

**ORDINANCE
OF THE GOVERNING BODY OF
THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION, MONTANA**

BE IT ENACTED BY THE TRIBAL COUNCIL OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES THAT AMENDMENT NO. 27 SHALL AMEND ORDINANCE 103-A AS FOLLOWS:

Title III, Chapter 2, entitled “Child Abuse and Neglect” is amended as follows:

Every where the term “DHRD Social Services” appears throughout Chapter 2 it shall be changed to read” Tribal Social Services Department (TSSD).”

Title III, Chapter 2, Part 1, entitled “General Provisions and Definitions” is amended by inserting the following definition:

- (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).

Title III, Chapter 2, Part 1, entitled “General Provisions and Definitions” is amended by substituting the following definitions:

- (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.

(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.

Title III, Chapter 2, Part 1, entitled “General Provisions and Definitions” is amended by renumbering the remainder of the existing definitions to accommodate the above insertion and substitutions.

Title III, Chapter 2, Section 3-2-104, entitled “Rights and Responsibilities of Parents” is stricken in whole and replaced with the following:

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, which 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.

Title III, Chapter 2, Section 3-2-108, entitled “Duties of the Tribal Social Services Department” is stricken in whole and replaced with the following:

Section 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.

Title III, Chapter 2, Part 3, Section 3-2-303, entitled "Show cause hearing -- order" is amended by adding the following provision:

- (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.

Title III, Chapter 2, Part 7, entitled “Long-Term Care - Permanent Living Arrangement” is stricken in whole and replaced with the following:

Part 7 – Long-Term Care – Permanent Living Arrangement

3-2-701. Permanency hearing.

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.

Title III, Chapter 2, Part 8, entitled “Suspension or Termination of Parental Rights” is stricken in whole and replaced with the following:

Part 8 - Termination of Parental Rights.

Section 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.

Section 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.

Section 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.

Section 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 (15th) 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.

Section 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.

Section 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*.

Title III, Chapter 2, Part 9, entitled "Guardianship" is stricken in whole and replaced with the following:

Part 9 – Suspension of Parental Rights.

Section 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.

Section 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.

Section 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.

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.

Title III, Chapter 2, Part 10, entitled “Foster Homes, Shelter Homes and Day Care” is stricken in whole and replaced with the following:

Part 10 - Guardianship

Section 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.
- (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.

Section 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.

Section 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.

Title III, Chapter 2, Part 11, entitled “Customary Adoption” appearing below shall be inserted prior to Title III, Chapter 2, Part 11, “Referrals Under the Indian Child Welfare Act” and that Part 11 shall be renumbered to Title III, Chapter 2, Part 12, “Referrals Under the Indian Child Welfare Act” and the sections thereof renumbered as 3-2-1201 through 3-21206.

Part 11 – Customary Adoption

Section 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).

Section 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.

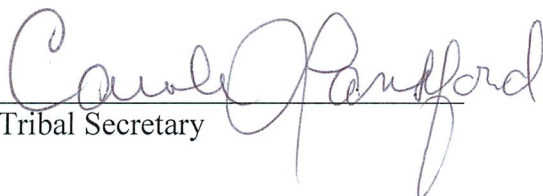
CERTIFICATION

The foregoing Amendment No. 27 to Ordinance 103-A was adopted by the Tribal Council on September 13, 2012, by a vote of 7 for, 0 opposed, and 0 not voting, pursuant to authority vested in it by Article VI, Section 1 (a), (l), (n), (q), (r) and (u) of the Tribes' Constitution and Bylaws; said Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.



Chairman, Tribal Council

ATTEST:



Tribal Secretary