal adjustment conference is requested and consented to in accordance with Section 3-2-312, the Court may suspend further proceeding pending the conference and diversion period.

(b) The parent or custodian will be allowed to admit or deny the allegations in the petition.

(c) Unless the allegations are admitted, the Tribal Social Services Advocate shall have the burden of proving, beyond a reasonable doubt, that the child is a Youth in Need of Care if permanent or long-term custody and care is petitioned for. However, the Tribal Social Services Advocate may request further time with which to prepare its case following a denial of the allegations in the petition, and the Court may continue the proceedings for such time as the Court determines necessary for further investigation and preparation by the Tribal Social Services.

(2) If temporary custody is requested, the Tribal Social Services Advocate shall have the burden of proving, by clear and convincing evidence, that such relief is necessary for the protection of the child.

(3) Upon the conclusion of the hearing, the Court shall issue a temporary order, including the following:

(a) Its jurisdiction over the case;

(b) Whether it has been proven that the child is a Youth in Need of Care. If the Court does not so find, the petition be dismissed.

(c) If temporary custody is requested, whether such is necessary for the protection of the child. If the Court does not so find, the custody of the child shall remain with or be returned to the parent or custodian.

(d) The date of dispositional hearing upon the petition. The dispositional hearing shall determine the further custody or placement of the child, and such hearing shall be set no later than ninety (90) days after initial hearing.

(4) In addition, the Order may direct:

- (a) That notice of the proceedings be given to additional interested parties;
- (b) That the child, parents, or custodians undergo medical or psychological examinations and that reports be submitted to the Court;
- (c) That further investigation be conducted by Tribal Social Services or other agencies;
- (d) That the family or the child participate in such counseling, advice, or other program as the Court may deem beneficial; and
- (e) That such other actions consistent with the purposes of this Code be taken.

(5) The initial hearing shall be held in two (2) parts: The adjudicatory hearing and the temporary disposition hearing. Such hearings shall be conducted according to the Rules of Civil Procedure and the Rules of Evidence of the Tribal Court, and consistent with all due process and other rights afforded the parties by the Indian Civil Rights Act. The burden of proof on all matters shall be upon Tribal Social Services. The adjudicatory hearing shall be conducted solely to determine whether the Tribal child is a Youth in Need of Care. For good cause, the adjudicatory hearing and the temporary dispositional hearing may be bifurcated and held in two (2) proceedings. Either the adjudicatory hearing phase of the proceedings may be transferred to another Court of competent jurisdiction for proceedings and determinations consistent with this Code. *(Rev. 4-15-03)*

3-2-312. Division – Informal Adjustment Conference.

- (1) It shall be the duty of Tribal Social Services, 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. The conference agreement may include the following dispositions:
 - (a) Release of the child to the parent or custodian with no further action, and dismiss case;
 - (b) Suspend the proceedings for a specified time, releasing the child to the parent, custodian, or other person as the Court may direct, with appropriate remedial conditions;
 - (c) Order final disposition of the case, consistent with the provisions for an order following final disposition hearing.

3-2-313. Final Disposition Hearing.

- (1) Notice of final disposition hearing shall be given in accordance with Section 3-2-309. All interested parties may testify, and otherwise give evidence in their behalf regarding the present circumstances of the child and of the parents, custodians, or possible custodians of the children. The Court shall inquire into the compliance with any temporary order issued by the Court, including remedial conditions.
- (2) Rules of procedure and evidence, and burdens of proof, shall be as set forth in Section 3-2-311 for initial hearings.

(3) The Court may order any of the dispositional alternatives permissible under temporary dispositional orders or informal adjustment conference orders. If the Court's Order does not finally conclude the case, the Court shall specify in its Order the date for further reporting to the Court, and the date for further dispositional hearing. In addition, the Court may order any of the following dispositions:

(a) Temporarily suspending parental rights for a specified period of time, placing the child's legal custody for such period with the Tribal Social Services and the physical custody of the child with an extended family member, foster home, shelter-care home, or other appropriate person or facility.

(b) Suspend parental rights for an indefinite period of time, placing legal custody of the child with Tribal Social Services, and the physical custody of the child as set forth in this Section.

(c) Terminate parental rights, and place the child with an appropriate custodian. Where practicable, the custodian shall be an extended family member of the child or a member of the child's community.

(4) In any of the above situations set forth in this Section, where the parental rights have been suspended or terminated, but the child has not been adopted, the child shall be considered a Protected Child of the Tribes or Ward of Court.

(5) No suspension or termination of parental rights may be ordered unless the Court determines, beyond a reasonable doubt, that the continued custody of the child by the parent or custodian 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 irreparable by further efforts of the Court and Tribal Social Services.

(6) 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) (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.

(b) (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 rights may include:

(A) The right to communication;

(B) The right to visitation;

(c) The right or obligation to contribute to support or education;(d) Disposition of per capita payments or other benefits as determined by the Court;

(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.

(7) The Court may grant similar residual rights to extended family members upon the termination of parental rights.

(8) 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. 4-15-03)*

Part 4

Suspension or Termination of Parental Rights.

3-2-401. Definitions.

- (1) "Suspension of parental rights" means the temporary or indefinite severance of the legal relationship between parent or child.
- (2) "Termination of parental rights" means the permanent cancellation of the legal relationship between parent and child, subject only to such residual parental rights as the Court may determine.

3-2-402. Methods of Termination. The following shall be the exclusive methods of suspension or termination of parental rights.

- (1) Voluntary suspension or termination by the parent or parents.
- (2) Involuntary termination under Part 3 of this Chapter.
- (3) Involuntary termination of the rights of one parent, when requested by the other parent, subject to all due process and Indian Civil Rights Act protections and guarantees. *(Rev. 4-15-03)*

3-2-403. Duration of Suspension or Termination of Parental Rights. Parental rights of a natural or adoptive parent may be severed temporarily or permanently. Upon the temporary suspension of parental rights, the person assuming the traditional parental rights of the child shall be deemed a custodian. Upon the permanent termination of parental rights, the person assuming the traditional parental rights shall be deemed as adoptive parent.

3-2-404. Preservation of Tribal 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 Tribes 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.

3-2-405. Suspension of Parental Rights. Parental rights may be suspended involuntarily or voluntarily.

- (1) Involuntarily Suspension. Involuntary suspension of parental rights, and custodianship may only be created according to the provisions of Part 3 of this Chapter.
- (2) Voluntary Suspension. Voluntary suspension of parental rights or custodianship may be created by formal Court process or informally.
 - (a) Formal Custodianship. A formal, voluntary custodianship may be created by petition and order of the Court.
 - (i) Petition. The process for creation of a voluntary custodianship shall be initiated by the filing of a petition entitled "Petition for Custodianship." The petition shall be filed in the name of a parent having custody of the child or a proposed custodian. 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 residence of the child;
 - (C) The name, age, and residence of the proposed custodian or custodians;
 - (D) The jurisdictional basis of the Tribal Court over the matter;

(E) A statement of the facts indicating that the custodianship is in the best interests of the child;

(F) The duration of the proposed custodianship, and whether such is to be of a definite or indefinite duration;

(G) Whether the custodianship 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 custodianship, and recommendation for disposition of per capita pay meets during the custodianship period.

(ii) Consent. The written consent of each parent consenting to the custodianship shall be filed with the petition. Such consents shall be executed before an adult witness. Such consents shall not be invalidated by reason of the minority of the consenting parent.

(iii) Investigation. Upon the filing of a petition, the Court may order such investigation as it deems necessary for a full determination upon the petition.

(iv) Summary Order. If the Court determines that the proposed custodian is a member of the child's extended family or community, or otherwise has significant ties to the child, and that the custodianship has been consented to by each living parent of the child, and that the custodianship is in the best interests of the child, the Court may enter a summary order of custodianship as requested in the petition.

(v) Notice. If the custodianship has not been contested to in writing by each living parent of the child, then each such parent not having consented shall be given written notice of the proceedings, including the date of hearing upon the petition and a copy of the petition. Such notice shall be served personally where the whereabouts of the parent is known and such service is practicable, otherwise service shall be made as ordered by the Court by the most effective means and consistent with the due process rights of the parent.

(vi) Hearing. Unless the custodianship is granted by summary order, the Court shall hold a hearing upon the petition and shall determine if the custodianship is in the best interests of the child. If a nonconsenting parent appears at the hearing and contests the custodianship, the petition shall be denied unless the Court determines, upon clear and convincing evidence, that the custodianship is in the best interests of the child, and the non-consenting parent is unable to furnish a home for the child, and the nonconsenting 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 custodian.

(vii) Order. Upon a determination that the petition should be granted, the Court shall enter an order of custodianship. Such order shall contain the following:

(A) The jurisdiction basis of the Court;

(B) The name of the custodian or custodians;

(C) The duration of the custodianship – whether of definite or indefinite duration;

(D) A factual finding that the custodianship is in the best interests of the child and the reasons therefor;

(E) Any specific conditions of custodianship, including rights of the parents.

(viii) Termination of Custodianship. The custodianship shall terminate upon any of the following:

(A) The duration specified in the Order; or

(B) The further order of the Court, terminating custodianship, or the death of the custodian or other circumstances creating a practical inability of the custodian to care for the child.

(C) Upon termination of the custodianship, all legal parental rights shall be returned to the person or persons having such rights prior to the creation of the custodianship.

(b) Informal Custodianship. An informal custodianship, or traditional custodianship, may be created by the placement of a child by a natural parent or parents with another person or family, without Court involvement.

(i) Creation of informal custodianship. Such a custodianship must be voluntarily entered into by the natural parent or parents involved and the custodian, and shall be recognized as a legal custodianship for so long as the consensual relationship continues.

(ii) Rights of non-consenting parent. No informal custodianship may be created over the objections of a natural parent having custody or joint custody of the child. A natural parent who does not have custody of the child, and who has not consented to such a traditional custodianship may petition the Court for denial or termination of the custodianship status, for custody of the child, or for such other appropriate relief as the parent believes may be in the best interests of the child.

(iii) Hearing upon petition. Upon the filing of such a petition, by a non-consenting parent, the Court shall hold a hearing in accordance with Subsection (2)(a)(vi), above, and the matter shall thereafter be determined in accordance with the proceeding rules for determination of a formal custodianship petition.

(iv) Termination. After the creation of a traditional custodianship status, if the natural parent or parents consenting to the custodianship shall elect to terminate the custodianship and request the return of the child, such request shall be granted by the custodian and the child shall be returned to the parent or parents so requesting. If the custodian does not believe that the termination of the custodianship status is in the best interests of the child, the custodian may, in the alternative, file or cause to be filed, a petition asking that the youth be declared a Youth in Need of Care under Part 3 of this Chapter. *(Rev. 4-15-03)*

3-2-406. Adoptions. An adoption may be accomplished either involuntarily or voluntarily.

(1) Involuntary. An involuntary adoption may only be accomplished by a termination of parental rights under Part 4 of this Chapter, and a further hearing under Subsection (8) of this Section to determine whether the proposed adoption is in the best interests of the child.

(2) Voluntary. A voluntary adoption may be accomplished by formal Court process or informally.

(a) Petition. The process for a voluntary adoption shall be initiated by the filing of a petition entitled "Petition for Adoption." The petition shall be filed in the name of the proposed adoptive parent and shall contain the following information:

(i) The name, age, and residence of each living parent of the child;

(ii) The name, age, date of birth, and residence of the child, and the Tribal affiliation of the child;

(iii) The name, age and residence of the proposed adoptive parent or parents;

(iv) The basis of the Court's jurisdiction over the adoption of such child;

(v) Whether the adoption is consented to by each living parent of the child, and, if not, any facts excusing such consent;

(vi) A full statement of the value of any property of the child, or of which the child is expected to become entitled after the adoption;

(vii) Any facts related to the physical care or custody of the child either present or past, which is relevant to the petition;

(viii) Any facts relative to the adoptive parent's ability to provide for cultural, traditional and spiritual development of the child.

(3) Consent. Such consents must be executed in writing and recorded before a Judge and accompanied by the Judge's certificate that the terms and consequences of consent were fully explained in detail and were fully understood by the parent or Indian custodian. The court shall also certify that either the parent or custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten (10) days after birth of the child, shall not be valid.

(4) Withdrawal of consent. A consent executed by a minor parent may be withdrawn, for any reason, at any time prior to final Order of Adoption. A consent executed by an adult may be withdrawn, in the discretion of the Court, upon a showing that such a withdrawal is in the best interest of the child, at any time prior to final Order of Adoption. After entry of a final decree, a parent may withdraw consent thereto if consent was obtained through fraud or duress and the parent may petition the Court to vacate such decree.

(5) Investigation. Upon the filing of a petition for adoption, the Court shall order such investigation as it deems necessary for a full determination upon the petition.

(6) Summary Order. The Court may enter a Summary Order of Adoption if such is requested in the petition, provided the Court upon investigation and inquiry determines as follows:

(a) That one of the proposed adoptive parents is a member of the child's extended family or community, or otherwise has significant ties to the child;

(b) That the adoption has been consented to by each living parent of the child;

(c) That the proposed adoptive home is an adequate environment for the development of the child;

(d) That the proposed adoptive parents can provide the child with the unique values of Indian culture; and

(e) That the adoption is in the best interests of the child.

(7) Notice. If the adoption has not been consented to in writing by each living parent of the child, then each such parent not having consented shall be given written notice of the proceedings, including the date of the hearing upon the petition and a copy of the petition. Such Notice shall be served personally whenever the whereabouts of the parent or parents is known and such service is practicable, otherwise service shall be made as ordered by the Court by the most effective means and consistent with the due process rights of the parent or parents.

(8) Hearing. (a) Unless the adoption is granted by Summary Order, the Court shall hold a hearing upon the petition. The first part of the hearing shall address the question of the termination of parental rights of any non-consenting living parent. The burden of proof shall be upon the petitioner to present evidence at the termination stage of the proceeding to prove, beyond a reasonable doubt, that the non-consenting parent's rights should be terminated, and that there is supporting evidence therefor.

(b) The second part of the hearing shall address the proposed adoption, and the petitioner shall have the burden of proof therein to prove, upon clear and convincing evidence that the adoption is in the best interests of the child.

(c) The hearing may be bifurcated to hear the separate parts of the hearing at different times, and the hearing may be continued at any stage, in the Court's discretion, for such time as may be necessary for a full determination of parental rights or whether the proposed adoption is in the best interests of the child.

(9) Termination of Parental Rights. Parental rights may be terminated if the Court determines, beyond a reasonable doubt, that the parent in question has severed the parent–child relationship, and that the continuing of the parent–child relationship is no longer in the best interests of the child. The following circumstances may be

indicative of the severance of the parent–child relationship, but are not meant to be exclusive circumstances for termination:

(a) Where the parent is no longer living with the child and has failed to maintain any meaningful contact with the child for a significant time;

(b) A parent who has committed serious acts or omissions which cause the child to become a Youth in Need of Care, under the standards of Part 3 of this Chapter;

(c) A parent who has failed to contribute to the financial and emotional support of the child during a period of more than one year prior to the filing of a petition, under the circumstances where the parent could have contributed support, and such support would have been beneficial to the child's welfare.

(10) Order. Upon a determination that good cause beyond a reasonable doubt exists to terminate the parental rights of the living parent or parents of the child, or that all living parents have freely and voluntarily consented to the adoption with full knowledge of the effect of the adoption, the Court shall enter an Order of Adoption. The Order shall include the following:

(a) The name, age, and residence of each parent of the child;

(b) The name, age and date of birth, and residence of the child, and all relevant facts as to Tribal affiliation and membership of the child;

(c) The jurisdiction of the Court;

(d) Whether the adoption is consented to by each living parent of the child, and, if not, facts excusing the consent upon which the Court relies in terminating the parental rights of a non–consenting parent or parents;

(e) A full statement of the property of the child, and the value thereof, and any provisions the Court may impose for the protection or distribution of such property;

(f) That the adoptive parents are fit to provide a home environment for the healthy development of the child, and that the adoption is in the best interests of the child;

(g) Facts showing that all parties entitled to notice were given notice consistent with their rights to due process.

(h) In accordance with Indian custom, the Court may determine that an open adoption in some degree is best for the child and family. In that case, the Court will decide that a full termination of parental rights is not in the best interests of the child, and that certain residual parental rights will be maintained by the natural parents of the child. Such residual rights may include rights to visitation, contact, to be informed of matters of major importance affecting the health, welfare, education or spiritual training of the child, or such other residual rights as the Court may determine in the best interests of the Child.

(11) Relationship of Adoptive Parent and Child. Upon the 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 Tribe, 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 the 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.

(12) Failed Adoptions. In cases of failed adoptions, notices of any hearing regarding the child shall be sent to the natural biological parents and any previous Indian custodians. *(Rev. 4-15-03)*

3-2-407. Confidentiality of Records and Proceedings. 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 advocates. *(Rev. 4-15-03)*

3-2-408. Informal Adoptions. 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.

(1) Creation of informal adoption. 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 rights.

(2) Rights of non-consenting parent. 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 interest of the child and consistent with the rights of the natural parent under the laws of the child's Tribe and this Code.

(3) Hearing upon petition. Upon the filing of such a petition, the Court shall hold a hearing in accordance with Section 3-2-406(8) and the matter shall thereafter be determined in accordance with the proceeding rules for determination of a formal adoption petition.

(4) Residual rights of the natural parent. 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.

(5) Relationship of adoptive parent and child. 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 3-2-406(11), as specified for formal adoptions. *(Rev. 4-15-03)*

Part 5

Referrals Under the Indian Child Welfare Act.

3-2-501. 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.

3-2-502. 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.

3-2-503. 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 custodian;
- (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.

3-2-504. 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.

3-2-505. Investigation of Referral. 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:

- (1) Contact appropriate sources to determine the child's membership status of the Tribes;
- (2) Investigate and determine whether the child custody referral is one properly referred to the Tribes under the Indian Child Welfare Act;
- (3) Contact the parent or custodian 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 custodian, where practicable. Where such personal service is not practicable, then notice shall be given by registered mail with return receipt requested;
- (4) Contact social, medical, legal, or other sources to obtain necessary information regarding the circumstances of the case;
- (5) 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 stage of the proceedings, considering the location of witnesses, documents, and other evidence and the existence of subpoena and other process limitations of Tribal jurisdictions;

(6) Continuity in the child's surroundings and emotional contact;

(7) The wishes of the child's family, extended family, and other interested persons;

(8) Notify the parent, guardian, or custodian of the child, and all other interested persons having contacted the Tribal Court, of the decision regarding transfer. Notification to parent, guardian, or custodian shall be by registered mail, return receipt requested.

(9) 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.

(10) 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.

(11) 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.

3-2-506. 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 and a petition under this Chapter shall be filed at the earliest practicable date. *(Rev. 4-15-03)*