

**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. 29 SHALL AMEND ORDINANCE 103-A AS FOLLOWS:**

***Title III, Chapter 1, entitled “Domestic Relations” is amended as follows:***

***Title III, Chapter 1, Part 1, is amended by entitling Part 1 as “General Provisions,” by repealing Sections 3-1-107. Paternity and support., and by renumbering Section 3-1-111 as 3-1-107 and Section 3-1-112 as 3-1-108.***

***Title III, Chapter 1, Part 2, entitled “Paternity” is added with the following language:***

**Part 2 – Paternity  
(Enacted 06/26/12)**

**3-1-201. Purpose.** The purpose of this chapter is to ensure that the father of each Salish and Kootenai child or child residing on the Flathead Reservation is identified and paternity established in order to protect the best interest of all children regarding such matters as customs and traditions of the tribe, survivorship and inheritance, health, support, and social security benefits. Indian children are the most vital and valued resource to the continued existence, the future, and integrity of the Confederated Salish and Kootenai Tribes. The Tribes have a compelling interest in promoting and maintaining the health and well being of all Salish and Kootenai children.

**3-1-202. Jurisdiction.**

- (1) The Tribal Court shall have jurisdiction over any action to determine paternity under this Title.
- (2) Any person who has sexual intercourse within the lands of the Flathead Reservation with a person who is a member or is eligible to become a member of the Confederated Salish and Kootenai Tribes

thereby submits to the jurisdiction of the Tribal Court as to an action brought under this Title with respect to a child who may have been conceived by that act of intercourse.

(3) In addition to any other method provided by statute, personal jurisdiction may be acquired by personal service of summons outside the Reservation or by service in accordance with the tribal law as now or hereafter amended.

**3-1-203. Applicability.** All civil proceedings pertaining to the establishment, enforcement or modification of child support obligations shall comply with this Title.

**3-1-204. General Provisions.** (1) Statute of Limitations. No statute of limitations applies to an action to establish paternity.

(2) Determination of Maternity. The provisions of this chapter may be applied to determinations of maternity.

**3-1-205. Rules of Procedure in Paternity Proceedings.** (1) Any paternity action under this chapter is a civil action governed by Part 7 Rules of Practice in Actions and Proceedings before the Tribal Court utilizing the Federal Rules of Civil Procedure.

(2) All proceedings in this section shall assure that concerned parties, including minors, shall have proper notice of hearings, and be accorded the right to professional counsel or lay representative at their own expense, the opportunity to introduce evidence, to be heard on their own behalf, and to examine witnesses. If the alleged father does not appear after notice through service of process, the hearing may be held and decree rendered in his absence.

(3) Any hearings or trial held under this section shall be in closed Court without admittance of any person other than those necessary to the action. All papers, records of files, other than the part of the permanent record of the Court or of a file of any agency, are subject to inspection only upon consent of the Court and all interested parties, or in exceptional cases only upon an Order of the Court for good cause shown.

(4) A judgment of the Tribal Court establishing the identity of the father of the child shall be conclusive of the fact in all subsequent determination of inheritance by the Court.

**3-1-206. Definitions.**

(1) "Alleged Father" means any man who might be the biological father of a child.

(2) "Adult Child" means a child eighteen (18) years or older.

(3) "Child" means a person who is less than eighteen (18) years old who has not been emancipated by order of a court of competent jurisdiction or by legal marriage.

(4) "Court" means the Tribal Court of the Confederated Salish and Kootenai Tribes of the Flathead Reservation.

(5) “Genetic Testing” means a DNA paternity test or other approved genetic testing by an accredited laboratory used to establish that the alleged father is the child's biological father with a probability of paternity of 99% or higher.

(6) “Party” means the parent, guardian, child, Tribe, or Confederated Salish and Kootenai Tribes Child Support Enforcement Program to whom certain rights accrue, including, but not limited to, with certain restrictions and limitations; the right to be notified of proceedings; to retain counsel or, in some cases, to secure Court-approved spokespersons; to appear and present evidence; to call, examine, and cross-examine witnesses; the unlimited or restricted right to discovery and the inspection of records; and the right to request a hearing or appeal a final order.

(7) “Paternity” means fatherhood. 'Establishing paternity' means identifying the father of a child and legally determining that he is the father.

(8) “Presumption” means a fact assumed to be true under law.

**3-1-207. Presumption of Paternity.** (1) A man is presumed to be the natural father of a child if:

(a) He and the child’s natural mother are or have been married to each other and the child is born during the marriage, or within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or dissolution, or after a decree of separation is entered by a court; or

(b) Before the child’s birth, he and the child’s natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born within three hundred (300) days after the termination of cohabitation; or

(c) After the child’s birth, he and the child’s natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

(i) He has acknowledged his paternity of the child in writing filed with the Confederated Salish and Kootenai Tribes Child Support Enforcement Program and the Confederated Salish and Kootenai Tribal Court; or

(ii) With his consent, he is named as the child’s father on the child’s birth certificate; or

(iii) He is obligated to support the child under a written voluntary promise or by court order;

(d) He acknowledges his paternity of the child in a writing filed with the Confederated Salish and Kootenai Tribes Child Support Enforcement Program and the Confederated Salish and Kootenai Tribal Court, who shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the Confederated Salish and Kootenai Tribes Child Support Enforcement Program and the Confederated Salish and Kootenai Tribal Court. If another man is presumed under subsection (a), (b), (c), or (d) of this section to be the child’s father, such acknowledgment shall give rise to the

presumption of paternity only with the written consent of the otherwise presumed father or after such other presumption has been rebutted.

(e) A presumption under this section may be rebutted in an appropriate action by a preponderance of evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man or an order of the Court disestablishing paternity.

**3-1-208. Good Cause Not to Establish Paternity.** (1) A woman may be excused from submitting to genetic testing or from identifying or locating the father of her child when there is good cause not to reveal his identity or location. The Court may hold a closed, ex-parte hearing to determine whether good cause exists. "Good cause" may include, but is not limited to:

(a) Cases involving domestic violence:

(b) Cases involving incest or rape; or

(c) Cases where identification of the father is not in the best interest of the child.

**3-1-209. Artificial Insemination.** (1) **Husband and Child Relationship.** If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of the child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the Confederated Salish and Kootenai Tribes Child Support Enforcement Program, where it shall be kept confidential and in a sealed file.

(b) **Donor and Child Relationship.** The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived, unless the donor and the woman agree in writing that said donor shall be the father. The agreement must be in writing and signed by the donor and the woman. The physician shall certify their signatures and the date of the insemination and file the agreement with the Confederated Salish and Kootenai Tribes Child Support Enforcement Program, where it shall be kept confidential and in a sealed file.

(c) **Administrative Record.** The failure of the licensed physician to perform any administrative act required by this section shall not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only in exceptional cases upon an order of the Court for good cause shown.

**3-1-210. Agreed Paternity Order.** (1) The parties may submit an agreed order establishing the paternity of a child. Before deciding whether to approve the agreed order, the judge shall discuss the agreed order with each party and shall:

(a) Explain the proposed agreed order in detail and the consequences of the order and of the person's failure to comply with agreed terms;

(b) Assure that the person's consent to the proposed agreed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person;

(c) Explain the person's right to a spokesperson at their own expense;

(d) Explain the burden of proof as to each issue;

(e) Explain that once the person agrees to the proposed order and it is signed and entered by the Court, it will be too late for the person to change his or her mind.

(2) If the Court finds that any consent was not truly voluntary, the agreed order shall not be entered and the case shall proceed to a hearing.

**3-1-211. Paternity Petition.** (1) Generally. A paternity proceeding under this Title may stand alone as a separate proceeding or it may be joined with an action to determine child support at the request of the alleged father or the child's mother. Paternity proceedings may also be joined with an action for divorce, dissolution, annulment, declaration of invalidity, separate maintenance, child-parent relationship, support, or any other civil action in which paternity is an issue including proceedings in Juvenile Court.

(2) Who May File Petition. A petition to request the Court to establish paternity may be filed by:

(a) An adult child, or, a child's legal guardian;

(b) The child's natural mother;

(c) An alleged father of the child; or

(d) Any tribal agency with an interest in determining parentage.

(3) Contents of Petition. A petition to establish paternity, prepared on a form approved by the Court, shall state:

(a) The names, ages, addresses, and tribal affiliations, if any, of the natural mother, the alleged father(s), the child, all others who have legal rights of custody, visitation, or support of the child, and of the petitioner;

(b) Whether the natural mother and the alleged father are or were married, and the dates of marriage, separation, and divorce, if any; (c) Whether the natural mother and alleged father agree that the alleged father is the natural father of the child; and

(d) Whether there are other courts or administrative paternity proceedings or state paternity affidavits concerning the child or whether parental rights have been terminated.

(e) A certified copy of the child's birth certificate shall be attached to the petition or provided to the Court at least ten (10) days before the first hearing.

(f) An affidavit setting forth the factual basis for the alleged paternity for each child.

(4) **Service and Summons.** All parties, including the child if over eighteen (18) years of age, the biological mother, and the man alleged in the petition to be the natural father, shall be served with the petition and a summons. The summons shall notify the party that the party must respond to the summons and petition by filing an answer with the Court and serving it on all parties. The summons shall further notify the party that, if the written response is not filed with the Court within twenty-one (21) days after receipt of the summons and petition, the Court may, without that party's response, enter a judgment of paternity by default only if it has admitted evidence of genetic testing statistically proving that the man alleged in the petition is the biological father.

**3-1-212. Paternity Hearing.** (1) The following rules shall apply to paternity hearings:

(a) Only those persons the Court finds to have a legitimate interest in the proceedings may attend hearings under this chapter. The Confederated Salish and Kootenai Tribes Child Support Enforcement Program staff may be present at paternity hearings;

(b) The mother of the child and the alleged father may be compelled to testify or to provide DNA samples at the paternity hearing;

(c) Testimony of a health care provider concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged for purposes of admitting this evidence;

(d) The parties shall provide testimony on how the costs of paternity testing shall be paid and the Court will make a determination based on this testimony. If the testing was paid by the Confederated Salish and Kootenai Tribes Child Support Enforcement Program, the Tribes may waive all or part of the costs or request reimbursement. Parties who have testing done by non-tribal agencies shall bear all associated costs.

(e) The Court may enter a judgment of paternity by default only if it has admitted evidence of genetic testing statistically proving that the man alleged in the petition to be the natural father is the biological father.

**3-1-213. Evidence Relating to Paternity.** (1) Genetic tests are the preferred method of establishing paternity. Evidence relating to paternity may include:

(a) Genetic test results, weighted in accordance with evidence of the statistical probability of the alleged father's paternity;

(b) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(c) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(d) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the Court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(e) Any other evidence relevant to the issue of paternity of the child.

**3-1-214. Genetic Testing.** (1) In all paternity proceedings, the Court shall require the child, mother, and alleged father(s) to submit to genetic tests, unless good cause exists not to require such testing. The following requirements apply to genetic testing under this section:

(a) **Lab Accredited.** The tests shall be performed by an accredited paternity genetic testing lab that performs legally and medically acceptable tests, approved by the Confederated Salish and Kootenai Tribes Child Support Enforcement Program as an accredited genetic testing laboratory of reputable standing.

(b) **Admission into Evidence.** Unless a party objects to the results of genetic tests in writing at least five (5) days before the hearing, the tests shall be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity.

(c) **Affidavit of Genetic Expert.** The results of genetic tests must be accompanied by an affidavit from the expert describing the expert's qualifications and analyzing and interpreting the results as well as documentation of the chain of custody of the genetic samples.

(d) **Contempt of Court.** Failure to submit to genetic tests when required by the Court may constitute civil contempt of Court.

**3-1-215. Paternity Order.** The judgment or order of the Court determining whether or not a respondent is a parent of a child shall be based on a preponderance of the evidence. If the judgment or order of the Court establishes a different father than that on the child's birth certificate, the Court shall send the order to the Department of Vital Statistics of the state in which the child was born.

**3-1-216. Disestablishment of Presumed Paternity.** A man presumed to be a child's father under Section 3-2-207 of this chapter may bring an action for the purpose of declaring the nonexistence of the father and child relationship only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party. Any other interested party may bring an action at any time for the purpose of declaring the existence or nonexistence of the father and child relationship. Regardless of its terms, no agreement between an alleged or presumed father and the mother or child shall bar an action under this section. If an action under this section is brought before the birth of the child, all proceedings may be stayed until after the birth, except service of process and discovery, including the taking of depositions.

**3-1-217. Paternity Records.** The records filed in a paternity action shall be confidential. Only parties to the case may obtain copies.

**3-1-218. Paternity Established by other Jurisdictions.** Properly issued court and administrative orders, judgments, or decrees of other tribes, states, or federal agencies establishing paternity will be given full faith and credit. Such orders will be considered properly issued when the issuing court or administrative agency had personal jurisdiction over the person claimed to be bound by the foreign order, subject matter jurisdiction over the matter, proper service of process under the law of the issuing jurisdiction was made on such person, and the order was issued according of the laws of that jurisdiction and does not violate the public policy of the Confederated Salish and Kootenai Tribes. Such orders will be recognized in accordance with the procedures set out in Ordinance 4-3-204 through 4-3-207. The Court shall not, however, recognize any paternity judgments entered by default in the absence of evidence of genetic testing statistically proving that the man alleged is actually the biological father.

**Title III, Chapter 1, Part 3, entitled “Child Support” is added with the following language:**

**Part 3 - Child Support**  
(Enacted 06/26/12)

**3-1-301. Purpose.** The purpose of this chapter is to establish child support guidelines and procedures for the enforcement of child support and to provide for the reciprocal recognition and enforcement of child support orders and judgments. The establishment of these guidelines and procedures is in the best interests of Indian families, and especially Indian children, who have a right and need to receive support from their parents.

**3-1-302. Jurisdiction.** The Tribal Court shall have jurisdiction over any action to establish or enforce child support under this Title.

**3-1-303. General Provisions.** (1) Statute of Limitations. The statute of limitations for the enforcement of child support is tolled from the child’s birth until the child reaches the age of eighteen (18) or nineteen (19) if still enrolled in high school. Under extraordinary circumstances, and under the discretion of the Court, a child support obligation may continue for an adult child until the age of twenty-four (24) for educational or medical expenses. Factors to be considered include income of the parents, aptitude and ability of the adult child and parental expectations.

**3-1-304. Procedure for Child Support Proceedings.** Any child support action under this chapter is a civil action governed by the Confederated Salish and Kootenai Civil Rules of Tribal Court.

**3-1-305. Definitions.**

- (1) “Alleged Father” means any man who might be the biological father of a child.
- (2) “Child” means a person who is less than eighteen (18) years old who has not been emancipated by order of a court of competent jurisdiction or by legal marriage.



(3) “Child Support” means the financial obligation that non-custodial parent owes toward his or her children, whether such obligation is established through a judicial or administrative process or by stipulation of the non-custodial parent. The financial obligation of a non-custodial parent shall be met through the payment of monies and/or through the provision of other services or resources, as ordered by the Court or as agreed by the parties.

(4) “Confederated Salish and Kootenai Tribes Child Support Enforcement Program” means the Tribe’s program designated by the Confederated Salish and Kootenai Tribal Council to administer and enforce this code.

(5) “Guidelines” and/or “Schedule” means the Confederated Salish and Kootenai Tribes Child Support Enforcement Programs’ child support guidelines and schedule approved by the Confederated Salish and Kootenai Tribal Council. These guidelines may be modified upon approval from the Tribal Council.

(6) “Court” means the Confederated Salish and Kootenai Tribal Court of the Flathead Reservation.

(7) “Custodial Parent” means the person who holds legal custody of the child or children pursuant to a court order, or who exercises primary physical custody of the child or children on the basis of an agreement between the parents or by the absence of one parent. A legal guardian with primary physical custody of the child or children and standing in the position of the parent shall have the same rights to child support as a custodial parent.

(8) “Employer” means all persons or entities who agree to compensate another for services performed.

(9) “Non-custodial parent” means a parent of a child, whether or not conceived during the course of marriage, who does not hold legal custody of the child pursuant to a court order, or who does not exercise physical custody of the child on the basis of agreement between the parents or by the absence of one parent.

(10) “Obligor” means the person with an obligation to pay child support.

(11) “Obligee” means the person or agency with the right to receive child support.

(12) “Party” means the parent, guardian, child, Tribe, or Confederated Salish and Kootenai Tribes Child Support Enforcement Program to whom certain rights accrue, including, but not limited to, with certain restrictions and limitations; the right to be notified of proceedings; to retain counsel or, in some cases, to secure Court-approved spokespersons; to appear and present evidence; to call, examine, and cross-examine witnesses; the unlimited or restricted right to discovery and the inspection of records; and the right to request a hearing or appeal a final order.

(13) “Parenthood” means the position, function, and standing of a parent.

(14) “TANF” means the Temporary Assistance to Needy Families program, whether administered by the Confederated Salish and Kootenai Tribes, or another Tribe or a State.

**3-1-306. CSKT Tribal Child Support Enforcement Program.** (1) The Confederated Salish and Kootenai Tribes Child Support Enforcement Program are established to carry out the purposes set out in this chapter. The Program shall be operated in compliance with Title IV-D of the Federal Social Security Act (42 U.S.C. § 651) for the establishment of paternity, establishment and modification of child support obligations, enforcement of child support obligations, and location of custodial and non-custodial parents.

(a) **Authority.** Upon request of the parent, an obligee, and obligor, or a tribal or state agency with authority to make such a request, the Confederated Salish and Kootenai Tribes Child Support Enforcement Program may initiate legal action; join a legal action; or otherwise act to establish parenthood of a child, locate a non-custodial parent, or to establish, modify, or enforce a child support obligation. In such an action, the Confederated Salish and Kootenai Tribes Child Support Enforcement Program do not represent the requesting party or any other party to the action, but instead acts on behalf of the child.

(i) Upon the request of the Confederated Salish and Kootenai Tribes Child Support Enforcement Program, the Tribes, any of its agencies, enterprises, or businesses, and any employer operating within the boundaries of the Flathead Reservation shall provide information to assist it in locating obligees, their income, and their assets. The Confederated Salish and Kootenai Tribes Child Support Enforcement Program is further authorized to seek a subpoena from the Court to obtain the names, addresses, employment information, and other necessary data regarding an obligor.

(ii) An attorney representing the Confederated Salish and Kootenai Tribes Child Support Enforcement Program has an attorney-client relationship only and exclusively with the Tribes and with the Confederated Salish and Kootenai Tribes Child Support Enforcement Program. The attorney does not have an attorney-client relationship with any applicant for or recipient of child support services. Any communication between the attorney and a mother, father, alleged father(s), child, or any other party in a paternity or child support action shall not be considered privileged or confidential unless specifically required by tribal or federal law.

(b) **Confidentiality.** The Confederated Salish and Kootenai Tribes Child Support Enforcement Program shall keep confidential all information and records in its possession except when release is necessary to carry out its duties.

(c) **Confederated Salish and Kootenai Tribes Child Support Registry.** The Confederated Salish and Kootenai Tribes Child Support Enforcement Program shall maintain the Confederated Salish and Kootenai Tribes Child Support Registry for receipt and disbursement of child support payments.

(d) **Program Recommendations and Assistance.** The Confederated Salish and Kootenai Tribes Child Support Enforcement Program shall prepare a recommendation about the child support and health insurance obligation for each case, using a form developed by the Program. In making its recommendation, the Confederated Salish and Kootenai Child Support Enforcement Program shall be guided by the Tribes Child Support Guidelines and Schedule. The Program's recommendation shall be filed with the petition whenever possible. The Program shall make assistance available to parents in developing agreements for child support and health insurance. Parents may obtain these services before they file a petition or they may be referred by the Court.

**3-1-307. Confidentiality.** (1) **Generally.** The Court may order that the address and other location information regarding a party or child shall not be released if the Court finds that release of such information is reasonably likely to result in physical or emotional harm to the child or to the party. In such instance, the information shall not be available for public view and the Court may designate those persons who are allowed access.

(2) **Hearings.** Only those persons the Court finds to have a legitimate interest in the proceedings may attend hearings under this chapter. Confederated Salish and Kootenai Tribes Child Support Enforcement Program staff may be present at child support hearings.

(3) **Financial Records.** The Court shall make provision for the confidentiality of financial records filed by the parties, so that they are secure from view by the general public but may be reviewed by the parties to the case and the Confederated Salish and Kootenai Tribes Child Support Enforcement Program, solely for the purpose of establishing, modifying, enforcing, or distributing child support.

**3-1-308. Petition for Child Support.**

(1) **Who May File.** Any parent, guardian, emancipated child, or agency authorized to enforce the child support laws of the Confederated Salish and Kootenai Tribes may file a petition for establishment of child support under this chapter. The child support petition may be filed as a separate proceeding, or in connection with a petition for:

- (a) Dissolution or annulment;
- (b) Paternity; or
- (c) Child custody.

(2) **Contents of Petition.** A petition for establishment of child support shall contain:

- (a) The name, address, tribal affiliation, date and place of birth, and social security number of the petitioner, the responding party, and the child for who support is requested;
- (b) The child support obligation requested or agreed upon;
- (c) The proposed provision of health insurance for the child;
- (d) Any proposed work-related day care or extraordinary medical or educational expenses;
- (e) The date proposed for the child support obligation to begin;
- (f) The proposed frequency of payment;
- (g) A statement whether child support payments should be made by wage withholding or by direct deposit to the Confederated Salish and Kootenai Tribes Child Support Enforcement Program;
- (h) A proposed parenting plan, if any, or if custody is shared, the percentage of a year that each parent has physical custody of the child;

(i) an affidavit attesting that the petitioner swears that he or she believes that the male party is the father of the child, or a statement that the parties agree that the male party is the father of the child;

(j) a statement whether any of the following proceedings involving the parents or the child are pending or have taken place in any court or administrative agency, and if so, the date, name, and place of the court or agency:

(i) Child custody proceeding;

(ii) Child support proceeding;

(iii) Paternity establishment or disestablishment proceeding;

(iv) Proceeding requesting a domestic violence protective order or no-contact order; or

(v) Proceeding requesting a restraining orders involving the child or a party;

(k) A statement whether either parent has ever received state or tribal public assistance, and if so, the date(s) and name of the state or tribe providing assistance;

(l) All financial information required by the Confederated Salish and Kootenai Tribes Child Support Enforcement Program;

(m) authorization for the release of all financial records to the Confederated Salish and Kootenai Tribal Court and the Confederated Salish and Kootenai Tribes Child Support Enforcement Program;

(n) A statement regarding which parent should be allowed to claim the child as a dependent for income tax purposes; and

(o) The recommendation of the Confederated Salish and Kootenai Tribes Child Support Enforcement Program regarding child support and health insurance coverage.

(3) Service and Summons. The petitioner shall serve a copy of the petition and summons upon the parent against whom child support is to be established. The summons shall inform the respondent of the following:

(a) That an answer must be filed with the Court and served on the petitioning party within twenty-one (21) days of the date of service of the petition;

(b) That if the respondent fails to enter a defense to the petition challenging the authority of the Court to hear the matter by the date of the hearing, the hearing shall proceed on the basis of the petitioner's evidence;

(c) That an order of child support may obligate the respondent to pay child support until the age of majority under the statute of limitations under Section 3-1-303 above;

- (d) That if the obligor fails to pay child support under an order, the Court may authorize publication of an obligor's name in a local newspaper and/or suspension or denial of an obligor's licenses for failure to pay child support;
- (e) That respondent's employer or others with evidence of the parent's income may be subpoenaed to provide the Court with records of his or her income;
- (f) That if there is no reliable evidence of the respondent's income, income will be imputed according to the Tribes Child Support Guidelines and Schedule;
- (g) That if the parent's income is reduced as a matter of choice and not for reasonable cause, the Court will attribute income up to the parent's earning capacity; and
- (h) That he or she may enter into an agreed child support order as allowed in this Title.

**3-1-309. Notice to Child Support Program.** The Court shall provide all notices of hearings in any marriage dissolution, child custody proceeding or paternity action involving child support. However, it shall be the responsibility of the Petitioning Party to provide the Confederated Salish and Kootenai Tribes Child Support Enforcement Program with a copy of the petition, response, financial information and all other documents filed with the Court

**3-1-310. Setting the Initial Child Support Hearing.** When the Court receives a petition for child support, it may set a hearing date which may not be more than twenty-eight (28) calendar days after the petition was received, unless continued for good cause.

**3-1-311. Agreed Child Support Order.**

(1) **Generally.** In lieu of a contested hearing under this chapter, the parties may enter into an agreement as to the level of child support obligation in accordance with this section. The Court may only approve an agreement for a deviation from the Tribes Child Support Guidelines and Schedule under the procedures established in Section 3-3-320, below.

(2) **Role of Child Support Program.** The Confederated Salish and Kootenai Tribes Child Support Enforcement Program shall assist the parties to develop the agreement under the Tribes Child Support Guidelines and Schedule.

(3) **Form.** The signed and notarized agreement shall be submitted to the Court for approval and entry of the order. The agreed order shall have the same force as any other order issued by the Court.

(4) **Court Review.** The Court may hold a hearing to review the agreed order and ensure that the parties understand the terms of the proposed order. If the Court finds that any consent was not truly voluntary, the agreed order shall not be entered and the case shall proceed to a hearing.

**3-1-312. Child Support Hearing.** The Court shall review the contents of the petition and hear any additional evidence in order to establish the child support obligation by applying the Tribes Child Support Guidelines and Schedule to the circumstances of the parties. The standard of proof for establishment of the amount of the child support obligation shall be by a preponderance of the evidence.

**3-1-313. Child Support Order.** (1) Generally. Payments under a child support order shall be made to the Confederated Salish and Kootenai Tribes Child Support Enforcement Program for distribution to the custodial parent or other obligee. The Court may, however, order payments to be made elsewhere if there is a showing that it is in the best interests of the child.

(2) Content. A child support order shall include:

(a) The child support obligation of one or both parties, including:

(i) The amount of cash to be paid to the other party;

(ii) The amount of the cash payment which is allocated to work-related day care or health insurance, if any;

(iii) The amount of non-cash services or resources to be provided to the other party, if any; and

(iv) The amount to be paid to third parties for day care, health insurance, or extraordinary expenses, if any.

(b) The date the child support obligation begins;

(c) The frequency of child support payments;

(d) The duration and amount of any pre-filing child support obligation;

(e) a statement that each party shall notify the Confederated Salish and Kootenai Tribes Child Support Enforcement Program of any change of employer or change of address within ten (10) days of the change;

(f) A statement that the child support order is final for purposes of appeal.

**3-1-314. Default Child Support Order.** (1) If the respondent fails to appear or otherwise defend, the Court may enter a default child support order upon request of the Petitioner. The Court may enter a default child support order based upon the evidence contained in the child support petition and the recommendation of the Confederated Salish and Kootenai Tribes Child Support Enforcement Program, and upon finding the following:

(a) The respondent was given proper service of the petition and summons and proper notice of the hearing; and

(b) The petitioner has stated, under oath, that he or she believes that the male party is the father of the child.

(2) The default order may be suspended or vacated upon a showing of good cause or disestablishment of paternity.

**3-1-315. Modification of Child Support Orders.** (1) When there has been a substantial change in the income of the paying party or other factors that determined the original support obligation, a party may request, by motion, modification of a Confederated Salish and Kootenai Tribal Court child support order.

(a) **Motion for Modification.** A motion for a modification of child support shall be accompanied by an affidavit setting forth the factual basis for the motion and the modification requested. The moving party shall serve the other parties who would be affected by the modification request with the motion and notice of hearing. The Court may set a hearing no sooner than fourteen (14) days after service of the motion.

(b) **Modification Hearing.** The moving party has the burden to prove the grounds for modification of the order. Grounds for modification of a child support order include:

(i) A substantial increase or decrease in the gross income that was the basis of the current support order;

(ii) A change in custody of a child;

(iii) A change in the Tribes Child Support Guidelines and Schedule; or

(iv) Other substantial change in circumstance that justifies a modification.

(c) **Financial Information.** Both parties shall file updated financial information forms at least ten (10) days before the modification hearing, except that:

(i) In agreed modification orders, no financial information need be filed with the Court; and;

(ii) A party is not required to provide his or her financial information as part of the Court record provided the party has made full and complete financial disclosure to the Confederated Salish and Kootenai Tribes Child Support Enforcement Program and the program has certified that it has reviewed the financial information and its recommendation is based upon that information.

**3-1-316. Enforcement of Child Support Orders.** (1) **Motion to Enforce Child Support Order.** An obligee or the Confederated Salish and Kootenai Tribes Child Support Enforcement Program may file a motion for the Court to enforce payment of a child support order. The petitioner must serve the obligor with a copy of the motion and notice of the hearing. The Court shall set a show cause hearing after the respondent receives notice of the enforcement action.

(2) **Enforcement Hearing.** If the moving party meets the burden of proving that the child support obligation is at least thirty (30) days overdue in an amount equal to one month's child support obligation or that the party has a history of non-compliance, by a preponderance of the evidence, the Court shall set a show cause hearing and may find an obligor in civil contempt and order any of the remedies available at law, including, but not limited to:

(a) Wage withholding;

(b) Attachment of assets;

(c) Garnishment;

(d) Attachment of per capita, Individual Indian Money (IIM) account, and/or lease income;

(e) Verification of income; and

(f) Proof of reasonable efforts to secure employment.

(3) The Court may order further hearings to monitor compliance with all child support orders.

(4) In addition to other remedies, the Court may issue an order to an employer trustee, financial agency, other person, or corporation on the reservation over whom the Court has jurisdiction, to withhold and pay over to the Tribal Child Support Enforcement Program or the person designated by the Court or the parent, money due or to become due. The Judge must include a statement in the order that, should the obligor fail to make a support payment, the obligor's income is subject to being withheld.

(g) Employers may not take any discharge, refuse to employ, or take disciplinary action against an obligor parent due to a wage withholding requirement or request, In the event that any employer has engaged in the above actions shall be fined in an amount not to exceed \$500.00.

(h) Income withholding. The Judge must include a statement in the order that should the obligated party fail to make a support payment, his/ her income is subject to be withheld.

(i) Employers who fail to withhold child support as ordered are liable for the full amount that should have been withheld. The Tribal Child Support Enforcement Program may also pursue a civil contempt, which shall carry a fine of up to \$500.00 for each contempt.

(5) Voluntary income assignments, excepting Tribal per capita dividends, may be completed and signed by the obligor. Tribal Child Support Enforcement Program shall send the standardized form to the individual in control of the funds being assigned by the obligor.

(6) Income Withholding. Tribal Child Support Enforcement Program will work to establish, modify, and enforce Child Support for all cases in the jurisdiction of the Tribal Court and in any case that is appropriately referred from a foreign jurisdiction. All Child Support Obligations will be based on the Child Support Guidelines and Schedule unless there is a finding by the Court that the application of these guidelines would be unjust or inappropriate in a particular case, or that deviation is in the best interest of the child(ren).

(7) In the event that there are Child Support arrears in a case, an additional 20% of current order should be ordered to be applied toward the liquidation of any overdue support. In cases where this is not a current Child Support Order, up to 10% of the non-custodial parent's gross income can be ordered to pay back arrears (for the custodial parent, Tribal or State debt).

(8) Income shall not be subject to withholding in any case where the total amount to be withheld exceeds the maximum amount permitted under the above-mentioned act.



(j) The maximum part of the aggregate disposable earnings of any person for any work week which is subject to garnishment or income assignment for the support of a minor child(ren) shall not exceed:

(i) Fifty percent (50%) of such person's disposable earnings for that week, if such person is supporting his spouse or a dependent child(ren) other than the child(ren) with respect to whose support such order is used; and

(ii) Sixty percent (60%) of such person's disposable earnings for that week if such person is not supporting a spouse or dependent child(ren). The fifty percent (50%) specified in paragraph one (1) of this subsection shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in paragraph two (2) of this subsection shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or income assignment to enforce a support order with respect to a period which is prior to the twelve (12) week period which ends with the beginning of such work week.

(9) To avoid improperly collecting Child Support, the Tribal Child Support Enforcement Program will immediately terminate income withholding and any other collection action on closed cases. In the event that Child Support is improperly withheld, the Tribal Child Support Enforcement Program will immediately refund the payment and amend the Notice of Collections to ensure proper accounting.

(10) When a case has been closed, the Tribal Child Support Enforcement Program or designee will immediately terminate any income withholding in cases where there is no longer a current order for support and all arrearage's have been satisfied.

(11) (a) In the event that a participant feels that there is good cause not to require income withholding, the Tribal Child Support Enforcement Program shall advise the participant that they should present the case to the Judge, who may enter a finding to disallow a withholding.

(b) Participants may also enter a signed agreement that provides for an alternative arrangement for payment, which will be entered into the Court's record. However, in the event that payments become delinquent, the Tribal Child Support Enforcement Program will proceed with collection actions that may include income withholding.

(c) All Child Support Orders must provide for automatic income withholding as necessary to comply with the order. Income shall not be subject to withholding in any case where the Court finds that there is good cause not to require the withholding or where there is a signed agreement between the participants that provides for an alternative arrangement that is entered into the Court's record.

(12) Tribal Child Support Enforcement Program has included into the Title IV-D plan that the only basis for contesting a withholding is a mistake in fact, in which means an error in the amount of current or overdue support or the identity of the alleged non-custodial parent is in question.

(13) The Tribal Child Support Enforcement Program shall utilize the standard Federal Income withholding form in contacting the employer to provide a notice of withholding order. In addition, staff shall follow up with the employer to make sure that they have received, reviewed, and understood the form. The Tribal Child Support Enforcement Program shall alert them of the potential

penalties for failing to withhold or discriminating against the employee with a withholding order. The Tribal Child Support Enforcement Program shall establish a cooperative working relationship with the employer to make the collection of withholding smoother for all parties involved.

(14) In cases where a non-custodial parent has multiple withholding orders, the amounts withheld and collected shall be allocated in an equitable manner across all withholding orders. In no case shall one order be given preference over another order to the extent that the second order is not implemented as required.

(15) Inter-governmental cases: (a) If a case is referred to the Tribal Child Support Enforcement Program from another jurisdiction, the Tribal Child Support Enforcement Program shall assist in providing services under the Full Faith and Credit for Child Support Orders Act (USC 173B); however, the Court retains authority to review the foreign Court order for proper jurisdiction.

(b) The Tribal Child Support Enforcement Program shall extend the full range of Child Support services to respond to all requests from outside jurisdictions.

(c) The Tribal Child Support Enforcement Program is responsible for receiving and processing income withholding orders from States, Tribes, and other entities, and ensuring orders are properly and promptly served on employers within the Tribe's jurisdiction.

**3-1-317. Child Support Guidelines and Schedule.** (1) The Confederated Salish and Kootenai Tribes Child Support Enforcement Program shall establish child support guidelines and a schedule for adoption by the Tribal Council. The guidelines shall set the scale of minimum child support contributions and shall be used to determine the amount an obligor parent must pay for support of his or her child pursuant to this chapter. The guidelines shall place a duty for child support upon either or both parents based on their respective financial resources and the custodial arrangements for the child(ren). The guidelines and schedule must, at a minimum:

(1) Gross and adjusted gross income;

(2) Be based on specific descriptive and numeric criteria and result in a computation of an amount of child support that is sufficient to meet the basic needs of the child;

(3) Provide a sufficient basis to support written findings for the award of child support;

(4) Provide for a minimum amount of monthly child support, not less than \$25.00 per child to establish the principal that every parent, regardless of income, has an obligation to provide financial support for a child; and

(e) Establish a median income based on the tribe's government minimum wage to be imputed as income when the Court has no reliable evidence for a person upon which to base a child support award.

The Confederated Salish and Kootenai Tribes Child Support Enforcement Program shall review its guidelines and schedule at least once every four (4) years to ensure that they remain current and shall make recommendations for revisions, as appropriate, to the Tribal Council.

**3-1-318. Determination of Income.** (1) **Gross Income.** Gross income shall include income from any source, and may include, but is not limited to, income from salaries, wages, treaty income, commissions, stipends, bonuses, dividends, severance pay, taxable per capita payments, interest, trust income, including income received from land held in trust by the United States or subject to a restriction against alienation, annuities, deferred compensation, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, gaming winnings, prizes, and spousal maintenance. Notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a support obligation, gross income also includes periodic payments from pension programs, retirement programs, and insurance policies. A specific cash value shall be assigned to non-cash benefits. Seasonal income, overtime income, or fluctuating income shall be averaged. When income from a full-time job is consistent with income during the marriage, income earned as the result of overtime hours or a second job may be disregarded.

(a) **Exclusions.** Gross income shall not include the following: benefits received from means-tested public assistance programs including, but not limited to, TANF, supplemental security income, food stamps, or any other program exempted by federal law; income of a parent's new spouse; and sums received as child support.

(b) **Self-Employment.** For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income means gross receipts minus ordinary and necessary expenses required to produce income.

(c) **Underemployment.** If a parent is unemployed or working below full earning capacity, the Court may consider the reasons. Among other factors, the Court may consider whether the parent declined to accept or pursue employment or training opportunities, and the parent's job skills, training, work history, education, health, and age. If the Court finds that earnings are reduced as a matter of choice and not for reasonable cause, the Court shall attribute income to a parent up to his or her earning capacity.

(d) **Imputed Income.** If the Court has no reliable evidence concerning a parent's income, the Court shall impute income as set forth in the Tribes Child Support Guidelines.

(2) **Adjusted Gross Income** Adjusted gross income includes gross income minus the following deductions:

(a) United States incomes taxes;

(b) Tribal, state, or local income taxes;

(c) FICA;

(d) Health insurance premiums to the extent paid by an obligor for the benefit of the child;

(e) Child support paid for another child to the extent actually paid;

(f) Court ordered spousal maintenance to the extent actually paid;

(g) Mandatory union and professional dues, and mandatory pension plan payments; and

(h) The amount of reasonable expense of an obligor for preexisting, jointly acquired debt of the parents to the extent payment of the debt is actually made. When a deduction for debt service is made, the Court may provide for prospective upward adjustments of support based on the anticipated reduction or elimination of the debt service.

**3-1-319. Pre-filing Child Support Obligations.** The Court may not order payment for support provided or expenses incurred more than five (5) years prior to the commencement of a child support action. Any period of time in which the responsible party has concealed himself or avoided the jurisdiction of the Court under this chapter shall not be included within the five-year period.

**3-1-320. Deviation from Child Support Guidelines and Schedule.** (1) The Court may order child support in an amount different from that which is provided in the Tribes Child Support Guidelines, only if:

(a) The party requesting deviation shows by a preponderance of the evidence that application of the guidelines is inappropriate, unjust, or causes substantial hardship in the particular case;

(b) Deviation is in the best interest of the child;

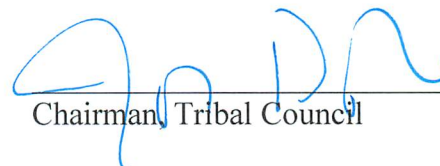
(c) The court enters written findings of the reasons justifying deviation under this subsection; and;

(d) The court sets out in its order what the monthly support obligation would have been under the schedule without the deviation and what the Court is ordering as the monthly support obligation with the deviation.

**3-1-321. Sovereign Immunity.** Nothing in this Ordinance shall be construed as a waiver of sovereign immunity of the Confederated Salish and Kootenai Tribes.

## CERTIFICATION

The foregoing Amendment No. 29 to Ordinance 103-A was adopted by the Tribal Council on the 24<sup>th</sup> day of January, 2013, with a vote of 7 for, 1 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