

LAW AND ORDER CODE OF THE
KOOTENAI TRIBE OF IDAHO

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CHAPTER 1

GENERAL

1-1 CONSTITUTIONAL AUTHORITY

1-1.01 This Code is adopted pursuant to the authority vested in Tribal Council of the Kootenai Tribe of Idaho under Article IV, Section 1, of the Constitution of the Kootenai Tribe of Idaho as duly adopted April 10, 1947.

1-2 PRIOR INCONSISTENT LAW REPEALED

1-2.01 Any Code, Ordinance, or Resolution of the Kootenai Tribe of Idaho which conflicts in any way with the provisions of this Code is hereby repealed to the extent that it is inconsistent with or is contrary to the spirit or purpose of this Code.

1-3 CODE OF FEDERAL REGULATIONS NO LONGER APPLICABLE

1-3.01 Any provision of the Code of Federal Regulations, Title 25, Part 11, relating to Courts of Indian Offenses as presently constituted or hereafter constituted that is not specifically adopted herein shall no longer be applicable to the Reservation except that the Tribal Council reserves the right to reestablish a Court of Indian Offenses by resolution when necessary for the administration of justice.

1-4 AMENDMENT OF LAW AND ORDER CODE

1-4.01 This Code may be amended in the manner provided for the adoption of ordinances. Amendments and additions to this Code shall become a part of this Code for all purposes and shall be codified and incorporated herein in a manner consistent with the numbering and organization of this Code.

1-5 ADOPTION BY REFERENCE NOT A WAIVER OF SOVEREIGN POWER

1-5.01 The adoption of any law, code, or other document by reference into this Law and Order Code does not constitute a waiver or cession of any sovereign power of the Kootenai Tribe of Idaho, or diminish such sovereign power, but shall result in the law, code, or other document thus adopted becoming the Law of the Kootenai Tribe of Idaho.

1-6 SOVEREIGN IMMUNITY

1-6.01 Except as required by federal law, the Constitution of the Kootenai Tribe of Idaho or by Ordinances, Resolutions, or agreements adopted or approved by the Tribal Council which contain express waivers, the Kootenai Tribe of Idaho and their officers and employees shall be immune from any civil action or any liability arising from the performance of official duties. Nothing in any provision of this code is intended or may be construed to waive such immunity.

1-7 - 1-11 Reserved

1-12 DEFINITIONS

1-12.01 As used herein, except as may be specifically provided otherwise, the following definitions shall apply.

(1) "Agency" shall mean the Northern Idaho Agency of the United States Department of the Interior, Bureau of Indian Affairs, located at Lapwai, Idaho.

(2) "Council" shall mean the Tribal Council of the Kootenai Tribe of Idaho.

(3) "Court" shall mean the Tribal Court or Court of Indian Offenses, as the case may be, of the Kootenai Tribe of Idaho.

(4) "Indian" shall mean any person of Indian descent who is a member of a federally recognized Indian Tribe, or who is recognized as an Indian by his or her tribe or community.

(5) "Member" shall mean a member of the Kootenai Tribe of Idaho.

(6) "Off-Reservation Rights" shall mean aboriginal or treaty rights, as the case may be, held by members of the Kootenai Tribe of Idaho.

(7) "Reservation" shall mean all tribal and allotted lands held in trust by the United States as Indian land and any lands which may hereafter be placed in trust for the Tribe or any land occupied by the Tribe or members of the Tribe that is considered a dependant Indian Community.

(8) "Secretary" shall mean the Secretary of the Interior or an authorized representative thereof.

(9) "Superintendent" shall mean the superintendent of the agency.

(10) "Tribe" shall mean the Kootenai Tribe of Idaho.

CHAPTER 2

JUDICIARY

2-1 ESTABLISHMENT

2-1.01 The Kootenai Tribe of Idaho hereby establishes a court to be known as the Tribal Court of the Kootenai Tribe of Idaho and reserves the right to establish such other courts as may be allowed by law.

2-2 JURISDICTION

2-2.01 The Tribal Court shall have exclusive jurisdiction over all judicial matters occurring on the Reservation involving Indians and non Indians to the full extent allowed by federal law.

2-2.02 The Tribal Court shall have exclusive jurisdiction over offenses committed by members in the exercise of off-reservation rights within the Tribe's aboriginal territory.

2-2.03 The Tribal Court shall have concurrent jurisdiction over matters subject to its jurisdiction, where jurisdiction has been granted to State or Federal courts under federal law, including Major Crimes defined in 18 USC 1153 where the defendant is Indian. The Kootenai Tribal Court shall not exercise jurisdiction over a defendant charged with a Major Crime until such time as the matter has been referred to the federal prosecutor and the federal prosecutor has declined to prosecute the defendant under federal law.

2-2.04 Any other tribal court or Court of Indian Offenses established pursuant to this chapter shall have its jurisdiction defined at the time of establishment.

2-3 MEANS TO CARRY JURISDICTION INTO EFFECT

2-3.01 In the event that a necessary procedure is not established by this Code, any suitable procedure may be adopted by the Court, provided it does not violate applicable laws and is consistent with tribal law and custom.

2-4 JUDGES

2-4.01 Judges. The Tribal Court shall be composed of a Chief Judge, who shall preside over all matters unless precluded from doing so by law or

circumstance. In such event, the Chief Judge or Council shall call an Associate Judge into service. At the Council's discretion, an alternate Associate Judge may also be appointed, who shall serve at the discretion of the Chief Judge. Any judge appointed shall be empowered to hear and decide all matters properly brought before the Court.

2-4.02 Appointment, Compensation, and Term. All judges shall be appointed by the Tribal Council during a regularly scheduled meeting at which all Council members are present and the basis for compensation shall be determined by the full Council at the time of appointment. Each judge so appointed shall hold office for a period not to exceed two years or such other term as may be determined by the Council and shall be eligible for reappointment.

2-4.03 Eligibility. To be eligible to serve as a judge of the Tribal Court, a person must:

(1) be over twenty-five years of age,

(2) never have been convicted or found guilty of a felony, or within one year, convicted of a misdemeanor involving moral turpitude,

(3) satisfy the Tribal Council that he or she is familiar with Tribal, federal, and state laws, applicable to the Reservation and members.

(4) be bonded in an amount determined by the Council.

In addition, preference for appointment shall be given to enrolled members of federally recognized Indian Tribes.

2-4.04 Removal. The Tribal Council may, by a majority vote of the Council's full membership, suspend, with or without pay, or remove any judge for cause. A written statement of such cause shall be served upon the judge at least ten (10) days prior to a public hearing to be held before the full Council. Any judge charged shall be given an adequate opportunity to answer all charges at the hearing. Causes sufficient for removal shall be such conduct determined by the Council to demonstrate the judge's inability to properly perform the duties assigned, including, by way of example and not

limitation: failure to uphold the law of the Tribe, excessive use of intoxicants, immoral behavior, conviction of any offense involving moral turpitude, use of official position for personal gain, desertion of office or failure to perform duties.

2-4.05 Unexpired Terms. In the event a Tribal Judge leaves office before the expiration of the judge's term, the Tribal Council shall appoint a successor to fill the unexpired term in the manner provided in Section 2-4.02 of this Code.

2-4.06 Disqualification. No judge shall preside over any action or proceeding to which the judge, or any relative by marriage or blood in the first degree, is a party or has a personal or monetary stake in the outcome, or any proceeding in which the judge has a bias against any party. Further, any party to any proceeding before the Tribal Court may, at any time, move to disqualify a judge that party believes is unable to fairly and impartially preside. A motion to disqualify a judge shall be accompanied by an affidavit stating the reasons supporting the motion. The Chief Judge, or a neutral judge if the Chief Judge is challenged, shall grant or deny the motion upon notice and hearing.

2-4.07 Duties. The judge(s) shall administer justice and discharge all duties imposed by law and shall hear and decide cases and enter judgments of orders disposing of each case. The judge(s) shall further make recommendations to the Tribal Council for the enactment or amendment of this Law and Order Code to improve judicial procedure.

2-4.08 Additional Duties of the Chief Judge. The Chief Judge shall be responsible for the Court's administration. In the absence of a court clerk, the Chief Judge shall also perform the clerk's duties.

2-4.09 Visiting Judges. If, for any reason, no judge is available to hear a case, the Chief Judge may request that a judge from a neighboring tribe hear the matter before the Court. Such request shall be in writing and approved by the Tribal Council. Compensation of a visiting judge shall be determined by agreement between the judge and the Tribal Council.

2-4.10 Request for Opinions. Whenever a judge is unable to resolve questions regarding jurisdiction or involving the meaning of laws applicable to a proceeding before the Court, a legal opinion may be

requested from the Tribal Attorney, the Superintendent, or the regional solicitor's office.

2-4.11 Legal Training. The Tribal Council may establish training requirements and programs for Tribal judges. Refusal of a judge to participate in any required training may be grounds for suspension or removal pursuant to Section 2-4.04.

2-5 OFFICERS OF THE COURT

2-5.01 Clerk of the Court. Subject to the availability of funds, and sufficient workload to justify the appointment, the Council may appoint a clerk of the Tribal Court. The clerk shall assist the Tribal Court, law enforcement officials, and with any document incidental to the lawful functions of the Court. The clerk shall attend and keep written records of all Court proceedings, administer oaths to witnesses, collect all fines paid, and pay out all fees required by this Code and make an accounting thereof to the appropriate Tribal officials. The clerk must be bonded in an amount established by the Council.

2-5.02 Legal Representative. Any person appearing in Tribal Court shall, at his or her own expense, have the right to be represented by a person licensed to practice before the Court. Persons are eligible to be licensed to practice before the Court if they meet the following qualifications:

(1) They are a member of the Kootenai Tribe of Idaho twenty-one years of age or older; or

(2) They are at least twenty-one years of age and take an oath that they are familiar with the laws and customs of the Kootenai Tribe of Idaho and have never been convicted of a felony and who pay a fee of twenty-five dollars (\$25.00).

2-5.03 Professional Attorneys. Professional attorneys may represent parties before the Courts of the Kootenai Tribe of Idaho provided they are admitted to practice before the Court. Any attorney who is an active member in good standing of any bar of any United States court or of the highest court of any State, Territory, or insular possession of the United States is eligible to be admitted to practice before the Tribal Courts. To be admitted, an attorney must certify that he or she is a member in good standing of one or more of the above-described bars, will abide by this Law and Order Code, the Rules of the Tribal Court, and any orders

issued by the Tribal Court and pay a fee of a twenty-five dollar (\$25.00).

2-6 COURT ADMINISTRATION

2-6.01 Records. The Tribal Court shall keep a record of all proceedings of the Court, including the title of each case, the names of the parties, the substance of the complaint, the names and addresses of all witnesses, the date of the hearing or trial, by whom conducted, the findings of the trier of fact and its verdict or judgment and any other facts or circumstances deemed important to the case. Subject to the availability of funds and equipment, the Court shall record by electronic, mechanical, or stenographic means all proceedings. Such recordings shall be preserved and kept by the Court Clerk.

2-6.02 Copies of Laws. The Tribal Court shall maintain a copy of the Law & Order Code of the Tribe and, subject to the availability of funds, such other books and publications as are necessary for the proper administration of justice. All ordinances and regulations enacted or promulgated by the Council shall be appended to this Law & Order Code, which shall be available for inspection and copying.

2-7 JURIES

2-7.01 Rules Governing Jury Trial.

(1) In any criminal case where there is a possible jail sentence, a trial by jury shall be granted upon request by either party at the preliminary hearing or arraignment or by written application to the Court within three (3) days thereafter.

(2) The jury shall consist of six (6) persons and one (1) alternate seated by the judge from a list of members of the Tribe residing within a twenty-five (25) mile radius of the Tribal headquarters.

(3) The Prosecutor, defense attorney, or defendant may remove jurors for just cause, as determined by the presiding judge under procedures established by agreement of the parties or ordered by the judge.

(4) When the jury has been seated, the jurors shall take an oath administered by the judge to try the case to the best of their ability under the directions and law given them by the judge.

(5) Each juror, including the alternate, shall be entitled to a fee for each one-half day of service plus mileage for travel to and from the Court payable by the Kootenai Tribe of Idaho pursuant to a schedule established by the Tribal Council.

(6) A party to a civil case involving a claim in excess of \$750.00 may request a jury trial if done so within three (3) days of filing the action. No right to a jury exists in domestic relations cases, adoptions, probates, juvenile cases, cases in equity, contempt proceedings, and cases on appeal.

2-7.02 Substitution of Jurors. The Court may order the discharge of a juror who becomes sick or is otherwise unable to perform duties and substitute an alternate juror. In the absence of an alternate and the failure of the parties to agree to continue the trial with five (5) or less jurors, the jury shall be discharged and a new jury shall be ordered.

2-7.03 Jury Instructions and Jury Verdict.

(1) The judge shall fully and completely instruct the jury in the law governing the case. The judge shall consider jury instructions submitted by each party and shall give instructions that accurately reflect the law to be applied to the case.

(2) In a civil action, the verdict shall be a majority for the plaintiff or the defendant.

(3) In a criminal action, the verdict shall be guilty or not guilty. A guilty verdict shall be by unanimous vote.

2-8 WITNESSES

2-8.01 Subpoenas. The judges of the Tribal Court shall have the power to issue subpoenas to compel the attendance of witnesses at any proceeding before the Court on the Court's own motion or at the request of law enforcement or any party to the proceeding. Each subpoena shall bear the signature of the judge issuing it.

2-8.02 Compensation of Witnesses.

(1) Each witness answering a subpoena shall be entitled to a fee and expenses in accord with the Rules of Court.

(2) Witnesses who testify voluntarily may be paid by the party calling them.

2-9 APPELLATE PROCEEDINGS

2-9.01 Appellate Court.

(1) Appeals from decisions from the Tribal Court shall be heard before one judge, who shall not be a judge who heard the case in the original instance. If it is not possible for any reason to assign the case to a judge of the Tribal Court, then the services of a judge from the Northwest Tribal Court Judges Association or other competent judge shall hear the case.

(2) Appeals shall be limited to issues arising under the Indian Civil Rights Act.

(3) The decision of the Appellate Court shall be final and the Court shall have the power to take any of the following actions:

- (a) Deny the appeal;
- (b) Grant the relief sought;
- (c) Remand the case to the court below for further proceedings consistent with the order of the Court of Appeals; and
- (d) To take what ever other action shall ensure justice is served.

2-9.02 Who May Appeal.

(1) A party may appeal to the Appellate Court upon filing a Notice of Appeal and general reason for the appeal in writing with the Clerk of Tribal Court or Judge within five (5) working days after the final judgment.

(2) The party appealing shall give proper assurance to the Tribal Court, through the posting of a bond or in any other manner as required by the presiding judge, that the party will satisfy the judgment if it is affirmed.

(3) In any case where the party has perfected his/her right to appeal, the judgment of the Tribal Court shall not be executed until after final disposition of the case by the Appellate Court.

2-9.03 Hearings. Hearings on appeals shall be held not less than ten or more than 30 days following the filing of the appeal. The judge will hear

only arguments on the issues related to alleged violations of the Indian Civil Rights Act. No evidence shall be presented or considered.

2-10 CONTEMPT

2-10.01 Criminal Contempt. A presiding judge may punish persons for contempt for disobeying any lawful order or process of the Court or wilfully disrupting the proceedings of the Court. If contempt is committed before a judge, the judge may impose punishment, including fines and imprisonment, without a hearing. In all other cases, a hearing must be granted before imposition of the punishment.

2-10.02 Civil Contempt. A judge may compel an act that has been ordered by the Court through the civil contempt power by fines that continue to accrue or imprisonment until the person obeys the Court's order.

2-11 REPRESENTATION OF THE TRIBE AND COUNCIL

2-11.01 The Tribal Council, as the representative of the Tribe, may use a tribal official, the tribal attorney or other qualified person approved to practice before the Tribal Court to represent it in any proceeding to which it is a party.

CHAPTER 3 CRIMINAL PROCEDURE

3-1 COMPLAINTS AND CITATIONS

3-1.01 Rules to Govern. These procedures govern criminal cases in the Tribal Court. They are intended to provide a fair and just determination in every criminal proceeding. They shall be construed to secure simplicity, fairness, and to eliminate unnecessary expense and delay. When appropriate, they shall be interpreted pursuant to Tribal custom. Where no custom exists, the Court may apply the federal or state law most appropriate to the situation.

3-1.02 Complaints and Citations. Every criminal proceeding shall be initiated by the filing of a complaint or citation, which shall state the following:

(1) The name of the complaining witness or the officer issuing a citation, the name of the defendant and address, if known;

(2) A short statement of the facts constituting the offense in ordinary language. If the acts constitute more than one offense, each offense shall be stated separately;

(3) A citation or complaint must be signed and dated by the issuing officer or the complaining witness.

3-1.03 Time of Complaint. No complaint or citation shall be filed charging the commission of any offense defined by this Code unless the offense charged was committed within one year of the date of the complaint.

3-2 SPEEDY TRIAL

3-2.01 Speedy Trial. Each person charged under this Code shall have the right to a speedy and public trial.

3-2.02 Time for Trial. A trial must begin within 180 days of the individual's arraignment, unless a longer period is requested or agreed to by the accused. The Court, on its own motion, may continue or postpone the case when justice so requires and the defendant will not be substantially prejudiced by the delay.

3-3 WAIVER OF TIME LIMITATIONS

3-3.01 Tolling of Time. A person accused of an offense who has intentionally avoided coming within the jurisdiction of the Court to escape prosecution shall be deemed to have waived the statute of limitations set forth in section 3-1.03 and the right to a speedy trial and the time during which the person remains outside the jurisdiction shall not count toward the time limits set forth above.

3-4 WARRANTS TO APPREHEND

3-4.01 Warrant to Apprehend.

(1) An arrest warrant shall be issued by the Court after a complaint and affidavit of the complaining party has been filed showing probable cause to believe that a violation was committed by the defendant.

(2) The warrant shall contain:

- (a) The name of the person to be arrested, or if his name is unknown, any description by which he can be identified with reasonable certainty;
- (b) The offense or offenses charged in the complaint;
- (c) The date of issuance and the signature of the Judge.

3-4.02 Summons in Lieu of a Warrant. When grounds otherwise exist to arrest a suspect, the Court may, in lieu of an arrest warrant, issue a summons or citation commanding the accused to appear before the Court at a stated time and place to answer the charge. The summons shall contain the same information as a warrant except that it may be signed by the Clerk of the Court. If a defendant fails to appear in response to a summons, a warrant for his or her arrest may be issued.

3-4.03 Execution of Warrant or Summons. A warrant or summons shall be executed or served by a law enforcement officer within the jurisdiction of the Court. Upon execution of the warrant or

summons or the failure to find the defendant, the law enforcement officer shall endorse the warrant and return it to the Clerk of the Court. An unexecuted warrant or summons may be canceled at any time by the Judge who issued it.

3-5 ARRESTS

3-5.01 Arrests by Law Enforcement. No tribal law enforcement officer shall arrest any person for any offense defined in this Code or by federal law except when the officer has a warrant commanding him to apprehend such person, or the offense occurs in the presence of the arresting officer, or he has probable cause to believe that the person arrested has committed an offense.

3-5.02 Citizen's Arrests. A tribal member or tribal employee may make a citizen's arrest for an offense which occurred in his presence. The use of force in a citizen's arrest is prohibited unless reasonable force is necessary to prevent immediate harm to a person or property.

3-5.03 Miranda Warnings. When a person is arrested or surrendered to the police after a citizen's arrest, he shall be informed of the following:

- (1) The right to remain silent and that any statement made by him may be used against him;
- (2) The charges against him;
- (3) The right to retain lay or professional counsel at his own expense;
- (4) If arrested pursuant to a warrant, the right to receive a copy of the warrant and complaint at the time of arrest or as soon thereafter as possible.

3-6 SEARCHES AND SEARCH WARRANTS

3-6.01 Who May Issue. Only a judge of the Tribal Court shall have authority to issue warrants for the search of any person or property within the jurisdiction of the Court.

3-6.02 Probable Cause. A tribal judge, upon a written and sworn affidavit and complaint, when satisfied there is probable cause, may issue a search warrant to search for and seize any evidence or contraband material to the investigation of a criminal offense within the jurisdiction of the Court.

3-6.03 Return of Search Warrant. An unexecuted search warrant shall be invalid after a period of seven (7) days from the date of issuance.

3-6.04 Warrant Content and Service. No warrant for search and seizure shall be valid unless it contains, with specificity, the name or description of the person or property to be searched and the articles of property to be seized. Warrants for search and seizure shall be executed only by tribal or federal law enforcement officers and, unless good cause exists otherwise, may be executed only during daylight hours.

3-6.05 Search Without a Warrant. No tribal law enforcement officer shall conduct any search without a valid warrant except under the following circumstances:

- (1) When the officer knows, or has probable cause to believe, that a suspect is engaged in the commission of an offense under this Code;
- (2) The search is incident to a lawful arrest, provided the scope of a search is for the safety of the arresting officer and does not extend beyond the suspect and the area under his immediate control;
- (3) When voluntary consent has been given by the suspect or some person who reasonably appears to have authority to give consent;
- (4) When probable cause exists to believe that the person searched may be armed and dangerous; or
- (5) When the search is of a moving vehicle and the officer has probable cause to believe that it contains contraband or stolen or embezzled property.

3-6.06 Disposition of Seized Property. The police shall inventory all property seized by warrant, or otherwise, and copies of such inventory shall be left with the person from whom the property was taken and with the Court Clerk. After its use as evidence, illegal substances shall be destroyed. All other property shall be returned to the defendant after trial or, if left unclaimed for a period of one year, shall be sold at auction by the Court.

3-7 ARRAIGNMENT

3-7.01 Commitment and Arraignment. No person arrested shall be detained or imprisoned under this Code for a period exceeding 72 hours, or the next day the Court is in session, which ever is shorter, without being arraigned before the Court or released from custody. At the arraignment the following procedure shall be observed:

(1) The defendant shall be read the complaint.

(2) The Judge shall explain the offense charged and the penalties prescribed and shall determine that the defendant understands the nature of the charges and possible penalties.

(3) The Judge shall advise the defendant of the right to remain silent and, at the defendant's own expense, to be represented by counsel of the defendant's own choosing.

(4) The Judge shall inform the defendant of the right to plead not guilty, guilty or no contest and shall request a plea. The plea, if given, shall be recorded by the Clerk. If the defendant does not enter a plea, the failure to do so shall be recorded as a plea of not guilty. The defendant shall be informed that a plea may be changed in an appearance before the Court any time prior to sentencing or trial.

(5) The Judge shall inform the defendant of other rights he/she may have before the Tribal Court.

3-8 BOND

3-8.01 Bail or Bond. A defendant may be admitted to bail based on the bond schedule approved by Council. Bail may only be in the form of cash bond.

3-8.02 Forfeiture. If the defendant fails to appear as lawfully required, the Court may direct an entry of such failure be made in the record, order the forfeiture of the cash bond, and may issue a warrant for the arrest of the defendant.

3-9 EXTRADITION

3-9.01 Extradition to Other Jurisdictions. If an accused is charged with a violation of the laws of any other tribe or Indian reservation or the federal or

state government, the Tribal Court may order that such person be delivered to the proper authorities, provided that a copy of the warrant, or proof of its existence, is presented to the Court.

3-9.02 Extradition Request to Tribal Jurisdiction. The Tribal Court shall request that any tribal member or other federally recognized Indian charged with a violation of this Code who is outside the jurisdiction of the Court be delivered by appropriate authorities to Tribal law enforcement for arrest and prosecution.

3-9.03 Extradition Arrest and Hearing. On receipt of a valid warrant from another jurisdiction, the Court may issue an order directing tribal law enforcement to apprehend and deliver the person named in the warrant to the proper authority, provided that, on the petition of the person named in the warrant, or on the Court's own motion, the judge may conduct a hearing to determine if there is probable cause to justify extradition.

3-9.04 Detention. The supervising law enforcement officer or the arresting officer immediately shall notify the Court of the apprehension of the subject of a warrant issued for extradition. The person apprehended may not be detained for a period longer than forty-eight (48) hours. If the requesting authority does not take custody within the time specified, the Court shall require a new warrant to be presented and that the requesting authority's representative accompany the tribal law enforcement officer to apprehend the person on the warrant and to take immediate custody after such apprehension.

3-10 TRIBAL PROSECUTOR

3-10.01 Appointment by Council. The Council shall appoint a person to act as tribal prosecutor and to represent the interests of the Tribe in any matter before the Court on a case by case basis at such compensation as determined by the Council. The prosecutor may be the tribal attorney if the defendant is represented by a professional attorney.

3-11 PROOF

3-11.01 Proof Beyond a Reasonable Doubt. No defendant shall be convicted of a criminal offense, as defined by this Code, unless the evidence presented shows beyond a reasonable doubt the defendant committed the offense charged.

3-12 COURT TRIALS

3-12.01 Trials Before the Tribal Judge. Unless a jury is requested by the defendant, all trials before the Court shall be heard without a jury. All rules and procedures applicable to the conduct of trials except those specifically applicable only to jury trials shall apply to court trials.

3-13 JURY TRIALS

3-13.01 Right to a Jury Trial. Any party to a criminal trial shall have the right to a trial by a jury of six (6) persons.

3-13.02 Requests for Jury. Requests for jury trials must be made by either party no later than three days after the arraignment. Requests made at the arraignment need not be in writing. All other requests must be in writing.

3-14 JURY SERVICE

3-14.01 Eligibility for Jury Service. Any member of the Kootenai Tribe of Idaho or other federally recognized Indian residing on the Kootenai Reservation who is eighteen (18) years of age or older, shall be eligible to serve as a juror.

3-14.02 Jury Panel. The Clerk of the Court, or in the Clerk's absence the Secretary of the Council, shall be responsible for maintaining an up-to-date list of potential jurors and, upon notice from the Court that a jury trial is pending, shall convene, by random selection and through use of a summons for jury duty, a panel of twelve (12) jurors on the day set for trial. Jurors may be excused from reporting at the discretion of the Clerk or Secretary but only for good reason, which shall not include financial hardship.

3-14.03 Jury Selection. The Clerk of Court or the presiding judge shall select at random the names of six (6) prospective jurors from the panel. These individuals shall constitute the jury unless either party upon questioning the jurors, objects to one or more of those selected. Parties are expected to challenge only for good reason. Each party may challenge two (2) jurors without cause. A party who has used two challenges may make a further challenge only upon demonstrating that a member of the panel has extreme bias against the party. After each successful challenge, the Clerk or judge

shall draw the name of one of the remaining panel at random to take the place of the challenged juror.

3-14.04 Compensation for Jury Service. Each member of the original panel of twelve (12) prospective jurors shall receive five dollars (\$5.00) upon reporting to the Court at the time set for trial. Jurors selected to hear the case shall receive an additional five dollars (\$5.00) per day for further service.

3-14.05 Limitation on Service. No person shall be summoned for jury service more than three (3) times in any twelve (12) month period.

3-14.06 Ineligibility for Service. No person may serve as a juror who has been convicted of, or pleaded guilty to, a felony or has a felony charge pending or who has been convicted of, or pleaded guilty to, a misdemeanor offense three (3) or more times, except traffic violations, if one such misdemeanor conviction or plea was within the previous twelve (12) months.

3-14.07 Circumstances Excusing Service. Persons may be excused from jury service for the following reasons:

(1) Absence from employment will cause extreme hardship to the employer.

(2) Illness.

(3) Physical or mental impairment affecting ability to serve.

(4) Death in the family.

(5) Other good cause as determined by the Clerk or Secretary.

3-14.08 Sanctions. Any person who fails to report for jury service without valid excuse, avoids or attempts to avoid service by knowingly giving false information, or refuses to release an employee for service without just cause, shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250.00).

3-15 SENTENCING

3-15.01 Sentences. A defendant who has pleaded guilty to an offense or who has been convicted by a jury or the Court shall be sentenced or fined or a

combination of sentence and fine not to exceed the limitations set forth in this Code. If a sentence is not provided as part of a specified crime or other provision, the sentence shall not exceed one year in jail and/or a \$5,000.00 fine.

3-15.02 Execution of Sentences. Unless the Tribal Court grants credit for time served, jail sentences shall commence from the date of sentencing, unless the defendant is granted a stay, pending appeal. In such case, the sentence shall commence to run on the date the defendant is incarcerated after the appeal is denied. Unless otherwise provided by law, the Tribal Court may delay the imposition of jail time if the situation should warrant it. All jail sentences shall be served in the Boundary County Jail in Bonners Ferry, Idaho or at such other place of incarceration as may be determined by the Tribal Court.

3-15.03 Reduction of Sentence for Labor. Any person who is incarcerated shall have the option, with the permission of the Court, to perform labor for the Tribe to reduce the time of incarceration. The nature of the labor shall be disclosed to the Court prior to its determination. Two (2) days for each one (1) day of labor performed shall be subtracted from the sentence, provided the person is confined to jail when not performing labor. Labor shall be performed under the supervision of an authorized agent of the Tribal Council.

3-15.04 Reduction of Fine for Labor or Jail Time. Any person who has been sentenced to pay a fine shall have, in lieu of the fine, the option to perform labor for the benefit of the Kootenai Tribe of Idaho or to serve time in jail. Labor shall be credited at the rate of \$15.00 per day for each day of labor performed, provided the person is confined to jail when not performing labor. In the person elects to remain in jail without performing labor, he shall be entitled to a credit on the at the rate of \$10.00 for each day in jail.

3-15.05 Confinement in Lieu of Fine Prohibited. No person shall be confined solely because of an inability to pay a fine. A jail sentence may be imposed upon any person who is able but refuses to pay a fine.

3-15.06 Restitution. In addition to any other sentence, the Court may require an offender who has inflicted injury upon the person or property of another to make restitution or to compensate the

party so injured through the surrender of property or the payment of money damages.

3-15.07 Community Service. In addition to any other sentence, the Court may require an offender who has damaged tribal property or otherwise harmed the interests of the Kootenai Tribe of Idaho to perform such community service work as deemed appropriate by the Court. Community service work is such work as will result in a public benefit.

3-15.08 Character and Duration of Sentence. In determining the character and duration of the sentence, the Court shall take into consideration the previous conduct of the defendant, the circumstances under which the offense was committed, whether the offense was malicious or willful, and whether the offender voluntarily has attempted to make restitution. The Court shall give consideration to the extent of the defendant's resources and the needs of his dependents. The Court shall consider all of the circumstances of each case to determine whether a lesser penalty or the maximum is to be imposed.

3-15.09 Credit. An offender shall receive full credit for any time served prior to final commitment in connection with the same offense, and further shall be given one (1) day credit each week for good time served.

3-15.10 Court Costs. The Court is authorized to impose the actual court costs associated with the action on any convicted defendant and such costs shall not be considered in addition to any fine imposed.

3-15.11 Assistance from State & Federal Government. The Court may seek assistance from employees of the Bureau of Indian Affairs, particularly those who are engaged in Social Services, Health and Education work, in the presentation of facts in a case and in the determination of proper treatment of offenders.

3-16 PROBATION

3-16.01 Probation. Where sentence has been imposed upon any person who has not previously been convicted of a felony under federal or state law within five (5) years of the date of his conviction or of any offense under this Code or gross misdemeanor under state or federal law within one (1) year of his

conviction, the Tribal Court may, in its discretion suspend the sentence imposed and allow the offender his freedom on probation, upon his signing a pledge of good conduct during the period of probation.

3-16.02 Violation of Pledge. Any person who shall violate his pledge shall be required to serve the original sentence in its entirety.

3-16.03 Terms and Conditions of Probation. The Tribal Court shall have the same power to provide for terms and conditions of probation as do the Courts of the State of Idaho.

3-16.04 Probation Officer. The Tribal Court may hire and define the duties of a probation officer.

3-17 PAROLE

3-17.01 Parole. Any person incarcerated by the Tribal Court who shall have served, without misconduct, one-half the sentence imposed by such Court shall be eligible for parole. Parole shall be granted in the discretion of the Judge who imposed the original sentence, if available and presently in office. In the event the Judge imposing sentence is unavailable or no longer in office, parole may be granted by the Chief Judge or his alternate after making an independent review of the facts and circumstances of the case.

3-17.02 Violation of Parole. Any person who shall violate any of the provisions of his/her parole shall be entitled to a hearing thereon and if the Court finds that the provisions and terms of such parole were violated and were of sufficient gravity the Court may require the person to serve the remainder of the original sentence.

3-18 UTILIZATION OF FINES

3-18.01 Deposit and Disposition of Fines. All fines and court costs collected shall be used to pay Tribal Court expenses. Such expenses shall include the payment of fees provided for in these ordinances to jurors and to witnesses answering a subpoena, and the payment of salaries of officers of the Court. The fines assessed shall be paid to the Treasury of the Tribal Council and credited to the account of the Court.

3-19 CLEARING A CRIMINAL RECORD

3-19.01 A convicted offender may request that his/her criminal record be expunged if the conviction is seven (7) years old and he/she has no later convictions.

CHAPTER 4 CRIMES

4-1 CRIMES GENERALLY

4-1.01 Definition of Terms. The following words have the meaning given in this chapter unless otherwise apparent from the context:

(1) "Willfully" when applied to the intent with which an act is done or admitted, means demonstrating a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage.

(2) "Neglect," "negligence," "negligent," and "negligently" mean a want of such attention to the nature of probable consequences of the act or omission as a prudent man ordinarily pays in acting in his own concerns.

(3) "Corruptly" means a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

(4) "Malice" and "maliciously" means a wish to vex, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

(5) "Bribe" means anything of value or advantage, present or prospective, or any promise or undertaking to give any value, asked, given or accepted, with a corrupt intent to influence unlawfully the person to whom it is given, in his action, vote, or opinion, in any public or official capacity.

(6) "Bodily harm" means physical pain, illness or any impairment of physical condition and includes mental illness or impairment.

(7) "Knowingly" means consciously and intentionally with respect to conduct or to a circumstance described by a statute defining an offense, when he/she is aware of his/her conduct or that the circumstance exists. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(8) "Intentionally" means a person acts deliberately and purposefully to achieve a certain result.

(9) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity, and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(10) "Threat" means a menace, however communicated, to knowingly and intentionally:

- (a) inflict physical harm on the person threatened or by any other person or on property; or
- (b) subject any person to physical confinement or restraint; or
- (c) commit any criminal offense; or
- (d) accuse any person of criminal offense; or
- (e) expose any person to hatred, contempt or ridicule; or
- (f) harm the credit or business reputation of any person; or
- (g) reveal any information sought to be concealed by the person threatened.

(11) "Recklessly" means in disregard for the consequences of any act an indifference to safety of life, limb or property.

(12) "Controlled Substance" means, unless specifically excepted or listed elsewhere in this Chapter, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or a combination of extraction and chemical synthesis:

- (a) opium and opiate, and any of the following including salts, compounds, derivatives, or preparations of opium or opiate:

- heroin; black-tar heroin; codeine; morphine; methadone.
- (b) any of the following hallucinogenic substances, and any of their salts, isomers, salts of isomers, compounds, derivatives or preparations: lysergic acid diethylamide (LSD); psilocybin and psilocin; the main compounds found in hallucinogenic mushrooms; peyote; provided that it shall not be unlawful for any member of the Native American Church to transport peyote onto Kootenai tribal trust lands, or buy, sell, possess or use peyote in any form, in connection with the religious practices, sacraments or services of the Native American Church; Hashish and Hashish oil; Mescaline; Tetrahydrocannabinol, or any other synthetic substance made from extracts of marijuana. Marijuana,
- (c) cocaine or coca leaves, and any salt, compound, derivative, mixture, isomer, ester, ether, or preparation of cocaine or coca leaves, including the substance commonly known as "crack," produced directly or indirectly by extraction from coca leaves.
- (d) any material, compound, mixture, or preparation which contains any quantity of the following substances having stimulant effect on the nervous system: amphetamine, its salts, optical isomers, and salts of its isomers; methamphetamine, its salts, isomers and salts of its isomers; 3, 4-methylenedioxymethamphetamine (MDMA).
- (e) any material, compound, mixture, or preparation which contains any quantity of the following substances having depressant effect on the nervous system: Amobarbital; Pentobarbital; Phencyclidine (PCP); Secobarbital; Any substance which contains any quantity of a derivative of barbituric acid.
- (f) Marijuana, which means the resins, oils, seeds, leaves, buds, and flowers of the plant of the genus Cannabis, whether growing or not;
- (g) Opiate, which means a substance having an addiction-forming or addiction-sustaining capability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining capability;
- (13) "Simulated controlled substance" means a substance that is not a controlled substance, but which by appearance or representation would lead a reasonable person to believe that the substance is a controlled substance. Appearance includes, but is not limited to, color, shape, size, and markings of the dosage unit. Representation includes, but is not limited to, representations or factors of the following nature:
- (a) statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;
- (b) statements made to the recipient that the substance maybe resold for inordinate profit; or
- (c) whether the substance is packaged in a manner normally used for illicit controlled substances.

4-2 CRIMES AGAINST PERSONS

4-2.01 Assault. Any person who knowingly and intentionally intimidates or threatens immediate bodily harm to another person through unlawful force or violence shall be deemed guilty of assault.

4-2.02 Battery. Any person who knowingly and intentionally strikes another person or otherwise inflicts bodily injury, or negligently inflicts bodily harm

on another with a weapon, or who shall, by threatening violence, causes another to harm himself/herself, shall be deemed guilty of battery.

4-2.03 Reckless Endangerment. Every person is guilty of reckless endangerment when he or she recklessly engages in conduct which creates a substantial risk of death or serious physical injury to another person.

4-2.04 Abduction. Any person who shall knowingly take away or detain another person against his/her will or without the consent of the parent or other person having lawful care or charge of him/her shall be deemed guilty of abduction.

4-2.05 Rape. Every person who by threat, force, violence, threat of force or violence, or misrepresentation, has sexual intercourse with a person shall be deemed guilty of rape.

4-2.06 Assisting Suicide. Every person who shall intentionally, purposely, or recklessly aid another to commit suicide shall be guilty of assisting suicide.

4-2.07 Criminal Libel. Every person who shall maliciously publish any writing, sign, picture, effigy, or other representation, including radio and television broadcast, containing any falsehood which tends to expose another person to hatred, contempt or ridicule shall be deemed guilty of the misdemeanor of Criminal Libel. Upon a conviction thereof, the defendant shall be subject to imprisonment not to exceed three (3) months and a fine not to exceed \$300.00 or a combination thereof.

4-2.08 Criminal Slander. Every person who shall knowingly utter any falsehood to a third party with the intent of bringing another person into disrepute, hatred, contempt or ridicule shall be deemed guilty of a misdemeanor. Upon conviction thereof, the defendant shall be subject to imprisonment, not exceed three (3) months, or a fine of \$300.00, or both with costs.

4-2.09 False Arrest or Unlawful Restraint. Any person who shall knowingly and intentionally make, or cause to be made, the unlawful arrest, detention or imprisonment of another person, or who shall knowingly and without lawful authority restrain another as to interfere substantially with his/her liberty, shall be deemed guilty of an offense.

4-2.10 Unlawful Use of a Firearm. Any person who carries a firearm or has a firearm on his or her person while in a physically or mentally impaired condition or threatens any person with a firearm or discharges a firearm with willful or negligent disregard for public safety or otherwise possesses or uses a firearm in a manner unsafe to the public shall be guilty of an offense.

4-2.11 Domestic or Family Violence.

(1) Any person who commits one or more of the following acts against a family or household member shall be guilty of the crime of domestic or family violence. Such crime does not include acts of self-defense by the victim.

(a) Attempting to cause or causing physical harm, bodily injury or assault to another family or household member;

(b) Placing a family or household member in fear of the infliction of physical harm, bodily injury or assault;

(c) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force or duress; or

(d) Causing a family or household member emotional distress.

(2) Upon conviction, the court shall impose up to the maximum penalty allowed by federal law and the defendant shall be referred to the Council for possible loss of membership privileges for a period set by the Council after a hearing.

(3) Any person not subject to the criminal jurisdiction of the Kootenai Tribal Court but found to be guilty of Domestic or Family Violence shall be guilty of a regulatory infraction and ordered to pay a fine up to the maximum allowed by law and is subject to exclusion under Chapter 12 Exclusion Act.

(4) The Tribal Court may, upon a finding of extraordinary circumstances, suspend a conviction and order the perpetrator to complete a Batterers Intervention Program at the perpetrator's expense.

4-2.12 Violation of a Protection Order.

(1) A person commits the crime of violating a protective order if he or she fails to comply with any provision of an ex parte or final protective order, regardless whether the order was issued by the Kootenai Tribal Court, registered with the Kootenai Tribal Court or issued by a foreign court.

(2) It is not a defense to this section that a protected person had not notified or registered the protection order with the Kootenai Tribal Court prior to the violation.

(3) If the person found to have violated a protection order is non-Indian, the Kootenai Tribal Court may exercise civil jurisdiction over such person and impose whatever civil penalties it finds appropriate in accordance with the laws of the Kootenai Tribe of Idaho or may refer the matter to the State of Idaho or United States for prosecution.

4-2.13 Stalking.

(1) A person commits the crime of stalking if the person knowingly alarms or coerces another person or a member of that person's family or household by engaging in repeated and unwanted contact, including by electronic means, with the other person; it is objectively reasonable for a person in the victim's situation to be alarmed or coerced by the contact; and the repeated and unwanted contact causes the victim reasonable apprehension regarding the person safety of the victim or a member of the victim's family or household.

(2) Any person not subject to the criminal jurisdiction of the Kootenai Tribal Court but found to be guilty of Stalking shall be guilty of a regulatory infraction and ordered to pay a fine up to the maximum allowed by law and is subject to exclusion under Chapter 12 Exclusion Act.

4-3 CRIMES AGAINST PROPERTY

4-3.01 Trespass.

(1) Any person who shall knowingly and intentionally go upon or pass over any cultivated or enclosed lands or premises of another person and shall refuse to go immediately therefrom on request

of the owner or occupant or who shall knowingly allow livestock to occupy or graze on the cultivated or enclosed lands of another person shall be deemed guilty of trespass.

(2) Any person who is lawfully exercising Tribal fishing, hunting, or gathering rights upon the land in question shall not be guilty of criminal trespass to land.

4-3.02 Theft. Crimes defined as theft under this section include the crimes known as robbery and breaking-and-entering (burglary).

(1) Any person who shall take or exercise unlawful control over the moveable property of the owner with the purpose to deprive the owner of the property; or knowingly uses, conceals or abandons the property in such manner as to deprive the owner of the property; or uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property; or

(2) Any person involved the taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear; or

(3) Any person who enters any house, room apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, vehicle, trailer, airplane or railroad car, with intent of taking property as described in section (1) or (2) of this section; is guilty of the crime of theft.

4-3.03 Embezzlement. Any person who, having lawful custody of property not his/her own, shall knowingly and intentionally appropriate the same to his/her own use with intent to deprive the owner thereof, shall be deemed guilty of embezzlement.

4-3.04 Fraud. Any person who shall knowingly and intentionally by misrepresentation or deceit, or by false interpretation or by the use of false weights or measures, knowingly obtain any money or other property of value, shall be deemed guilty of fraud.

4-3.05 Issuing a Bad Check. Any person who knowingly and intentionally issues or delivers a

check for the purpose of obtaining the property, labor or services of another, knowing that it will not be paid by the depository, commits the offense of issuing a bad check. If the offender has an account with the depository, failure to make good the check within fifteen (15) days after written notice of nonpayment has been received by the issuer is prima facie evidence that the person knew it would not be paid by the depository.

4-3.06 Forgery. Any person who, with intent to defraud, falsely signs, or knowingly executes or alters any written instrument, shall be deemed guilty of forgery.

4-3.07 Receiving Stolen Property. Any person who knowingly obtains control over stolen property knowing the property to have been stolen by another, and:

(1) Has the purpose of depriving the owner of the property; or

(2) Knowingly uses, conceals or abandons the property in such manner as to deprive the owner of the property; or

(3) Uses, conceals or abandons the property, knowing such use, concealment or abandonment probably will deprive the owner of the property, shall be deemed guilty of an offense.

4-3.08 Extortion.

(1) Any person who obtains property from another, with his or her consent, by threat of force or by intimidation under color of official right shall be deemed guilty of extortion.

(2) Any person who, by making false charges against another or by any other means whatsoever, knowingly extorts any monies, goods, property, or anything else of value, shall be deemed guilty of extortion.

4-3.09 Malicious Mischief. Any person who knowingly and maliciously disturbs, injures, destroys, or tampers with any property of another, shall be deemed guilty of malicious mischief.

4-3.10 Arson. Any person who willfully and maliciously sets fire to or burns or causes to be

burned or who aids or counsels or procures the burning of any dwelling house, whether occupied or unoccupied or vacant, any building or structure of whatever class or character, or any kitchen, shop, barn, stable, or other outhouse that is a parcel thereof, or belonging to or adjoining thereto, whether the property is of himself or herself or of another, shall be guilty of arson.

4-3.11 Conversion of Goods from Legal Custody. Every person who willfully injures or destroys, or takes from the custody of any officer or person, any personal property which such officer or person has in charge under any process of law, is guilty of conversion of goods from legal custody.

4-3.12 Obtaining Money, Property or Labor Under False Pretenses. Every person who knowingly, by any false or fraudulent representation, defrauds any other person of money, labor or property, real or personal, or obtains the signature of another to any instrument in writing whereby any liability is created, or who causes or procures others to report falsely of his or her wealth or mercantile character, and by thus imposing upon any person, obtains credit, and thereby gets possession of money or property, or obtains the labor or service of another, is guilty of obtaining such benefits by false pretenses.

4-3.13 Disposing of Property of an Estate. It shall be unlawful for any person, who, without prior authorization, sells, exchanges, or otherwise disposes of any property of an estate.

4-3.14 Failure to Report of Control Fire. It shall be unlawful for any person, knowing that a fire is endangering life or property, to fail to take prompt and reasonable action to give a fire alarm to any individual, agency, or organization having a duty to deal with such emergency. Upon convictions, imprisonment shall not exceed ninety (90) days or \$300.00.

4-4 CRIMES AGAINST TRIBAL ADMINISTRATION

4-4.01 Injury to Public Property. Any person who shall, without proper authority, knowingly use or tamper with, or knowingly or negligently injure any public property of the Tribe, or property held for the benefit of the Tribe by the United States, shall be deemed guilty of an injury to public property.

4-4.02 Misuse of USDA Commodities. Any person who shall, within the Kootenai Reservation, knowingly sell, trade, waste, or otherwise dispose of in an unauthorized manner USDA commodities issued by the Tribe, and any person who knowingly receives from another person as part of a sale, trade or other transaction, any USDA donated commodities issued to that person by the Tribe, shall be deemed guilty of misuses of USDA donated commodities.

4-4.03 Bribery. Any person who shall knowingly give or offer to give any money, property or services, or anything else of value to another person with the intent to influence another in the discharge of his/her public duties or conduct, and any person who shall knowingly accept, solicit or accept any bribe, shall be deemed guilty of an offense. Upon conviction, the Tribal Council may, in addition to the usual penalties, relieve such person of his or her tribal office.

4-4.04 Perjury. Any person who shall knowingly, in any judicial proceeding in the Tribal Court, falsely swear or interpret, or shall make a sworn statement or affidavit, knowing the same to be untrue, or shall induce or procure another person to do so, shall be deemed guilty of perjury.

4-4.05 Resisting Lawful Arrest. Any person who shall knowingly, by force, violence or subterfuge, resist or assist another person to resist a lawful arrest, shall be deemed guilty of resisting lawful arrest.

4-4.06 Refusing to Aid Officer. Any person who shall neglect or refuse, without good cause, when called upon by any law enforcement officer to assist in the arrest of any person charged with or convicted of any offense or in securing such offender when apprehended, or in conveying such offender to the nearest place of confinement or in preventing the commission by another of an offense, shall be deemed guilty of refusing to aid an officer of the law.

4-4.07 Obstructing Justice. Any person who, knowing a person is an offender, knowingly prevents or obstructs anyone from performing an act that might aid in the discovery or apprehension of an offender, or suppresses by act of concealment, alteration or destruction, any physical evidence that

might aid in the discovery or apprehension of an offender, shall be deemed guilty of the offense of obstructing justice.

4-4.08 Escape. Any person who, being in lawful custody, for any offense, shall knowingly escape or who shall knowingly permit or assist another person to escape from lawful custody shall be deemed guilty of escape.

4-4.09 False Reports to Law Enforcement Officers. Any person who knowingly gives false information to any law enforcement officer with the purpose of implicating another, reporting an offense or incident that he/she knows not to have occurred, or pretending to furnish information relating to an offense or incident when he/she knows he/she has no such information shall be deemed guilty of false reporting.

4-4.10 Disobedience to Lawful Orders of Court - Contempt.

(1) Any person who shall knowingly disobey any order, subpoena, warrant, or command duly issued, made or given by the Tribal Court or any officer thereof, or who shall knowingly fail to return to official detention following leave granted for a specific purpose or limited time, shall be deemed guilty of criminal contempt.

(2) For purpose of this section, "official detention" includes, but is not limited to, constraint incidental to release on bail.

4-4.11 Violation of Approved Tribal Law. Any person who knowingly violates a law promulgated by Tribal Council and legally in force, shall be deemed guilty of an offense.

4-4.12 Impersonation of a Tribal Official or Other Person in Authority. Any person who shall falsely impersonate or identify or represent himself or herself as a Tribal Councilman, Police Officer, Game Warden, Peace Officer or any other person of authority authorized by the Kootenai Tribe, the United States, the State of Idaho or any of its political subdivisions, for the purpose of inducing another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his or her prejudice shall be deemed guilty of impersonation.

4-4.13 Bail Jumping - Default in Required Appearance. It shall be unlawful for any person, set at liberty by Court order, with or without bail, upon condition that he or she will subsequently appear at a specified time and place, without lawful excuse, to fail to appear at the time and place so specified.

4-4.14 Abuse of Office.

(1) It shall be unlawful for any person acting or purporting to act for the Kootenai Tribe in any official capacity to unlawfully subject, or threaten to subject, another person to arrest, detention, search, seizure, mistreatment, dispossession, assessment, lien or other infringement of property rights, or to deny or impede another in the exercise or enjoyment of any right, privilege, power or immunity under law.

(2) It shall be unlawful for any person serving in an official capacity for the Kootenai Tribe, to use his or her position to offer or promise any special privilege to any person, whether or not the offer or promise is fulfilled, or to procure special privileges or exemption from fines, taxes, penalties or any other obligation imposed by law for himself or herself, his or her spouse, children, parents or relation by blood to the second degree.

(3) For purposes of this section, any person who is shown by the prosecution to be an elected, appointed or employed official, board member, employee, consultant, contractor or representative of the Kootenai Tribe of Idaho at the time the alleged conduct takes place, shall be presumed to be acting in his or her official capacity, whether or not the conduct takes place during regular business hours, and the burden of showing that actions were not taken in an official capacity shall be on the person charged with the offense.

4-4.15 Jury Tampering. Every person who corruptly attempts to influence a juror, or any person summoned or drawn as a juror, in respect to his or her verdict or decision in any cause pending is guilty of jury tampering.

4-4.16 Misconduct of Jurors. Every juror or person drawn or summoned as a juror, who willfully and corruptly permits any communication to be made to him or her, or receives any book, paper, instrument

or other information relating to any cause or matter pending before him or her, except according to the regular course of proceedings, is guilty of misconduct.

4-4.17 Threats or Intimidation of Members of the Council. Any person who shall threaten or invoke the use of force or violence against, or threaten harm to, a member of the Council of the Tribe, for the purpose of interfering with, or influencing the performance of, an official duty, shall be guilty of an offense.

4-4.18 Interference with Performance of Duties. Any person who shall interfere with the duties or activities of a member of the Council of the Tribe while such a member is engaged in performing official duties shall be guilty of an offense.

4-4.19 False Statement. Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Kootenai Tribe of Idaho, knowingly and willfully—

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious, or fraudulent statement or representation; or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be guilty of the crime of false statement.

4-4.20 Violation of Supplemental Assistance Act. Any person who violates the Supplemental Assistance Act is guilty of a crime and subject to punishment under Section 32-10.

4-5 CRIMES AGAINST PUBLIC ORDER, HEALTH, DECENCY

4-5.01 Possession of Alcohol. Any person who shall possess, consume or transport any alcoholic beverage on the lands of the Kootenai Tribe of Idaho (except the Kootenai River Inn or other lands specifically excepted by the Council) or the lands of any member thereof, shall be guilty of an offense and upon a first conviction thereof shall be sentenced to pay a fine of not less than five hundred

dollars (\$500) and to jail for not more than ninety (90) days or both. Upon a second conviction of this section within one year, the sentence shall be a fine of not less than two thousand dollars (\$2,000) and jail for not more than six (6) months. Upon a third conviction within three years of the first conviction, the fine and jail sentence shall be the maximum allowed under federal law and the Court shall order the defendant to undergo alcohol treatment. Upon any subsequent conviction after the third conviction, the court shall impose the maximum penalty allowed by federal law and the defendant shall be referred to the Council for possible loss of membership privileges for a period set by the Council after a hearing.

4-5.02 Possession of Alcohol for Sale. Any person who shall possess or transport any alcoholic beverage on the lands of the Kootenai Tribe of Idaho (except the Kootenai River Inn) or the lands of any member thereof in excess of two cases of beer, two quarts of liquor or four, 1.5 liter bottles of wine, or any equivalent volumes thereof, shall be guilty of an offense of possession of alcohol for sale and upon a first conviction shall be sentenced to pay a fine of not less than three thousand dollars (\$3,000) and to jail for not more than six months or both. Upon a subsequent conviction of this provision within two years, the defendant shall be sentenced to the maximum penalty allowed by federal law and shall be ordered excluded from the Kootenai Reservation and any other real property owned by the Kootenai Tribe of Idaho for a period not to exceed five (5) years.

4-5.03 Providing Alcohol to Minors, Habitual Offenders. Any person who shall knowingly provide any alcoholic beverage to a minor or to any person who is generally known as an alcohol abuser shall be guilty of an offense and upon a conviction thereof shall be sentenced as set forth in section 4-5.02. For purposes of this section, a minor shall be any person under the legal drinking age in the state of Idaho and an alcohol abuser is any person who has been convicted of any offense involving alcohol on two previous occasions or who has been through an alcohol treatment program.

4-5.04 Carrying Concealed Weapons. Any person who shall go about in public places armed with a dangerous weapon concealed upon his/her person, unless he/she shall have a permit signed by a Judge

of the Tribal Court, shall be deemed guilty of an offense. Upon conviction, the weapons so carried may be confiscated by the Court or may be seized at officers' discretion. This section does not apply to any authorized law enforcement officer.

4-5.05 Disorderly Conduct. Any person who shall knowingly disturb the peace by engaging in the following conduct shall be guilty of the crime of disorderly conduct:

(1) Quarreling, challenging to fight or fighting; or

(2) Transmitting a false report or warning of a fire, impending explosion or other catastrophe in such a place that its occurrence would endanger human life; or

(3) Appearing in a public place or private place in an intoxicated and disorderly condition.

4-5.06 Prostitution.

(1) Any person who knowingly practices or promotes prostitution or solicits the service of a prostitute, shall be deemed guilty of an offense.

(2) A person commits the offense of "promoting prostitution" if he/she knowingly commits any of the following acts:

(a) keeps, maintains, rents or leases, any house, room, tent, or other place for the purpose of prostitution; or

(b) encourages, induces, or otherwise purposely causes another to become or remain a prostitute.

4-5.07 Sexually Transmitted Disease. Any person who shall knowingly expose another person to a sexually transmitted disease through sexual contact or other conduct that could transmit the disease or who is afflicted with any communicable disease of this nature and knowingly neglects or refuses to seek treatment shall be deemed guilty of an offense and upon conviction thereof, shall be sentenced to a period of confinement or be ordered to pay a fine, or both jail sentence and fine, and costs.

4-5.08 Desecration of Grave, Cemetery, Headstone, or Place of Burial Prohibited. It shall be unlawful for any person, not acting with authority, to desecrate or molest in any way, any portion of any grave, cemetery, headstone, grave marker, mausoleum, crypt, or other place of burial, whether of whole bodies or ashes or other evidence of remains of a deceased human body.

4-5.09 Cruelty to Animals. Any person who shall torture or intentionally mistreat any animal, shall be deemed guilty of cruelty to animals. Such person shall be sentenced to labor for a period not to exceed 180 days, and/or to pay a fine not to exceed \$500.00. Such person also shall provide animal care as the Court directs.

4-5.10 Indecent Exposure. Any person who publicly exposes his or her sexual organs under circumstances in which his or her conduct is likely to cause affront or alarm shall be guilty of Indecent Exposure.

4-5.11 Indecent Liberties. Any person who knowingly causes another person who is less than 16 years of age, or who is incapable of consent by reason of being mentally defective, to engage in sexual contact is guilty of Indecent liberties. For purposes of this rule, "sexual contact" means any touching of the sexual or intimate parts of a person.

4-5.12 Controlled Substances. Any person who shall possess, consume, manufacture, transport or be under the influence of any controlled substance, as defined herein within the boundaries of the Mission or on any tribal lands upon which are located permanent residences of tribal members shall be guilty of an offense and upon a conviction thereof shall be fined in the same manner as fines are imposed for possession, sale and dispensing of alcohol. The Court shall refer to the laws of the State of Idaho to determine if the quantity of controlled substance in possession of the defendant is sufficient to sustain a conviction of the offense of possession of controlled substances for sale. If the quantity is sufficient to support such a conviction, the sentence shall be imposed as though the conviction were for the possession of alcohol for sale.

4-5.13 Tobacco. Any person or operator violating the provisions of Chapter 10 shall be guilty of an

offense and subject to a fine of not less than \$50.00 or more than \$250.00. Any operator committing such violation shall further be subject to the forfeiture of all remaining stock of products distributed under the license issued under Chapter 10 and situated in the tobacco outlet. The Tribal law enforcement officers shall be empowered to seize forfeited goods. The Council is empowered to dispose of forfeited goods.

4-5.14 [REPEALED]

4-5.15 Criminal Conspiracy. If two (2) or more persons agree to engage in or cause conduct intending that a crime be committed, and one or more of such persons does any act to effect the object of the conduct, each shall be punishable upon conviction as if the crime had been committed.

4-5.16 Persons Under the Influence of Alcohol, Drugs or Any other Intoxicating Substances.

(1) Unlawful Influence.

(a) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or any combination of alcohol, drugs and/or any other intoxicating substances, or who has an alcohol concentration of 0.08, as defined in subsection (4) of this section, or more, as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a motor vehicle within Kootenai lands.

(b) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or any combination of alcohol, drugs and/or any other intoxicating substances, or who has an alcohol concentration of 0.04 or higher but less than 0.08, as defined in subsection (4) of this section, as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a commercial motor vehicle within Kootenai lands.

(c) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or any

combination of alcohol, drugs and/or any other intoxicating substances, or who has an alcohol concentration of 0.08 or higher, as defined in subsection (4) of this section, as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a commercial motor vehicle within Kootenai lands.

(d) It is unlawful for any person under the age of twenty-one (21) years who has an alcohol concentration of at least 0.02 but less than 0.08, as defined in subsection (4) of this section, to drive or be in actual physical control of a motor vehicle within Kootenai lands. Any person violating this subsection shall be guilty of a crime and/or regulatory infraction under Tribal law.

(2) Any person having an alcohol concentration of less than 0.08, as defined in subsection (4) of this section, as shown by analysis of his blood, urine, or breath, by a test requested by a police officer shall not be prosecuted for driving under the influence of alcohol, except as provided in subsection (3), subsection (1)(b) or subsection (1)(d) of this section. Any person who does not take a test to determine alcohol concentration or whose test result is determined by the court to be unreliable or inadmissible against him, may be prosecuted for driving or being in actual physical control of a motor vehicle while under the influence of alcohol, drugs, or any other intoxicating substances, on other competent evidence.

(3) If the results of the test requested by a police officer show a person's alcohol concentration of less than 0.08, as defined in subsection (4) of this section, such fact may be considered with other competent evidence of drug use other than alcohol in determining the guilt or innocence of the defendant.

(4) For purposes of this chapter, an evidentiary test for alcohol concentration shall be based upon a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath or sixty-seven (67) milliliters of urine. Analysis of blood, urine or breath for the purpose of determining the alcohol concentration shall be performed by any method

approved by the Boundary County Sheriff's Office. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory approved by the Boundary County Sheriff's Office shall be admissible in any proceeding in this jurisdiction without the necessity of producing a witness to establish the reliability of the testing procedure for examination.

(5) "Actual physical control" as used in this section, shall be defined as being in the driver's position of the motor vehicle with the motor running or with the motor vehicle moving.

(6) Notwithstanding any other provision of law, any evidence of conviction under this section shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

(7) The fact that any person charged with a violation of the provisions of this chapter involving being under the influence of any drug, or any combination of drugs with alcohol or any other intoxicating substance, is or has been entitled to use such drug under the laws of this jurisdiction or of any other jurisdiction shall not constitute a defense against any charge of a violation of the provisions of this chapter.

4-5.17 Reckless and/or Inattentive Driving.

(1) Any person who drives or is in actual physical control of any vehicle upon Kootenai Lands, carelessly and heedlessly or without due caution and circumspection, and at a speed or in a manner as to endanger or be likely to endanger any person or property, or who passes when there is a line in his lane indicating a sight distance restriction, shall be guilty of reckless driving and upon conviction shall be punished as provided in subsection (2) of this section.

(2) Every person who pleads guilty to or is found guilty of reckless driving for the first time is guilty of a misdemeanor and may be sentenced to jail for not more than six (6) months or may be

fined not more than one thousand dollars (\$1,000), or may be punished by both fine and imprisonment. Every person who pleads guilty to or is found guilty of reckless driving, who has previously been found guilty of or has pled guilty to reckless driving, or any substantially conforming foreign criminal violation within five (5) years, notwithstanding the form of the judgment(s) or withheld judgment(s), is guilty of a misdemeanor and may be sentenced to jail for not more than one (1) year or may be fined not more than two thousand dollars (\$2,000), or may be punished by both fine and imprisonment.

(3) Inattentive driving shall be considered a lesser offense than reckless driving and shall be applicable in those circumstances where the conduct of the operator has been inattentive, careless or imprudent, in light of the circumstances then existing, rather than heedless or wanton, or in those cases where the danger to persons or property by the motor vehicle operator's conduct is slight. Every person convicted of inattentive driving under this section shall be guilty of a misdemeanor and may be sentenced to jail for not more than ninety (90) days or may be fined not more than three hundred dollars (\$300), or may be punished by both fine and imprisonment.

4-6 CRIMES INVOLVING MINORS OR DEPENDENT PERSONS

4-6.01 Failure to Support and Care for Dependent Persons. Any person who, for any reason, knowingly refuses to furnish food, shelter, or proper care which he/she can provide to any person dependent upon him/her, including any dependent children born out of wedlock, or knowingly endangers the health, welfare or emotional well being of any child, shall be deemed guilty of failure to support or care for a dependent. Upon conviction, he/she must be charged with the maintenance of any dependents in a manner directed by the Tribal Court.

4-6.02 Failure to Send Children to School. Any person who, without good cause, neglects the education of a school-aged child in his or her custody by refusing to send the child to school or by failing to provide equivalent instruction elsewhere shall be deemed guilty of an offense. Upon conviction, he/she shall be sentenced to labor for a

period not to exceed sixty (60) days, and/or a fine not to exceed \$100.00, or give bond up to \$100.00 to guarantee attendance.

4-6.03 Contributing to the Delinquency of a Minor. Any person who knowingly encourages the delinquency of a minor shall be deemed guilty of contributing to the delinquency of a minor. Such person may also be liable as a principal in any offense.

4-6.04 Curfew.

(1) [REPEALED]

(2) Any parent or guardian or custodian, whose children fail to obey the curfew regulations, shall be deemed guilty of curfew violation. Upon conviction, he or she shall be sentenced to labor for a period not to exceed thirty (30) days, and/or a fine not to exceed \$50.00

4-7 ATTEMPTS TO COMMIT CRIMES

4-7.01 (1) A person commits the offense of attempt when he/she knowingly and intentionally with the purpose to commit a specific offense, does any act toward the commission of such offense.

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

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

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

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

4-8 PARTIES TO CRIMES

4-8.01 Classification of Parties. The parties to crimes are classified as: (1) Principals and (2) Accessories.

4-8.02 Principals Defined. All Indian persons concerned in the commission of a crime, and whether they directly commit the act constituting the offense or aid and abet in its commission, or, not being present, have advised and encouraged its commission and all persons counseling, advising, or encouraging children under the age of 18 years to commit any crime, or who, by fraud, contrivance, or force, occasion the drunkenness of another for the purpose of causing him or her to commit any crime, or who, by threats, menaces, command, or coercion, compel another to commit any crime, are principals in any crime so committed.

4-8.03 Accessories Defined. All persons who, after full knowledge that a crime has been committed, conceal it from law enforcement personnel or the Court, or harbor and protect the person charged with or convicted thereof, are accessories.

4-8.04 Punishment of Accessories. An accessory is punishable by imprisonment or fine not to exceed the limits set for the principal perpetrator of the crime as enumerated herein.

4-9 DEFENSES

4-9.01 Intoxication No Defense. An intoxicated or drugged person is criminally responsible for conduct unless such condition is involuntarily produced and deprives him/her of his/her capacity to appreciate the criminality of his/her conduct or to conform his/her conduct to the requirements of law. An intoxicated or drugged condition may be taken into consideration in determining the existence of a mental state which is an element of the offense.

4-9.02 Mental Illness as a Defense. A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect, he or she lacks substantial capacity either to appreciate the wrongfulness of his or her conduct or to act in a lawful manner. As used in this chapter, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct.

4-9.03 Lack of Capacity. No person who, as a result of mental disease or defect, lacks the capacity to understand the proceedings against him or her to

assist in his or her own defense, shall be tried, convicted, sentenced or punished for the commission of an offense so long as such incapacity endures.

4-9.04 Self Defense.

(1) A person is justified in the use of the force or threat to use force against another when and to the extent that he/she reasonably believes that such force is necessary to:

- (a) defend himself/herself or another person against another's imminent use of unlawful force;
- (b) prevent another person's trespass on, or tortious or criminal interference with, real or personal property which he/she or his/her family owns, possesses or has the legal duty to protect.

(2) however, a person is justified in the use of force likely to cause death or serious bodily harm only if he/she reasonably believes that such force is necessary to prevent imminent death or serious bodily injury to himself/herself or another person.

4-10 EXCLUDED DEFENSES

4-10.01 Quantity of Controlled Substance In a prosecution for the possession of a controlled substance listed in this Chapter, it is not a defense that the substance was possessed in less than a usable quantity. It is sufficient to support a conviction that there is a sufficient quantity of the substance to permit accurate identification.

4-11 MAJOR CRIMES

4-11.01 Assault with a Deadly Weapon. Every person having upon him any deadly weapon with intent to assault another is guilty of the crime of assault with a deadly weapon.

CHAPTER 4A
SEX OFFENDER REGISTRATION AND NOTIFICATION

4A-1 TITLE

This Chapter shall be known as the Kootenai Tribal Sex Offender Registration and Notification Act (KTSORNA).

4A-2 PURPOSE

The intent of this Chapter is to implement the federal Sex Offender Registration and Notification Act (SORNA) (Title I of Public Law 109-248) and shall be interpreted liberally to comply with the terms and conditions of SORNA as presently written or hereafter amended.

4A-3 REGISTRY

The Tribal Council has determined that it is in the best interests of the Tribe to work cooperatively with the State of Idaho to fulfill SORNA responsibilities. Registration of sex offenders within Kootenai jurisdiction shall be implemented in a manner consistent with the SORNA, the Memorandum of Agreement between the State of Idaho and the Kootenai Tribe of Idaho regarding Sex Offender Registration and Notification and Kootenai law. References to Registry in this Chapter shall mean the Idaho Sex Offender Registry Database maintained by the State of Idaho.

4A-4 DEFINITIONS

The Definitions below apply to this Chapter only.

4A-4.01 "Convicted."

(1) An adult sex offender is "convicted" for the purposes of this Chapter if the sex offender has been subjected to penal consequences based on the conviction, however the conviction may be styled.

(2) A juvenile offender is "convicted" for purposes of this Chapter if the juvenile offender is either:

- (a) Prosecuted and found guilty as an adult for a sex offense; or

- (b) Is adjudicated delinquent as a juvenile for a sex offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in either (a) or (b) of section 2241 of title 18, United States Code), or was an attempt or conspiracy to commit such an offense.

4A-4.02 "Foreign Convictions" means one that is obtained outside of the United States.

4A-4.03 "Employee" as used in this Chapter includes, but is not limited to, an individual who is self-employed or works for any other entity, regardless of compensation. Volunteers of a tribal agency or organization are included within the definition of employee for registration purposes.

4A-4.04 "Immediate" and "Immediately" mean within three (3) business days.

4A-4.05 "Imprisonment" refers to incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. The term is to be interpreted broadly to include, for example, confinement in a state "prison" as well as in a federal, military, foreign, BIA, private or contract facility, or a local or tribal "jail". Persons under "house arrest" following conviction of a covered sex offense are required to register pursuant to the provisions of this Chapter during their period of "house arrest".

4A-4.06 "Jurisdiction" as used in this Chapter refers to the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, and any Indian tribe.

4A-4.07 "Minor" means an individual who has not attained the age of 18 years.

4A-4.08 "Resides" means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives or sleeps.

4A-4.09 "Sex Offense" as used in this Chapter includes those offenses contained in 42 U.S.C. §16911(5) and those offenses enumerated in Section 4A-5 of this Chapter or any other covered offense under Kootenai law.

An offense involving consensual sexual conduct is not a sex offense for the purposes of this Chapter if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.

4A-4.10 "Sex Offender" means a person convicted of a sex offense.

4A-4.11 "Sexual Act" means:

(1) contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;

(2) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(3) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(4) the intentional touching, not through the clothing, of the genitalia of another person that has not attained the age of eighteen (18) years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

4A-4.12 "Sexual Contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or

arouse or gratify the sexual desires of another person.

4A-4.13 "Student" means a person who enrolls in or attends either a private or public education institution, including a secondary school, trade or professional school, or an institution of higher education.

4A-4.14 "SORNA" means the Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006 P.L. 109-248), 42 U.S.C. §16911 *et. seq.*, as amended.

4A-4.15 "Sex Offender Registry" means the registry of sex offenders, and a notification program, maintained by the State of Idaho.

4A-4.16 "National Sex Offender Registry (NSOR)" means the national database maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16919.

4A-4.17 "SMART Office" means the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which was established within the United States Department of Justice under the general authority of the Attorney General of the United States pursuant to 42 U.S.C. §16945.

4A-4.18 "Dru Sjodin National Sex Offender Public Website (NSOPW)" means the public website maintained by the Attorney General of the United States pursuant to 42 U.S.C. §16920.

4A-5 COVERED OFFENSES

Individuals who reside within the exterior boundaries of the reservation or otherwise reside on property owned by the Tribe in fee or trust regardless of location, are employed within the exterior boundaries of the reservation or on property owned by the Tribe in fee or trust regardless of location, or who attend school within the exterior boundaries of the reservation or on property owned by the Tribe in fee or trust regardless of location, that have been convicted of any of the following offenses, or convicted of an attempt or conspiracy to commit any of the

following offenses, are subject to the requirements of this Chapter:

4A-5.01 Tribal Offenses. A conviction for any of the following, and any other offense hereafter included in the definition of "sex offense" in this Chapter.

- (1) Kootenai Code § 4-2.05 (rape);
- (2) Kootenai Code § 4-5.11 (indecent liberties).

4A-5.02 Federal Offenses. A conviction for any of the following, and any other offense hereafter included in the definition of "sex offense" at 42 U.S.C. §16911(5):

- (1) 18 U.S.C. §1591 (sex trafficking of children);
- (2) 18 U.S.C. §1801 (video voyeurism of a minor);
- (3) 18 U.S.C. §2241 (aggravated sexual abuse);
- (4) 18 U.S.C. §2242 (sexual abuse);
- (5) 18 U.S.C. §2243 (sexual abuse of a minor or ward);
- (6) 18 U.S.C. §2244 (abusive sexual contact);
- (7) 18 U.S.C. §2245 (offenses resulting in death);
- (8) 18 U.S.C. §2251 (sexual exploitation of children);
- (9) 18 U.S.C. §2251A (selling or buying of children);
- (10) 18 U.S.C. §2252 (material involving the sexual exploitation of a minor);
- (11) 18 U.S.C. §2252A (material containing child pornography);
- (12) 18 U.S.C. §2252B (misleading domain names on the internet);

(13) 18 U.S.C. §2252C (misleading words or digital images on the internet);

(14) 18 U.S.C. §2260 (production of sexually explicit depictions of a minor for import into the U.S.);

(15) 18 U.S.C. §2421 (transportation of a minor for illegal sexual activity);

(16) 18 U.S.C. §2422 (coercion and enticement of a minor for illegal sexual activity);

(17) 18 U.S.C. §2423 (Mann Act);

(18) 18 U.S.C. §2424 (failure to file factual statement about an alien individual);

(19) 18 U.S.C. §2425 (transmitting information about a minor to further criminal sexual conduct).

4A-5.03 Foreign Offenses. Any conviction for a sex offense involving any conduct listed in this Section that was obtained under the laws of Canada, the United Kingdom, Australia, New Zealand, or under the laws of any foreign country when the United States State Department in its Country Reports on Human Rights Practices has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred.

4A-5.04 Military Offenses. Any military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. 951 note).

4A-5.05 Juvenile Offenses or Adjudications. Any sex offense, or attempt or conspiracy to commit a sex offense, that is comparable to or more severe than the federal crime of aggravated sexual abuse (as codified in 18 U.S.C. §2241) and committed by a minor who is 14 years of age or older at the time of the offense. This includes engaging in a sexual act with another by force or the threat of serious violence; or engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim.

4A-5.06 Jurisdiction Offenses. Any sex offense committed in any jurisdiction, including this Tribe, that involves:

(1) Any type or degree of genital, oral, or anal penetration;

(2) Any sexual touching of or sexual contact with a person's body, either directly or through the clothing;

(3) Kidnapping of a minor;

(4) False imprisonment of a minor;

(5) Solicitation to engage a minor in sexual conduct understood broadly to include any direction, request, enticement, persuasion, or encouragement of a minor to engage in sexual conduct;

(6) Use of a minor in a sexual performance;

(7) Solicitation of a minor to practice prostitution;

(8) Possession, production, or distribution of child pornography;

(9) Criminal sexual conduct that involves physical contact with a minor or the use of the internet to facilitate or attempt such conduct. This includes offenses whose elements involve the use of other persons in prostitution, such as pandering, procuring, or pimping in cases where the victim was a minor at the time of the offense;

(10) Any conduct that by its nature is a sex offense against a minor, or

(11) Any offense similar to those outlined in:

(a) 18 U.S.C. §1591 (sex trafficking by force, fraud, or coercion);

(b) 18 U.S.C. §1801 (video voyeurism of a minor);

(c) 18 U.S.C. §2241 (aggravated sexual abuse);

(d) 18 U.S.C. §2242 (sexual abuse);

(e) 18 U.S.C. §2244 (abusive sexual contact);

(f) 18 U.S.C. §2422(b)(coercing a minor to engage in prostitution), or

(g) 18 U.S.C. §2423(a) (transporting a minor to engage in illicit conduct).

4A-6 REGISTRATION AND COMMUNITY RIGHT TO KNOW

4A-6.01 Other Laws. Idaho Code Title 18 Chapters 83 (Sexual Offender Registration Notification and Community Right-to-Know Act) and 84 (Juvenile Sex Offender Registration Notification and Community Right-to-Know Act) are hereby incorporated as Kootenai law to the fullest extent necessary to implement the SORNA and the Memorandum of Agreement between the Kootenai Tribe and the State of Idaho regarding Sex Offender Registration.

4A-6.02 Registration. Registration and notification of sex offenders within Kootenai jurisdiction shall occur in the same manner as if such sex offender was within the jurisdiction of the State of Idaho.

4A-7 IMMUNITY

4A-7.01 No Waiver Of Immunity. Nothing under this Chapter shall be construed as a waiver of sovereign immunity for the Tribe, its departments, agencies, employees, or agents.

4A-7.02 Good Faith. Any person acting under good faith of this Chapter shall be immune from any civil liability arising out of such actions.

4A-8 CRIMES AND CIVIL SANCTIONS

4A-8.01 Criminal Penalty. Each violation of a provision of this Chapter by a sex offender who is an Indian shall be considered a crime and subject to a period of incarceration of one year and a fine of \$5,000.

4A-8.02 Civil Penalty. Each violation of a provision of this Chapter by a sex offender who is not an Indian shall be considered a civil violation subject to enforcement by any means not prohibited by federal law, including, but not limited to the issuance of fines, forfeitures, and civil contempt.

4A-8.03 Possible Exclusion. Violations of provisions of this Chapter may result in expulsion and/or exclusion under Kootenai Code Chapter 12.

4A-8.04 Hindrance Of Sex Offender Registration.

A person is guilty of an offense if they:

(1) Knowingly harbors or knowingly attempts to harbor, or knowingly assists another person in harboring or attempting to harbor a sex offender who is in violation of this Chapter;

(2) Knowingly assists a sex offender in eluding a law enforcement agency that is seeking to find the sex offender to question the sex offender about, or to arrest the sex offender for, noncompliance with the requirements of this Chapter; or

(3) Provide information to law enforcement agency regarding a sex offender which the person knows to be false.

CHAPTER 4B
JUVENILE DELINQUENCY

4B-1 PURPOSE

4B-1.01 The purposes of this Chapter shall be the following:

- (1) To preserve and strengthen family ties whenever possible;
- (2) To preserve and strengthen children's cultural and ethnic identity whenever possible;
- (3) To improve any home conditions or environment that may be contributing to a child's delinquency;
- (4) To protect the peace and security of the Kootenai Indian Reservation and its individual residents from the negative effects of juvenile delinquency;
- (5) To establish basic rights of children and families and provide a system of procedure and law to ensure fairness to all parties who come before the Court under this Chapter;
- (6) To recognize and incorporate customs and traditions of the Kootenai Tribe of Idaho and incorporate those customs and traditions into the rehabilitation of juveniles who are adjudicated delinquent by the Court.

4B-2 DEFINITIONS

4B-2.01 As used herein, except as may be specifically provided otherwise, the following definitions shall apply.

- (1) "Adult" shall mean a person 18-years-of age or older, or a person otherwise emancipated.
- (2) "Child" shall mean a person who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.
- (3) "Custodian" shall mean a person, other than a parent or guardian, to whom custody of a child has been given.
- (4) "Delinquent Act" shall mean an act that would be a crime if committed by an adult.

(5) "Detention" shall mean exercising authority over a child by physically placing him in any facility designated by the Court and restricting the child's movement in that facility.

(6) "Guardian" shall mean a person assigned by a court of law other than a parent, having duty and authority to provide care and control of a child.

(7) "Habitual Status Offender" shall mean any minor who has been found to have committed three (3) status offenses within twelve months.

(8) "Home detention" shall mean a dispositional alternative available to the Court whereby a juvenile offender may be released to the parent or legal guardian provided that the juvenile offender may not be out between the hours of 7:00 P.M. and 7:00 A.M. nor go beyond fifty (50) yards of the residence in which the Court ordered them to be detained without twenty-four (24) hour prior approval of the Court.

(9) "Indian" shall mean any member of a federally recognized Indian tribe, band or community, or any Alaska Native, or a person considered by the community to be Indian.

(10) "Juvenile" shall have the same meaning as "child".

(11) "Juvenile Offender" shall mean a juvenile who has been adjudicated as delinquent by the Court.

(12) "Minor" shall have the same meaning as "child".

(13) "Parent" shall include a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

(14) "Secure juvenile facility" shall mean a facility which (1) contains locked cells or rooms which are separated by sight and sound from any adult inmates; (2) restricts the movement of those placed in the locked cells or rooms, and (3) complies with the other requirements of the

Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5601 et. seq.

(15) "Status Offense" shall mean an offense applicable to a child due to their age, such as truancy and curfew violations.

4B-3 JURISDICTION

4B-3.01 Original Jurisdiction

The Court shall have jurisdiction over any Indian juvenile and over any Indian adult who was a juvenile at the time of any act, omission or status, found or living within the Kootenai Indian Reservation where the act, omission or status is prohibited by Tribal or applicable state or federal law or ordinance or where such act, omission or status committed by a juvenile would be a crime if committed by an adult.

4B-3.02 Extended Jurisdiction

The Court shall have original jurisdiction in all proceedings coming under the terms of this Chapter. The Court shall have continuing jurisdiction until the juvenile reaches age eighteen (18), provided, however, that jurisdiction over a juvenile offender can be extended to age twenty-one (21), if done before the juvenile is eighteen (18) in order to retain jurisdiction to impose sentence or to have time to execute the full sentence.

4B-3.03 Jurisdiction over parents

Whenever a juvenile is found to come under the purview of this Chapter, the Court shall have jurisdiction and authority to have the juvenile and the juvenile's parent(s), legal guardian or custodian sign a probationary contract with the Court containing terms and conditions that the juvenile and the juvenile's parent(s), legal guardian or custodian must adhere to as a condition of the juvenile's probation. The probationary contract may provide that upon a violation or breach of the terms and conditions of the probationary contract the juvenile's parent(s), legal guardian or custodian, the Court may order that the parent(s), legal guardian or custodian provide community service, attend parenting classes or undergo other treatment or counseling.

4B-3.04 Capacity

A child under the age of eight (8) years of age is deemed incapable of committing a crime.

4B-3.05 Trial as adult

The Tribal Prosecutor or the child may file a petition requesting the Court to try a child as an adult if the child is fourteen (14) years of age or older and is alleged to have committed a violent offense, such as those enumerated in the Major Crimes Act, 18 U.S.C. § 1153. Once the petition is filed, the Court shall conduct a hearing on the matter.

(1) The Court may try the minor as an adult only if it finds clear and convincing evidence that:

(a) there are no reasonable prospects for rehabilitating the child through resources available to the Court; and

(b) the act(s) allegedly committed by the child demonstrate conduct which constitutes a substantial danger to the public.

(2) The Court shall issue a written order that the child shall be tried as an adult with respect to the delinquent acts alleged in the petition after the conclusion of the hearing.

4B-4 CUSTODY

4B-4.01 Taking juveniles into custody

A Tribal police officer may take a juvenile into custody when:

(1) the juvenile commits a delinquent act in the presence of the officer;

(2) the officer has probable cause to believe the juvenile has committed a delinquent act;

(3) a custody order or warrant for juvenile has been issued by the Court;

(4) when the officer has probable cause to believe the juvenile has committed a status offense; or

(5) when the officer has probable cause to believe that the juvenile has violated conditions of their probation.

4B-4.02 Notification of Rights

A Tribal police officer taking a juvenile into custody shall inform the child that:

- (1) he or she has a right to remain silent;
- (2) anything he or she says can be used against him in court;
- (3) he or she has a right to the presence of his parent, guardian, or custodian and/or counsel during questioning; and
- (4) he or she has a right to an attorney at his own expense.

4B-4.03 Custody Procedures

(1) While in custody, a juvenile shall not be finger printed or photographed except by order of the Court.

(2) After taking a juvenile into custody the officer shall:

- (a) release the juvenile to the juvenile's parent, guardian or custodian and issue verbal warning as may be appropriate;
- (b) release the juvenile to a relative or other responsible adult if the child's parent, guardian or custodian consents to the release; or
- (c) deliver the juvenile to a juvenile shelter care facility or a secure juvenile facility.

4B-5 INITIATION OF PROCEEDINGS

4B-5.01 Petitions and Citations. Every juvenile proceeding shall be initiated by the filing of a petition or citation, which shall state the following:

- (1) The name of the officer issuing a citation or the Tribal Prosecutor filing the petition, the name of the juvenile and address, if known;
- (2) A short statement of the facts constituting the offense in ordinary language. If the acts constitute more than one offense, each offense shall be stated separately;

(3) A petition or complaint must be signed and dated by the issuing officer or the Tribal Prosecutor and may be signed by a complaining witness.

4B-5.02 Time of Petition or Citation. No petition or citation shall be filed charging the commission of any offense defined by this Code unless the offense charged was committed within one (1) year of the date of the petition or citation.

4B-6 JUVENILE PROCEEDINGS GENERALLY

4B-6.01 Juvenile Hearing Procedures

During proceedings in juvenile matters, unless otherwise provided by this Chapter, the rules of procedure shall be the same as that for adult criminal proceedings, except:

- (1) the child has no right to a jury trial; and
- (2) the general public shall be excluded.

4B-6.02 Notice in Juvenile Proceedings

For all juvenile proceedings before the Court, notice of the proceedings shall be given to the juvenile; his parent, guardian, or custodian; and their attorneys or spokespersons, if any; within the time limits set for a particular proceeding.

4B-6.03 Parental Attendance in Court

When a juvenile is ordered into court, a parent, guardian or custodian shall be ordered by the Court to be present during the court hearing. It will be up to the discretion of the Court if both parents are to appear in court.

4B-7 JUVENILE PROCEEDINGS

4B-7.01 Detention Hearing

(1) When a juvenile is placed into secured confinement upon being taken into custody, the Court shall hold a detention hearing within two (2) days of the initial detention, excluding Saturdays, Sundays and Tribally-recognized holidays. At such hearing, the Court shall determine:

- (a) whether probable cause exists to believe the juvenile committed the alleged delinquent act; and

(b) whether continued detention is necessary pending further proceedings.

(2) If the Court determines that there is a need for continued detention, it shall specify whether the juvenile is to be under home detention or confined in a secure juvenile facility until the adjudicatory hearing.

4B-7.02 Admit/Deny Hearing

(1) The admit/deny hearing is in the nature of an adult arraignment. The Court may combine an admit/deny hearing with the detention hearing if doing so shall not violate the juvenile's right to due process, otherwise, the Court shall schedule the admit/deny hearing after the detention hearing without unnecessary delay.

(2) At the admit/deny hearing, the Court shall read the petition or citation to the juvenile and shall inform the juvenile of his rights:

- (a) to cross-examine witnesses;
- (b) to subpoena witnesses and to introduce evidence on his own behalf;
- (c) to the privilege against self-incrimination; and
- (d) to an attorney at his own expense.

(3) The Court shall inform the juvenile that he or she has no right to a jury trial, and that juvenile hearings are closed to the public. The Court shall also inform the juvenile of the possible consequences if the allegations in the petition are found to be true.

(4) If the judge is satisfied that the juvenile understands the charge, the judge shall then ask the juvenile (or his representative) to enter a plea of "admit" or "deny."

(a) If the plea entered is admit, the judge shall then insure that the plea is knowing, voluntary and intelligent; that the juvenile fully understands the impact and consequences of such a plea (such as a waiver of a trial, an admission of all the facts alleged in the petition, etc.) The judge shall then accept the plea and inquire of the juvenile (or his representative) whether he or she desires to be sentenced immediately or at a later date.

(b) If the plea entered is deny, the judge shall then set a date for an adjudication hearing.

4B-7.03 Adjudicatory Hearing

(1) Any time prior to the adjudicatory hearing, the Court may order one or more conferences to consider matters that would promote a fair and expeditious trial.

(2) The Court shall conduct the adjudicatory hearing to determine whether the juvenile has committed a delinquent act or status offense. The hearing shall be private and closed. The Court shall hear testimony and take evidence concerning the circumstances which gave rise to the petition or citation. If the Court finds beyond a reasonable doubt that the allegations contained in the petition or citation are true it shall adjudicate the juvenile as delinquent.

(3) Upon a juvenile being adjudicated delinquent, the Court shall schedule a disposition hearing and specify whether the child is to be in home detention or held in a secure juvenile facility pending the hearing.

4B-7.04 Disposition Hearing

(1) Any date for a dispositional hearing shall be set by the Court at the conclusion of an adjudication hearing when a juvenile is adjudicated delinquent.

(2) The Court shall conduct the dispositional hearing to determine what sanctions shall be imposed upon the juvenile for his delinquent act. The hearing shall be private and closed. The Court may consider all relevant and material evidence, including oral and written reports, concerning the juvenile and his circumstances. The Court shall afford the juvenile, the juvenile's parent, guardian or custodian, and the juvenile's counsel, to speak regarding the juvenile's circumstances and to address any factual statements or conclusions presented in any oral or written reports presented as evidence.

(3) In entering a disposition order, the Court shall have broad discretionary authority with respect to the sanctions imposed, including but not limited to: imposing a fine and/or detention time, community service hours, restitution, counseling, treatment, or other alternatives the Court determines are just. The burden of the sanction

should fall primarily on the juvenile rather than on the parent.

4B-8 JUVENILE COURT RECORDS

4B-8.01 Juvenile Record Access and Confidentiality

(1) Court files concerning juvenile cases shall be kept separate from the records and files of adults. Juveniles shall be referred to solely by their initials in Court proceedings and orders. Other than the juvenile's initials, docket number, specific charges and specific convictions, all court records and law enforcement records related to juveniles shall be confidential and shall not be open to inspection to any but the following:

- (a) the juvenile;
- (b) the juvenile's parent, guardian or custodian;
- (c) the juvenile's counsel;
- (d) law enforcement, juvenile court, and social services personnel directly involved in the handling of the case;
- (e) the tribal prosecutor; and/or
- (f) other prosecuting attorneys or courts of competent jurisdiction upon a showing of extraordinary need.

(2) The victim of misconduct shall be entitled to the name of the juvenile involved and the name of the juvenile's parents or guardian.

(3) Records or statistical information may be released for purposes of legitimate research or study upon order of the Court as long as such information does not identify or tend to reveal the identity of any individual upon which it is based.

4B-8.02 Expungement of Records

(1) Any person who has been adjudicated in a case under this Chapter may, after the expiration of five (5) years from the date of termination of the continuing jurisdiction of the Court, or after reaching age 18, whichever is the soonest, petition the Court for the expungement of his record in the Court. Upon filing the petition, the

Court shall set a date for a hearing and shall notify the Tribal Prosecutor of the pendency of the petition and of the date of the hearing.

(2) If the Court finds upon the hearing that the petitioner demonstrates rehabilitation through no further adjudications of delinquency or conviction of a crime under Tribal, federal, state, or provincial laws as an adult, and that no such proceedings have been instituted or are pending against him, the Court shall order sealed all records in the petitioner's case in the custody of the Court and all such records in the custody of any other agency or official subject to its jurisdiction; and shall further order all references to the adjudication removed from all indices and from all other records available to the public.

(3) Copies of such order shall be sent to each agency or official named in the order. Upon the entry of such order, the proceedings in the petitioner's case shall be deemed never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the matter. Inspection of such records may thereafter be permitted only by the Court upon petition by the person who is the subject of such records or by any other court of competent jurisdiction, and only to persons named in such petition.

4B-9 STATUS OFFENSES

4B-9.01 Curfew

A juvenile commits a curfew violation if he or she is on the streets, highways or any place open to the public between the weekday hours of 9:00 p.m. to 6:00 a.m. and weekend hours of 10:00 p.m. to 6:00 a.m. From June 1 through September 1, the curfew shall be 11:00 p.m. to 6:00 a.m.

This section shall not apply if the juvenile is under the immediate supervision of a parent, guardian or custodian, or is attending an official public meeting or gathering or authorized school function supervised by adults.

4B-9.02 Truancy

A juvenile commits a truancy violation if he or she willfully and unjustifiably fails to attend school when he or she is required to attend.

4B-9.03 Runaway

A juvenile commits a runaway violation if he or she flees from the control of his parent, guardian or custodian, or when he or she is away from his home or place the parent, guardian or custodian has designated for him to be for twenty-four (24) consecutive hours.

4B-9.04 Tobacco

A juvenile commits a tobacco violation if he or she buys, accepts or possesses any cigarette, electronic cigarette, cigar or tobacco in any form.

CHAPTER 5

REGULATORY INFRACTIONS

5-1 PURPOSE

5-1.01 Purpose. The purpose of this chapter is to identify infractions of law that the Council has determined are not sufficiently harmful to the public interest to warrant criminal sanctions but are sufficiently serious to warrant the establishment of civil penalties to deter their commission. It is the intention of Council to levy civil fines for crimes committed on tribal lands by individuals not subject to the criminal jurisdiction of the tribal court.

5-1.02 Burden of Proof. The finding of a regulatory infraction shall be by a preponderance of the evidence, that is, by evidence that shows, more probably than not, the infraction occurred.

5-2 REMEDIES

5-2.01 Available Remedies. In imposing civil penalties, the Court should consider remedies meant to end infractions and deter people from committing them. These remedies include assessing money damages, not to exceed five thousand dollars (\$5,000), impounding property used to commit infractions, and ordering the wrongdoer to cease the conduct constituting the infraction and to repair or remove damaged and offending property.

5-2.02 Limitation on Damages. Money damages or civil fines shall not exceed an amount necessary to pay for any inconvenience caused by the infraction and the Tribe's cost to bring the action unless it must use the property to collect money damages. Impounded property may be released by the Court if the alleged wrongdoer agrees in writing to pay any civil fine imposed.

5-3 REGULATORY INFRACTIONS

5-3.01 Destruction of Public Property. It shall be unlawful for any person to intentionally or maliciously deface or destroy any public property located within the Kootenai Reservation. Such property shall include all property of the Tribe, State of Idaho, and any municipal governments, or the government of the United States.

5-3.02 Disorderly Conduct. A person shall be guilty of disorderly conduct if such person shall knowingly disturb the peace by:

(1) using threatening, profane or abusive language; or

(2) the threatening or malicious display of firearms or other weapons; or

(3) impeding vehicular or pedestrian traffic ;
or

(4) impeding the free ingress or egress to public or private places; or

(5) fighting or being involved in mutual combat or other tumultuous activities; or

(6) loud or unusual noise, or loud or boisterous voice and behavior that disturbs the peace or quiet of a neighborhood, or disturbs the dignity or reverential nature of any ceremony or gathering.

5-3.03 Maintaining a Nuisance. Any person who shall knowingly and intentionally create, conduct, or maintain a public nuisance commits an infraction. Upon the Court's finding against the person, the Court may direct the person to remove such nuisance. For purposes of this section, a "nuisance" shall mean:

(1) a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property by an entire community or neighborhood, or by any considerable number of persons; or

(2) any premises where person gather for the purpose of engaging in unlawful conduct; or

(3) a condition which renders dangerous for passage, any public pathway or right-of-way, or waters.

5-3.04 Sanitation and Public Health.

(1) Any person who violates any rules or regulations for the health and welfare of the

Kootenai people as adopted by the Tribal Council commits a public health infraction.

(2) The Judge of the Tribal Court may, in his/her discretion, take any action deemed necessary, under the circumstances, to safeguard the health or well being of the community, a family or a person.

5-3.05 [Renumbered Section 5-4.01; MOVED TO CHAPTER 5A MOTOR VEHICLE CODE]

5-3.06 [Renumbered Section 5-4.02; MOVED TO CHAPTER 5A MOTOR VEHICLE CODE]

5-3.07 Littering. It shall be unlawful for any person to deposit upon any Tribal or private property within the Kootenai Reservation, any debris, , litter, glass, barbed wire, construction debris , trash, garbage, or other waste substances when not authorized to do so by the Kootenai Tribe, or the owner of such property.

5-3.08 False Statement. A person shall be guilty of False Statement if he or she, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Kootenai Tribe of Idaho, knowingly and willfully—

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.

5-3.09 Tobacco. Any person violating the provisions of Chapter 10 shall be guilty of an offense and subject to a fine of not less than \$50.00 or more than \$250.00. Tribal law enforcement officers shall be empowered to seize forfeited goods. The Council is empowered to dispose of forfeited goods.

5-3.10 Alcohol. Any person violating the provisions of Chapter 11 shall be guilty of an offense and subject to a fine of not less than \$50.00 or more than \$250.00. Tribal law enforcement officers shall be empowered to seize forfeited goods. The Council is empowered to dispose of forfeited goods.

5-3.11 Accommodation Obtained by Fraud.

(1) Proof that lodging, food or other accommodation was obtained by any deception or false pretense, or by any false or fictitious show or pretense of any baggage or other property, or that any person absconded without paying or offering to pay for such food, lodging or other accommodation, or that any such person surreptitiously removed, or attempted to remove, his or her baggage, shall be prima facie proof of the intent necessary for the theft of the same.

(2) Any person not subject to the criminal jurisdiction of the Kootenai Tribal Court but found to have Obtained Accommodation by Fraud shall be guilty of a regulatory infraction and ordered to pay restitution equal to the amount of the fraud and a fine not to exceed \$500.

5-4 VEHICLE INFRACTIONS - Moved to Chapter 5A Motor Vehicle Code.

[Renumbered. See Chapter 5A for Vehicle Infractions.

5-4.01 Traffic Violations.

5-4.02 Off-Road Use of Motor Bikes, Cycles or Scooters.

5-4.03 Persons Under the Influence of Alcohol, Drugs OR Any Other Intoxicating Substances.

5-4.04 Reckless Driving and/or Inattentive Driving.

5-4.05 Unauthorized Use of Handicapped Parking Place.

5-4.06 Unauthorized Parking.]

5-5 RECREATION INFRACTIONS

5-5.01 Trespassing. It shall be an infraction for any person to enter upon lands that are posted with "No Trespassing" signs or other proper notice; or lands that are fenced or otherwise enclosed in a manner that a reasonable person would recognize as intended to exclude intruders; or when the person is directed not to enter or leave the land by the landowner, landowners' employee or agent.

The fine for violation of this section shall be \$50.00

5-5.02 Failure to Pay User Fee. It shall be an infraction for any person to fail to pay the assigned user fee to camp or recreate on the Kootenai Indian Reservation.

The fine for violation of this section shall be \$50 plus the amount of the unpaid user fee.

5-5.03 Violation of Quiet Hours. It shall be an infraction for any person to engage in loud or unusual noise, or loud or boisterous voice and behavior when camping or recreating at the Kootenai River Inn and the Twin Rivers RV Resort between the hours of 10 p.m. and 7 a.m.

The fine for violation of this section shall be \$50.

5-5.04 Fires. It shall be an infraction for any person to build or maintain a fire outside a fire circle, grill, or other places otherwise designated without permission. All fires shall be kept under control at all times, and shall be extinguished whenever a fire is left unattended. Areas may be closed to open fires during extreme fire danger.

The fine for violation of this section shall be \$50.

5-5.05 Failure to Report or Control a Fire. It shall be an infraction for any person who shall, with knowledge that a fire is endangering life or property, fail to give a timely fire alarm or fail to take reasonable measures to extinguish or control such fire when such action would not endanger himself when he knowingly has an official, contractual or other legal duty to prevent or combat such fire; or if such individual started the fire, lawfully or unlawfully, or if such fire was started with his assent on property within his custody or control.

The fine for violation of this section shall be \$100.

5-5.06 Setting Fire to Tribal Lands. It shall be an infraction for any person who shall willfully set on fire any wooded or grassland area of the Kootenai Reservation or any lands owned by or held in trust for the Kootenai Tribe of Idaho or its citizens with the exception of lawful burns conducted under Chapter 28.

The fine for violation of this section shall be \$250.

5-5.07 Discharge of Firearms. Other than in a Designated Area identified by Tribal Council, it shall be an infraction for any person to discharge any kind of dangerous weapon or firearm:

(1) from any motor vehicle, off-highway vehicle or watercraft;

(2) from, upon, or across any roadway;

(3) at any road signs placed upon any roadway on the Reservation;

(4) within 500 feet of any house, dwelling, building, barn, or other structure without written permission of the owner or person in charge of the property.

The fine for violation of this section shall be \$100.

5-5.08 Carrying a Dangerous Weapon While Under the Influence of Alcohol or Drugs. It shall be an infraction for any person to possess any kind of dangerous weapon or firearm while under the influence of alcohol, drugs or any other intoxicating substance on the Kootenai Indian Reservation.

The fine for violation of this section shall be \$250.

CHAPTER 5A MOTOR VEHICLE CODE

5A-1 JURISDICTION & APPLICABILITY

5A-1.01 The Kootenai Tribe of Idaho shall have exclusive jurisdiction over the operation of motor vehicles, motorcycles and off-highway vehicles (OHVs) within the exterior boundaries of the Kootenai Indian Reservation, including all properties held in trust by the Federal government for the Kootenai Tribe of Idaho or its citizens.

5A-1.02 The Kootenai Tribe Motor Vehicle Code shall apply to all persons operating motor vehicles, motorcycles and OHVs on the Kootenai Indian Reservation, regardless of whether the individual is an Indian.

5A-2 DEFINITIONS

5A-2.01 "Authorized emergency vehicle" is defined as a vehicle operated by any authorized fire department or law enforcement agency, ambulances, vehicles belonging to personnel of voluntary fire departments while in performance of official duties only, sheriff's search and rescue vehicles which are under the immediate supervision of the Boundary County Sheriff, wreckers which are lawfully engaged in motor vehicle recovery operations and are blocking part or all of one (1) or more lanes of traffic, and other emergency vehicles designated by the Kootenai Tribe of Idaho.

5A-2.02 "Driver" shall have the same meaning as operator.

5A-2.03 "Motorcycle" is defined as every motor vehicle having a seat or saddle for the use of the rider, designed to travel on not more than three (3) wheels in contact with the ground or designed to travel on two (2) wheels in contact with the ground which is modified by the addition of two (2) stabilizing wheels on the rear of the motor vehicle, that meets the federal motor vehicle safety standards as originally designed, and includes a converted motorbike, and includes a motor-driven cycle, a motorbike, or a moped.

5A-2.04 "Motor vehicle" is defined as every vehicle which is self-propelled. Motor vehicle does not include vehicles moved solely by human

power, electric personal assistive mobility devices and motorized wheelchairs.

5A-2.05 "Off-highway Vehicle" is defined as all-terrain vehicle, motorbike, specialty off-highway vehicle or utility type vehicle.

5A-2.06 "Operator" is defined as every person who is in actual physical control of a motor vehicle upon a highway or private property open to public use.

5A-3 CITATIONS

5A-3.01 Kootenai Tribal Police, including contracted Tribal law enforcement, shall issue a civil infraction citation to operators who violate the Motor Vehicle Code.

5A-3.02 The civil infraction citation shall list the next Kootenai Tribal Court date as the due date for payment of the citation or date on which the alleged violator may appear to contest the citation. All citations issued during a calendar month shall list the first court date of the following month as the date on which payment of the citation amount must be paid or on which the alleged violation must appear to contest the citation.

5A-4 FAILURE TO PAY BY COURT DATE

5A-4.01 If an alleged violator fails to pay the civil infraction fine amount listed on the citation by the end of business of the stated court date, the fine amount shall increase by \$20.00 to cover court and collection costs.

5A-4.02 The civil infraction fines shall be payable on court dates to the Kootenai Tribal Court Clerk or on non-court dates to the Finance Department.

5A-5 ACCIDENT ENHANCEMENT

5A-5.01 If during the investigation of a motor vehicle accident or collision, the investigating officer determines there has been a violation of this Chapter that contributed to the accident, a civil infraction citation may be issued to the operator at fault. In such cases, the officer issuing the civil infraction citation shall note "resulting in an accident" next to the section violated.

In such cases, the civil infraction fine amount shall be increased by \$50.00.

5A-6 MOVING VIOLATIONS

5A-6.01 Traffic Violations. Every person operating a vehicle of any character on a public road within the Kootenai Reservation shall drive in a careful and prudent manner, and at a rate of speed no greater than is reasonable and proper and so as not to unduly or unreasonably endanger the life, limb, property or other rights of any person entitled to the use of the street, road or highway. [Formerly 5-4.01]

5A-6.02 Violating Posted Speed Limit. It shall be an infraction for an operator of a motor vehicle to travel at a speed above the posted speed limit.

The fine amount for speed limit violation shall be:

1-4 m.p.h. = \$20.00
5-9 m.p.h. = \$45.00
10-14 m.p.h. = \$70.00
15-19 m.p.h. = \$95.00

An operator who operates a motor vehicle at a speed exceeding twenty (20) miles per hour over the posted speed limit shall be charged with reckless driving.

5A-6.03 Speed Too Fast For Conditions. It shall be an infraction for an operator to operate a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding highway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

The fine amount for a violation of this section shall be \$70.00.

5A-6.04 Persons Under The Influence Of Alcohol, Drugs Or Any Other Intoxicating Substances.

(1) Any person not subject to the criminal jurisdiction of the Kootenai Tribal Court but found to be under the influence of alcohol, drugs or other intoxicating substances as defined in Section 4-5.16 of the criminal code shall be guilty of a regulatory infraction and subject to a civil fine as well as possible exclusion under Section 12-2.01. [Formerly 5-4.03]

A penalty of up to \$5,000 shall be imposed for the offense of Persons Under The Influence Of Alcohol, Drugs Or Any Other Intoxicating Substances.

5A-6.05 Reckless Driving and/or Inattentive Driving.

(1) Any person not subject to the criminal jurisdiction of the Kootenai Tribal Court but found to be guilty of reckless and/or inattentive driving as defined in Section 4-5.17 of the Criminal Code shall be guilty of a regulatory infraction and subject to a civil fine. [Formerly Section 5-4.04]

A penalty of up to \$1,000 shall be imposed for a first offense of reckless driving and a penalty up to \$2,000 shall be imposed for a second offense of reckless driving. A penalty of up to \$300 shall be imposed for Inattentive driving.

5A-6.06 Failure To Yield To Emergency Vehicle. Upon the immediate approach of an authorized emergency or police vehicle making use of an audible or visible signal, the driver of every other vehicle shall yield the right-of-way and immediately drive to a position parallel to, and as close as possible to, the nearest edge or curb of the highway lawful for parking and clear of any intersection, and stop and remain in that position until the authorized emergency or police vehicle has passed, except when otherwise directed by a peace officer.

The fine amount for a violation of this section shall be \$100.00.

5A-6.07 Overtaking or Passing School Bus. The driver of a vehicle meeting or overtaking from either direction any school bus stopped on the highway shall stop before reaching the school bus when there is in operation on a school bus the visual warning signals, and the driver of a vehicle shall not proceed until the school bus resumes

motion or the visual warning signals are no longer activated.

The fine amount for a violation of this section shall be \$100.00.

5A-6.08 Driving on the Right Side of Roadway Required. The driver of a motor vehicle on a road or highway shall operate the vehicle on the right half of the roadway unless an obstruction exists making it necessary to drive to the left of the center of the highway. Any person doing so shall yield the right-of-way to all vehicles traveling in the proper direction upon the unobstructed portion of the highway within a distance as to constitute an immediate hazard.

The fine amount for a violation of this section shall be \$50.00.

5A-6.09 Off-Road Use of Motor Bikes, Cycles or Scooters. The use of motor bikes, motorcycles, or motor scooters is restricted to existing roads or designated trails, and it shall be a violation for any person to knowingly or negligently use such a vehicle on any other Reservation lands, including trails designed for non-motorized travel. [Formerly §5-4.02]

5A-6.10 Riding on Motorcycles. A person operating a motorcycle shall ride only upon the permanent and regular seat attached to it, and the operator shall not carry any other person nor shall any other person ride on a motorcycle unless the motorcycle is designed to carry more than one (1) person, in which event a passenger may ride upon the permanent and regular seat if designed for two (2) persons, or upon another seat firmly attached to the rear or side of the vehicle.

The fine amount for a violation of this section shall be \$50.00.

5A-6.11 Failure to Remain At Scene of Accident. The driver of any vehicle involved in an accident on a roadway on the Kootenai Indian Reservation shall immediately stop the vehicle at the scene of the accident, or as close as possible, and shall immediately return to, and in every event shall remain at, the scene of the accident until he complies with all applicable requirements or is released from the scene by law enforcement.

The fine amount for a violation of this section in cases of property damage only shall be \$100.00. The fine amount for a violation of this section in cases of personal injuries shall be \$250.00. Both fines shall be subject to the accident enhancement amount of \$50.00 prescribed in 5A-5.

5A-6.12 Failure to Give Information At Accident Scene. The driver of any vehicle involved in an accident on a roadway on the Kootenai Indian Reservation, shall, at the scene of the accident, give his name, address and, if available, at the scene of the accident, he shall exhibit his driver's license, proof of registration and certificate or proof of liability insurance to the person struck or to the driver or person attending any vehicle collided with.

The fine amount for a violation of this section in cases of property damage only shall be \$100.00. The fine amount for a violation of this section in cases of personal injuries shall be \$250.00. Both fines shall be subject to the accident enhancement amount of \$50.00 prescribed in 5A-5.

5A-7 VEHICLE INFRACTIONS

5A-7.01 Unauthorized Use Of Handicapped Parking Place. It shall be unlawful for any person who does not have a government-issued license plate tag or other legally recognized permit designated as "Handicap", to park a motor vehicle in, or block access to, a parking place designated for the handicapped at the Kootenai River Inn Casino & Spa and the Twin Rivers RV Resort. The registered owner of a vehicle violating this section shall be subject to a fine of \$100 (one hundred dollars). Vehicles found violating this section may be subject to tow at owner's risk and expense. [Formerly § 5-4.05]

5A-7.02 Unauthorized Parking. It shall be unlawful for any person to park a motor vehicle in, or block access to, fire lanes or any other designated no parking area, or to park in a way that might endanger public safety at the Kootenai River Inn Casino & Spa and Twin Rivers RV Resort. The registered owner of a vehicle violating this section shall be subject to a fine of \$45 (forty-five dollars). Vehicles found violating this section may be subject to tow at owner's risk and expense. [Formerly § 5-4.06]

5A-7.03 Applicability; Removal of Vehicles.

(1) This section of the Kootenai Code shall be applicable to the Kootenai River Inn and Twin Rivers Recreation area.

(2) Whenever any tribal law enforcement officer finds a vehicle in violation of any of the provisions of this Code, the officer is authorized to move the vehicle, or require the driver or other person in charge of the vehicle to move it to a position off the roadway. Further, any tribal law enforcement officer is authorized to remove or cause to be removed to a place of safety any unattended vehicle illegally left in violation of this Code. The registered owner of the vehicle shall be responsible for the cost of any removal.

(3) A vehicle is considered abandoned when left for seventy-two hours or longer after a owner-operator has left the premises, unless the owner-operator has made arrangements with management or law enforcement.

5A-8 EQUIPMENT REQUIRED**5A-8.01 Headlamps Required.**

(1) It shall be an infraction for an operator to drive a motor vehicle without a minimum of two working headlamps.

(2) It shall be an infraction for an operator to drive a motorcycle without a minimum of one working headlamp.

The fine amount for a violation of this section shall be \$50.00.

5A-8.02 Safety Restraint Use. Each occupant of a motor vehicle or off highway vehicle, and which was manufactured with safety restraints, shall have a safety restraint properly fastened about his body at all times when the vehicle is in motion.

The fine amount for a violation of this section shall be \$25.00.

5A-8.03 Passenger Safety for Children.

(1) No motor vehicle operator shall transport a child who is six (6) years of age or younger in a motor vehicle manufactured with seat belts after January 1, 1966, unless the child is

properly secured in a child safety restraint that meets the requirements of federal motor vehicle safety standard no. 213.

(2) The provisions of this section shall not apply:

(a) If all of the motor vehicle's seat belts are in use, but in such an event any unrestrained child to which this section applies shall be placed in the rear seat of the motor vehicle, if it is so equipped; or

(b) When the child is removed from the car safety restraint and held by the attendant for the purpose of nursing the child or attending the child's other immediate physiological needs.

The fine amount for a violation of this section shall be \$75.00.

5A-8.04 Stop Lamps Required. Any motor vehicle may be equipped and when required under this chapter shall be equipped with stop lamps on the rear of the vehicle which shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than one hundred (100) feet to the rear in normal sunlight, and which shall be actuated upon application of the service (foot) brake, and which may but need not, be incorporated with one or more other rear lamps.

The fine amount for a violation of this section shall be \$50.00.

5A-8.05 Signal Lamps Required. Any motor vehicle may be equipped and when required under this chapter shall be equipped with lamps or mechanical signal devices showing to the front and rear for the purposes of indicating an intention to turn either to the right or left. When lamps are used for this purpose, the lamps showing to the front shall be located on the same level and as widely spaced laterally as practicable, and when in use shall display a white or amber light, or any shade of color between white and amber, visible from a distance of not less than one hundred (100) feet to the front in normal sunlight, and the lamps showing to the rear shall be located at the same level and as widely spaced laterally as practicable, and when in use shall display a red or amber light,

or any shade of color between red and amber, visible from a distance of not less than one hundred (100) feet to the rear in normal sunlight. When actuated the lamps shall indicate the intended direction of turning by flashing the lights showing to the front and rear on the side toward which the turn is made.

The fine amount for a violation of this section shall be \$50.00.

5A-8.06 Condition of Stop Lamps and Signal Lamps. Stop lamps and signal lamps shall not be cracked or broken so as to project a glaring light.

The fine amount for a violation of this section shall be \$50.00.

5A-9 MISCELLANEOUS REQUIREMENTS

5A-9.01 Drivers License Required.

(1) No person shall drive any motor vehicle upon a road or highway unless the person has a current and valid driver's license.

(2) No person shall operate a motorcycle upon a road or highway unless he has a motorcycle endorsement on his valid driver's license.

The fine amount for a violation of this section shall be \$50.00.

5A-9.02 Current Vehicle Registration Required. No person shall operate any motor vehicle upon a road or highway unless the operator has current and valid registration document in the motor vehicle.

The fine amount for a violation of this section shall be \$50.00.

5A-9.03 Current Proof of Financial Responsibility Required. No person shall operate any motor vehicle upon a road or highway unless the operator has current and valid current proof of financial responsibility in the motor vehicle. The certificate shall give the effective date of the motor vehicle liability policy, which date shall be the same as the effective date of the certificate. The certificate shall also designate by appropriate reference all motor vehicles covered by that policy, unless the policy is

issued to a person who is not the owner of a motor vehicle.

The fine amount for a violation of this section shall be \$50.00.

5A-9.04 Tampering With Ignition Interlock System. A person may not:

(1) circumvent or tamper with the operation of an ignition interlock system;

(2) knowingly furnish an interlock restricted driver a motor vehicle without an ignition interlock system;

(3) blow into an ignition interlock system or start a motor vehicle equipped with an ignition interlock system for the purpose of allowing an interlock restricted driver to operate a motor vehicle.

The fine amount for a violation of this section shall be \$100.00.

5A-9.05 Interlock Driver Restrictions. An interlock restricted driver may not:

(1) rent, lease, or borrow a motor vehicle without an ignition interlock system; or

(2) request another person to blow into an ignition interlock system in order to allow the interlock restricted driver to operate the motor vehicle.

The fine amount for a violation of this section shall be \$100.00.

5A-9.06 Obstruction of Driver's View. No vehicle shall be operated when the windshield and/or windows of the vehicle are coated with ice, snow, sleet, or dust to the extent that the driver's view ahead, or to the sides or rear of the vehicle is obstructed.

The fine amount for a violation of this section shall be \$50.00.

5A-9.07 Obstruction of Injurious Material On Roadway.

(1) No person shall throw or deposit upon any highway any glass bottle, glass, nails, tacks, wire, cans, or any other substance likely to

injure any person, animal or vehicle upon the highway.

(2) Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from that vehicle.

The fine amount for a violation of this section shall be \$50.00.

5A-9.08 Lighted Material From Moving Vehicle. A person shall not throw or expel any lighted material from a moving vehicle.

The fine amount for a violation of this section shall be \$50.00.

CHAPTER 6 CIVIL ACTIONS

6-1 JURISDICTION

6-1.01 The Tribal Court shall have jurisdiction of all civil suits wherein the defendant is a member of the Kootenai Tribe, a person who voluntarily comes on or lives within the jurisdiction of the Court or a person, business, corporation, association or any other entity that does business with the Kootenai Tribe of Idaho or its members and the cause of action arose within the jurisdiction of the Tribal Court, or the parties consent to Tribal Court jurisdiction.

Provided, however, that the Kootenai Tribal Court shall not have jurisdiction to hear cases involving breaches of short-term loan agreements, which shall include but is not limited to bail bond agreements, payday loans or similar arrangements, including any transactions in which cash or credit is advanced to a borrower and is expected to be repaid in a limited timeframe and/or involves a service charge or other consideration. Application of this provision cannot be avoided by attempting to re-characterize, misrepresent or differentiate a transaction using different terms or features. The determination of what constitutes a short-term loan agreement is a decision of the Kootenai Tribal Court and shall be final.

6-1.02 The Tribal Court shall have jurisdiction to hear disputes between participants in the Tribe's gaming activities and gaming management or the Tribe's Gaming Commission that are referred to it by the Commission. It also shall have jurisdiction to hear appeals from decisions of the Gaming Commission but such jurisdiction shall be limited to determining whether the Commission provided due process in its proceedings and the relief to be granted is limited to remanding such cases to the Gaming Commission for a new hearing.

6-1.03 In addition to jurisdiction to hear any other action under this Chapter, the Court shall have jurisdiction to hear any action brought by the Council of the Kootenai Tribe of Idaho to collect any outstanding accounts, monies, or debts owed to it or the Tribe from any Kootenai tribal member or any other person, corporation, partnership, or business entity under a lawful promise to pay made to the Tribe or Council on Kootenai tribal lands.

6-2 COMMENCEMENT OF CIVIL ACTIONS

6-2.01 Commencement. Civil Actions may be commenced by the filing of a complaint with the Clerk, stating the names of the plaintiff and the defendant, accompanied by a simple statement of the facts giving rise to the cause for which relief is requested and the nature of such relief.

6-2.02 Signature of Complaint. Complaints shall bear the signature of the plaintiff.

6-2.03 Limitation of Filing. An action must be commenced within a period of three (3) years from the date of the events giving rise to the cause of action.

6-2.04 Tolling the Limitation. The three (3) year limitation on the commencement of civil actions shall not apply during the time a person entitled to bring a civil action under this Code is incapacitated or under disability to bring suit by reason of being a minor under 18 years of age or by reason of being mentally incompetent. Provided, however, that if the action is brought after the three (3) year limitation has expired, a written statement of reasonable cause must be given why the person's parent, guardian or other available representative did not bring the action in behalf of the disabled or incapacitated person within the three (3) year limitation. The statement shall be filed with the complaint and if attacked by the defendant or other party to the suit the Tribal Court shall consider the reasonable cause given and in its discretion decide whether it is sufficient to justify the tolling of the statute of limitations. The decision of the Tribal Judge in this respect shall be appealable.

6-2.05 Filing Fee. The plaintiff shall pay a filing fee of \$15.00 or as prescribed in the rules. All or part of the fee may be waived by the Court upon a showing of inability to pay.

6-3 SUMMONS

6-3.01 Summons. Upon the filing of a complaint, the Clerk shall issue a summons requiring the defendant to file and serve a written answer to the complaint with the Court and the plaintiff not more than twenty (20) days after service of summons and complaint upon the defendant.

6-4 SERVICE OF SUMMONS AND COMPLAINT

6-4.01 Service. The Plaintiff shall serve, or arrange to be served, a summons, with a copy of the complaint attached, upon the defendant by personal service or by any other manner authorized by the Tribal Judge as set forth below. All answers and subsequent pleadings may be served by mail or other similar service.

6-4.02 Personal Service. Service may be obtained by personally delivering the summons and complaint to the defendant or by leaving the summons and complaint at the place of his usual abode with some adult person who is a resident therein.

6-4.03 Service by Mail. Service may be authorized by the Tribal Judge by means of certified mail, return receipt requested.

6-4.04 Service by Publication. The Judge may allow service upon the defendant by the posting of copies of the summons and complaint in two (2) public places near the last known address of the defendant for three (3) weeks and by publication of notice of the filing of the summons and complaint once a week for three (3) consecutive weeks in a newspaper of general circulation on or near the lands of the Kootenai Tribe of Idaho. Such service shall be allowed only upon sufficient showing that diligent efforts were made to effect service and that service could not be made.

6-5 SERVICE OF SUMMONS AND COMPLAINT UPON MINORS, WARDS, AND CORPORATIONS

6-5.01 Service Upon Minors. If the suit is against a minor under the age of 14 years, service may be made on the minor's father, mother, or person having custody the minor, or with a person eighteen years of age or older with whom the minor resides.

6-6 PROOF OF SERVICE

6-6.01 Proof of Service. An affidavit of personal service shall be returned to the Clerk for filing. The return receipt from service made by mail shall be made a part of the record. When service is made by publication, affidavits shall be obtained for the Court records from the individual posting the summons and complaint and from the newspaper publishing the notice.

6-7 GUARDIAN AD LITEM FOR MINOR OR INCOMPETENT

6-7.01 Guardian Ad Litem for Minor or Incompetent. When a minor or incompetent is a party, he shall appear by guardian. If he has no guardian or his guardian is not proper or unable to act as such, the Court shall appoint one as follows:

(1) If the party is a minor without a proper guardian, the Court shall appoint a guardian upon the minor's request if the minor is 14 years of age or older or upon the application of a relative or friend if the minor is under the age of 14 years.

(2) If the party is incompetent other than by age and has no proper guardian, the Court shall appoint one upon application of a friend or relative or upon the Court's own motion.

6-8 APPLICABLE LAW IN CIVIL ACTIONS

6-8.01 Applicable Law in Civil Actions. The Tribal Court shall apply the laws of the Kootenai Tribe of Idaho, including its traditional laws and customs, unless such law has been specifically preempted by the laws of the United States. In the absence of applicable law, the Court may apply the laws of the United States or the regulations of the Department of the Interior as they may specifically relate to the issues in the case. As to any matters not covered by the above, the Tribal Court may be guided by the common law of the State of Idaho.

6-8.02 Tribal Custom Advisor. In the event of a dispute or uncertainty regarding traditional Tribal law and customs, the Court may utilize advisors familiar with these laws and customs.

6-9 JUDGMENTS IN CIVIL ACTIONS

6-9.01 Judgments. In all civil cases in which plaintiff prevails, judgment shall consist of an order of the Court directing payment to plaintiff of the monies found to be owed, awarding money damages to be paid to the injured party, or an order directing the performance of some other act for the benefit of the injured party.

6-9.02 Judgments in Cases Involving Injury. In cases involving injury to persons or property:

(1) Where the injury inflicted is found to be the fault of the defendant, the judgment shall fairly compensate the injured party for the loss suffered.

(2) If the injury was deliberately inflicted, an additional penalty may be imposed in favor of the injured party.

(3) Where the injury is found to be the fault of both the complainant and the defendant, the judgment shall compensate the injured party for the loss suffered minus an adjustment for the proportion of the plaintiff's fault.

6-10 DEFAULT JUDGMENT AND DISMISSAL

6-10.01 Default Judgment. Upon the failure of a defendant answer in the time stated in the summons, the other party may proceed to offer evidence including proof that the defendant was served with a summons, and the Court may render a judgment granting such relief as the evidence warrants, provided that the defaulting party may apply in writing for a new trial within twenty (20) days of the default judgment, showing good cause for his failure answer the summons. Upon failure of plaintiff to appear at the time set by the summons for hearing, the Court may dismiss the case.

6-11 COSTS

6-11.01 Costs. Unless the Court provides otherwise, Court costs incurred by the winning party shall be included in any judgment, including filing fees, service fees, expense of witnesses, expert witness fees, compensation of jurors and other incidental expenses.

6-12 INDIVIDUAL INDIAN MONEY

6-12.01 Payment of Judgments from Individual Indian Monies. Whenever money damages are not paid to an injured party within the time specified, and the party against whom judgment is rendered has sufficient funds in an Individual Indian Money account with the BIA to satisfy all or part of the judgment, the Clerk of the Court shall certify a copy of the case record to the Superintendent of the Agency where the losing party has such funds available and to the Secretary of the Interior. The Secretary of the Interior may direct the disbursing agent to pay from the delinquent party's account to the injured party the amount of judgment, or an

amount specified by the Secretary not to exceed the amount of judgment.

6-13 ESTATES

6-13.01 Effect on Estate. A judgment by this Court shall be considered a lawful debt for purposes of probate proceedings or other actions regarding decedent's estates.

6-14 LIENS

6-14.01 Judgment Lien. An unsatisfied judgment shall be a lien against funds owing the judgment debtor by the Tribe upon the delivery of a copy of the judgment from the Kootenai Tribal Court to the Finance Department.

6-14.02 Satisfaction of Judgment Lien. Upon receipt of an order from the Tribal Court, the Finance Department shall arrange for payment of the amount specified in the judgment as funds become available to the credit of the judgment debtor. Funds available to the credit of the judgment debtor include:

(1) Wages, except that seventy-five (75%) of the disposable earnings of defendant shall be exempt, such percentage to be computed for each interval wages are to be paid judgment debtor.

(2) Future gaming revenue distributions not obligated prior to the judgment through Tribal Court order or agreement of judgment debtor.

(3) Incarcerated Members' Trust Accounts not obligated prior to the judgment through Tribal Court order or agreement of judgment debtor.

(4) Such other funds as may be become available to the credit of the judgment debtor.

6-14.03 Payment Plans Prohibited. Tribal Court orders to the Finance Department may not require payments less than the amount of funds available to the credit of the judgment debtor as identified in Section 6-14.02.

6-14.04 Priority and Order of Satisfaction. Judgment liens for child support orders shall take priority over all other judgment liens. Once child support order judgment liens have been satisfied, all other judgment liens shall be paid on a first-come, first-served basis unless modified through agreement of

all judgment debtors or upon a finding of the Tribal Court that good cause exists to modify the order of satisfaction.

6-14.05 Prohibition against Satisfaction of Certain Judgments by Tribal Government. No judgment lien against funds owing a judgment debtor by the Tribe shall be valid if such judgment arises out of a short-term loan agreement. For purposes of this section, a short-term loan which shall include but is not limited to bail bond agreements, payday loans or similar arrangements, including any transactions in which cash or credit is advanced to a borrower and is expected to be repaid in a limited timeframe and/or involves a service charge or other consideration. Application of this provision cannot be avoided by attempting to re-characterize, misrepresent or differentiate a transaction using different terms or features. The determination of what constitutes a short-term loan agreement is a decision of the Kootenai Tribal Court and shall be final. This prohibition exists whether the judgment is an original Tribal Court judgment or is a foreign judgment recognized by the Tribal Court.

6-15 EXECUTION ON JUDGMENTS

6-15.01 Writ of Execution. A judgment creditor may seek a writ of execution upon personal property of the judgment debtor to be sold in order to satisfy all or part of the judgment. A writ shall specify the amount of the judgment and property to be seized. A notice must be posted at two (2) public places within the Reservation for seven (7) days prior to the sale by the Court. The sale will be conducted by the Court Clerk. The property shall be sold to the highest bidder but not for less than its reasonable value. The proceeds of the sale shall first go to satisfy the cost of the sale, second to any unpaid court costs, next to satisfy any portion of the judgment still owing. Any amount remaining after the above has been paid shall be paid to the defendant.

6-16 LIMITATION

6-16.01 Limitation of Enforcement of Judgment. An uncollected judgment shall be void at the end of five (5) years from the date of entry.

6-17 SATISFACTION

6-17.01 Satisfaction of Judgment. It shall be the duty of the judgment creditor to notify the Court in

writing that a judgment has been fully or partially satisfied.

6-18 EVIDENTIARY STANDARD

6-18.01 Preponderance of the Evidence. Judgment in civil cases shall be rendered upon a finding that the plaintiff has proved or failed to prove his case by a preponderance of the evidence.

6-19 IMMUNITY FOR EMERGENCY RESPONDERS

6-19.01 "Emergency Responder" means a person employed by or who is a bona fide member of a governmental entity including, but not limited to, a federally recognized Indian tribe, a legally organized law enforcement agency, a legally organized fire department or a licensed emergency medical service provider, and whose primary duty is to serve or protect the safety or life of any person or to protect property. Emergency responder includes, but is not limited to, law enforcement officers, peace officers, firefighters, ambulance attendants, emergency medical technicians, search and rescue personnel and park rangers.

6-19.02 Any Emergency Responder practicing as such on the Kootenai Indian Reservation or any other person who renders emergency care at a public gathering or at the scene of an emergency accident, illness or other occurrence in good faith shall not be liable for any civil or other damages as a result of any act or omission by such person rendering the emergency care, or as the result of any act or failure to act to provide or arrange for further medical treatment or care for the injured or ill persons, unless such person, while rendering such emergency care, is found guilty of gross, willful negligence.

CHAPTER 7
RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS
AND SERVICE OF FOREIGN PROCESS

7-1 RECOGNITION AND ENFORCEMENT

7-1.01 The Kootenai Tribal Court shall only recognize and enforce a foreign judgment if the proponent of the foreign judgment takes the following actions:

(1) Submits proof that the person against whom the foreign judgment has been rendered is subject to the jurisdiction of the Kootenai Tribal Court.

(2) Submits proof that the foreign judgment is based on valid subject matter jurisdiction.

(3) States good cause why an attempt at enforcement of the foreign judgment in the jurisdiction in which it was rendered was unsuccessful or would be futile.

(4) Submits proof that the foreign judgment is final and that it is not under appeal.

(5) Submits proof that the government that issued the foreign judgment provides comity or full faith and credit to the orders, decrees, and judgments of the Kootenai Tribe.

7-1.02 The Kootenai Tribal Court need not recognize the foreign judgment if:

(1) The person against whom the foreign judgment has been rendered is not subject to the jurisdiction of the Kootenai Tribal Court.

(2) The defendant in the foreign court did not receive notice of the proceedings and sufficient time to allow preparation of a defense.

(3) The foreign judgment would serve to violate any federal law or tribal law, custom or tradition.

(4) The foreign judgment was obtained by fraud.

7-1.03 The Kootenai Tribal Court need not recognize the attorney's fee award in a foreign default judgment. The burden of proof will fall upon

the proponent of the award to demonstrate its reasonableness.

7-2 PROCEDURE FOR RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENT

7-2.01 To be recognized and enforced, a foreign judgment must be filed by its proponent with the Kootenai Tribal Court within one year from the date of its issuance.

7-2.02 Proper filing with the Kootenai Tribal Court takes place when a proponent of the judgment delivers to the Court a certified copy of the foreign judgment, the date of its entry, record of any later entries affecting it, such as levies of execution and payments in partial satisfaction, and a motion requesting that the Court recognize and enforce the foreign judgment. A properly filed foreign judgment shall be docketed and recorded in the Court in the same manner as other cases.

7-2.03 Upon proper filing of a foreign judgment with the Court, the Court shall issue a summons directing the defendant to appear at a date not more than thirty (30) days from the date of service and respond to the motion requesting the Court to recognize and enforce the foreign judgment. Once the defendant has been served, failure to appear or respond as directed shall not prevent the Court from ruling on the motion.

7-2.04 For all foreign judgments not given full faith and credit by Federal mandate, the Court will review all evidence relevant to the foreign judgment and shall issue an order granting or denying the motion to recognize and enforce the foreign judgment. The order shall be the final judgment of the Kootenai Tribal Court and shall be enforceable as such.

7-3 SOVEREIGN IMMUNITY

7-3.01 Nothing in this chapter shall be deemed to waive the sovereign immunity of the Kootenai Tribe of Idaho to any extent.

7-4 SERVICE OF PROCESS INVOLVING
FOREIGN CAUSES OF ACTION

7-4.01 If service is desired to be obtained upon an Indian within the exterior boundaries of the Kootenai Indian Reservation for the purposes of initiating a civil judicial proceeding in a foreign tribal, state or federal court, such service must be performed by a Kootenai Tribal Officer, or another party designated by the Tribal Court. Any person desiring such service shall submit a written request for such service to the Kootenai Tribal Police together with the document that is desired to be served and the location of the person to be served. A schedule of fees and mileage for such service required to be paid by the judgment creditor shall be as determined by the Police chief and approved by the Tribal Court. An Affidavit of Service shall also be provided upon obtaining the desired service.

CHAPTER 8
CHILD AND FAMILY PROTECTION

8-1 PURPOSE

8-1.01 The purposes of this chapter shall be the following:

(1) To provide for the welfare, care and protection of the children and families within the jurisdiction of the Court of the Kootenai Tribe of Idaho.

(2) To preserve the unity of Kootenai families by preventing the separation of families unless separation is necessary to prevent serious harm to a child;

(3) To prevent abuse, neglect or abandonment of children;

(4) To provide services for children and families, from abuse and neglect prevention to residential treatment, with emphasis on prevention, early intervention and community-based alternatives;

(5) To establish basic rights of children and families and to ensure fairness to all parties who come before the Court under this chapter;

(6) To provide a system of procedure and law that will help ensure that off-reservation courts will be willing to return tribal children to the reservation;

(7) To recognize and incorporate customs and traditions of the Kootenai Tribe of Idaho with regard to family practices and child rearing.

8-2 DEFINITIONS

8-2.01 As used herein, except as may be specifically provided otherwise, the following definitions shall apply.

(1) "Abandon or Abandonment" shall mean the failure of the parent, guardian or custodian to provide reasonable support and to maintain regular contact with a child. Failure to maintain a parental relationship with a child without just cause for a period of six (6) months shall constitute prima facie evidence of abandonment. Voluntary relinquishment of custody to extended family

members or voluntary consent to placement does not constitute abandonment.

(2) "Abuse" shall mean the infliction of physical, emotional or mental injury on a child, or the sexual abuse or sexual exploitation of a child and shall include failing to maintain reasonable care and treatment or exploiting or overworking a child to such an extent that the child's physical health or emotional well-being is subject to serious harm.

(3) "Child" shall mean a person who is less than eighteen (18) years old and has not been emancipated by order of a court of competent jurisdiction.

(4) "Domicile" shall mean a person's permanent home, legal home or place of permanent residence. The term domicile includes any place of residence where a person intends to establish a permanent home or any residence that a person considers to be their permanent home. The domicile of a child is that of the custodial parent or legal guardian.

(5) "Extended Family" shall be defined according to the tribal customs and traditions of the child's tribe.

(6) "Indian" shall mean any member of a federally recognized Indian tribe, band or community, or any Alaska Native, or a person considered by the community to be Indian.

(7) "Neglect" shall mean the failure of the parent, guardian or custodian to provide adequate food, clothing, shelter, medical care, education or supervision for the child's health and well-being. "Neglected" shall include "abandoned" children.

(8) "Probable Cause" shall mean a reasonable basis has been established to believe that the facts alleged are more likely to have occurred than to have not occurred.

(9) "Tribal Social Worker" shall mean the person duly appointed by the Tribe to enforce this chapter and any other ordinances and codes promulgated by the Tribe.

(10) "Tribal Law Enforcement" shall mean the officers and organization duly appointed by the Tribe to enforce this chapter and any other ordinances and codes promulgated by the Tribe.

(11) "Parent" shall include a natural or adoptive parent, but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established.

(12) "Guardian" shall mean a person assigned by a court of law other than a parent, having duty and authority to provide care and control of a child.

(13) "Custodian" shall mean a person, other than a parent or guardian, to whom legal custody of a child has been given.

8-3 JURISDICTION

8-3.01 The Tribal Court shall have jurisdiction of all matters involving Indian child and family welfare arising on the lands of the Tribe pursuant to Chapter 8C the Uniform Child Custody Jurisdiction and Enforcement Act and applicable federal laws.

8-3.02 Application of the Indian Child Welfare Act.

(1) The Kootenai Tribal Court shall apply the policies of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, where they do not conflict with the provisions of this chapter and where they are consistent with the intent and purpose of this chapter.

(2) Unless they are consistent with the intent and purpose of this chapter, the standards and procedures applicable to state courts under the Indian Child Welfare Act shall not be binding upon the Tribal Court unless they are specifically made applicable by this chapter.

8-4 REPORTING PROCEDURES

8-4.01 Any person who suspects that a child has been abused, neglected or abandoned shall immediately report the suspicion to the tribal social worker, or tribal law enforcement.

8-4.02 Persons reporting suspicions that a child has been abused, neglected or abandoned, except

those specified in Section 8-4.04, may remain anonymous.

8-4.03 All persons reporting known or suspected instances of abuse or neglect, in good faith, shall be immune from civil liability and criminal prosecution.

8-4.04 Upon receipt of a report or upon learning of or suspecting abuse, the tribal social worker or tribal law enforcement officers shall make a written report to the Kootenai Tribal Court, which shall include the following information to the extent possible:

(1) Names, addresses, and tribal affiliation of the child and his parents, guardian, or custodian.

(2) The child's age.

(3) The nature and content of the child's abuse or neglect.

(4) Previous abuse or neglect of the child or the child's siblings, if known.

(5) The name, age, and address of the person alleged to be responsible for the child's abuse or neglect, if known.

(6) The name and address of the person or agency making the report.

8-5 INVESTIGATION

8-5.01 Upon receipt of written report from the tribal social worker or tribal law enforcement, the judge of the Kootenai Tribal Court shall evaluate the report for probable cause to investigate.

8-5.02 Upon a finding of probable cause, the Court shall issue an order of investigation.

8-5.03 No investigation shall commence without an order from the Court.

8-6 EMERGENCY REMOVALS

8-6.01 Except as provided below, no child shall be removed from the home of a child's parents, guardian or custodian without the consent of the parents, guardian or custodian or a specific order of the Court. The tribal social worker or tribal law enforcement shall have authority to remove a child under the following circumstances:

(1) When failure to remove the child may result in a substantial risk of death, permanent injury, or serious emotional harm, or;

(2) When the parent, guardian or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his own basic necessities of life, and that no satisfactory arrangement has been made by the parent, guardian or custodian to provide for such necessities; and

(3) When the person removing the child can ensure the safety and well-being of the child until the Kootenai Tribal Court assumes control of the matter.

8-7 NOTICE OF EMERGENCY REMOVAL

8-7.01 After a child is removed from the home under the provisions of Section 8-6 of this chapter, the person who removed the child shall immediately attempt to contact the Court and shall continue such attempts until contact is made.

8-7.02 The Court shall make all reasonable efforts to notify the parents, guardian or custodian within four (4) hours of receipt of notice that a child was removed. Reasonable efforts shall include personal, telephone and written contacts at the last known residence of the parents, guardian or custodian or at their place of employment, or other location where they are known to frequent regularly. If the parent, guardian or custodian cannot be found, notice shall be given to members of the extended family of the parent, guardian or custodian and/or the extended family of the child.

8-8 NOTIFICATION OF RIGHTS

8-8.01 Notice of the following rights shall be given to all parties contemporaneous with the fulfillment of notice requirements of Section 8-7 of this chapter. All parties have a right to be represented by an advocate/attorney at their own expense in all proceedings under this code, to introduce evidence, to be heard on his or her own behalf, to examine witnesses, and to be informed of possible consequences if the allegations of the petition are found to be true. All parties shall be entitled to advance copies of court documents, including petitions and reports, unless deemed inappropriate by the Court.

CHAPTER 8A DOMESTIC RELATIONS

INTRODUCTORY PROVISIONS

8A-1 DEFINITIONS

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

8A-1.01 "Annulment" or "nullity" means the act of declaring a marriage void.

8A-1.02 "Business day" means a day on which Kootenai Tribal offices are open for regular business

8A-1.03 "Current support" means the present month's required support pursuant to an order that is to be paid in increments, excluding amounts ordered to satisfy a delinquency.

8A-1.04 "Delinquency" means the amount of unpaid support that has accrued from the date a child support order is entered or an amount due on a judgment for support for a prior period.

8A-1.05 "Dependent child" means any child for whom a support order has been established or for whom a duty of support is owed.

8A-1.06 "Dissolution" or "divorce" means the act of terminating a marriage not including annulment.

8A-1.07 "Duty of support" means the duty to provide for the needs of a dependent child, which may include the costs of necessary food, clothing, shelter, education, and health care including health insurance premiums for the child. The duty includes any obligation to make monetary payment, to pay expenses or to reimburse another person or an agency for the cost of necessary support furnished a dependent child. The duty may be imposed by court order, by operation of law, or otherwise.

8A-1.08 "Employer" includes the Kootenai Tribe of Idaho and any person or entity that pays or owes income to the obligor.

8A-1.09 "Income" means any form of periodic payment to an individual, regardless of source, including, but not limited to, wages, salary, bonus,

commission, compensation for services rendered or goods sold, compensation as an independent contractor; and notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy support obligations, specifically includes periodic payments pursuant to pension and annuity or retirement programs, or disability or insurance policies of any type, with the following exceptions:

(1) Unemployment compensation payments, workers compensation and similar public assistance shall be exempt from the provisions of this chapter;

(2) Worker's compensation payments made under Chapter 8, title 72, Idaho Code or under the jurisdiction of any other state, province or tribe, shall be exempt from the provisions of this chapter;

(3) Public assistance payments made under the Tribal TANF or General Assistance Program, title 56, Idaho Code, or similar payments made by another tribe, state, province or federal (U.S. or Canada) agency shall be exempt from the provisions of this chapter;

(4) Gaming Revenue Distribution Plan payments.

8A-1.10 "In-Kind Payments" as permitted by the trier of fact includes, but is not limited to, the provision of traditional foods and services.

8A-1.11 "Maintenance" means the furnishing by one person to another of support, for the means of living including food, clothing, shelter and other reasonable needs.

8A-1.12 "Marriage" means the civil status, condition or relation of a man and woman considered united in law as husband and wife.

8A-1.13 "Minor" or "Child" means any person under the age of eighteen (18) that has not been emancipated by order of a court of competent jurisdiction.

8A-1.14 "Obligee" means any person, tribal department, state, provincial or federal (U.S. or

Canada) agency or bureau entitled by order to receive child support payments or child and spousal support payments, or the person or agency to whom the right to receive or collect support has been assigned.

8A-1.15 "Obligor" means any person obligated by order to pay child or spousal support.

8A-1.16 "Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children for whom the individual also owes support.

8A-1.17 "Support order" means a judgment, decree, or order issued by the Kootenai Tribal Court creating a duty of support for a minor child, spouse or former spouse, as herein defined; or a judgment, decree, order or administrative ruling issued by a court or agency of competent jurisdiction of another tribe, state, province or country, creating a duty of support for a minor child, spouse or former spouse, as herein defined, which has been registered or otherwise made enforceable by the Kootenai Tribe.

8A-2 SCOPE

8A-2.01 This chapter will apply to the creation and dissolution of a marriage of which at least one party to the marriage is an Indian living in Kootenai Indian Country for a period no less than six (6) months.

8A-2.02 Marriages performed under this chapter must be performed on Kootenai Lands or within Kootenai Indian Country.

8A-3 ENFORCEMENT

In addition to any other applicable remedy or penalty provided by the Kootenai Code, any person who violates the provisions of this chapter or misrepresents any fact required to be stated on a certificate form or marriage license may be subject to fine for a civil infraction.

8A-4 MARRIAGE LICENSE

8A-4.01 Any person over the age of eighteen (18), or over the age of sixteen (16) provided he or she has consent from his or her parents or legal guardian, shall be granted a

license for purposes of legalizing his or her marriage to a person of the opposite gender, provided he or she complies with the terms and conditions set forth in this ordinance.

8A-4.02 Application For A Marriage License.

(1) The Clerk of Court shall prepare an application for a marriage license. The application shall require such information as is deemed appropriate by the Tribal Council. Upon receipt of a completed application, a marriage license shall be issued.

(2) Both individuals who desire to be married under the civil authority of the Kootenai Tribe of Idaho shall complete an application, which shall include, but is not limited to the following information:

- (a) Name, address and telephone number;
- (b) Date of birth;
- (c) Social Security Number;
- (d) Driver's License Number;
- (e) Name, address and telephone number of next of kin that can generally be contacted with the information given; and
- (f) Address and telephone number of the marriage residence.

(3) In addition to the foregoing, the application for a marriage license shall include the following:

- (a) A place for the parent or legal guardian of any applicant under the age of eighteen (18) to acknowledge his or her consent to the marriage by signature following the words,

I hereby grant my consent to _____, my
(son)(daughter)(legal ward), who is
presently under the age of eighteen
(18) but over the age of sixteen (16),
to be married to _____

under the civil authority of the Kootenai Tribe of Idaho. I have given this consent based on my trust in them to conduct themselves in conformity with the laws and policies of the Kootenai Tribe of Idaho.

- (b) A place for each applicant to sign the application immediately following the words below:

I hereby declare under penalty of perjury that the information contained on this application is true and correct to the best of my knowledge. I further declare that I make application for a license to be married to _____, who shall be my (husband)(wife) for as long as we shall live. I hereby give my promise to provide love and support to _____ and, should any children be born of our relationship, to provide love and support for them as well. I hereby give my irrevocable consent to the jurisdiction of the Tribal Court of the Kootenai Tribe of Idaho for purposes of its right and obligation to determine my duty to pay child support for any such child. I further give my irrevocable promise to abide by any order of that Court regarding custody and child support as long as any such child remains within the Court's jurisdiction.

8A-5 MARRIAGE CEREMONY

8A-5.01 Marriages may be solemnized by the Tribal Chairperson, or any of the following who is of the age of eighteen (18) years or older. Such marriages must conform to the requirements of this chapter.

- (1) A priest, minister, rabbi, or authorized person of any religious denomination.
- (2) Any judge or retired judge of any competent jurisdiction.
- (3) Any elected official of the Tribe.

(4) A "Deputy of Civil Marriage" appointed by the Tribal Chairperson, who may solemnize marriages under his or her direction. Such Deputy may be appointed upon filing a request with the Tribal Chairperson and will be valid for the time specified.

8A-5.02 The person conducting the marriage ceremony must be reasonably assured of:

- (1) the identity of the parties and
- (2) the places of residence of the parties; and
- (3) that the parties possess a marriage license.

8A-5.03 No particular form for the ceremony of a marriage is required, but the parties must declare, in the presence of at least two (2) witnesses and the person solemnizing the marriage that they take each other as husband and wife.

ANNULMENT

8A-6 VOID AND VOIDABLE MARRIAGES

8A-6.01 A marriage is illegal and void from the beginning if:

- (1) Either party is less than eighteen (18) years old unless such party:
 - (a) Is over sixteen (16) years of age and has the written and properly notarized consent of his or her parent or guardian to marry; or
 - (b) If after obtaining the age of eighteen (18), freely cohabits with the other as husband or wife.
- (2) Either party was of unsound mind, unless after coming to reason such party freely cohabits with the other as husband or wife;
- (3) The consent of either party is obtained by fraud or duress, unless such party afterward, with full knowledge of the facts constituting the fraud or regardless of the duress used, freely cohabited with the other as husband or wife;

(4) The marriage is between parents and children, ancestors and descendants of every degree, brothers and sisters of the half as well as the whole blood, uncles and nieces, or aunts and nephews or first cousins whether the relationship is legitimate or illegitimate;

(5) The marriage is contracted by a person during the time he is legally married to another unless the actor believes the original spouse to be dead at the time.

8A-7 ANNULMENT ACTIONS/JUDGMENT

8A-7.01 An action to obtain a decree of nullity of marriage may be commenced if:

(1) The marriage is in violation of the age requirements of this chapter and the action is brought by the under aged party to the marriage within one (1) year after arriving at the age of eighteen (18), or by a parent, guardian, or other person having charge of such party, at any time before such party reaches the age of eighteen (18);

(2) Either party is legally married to another and the action is brought by either party or by such original spouse;

(3) Either party was of unsound mind and the action is brought by such party, or a relative or guardian of such party;

(4) The marriage is between relatives and the action is brought by another relative of the parties or the Tribe;

(5) Consent of either party was obtained by fraud and the action is brought by the party injured within one (1) year after the discovery of the facts constituting the fraud; or

(6) Consent of either party was obtained by force and the action is brought by the party injured within one (1) year after the marriage.

8A-8 LEGITIMACY OF CHILDREN

It shall be a rebuttable presumption that children conceived during a marriage are legitimate and have rights to the estate of both parents. The Tribal Court may at any time issue necessary

orders for the support of children as the circumstances require.

DISSOLUTION

8A-9 DISSOLUTION OF MARRIAGE

A marriage is dissolved by:

(1) The death of one of the parties; or

(2) The judgment of the Tribal Court or any other court of competent jurisdiction decreeing a dissolution and restoring the parties to the state of unmarried persons.

8A-10 GROUND FOR DISSOLUTION

A dissolution may be granted if one or other of the parties alleges irreconcilable differences in the marriage or the marriage is irretrievably broken.

8A-11 PROCEEDINGS

8A-11.01 Dissolution proceedings shall be initiated by the filing of a petition. No decree of dissolution shall be granted except after hearing before the Court.

8A-11.02 Unless determined otherwise by the Court, or upon agreement by both parties, no hearing on the petition for dissolution shall be held until at least twenty (20) business days after the filing of the petition. At any time prior to hearing, the Court, upon application of one of the parties, may require conference of the parties in order to determine whether or not reconciliation is practicable. The Court may allow additional parties to attend the meeting as it determines appropriate. If the Court determines that as a result of the meeting, reconciliation is practicable and it is in the best interest of the parties and children, if any, it may stay the proceedings for up to ninety (90) days.

SEPARATE MAINTENANCE/CHILD SUPPORT

8A-12 TEMPORARY SPOUSAL/CHILD SUPPORT

8A-12.01 While an action for dissolution is pending and upon consideration of the financial status of the parties, the Court may order the payment by one party to the other:

(1) Of temporary maintenance or temporary support of a child in an amount and according to appropriate terms under the circumstances;

(2) Of a reasonable amount for the cost of maintaining or defending any dissolution proceedings.

8A-12.02 In those instances where the Court deems it necessary, it may appoint a guardian ad litem to represent a minor or dependent child with respect to his support, custody and visitation. Any costs or fees for such representation shall be borne by either or both of the child's parents.

PROPERTY RIGHTS

8A-13 PROPERTY SETTLEMENT AGREEMENT

This chapter shall govern the property rights of married persons, subject to a written property settlement agreement between such persons entered into prior to or during the marriage. Such an agreement must be recorded in the office of the recorder of every county and/or Bureau of Indian Affairs (BIA) for property held in trust by the BIA for the benefit of either of the parties in which any real estate affected by the agreement is located. The effect of recording or non-recording of such agreement shall be the same as if the agreement were a conveyance of real property.

8A-14 SEPARATE PROPERTY

8A-14.01 The sole and separate property of married persons shall include all property of a husband or wife:

(1) Owned by him or her before marriage or acquired after marriage by either gift, bequest, devise or descent; or

(2) Acquired with the proceeds of his or her separate property; or

(3) That are considered traditional or cultural items.

8A-14.02 During the marriage, a party has the management, control and sole authority to dispose of his separate property and the separate

property of one spouse shall not be liable for debts contracted to with the separate property of the other.

8A-15 COMMUNITY PROPERTY

8A-15.01 All other property acquired after marriage by either husband or wife is community property. The income of all property, separate or community, is community property unless the conveyance by which it is acquired provides or both spouses, by written agreement specifically so providing, declare that all or specifically designated property and the income from all or the specifically designated property shall be the separate property of one of the spouses or the income from all or specifically designated separate property be the separate property of the spouse to whom the property belongs. Such property shall be subject to the management of the spouse owning the property and shall not be liable for the debts of the other member of the community.

8A-15.02 Property conveyed by one spouse to the other shall be presumed to be the sole and separate estate of the grantee and only the grantor spouse need execute and acknowledge the deed or other instrument of conveyance; provided, however, that the income from such property shall not be the separate property of the grantee spouse unless this fact is specifically stated in the instrument of conveyance.

8A-16 MANAGEMENT OF COMMUNITY PROPERTY

Either the husband or the wife shall have the right to manage and control the community property, and either may bind the community property by contract, except that neither the husband nor wife may sell, convey or encumber the community real estate unless the other joins in executing and acknowledging the deed or other instrument of conveyance, by which the real estate is sold, conveyed or encumbered, and any community obligation incurred by either the husband or the wife without the consent in writing of the other shall not obligate the separate property of the spouse who did not so consent; provided, however, that the husband or wife may by express power of attorney give to the other the complete power to sell, convey or encumber community property, either real or personal.

8A-17 DISPOSITION OF PROPERTY

8A-17.01 Unless there are compelling reasons otherwise, in the event dissolution is granted, the Court shall dispose of the community property of the parties in substantially equal division in value or assign the property in such proportions as it deems just. In making its determination, the Court shall consider all the facts of the case and the condition of the parties.

8A-17.02 If real property is involved in the disposition of property from a decree of dissolution, its disposition shall be consistent with the just apportionment of the property and may be assigned to either party either absolutely or for a limited period. The Tribe disfavors alienation of real property within Kootenai Territory to non-Kootenais and the Court shall take such policy into consideration when disposing of property under this chapter.

CUSTODY OF CHILDREN**8A-18 CARE AND CUSTODY OF CHILDREN**

8A-18.01 Unless otherwise provided by this Code or court order, the parents of an unmarried or unemancipated child(ren) are equally entitled to his or her custody and responsible for his or her care and support. If either the father or mother is deceased, or has been determined to have abandoned the family or to be unable or to have refused to take custody of the child(ren), his or her rights and responsibilities shall transfer to the other parent or grandparent(s) if neither parent is willing and able to care for the child(ren).

8A-18.02 In cases where the parents of a child(ren) are not married to each other, either parent may petition for an order of custody and child support.

8A-19 PROCEEDINGS

8A-19.01 The Court shall provide or remand physical/legal custody, care, and education, when it is deemed in the best interest of the child(ren).

8A-19.02 In reaching a decision on custody, and placement and visitation of a child(ren) the Court shall consider all relevant factors, including:

(1) The wishes of the child(ren) as to his or her custody and the older the child(ren), the more weight shall be given by the trier of fact;

(2) The wishes of the biological/legal parent(s);

(3) The relationship between the child(ren) and his or her parent(s) and siblings;

(4) The child(ren)'s adjustment or lack of adjustment, to a new home, school, or community;

(5) The need to promote continuity and stability in the life of the child(ren).

**SEPARATE MAINTENANCE/CHILD SUPPORT
MANDATORY INCOME WITHHOLDING FOR
CHILD SUPPORT****8A-20 MAINTENANCE/CHILD SUPPORT**

8A-20.01 Action for separate maintenance and/or child support may be maintained by one spouse who is living separate from the other.

8A-20.02 Where dissolution is granted and after considering all relevant factors, the Court may order separate maintenance for either spouse in such amounts and for such period of time the Court deems just. Separate maintenance may be awarded to a spouse only if such spouse:

(1) Lacks sufficient property to provide for his or her reasonable needs; and

(2) Is unable to support himself or herself through employment.

8A-20.03 The court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for such child's support.

(1) Factors to be considered in determining each parents' obligation to their children's support include:

(a) The age, health, station, earning capacity, amount and sources of income, estate, vocational skills, employability of each of the parents;

- (b) The age, health, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs of the child; and
- (c) Any Tribal interests in or benefits available to either of the parents or minor child, including, but not limited to, health care and education, provided that Health, Education and Welfare GRDP Distributions shall not be factored.

(2) In the absence of Kootenai Tribal Child Support Guidelines, the Court may look to the respective State-established guidelines as a tool in determining an amount for child support. Upon adoption of Tribal guidelines, the Tribal guidelines shall be the sole tool for establishing child support, in relation to the factors set forth herein. The guidelines shall be reviewed every three (3) years. There shall be a rebuttable presumption that the amount of the award which would result from the application of the guidelines is the amount of the child support to be awarded, unless evidence is presented in a particular case which indicates that an application of the guidelines would be unjust or inappropriate. If the court determines that the circumstances exist to permit a departure from the guidelines, the judge making the determination shall make a written or specific finding on the record that the application of the guidelines would be unjust or inappropriate in the particular case before the court. When adopting guidelines, the court shall provide that in a proceeding to modify an existing award, children of the party requesting the modification who are born or adopted after the entry of the existing order shall not be considered.

(3) The Court may order either parent to name any child under eighteen as a beneficiary of any medical or dental or benefit plan carried by such parent or available to such parent on a group basis through employment.

8A-21 REMEDIES IN ADDITION TO OTHER REMEDIES

8A-21.01 The remedies provided in this chapter are in addition to, and not in substitution for, any other remedies provided by law.

8A-21.02 The provisions of this chapter apply to any dependent child, whether born before or after the effective date of this chapter, and regardless of the past or current marital status of the parents.

8A-22 INCOME WITHHOLDING

8A-22.01 The Tribal Prosecutor or other Tribal agency responsible for child support enforcement may enforce a support order which is or has been issued or modified against a non-custodial parent by withholding as much of his or her income as is necessary to pay the current monthly support amount and, if needed, an additional amount to be applied toward any arrearage. The total amount may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Act (15 U.S.C. 1673 (b)).

8A-22.02 The Tribal Prosecutor or other Tribal agency will comply with all procedural due process requirements of the Kootenai Tribe of Idaho.

8A-22.03 Income withholding does not apply to in-kind payments.

8A-22.04 Mistake of fact is the only basis for contesting income withholding.

8A-23 NOTICE OF IMMEDIATE INCOME WITHHOLDING

8A-23.01 The Court shall order income withholding in all support orders effective the date of the order unless an exception is granted pursuant to this chapter. All support orders shall notify the obligor that income withholding shall be enforced by a withholding order issued to the obligor's employer, without additional notice to the obligor.

8A-23.02 Immediate income withholding shall not be ordered if:

(1) One of the parties demonstrates and the Court makes a specific written finding that there is good cause not to require immediate income withholding. A finding of good cause by the Court must be based on, at a minimum:

- (a) A written determination and explanation of why implementing

immediate withholding would not be in the best interests of the child; and

- (b) Proof of timely payment of previously ordered support in cases involving the modification of support orders; or

(2) A written agreement is reached between the obligor and obligee and the Tribal Prosecutor or other Tribal agency in cases where the Tribe is providing child support services, which provides for an alternative arrangement and such agreement is determined by the Court to be in the best interests of the child.

8A-23.03 Failure to provide for income withholding does not affect the validity of the support order.

8A-24 INCOME WITHHOLDING UPON A DELINQUENCY

If a support order does not include immediate income withholding, the obligor is subject to income withholding upon a delinquency at least equal to the child support payment for one (1) month, without the need for a judicial or administrative hearing.

8A-25 IDENTIFYING INFORMATION -- FILING WITH TRIBUNAL AND CHILD SUPPORT SERVICES

Obligors and obligees shall file with the Court or the Tribal Prosecutor or other Tribal agency, if the Tribal Prosecutor or other Tribal agency is providing child support services, identifying information including social security number, residential and mailing address, telephone number, driver's license number, and name, address, and telephone number of their employer. Obligors and obligees shall provide written notification of any changes within thirty (30) days after such change.

8A-26 ORDER FOR PAYMENT OF MEDICAL EXPENSES

The Court may order payment for reasonable share of medical expenses of a dependent child upon filing of a motion itemizing medical expenses, reference to insurance premiums, deductibles or

payments on submitted claims and a description of the terms of the support order requiring medical expenses claimed to be due.

8A-27 TERMINATION OF INCOME WITHHOLDING UPON OBLIGOR'S REQUEST

8A-27.01 An obligor whose income is subject to withholding upon a delinquency under this chapter may request a hearing to quash, modify, or terminate the withholding by filing a motion requesting such relief with the Court. A copy of the motion and a notice of hearing shall be served upon the obligee by personal service or certified mail, pursuant to the Kootenai Civil Code.

8A-27.02 In a hearing to quash, modify, or terminate an income withholding order issued under this chapter, the Court may grant relief only upon a showing by the obligor that there is a substantial probability that the obligor would suffer irreparable injury and that the obligee would not suffer irreparable injury. Satisfaction by the obligor of any delinquency subsequent to the issuance of the income withholding order is not grounds to quash, modify, or terminate the income withholding order.

8A-27.03 Mistake of fact is the only basis for contesting income withholding.

8A-28 HEALTH INSURANCE COVERAGE -- ENFORCEMENT

Where a person is required by court or administrative order to provide health insurance coverage for a dependent child, that person is eligible for family health coverage through an employer and fails to provide such coverage or lets it lapse, the Tribal Prosecutor or other Tribal agency or other obligee may seek enforcement of the coverage order as provided under this section.

8A-29 TERMINATION OR MODIFICATION OF INCOME WITHHOLDING UPON OBLIGEE'S REQUEST

The Court may quash, modify or terminate an income withholding order issued under this chapter upon written request therefore by the obligee, unless the Court finds that the termination would not be in the best interests of the dependent child.

8A-30 TERMINATION OF INCOME
WITHHOLDING BY THE COURT IN A JUDICIAL
PROCEEDING

If the clerk is unable to deliver payments under an income withholding order issued under this chapter for a period of three (3) months due to the failure of the obligee to notify the clerk of a change of address, the Court shall terminate the income withholding order, and shall mail a copy of the termination order to the employer and to the obligor. The Court shall return all undeliverable payments to the obligor.

CHAPTER 8B PATERNITY CODE

8B-1 PATERNITY /PURPOSE

This Chapter provides a process for the Tribal Court to establish the paternity of a child.

8B-2 PATERNITY PROCEEDINGS – GENERALLY

The paternity proceedings in this Chapter may be used in a variety of circumstances.

8B-2.01 Acknowledgement under section 8B-5 is an uncontested process allowing a father to swear under oath that he is the biological parent of a minor child. Establishment of paternity under section 8B-6 is generally a contested process or it may be used if an alleged father is dead or otherwise unavailable.

8B-2.02 An unwed father is not entitled to treatment as a parent under this Chapter unless his name appears on the minor child's Tribal, state or provincial certified birth certificate or unless he acknowledges or establishes his paternity as provided in this Chapter.

8B-2.03 An action of an adult child seeking to establish paternity under this Chapter must be filed within five (5) years from the time the child knew or should have known who is alleged to be the adult child's father.

8B-3 JURISDICTION

The Tribal Court shall have jurisdiction over all suits brought to determine paternity of a Kootenai child for any lawful purpose.

8B-4 DEFINITIONS

(a) "Child" shall mean any person who is less than eighteen (18) years of age and has not been emancipated by order of a court of competent jurisdiction.

(b) "Court" shall mean the Kootenai Tribal Court.

(c) "Kootenai Child" shall mean any person who is enrolled or eligible to be enrolled in the Kootenai Tribe, including a person under the age of eighteen (18) who is not emancipated according to the laws

of the Kootenai Tribe or is NOT otherwise legally considered an adult.

(d) "Genetic testing" means an analysis of genetic markers only to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination of the following:

(1) Deoxyribonucleic acid (DNA) ; and

(2) Blood-group antigens, red-cell antigens, human leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.

(e) "Paternity" as used in this Chapter shall mean the legal relationship between a child and a father.

(f) "Presumption" as used in this Chapter is an assumption recognized by law that a particular fact is true and may be admitted as evidence in a legal proceeding or judicially noticed, unless the presumed fact is rebutted by evidence sufficient to prove the fact to be untrue.

8B-5 ESTABLISHING PATERNITY BY AFFIDAVIT AND/OR STIPULATION

8B-5.01 Voluntary Acknowledgment of Paternity by Affidavit

(1) An alleged father of a child may voluntarily acknowledge paternity by an Affidavit of Paternity filed with the Court.

(2) If another man is already the presumed father of the child as provided in this Chapter, the Affidavit of Paternity shall not give rise to a presumption of paternity unless the man previously presumed to be the father of the child consents in writing with his signature being notarized and the document accepted by the Court, or until the previously established presumption has been rebutted.

(3) Disputes regarding paternity involving affidavits shall be resolved as provided for in section 8B-6 of this Chapter.

8B-5.02 Establishing Paternity by Stipulation

(1) A man may acknowledge that he is the biological father of a child by filing with the Court a notarized affidavit stating he is the biological father of the child.

(2) Upon receipt of a notarized affidavit, the Court shall promptly serve notice on the mother of the filing of the paternity affidavit by the alleged father.

(3) Within thirty (30) days after being served with notice of the alleged father's voluntary acknowledgment of paternity by affidavit, the mother may acknowledge the alleged father's paternity affidavit or dispute the affidavit by filing a written statement with the Court.

(4) If the mother and father sign a joint petition to establish paternity, the petition with a notarized affidavit can be presented to the Court for entry of an Order Establishing Paternity.

(5) If the mother does not sign a joint petition to establish paternity, the alleged father can file a petition to establish paternity attaching the notarized affidavit. The provisions of section 8B-6 will then apply.

8B-5.03 Affidavit or Stipulation Signed by a Minor. The Court may recognize or accept an affidavit or stipulation signed by a minor natural parent unless:

(1) It was signed by a minor who did not understand the consequences of signing the affidavit or stipulation; or

(2) The person who signed the affidavit or stipulation shows by clear, cogent and convincing evidence that he or she signed under duress, mistake or there was a violation of due process.

8B-6 ESTABLISHING PATERNITY THROUGH COURT ORDER

A child, a child's legal guardian, the child's natural mother, an alleged father of a child, or the Tribe, or another tribe, state, provincial or federal (U.S. or Canada) agency may file a petition requesting the Court to establish paternity. The natural mother and an alleged father may file jointly.

8B-6.01 Pleading to be filed:

(1) Summons. The summons may be signed by an attorney for a party or the Clerk of the Court. The summons to be served on the alleged father(s), along with the Petition, shall include the following notice, in addition to providing a time and date for appearance:

NOTICE TO RESPONDENT:

You have been named in a petition alleging paternity. A judgment of paternity would legally designate the child as your child, grant parental rights to you, create the right of inheritance for the child, obligate you to pay child support until the child reaches the age of eighteen (18), or until the child graduates from high school or its equivalent up to age nineteen (19), and make your failure to pay child support punishable by contempt of court.

You may request genetic testing, which will indicate the probability that you are or are not the father of the child. The Court will order genetic testing on a request by you, the child, the child's legal guardian, the child's natural mother, an alleged father of the child, or the Tribe, or another tribe, state, provincial or federal (U.S. or Canada) agency. Any person who refuses to comply with court-ordered genetic testing may be punished for contempt of court.

The petitioner has the burden of proving by clear and convincing evidence that the named alleged father is the father. If a genetic test shows that you are not excluded as the child's father and that the statistical probability of your being the child's father is ninety-five percent (95%) or higher, you are rebuttably presumed to be the child's father.

(a) The following defenses are available to you:

1. That you were sterile or impotent at the time of conception and had not voluntarily preserved semen;
2. That you did not have sexual intercourse with the mother of the child during the conception period;
3. That another man did have sexual intercourse with the mother of the child during the conception period; or
4. Any other defenses allowed pursuant to Kootenai law.

- (b) If you fail to appear at any stage of the proceedings, including a scheduled genetic test, the Court may enter a default judgment finding you to be the child's father. A default judgment will take effect twenty (20) days after it is served on or mailed to you by certified mail return receipt requested unless, within those twenty (20) days, you present yourself to the Court and establish good cause for your failure to appear or present yourself for the genetic test

(2) Petition. A Petition to establish paternity shall include the following:

- (a) The names, dates of birth, address, and tribal affiliations, if any, of the natural mother, the alleged father(s), the child, and of all others who have legal rights of custody, visitation, or support of the child;
- (b) The marital status of the natural mother and the alleged father(s);
- (c) The consent, if any, of the natural mother and the alleged father to establish the alleged father as the natural father of the child;

- (d) Whether any party has filed an action to determine paternity in any other court, or with any agency, and if a judgment of paternity has been rendered by any other court;

- (e) A certified copy of the child's birth certificate attached as a supporting document;

- (f) Whether a name change for the child is requested; and

- (g) The notarized signature of the petitioner verifying the truth of the information in the Petition.

8B-6.02 Notice and Absent Parties

(1) All parties including the biological mother and each man alleged to be the natural father shall be notified of the petition and of all hearings, and shall be given an opportunity to be heard.

(2) The Court has jurisdiction to decide the issues before it whether or not all the alleged fathers participate in the establishment of paternity court process.

8B-6.03 Service

Service shall be performed as provided in Chapter 6 of this Law and Order Code.

8B-6.04 Hearing

The following rules apply to paternity hearings:

(1) The mother of the child and the alleged father(s) may be compelled to testify at the hearing.

(2) 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 at the paternity hearing.

(3) The hearing shall be conducted by the judge with no jury.

(4) All hearings shall be closed unless all parties agree otherwise.

(5) If the petition contains a request that the child's name be changed, the Court shall hear testimony on this issue.

8B-6.05 Genetic Testing.

(1) If the alleged father(s) is alive and available, the Court shall require the child, mother, and alleged father(s) to submit to genetic testing, unless the Court determines it would not be in the best interest of the child because:

- (a) The child was conceived as the result of incest, sexual abuse of a minor, or sexual assault;
- (b) A legal proceeding of adoption is pending before a court of competent jurisdiction; or
- (c) The cooperation of the child's custodian in the establishment of paternity is reasonably likely to result in physical or emotional harm to the child or to the child's custodian.

(2) An alleged father may be excused from the requirement of genetic testing if the Court determines that there is no reasonable possibility that sexual contact occurred at or near the time of conception.

(3) If genetic testing is required by the Court, such testing shall be performed by a tribal, state, provincial and or federally accredited/certified expert in paternity genetic testing approved by the Court.

(4) If such testing confirms parentage, the disputing parent shall pay the cost of testing. If the test disproves parentage, the petitioner shall pay the cost of the testing.

(5) The Court may order additional genetic testing by other experts qualified in paternity genetic testing upon reasonable request of a party at that party's expense.

(6) The party receiving the genetic test results shall file them with the Clerk of the Court and provide all parties with a copy of the test results.

(7) The results of genetic testing must be accompanied by an affidavit describing the expert's qualifications; an analysis and interpretation of the genetic test results; and documentation of the chain of custody of the genetic sample.

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

8B-6.06 Evidence and Burden of Proof. The Court may consider the following types of evidence in paternity cases:

(1) Genetic test results, including the impossibility or the statistical probability of an alleged father's paternity, presented by either expert testimony or a written report, accompanied by an affidavit. The following types of genetic tests are admissible as evidence of paternity provided that the results of all tests, when taken together, either exclude an alleged father or yield a statistical probability of at least ninety-five percent (95%) probability that the alleged father is the biological father:

- (a) DNA
- (b) HLA (Human Leukocyte Antigens)
- (c) Red blood cell enzyme
- (d) Red blood cell antigen
- (e) Serum protein tests, and/or
- (f) Any other scientifically approved genetic test.

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

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

(4) Medical or anthropological evidence relating to an alleged father's paternity of the child

based on tests which may be ordered by the Court and performed by experts;

(5) Cultural evidence and/or a reputation in the community as to paternity;

(6) Information kept by the Kootenai Tribal Enrollment Office in the normal course of business; or

(7) Any other reliable evidence which is relevant to the issue of paternity of the child.

The Burden of Proof lies with the Petitioner or party contesting the action and shall be by clear and convincing evidence.

8B-6.07 Presumption of Paternity. A man shall be presumed to be a child's natural father when:

(1) A genetic or other test establishes a ninety-five (95) percent or greater probability that the individual is the child's natural father; or

(2) The alleged father and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, or divorce; or

(3) Before the child's birth, the alleged father and the child's natural mother married but the marriage is invalid and the child was born within 300 days after the marriage; or

(4) The alleged father has acknowledged his paternity in writing; or

(5) The alleged father, with his consent, is named as the father on the child's birth certificate; or

(6) The alleged father acknowledges paternity in writing filed with the Tribal Enrollment Office or with the Registrar of Vital Statistics for the state or province where the child was born, and the natural mother did not dispute the acknowledgment within a reasonable time after being informed thereof.

A presumption of paternity may be rebutted only by clear and convincing evidence.

8B-6.08 Artificial Insemination.

(1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is artificially inseminated with the 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 Registrar of Vital Statistics or similar agency, where it shall be kept confidential and in a sealed file.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's 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 Registrar of Vital Statistics or similar agency, where it shall be kept confidential and in a sealed file.

(3) 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.

8B-6.09 Best Interest of the Child NOT to Establish Paternity. The Court may determine upon a showing of good cause that it is not in the best interest of the child to establish paternity. Good cause may include, but is not limited to:

(1) The child was conceived as the result of rape, incest, sexual abuse of a minor, or sexual assault;

(2) A legal proceeding for adoption is pending before a court of competent jurisdiction; or

(3) The cooperation of the child's custodian in the establishment of paternity is

reasonably likely to result in physical or emotional harm to the child or to the child's custodian.

The Court may hold a closed, ex parte hearing to determine whether good cause exists to NOT establish paternity.

8B-6.10 Default Order of Paternity (Failure to Answer/Respond to Petition).

Entering a default order of paternity is against the public policy of the Kootenai Tribe.

However, if respondent is the alleged father and he fails to appear at any time not waived by the Court, the Court may, if no good cause to the contrary exists, enter an order that the respondent is the father, which shall be served on respondent personally, or by registered or certified mail to his last known address, or by publication if the respondent's address is not known. Such order shall take effect thirty (30) days after service unless, within that time, the respondent presents to the Court evidence of good cause for his failure to appear or to undergo a genetic test. Plaintiff has to request a default hearing within thirty-one (31) days after service has been accomplished.

8B-6.11 Order of Paternity

The order of the Court determining the existence or nonexistence of paternity shall be based on clear and convincing evidence and shall be final. If the order of the Court is different from the child's birth certificate, the Court shall send the order to the Registrar of Vital Statistics or similar agency of the state or province in which the child was born with instructions to amend the birth certificate upon receipt of the necessary documents and costs for filing with the state or province.

8B-6.12 Reopening Default Order of Paternity

An action where paternity was established by default order may be reopened upon petition for a showing of good cause.

8B-6.13 Disestablishment of Paternity

A declared father may file a Petition for Disestablishment of Paternity upon an initial showing that there is good cause to reopen the paternity matter. A Petition for Disestablishment must be filed no later than five (5) years after the

order establishing paternity was entered or no later than five (5) years from the time the father, the child and/or an interested party knew or should have known that the determined father was in fact not the natural father.

8B-6.14 Time for Filing Paternity Action. A petition to determine paternity may be filed at any time for the purpose of establishing the existence of a father and child relationship, but no later than five (5) years after the party knew or should have known of the father/child relationship.

(1) For the purposes of establishing a child support obligation, a petition to determine paternity must be filed before the child reaches the age of majority or is emancipated according to the laws of the Kootenai Tribe or is NOT otherwise legally considered an adult.

(2) If a petition to determine paternity is brought before the birth of the child, no hearing or other proceeding shall be conducted until after the birth unless the Court determines that an action is necessary in order to preserve testimony.

8B-6.15 Hearings Closed, Records Sealed.

Paternity Proceedings shall be closed and all records shall be sealed except as ordered by the Court for the purpose of requesting an amended birth certificate, or for any purpose consistent with the best interest of the child.

8B-7 ESTABLISHMENT OF PATERNITY WHEN NATURAL/ALLEGED PARENT IS MINOR

If either the natural mother or an alleged father is a minor, the Court shall provide the Tribal Prosecutor or other designated Tribal official with a copy of the paternity petition/affidavit and the prosecutor or other official may appear and/or at the Court's request advise the Court regarding protection of the minor parent(s).

8B-8 PATERNITY AND TRIBAL ENROLLMENT

Establishment of paternity under this Chapter has no effect on Kootenai enrollment procedure, status or membership. The Kootenai Tribal Council makes the final determination of eligibility for enrollment in the Kootenai Tribe of Idaho.

8B-9 PATERNITY ESTABLISHED BY OTHER JURISDICTIONS

8B-9.01 Properly issued court and administrative orders, judgments, or decrees of other Indian Tribes, states, provinces or federal agencies establishing paternity will be given full faith and credit in the Court. 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; and the issued order does not violate public policy of the Kootenai Tribe.

8B-9.02 A foreign order is authenticated by reasonable proof that the document tendered to the Clerk of the Court is a true copy of the foreign order as it is recorded in the agency or court of the issuing jurisdiction. An authentication stamp issued by a Clerk of Court or custodian of records, or a court seal, is sufficient evidence of authenticity.

8B-9.03 Unless defects in jurisdiction are apparent on the face of the foreign order, the person contesting enforcement of the order has the burden of showing the order is not valid. Upon a failure to respond to a notice of the order and to timely contest it, the Court shall enforce it as a Kootenai Tribal Court Order.

8B-9.04 Where a foreign order is invalid by reason of a lack of personal jurisdiction in the agency or court of the issuing jurisdiction, the Court may adopt some or all of its provisions as an original order of the Court to the extent that it does not violate the public policy of the Kootenai Tribe.

8B-10 DEFAULT PATERNITY ORDERS – REIMBURSEMENT OF CHILD SUPPORT PAID ERRONEOUSLY

8B-10.01 When a man has paid child support as the father of a child and the paternity of a different man is established later by the Court based on genetic testing, the Court may order reimbursement of the child support that was paid erroneously only if:

(1) The child support payments were retained by a state, provincial or tribal government under a permanent assignment of public assistance benefits;

(2) Notice of the hearing has been served on the appropriate government agency;

(3) The government agency that received and retained the payment is the party ordered to make the reimbursement and;

(4) Reimbursement extends back to the date the man can prove he attempted to contest the child support obligation or eighteen months, whichever is longer.

8B-6.11 CONFIDENTIALITY IN PATERNITY ACTIONS

The records filed in a paternity action shall be sealed. ONLY parties to the case may obtain copies of any filed pleadings without a court order and a showing of cause for why pleadings should be released.

CHAPTER 8C
UNIFORM CHILD-CUSTODY JURISDICTION
AND ENFORCEMENT ACT

8C-1 SHORT TITLE

This chapter may be cited as the "Uniform Child Custody Jurisdiction and Enforcement Act."

8C-2 DEFINITIONS

In this chapter:

(a) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(b) "Child" means an individual who has not attained eighteen (18) years of age.

(c) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(d) "Child custody proceeding" means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under this chapter.

(e) "Commencement" means the filing of the first pleading in a proceeding.

(f) "Court" means an entity authorized under the law of a tribe, state or other jurisdiction to establish, enforce or modify a child custody determination.

(g) "Home tribe or state" means the tribe or state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six (6) months of age, the term means the

tribe or state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(h) "Initial determination" means the first child custody determination concerning a particular child.

(i) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

(j) "Issuing tribe or state" means the tribe or state in which a child custody determination is made.

(k) "Kootenai Lands" shall mean the Kootenai Indian Reservation and other lands over which the Kootenai Tribe of Idaho retains jurisdiction.

(l) "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(m) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

(n) "Person acting as a parent" means a person, other than a parent, who: (1) Has physical custody of the child or has had physical custody for a period of six (6) consecutive months, including any temporary absence, within one (1) year immediately before the commencement of a child custody proceeding; and (2) Has been awarded legal custody by a court or claims a right to legal custody under applicable law.

(o) "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague convention on the civil aspects of international child abduction or enforcement of a child custody determination.

(p) "Physical custody" means the physical care and supervision of a child.

(q) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague convention on the civil aspects of international child abduction or enforcement of a child custody determination.

(r) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(s) "Tribe" means an Indian Tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(t) "Tribal Court" means the Kootenai Tribal Court.

(u) "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

8C-3 PROCEEDINGS GOVERNED BY OTHER LAW.

This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

8C-4 APPLICATION TO INDIAN TRIBES

A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. 1901 *et seq.*, is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

8C-5 INTERNATIONAL APPLICATION OF CHAPTER

8C-5.01 Tribal Court shall treat a foreign country as if it were a Tribe or State for the purpose of applying parts 1 and 2 of this chapter.

8C-5.02 Except as otherwise provided in this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional

standards of this chapter must be recognized and enforced under this chapter.

8C-5.03 Tribal Court need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

8C-6 EFFECT OF CHILD CUSTODY DETERMINATION

A child custody determination made by the court that had jurisdiction under this chapter binds all persons who have been served in substantial accordance with the laws of the Kootenai Tribe, or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

8C-7 PRIORITY

If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

8C-8 NOTICE TO PERSONS OUTSIDE TRIBE

8C-8.01 Notice required for the exercise of jurisdiction when a person is outside Kootenai Lands may be given in a manner prescribed by Chapter 6 of the Kootenai Code or by the law of the Tribe or State in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

8C-8.02 Proof of service may be made in the manner prescribed by Kootenai law or by the law of the Tribe or State in which the service is made.

8C-8.03 Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

8C-9 APPEARANCE AND LIMITED IMMUNITY

8C-9.01 A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction of the Kootenai

Tribe for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding.

8C-9.02 A person who is subject to personal jurisdiction of the Kootenai Tribe on a basis other than physical presence is not immune from service of process of the Kootenai Tribe. A party present on Kootenai Lands who is subject to the jurisdiction of another jurisdiction is not immune from service of process allowable under the laws of that Tribe or State.

8C-9.03 The immunity granted by this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present on Kootenai Lands.

8C-10 COMMUNICATION BETWEEN COURTS

8C-10.01 The Tribal Court may communicate with a court in another jurisdiction concerning a proceeding arising under this chapter.

8C-10.02 The Tribal Court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

8C-10.03 Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

8C-10.04 Except as otherwise provided in Section 8C-10.03, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

8C-10.05 For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

8C-11 TAKING TESTIMONY IN ANOTHER TRIBE OR STATE

8C-11.01 In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located outside Kootenai Lands, including testimony of the parties and the child, by deposition or other means allowable by the Kootenai Tribe for testimony taken in another jurisdiction. The Tribal Court on its own motion may order that the testimony of a person be taken outside Kootenai Lands and may prescribe the manner in which and the terms upon which the testimony is taken.

8C-11.02 The Tribal Court may permit an individual residing in another jurisdiction to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that Tribe or State. The Court shall cooperate with courts of other jurisdictions in designating an appropriate location for the deposition or testimony.

8C-11.03 Documentary evidence transmitted from another jurisdiction to the Tribal Court by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

8C-12 COOPERATION BETWEEN COURTS -- PRESERVATION OF RECORDS

8C-12.01 The Tribal Court may request the appropriate court of another jurisdiction to:

- (1) Hold an evidentiary hearing;
- (2) Order a person to produce or give evidence pursuant to procedures of that jurisdiction;
- (3) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;
- (4) Forward to the Tribal Court a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(5) Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

8C-12.02 Upon request of a court of another jurisdiction, the Tribal Court may hold a hearing or enter an order described in this section.

8C-12.03 Travel and other necessary and reasonable expenses incurred under this section may be assessed against the parties.

8C-12.04 The Tribal Court shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains eighteen (18) years of age. Upon appropriate request by a court or law enforcement official of another jurisdiction, the Tribal Court shall forward a certified copy of those records.

8C-13 INITIAL CHILD CUSTODY JURISDICTION

8C-13.01 Except as otherwise provided by Kootenai law, the Tribal Court has jurisdiction to make an initial child custody determination only if:

(1) The Kootenai Tribe is the child's Home Tribe on the date of the commencement of the proceeding, or was the Home Tribe of the child within six (6) months before the commencement of the proceeding and the child is absent from the Kootenai Tribe but a parent or person acting as a parent continues to live within the jurisdiction of the Kootenai Tribe;

(2) A court of another jurisdiction does not have jurisdiction under paragraph (1) of this section, or a court of the home tribe or state of the child has declined to exercise jurisdiction on the grounds that the Kootenai Tribe is the more appropriate forum under the Uniform Child Custody Jurisdiction and Enforcement Act, and:

(a) The child and the child's parents, or the child and at least one (1) parent or a person acting as a parent, have a significant connection with the Tribe other than mere physical presence; and

(b) Substantial evidence is available to the Kootenai Tribe concerning the child's care,

protection, training and personal relationships;

(3) All courts having jurisdiction under this section have declined to exercise jurisdiction on the ground that the Tribal Court is the more appropriate forum to determine the custody of the child; or

(4) No other court would have jurisdiction under the criteria specified in this section.

8C-13.02 Section 8C-13.01 of this section is the exclusive jurisdictional basis for making a child custody determination by the Tribal Court.

8C-13.03 Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

8C-14 EXCLUSIVE, CONTINUING JURISDICTION

8C-14.01 Except as otherwise provided in Kootenai law, if the Tribal Court has made a child custody determination consistent with Kootenai law, it has exclusive, continuing jurisdiction over the determination until:

(1) The Tribal Court determines that neither the child, nor the child and one (1) parent, nor the child and a person acting as a parent have a significant connection with the Tribe and that substantial evidence is no longer available to the Kootenai Tribe concerning the child's care, protection, training and personal relationships; or

(2) Tribal Court or a court of another jurisdiction determines that the child, the child's parents, and any person acting as a parent do not presently reside on Kootenai Lands.

8C-14.02 In the event the Tribal Court has made a child custody determination and does not have exclusive, continuing jurisdiction under this section, it may modify that determination only if it has jurisdiction to make an initial determination under this chapter.

8C-15 JURISDICTION TO MODIFY DETERMINATION

8C-15.01 Except as otherwise provided by law, the Tribal Court may not modify a child

custody determination made by a court of another jurisdiction unless the Tribal Court has jurisdiction to make an initial determination, and:

8C-15.02 The court of the other jurisdiction determines it no longer has exclusive, continuing jurisdiction under this chapter; or

8C-15.03 The Tribal Court or a court of the other state or tribe determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state or tribe.

8C-16 TEMPORARY EMERGENCY JURISDICTION

8C-16.01 Tribal Court has temporary emergency jurisdiction if the child is present on Kootenai Lands and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

8C-16.02 If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in Tribal Court, a child custody determination made under this section remains in effect until an order is obtained from a court having jurisdiction. If a child custody proceeding has not been or is not commenced in a court having jurisdiction, a child custody determination made under this section becomes a final determination, if it so provides and the Tribe becomes the home tribe of the child.

8C-16.03 If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court having jurisdiction, any order issued by the Tribal Court under this section must specify in the order a period that the Tribal Court considers adequate to allow the person seeking an order to obtain an order from the court having jurisdiction under applicable law. The order issued in Tribal Court remains in effect until an order is obtained from the other jurisdiction within the period specified or the period expires.

8C-16.04 The Tribal Court, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another jurisdiction

under a statute similar to this section shall immediately communicate with that court to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

8C-17 NOTICE -- OPPORTUNITY TO BE HEARD – JOINDER

8C-17.01 Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with Kootenai law must be given to all persons entitled to notice under Kootenai law as in child custody proceedings between members of the Tribe, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

8C-17.02 This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

8C-17.03 The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by Kootenai law as in child custody proceedings between members of the Tribe.

8C-18 SIMULTANEOUS PROCEEDINGS

8C-18.01 Except as otherwise provided in this chapter, the Tribal Court may not exercise its jurisdiction if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another jurisdiction having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other jurisdiction because the Tribal Court is a more convenient forum.

8C-18.02 Except as otherwise provided in this chapter, the Tribal Court, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties. If the court determines that a child custody proceeding has been commenced in a court in another jurisdiction substantially in accordance with this chapter, the Tribal Court shall stay its proceeding and communicate with the other court. If the other court having jurisdiction substantially in accordance with this chapter does not determine

that the Tribal Court is a more appropriate forum, the Tribal Court shall dismiss the proceeding.

8C-18.03 In a proceeding to modify a child custody determination, the Tribal Court shall determine whether a proceeding to enforce the determination has been commenced in another state or tribe. If a proceeding to enforce a child custody determination has been commenced in another state or tribe, the court may:

(1) Stay the proceeding for modification pending the entry of an order of the other court enforcing, staying, denying or dismissing the proceeding for enforcement;

(2) Enjoin the parties from continuing with the proceeding for enforcement; or

(3) Proceed with the modification under conditions it considers appropriate.

X-19 INCONVENIENT FORUM

8C-19.01 The Tribal Court may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another jurisdiction is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the Tribal Court's own motion or request of another court.

8C-19.02 Before determining whether it is an inconvenient forum, the Tribal Court shall consider whether it is appropriate for a court of another jurisdiction to exercise jurisdiction. For this purpose, the Tribal Court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) Whether domestic violence has occurred and is likely to continue in the future and which jurisdiction could best protect the parties and the child;

(2) The length of time the child has resided outside Kootenai Lands;

(3) The distance between the Tribal Court and the other court that would assume jurisdiction;

(4) The relative financial circumstances of the parties;

(5) Any agreement of the parties as to which state or tribe should assume jurisdiction;

(6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) The ability of the court of each jurisdiction to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) The familiarity of the court of each jurisdiction with the facts and issues in the pending litigation.

8C-19.03 If the Tribal Court determines that it is an inconvenient forum and that a court of another jurisdiction is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated jurisdiction and may impose any other condition the Court considers just and proper.

8C-19.04 The Tribal Court may decline to exercise its jurisdiction under this chapter if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

8C-20 JURISDICTION DECLINED BY REASON OF CONDUCT

8C-20.01 Except as otherwise provided by law, if the Tribal Court has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the Tribal Court shall decline to exercise its jurisdiction unless:

(1) The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(2) Another court otherwise having jurisdiction under the law determines that the Tribal Court is a more appropriate forum; or

(3) No court of any other jurisdiction would have jurisdiction under the criteria specified in this chapter.

8C-20.02 If the Tribal Court declines to exercise its jurisdiction pursuant to this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction.

8C-20.03 If the Tribal Court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The Tribal Court may not assess fees, costs or expenses against the Tribe unless authorized by law other than this chapter.

8C-21 INFORMATION TO BE SUBMITTED TO COURT

8C-21.01 In a child custody proceeding each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

(2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding; and

(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of

legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

8C-21.02 If the information required by Section 8C-21.01 is not furnished, the Tribal Court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

8C-21.03 If the declaration as to any of the items described in Section 8C-21.01 is in the affirmative, the declarant shall give additional information under oath as required by the Tribal Court. The Tribal Court may examine the parties under oath as to details of the information furnished and other matters pertinent to the Tribal Court's jurisdiction and the disposition of the case.

8C-21.04 Each party has a continuing duty to inform the Tribal Court of any proceeding in any jurisdiction that could affect the current proceeding.

8C-22 APPEARANCE OF PARTIES AND CHILD

8C-22.01 In a child custody proceeding, the Tribal Court may order a party to the proceeding who is a Tribal member to appear before the Tribal Court in person with or without the child. The Tribal Court may order any person who is a Tribal member and who has physical custody or control of the child to appear in person with the child.

8C-22.02 If a party to a child custody proceeding whose presence is desired by the Tribal Court is outside Kootenai Lands, the Tribal Court may order notice be given pursuant to this chapter, including a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

8C-22.03 The Tribal Court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

8C-22.04 If a party to a child custody proceeding who is outside Kootenai Lands is directed to appear under this section or desires to appear personally before the Tribal Court with or without the child, the Tribal Court may require another party to pay reasonable and necessary

travel and other expenses of the party so appearing and of the child.

8C-23 ENFORCEMENT UNDER HAGUE CONVENTION

Under this chapter, the Tribal Court may enforce an order for the return of the child made under the Hague Convention on the civil aspects of international child abduction as if it were a child custody determination.

8C-24 DUTY TO ENFORCE

8C-24.01 The Tribal Court shall recognize and enforce a child custody determination of a court of another jurisdiction if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

8C-24.02 The Tribal Court may utilize any remedy available under tribal or other applicable law to enforce a child custody determination made by a court of another jurisdiction. The remedies provided in this chapter are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

8C-25 TEMPORARY VISITATION

8C-25.01 If the Tribal Court does not have jurisdiction to modify a child custody determination, it may issue a temporary order enforcing:

(1) A visitation schedule made by a court of another jurisdiction; or

(2) The visitation provisions of a child custody determination of another jurisdiction that does not provide for a specific visitation schedule.

8C-25.02 If the Tribal Court makes an order under this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in this chapter. The order remains in effect until an order is obtained from the other court or the period expires.

8C-26 REGISTRATION OF CHILD CUSTODY DETERMINATION

8C-26.01 A child custody determination issued by a court of another jurisdiction may be registered in the Tribal Court, with or without a simultaneous request for enforcement, by sending to the Tribal Court Clerk:

(1) A letter or other document requesting registration;

(2) Two (2) copies, including one (1) certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) Except as otherwise provided in this chapter, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

8C-26.02 On receipt of the documents required by this section, the Tribal Court shall:

(1) Cause the determination to be filed as a foreign judgment, together with one (1) copy of any accompanying documents and information, regardless of their form; and

(2) Serve notice upon the persons named pursuant to this section and provide them with an opportunity to contest the registration in accordance with this section.

8C-26.03 The notice required by this section must state that:

(1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by the Tribal Court.

(2) A hearing to contest the validity of the registered determination must be requested within twenty (20) days after service of notice; and

(3) Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that

determination with respect to any matter that could have been asserted.

8C-26.04 A person seeking to contest the validity of a registered order must request a hearing within twenty (20) days after service of the notice. At that hearing, the Tribal Court shall confirm the registered order unless the person contesting registration establishes that:

(1) The issuing court did not have jurisdiction under this chapter;

(2) The child custody determination sought to be registered has been vacated, stayed or modified by a court having jurisdiction to do so under this chapter; or

(3) The person contesting registration was entitled to notice, but notice was not given in substantial accordance with Kootenai law in the proceedings before the court that issued the order for which registration is sought.

8C-26.05 If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

8C-26.06 Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

8C-27 ENFORCEMENT OF REGISTERED DETERMINATION

8C-27.01 The Tribal Court may grant any relief normally available under applicable law to enforce a registered child custody determination made by a court of another jurisdiction.

8C-27.02 The Tribal Court shall recognize and enforce, but may not modify, except in accordance this chapter, a registered child custody determination of a court of another jurisdiction.

8C-28 SIMULTANEOUS PROCEEDINGS

If a proceeding for enforcement under this chapter is commenced in Tribal Court and the Tribal Court determines that a proceeding to modify the

determination is pending in a court of another jurisdiction having jurisdiction to modify the determination under this chapter, the Tribal Court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the Tribal Court, after consultation with the modifying court, stays or dismisses the proceeding.

8C-29 EXPEDITED ENFORCEMENT OF CHILD CUSTODY DETERMINATION

8C-29.01 A petition for enforcement of a child custody determination must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

8C-29.02 A petition for enforcement of a child custody determination must state:

(1) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) Whether the determination for which enforcement is sought has been vacated, stayed or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number and the nature of the proceeding;

(3) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

(4) The present physical address of the child and the respondent, if known;

(5) Whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(6) If the child custody determination has been registered and confirmed under this chapter, the date and place of registration.

8C-29.03 Upon the filing of a petition, the Tribal Court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the Tribal Court shall hold the hearing on the first judicial day possible. The Tribal Court may extend the date of hearing at the request of the petitioner.

8C-29.04 An order issued under this section must state the time and place of the hearing and advise the respondent that at the hearing the Tribal Court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs and expenses, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(1) The child custody determination has not been registered and confirmed under Kootenai law, and that:

(a) The issuing court did not have jurisdiction under this chapter;

(b) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court having jurisdiction to do so under this chapter;

(c) The respondent was entitled to notice, but notice was not given in substantial accordance with Kootenai law in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child custody determination for which enforcement is sought was registered and confirmed under applicable law, but has been vacated, stayed or modified by a court of a state or tribe having jurisdiction to do so under this chapter.

8C-30 SERVICE OF PETITION AND ORDER

Except as otherwise provided in this chapter, the petition and order must be served by any method authorized by Kootenai law upon respondent and any person who has physical custody of the child.

8C-31 HEARING AND ORDER

8C-31.01 Unless the Tribal Court issues a temporary emergency order pursuant to this chapter, upon a finding that a petitioner is entitled to immediate physical custody of the child, the Tribal Court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) The child custody determination has not been registered and confirmed under this chapter, and that:

(a) The issuing court did not have jurisdiction under this chapter;

(b) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a state or tribe having jurisdiction to do so under this chapter; or

(c) The respondent was entitled to notice, but notice was not given in substantial accordance with the standards of this chapter in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child custody determination for which enforcement is sought was registered and confirmed under this chapter, but has been vacated, stayed or modified by a court having jurisdiction to do so under this chapter.

8C-31.02 The Tribal Court shall award the fees, costs and expenses authorized under this chapter, and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

8C-31.03 If a party called to testify refuses to answer on the ground that the testimony may be self incriminating, the Tribal Court may draw an adverse inference from the refusal.

8C-31.04 A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a child custody enforcement proceeding under this chapter.

8C-32 WARRANT TO TAKE PHYSICAL CUSTODY OF CHILD

8C-32.01 Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from Kootenai Lands.

8C-32.02 If the Tribal Court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from Kootenai Lands, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the Tribal Court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by Section 8C-29, Expedited Enforcement of a Child Custody Determination.

8C-32.03 A warrant to take physical custody of a child must:

(1) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) Direct law enforcement officers to take physical custody of the child immediately; and

(3) Provide for the placement of the child pending final relief.

8C-32.04 The respondent must be served with the petition, warrant and order immediately after the child is taken into physical custody.

8C-32.05 A warrant to take physical custody of a child is enforceable throughout Kootenai Lands. If the Tribal Court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the Tribal Court may authorize law enforcement officers to make a forcible entry at any hour.

8C-32.06 The Tribal Court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

8C-33 COSTS -- FEES -- EXPENSES

8C-33.01 The Tribal Court shall award the prevailing party, including a state or tribe, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

8C-33.02 The Tribal Court may not assess fees, costs or expenses against another jurisdiction unless authorized by law other than this chapter.

8C-34 RECOGNITION AND ENFORCEMENT

The Tribal Court shall accord full faith and credit to an order issued by another jurisdiction and consistent with this chapter which enforces a child custody determination by a court of another jurisdiction, unless the order has been vacated, stayed or modified by a court having jurisdiction to do so under this chapter.

8C-35 APPEALS

An appeal may be taken from a final order in a proceeding under this chapter. The Tribal Court shall make every effort to expedite the appeal. Unless the Tribal Court enters a temporary emergency order under section 8C-16 the Tribal Court may not stay an order enforcing a child custody determination pending appeal.

8C-36 ROLE OF TRIBAL ATTORNEY

8C-36.01 In a case arising under this chapter or involving the Hague Convention on the civil aspects of international child abduction, the Tribal Attorney may take any lawful action, including resort to a proceeding under this chapter or any other available civil proceeding to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

(1) An existing child custody determination;

(2) A request to do so from a court in a pending child custody proceeding;

(3) A reasonable belief that a criminal statute has been violated; or

(4) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the civil aspects of international child abduction.

8C-36.02 The Tribal Attorney acting under this section acts on behalf of the Tribal Court and may not represent any party.

8C-37 ROLE OF LAW ENFORCEMENT

At the request of the Tribal Attorney acting under section 8C-36, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist the Tribal Attorney with responsibilities under 8C-36.

8C-38 COSTS AND EXPENSES

If the respondent is not the prevailing party, the Tribal Court may assess against the respondent all direct expenses and costs incurred by the Tribal Attorney and law enforcement officers under 8C-36 and 8C-37.

8C-39 APPLICATION AND CONSTRUCTION

In applying and construing this chapter, otherwise known as the Uniform Child Custody Jurisdiction and Enforcement Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among jurisdictions that enact it.

8C-40 SEVERABILITY CLAUSE

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

8C-41 TRANSITIONAL PROVISION

A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination which was commenced before the effective date of this chapter as the Uniform Child Custody Jurisdiction and Enforcement Act is governed by the law in effect at the time the motion or other request was made.

CHAPTER 8D
DOMESTIC AND FAMILY VIOLENCE PROTECTION AND PREVENTION ACT

8D-1 TITLE AND PURPOSE

The purpose of this Act is to provide victims of domestic or family violence the maximum protection from further violence, which the law, and those who enforce the law, can provide. It is the intent of the Kootenai Tribe of Idaho that the laws against domestic and family violence be enforced without requiring that the persons be married, cohabitating or presently involved in a relationship. It is the further intent of the Kootenai Tribe of Idaho that the laws against domestic and family violence be enforced to the furthest extent allowed by law.

8D-2 DEFINITIONS

8D-2.01 Unless the context requires otherwise, terms in this Act are defined as follows:

(1) "Domestic or family violence" shall mean the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense by the victim:

- (a) Attempting to cause or causing physical harm, bodily injury or assault to another family or household member;
- (b) Placing a family or household member in fear of the infliction of physical harm, bodily injury or assault;
- (c) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force or duress; or
- (d) Causing a family or household member emotional distress.

(2) "Family or household members" shall mean

- (a) Current or former spouses;

(b) Persons who live together or have lived together;

(c) Persons who are engaged in or have engaged in a relationship;

(d) Persons who have a child in common or who are expecting a child together;

(e) Persons related by blood, adoption or marriage; and

(f) Minor children, foster children or adopted children of persons described in (a) through (e) above.

(3) "Bodily injury" shall mean any act, except one done in self-defense, that results in physical injury, pain, illness or an impairment of a physical condition or sexual abuse.

(4) "Causing apprehension of bodily injury" shall mean any physical act, including the utterance of verbal threats, which causes another person reasonably to fear serious bodily injury or death.

(5) "Causing emotional distress" shall mean engaging in conduct that would cause a reasonable person emotional distress and does in fact cause emotional distress to the person. Unless the presumption is rebutted by a preponderance of the evidence, the following types of conduct will be presumed to cause emotional distress:

(a) Creating a disturbance at a person's place of employment or school;

(b) Repeatedly telephoning a person's place of employment or residence;

(c) Repeatedly following a person in a public place or places;

(d) Repeatedly contacting by means of electronic communications, including but not limited to, telephones, cellular telephones, and computers, whether or not a conversation ensues;

(e) Repeatedly keeping a person under surveillance by remaining present outside his or her home, school, place of employment, vehicle or other place occupied by the person or by peering in the person's windows;

(f) Improperly concealing a minor child from a person with sole or joint custody of the minor, repeatedly threatening to improperly remove the person's minor child from the jurisdiction or from his or her physical care, repeatedly threatening to conceal the person's minor child or making a single such threat following an actual or attempted improper removal or concealment, unless the removal or attempted removal was made while fleeing from an incident or pattern of domestic violence; or

(g) Threatening physical force, confinement or restraint.

(6) "Program of intervention for perpetrators" or "Batterers Intervention Program" shall mean a specialized program that:

(a) Accepts perpetrators of domestic or family violence into treatment or educational classes to satisfy court orders;

(b) Offers treatment to perpetrators of domestic or family violence; or

(c) Offers classes or instruction to perpetrators of domestic or family violence.

(7) "Advocate" shall mean an employee of, or volunteer for, a program for victims of domestic or family violence who has a primary function of rendering advice, counseling or

assistance to victims of domestic or family violence, supervising the employees or volunteers of the program or administering the program.

(8) "Ex Parte Protection Order" shall mean a temporary order issued by a court of competent jurisdiction which restrains any person, Indian or non-Indian, from harassing, annoying, stalking, contacting or coming within a certain proximity to another person.

(9) "Final Order of Protection" shall mean an order issued by a court of competent jurisdiction which restrains any person, Indian or non-Indian, either permanently or for a specified period of time, from harassing, annoying, stalking, contacting or coming within a certain proximity to another person.

(10) "Mutual Protection Order" shall mean an order issued by a court of competent jurisdiction that restrains both parties to a proceeding from harassing, annoying, stalking, contacting or coming within a certain proximity to another person.

(11) "Issuing Court" shall mean a court that issues an ex parte or final order of protection against a person.

(12) "Enforcing Court" shall mean a court that recognizes and enforces an ex parte or final order of protection, against a person, issued by another court.

(13) "Full Faith and Credit" shall mean the act of enforcing an ex parte or final order of protection from another court as if it were the order of the Kootenai Tribal Court.

(14) "Registration" shall mean the act of filing a protection order issued by another court with the Kootenai Tribal Court or with the Kootenai Tribal Police Department.

8D-3 REGISTRATION AS DOMESTIC VIOLENCE OFFENDER OR PERSON SUBJECT TO PROTECTIVE ORDER

All individuals on the Reservation must inform the Kootenai Tribal Police Department of any convictions for domestic violence offenses or if they are subject to a protective order.

8D-4 DUTIES OF LAW ENFORCEMENT OFFICER TO VICTIM OF DOMESTIC OR FAMILY VIOLENCE; REQUIRED NOTICE TO VICTIM

8D-4.01 A Police Officer who responds to an allegation of domestic or family violence should use all reasonable means to protect the victim and prevent further violence, which may include:

- (1) Taking any action necessary to provide for the safety of the victim and any other family or household member;
- (2) Confiscating weapons pursuant to 8D-5;
- (3) Facilitating transportation for the victim and any minor child to a shelter or other place of safety;
- (4) Assisting the victim in removing essential personal effects from the place where the alleged offense occurred;
- (5) Assisting the victim and any minor child in seeking medical treatment, including obtaining transportation to a medical facility; or
- (6) Giving the victim immediate and adequate notice of the rights of victims and the remedies and services available to victims of domestic or family violence.

8D-4.02 As part of the notice required by 8D-4.01(6), the Police Officer must give a written notice to the victim, which must include at a minimum the following:

"If you are the victim of domestic or family violence and you believe that law enforcement protection is needed for your physical safety, you have the right to request that the Police Officer assist in providing for your safety. You may request an emergency order for protection. You may also request that the Police Officer assist you in obtaining your essential personal effects and locating a safe place, such as a shelter, a family member's or a friend's residence, or a similar place of safety. If you are in need of medical treatment, you have the right to request that the Police Officer assist you in seeking medical treatment. You may request a copy of the Police Officer's report at no cost to you.

"You have the right to request a meeting with the Tribal Prosecutor to discuss potential criminal charges. You also have the right to file a petition with the Kootenai Tribal Court requesting an order for protection from domestic or family violence, which could include any of the following orders:

- (1) An order enjoining the perpetrator from threatening to commit or committing further acts of domestic or family violence;
- (2) An order prohibiting the perpetrator from intimidating, harassing, menacing, annoying, telephoning, contacting or otherwise interfering or communicating with you, directly or indirectly;
- (3) An order removing the perpetrator from your residence and a reasonable area surrounding the residence;
- (4) An order directing the perpetrator to stay away from your

residence, school, place of employment or any other specified place frequented by you or another family or household member;

(5) An order informing the perpetrator that federal law prohibits persons subject to a protective order from using or possessing any firearm or other weapon specified by the Court;

(6) An order granting you possession and use of the automobile and other essential personal effects;

(7) An order granting you custody of your minor child or children;

(8) An order denying the perpetrator visitation;

(9) An order specifying arrangements for visitation, including requiring supervised visitation; and

(10) An order requiring the perpetrator to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs and attorney's fees.

"The forms you need to obtain an order for protection are available from the Court Clerk or Kootenai Tribal Police Department. A list of the resources available relating to domestic and family violence, treatment of injuries and places of safety and shelters is attached.

"You also have the right to seek reimbursement for losses suffered as a result of the domestic or family violence, including medical and moving expenses, loss of earnings or support and other expenses for injuries sustained and damage to your property. This can be done without an

attorney or advocate in the Kootenai Tribal Court."

8D-4.03 The written notice described in this section must not include the addresses of shelters, unless the location is public knowledge.

8D-5 AUTHORITY OF LAW ENFORCEMENT OFFICER TO SEIZE WEAPONS

8D-5.01 If a Police Officer investigating a crime involving domestic violence determines that it is necessary to protect the victim or the victim's family from domestic violence or to protect the officer or the public during the investigation, the officer may:

(1) Seize a deadly weapon in plain view of the officer; and

(2) If a firearm was actually possessed during or used in the domestic violence, seize all deadly weapons owned, used, possessed or within the control of the alleged perpetrator.

8D-5.02 When an officer seizes a weapon pursuant to this section, the weapon shall not be returned to the alleged perpetrator of domestic or family violence until the case has been resolved through dismissal of charges or acquittal. In the event of conviction, the weapon shall not be returned to the perpetrator of domestic or family violence and shall be disposed of in accordance with applicable procedures.

8D-6 MANDATORY ARREST FOR CRIMES INVOLVING DOMESTIC VIOLENCE, VIOLATION OF PROTECTIVE ORDERS AND VIOLATION OF CONDITIONS OF RELEASE

8D-6.01 Except as provided in 8D-6.02 and 8D-6.03, a Police Officer, with or without a warrant, shall arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer, within the previous twelve (12) hours:

(1) Committed domestic violence, whether the crime is a felony or a misdemeanor;

(2) Committed the crime of violating a protective order;

(3) Violated a condition of release.

8D-6.02 If a Police Officer receives complaints of domestic violence from more than one person arising from the same incident, the officer shall evaluate the conduct of each person to determine who was the principal physical aggressor. If the officer determines that one person was the principal physical aggressor, the other person or persons need not be arrested. In determining whether a person is a principal physical aggressor, the officer shall consider:

(1) Prior complaints of domestic violence;

(2) The relative severity of the injuries inflicted on each person;

(3) The likelihood of future injury from domestic violence to each person; and

(4) Whether one of the persons acted in defense of self or others.

8D-6.03 A Police Officer is not required to make an arrest under this section if there exists extraordinary circumstances corroborated by testimony of third parties showing an arrest is inappropriate.

8D-6.04 When investigating a crime involving domestic violence, a Police Officer may not threaten or suggest the possible arrest of all persons involved in the same incident in a manner that would have a tendency to discourage requests for intervention by law enforcement in incidents involving domestic violence.

8D-6.05 In addition to the contents of any other report, a Police Officer who does not make an arrest after investigating a complaint of

domestic violence, or who arrests two or more persons based on the same incident, shall describe in writing the reasons for not making an arrest or for arresting more than one person.

8D-6.06 A person may not bring a civil action for damages for a failure to comply with the provisions of this section.

8D-7 JURISDICTION

The Kootenai Tribal Court has jurisdiction to hear a cause of action for an order for protection and issue such an order if either the petitioner or the respondent is a citizen of the Kootenai Tribe or resides or is employed within the Kootenai Indian Reservation or Kootenai Indian Country.

8D-8 CRIMINAL CASE MAY NOT BE DISMISSED BECAUSE CIVIL COMPROMISE IS REACHED

The Kootenai Tribal Court may not dismiss a criminal complaint charging domestic or family violence for the sole reason that a civil compromise or settlement is reached.

8D-9 ELIGIBLE PETITIONERS FOR ORDER

8D-9.01 A person who is or has been a victim of domestic or family violence may file a petition for an order for protection against a family or household member who has committed an act of domestic or family violence.

8D-9.02 A parent, guardian or other representative may file a petition for an order for protection on behalf of a child or dependent person against a family or household member who commits an act of domestic or family violence. Children who are legally married or emancipated may seek relief for themselves.

8D-10 CONTINUING DUTY TO INFORM COURT OF OTHER PROCEEDINGS; EFFECT OF OTHER PROCEEDINGS; DELAY OF RELIEF PROHIBITED; OMISSION OF PETITIONER'S ADDRESS

8D-10.01 At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the Court of any civil or criminal action involving both parties filed within the previous five years that was not listed in the petition for any reason.

8D-10.02 An order for protection is in addition to and not in lieu of any other available civil or criminal proceeding. A petitioner is not barred from seeking an order because of other pending proceedings. The Court must not delay granting relief because of the existence of a pending action between the parties.

8D-10.03 A petitioner may omit her or his address from all documents filed with the Court. If a petitioner omits her or his address, the petitioner must provide the Court a mailing address. If disclosure of petitioner's address is necessary to determine jurisdiction, the Court may order the disclosure to be made:

- (1) After receiving the petitioner's consent;
- (2) Orally and in chambers, out of the presence of the respondent, with a sealed record to be made; or
- (3) After a hearing if the Court takes into consideration the safety of petitioner and finds such disclosure is in the interest of justice.

8D-11 EMERGENCY ORDER FOR PROTECTION; AVAILABLE RELIEF; AVAILABILITY OF JUDGE OR COURT OFFICER; EXPIRATION OF ORDER

8D-11.01 The Kootenai Tribal Court may issue a written or oral emergency order for protection ex parte when a Police Officer states to

the Court in person or by telephone, and the Court finds reasonable grounds to believe, that:

(1) The petitioner is in immediate danger of domestic or family violence. Immediate danger under this section includes but is not limited to situations in which there is an allegation of a recent incident of domestic or family violence by the respondent or the respondent has recently threatened petitioner with additional bodily harm.

(2) The restrained person represents a credible threat to the physical safety of the petitioner or other person in need of protection.

The order for protection shall expressly prohibit the use, attempted use, or threatened use of physical force against the petitioner or other protected person that would reasonably be expected to cause bodily injury.

8D-11.02 A Police Officer who receives an oral order for protection from the Court must:

- (1) Fill out the form of the order based on the Court's directive and sign the form in the space provided for law enforcement;
- (2) Serve a copy on the respondent;
- (3) Immediately provide the petitioner with a copy of the order; and
- (4) Provide the order to the Court by the end of the next court working day. The Court shall sign the order, after reviewing its contents and making any necessary modifications.

8D-11.03 The Court may grant the following relief in an emergency order for protection:

- (1) An order enjoining the respondent from threatening to commit or committing acts of domestic or family violence against the petitioner and any designated family or household member;
- (2) An order prohibiting the respondent from intimidating, harassing, menacing, annoying, telephoning, contacting or otherwise interfering or

communicating with the petitioner, directly or indirectly;

(3) An order removing and excluding the respondent from the residence of the petitioner and a reasonable area surrounding the residence, regardless of ownership of the residence;

(4) An order requiring the respondent to stay away from the residence, school, place of employment of the petitioner or any specified place frequented by the petitioner and any designated family or household member;

(5) An order prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court and informing the respondent that federal law prohibits the respondent from using or possessing a firearm or other weapon specified by the Court;

(6) An order granting possession and use of an automobile and other essential personal effects to the petitioner, and directing the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;

(7) An order granting temporary custody of a child to the petitioner;

(8) An order prohibiting the respondent from removing a child from the jurisdiction of the Court; and

(9) An order granting such other relief as the Court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member.

8D-11.04 A judge or other court officer with authority to issue an order for protection shall be available twenty-four (24) hours a day to hear petitions for emergency orders for protection.

8D-11.05 An emergency order for protection expires thirty (30) days after issuance.

8D-12 ORDER FOR PROTECTION;
MODIFICATION OF ORDERS; RELIEF
AVAILABLE EX PARTE; RELIEF AVAILABLE
AFTER HEARING; DUTIES OF THE COURT;
DURATION OF ORDER

8D-12.01 If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic or family violence has occurred or a modification of an order for protection is required, the Court may:

(1) Without notice or hearing, immediately issue an order for protection ex parte or modify an order for protection ex parte as it deems necessary to protect the petitioner; or

(2) Upon notice, issue an order for protection or modify an order after a hearing, whether or not the respondent appears.

8D-12.02 The Court may issue an order for protection if it finds reasonable grounds to believe, that:

(1) The petitioner is in immediate danger of domestic or family violence. Immediate danger under this section includes but is not limited to situations in which there is an allegation of a recent incident of domestic or family violence by the respondent or the respondent has recently threatened petitioner with additional bodily harm.

(2) The restrained person represents a credible threat to the physical safety of the petitioner or other person in need of protection.

The order for protection shall expressly prohibit the use, attempted use, or threatened use of physical force against the petitioner or other protected person that would reasonably be expected to cause bodily injury.

8D-12.03 The Court may grant the relief available in 8D-11, Emergency Orders for Protection, and any of the following relief:

(1) An order specifying arrangements for visitation with any child by the respondent and requiring supervision of that visitation by a third party or denying visitation if necessary to protect the safety of the petitioner or the child. Visitation arrangements must not compromise any other remedy provided by the Court by requiring or encouraging contact between the petitioner and respondent;

(2) An order prohibiting the respondent from transferring, encumbering or otherwise disposing of specified property mutually owned or leased by the parties;

(3) An order requiring the respondent to pay attorney's fees;

(4) An order requiring the respondent to:

(a) Pay rent or make payment on a mortgage on the petitioner's residence and pay for the support of the petitioner and child if the respondent is found to have a duty to support the petitioner or child;

(b) Reimburse the petitioner or other person for any expenses associated with the domestic or family violence, including but not limited to loss of earnings or other support, out-of-pocket losses for injuries sustained, cost of counseling, shelter expenses, moving or other travel expenses and cost of repair or replacement of property damaged or taken;

(c) Pay the costs and fees incurred by the petitioner in bringing the action;

(d) Pay an award for emergency monetary relief to the petitioner and other dependents, if any; and

(e) Pay compensation for pain and suffering and punitive damages where appropriate.

8D-12.04 The Court shall:

(1) Cause the order to be delivered to the Kootenai Tribal Police Department for service;

(2) Take reasonable steps to ensure that the respondent and the petitioner, if present, understand the order for protection;

(3) Transmit, by the end of the next court working day after the order is issued, a copy of the order for protection to any non-tribal law enforcement agencies designated by the petitioner; and

(4) Transmit a copy of the order to the Boundary County Sheriff's Office and the State District Court.

8D-12.05 An order for protection will be binding upon the parties to the action, their officers, agents, servants or employees, and any other person in active concert or participation with them.

8D-12.06 An order for protection or a modification of an order for protection issued ex parte or upon notice and hearing is effective until further order of the Court, notwithstanding the acts of the parties. Temporary reconciliation will not revoke an order.

8D-13 REQUIRED HEARINGS; DUTY OF COURT WHEN ORDER FOR PROTECTION DENIED

8D-13.01 If the Court issues an order for protection or a modification of an order for protection ex parte, the Court shall set a date for a hearing on the petition within thirty (30) days after service of the order or modification. The Court may continue the hearing for good cause shown. The Court shall notify both parties by first class mail or personal service by the Kootenai Tribal Police Department of the date and time of the hearing.

8D-13.02 The Court shall hold a hearing on the petition within fifteen (15) days after the filing of the petition if the Court issues an order for protection or a modification of an order ex parte and such order awards temporary custody of a minor child to the petitioner, excludes the respondent from the residence of the petitioner or awards possession and use of an automobile to the petitioner. Such a hearing must be given precedence over all matters except older matters of the same character.

8D-13.03 In a hearing held pursuant to this section the Court may afford relief available in Emergency Protection Order proceedings or modifications of orders for protection. If the respondent seeks relief concerning an issue not raised by the petitioner, the Court may continue the hearing at the petitioner's request.

8D-13.04 If the Court denies a petition for an order ex parte or a petition to modify an order for protection that is requested without notice to the respondent, the Court must inform the petitioner of his or her right to request a hearing upon notice to the respondent.

8D-14 EXTENSION OF FINAL ORDER FOR PROTECTION

8D-14.01 Prior to the expiration of a final order for protection, the petitioner may apply for a modification of the order that will extend its effective time period.

8D-14.02 The final order for protection may be modified by extending the time period up to five (5) years. The Court may, in its discretion, issue an order for protection of permanent duration, particularly if the petitioner has been subjected to domestic or family violence which required hospitalization or which resulted in life threatening injuries, significant disfigurement, impairment or disability.

8D-14.03 If there has been no violation of the existing order prior to the application for extension, the Court will take this fact as evidence of the effectiveness of the order for protection in

assuring the safety of the petitioner. The Court may not use the fact that there has been no violation of the order for protection to determine that no further need for the order for protection exists.

8D-15 EFFECT OF ACTION BY PETITIONER OR RESPONDENT ON ORDER

If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do an act prohibited by the order does not waive or nullify the order for protection.

8D-16 DENIAL OF RELIEF PROHIBITED

The Court may not deny a petitioner relief under a petition for an order for protection solely because of a lapse of time between an act of domestic or family violence and the filing of the petition. Previous reconciliation prior to filing the current action must not be grounds for denying or terminating an order for protection.

8D-17 MUTUAL ORDERS FOR PROTECTION PROHIBITED

The Court must not issue a mutual order for protection to opposing parties. Where opposing parties seek orders of protection against each other, or a party that is the respondent in an order for protection seeks an order against the petitioner, the Court must determine which party is the principal physical aggressor in accordance with 8D-6.02. Following such determination, the Court must dismiss the petition filed by the party who is determined to be the principal physical aggressor.

8D-18 COURT-ORDERED AND COURT-REFERRED MEDIATION, MARRIAGE COUNSELING OR RECONCILIATION OF CASES INVOLVING DOMESTIC OR FAMILY VIOLENCE PROHIBITED

The Court must not order or refer parties into mediation, marriage counseling or reconciliation for resolution of the issues in a petition for an

order for protection. The prohibition contained in this section does not apply to Batterer Intervention Programs.

8D-19 COURT COSTS AND FEES

Fees for filing and service of process will not be charged for any proceeding seeking only the relief provided in this Chapter.

8D-20 - 8D-29 [RESERVED]

8D-30 FOREIGN ORDERS FOR PROTECTION; POLICY

It shall be the policy of the Kootenai Tribe of Idaho to ensure that domestic violence protection orders issued by other jurisdictions, including tribal, First Nation, state, federal, territorial and Canadian federal, provincial and territorial courts, are honored and enforced by the Kootenai Tribal Court and the Kootenai Tribal Police Department.

8D-31 REGISTRATION OF FOREIGN PROTECTION ORDER WITH THE KOOTENAI TRIBAL COURT

Any person who has received a protection order, either ex parte or permanent, from another court, may file the protection order in the Kootenai Tribal Court and request that the Kootenai Tribal Court grant full faith and credit to that protection order. Immediately upon the filing of a protection order with the Court, a Judge shall review such filing and if it appears from the face of the protection order it meets the requirements of 8D-32, shall enter an order recognizing the protection order. The order shall immediately be forwarded to the Kootenai Tribal Police Department. A person shall be not charged a filing or registration fee for the filing of a foreign protection order. A person protected by a protection order issued by another court may receive law enforcement protection pending the Kootenai Tribal Court's determination.

8D-32 ENFORCEMENT OF FOREIGN PROTECTION ORDERS

8D-32.01 The Kootenai Tribal Court shall enforce a protection order, either ex parte or permanent, and all provisions of that protection order, including child custody and property awards, if all the following are satisfied:

(1) The court issuing the order had jurisdiction over the parties and matter under the law of the jurisdiction; and

(2) Reasonable notice and opportunity to be heard was given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by the laws of the issuing jurisdiction, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

8D-32.02 A protection order issued by another jurisdiction against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if:

(1) No cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(2) A cross or counter petition has been filed and the court did not make specific findings that each party was entitled to an order.

8D-32.03 Upon granting full faith and credit to an order by another jurisdiction, the Kootenai Tribal Court shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in the Kootenai Tribal Court, unless requested to do so by the party protected under such order.

8D-33 LAW ENFORCEMENT PROTECTION UNDER FOREIGN PROTECTION ORDERS

Whenever any law enforcement officer of the Tribe is presented with an order, either ex parte or permanent, issued by another court, or verifies the existence of such an order with the court or law enforcement agency of the issuing jurisdiction, which restrains any person from harassing, annoying, stalking, contacting or coming within a certain proximity to another person, that officer shall enforce such order and all provisions of such order, including the award of custody and property in such protection order, as if it were issued by the Kootenai Tribal Court until such time as the Kootenai Tribal Court has had an opportunity to review the order under 8D-32.

8D-34 IMMUNITY FOR GOOD FAITH ENFORCEMENT OF FOREIGN PROTECTION ORDER.

An officer or any other law enforcement official of the Tribe who acts in good faith in enforcing a foreign protection order and its terms shall be immune from suit for wrongful arrest or any other civil or criminal action. This immunity shall extend to a Tribal police officer who arrests a non-Indian for violation of a protection order.

8D-35 LIMITS ON PUBLICATION OF INFORMATION

8D-35.01 Information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction shall not be made publicly available if such publication would be likely to publicly reveal the identity or location of the party protected under such order. The Tribe may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

[8D-36 - 8D-39 [RESERVED]]

8D-40 FACTORS IN DETERMINING CUSTODY AND VISITATION

8D-40.01 In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the Court that domestic or family violence has occurred raises a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody or joint physical custody with the perpetrator of domestic or family violence and that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic or family violence in the location of that parent's choice.

8D-40.02 In addition to the presumptions raised by 8D-40.01 and any other factors relevant to the Court's decision, the Court must consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the Court has made a finding of domestic or family violence the following:

(1) The safety and well-being of the child and of the parent who is the victim of domestic or family violence; and

(2) The perpetrator's history of causing physical harm, bodily injury or assault, or causing reasonable fear of physical harm, bodily injury or assault, to another person.

8D-40.03 If a parent is absent or relocated because of an act of domestic or family violence by the other parent, the absence or relocation is not a factor that weighs against the parent in determining custody or visitation.

8D-42 CONDITIONS OF VISITATION IN CASES INVOLVING DOMESTIC AND FAMILY VIOLENCE

8D-42.01 The Court may award visitation by a parent who committed domestic or family violence only if the Court finds that adequate provision for the safety of the child and the parent who is a victim of domestic or family violence can be made.

8D-42.02 In a visitation order, the Court may:

(1) Order an exchange of a child to occur in a protected setting;

(2) Order another person or agency to supervise the visitation;

(3) Order the perpetrator of domestic or family violence to attend and complete, to the satisfaction of the Court, a Batterers Intervention Program or other designated counseling as a condition of the visitation;

(4) Order the perpetrator of domestic or family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for twenty-four (24) hours preceding the visitation;

(5) Order the perpetrator of domestic or family violence to pay a fee to defray the costs of supervised visitation;

(6) Prohibit overnight visitation;

(7) Require a bond from the perpetrator of domestic or family violence for the return and safety of the child; and

(8) Impose any other condition that is deemed necessary to provide for the safety of the

child, the victim of domestic or family violence or other family or household member.

8D-42.03 Whether or not visitation is allowed, the Court may order the address of the child and the victim to be kept confidential.

8D-42.04 The Court may refer but must not order an adult who is a victim of domestic or family violence to attend counseling relating to the victim's status or behavior as a victim, individually or with the perpetrator of domestic or family violence, as a condition of receiving custody of a child or as a condition of visitation.

8D-42.05 If the Court allows a family or household member to supervise visitation, the Court must establish conditions to be followed during visitation.

8D-44 DOMESTIC VIOLENCE LEAVE

Victims of domestic violence are oftentimes forced to flee from a perpetrator in order to avoid future danger and violence. In so fleeing, victims who are employed frequently miss days of employment. Employers on the Kootenai Indian Reservation, including the Tribe, shall grant leave with pay or leave without pay due to domestic violence related absences not to exceed twelve (12) weeks.

CHAPTER 9
MEMBERSHIP: ADOPTION AND TERMINATION

9-1 TITLE

9-1.01 This shall be known as the Kootenai Tribe of Idaho Membership Adoption and Termination Act. It is established pursuant to Article II, Section 2 of the Constitution of the Tribe. It sets forth the policies and procedures under which persons who are at least one-fourth blood quantum of the Kootenai Nation may become adopted members of the Kootenai Tribe of Idaho or may be terminated as adopted members of the Tribe.

9-2 TERMINATION OF ADOPTED MEMBERS

9-2.01 Termination of Existing Adopted Members. The Council finds that, over the years, the standards for adoption have varied and have not been applied consistently. Based on that finding, all adopted members as of November 1, 1997, including those on the official census roll of the Tribe, except those adopted pursuant to resolution No. 73-09, are hereby terminated. All persons terminated are eligible to apply for adoption in the Tribe according to the provisions of this ordinance.

9-2.02 Termination of Future Adopted Members. After November 1, 1997, an adopted member may be terminated by a vote of not less than six (6) members of the Council if it is determined that his or her adoption was based, in whole or in part, on false information or the adoption procedure was not in compliance with this ordinance. An adopted member may also be terminated if he or she has maintained membership in another, non-Kootenai, Indian tribe or band, has taken action that seriously harms the interests of the Kootenai Tribe of Idaho or such other reason deemed proper by not less than six (6) members of the Council, provided an adopted member may not be terminated without a hearing conducted before the Council in compliance with the Indian Civil Rights Act.

9-3 APPLICATION FOR ADOPTION

9-3.01 Any person who has at least one-fourth degree Kootenai Nation blood quantum, who desires to be adopted as a member of the Kootenai Tribe of Idaho, shall make written application to the Kootenai Tribal Council in a form acceptable to the Council.

9-4 APPLICATION DUTIES OF COUNCIL

9-4.01 The Tribal Council shall conduct an investigation of the applicant's degree of Kootenai blood, tribal status, residency, close social and economic ties and such other characteristics of the applicant as the Council deems necessary to determine whether the applicant qualifies to be adopted as a member.

9-5 ELIGIBILITY REQUIREMENTS

9-5.01 No person shall be considered for adoption unless he or she is of one-fourth or more blood of the Kootenai Nation. Upon a satisfactory showing that the applicant is qualified for consideration, the Council shall determine if the applicant has:

- (1) Maintained a permanent residence in Boundary County, Idaho for not less than fifteen (15) years; or
- (2) Maintained close social and economic ties with the Kootenai Tribe of Idaho for such period.

9-6 APPROVAL BY GENERAL MEMBERSHIP

9-6.01 Persons who meet the qualifications for consideration, as determined by the Council, shall become adopted members of the Tribe only if approved by the General Membership upon a vote in favor of not less than seventy percent (70%) of the eligible voters voting at a meeting called for the purpose of ruling on adoption applications. Any person terminated by this ordinance who, upon application, meets the qualifications of this ordinance, shall be deemed approved without vote of the General Membership Council.

9-7 RIGHTS AND PRIVILEGES OF ADOPTED MEMBERS

9-7.01 Adopted members shall have the rights and responsibilities of membership except they shall not have the right to serve on the Tribal Council or to vote in elections involving adoption applications. Adopted members shall be eligible to receive benefits and services provided to tribal members from programs funded by federal or state governments or other third parties. Adopted

members shall not be eligible to receive payments or other benefits from assets owned by the Tribe except as determined by the Council in its sole discretion. In determining whether to make any payment to adopted members from tribal assets the Council shall consider the financial condition of the Tribe and the impact such distribution may have on the welfare of members of the Tribe.

9-8 CHILDREN OF ADOPTED MEMBERS

9-8.01 All children who are at least one-fourth degree Kootenai Nation blood quantum who are born to adopted members of the Tribe shall become adopted members of the Tribe with the same rights and privileges as other adopted members.

9-9 TERMINATION OF REGULAR MEMBERS

Repealed 2-5-04

CHAPTER 10
TOBACCO CONTROL ACT

10-1 TITLE

This chapter shall be known as the Tobacco Control Act

10-2 DEFINITIONS

10-2.01 For purposes of this Chapter, unless otherwise required by the context, the following words and phrases shall have the following meanings:

(1) "Tobacco Products" shall mean cigarettes, cigars, pipe or other smoking tobacco, snuff, chewing tobacco, and other forms of tobacco prepared in such manner as to be suitable for chewing or smoking.

(2) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, mixed with any other ingredient, or otherwise adulterated, where such roll has a wrapper or cover made of paper or any material, except where such wrapper or cover is wholly or in the greater part made of natural leaf tobacco in its natural state.

(3) "Tobacco Outlet" or "Operator" shall mean the business, entity, or enterprise licensed by the Council to sell tobacco products on Kootenai Lands.

(4) [Repealed]

(5) "Tribal License" or "Tobacco License" or "Tobacco Outlet License" shall mean the license issued to the operator pursuant to this chapter by the Council.

(6) "Retail Selling Price" shall mean that price paid by the ultimate consumer to the operator for the tobacco product.

(7) "Excise Tax" shall mean the tax levied by the Council on each sales unit (e.g. pack, carton, etc.) which is to be collected by the operator from the ultimate consumer and remitted to the Tribe.

(8) "Cigarette Package" shall mean the individual package, box, or other container in or

from which retail sales of cigarettes are normally made or intended to be made.

10-3 LICENSING OF TOBACCO OUTLETS

10-3.01 Tobacco Outlets and Operators must have a license approved by Tribal Council prior to selling cigarettes or tobacco products. Such licenses shall be valid until revoked by the Tribal Council.

10-4 NATURE OF OUTLET

10-4.01 Tobacco Outlets and Operators shall be managed pursuant to the provisions of this Chapter and the Tribal License granted hereunder, along with any regulations imposed by the Tribal Council.

10-5 [REPEALED]

10-6 [REPEALED]

10-7 [REPEALED]

10-8 EXCISE TAX IMPOSED UPON THE SALE OR DISTRIBUTION OF TOBACCO PRODUCTS

[Repealed and recodified in Chapter 16C]

10-9 PERFORMANCE BOND FOR EXCISE TAX

[Repealed and recodified in Chapter 16C]

10-10 LICENSES AND LIABILITY FOR BILLS

10-10.01 A tobacco outlet license issued by the Council does not represent any promise or commitment by the Tribe to assume responsibility for the business. The operator is responsible for the payment of all tobacco outlet bills and is forbidden to represent or give the impression to any supplier that he is an official representative of the Tribe. The license issued by the Tribe under this chapter is contingent on the agreement of the operator to hold the Tribe harmless from all claims and liability related to the operation of the tobacco outlet.

10-10.02 The Council may revoke the operator's tribal license if the tobacco outlet is not operated in a business-like manner or does not remain financially solvent or if the operator does not

pay the tobacco outlet's operating expenses and other bills.

10-10.03 The operation of a tribally-owned tobacco outlet is not to be deemed a waiver of sovereign immunity of the Tribe.

10-11 AUDITS - TRIBAL REGULATIONS

10-11.01 The operator shall provide the authorized representative of the Council copies of all tobacco outlet purchase invoices.

10-11.02 The books and other business records of a tobacco outlet may be available for inspection by the Council, its authorized representative, or any other person authorized by the Council, at any reasonable times and shall be especially inspected by the Council or its authorized representative prior to a renewal of a tobacco outlet license. Failure of the operator to maintain adequate business records is reason for the revocation or renewal of his tobacco outlet license, as contemplated in Section 10-14 of this chapter.

10-11.03 Net profits of tribally-owned outlets shall be used to meet the Council's governmental obligation to promote the health, security, and general welfare of the Kootenai Tribe and members.

10-12 OTHER BUSINESS BY OPERATOR

10-12.01 An operator may conduct other businesses on the premises of the tobacco outlet, provided separate books of accounts are maintained so that the amount of the excise tax collectable and payable to the Tribe can be determined.

10-13 CIGARETTE PACKAGE POSSESSION

10-13.01 No person within Kootenai Tribal jurisdiction shall be in possession of more than one hundred (100) cigarette packages which do not have affixed thereto a valid state or Kootenai Tribe Tobacco Tax stamp, unless the packages are in transit and are being delivered either to an operator or a state authorized wholesaler or retailer. Violators will be subject to the penalties in Section 4-5.13 and/or Section 5-3.09.

10-14 REVOCATION OF TOBACCO OUTLET LICENSE

10-14.01 Failure of an operator to abide by the provisions of this chapter shall result in the revocation of his Tobacco Outlet License by the Council and the enforcement of the penalties provided in Section 10-15 of this chapter.

10-15 VIOLATION - PENALTIES

10-15.01 Any person or operator violating the provisions of this chapter shall be guilty of an offense and subject to a fine as provided in Chapter 4 and/or 5 of this code.

10-16 SEVERABILITY

10-16.01 If any provision of this chapter or its application to any person or circumstances is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances is not affected.

10-17 KOOTENAI TRIBE TOBACCO TAX STAMP

10-17.01 All cigarette packages sold by a tobacco outlet licensed by this chapter must bear a tribal tax stamp which stamp shall be issued by the Kootenai Tribe of Idaho.

10-17.02 It is a misdemeanor for a licensed tobacco outlet owner to possess in its outlet inventory or to in any manner offer for sale cigarettes which are not in stamped packages.

10-17.03 It is a misdemeanor for anyone subject to the jurisdiction of the Kootenai Tribe of Idaho to sell or offer for sale cigarettes which are not in stamped packages.

CHAPTER 11 ALCOHOL CONTROL ACT

This Act repeals the previous Chapter 11 Alcohol Control, approved September 1994, in its entirety and replaces it with this restated Chapter 11.

11-1 TITLE AND PURPOSE.

11-1.01 This Chapter shall be known as the KOOTENAI TRIBE OF IDAHO ALCOHOL CONTROL ACT.

11-1.02 The purpose of this Chapter is to regulate and control the distribution and sale of liquor within the territory identified in Article I of the Kootenai Tribe of Idaho Constitution in conformance with federal law.

11-2 AUTHORITY.

11-2.01 Powers of Council. This Chapter is enacted pursuant to the authority vested in the Tribal Council of the Kootenai Tribe of Idaho under Article IV, Section 1 of the Kootenai Tribe of Idaho Constitution adopted April 10, 1947 and where applicable the Act of August 15, 1953 (Pub. L. 83-277, 67 Stat. 588, 18 U.S.C. 1161).

11-2.02 Territory. The Kootenai Tribe of Idaho exercises jurisdiction over the area of Indian trust lands acquired under the Act of February 8, 1887 (24 Stat. 388), and other trust lands acquired pursuant to the Act of May 10, 1926 (44 Stat. 202), and over any lands which may hereafter be acquired by or for the Kootenai Tribe of Idaho as set forth in Article I of the Kootenai Tribe of Idaho Constitution.

11-3 DEFINITIONS.

11-3.01 As used in this Chapter, except as may be specifically provided otherwise, the following definitions shall apply.

(1) "Alcohol" means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substance including all dilutions and mixtures of this substance.

(2) "Beer" means any malt beverage, flavored malt beverage, or malt liquor as these terms are defined in this chapter.

(3) "Kootenai Reservation" refers to the lands defined in section 11-2.02, above.

(4) "Licensee" means any Tribally-owned business entity licensed by the Tribal Council to own and/or operate a liquor outlet.

(5) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spirituous, vinous, or malt liquor or combination thereof, and mixed liquor, or otherwise intoxicating; and every liquor or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine and beer, and all drinks or drinkable liquids and all preparations or mixtures capable of all human consumption and any liquid, semisolid, solid, or other substances, which contain more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

(6) "Malt Beverage" or "malt liquor" means any beverage such as beer, ale, lager, stout, porter, flavored malt beverages such as wine coolers, obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or the pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. Any such beverage containing more than eight percent of alcohol by weight shall be referred to as strong beer.

(7) "Liquor Outlet" means any business where liquor is served, sold and/or consumed.

(8) "Spirits" means any beverage which contains alcohol obtained by distillation and intended for consumption.

(9) "Tribal Council" or "Council" means the Tribal Council of the Kootenai Tribe of Idaho.

(10) "Tribe" means the Kootenai Tribe of Idaho.

(11) "Wine" means any alcoholic beverage obtained by fermentation of fruits or other agricultural products containing sugar and containing not more than twenty-four percent alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this chapter, "wine coolers" shall not be defined as wine but rather as a "malt beverage".

11-4 POSSESSION OF ALCOHOL

11-4.01 Possession of Alcohol is prohibited on the Kootenai Reservation, except as provided in this Chapter and in the locations identified in 11-4.02.

11-4.02 Tribal Council authorizes possession of alcohol at the Kootenai River Inn Casino & Spa, Twin Rivers RV Resort and such other locations as Tribal Council may designate by Resolution.

11-4.03 Violations of this Section

(1) Any individual found to be in possession of alcohol on the Kootenai Reservation in violation of this section is guilty of a crime under Section 4-5 of the Criminal Code.

(2) Any individual found to be in possession of alcohol on the Kootenai Reservation in violation of this section and not subject to the criminal jurisdiction of the Kootenai Tribe of Idaho is guilty of a regulatory infraction under Section 5-3.11.

11-5 SALES OF LIQUOR.

11-5.01 Licenses Required. No sales of alcoholic beverages shall be made within the Kootenai Reservation, except at a Tribally-licensed business.

11-5.02 Sales for Cash. All liquor sales within the Kootenai Reservation shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of major credit cards.

11-5.03 Sale for Personal Consumption. All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the Kootenai Reservation is prohibited. Any person who is not licensed pursuant to this Chapter who purchases an alcoholic beverage and sells it, whether in the

original container or not, shall be guilty of a violation of this Chapter and shall be subjected to paying damages to the Tribe as set forth herein.

11-5.04 Restrictions on Sales. No person shall sell, deliver or give, or cause or permit to be sold, delivered or given, any alcoholic beverages to:

(1) Any person under the age of twenty-one (21) years, proof of which shall be a valid Tribal identification card, driver's license, military identification card or any other validly issued government identification card;

(2) Any person apparently or actually intoxicated;

(3) A habitual drunkard; or

(4) An interdicted person.

Any person who fails to comply with this section shall have committed a violation

11-6 LICENSING.

11-6.01 Eligibility. Only Tribally owned entities shall be eligible to sell or dispense liquor for consumption and must possess a valid license issued by the Tribe.

11-6.02 License Issued. Upon approval, Council shall issue a Tribally-owned entity a Tribal Liquor License for a period of not more than three (3) years which will entitle the license holder to maintain one liquor outlet within the Kootenai Reservation. The license is nontransferable. It shall be renewed at the discretion of the Tribal Council subject to the terms of this Chapter.

11-6.03 Liability for Bills. A Liquor Outlet License issued by the Council does not represent any promise or commitment by the Tribe to assume responsibility for the business. The operator is responsible for the payment of all Liquor Outlet bills and is forbidden to represent or give the impression to any supplier that he or she is an official representative of the Tribe. The license issued by the Tribe under this Chapter is contingent on the agreement of the operator to hold the Tribe harmless from all claims and liability related to the operation of the Liquor Outlet.

11-6.04 No Waiver. The operation of a Tribally-owned Liquor Outlet is not to be deemed a waiver of sovereign immunity of the Tribe.

11-7 RULES, REGULATIONS, AND ENFORCEMENT

11-7.01 Violations of This Chapter. Any liquor outlet operator who violates this Chapter shall be guilty of an offense and subject to a penalty as determined by the Tribal Court.

11-7.02 Loss of License. In addition to any penalties imposed, any license issued under this Chapter may be suspended or canceled by the Tribal Council after ten (10) days notice to the licensee. The decision of the Tribal Council shall be final.

11-7.03 Tribal Law. Nothing in this Chapter shall preempt the criminal offenses imposed by Section 4-5 of Chapter 4 Crimes or the Regulatory Infractions of Chapter 5 of the Kootenai Law and Order Code.

11-7.04 Non-Indian Offenders. Any individual who is in violation of this Chapter or Chapter 4 shall be subject to a Regulatory Infraction and/or exclusion and shall be subject to any State action against them.

11-8 VIOLATION - CIVIL PENALTIES, BURDEN OF PROOF

11-8.01 Any person violating any of the provisions of this Chapter, except where a specific civil fine is provided, shall be subject to a civil fine of not less than three hundred dollars (\$300) nor more than three thousand dollars (\$3000) and shall be subject to any other lawful penalty such as loss of license, forfeiture of contraband and/or exclusion from the Reservation. Any court in which a civil judgment against any licensee shall be entered shall forthwith certify a copy thereof to the Tribal Council and the Council shall thereupon give notice of intent to revoke any license issued to such person or to exclude the person from the Reservation under Chapter 12 of this Code.

11-8.02 A violation of any of the provisions of this Chapter by any person in any way acting on behalf of the licensee shall be presumed to be a violation by the licensee.

11-8.03 All violations of this Chapter must be proven to the satisfaction of the Court by a preponderance of the evidence presented by any person qualified to appear before the Court on behalf of and at the direction of the Tribal Council.

11-9 OTHER PROVISIONS

11-9.01 Persons Not Allowed To Purchase, Possess Or Consume Liquor. Any person under the age of twenty-one (21) years who shall purchase, attempt to purchase, possess, or consume alcoholic beverages shall have committed a violation and shall be reported to the proper authorities.

11-9.02 Identification Required. It shall be a violation for any person to refuse to present valid identification indicating age when requested to do so by a licensee under this Chapter or the employee of such licensee or by a law enforcement officer with authority within the Kootenai Reservation if that person shall appear to be under the age of twenty-nine (29) and that person possesses, purchases, attempts to purchase or consumes alcoholic liquor, as defined by section 23-115, Idaho Code or beer as defined by section 23-1101, Idaho Code or is within a premises licensed to sell liquor by the drink at retail, or licensed to sell beer for consumption on the premises.

11-10 SUSPENSION AND REVOCATION OF LICENSE

11-10.01 Procedures. The Tribal Council may suspend or revoke a license issued in accordance with this Chapter for any violation of or failure to comply with the provisions of this Chapter or Idaho statute, or any rules and regulations promulgated pursuant to such laws. Procedures for suspension or revocation of licenses issued under this Chapter are the following:

(1) The Council shall give written notice of the alleged violations to the licensee and grant an opportunity to the licensee to challenge the allegations within thirty (30) days. The Council shall inform the licensee that it will suspend or revoke the license if no challenge is made within thirty (30) days.

(2) If a challenge is made, the Council shall set a time for hearing during a Council meeting and immediately send written notice to the licensee and the complaining officer or individual of the date, time

and place of the hearing.

(3) A licensee who makes a timely challenge to alleged violations shall have the right to present evidence, including testimony of witnesses, that the licensee did not commit the violations alleged. The person alleging the violations shall present evidence of the violations at the same meeting and failure to do so will result in dismissal of the complaint.

(4) The complaining party must prove the violations took place by a preponderance of the evidence.

11-10.02 Monetary Penalty. When the Council makes a determination to suspend a license, the licensee may petition the Council to substitute a monetary penalty in lieu of the license suspension. If the Council determines such payment to be consistent with the purpose of this Chapter and is in the Tribal interest, it shall establish a payment in any amount not to exceed five thousand dollars (\$5,000). The licensee may reject the amount determined by the Council, and shall have the license suspended until the terms of the suspension are met. Upon payment of the amount established, the Council shall cancel the suspension. The Council shall cause any payment to be paid to the treasurer of the Tribe.

11-11 SEVERABILITY AND MISCELLANEOUS

11-11.01 Severability. If any provision or application of this Chapter is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this chapter or to render such provisions inapplicable to other person or circumstances.

11-11.02 Prior Enactments. All prior enactments of the Tribal Council, which are inconsistent with the provisions of this Chapter, are hereby rescinded.

11-11.03 Idaho Law. To the extent required by federal law, all acts and transactions under this Chapter shall be in conformity with the laws of the State of Idaho as required by 18 U.S.C. 1161.

11-11.04 Effective Date. This Chapter shall be effective upon adoption by the Tribal Council.¹

¹ Federal law imposes the requirement that this

11-12 SOVEREIGN IMMUNITY

11-12.01 Nothing contained in this Chapter is intended to, nor does it in any way limit, alter, restrict, or waive the Tribe's sovereign immunity from unconsented suit or action.

Chapter obtain approval of the Secretary of the Interior and published in the Federal Register.

CHAPTER 12

EXPULSION AND EXCLUSION

12-1 PURPOSE

12-1.01 The purpose of this chapter is to provide procedures for expelling or excluding from the Reservation of the Kootenai Tribe of Idaho persons deemed by authorized tribal government officials to be undesirable.

12-2 PERSONS WHO MAY BE EXPELLED OR EXCLUDED

12-2.01 Any person or persons authorized by federal law to be present thereon, may be excluded from the lands of the Tribe for a period set by the Court upon a finding one or more of the following grounds:

(1) Commission of a crime as defined by tribal, state, or federal law, especially those laws concerning alcohol and controlled substances.

(2) Immoral conduct as defined by tribal, state, or federal law.

(3) Breach of the peace, or repeated public intoxication.

(4) Unlawful forcible entry into any home on the Kootenai Reservation.

(5) Committing fraud, confidence games, or usury against the people of the Kootenai Reservation inducing them to enter into grossly unfavorable agreements of any nature.

(6) Defrauding any enrolled Kootenai tribal member of just compensation for his or her labor or services of any nature done at the request of the nonmember.

(7) Unauthorized prospecting.

(8) Unauthorized mining, timber cutting, or other activity causing physical loss or damage to any tribal resource.

(9) Unauthorized trading or peddling within the boundaries of the Reservation.

(10) Entering upon any area of the Kootenai Reservation designated closed by the

Kootenai Tribal Council or the federal government for whatever lawful purpose.

(11) Removing or attempting to remove any minor member of the Kootenai Tribe from the Kootenai Reservation without proper authority.

(12) Interfering with or disrupting Tribal Council or General Council meetings or other duly authorized meetings.

12-3 PETITION AND NOTICE OF INTENT TO EXCLUDE

12-3.01 Where there appears to be reasonable grounds to believe that cause exists to exclude a person or persons from the Kootenai Reservation, the Kootenai Tribal Council shall pass a resolution stating the name(s) of the person or persons to be excluded and the reasons for the exclusion. The resolution shall direct a member of the Kootenai Tribal Council to petition the Kootenai Tribal Court or Court of Indian Offenses, as the case may be, for an Order of Exclusion.

12-3.02 Upon the filing of the petition, the tribal judge shall issue a notice to the person or persons named to appear before the Court at a time to show cause why an order excluding him or her from the Reservation should not be issued. The notice shall state the reason for the proposed exclusion. Notice shall be served personally upon the person or persons to be excluded in the same manner as personal service is obtained in civil cases.

12-3.03 A hearing shall be held not less than three (3) days nor more than seven (7) days after service of the notice. The hearing may be held in less than three (3) days if the Court has reasonable cause to believe that an emergency exists. In such cases a hearing may be held after twenty-four (24) hours from the time of service, provided the notice to the person gives the time and date of such hearing.

12-4 HEARING

12-4.01 At the hearing, any member of the Council may be present and one member of

Council, or the Prosecuting Attorney shall represent the Council before the Court. The Council shall call such witnesses and present such evidence as it deems appropriate to support its petition for exclusion.

12-4.02 The person proposed to be excluded shall be given an opportunity to present his or her defense and may be represented by counsel at his or her expense. The opportunity to cross examine all witnesses shall be provided.

12-4.03 The hearing shall be closed to the public at the request of any party.

12-4.04 After the hearing, or after the time set for such hearing if, having received notice, the person proposed for exclusion fails to appear, the Court may order such person excluded from all or any part of the Reservation, or may permit the person to remain upon the Reservation under such conditions as the Court shall impose. An order for exclusion shall be in writing and set forth the findings of the Court and the specific grounds for exclusion. Any orders of exclusion shall be permanent unless the order provides otherwise.

12-5 APPEAL

12-5.01 Any person aggrieved by the decision of the Tribal Court or Court of Indian Offenses shall have the right to appeal such decision as is provided in Chapter 2, Section 2-9.

12-6 ENFORCEMENT

12-6.01 Any person excluded from the Kootenai Reservation by an order of the Kootenai Tribal Court or Court of Indian Offenses, who does not promptly obey the order voluntarily, shall immediately be escorted outside the Reservation boundaries by law enforcement officers with authority to do so. The officer executing such order shall use only such force as is necessary to effect removal.

12-7 FEDERAL ENFORCEMENT

12-7.01 The Kootenai Tribal Court or Court of Indian Offenses, at its discretion, may refer an exclusion case to the Superintendent of the appropriate Bureau of Indian Affairs agency or to the United States Attorney for appropriate action.

12-8 PHYSICAL REMOVAL OF TRESPASSERS

12-8.01 In cases involving immediate danger to life, health, morals, or property of the Tribe, or any tribal members, and where delay may result in irreparable damage to any of those interests, a Kootenai tribal law enforcement officer may bodily remove a person not entitled to be on such property. Only such force as is necessary to effect removal shall be used by the officer.

12-9 REENTRY FOR HEARING

12-9.01 In all cases where exclusion or expulsion under this chapter has occurred, and the person affected is entitled to, and requests, a hearing on appeal, or has a civil matter under section 12-5 of this chapter pending, the judge of the Tribal Court or Court of Indian Offenses will notify the party of a place on the Reservation boundary where he or she may reenter in the company of a tribal law enforcement officer for the purpose of attending the hearing or appeal or making any other appearance required before the Tribal Court. The judge shall order an officer to accompany the person while he or she is on the Reservation coming to and leaving from the hearing or appeal.

12-10 EXCLUSION NOT IN LIEU OF CIVIL PENALTIES

12-10.01 Nothing in this chapter shall prohibit the imposition of any civil fine or other lawful penalty upon any person subject to exclusion hereunder and any civil penalty imposed shall be in addition to any exclusion ordered pursuant to this chapter.

12-11 CRIMINAL ENFORCEMENT OF EXCLUSION ORDER

12-11.01 (1) Any Indian who violates an Exclusion Order shall be guilty of an offense and upon conviction shall be sentenced to jail for not more than one year and/or may be fined not more than five thousand dollars (\$5,000.00).

(2) Any Indian who knowingly or willingly aids or abets an individual in violating an Exclusion Order shall be guilty of an offense and upon conviction sentenced to jail for not more than one year and/or may be fined not more than five-thousand dollars (\$5,000.00).

12-11.02 (1) Any non-Indian who violates an Exclusion Order shall be subject to civil penalty in an amount not more than five thousand dollars (\$5,000.00). The Tribal Prosecutor shall also request the United States Attorney or State prosecuting attorney to prosecute the individual for trespass or any other crime which may be charged against the individual. Any Non-Indian who violates an Exclusion Order shall automatically have his or her Exclusion Order extended for an additional one-year period.

(2) Any non-Indian who knowingly or willingly aids or abets an individual in violating an Exclusion Order shall be subject to civil penalty in an amount not to exceed five thousand dollars (\$5,000.00). The Tribal Prosecutor shall also request the United States Attorney or State prosecuting attorney to prosecute the individual for trespass or any other crime which may be charged against the individual.

CHAPTER 13 WATER QUALITY

13-1 COUNCIL FINDINGS

13-1.01 The Tribal Council is responsible for maintaining, promoting and protecting the general welfare and treaty and aboriginal rights of the people of the Kootenai Tribe of Idaho.

13-1.02 The Tribal Council possesses the inherent authority to regulate conduct occurring on its lands that meet the definition of Indian Country under federal law or lands within the external boundaries of the above-described lands that are not held in trust by the United States, including the waters on or flowing through such lands.

13-1.03 The continued existence of numerous fish species in the Kootenai River can be promoted under the Tribe's inherent right to regulate conduct and the rights reserved in the Treaty of Hell Gate. In meeting its responsibility to the Tribe and its members, the Tribal Council must act to protect those fish species indigenous to the waters of the Tribe, including those fish species in the Kootenai River. In so doing, the Council must ensure that the quality of its waters will be such that the fish can survive.

13-2 WATER QUALITY STANDARDS

13-2.01 The minimum water quality standards applicable within the Tribe's jurisdiction shall be those standards contained in the federal Clean Water Act, 33 U.S.C. §§ 1251 et seq., and applicable regulations promulgated thereunder, unless otherwise specified by the Council.

CHAPTER 14

BUILDING

14-1 MINIMUM CONSTRUCTION STANDARDS

14-1.01 All construction of tribally owned permanent buildings shall conform to the minimum construction standards contained in the Uniform Building Code published by the International Conference of Building Officials and the codes and standards of the American Public Works Association to the extent the standards pertain to the construction, architecture, and engineering of the buildings.

14-1.02 No construction of tribally owned permanent buildings shall commence until the plans and specifications thereof have first been certified as conforming to the above described minimum construction standards by an engineer or architect, as appropriate, duly licensed by a state or federal agency, professional association, or other recognized authority.

14-2 PLUMBING AND ELECTRICAL WORK

14-2.01 Only plumbers and electricians duly licensed by a state or federal agency, professional association, or other commonly recognized authority shall be engaged for work on tribally owned permanent buildings.

14-2.02 Unless the Tribal Council otherwise provides, plumbers and electricians engaged pursuant to this chapter shall certify to the Tribe that all work completed by them shall be consistent with and conform to the codes and standards required by the agency, association, or authority under which they are licensed. An authorized Tribal representative may request an inspection and/or approval by a licensed engineer or a duly qualified federal, state, or local government official.

CHAPTER 15 LAND CONSOLIDATION

15-1 TITLE

This shall be known as the Kootenai Tribe of Idaho Land Consolidation Ordinance.

15-2 NONMEMBERS NOT ENTITLED TO RECEIVE

15-2.01 Be it enacted by the Kootenai Tribal Council that notwithstanding any other provision of law, nonmembers of the Kootenai Tribe of Idaho or non-Indians shall not be entitled to receive by devise or descent any interest in trust or restricted lands within the Tribe's reservation or otherwise subject to the Tribe's jurisdiction provided:

(1) If an Indian dies intestate, the surviving non-Indian or nonmember spouse and/or children may elect to receive a life estate in as much of the trust or restricted lands as such person or persons would have been entitled to take in the absence of a qualified person taking a life estate;

(2) If an intestate Indian decedent has no heir to whom land in trust or restricted status may pass, such interests shall escheat to the Tribe, subject to any non-Indian or nonmember spouse and/or children's rights as described in subsection 15-2.01(1) of this section;

(3) If an Indian decedent has devised interests in trust or restricted lands to persons who are ineligible for such an inheritance by reason of this ordinance, the devise shall be voided only if, while the estate is pending before the Secretary for probate, the Tribe acquires such interest by paying to the Secretary for probate, on behalf of the devisees, the fair market value of a life estate as determined by the Secretary as of the date of the decedent's death: Provided, that any non-Indian or nonmember spouse and/or children of such decedent have been devised such interest may retain, at their option a life estate in such interests.

15-3 UNDIVIDED LANDS

15-3.01 No undivided tracts of trust or restricted lands within a Tribe's reservation or otherwise subject to the jurisdiction of the Tribe shall descend by intestacy or devise but shall escheat to the

Kootenai Tribe of Idaho if such an interest represents two per centum or less of the total acreage in such tract and is incapable of earning \$100.00 in any one of the five years from the date of decedent's death. Where the fractional interest has earned to the owner less than \$100.00 in any one of the five years before the date of the decedent's death, there shall be a rebuttable presumption that such an interest is incapable of earning \$100.00 or more in any one of the five years following the death of the decedent.

15-3.02 Nothing in this section shall prohibit the devise of such an escheatable fractional interest to any other owner of an undivided interest in such parcel or tracts of trust or restricted lands, provided the owner is a member of the Kootenai Tribe of Idaho.

15-4 CONSOLIDATION

15-4.01 For the purpose of effecting the consolidation of lands situated within the jurisdiction of the Kootenai Tribe of Idaho into the ownership of the Kootenai Tribe of Idaho and its individual members and for the purpose of attaining and preserving an economic land base for Indian use, alleviating problems of Indian heirship and assisting in the productive leasing, disposition and other use of tribal lands and other individual allotted lands under the jurisdiction of the Kootenai Tribe of Idaho, the Secretary is authorized in his discretion to:

(1) Sell or approve sale of any tribal trust lands, including interests therein and improvements thereon.

(2) Exchange any tribal trust lands, including interests therein and improvements thereon, for any lands or interests in lands situated within such reservation.

15-5 REQUEST BY TRIBAL COUNCIL

15-5.01 The sale and exchange of lands for the Kootenai Tribe of Idaho pursuant to this ordinance shall be upon the request of the Tribal Council of the Kootenai Tribe of Idaho, evidenced by a resolution adopted in accordance with the Constitution and Bylaws of the Tribe, and shall be in accordance with

the Land Consolidation Plan approved by the Secretary.

15-6 SECRETARY OF THE INTERIOR

15-6.01 The Secretary of the Interior is authorized to sell and exchange individual Indian trust lands or interests therein on the lands under the jurisdiction of the Kootenai Tribe of Idaho held in multiple ownership to the Kootenai Tribe, to any member thereof, or to any other Indian having an interest in the land involved, if the sale or exchange is authorized in writing by owners of at least a majority of the trust interest in such lands: except that no greater percentage of approval of such interest shall be required under this ordinance than in any other statute of general application approved by Congress.

15-7 TITLE TO LAND

15-7.01 Titles to any lands, or interest therein, acquired pursuant to this ordinance shall be taken in the name of the United States of America to be held in trust for the Kootenai Tribe of Idaho or individual members and shall be subject to the same laws relating to other Indian trust lands subject to the Kootenai Tribal Council's jurisdiction.

15-8 MORTGAGE TO LAND

15.8.01 The Tribal Council of the Kootenai Tribe of Idaho may encumber any tribal lands by a mortgage or deed of trust, with the approval of the Secretary of the Interior, and such land shall be subject to foreclosure or sale pursuant to the terms of a mortgage or deed of trust in accordance with the laws of the state of Idaho.

CHAPTER 16A
SALES TAX

16A-1 PURPOSE

16A-1.01 The purpose of this chapter is to authorize the collection of taxes for sales on the reservation of the Kootenai Tribe of Idaho. Revenues collected from implementation of this chapter shall be utilized for social programs, education, scholarships, health care, housing for the indigent, employment programs, and other programs consistent with the obligations of the Kootenai Tribal Council to maintain the general welfare of tribal members pursuant to the Constitution of the Kootenai Tribe of Idaho.

16A-2 DEFINITIONS

16A-2.01 "Law" means law as defined under Kootenai Tribal code, ordinances or resolutions, federal laws, or applicable state law.

16A-2.02 "Vendor" means any person, including merchant or retailer, making retail sales, or engaged in the business of making retail sales as defined in this section, to a buyer, whether as an agent, broker, or principal.

16A-2.03 "Sale" means and includes any transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration and shall include any transfer of possession through incorporation or any other artifice found by the tax officer to be in lieu of, or equivalent to, a transfer of title, an exchange or barter. "Sale" shall also include:

(1) Producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration of consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting.

(2) Furnishing, preparing, or serving for consideration food, meals, or drinks and nondepreciable goods and services directly consumed by customers included in the charge thereof.

(3) A transaction whereby the possession of property is transferred but the seller retains the title as security for the payment of the price.

(4) A transfer for a consideration of the title or possession of tangible personal property which has been produced, fabricated, or printed to the special order of the customer, or of any publication.

(5) Admission charges.

(6) Receipts from the use of or the privilege of using tribal property or other facilities for recreational purposes.

(7) Providing hotel, motel, tourist home, campground or trailer court accommodations and nondepreciable goods and services directly consumed by customers included in the charge thereof, except where residence is maintained continuously under the terms of a lease or similar agreement for a period in excess of thirty (30) days.

(8) Receipts from the lease or rental of tangible personal property.

(9) As used in subsections (2) and (7) of this section, goods "directly consumed by customers" shall not be interpreted to mean any linens, bedding, cloth napkins or similar non-disposable property.

16A-2.04 "Sale price" means the total amount for which tangible personal property, including services agreed to be rendered as part of the sale, is sold, rented, or leased, valued in money, whether paid in money or otherwise:

(1) Without deduction for:

- (a) The cost of property sold,
- (b) The cost of transportation of the property prior to its sale,
- (c) The cost of materials used, labor or service cost, losses, or any other expense.

(2) "Sale price" does not include:

- (a) Retailer discounts allowed and taken on sales,

- (b) The amount charged for goods or services which is refunded to customers either in cash or credit. This shall not apply where the customer, in order to obtain the refund, is required to purchase other goods or services of a greater price than the goods or services refunded or credited,
- (c) The amount of any tax imposed by the United States or with respect to retail sales imposed upon the retailer or consumer,
- (d) The amount charged for finance charges, carrying charges, service charges, interest, or deferred payment sales,
- (e) Charges for transportation of goods after the sale.

16A-2.05 "Tax Officer" means the Treasurer of the Kootenai Tribe of Idaho or a person appointed and authorized by the Kootenai Tribal Council to carry out the provisions of this ordinance in the assessment, review, and collection of sales tax.

16A-2.06 "Taxpayer" means any person subject to, or liable for, any taxes imposed by this ordinance.

16A-2.07 "Tribal Council" means the Kootenai Tribal Council, the governing body of the Kootenai Tribe of Idaho.

16A-2.08 "Buyer" whether as principal, broker, or agent, means a purchaser or consumer of goods or services sold by a vendor.

16A-3 IMPOSITION AND RATE OF THE SALES TAX

16A-3.01 A sales tax is hereby imposed upon each sale at retail at a rate in lieu of, and, unless otherwise specified by the Council, exactly equal to the rate prevailing under Idaho Code § 63-3619, and such amount shall be computed monthly on all sales at retail within the preceding month.

(1) The tax shall apply to, be computed on, and be collected for, all credit, installment, conditional or similar sales at the time of the sale, or, in the case of rentals or services, at such times as rentals or services are charged.

(2) The tax imposed shall be collected by the vendor from the buyer.

(3) The vendor shall calculate the tax upon the entire amount of the purchases of the buyer made at a particular time and not separately upon each item purchased.

16A-3.02 A sales tax is hereby imposed at a rate equal to that imposed by Idaho Code § 67-4718 for renting of a place to sleep, to an individual by a hotel, motel, or campground for a period of less than thirty-one (31) continuous days.

16A-4 EXEMPTIONS

16A-4.01 Subject to applicable laws, the Tribal Council may create exemptions from the sales tax. Such exemptions may include but shall not be limited to the following:

(1) Waiver of the sales tax on new businesses upon request of the merchant.

(2) Individuals.

(3) The sale at retail of goods or services which the Kootenai Tribe of Idaho is prohibited from taxing under the Constitution and laws of the United States.

16A-5 RETURNS AND PAYMENTS

16A-5.01 The taxes imposed by this chapter are due and payable to the Tax Officer monthly on or before the twentieth day of the month succeeding the month for which the taxes were calculated.

16A-5.02 All money collected or received by the Tax Officer from taxes, penalties, interest, and fees, imposed by this chapter shall be credited by him/her to the sales tax account created by this chapter.

16A-5.03 On or before the twentieth day of the month succeeding the month for which the taxes are being calculated, a vendor shall file a return with the Tax Officer in such form as the Tribal Council may prescribe.

16A-5.04 The return shall be filed by every vendor conducting business on the Reservation.

Returns shall be signed by the person required to file the return or by his duly authorized agent.

16A-5.05 The return shall show the total sales subject to tax under this chapter during the reporting period.

16A-5.06 The return shall show the amount of the taxes for the period covered by the return and such other information as the Tribal Council deems necessary for the proper administration of this chapter.

16A-5.07 The person required to file the return shall mail or deliver the return together with a remittance of any tax due to the Tax Officer for the reporting period.

16A-5.08 The Tribal Council, if it deems it necessary, in order to insure payment to or facilitate the collection by the Tax Officer for taxes, may require returns for periods other than monthly periods.

16A-5.09 Gross amounts from rentals or leases of goods or services which may be subject to tax under this chapter, shall be reported and tax paid in accordance with such rules and regulations as the Council may prescribe.

16A-5.10 Subject to applicable laws, the Tax Officer for good cause may extend, for not to exceed one (1) month, the time for making any return or paying any amount to be paid under this chapter.

16A-5.11 The Tax Officer may impose penalties in addition to interest in the event any sales tax payable and due is withheld beyond due periods and without good cause. A ten percent (10%) penalty shall be assessed for each week for which the tax is over due and not paid. Penalties shall not exceed one hundred percent (100%) of the amount of the tax due.

16A-6 ADMINISTRATION

16A-6.01 The Tribal Council shall enforce the provisions of this chapter and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this chapter.

16A-6.02 The Tribal Council shall employ such qualified auditors, accountants, investigators,

assistants, clerks, and other personnel as are necessary for the efficient administration of this chapter, and may delegate authority to its representatives to conduct hearings, or perform any other duties imposed by this chapter.

16A-6.03 Every vendor who files the returns required under this chapter shall keep such records not less than four (4) years from the making of such records.

16A-6.04 As a condition of doing business on the Reservation, a vendor must permit the Tribal Council, or any person authorized in writing by it, to examine the books, papers, records, and equipment, of any person making sales, and to investigate the character of the business of the person in order to verify the accuracy of any return made, or, if no return is made by the person, to ascertain and determine the amount required to be paid.

16A-6.05 Vendors whose pertinent records are kept off the Reservation, must bring the records to the Reservation for examination by the Tribal Council, or its representative, upon its request, or, by agreement with the Tribal Council, permit a Kootenai Tribal representative to visit the place where the records are kept, and there examine and duplicate such records.

16A-7 SECURITY FOR TAX

16A-7.01 The Tax Officer, whenever s/he deems it necessary to insure compliance with this ordinance, may require any person subject to this ordinance to place with it such security as the Tax Officer may determine. The amount of the necessary security shall be fixed by the Tribal Council but, except as provided thereafter shall not be greater than three (3) times the estimated average monthly amount payable by such persons pursuant to this chapter. In the case of persons habitually late in their payments under this chapter, the amount of the security shall not be greater than five (5) times the estimated average monthly amount payable by such persons pursuant to this chapter or ten thousand dollars (\$10,000.00), whichever is greater. The amount of the security may be increased or decreased by the Tribal Council at any time, subject to the limitations set forth above.

16A-7.02 Subject to applicable laws, the Tribal Council may sell the security at public auction in order to recover any unpaid tax, interest, or penalties due on any amount required to be collected. Notice of the sale must be given to the person who deposited the security at least fifteen (15) days before the sale; such notice may be given personally or by mail addressed to the person at the address furnished to the Kootenai Tribe of Idaho. Upon such sale, any surplus above the amounts due and the reasonable costs of sale shall be refunded to the person who placed the security.

16A-8 REFUNDS, LIMITATIONS, INTEREST

16A-8.01 If the Tax Officer determines that any amount due under this chapter has been paid more than once, or has been erroneously or illegally collected or computed, the Tax Officer shall state that fact in its records. The Tax Officer shall either credit the excess amount paid or collected toward any amount then due and payable to the Kootenai Tribe from the person, or refund any balance to the person by whom it was paid or to his successors, administrators or executors.

16A-8.02 No such credit or refund shall be allowed or made after three (3) years from the time the payment was made, unless, before the expiration of such period a claim is filed by the taxpayer.

16A-9 RESPONSIBILITY FOR TAXES - CORPORATIONS

16A-9.01 Every person with the duty to account for and pay over any tax imposed by this ordinance on behalf of a corporation, or as an officer or employee of the corporation, or on behalf of a partnership, shall be personally liable for payment of such tax, plus penalties and interest, if s/he knowingly and wilfully fails to carry out his/her duty.

16A-9.02 Any person who is required to collect, truthfully account for, and pay over any tax imposed by this chapter who knowingly and wilfully fails to collect such tax or truthfully account for and pay over such tax or knowingly and wilfully attempts in any manner to evade or defeat any such tax or payment, shall, in addition to other penalties provided by law, be liable for a penalty equal to twice the total amount of the tax evaded, or not collected, or not accounted for and paid over as

well as expenses incurred in attempting to recover such tax.

16A-10 SUCCESSORS' LIABILITY

16A-10.01 If any vendor liable for any amount under this chapter sells out his business or stock of goods, the purchaser of the vendor's business shall make inquiry of the Tax Officer and shall withhold from the purchase price any amount of tax that may be due under this chapter, until such time as the vendor produces a receipt stating that an amount is due.

16A-10.02 If the purchaser of a business or stock of goods fails to withhold from the purchase price as required above, he shall be personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price valued in money.

16A-10.03 The Tax Officer shall, as soon as practical after receiving written inquiry as to the amount due, issue a statement to the purchaser setting forth the amount of tax due by the vendor, if any.

16A-11 DEFICIENCY DETERMINATIONS

16A-11.01 If the Tax Officer is not satisfied with the return or returns of the tax because of errors or omissions discovered in audits, examinations, or in any other way, s/he may compute and determine the amount which is due upon the basis of any information within its possession, or that may come into its possession, and assert a deficiency. One or more deficiency determinations may be made of the amount due. In making such determination, the Tax Officer may offset overpayment against amounts due.

16A-12 JEOPARDY DETERMINATIONS

16A-12.01 If the Tax Officer finds that a taxpayer owing unpaid taxes is about to depart permanently from the Reservation, or to remove his/her property from it, or to conceal his property, or to do any act tending to prejudice or to render wholly or partially ineffectual proceedings to collect tax for a taxable period, the Tax Officer shall thereupon make a determination of the tax or amount of tax, together with interest or penalty required to be collected, noting that fact upon the determination. Upon giving notice and demand, the

amount determined shall be immediately due and payable. In any proceeding in court brought to enforce payment of taxes made due and payable by this section, the finding of the Tax Officer, whether made after notice to the taxpayer or not, shall be for all purposes prima facie evidence of the taxpayer's design. Collection proceedings may be instituted immediately in such case.

16A-13 REDETERMINATION

16A-13.01 Any person against whom a deficiency determination is made under this chapter, or any person directly interested, may petition the Tax Officer for a redetermination within thirty (30) days after adequate service or notice; provided, however, that the person against whom the determination is made must pay the tax plus penalty and interest at the same time in order to so petition. If a petition for redetermination is not filed within the thirty (30) day period, the determination becomes final at the end of the period.

16A-13.02 If a petition for redetermination is properly filed within the thirty (30) day period, the Tax Officer shall reconsider the determination and, if the person has so requested in his petition, shall grant the person an oral hearing and shall give him/her fifteen (15) days notice of the time and place of the hearing personally or by mail. With appropriate notice, the Tax Officer may reschedule the hearing from time to time as may be necessary.

16A-13.03 The Tax Officer may affirm the determination, or increase or decrease the amount and issue a new determination.

16A-14 APPEALS - INTEREST ON DEFICIENCIES

16A-14.01 A redetermination becomes final when the Tax Officer mails or serves notice to the taxpayer against whom the redetermination is made. Within thirty (30) days of the date upon which the determination or redetermination becomes final the taxpayer may file an appeal of the same with the Court, copies to the Tax Officer, provided, however, that the taxpayer has paid the assessed taxes, penalty and interest. No assessment of a deficiency in respect to the tax imposed by this chapter, no sale of any security to satisfy taxes due, and no proceedings in court for its collection shall be made, begun or prosecuted until notice has been given to the taxpayer, nor until

the expiration of such thirty (30) day period after the decision of the Tax Officer becomes final.

16A-14.02 If an appeal is granted by the Court subject to subsection 16A-14.01 of this section, the appeal date shall be within a reasonable length of time.

16A-14.03 The appeal shall state the grounds for taxpayer's assertion that the determination or redetermination is incorrect or invalid and shall conform to the Rules governing the Court regarding civil procedure. The appellant taxpayer and the Tax Officer shall have the right to a hearing before the Court and the right to present all relevant evidence, including testimony of witnesses, to the Court.

16A-14.04 If the taxpayer does not file an appeal with the Court within the time prescribed, the deficiency shall be assessed and shall become due and payable upon notice and demand from the Tax Officer.

16A-14.05 Interest upon any deficiency shall be assessed at the same time as the deficiency and shall be due and payable upon notice and demand from the Tax Officer, and shall be collected as a part of the tax at the rate of ten percent (10%) per annum from the date prescribed for payment of the tax up to and including the date of the actual payment.

16A-15 PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION

16A-15.01 Subject to Section 16A-17, the amount of taxes imposed by this chapter shall be assessed within four (4) years of the time the return upon which the tax asserted to be due was or should have been filed, whichever is the later, and no proceeding in court for the collection of such taxes shall be begun after the expiration of such period; provided, however, if an assessment has been made within the prescribed time, such tax may be collected by levy or by a proceeding in court within a period of seven (7) years after the remedy has been assessed.

16A-16 PENALTIES AND PROPERTY SUBJECT TO LIEN

16A-16.01 If such person liable to pay any tax neglects or refuses to pay the same after demand, the amount of such tax, including any interest,

penalty, or addition to such tax, together with any costs which may accrue in addition thereto, shall be a lien in favor of the Kootenai Tribe of Idaho upon all property rights to property, whether real or personal, belong to such person. To protect the Tribe's interests, the Tax Officer shall, as soon as practicable, file notice of the lien against the property in appropriate records.

16A-17 FALSE RETURN

16A-17.01 In the case of a false or fraudulent return with intent to evade tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within five (5) years after the date of the discovery of the facts constituting the fraud.

16A-18 KOOTENAI TRIBE OF IDAHO SALES TAX FUND

16A-18.01 There is hereby created a fund to be known as the "Kootenai Tribe of Idaho Sales Tax Fund."

(1) All monies collected under this chapter shall be paid by the Tax Officer into the Sales Tax Fund.

(2) All monies refunded under this chapter shall be paid from the Sales Tax Fund by the Kootenai Tribal Tax Officer to the respective taxpayer.

(3) Unless otherwise provided by law, the Tribal Council shall have discretion to administer the Sales Tax Fund.

16A-19 CONSENT TO JURISDICTION

16A-19.01 Making sales on the Reservation shall be deemed consent to civil and regulatory jurisdiction of the Kootenai Tribal Council, and the Court.

16A-20 SEVERABILITY

16A-20.01 If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any portion of this chapter, such judgment or decree shall not affect the remainder of this chapter.

16A-21 EXEMPTIONS

16A-21.01 The following persons and transactions shall be exempt from taxation under this chapter.

(1) Transactions with the Kootenai Tribe.

(2) Raw agriculture products and food.

(3) Any matter used to produce heat by burning, including wood, gas, petroleum, and coal.

(4) Gas, electricity, and water when delivered to consumers.

(5) Tangible personal property used for the performance of a written contract and executed before the approval of this chapter.

(6) Liquor from the Idaho State Liquor dispensary.

(7) Tangible personal property sold at home yard sales; provided, however, that no more than two such home yard sales per individual per calendar year shall be exempt.

(8) Tangible personal property sold by Reservation residents not in the business of making retail sales.

16A-22 REPEALER

16A-22.01 Any code, ordinance, or resolution of the Kootenai Tribe of Idaho which conflicts in any way with the provisions of this chapter is hereby repealed to the extent that it is inconsistent with or is contrary to the spirit or purpose of this chapter.

CHAPTER 16B
MOTOR FUELS EXCISE TAX ACT

16B-1 TITLE

This Chapter shall be known as the Motor Fuels Excise Tax Act.

16B-2 DEFINITIONS

16B-2.01 For purposes of this Chapter, unless otherwise required by the context, the following words and phrases shall each have the designated meaning as follows:

(1) “Motor Fuels” shall mean gasoline, special fuels, or any other fuels suitable and used for the operation or propulsion of a self-propelled vehicle designed for operation or required to be licensed or registered for operation, upon a highway.

(2) “Distributor” shall mean those businesses, entities, or individuals that deliver fuel to a Retailer.

(3) “Retailer” shall mean any business, entity, individual, or enterprise engaged in the retail sale of fuel to the public located on Kootenai Lands.

(4) “Kootenai Lands” shall mean those lands within Bonner or Boundary County, Idaho, held in trust by the United States government for the benefit of the Kootenai Tribe of Idaho or its members.

(5) “Motor Fuels Tax Agreement” shall mean the Kootenai Tribe-State of Idaho Motor Fuels Tax Agreement dated 30 November 2007.

16B-3 TAX IMPOSED; RATE OF TAX

16B-3.01 A motor fuels excise tax is imposed on every gallon of motor fuel distributed to a Retailer that is not subject to the State of Idaho motor fuels tax imposed pursuant to the Motor Fuels Tax Agreement.

16B-3.02 The rate of tax imposed under this Chapter shall be equivalent to the State of Idaho tax per gallon of fuel received as provided in title 63, section 2402 of the Idaho Code.

16B-4 COLLECTION AND REMITTANCE OF TAX

16B-4.01 Distributors shall collect the tax imposed under this Chapter and the amount of tax shall be added to the price of the fuel received by a Retailer from the Distributor and clearly identified.

16B-4.02 Distributors shall remit to the Finance Department on the first working day of each month the tax imposed under this Chapter on all fuel that was delivered to a Retailer from that Distributor during the immediately preceding month, along with a report containing the following information:

(1) Name of the Retailer,

(2) Date on which motor fuels were delivered,

(3) Quantity of motor fuels,

(4) Amount of tax due under this Chapter, and

(5) Any credits that may be allowed pursuant to Tribal Council approval

16B-5 PERFORMANCE BOND FOR EXCISE TAX

16B-5.01 The Distributor shall, if required by the Council or its authorized representative, furnish a satisfactory bond to the Tribe in the amount of \$10,000 or less, but sufficient to guarantee payment of the excise tax.

16B-6 CONSENT TO JURISDICTION

16B-6.01 Delivery of motor fuels by a Distributor to a Retailer shall be deemed consent to civil and regulatory jurisdiction of the Tribe and the Kootenai Tribal Court.

CHAPTER 16C
TOBACCO AND CIGARETTE TAX ACT

16C-1 TITLE

This Chapter shall be known as the Tobacco and Cigarette Excise Tax Act.

16C-2 DEFINITIONS

16C-2.01 For purposes of this Chapter, unless otherwise required by the context, the following words and phrases shall have the following meanings:

(1) "Tobacco Products" shall mean cigarettes, cigars, pipe, or other smoking tobacco, snuff, chewing tobacco, and other forms of tobacco prepared in such manner as to be suitable for chewing or smoking.

(2) "Cigarettes" shall mean any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, mixed with any other ingredient, or otherwise adulterated, where such roll has a wrapper or cover made of paper or any material, except where such wrapper or cover is wholly or in the greater part made of natural leaf tobacco in its natural state.

(3) "Tobacco Outlet" or "Operator" shall mean the retailer licensed by the Council to sell tobacco products on trust lands or such other entity as the Council may designate.

(4) "Distributor" shall mean those businesses, entities, or individuals that deliver cigarettes or tobacco products to Tobacco Outlets or Operators.

(5) "Tribal License" or "Tobacco License" or "Tobacco Outlet License" shall mean the license issued to the operator pursuant to this chapter by the Council.

(6) "Retail Selling Price" shall mean that price paid by the ultimate consumer to the operator for the tobacco product.

(7) "Excise Tax" shall mean the tax levied by the Council on each sales unit (e.g. pack, carton, etc.) which is to be collected by the Distributor and remitted to the Tribe.

(8) "Cigarette Package" shall mean the individual package, box, or other container in or from which retail sales of cigarettes are normally made or intended to be made.

16C-3 TAX IMPOSED; RATE OF TAX

16C-3.01 There is levied and there shall be collected and remitted by the Distributor to the authorized representative of the Council, a tax upon the distribution of all cigarettes or other tobacco products sold or otherwise distributed.

16C-3.02 The rate of tax imposed under this Chapter shall be approximately equal the rate prevailing under Idaho Code or as determined by Council.

16C-4 COLLECTION AND REMITTANCE OF TAX

16C-4.01 Tobacco Outlets and Operators shall collect the tax imposed under this Chapter and the amount of tax shall be added to the price of cigarettes or tobacco products and clearly identified.

16C-4.02 Distributors shall remit to the Finance Department on the first working day of each month the tax imposed under this Chapter on all cigarettes and tobacco products delivered to a Tobacco Outlet or Operator from that Distributor during the immediately preceding month, along with a report containing the following information:

(1) Name of Tobacco Outlet or Operator,

(2) Date on which the tobacco products or cigarettes were delivered,

(3) Quantity of tobacco products or cigarettes, and

(4) Any credits that may be allowed pursuant to Tribal Council approval.

16C-5 PERFORMANCE BOND FOR EXCISE TAX

16C-5.01 The Distributor shall, if required by the Council or its authorized representative, furnish

a satisfactory bond to the Tribe in the amount of \$10,000 or less, but sufficient to guarantee payment of the excise tax.

16C-6 CONSENT TO JURISDICTION

16C-6.01 Delivery of tobacco products or cigarettes by a Distributor to a Tobacco Outlet or Operator shall be deemed consent to civil and regulatory jurisdiction of the Tribe and the Kootenai Tribal Court.

CHAPTER 17
GAMING COMMISSION

17-1 TITLE

17-1.01 This chapter shall be cited as the Kootenai Tribal Gaming Commission Ordinance.

17-2 PURPOSE

17-2.01 This chapter is enacted to establish a Commission within the tribal organization to oversee and regulate gaming consistent with this chapter and in compliance with federal law and all laws and regulations established by the Kootenai Tribal Council.

17-3 KOOTENAI TRIBAL GAMING COMMISSION ESTABLISHED

17-3.01 A commission known as the Kootenai Tribal Gaming Commission is hereby established consisting of five persons to be appointed by the Kootenai Council, three of whom are enrolled members of the Kootenai Tribe of Idaho, and two of whom are members of the community at large. The length of each appointment shall be determined by the Kootenai Tribal Council at the time of the appointment. The Kootenai Tribal Council shall appoint a new Commissioner to fill any vacancy within thirty days of the date the vacancy occurs.

17-3.02 The Secretary of the Kootenai Tribe shall be responsible for maintaining a list of potential commissioners, whose names shall be obtained upon the recommendation of local business and civic leaders, Bureau of Indian Affairs personnel, tribal council members or any other persons of good reputation.

17-3.03 The Commission shall choose from among its members a chair, vice chair and recorder. The chair shall preside over all meetings and shall be responsible for ensuring the Commission addresses its responsibilities under this chapter and all applicable laws, regulations and procedures. In the absence of the chair, the vice chair shall perform the chair's duties. The recorder shall record all proceedings of the Commission. In the absence of the recorder, the chair shall appoint a substitute to perform the duties of the recorder.

17-4 POWERS AND DUTIES OF THE COMMISSION

17-4.01 The Commission shall have authority and responsibility to take action and conduct gaming operations, including authority and responsibility to:

(1) Oversee and regulate the gaming activities authorized by this chapter and all other applicable laws and regulations.

(2) Safeguard the morals of the Kootenai people and keep community peace by regulating by civil fines and/or civil prosecution of violations of this chapter.

(3) Issue licenses when such are required by this chapter or other applicable law, regulation or procedure, and to deny or revoke such licenses when it is deemed to be in the public interest.

(4) Insure the proper record keeping regarding gaming of all, namely licensees, persons, associations, organizations and the Kootenai Tribe of Idaho.

(5) Cause an annual review of all the records of all employees and licensees.

(6) Cause annual outside audits of all gaming activities on the Kootenai Reservation to be conducted and submitted to the National Indian Gaming Commission specifically including all contracts for supplies, services or concessions having a contract amount in excess of \$25,000.00, except auditing and legal fees,

(7) Insure that facilities where gaming occurs are properly constructed and maintained and that the operation of the game is conducted in a manner which adequately protects the environment and the public health and safety.

(8) Hear all disputes arising from gaming activities involving gaming participants and management or gaming participants and the Tribe or Commission. Such power shall include the power to provide a hearing to disputing parties, such hearing to be conducted under principles of due process, or to refer matters to the Tribal Council or the Tribal Court. The Commission shall refer all

disputes involving alleged bodily injury or harm to the Tribal Court for appropriate proceedings.

17-4.02 In conducting gaming operations, the Commission shall:

(1) Subject all tribal gaming operations to monitoring and inspection by the Commission or agents of the Commission.

(2) Strive to obtain a Certificate of Self-Regulation from the National Indian Gaming Commission as established by Public Law 100-497, 25 U.S.C. Section 2704, 102 Stat. 2469 et seq. and conduct the tribal gaming operations in a manner consistent with all applicable laws and regulations.

17-4.03 The Commission shall issue regulations, subject to the approval of the Tribal Council, which shall include regulation of the following:

(1) The possession of firearms by operators or employees. No other firearms or weapons of any kind shall be allowed on gaming premises.

(2) Security requirements for the operations.

(3) Limitations, if any, on the amount offered as prizes.

(4) Conduct of the games.

(5) Any other regulations controlling the operation which is deemed necessary by the Commission or the Council.

17-4.04 The Commission shall determine whether or not to issue the license to any applicant for employment or management as required by law within 30 days of its receipt of the investigator's report on the background check required by law. The Commission may charge a fee not in excess of \$200.00 for each application or renewal.

17-4.05 The Commission shall prepare and submit a budget annually. Pursuant to the budget, the members of the Commission shall be reimbursed for out of pocket expenses and shall be allowed per diem under rates established by the Kootenai Tribal Council. The Kootenai Tribal Council may approve salaries for Commission members, provided such payments shall be made only out of the license fees

or the net proceeds of the gaming activities of the Kootenai Tribe of Idaho.

17-4.06 Members of the Gaming Commission are prohibited from participating in gaming conducted on the Kootenai Reservation.

17-5 APPEAL FROM DECISIONS OF THE COMMISSION

17-5.01 If the Commission denies a license, or if the Commission revokes or suspends a license which was previously granted, the Commission shall do so in writing, explaining the reasons for such decision. Notice of the revocation or suspension shall be provided to the license holder in writing, who shall have three (3) working days in which to request a hearing before the Commission. Failure to request a hearing within the time specified shall be deemed a waiver of the right to a hearing. All hearings before the Commission shall be conducted in conformity with standards of due process under the Indian Civil Rights Act, including the right to confront witnesses and to be represented by counsel at the license holders expense. An appeal may be taken to the Kootenai Tribal Court based on a failure to provide due process but for no other reason within ten (10) days of the date of written denial, suspension or revocation. The only relief the Court may grant is the right to a new hearing before the Commission and only on a finding by clear and convincing proof that the Commission failed to provide due process.

17-6 INSPECTION OF PREMISES

17-6.01 The premises where authorized gaming activities are being held and all records, books and accounts of the gaming operation shall be subject to inspection and audit at any reasonable time by persons designated by the Commission or the Council, with or without notice as follows:

(1) If the items or records to be inspected or audited are located anywhere upon a premises any portion of which is regularly open to the public or members and guests, then at any time when the premises are so open, or at which they are usually open; or

(2) If the items or records to be inspected or audited are not located upon a premises set out in subsection (1) above, then any time between the hours of 8:00 a.m. and 9:00 p.m., Monday through

Friday, except holidays observed by the Kootenai Tribe of Idaho.

17-6.02 At such reasonable intervals as the Commission shall determine, the Commission shall be provided by the Gaming Manager with a report, under oath, detailing all receipts and disbursements in connection with such gaming activities together with such other reasonable information as required in order to determine whether such activities comply with the applicable laws and regulations.

17-6.03 Any person who is excluded from gaming by an operator pursuant to this section may petition the Commission for an order lifting the exclusion. The Commission shall have full discretion in determining whether to hear any such petition and shall have the authority to enact such rules as may be necessary regarding the procedures for acting upon any such petition. The Commission shall further have discretion to impose such conditions as they deem appropriate in issuing any order lifting an exclusion.

17-7 DISPENSATION OF FOOD AND BEVERAGES

17-7.01 Subject to approval by the Tribal Council, the Commission may promulgate reasonable regulations governing the sale of beverages, spirituous or otherwise, and the serving of food at gaming premises.

17-8 SEVERABILITY

17-8.01 If any clause, provision or section of this chapter shall be ruled invalid or unenforceable by any court of competent jurisdiction by final order after all appellate jurisdiction is exhausted, such holding shall not invalidate or render unenforceable any other remaining provisions of this chapter. Until such final order is entered and review exhausted, the questioned provisions shall, absent an enforceable injunction to the contrary, be in full force and effect.

17-9 AMENDMENT

17-9.01 All powers of amendment are retained by the Kootenai Tribal Council.

17-10 REPEALER

17-10.01 Any code, ordinance, or resolution of the Kootenai Tribe of Idaho which conflicts with the provisions of this chapter is hereby repealed to the extent that it is inconsistent with or is contrary to the spirit or purpose of this chapter.

17-11 SOVEREIGNTY

17-11.01 Nothing in this ordinance is intended to be construed as the waiver, express or implied of the sovereign immunity of the Kootenai Tribe of Idaho.

CHAPTER 18

GAMING

18-1 PURPOSE

18-1.01 The Tribal Council (hereinafter "Tribe"), empowered by the Tribe's constitution and bylaws, to enact ordinances, hereby enacts this ordinance in order to set the terms for class II and class III gaming operations on tribal lands.

18-1.02 The Tribal Council hereby establishes the Kootenai Tribal Gaming Commission, which shall be organized and operate under the rules and procedures set forth in Chapter 17 of this Code and, unless otherwise indicated, shall be responsible for all activities of the Tribe set forth below.

18-2 GAMING AUTHORIZED

18-2.01 Class II and class III gaming as defined in the Indian Gaming Regulatory Act, P.L.100-447, 25 U.S.C. Section 2703(7)(A) and 2702(8) ("IGRA") and by the regulations promulgated by the National Indian Gaming Commission at 25 C.F.R. §502.3 (as published in the Federal Register at 57 FR 12382-12393, April 9, 1992 or any subsequent amendments thereto) is hereby authorized.

18-3 OWNERSHIP OF GAMING

18-3.01 The Tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation authorized by this ordinance.

18-4 USE OF GAMING REVENUE

18-4.01 The Kootenai Tribe of Idaho hereby reserves the right to adopt or impose an uniform and comprehensive system of revenue distribution and taxation relating to gaming, provided such system is adopted in compliance with the National Indian Regulatory Act.

18-4.02 Net revenues from gaming shall be used only for the following purposes: to fund tribal government operations and programs; provide for the general welfare of the Tribe and its members; promote tribal economic development; donate to charitable organizations; or help fund operations of local government agencies.

18-4.03 If the Tribe elects to make per capita payments to tribal members, it shall authorize such

payments only upon approval of a plan submitted to the Secretary of the Interior under 25 U.S.C. § 2710(b)(3) and such rules as may be promulgated by Council and/or the Secretary under lawful authority.

18-5 AUDIT

18-5.01 The Tribe shall cause to be conducted annually an independent audit of gaming operations and shall submit the resulting audit reports to the National Indian Gaming Commission as may be required by law.

18-5.02 All gaming related contracts that result in the purchase of supplies, services, or concessions in excess of \$25,000.00 annually, except contracts for professional legal and accounting services, shall be specifically included within the scope of the audit that is described in subsection 18-5.01 above.

18-6 PROTECTION OF THE ENVIRONMENT AND PUBLIC HEALTH AND SAFETY

18-6.01 All tribal gaming facilities shall be constructed, maintained and operated in a manner that adequately protects the environment and the public health and safety.

18-7 LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS

The Tribe shall ensure that the policies and procedures set out in this section are implemented with respect to key employees and primary management officials employed at any gaming enterprise operated on Kootenai tribal lands.

18-7.01 Definitions

For the purposes of this section the following definitions apply:

(1) Key Employee means any of the following that may be involved in tribal gaming:

(a) A person who performs one or more of the following functions:

1. Bingo caller;
2. Counting room supervisor;
3. Chief of Security;

4. Custodian of gaming supplies or cash;
 5. Floor manager;
 6. Pit boss;
 7. Dealer;
 8. Croupier;
 9. Approver of credit; or
 10. Custodian of gambling devices including persons with access to cash and accounting records within such devices.

(b) If not otherwise included, any other person whose total cash compensation is in excess of \$50,000 per year; or

(c) If not otherwise included, the four most highly compensated persons in the gaming operation.

(2) Primary Management Official means

(a) The person having management responsibility for a management contract;

(b) Any person who has authority:

1. To hire and fire employees; or
 2. To set up working policy for the gaming operation; or

(c) The chief financial officer or other person who has financial management responsibility.

18-7.02 Application Forms

(1) The following notice shall be placed on the application form for a key employee or a primary management official before that form is filled out by the applicant:

In compliance with the Privacy Act of 1974, the following information is provided: Solicitation of the information on this form is authorized by 25 U.S.C. 2701 et seq. The purpose of the requested information is to determine the eligibility of individuals to be employed in a gaming operation. The information will be used by National Indian Gaming Commission members and staff who have need for the information in the performance of their official duties. The information may be disclosed to appropriate Federal, Tribal, State, local, or foreign law enforcement and regulatory agencies when

relevant to civil, criminal or regulatory investigations or prosecutions or when pursuant to a requirement by a tribe or the National Indian Gaming Commission in connection with the hiring or firing of an employee, the issuance or revocation of a gaming license, or investigations of activities while associated with a tribe or a gaming operation. Failure to consent to the disclosure indicated in this notice will result in a tribe's being unable to hire you in a primary management official or key employee position.

The disclosure of your Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing your application.

(2) Existing key employees and primary management officials shall be notified in writing that they shall either:

(a) Complete a new application form that contains a Privacy Act Notice; or

(b) Sign a statement that contains the Privacy Act notice and consent to the routine uses described in that notice.

(3) The following notice shall be placed on the application form for a key employee or a primary official before that form is filled out by an applicant.

A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin work. Also, you may be punished by a fine or imprisonment. (U.S. Code, Title 18, Section 1001.)

(4) The Tribe shall notify in writing existing key employees and primary management officials that they either:

(a) Complete a new application form that contains a notice regarding false statements; or

(b) Sign a statement that contains the notice regarding false statements.

18-7.03 Background Investigations

(1) In addition to any applicable provisions in the Compact with the State of Idaho, the Tribe shall request from each primary management official and from each key employee all of the following information:

(a) Full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, all languages (spoken or written);

(b) Currently and for the previous 5 years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and drivers license numbers;

(c) The names and current addresses of at least three personal references, including one personal reference who was acquainted with the applicant during each period of residence listed under paragraph (1)(b) of this section;

(d) Current business and residence telephone numbers;

(e) A description of any existing and previous business relationships with Indian Tribes, including ownership interests in those businesses;

(f) A description of any existing and previous business relationships with the gaming industry generally, including ownership interest in those businesses;

(g) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit related to gaming, whether or not such license or permit was granted;

(h) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition if any;

(i) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations), within 10 years of the date of the application, the name and address of the court involved and the date of the disposition;

(j) For each criminal charge (excluding minor traffic charges), whether or not there is a conviction, if such criminal charge is within 10 years of the date of the application and is not otherwise listed pursuant to paragraph (1)(h) or (1)(i) of this section, the criminal charge, the name and address of the court involved and the date and disposition;

(k) The name and address of any licensing or regulatory agency with which the person has filed an application for an occupational license or permit, whether or not such license or permit was granted;

(l) A current photograph;

(m) Any other information the Tribe deems relevant; and

(n) Fingerprints consistent with procedures adopted by the Tribe according to 25 C.F.R. § 522.2(h).

(2) The Tribe shall conduct an investigation sufficient to make a determination under subsection 18-7.04 below. In conducting a background investigation, the Tribe or its agent shall promise to keep confidential the identity of each person interviewed in the course of the investigation.

18-7.04 Eligibility Determination

The Tribe shall review a person's prior activities, criminal record, if any, and reputation, habits and associations to make a finding concerning the eligibility of a key employee or primary management official for employment in a gaming operation. If the Tribe determines that employment of the person poses a threat to the public interest or to the effective regulation of gaming, or creates or enhances dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming, a tribal gaming operation shall not employ that person in a key employee or primary management official position.

18-7.05 Procedures for Forwarding Applications and Reports for Key Employees and Primary Management Officials to the National Indian Gaming Commission

(1) When a key employee or primary management official begins work at a gaming operation authorized by this ordinance, the Tribe shall forward to the National Indian Gaming Commission a completed application for employment and conduct the background investigation and make the determination referred to in subsection 18-7.04 of this section.

(2) The Tribe shall forward the report referred to in subsection 18-7.06 of this section to the National Indian Gaming Commission within 60 days after an employee begins work or within 60 days of the approval of this ordinance by the Chairman of the National Indian Gaming Commission.

(3) The gaming operation shall not employ as a key employee or primary management official a person who does not have a license after 90 days.

18-7.06 Report to the National Indian Gaming Commission

(1) Pursuant to the procedures set out in subsection 18-7.05 of this section, the Tribe shall prepare and forward to the National Indian Gaming Commission an investigative report on each background investigation. An investigative report shall include all of the following:

(a) Steps taken in conducting a background investigation;

(b) Results obtained;

(c) Conclusions reached; and

(d) The bases for those conclusions.

(2) The Tribe shall submit, with the report, a copy of the eligibility determination made under subsection 18-7.04 of this section.

(3) If a license is not issued to an applicant, the Tribe:

(a) Shall notify the National Indian Gaming Commission; and

(b) May forward copies of its eligibility determination and investigative report (if any) to the National Indian Gaming Commission for inclusion in the Indian Gaming Individuals Records System.

(4) With respect to key employees and primary management officials, the Tribe shall retain applications for employment and reports (if any) of background investigations for inspection by the Chairman of the National Indian Gaming Commission or his or her designee for no less than three (3) years from the date of termination of employment.

18-7.07 Granting a Gaming License

(1) If, within a thirty (30) day period after the National Indian Gaming Commission receives a report, the National Indian Gaming Commission notifies the tribe that it has no objection to the issuance of a license pursuant to a license application filed by a key employee or a primary management official for whom the tribe has provided an application and investigative report to the National Indian Gaming Commission, the Tribe may issue a license to such applicant.

(2) The Tribe shall respond to a request for additional information from the Chairman of the National Indian Gaming Commission concerning a key employee or a primary management official who is the subject of a report. Such a request shall suspend the 30-day period under subsection 18-7.07(1) of this section until the Chairman of the National Indian Gaming Commission receives the additional information.

(3) If, within the thirty (30) day period described above, the National Indian Gaming Commission provides the Tribe with a statement itemizing objections to the issuance of a license to a key employee or to a primary management official for whom the Tribe has provided an application and investigative report to the National Indian Gaming Commission, the Tribe shall reconsider the application, taking into account the objections itemized by the National Indian Gaming Commission. The Tribe shall make the final decision whether to issue a license to such applicant.

18-7.08 License Suspension

(1) If, after the issuance of a gaming license, the Tribe receives from the National Indian Gaming Commission reliable information indicating that a key employee or a primary management official is not eligible for employment under subsection 18-7.04 above, the Tribe shall suspend such license and shall notify in writing the licensee of the suspension and the proposed revocation.

(2) The Tribe shall notify the licensee of a time and a place for a hearing on the proposed revocation of a license.

(3) After a revocation hearing, the Tribe shall decide to revoke or to reinstate a gaming license. The Tribe shall notify the National Indian Gaming Commission of its decision.

18-8 LICENSE LOCATIONS

The Tribe shall issue a separate license to each place, facility, or location on Indian lands where class II gaming is conducted under this ordinance.

18-9 REPEAL

To the extent that they are inconsistent with this ordinance, all prior gaming ordinances are hereby repealed.

CHAPTER 19
TRIBAL EMPLOYMENT RIGHTS

19-1 TITLE

19-1.01 This chapter shall be known as the Kootenai Tribal Employment Rights Ordinance.

19-2 POLICY

19-2.01 It is the policy of the Kootenai Tribe of Idaho to provide employment for all tribal members and other Indians living on and near the Kootenai Reservation who are able and willing to work.

19-3 PURPOSE

19-3.01 The purpose of this chapter is to insure preference in hiring for tribal members and other Indians on Kootenai lands and to insure compliance with federal and state laws related to Indian hiring on and near the Kootenai Reservation.

19-4 DEFINITIONS

19-4.01 For the purposes of this chapter, unless required by the context, the following words and phrases shall have the following meanings:

(1) "Director" shall mean the director of the Kootenai Tribal Employment Rights office.

(2) "Employer" shall mean any person, company, contractor, subcontractor, or other entity located or otherwise engaged in work on or near the Kootenai Reservation. It includes any contractor or subcontractor of a governmental agency engaged in work on or near the Reservation. The term "employer" does not include federal and tribal government agencies.

(3) "Indian" shall mean any member of the Kootenai Tribe of Idaho, any Indian spouse or child of a member and any federally recognized Indian who is living, working, or has applied for a job on or near the Reservation.

(4) "TERO" shall mean the Kootenai Tribal Employment Rights Office or ordinance, as may be appropriate.

19-5 TRIBAL EMPLOYMENT RIGHTS OFFICE

19-5.01 There shall be included in the Kootenai Tribal Government a Tribal Employment Rights Office (TERO). The duties of TERO shall be:

(1) To list all employers and labor unions operating on or near the Reservation that are subject to tribal, federal, and/or state hiring laws affecting Kootenai members.

(2) To investigate hiring practices and policies of the foregoing employers and labor unions regarding Indians.

(3) To issue rules and guidelines to implement the employment rights requirements imposed by this chapter.

(4) To require employers to submit reports and to take such other actions as are necessary for the fair implementation of this chapter.

(5) To bring actions in tribal court to enforce this chapter and TERO rules, provided the bringing of any action shall first be subject to the approval of the Council.

(6) To file complaints with the Equal Employment Opportunity Commission.

(7) To assist Indians with Equal Employment Opportunity Commission complaints against employers.

(8) To enter into cooperative relationships with federal and state employment rights agencies in order to end discrimination against Indians on and near the Kootenai Reservation.

(9) To set appropriate fees to be imposed on employers, subject to the approval and waiver authority of the Council.

19-5.02 The TERO is further authorized to:

(1) Impose numerical hiring goals and time tables establishing the minimum number of Indians an employer must hire by craft or skill level.

(2) Require employers to set up or participate in such training programs as the TERO determines are necessary to increase the pool of qualified Indians on or near the Reservation as quickly as possible.

(3) Establish, in conjunction with the tribal Jobs Training Partnership Act Program, a tribal hiring hall and impose a requirement that no employer may hire a non-Indian for work on the Reservation until the hiring hall has certified that no qualified Indian is available for the vacancy.

(4) Enter into agreements with labor unions to insure compliance with this chapter.

(5) Require on-Reservation employers to give preference in the award of subcontracts to tribal and other Indian-owned firms and entities.

(6) Establish programs, in conjunction with other tribal and federal offices, to provide counseling and support to Indian workers to help them to obtain and keep jobs.

(7) Prohibit any employer, in its on-Reservation employment, from using qualification criteria or other requirements that form barriers to Indian employment unless the employer can show what such criteria or requirements are required by business necessity. In developing rules and guidelines to implement this requirement, the TERO shall adopt the Equal Employment Opportunity Commission guidelines on these matters to the extent they are appropriate, provided, however, that the TERO may create other requirements in order to address employment barriers unique to Indians.

(8) Take such other actions as are necessary to achieve the purposes of this chapter, subject to the approval of the Council.

19-5.03 Director. The Tribal Council will appoint a TERO director according to tribal hiring policies and procedures. The Director shall administer the TERO and carry out the duties of the office as stated herein.

19-6 DUTIES OF EMPLOYERS

19-6.01 Indian Preference. To the extent allowed by federal law, all employers operating on the Reservation shall give preference to Indians and Indian owned companies in hiring, promotion,

training, other aspects of employment, and in contracting or subcontracting for work on the Reservation. Employers shall comply with the tribal ordinances, resolutions, TERO rules and guidelines, and federal and state employment laws to the extent they do not conflict with the foregoing.

19-6.02 Employer-Union Agreements. Any employer operating on the Reservation who has a collective bargaining agreement with one or more unions shall obtain a written agreement that the union will comply with the Indian preference laws, rules, regulations, and guidelines of the Tribe as to on-Reservation work. Such agreement shall be subject to the approval of the TERO. Such agreement shall not constitute official tribal recognition or sanction of the unions.

19-6.03 Tribal Hiring Hall. An employer, for on-Reservation work, may recruit and hire workers from whatever sources and by whatever process it chooses, provided that it may not hire a non-Indian until it has given the TERO a reasonable time to locate a qualified Indian. For the purposes of this section, "reasonable time" shall be defined as follows: For construction jobs, the TERO shall have 48 hours to locate and an additional 12 hours to refer a qualified Indian; for other kinds of employment, the TERO shall have five (5) working days. The TERO shall consider waivers of these time periods if the employer shows that time periods if the employer shows that a time period would impose an undue burden on it. An employer shall be exempt from this procedure if it has a collective bargaining agreement with a union and the union places on its referral list and gives priority to all persons that the TERO refers to them.

19-7 SANCTIONS

19-7.01 Sanction by Director. The Director shall impose sanctions on any employer the Director finds to be in violation of this chapter or TERO rules, provided, however, that notice and opportunity for explanation shall be provided to the employer before any sanction may be imposed. Sanctions shall be civil fines in amounts between \$100 and \$500 per violation of this chapter or TERO rules.

19-7.02 Removal of Non-Indian. An employer who hires a non-Indian employee in violation of this chapter or TERO rules shall be sanctioned. Any non-Indian employee shall be subject to summary removal by the employer from the job and any

claims or remedies for such removal shall be between the employer and the employee.

19-7.03 Sanction by Tribal Court. The Tribal Court may impose further sanction after considering mitigating factors such as the employer's effort to comply and its efforts to remedy any harm done by noncompliance as follows:

(1) Suspend the employer's operation until it takes corrective action or the TERO and the employer develop a plan for corrective action.

(2) Terminate the employer's operation on the Reservation.

(3) Require the employer to remove certain employees and/or hire certain employees.

(4) Require the employer to provide back pay, employment, promotion, training, and/or other relief to Indians who were harmed by the employer's noncompliance.

(5) Require the employer to change its procedures or policies as necessary in order to comply with tribal requirements.

19-8 PROCEDURES

19-8.01 Publication. The Director shall provide a copy of this chapter and TERO rules and guidelines to all employers. All bid announcements issued by any tribal, federal, state or other private or public entities shall contain a statement that the successful bidder must comply with this ordinance and TERO rules and guidelines and that a bidder may contact the TERO to obtain further information. The Director shall keep a record of all employers who have received a copy of this ordinance and TERO guidelines. The Director may not impose a sanction on any employer to whom he/she did not send the appropriate ordinance or rules.

19-8.02 Reporting or On-Site Inspections. Employers shall submit reports and such other information as is requested by the TERO. The Director and TERO employees have the right to make on-site inspections in order to monitor employers' compliance with this chapter and TERO rules. Further, they have the right to inspect and copy all relevant records of an employer, of the employer's signatory unions or subcontractors, and to speak with employees on the job site, and to

perform similar investigatory activities. All information collected by the TERO shall be kept confidential unless disclosure is required in the process of imposing a sanction or pursuing an action in Tribal Court or before the Equal Employment Opportunity Commission.

19-8.03 Notice of Noncompliance. If the Director believes that an employer has failed to comply with any of the requirements of this chapter or the TERO rules, he/she shall notify the employer in writing, specifying the alleged violation(s). The employer is entitled to present evidence, including testimony, to the Director under informal procedures to show its compliance and why it should not be subject to sanction. Likewise, the Director may call witnesses and present evidence in the Tribe's behalf.

19-8.04 Appeal. An employer has the right to appeal to the tribal court any adverse decision and sanction of the Director.

19-9 WAIVER

19-9.01 Discretion of Council. Under extraordinary circumstances, the Tribal Council is authorized to waive the requirements of this ordinance but only to the extent such waiver is determined to be in the best interests of the Tribe as a whole.

CHAPTER 20 ABORIGINAL RIGHTS

20-1 GENERAL POLICY

20-1.01 Minimum Regulation. The Council hereby declares it to be the policy of the Kootenai Tribe of Idaho to allow all members of the Kootenai Tribes and Bands to exercise tribal aboriginal hunting, fishing and gathering rights free of unnecessary regulations. This ordinance is set forth only to establish a policy of prohibiting the exercise of aboriginal rights in manner inconsistent with the historical traditions of the Kootenai Tribe.

20-2 ONLY MEMBERS MAY EXERCISE ABORIGINAL RIGHTS

20-2.01 Non-members Prohibited. Except as set forth in 20-2.02, It shall be unlawful for any person who is not a member of the Kootenai Tribe of Idaho or other recognized band of Kootenai Indians to exercise or in any way participate in the exercise of the aboriginal hunting, fishing and gathering rights of the Tribe.

20-2.02 Non-member's Lawful Participation. It shall not be unlawful for a spouse, child, father-in-law or mother-in-law of a member, or the child of a spouse of a member, to accompany a tribal member in the exercise of aboriginal rights provided the exercise is intended for the subsistence uses of the family of the member. Participation may include the actual taking of game or other resources provided the quantity does not exceed amounts needed for subsistence or amounts that reasonably can and will be distributed to tribal members.

20-3 SALE OF RIGHTS PROHIBITED

20-3.01 Guide Services, other Activities Prohibited. It shall be unlawful for any person to act as a guide or to otherwise provide services related to the exercise of aboriginal rights, whether or not for value received, to any person who is not a member.

20-3.02 Sale of Game or Other Items. It shall be unlawful for any person to sell, barter or exchange for any value any game, parts of game, fish or parts of fish or any other animals or parts of animals or any item or materials obtained in the exercise of aboriginal rights, provided nothing herein shall prohibit the exchange between tribal members of items taken in the exercise of aboriginal rights for

use in traditional and customary ways of the Kootenai Tribe.

20-4 JURISDICTION OF COUNCIL

20-4.01 Hearings Before Council. Due to the highly sensitive nature of the exercise of aboriginal rights, allegations of violations of this chapter shall be presented only to the Council and only the Council shall decide whether a member should be charged and the matter heard. If a hearing is to be held, the person alleged to have violated this ordinance shall be given at least ten (10) days notice of the date, time and place of the hearing and shall be granted the opportunity to present a defense. All hearings shall be held before the Council under such rules as it may adopt, provided the hearing may not violate the provisions of the Indian Civil Rights Act.

20-4.02 Findings and Penalties. Upon a determination by the Council that a violation of this chapter has occurred, the Council shall set forth the reasons for its finding in writing and shall impose such penalty as it deems appropriate to the offense. The penalty shall include the forfeiture of all game, fish or other items illegally taken or any money or items received in violation of this ordinance and, in addition, may include a fine not to exceed five hundred dollars (\$500) and the loss of the privileges of exercising aboriginal rights for such time as is set by the Council.

20-5 APPEALS

20-5.01 Right to Appeal and Limited Scope of Appeal. Any party against whom a finding is made by the Council shall have the right to appeal under the appellate procedures established by this Code as though the Council's determination was a judgment of the Tribal Court. The right to appeal is limited to issues related to violations of the Indian Civil Rights Act and, upon a finding of such a violation, the remedy to be granted by the court is limited solely to the power to remand the case back to the Council for a new hearing.

CHAPTER 21

BENEFITS

21-1 QUALIFICATIONS FOR BENEFITS

21-1.01 Duly enrolled members of the Kootenai Tribe of Idaho who are also members of another tribe and/or band of Indians who have, during the previous two years, received tribal disbursements from the other tribe and/or band of Indians shall not receive tribal disbursements from the Kootenai Tribe of Idaho, including but not limited to, bonuses and allowances. This shall not be deemed to effect the membership status of any member of the Kootenai Tribe of Idaho.

21-1.02 A member who is dually enrolled must execute a waiver of other disbursements as a condition of receiving disbursements from the Kootenai Tribe of Idaho.

21-2 RESTRICTIONS ON DISBURSEMENTS OF BENEFITS

21-2.01 Pursuant to its authority under Article IV, Section 1(e) of the Constitution, the Council hereby establishes rules for restrictions on the disbursement of benefits paid to members who fail or refuse to participate in the social, cultural and/or political activities of the Tribe. These provisions are to prevent the diminution of benefits paid to members of the Tribe who have participated and/or continue to participate willingly and continuously in the Tribe's daily social, cultural and/or political activities.

21-2.02 No member of the Tribe who has *not* participated fully in one or more of the daily social, cultural or political activities of the Tribe, as determined by the Council, shall be eligible for disbursement of full benefits of tribal membership. For purposes of assisting the Council in determining whether a member has participated fully in one or more of such activities, the following shall apply:

(1) A member who is *not*, at the time of a disbursement of a benefit, a full-time resident of Boundary County, Idaho shall be deemed not to participate fully in such activities unless such person is *not* subject to the provisions of subsection (b), was a full-time resident of Boundary County for not less than five continuous years prior to residing elsewhere, participated fully

in one or more of such activities prior to departing and is temporarily residing outside Boundary County for purposes of schooling, military service, medical care or employment and unless such person continues to maintain close social and cultural ties with the Tribe.

(2) A member of the Tribe who is a full-time resident of Boundary County at the time of a disbursement of a benefit shall be deemed not to have participated fully in one or more of such activities unless such person participates fully in one or more of such activities and has been a resident of Boundary County for his or her entire life or, immediately preceding the disbursement, for not less than five continuous years plus one year for each year such person is over the age of eighteen or one year for each year such person has not been a full-time resident of Boundary County, whichever is less.

(3) The eligibility for the disbursement of benefits of members of the Tribe who are younger than the age of eighteen shall be determined by the eligibility of their parent or legal guardian.

21-3 WAIVER OF RESTRICTIONS BY COUNCIL

21-3.01 Any member of the Tribe, including members under the age of eighteen, shall have the right to appeal to the Council for a temporary or permanent waiver of the restrictions on disbursement of benefits. In considering such requests, the Council shall grant the right to be heard and may consider, but is not limited to, the following factors:

(1) Circumstances leading to restrictions on disbursements of benefits that are shown to be outside the control of the member;

(2) Conduct of the member that demonstrates to the Council a sincere desire to be a part of the social, cultural, political and/or economic activities of the Tribe that is not motivated in whole or in part by the availability of disbursements to members; or

(3) Hardship to the members of the Tribe who are eligible for full disbursements of benefits.

21-4 NO LIMITATIONS ON BENEFITS FROM
OTHER GOVERNMENT SOURCES

21-4.01 Nothing herein shall be deemed a basis to deny any tribal member a benefit or benefits to which he or she is entitled pursuant to federal, state or other applicable law. The restrictions set forth in this ordinance apply only to disbursements of benefits from resources generated from tribal assets.

21-5 BENEFITS AWARDED ON THE BASIS
OF NEED

21-5.01 Findings. The Council of the Kootenai Tribe of Idaho recognizes that individual members may have certain conditions that put them at a disadvantage from enjoying the same quality of living that other members possess. The Council promotes social and general welfare of all its members such that they may enjoy an equal opportunity for the blessings of spiritual, educational, cultural, and economic growth for now and generations to come.

21-5.02 Needs Based Benefits. The Council of the Kootenai Tribe of Idaho is authorized to make benefit payments to individual tribal members based on need or to establish needs based benefit programs. Such programs are defined in Chapter 32 and policies adopted by Tribal Council.

(1) Restated in Chapter 32.

(2) Restated in Chapter 32.

(3) Restated in Chapter 32.

CHAPTER 22

ELECTION

22-1 ELIGIBILITY TO VOTE

22-1.01 To be eligible to vote in an election held by the Kootenai Tribe of Idaho a person must be a member of the Kootenai Tribe of Idaho and be at least 18 years of age.

22-2 ELIGIBILITY TO BE A MEMBER OF THE TRIBAL COUNCIL

22-2.01 To be a member of the Tribal Council a person must be eligible to vote on adoption applications and have been a resident of Boundary County, Idaho for the previous six months. A person convicted of a felony or any crime involving fraud, embezzlement, or theft, within the previous four years, is not eligible to be a member of the Tribal Council.

22-3 VOTING BY DISTRICT

22-3.01 Members of the Council shall be elected from three districts. The Council shall be composed of six members, two from each District.

22-3.02 The Districts shall be Aitken, Abraham and David. Eligible members must designate a district in which they will vote on or before June 1, 1998. Such designations cannot be changed.

22-3.03 After June 1, 1998, members must designate the voting district of which they are a member upon becoming eligible to vote. Such designation cannot be changed. Members of the Tribal Council are selected from the districts from which they are members. Except as set forth below, members of a district elect the Member(s) of the Tribal Council representing them.

22-4 COUNCIL SEATS

22-4.01 Each district shall elect two Tribal Council Members and one alternate.

22-4.02 The two individuals who receive the highest number of votes from each district, upon being seated by the Council, will represent that district on the Tribal Council. The individual who receives the next highest number of votes shall become the alternate and shall become a member of the Council if a member from the alternate's district is unavailable or unable to serve during a

meeting or other official business of the Tribe. The Council shall refuse to seat members elected to the Council only pursuant to the provisions of this Act.

22-5 SPECIAL AND RUN OFF ELECTIONS

22-5.01 In case of a tie for the highest number of votes in a district there will be a run off election, if necessary, between the individuals receiving an equal number of votes.

22-5.02 The Districts will set the dates for Special and Run Off Elections. The provisions of this ordinance shall govern all Special and Run Off Elections.

22-6 ELECTION PROCESS

22-6.01 Except for Special and Run Off Elections, election day shall be the second Friday in September during election years. Election years are every fourth year starting with the year 1997.

22-6.02 Voting shall be done by secret ballot, except—telephone votes are permitted provided calls are received at the location selected by the District for its election and the caller is identified by at least two individuals and the phone vote is certified and put in writing.

22-6.03 Repealed July 2005

22-6.04 Each District will engage an independent third party to be present on the day of any election to supervise the election process. Such third party will certify in writing the results of the election to the Tribal Secretary by the official election day.

22-6.05 Districts shall meet at a location selected by the Districts no more than 2 (two) weeks prior to the official election day. Each District shall select its Council Members and Alternates at such meeting.

22-6.06 At the time of an election, all eligible voters must certify that they have not voted in another Tribe's and/or Band's election within the

previous five years. Eligible voters who refuse to sign the certification will not be allowed to vote.

22-7 SEATING OF COUNCIL MEMBERS

22-7.01 A person elected to the Council shall not be deemed a member of the Council until he or she is seated.

22-7.02 Prior to being seated on the Council, members elected from each district must certify that they are not aware of any physical, mental or emotional health problems, including drug and alcohol abuse or addictions, that will prevent them from performing their duties or will substantially impair them in such performance.

22-7.03 A Council member who fails to disclose physical, mental or emotional problems as required under section 22-7.02 and who subsequently fails to perform the duties of a Council member as a result of such health problems, shall be deemed to have committed fraud and shall be subject to disciplinary action or removal from the Council as determined by a vote of not less than five members of the Council voting in favor. Removal from the Council shall be for a period of four (4) years.

22-7.04 The Council may, under extraordinary circumstances, refuse to seat a person elected to the Council from a district, regardless of the certification required by section 22-7.02, if the Council determines by a vote of not less than five members voting in favor of refusing to seat that person, that the person so elected is physically, mentally or emotionally unable to perform the duties of a Council member competently, or has violated Chapter Four, Sections 4-4.17 or 4-4.18, provided such refusal for any reason stated herein is based on clear and convincing evidence.

22-7.05 "Clear and Convincing Evidence" shall be evidence such as the person's own admission, the person's previous resignation from the Council, information from trained individuals qualified to express professional opinions on matters related to physical, mental or emotional health or the experience and observations of at least three members of the Council.

22-8 COUNCIL OFFICER

22-8.01 The Council shall elect from its membership a Chairperson, Vice-Chair, Secretary and Treasurer. The Chairperson shall not have a

vote on Council business except in the case of a tie and as set forth in section 22-10.03. The Alternate from the Chairperson's district shall serve the term vacated by the Chairperson.

22-9 FILLING VACANCIES

22-9.01 A vacancy on the Council shall be filled by the alternate from the district in which the vacancy occurs.

22-9.02 If no alternate is available the Council shall call a Special Election for the district within sixty (60) days at which time the district shall elect a replacement, who shall be seated pursuant to the same rules and procedures as any other elected member of the Council. Special Elections shall be held in a manner designated by the District.

22-9.03 If a district fails to elect a suitable member to fill the vacant seat at the Special Election called by the Council for that purpose, that seat shall remain vacant at the discretion of the Council. The Council may, if it so chooses, leave the seat vacant or appoint a member from the district with the vacant seat to serve out the remaining term of that seat.

22-9.04 If a district does not have any representation on the Council due to vacant seats, which have not been filled by the district at a Special Election called for that purpose, the Council shall appoint at least one member from that district to serve out the remaining term of the vacant seats to ensure that the district has some representation. If no member from that district is willing and/or qualified to fill the seat, the Council shall appoint a member at large to serve out the term of the vacant seat, who shall represent the district as he or she deems proper.

22-10 PROCEDURES CHAIRPERSON AUTHORIZED TO VOTE

22-10.01 All matters related to seating and disciplinary actions of the Council shall be conducted in compliance with the Indian Civil Rights Act.

22-10.02 Upon a petition signed by 75% of the eligible voters of a district, the Council shall reconsider any action taken under this ordinance to refuse to seat or to discipline an elected or seated member of the Council from that district, provided that nothing herein shall require the

Council to rescind or modify any previous action and any rescission or modification will not be effective unless approved by not less than five members of the Council voting in favor of rescission or modification.

22-10.03 The Chairperson of the Council shall be authorized to vote in all matters related to the seating or disciplining of Council members.

22-11 NO WAIVER OF SOVEREIGN IMMUNITY

22-11.01 Nothing in this ordinance shall be construed as a waiver of the sovereign immunity of the Kootenai Tribe of Idaho or the Council. There shall be no right of appeal to any forum from any action taken or discipline imposed by the Council pursuant to this ordinance.

CHAPTER 23
CLOSE SOCIAL AND ECONOMIC TIES

23-1 PURPOSE AND AUTHORITY

23-1.01 The purpose of this ordinance is to establish the criteria by which members of other federally-recognized Indian tribes shall be declared to have "close social and economic ties" with the Kootenai Tribe of Idaho for purposes of eligibility for Indian Health Contract Services and other purposes.

(4) Demonstrated need; and

(5) Support for the broad goals and objectives of the Tribe.

23-2 TRIBAL EMPLOYEES

23-2.01 Those persons who are members of federally-recognized Indian tribes and who are full-time employees of the Kootenai Tribe of Idaho are declared to have established close social and economic ties with the Tribe.

23-3 PERSONS OTHER THAN TRIBAL EMPLOYEES

23-3.01 Those persons who are members of federally-recognized Indian tribes, who are not full-time tribal employees, have been residents of Boundary County for the previous six consecutive months and who believe that they have a relationship with the Tribe that constitutes "close social and economic ties" shall make a request to the Tribal Council that they be declared to have close social and economic ties with the Tribe. The request shall be in writing and shall state supporting reasons.

23-3.02 The Tribal Council shall decide such request on a case by case basis. The Council shall have discretion to approve or deny any request upon application of its rules and standards. The Tribal Council may consider any factors it deems relevant to its determination. Such factors include but are not limited to:

(1) Marriage or previous marriage to a member of the Tribe;

(2) Children who are members of the Tribe;

(3) Involvement (not interference) in activities of the Tribe, especially those of a social and cultural nature;

CHAPTER 24
ZONING

(Reserved)

CHAPTER 25 REPOSSESSION OF PROPERTY

25-1 PERSONAL PROPERTY OF INDIANS

25-1.01 The Kootenai Tribe of Idaho possesses exclusive jurisdiction over the repossession of any personal property located within the exterior boundaries of the Kootenai Indian Reservation held by or belonging to a Kootenai Tribal member or any other Indian, who resides on the Reservation. Such Indian's personal property shall not be taken from such lands except in compliance with the procedures set forth in Chapter 6 or, if appropriate, Chapter 7, of the Law and Order Code of the Tribe.

25-2 REPOSSESSION OF INDIAN PERSONAL PROPERTY

25-2.01 Prior to the initiation of any proceeding for repossession of the personal property subject to this ordinance, a creditor shall contact an Indian debtor orally or in writing concerning a dispute with such debtor that may lead to repossession of personal property located within the exterior boundaries of the Kootenai Reservation. Such Indian debtor may give written consent to the creditor, permitting a repossession of the personal property without formal court proceedings. A creditor may enter the Reservation for the purpose of repossessing personal property with the debtors written consent only when accompanied by the debtor or a Tribal Law Enforcement Officer.

25-3 COURT ORDER IN ABSENCE OF WRITTEN CONSENT BY INDIAN DEBTOR

25-3.01 If an Indian debtor refuses to sign a written consent allowing repossession, the property may be removed by the creditor from the Reservation only by order of a Judge of the Kootenai Tribal court entered in accordance with the procedures set forth under tribal law.

25-4 PROCEDURE TO OBTAIN COURT ORDER FOR REPOSSESSION

A creditor may seek an order of repossession against an Indian debtor in accordance with the following procedures:

25-4.01 Complaint by Creditor. The creditor shall file a complaint with the Clerk of the Kootenai Tribal Court in compliance with Chapter 6, accompanied by a verified copy of the contract or other document entitling the creditor to repossess the personal property of the Indian debtor. The petition shall be served upon the Indian debtor in the manner prescribed by Code.

25-4.02 Answer by Debtor. The Indian Debtor shall file with the Clerk of the Court a written answer or response to the creditor's petition and shall file an answer as required by Section 6-3.01 of the Code or be subject to a default judgment as set forth in Section 6-10.01.

25-4.03 Hearing on Complaint. After an answer is filed, or upon the failure of the debtor to answer, a hearing date shall be set by the Court and a hearing held on the petition for repossession. Both the creditor and debtor may present evidence and witnesses relevant to the contract or dispute which forms a basis for the repossession request. The Court may for good cause shown advance the time lines set forth in the Code, provided the following exists:

(1) The petition contains a verified allegation showing reasonable cause to believe that the personal property involved may be lost, damaged, or removed from the Reservation prior to the regularly scheduled hearing; and

(2) An accelerated hearing can be held, without substantially prejudicing the Indian debtor, to present any good faith defense to the petition for repossession.

(3) Content of Court Order. If after a hearing the court determines that repossession is justified, the Court shall issue an order authorizing the creditor to repossess the personal property involved in the proceeding. The Court shall direct a Tribal Law Enforcement Officer to accompany the creditor to repossess the property. If the Indian debtor has failed to appear at the hearing despite reasonable notice, the Court shall enter the repossession order as a default judgment, provided the debtor may petition pursuant to Section 6-10 for a new trial.

25-5 REPOSSESSION BASED ON A
FOREIGN JUDGMENT

25-5.01 If a creditor is attempting to repossess an item of personal property pursuant to a judgment from any other jurisdiction, he or she must comply with the provisions of Chapter 7 of the Kootenai Law and Order Code, provided a proceeding under that Chapter may not be initiated until an effort of the creditor is made to obtain a voluntary relinquishment of the property pursuant to Section 25-2 of this Ordinance.

25-6 REMEDIES FOR VIOLATION OF THESE
RULES

25-6.01 (1) Exclusion from Reservation. Any non-member of the Kootenai Tribe of Idaho, except persons authorized by federal law to be present on the Kootenai Reservation, may be excluded from the Reservation in accordance with procedures set forth in Chapter 12 of the Law and Order Code of the Kootenai Tribe of Idaho, if such non-member is found to be in deliberate or willful violation of this ordinance.

(2) Denial of Business Privileges. Any creditor and any agents or employees of any creditor who are found by the Tribal Court to be in deliberate and willful violation of this ordinance may be denied the privilege of doing business within the Kootenai Reservation. The Court shall afford any creditor fair notice and opportunity for hearing prior to denial of any business privileges on the Reservation.

(3) Civil Damage Liability. Any person who violates this ordinance shall be deemed to have breached the peace of the Kootenai Indian Reservation and shall be civilly liable to the Tribe or any debtor for actual damages caused by the deliberate or negligent failure to comply with the provisions of this Ordinance.

CHAPTER 26 HOUSING

26-1 APPLICABILITY

26-1.01 This chapter shall be known as the Kootenai Tribe of Idaho Housing Ordinance. It shall apply to all written arrangements in selling, buying, renting, leasing, occupying, or using housing for human occupation. It shall also apply to all mortgages, leasehold mortgages and agreements to secure an interest in a building, except the Kootenai River Inn.

26-2 DEFINITIONS

26-2.01 In addition to those definitions included in Chapter 1, Section 1-12 of the Law and Order Code, the following words will have the meanings given them in this Chapter unless the context plainly requires otherwise:

(1) "Action, suit or lawsuit, claim, complaint or defense" shall include any dispute between persons or entities which relates to the sale, rental, use or occupancy of any housing, dwelling or accommodation for human occupancy, including claims for the payment of monies for such housing, dwellings, or accommodations, damages to such units, condition of such units or the relationships between owners and occupiers of such units, including the right to occupy them.

(2) "Adult person" is any person eighteen (18) years of age or older.

(3) "Borrower/Mortgagor" is the Tribe, Tribal entity, or any individual Indian or any heir, successor, executor, administrator, or assign of the Tribe or such Indian or non-Indian who has executed a Mortgage as defined in this Code or a Leasehold Mortgage as defined in this Code.

(4) "Building" is a structure, and any appurtenances or additions thereto, designed for habitation, shelter, storage and the like.

(5) "Dwelling unit" is a house or building or portion thereof which is rented or leased as a home or residence by any person, not including public transient accommodation, such as hotel rooms.

(6) "Guest" is any person, other than the tenant, in or around a dwelling unit with the permission and consent of the tenant.

(7) "Housing Authority" is the Kootenai Tribal Council.

(8) "Landlord" can be the Tribe, Tribal entity, a person, entity or federal government agency which is the owner, lessor, or sublessor of a dwelling unit intended for the use of tenants.

(9) "Lease" is an agreement, written or oral, as well as valid rules and regulations, regarding the terms and conditions of the use and occupancy of real property, dwelling unit, building, or premises, including a lease-to-purchase agreement or rental agreement.

(10) "Leasehold Mortgage" is the mortgage or lease of property given to secure a loan, and may be created under the auspices of any federal agency homebuyer program, the Mutual Help Homeownership administered by the Housing Authority, or any other agreement entered between a Borrower/Mortgagor and a Lender/Mortgagee.

(11) "Mortgage Foreclosure Proceeding" is a proceeding:

(a) To foreclose the interest of the Borrower/ Mortgagor, and each person or entity claiming through the Borrower/ Mortgagor, in real property, a building, or in the case of a Leasehold Mortgage, a Lease for which a Mortgage has been given under the home purchase program of any federal agency; and

(b) To assign where appropriate the Borrower/Mortgagor interest to a designated assignee.

(12) "Lender/Mortgagee" is any private lending institution established to primarily loan funds and not to invest in or purchase properties, the Tribe, an Indian Housing Authority, or a U.S. government agency which loans money, guarantees or insures loans to a Borrower for construction, acquisition, or rehabilitation of a home. It is also any lender

designated assignee or successor of such Lender/Mortgagee.

(13) "Lender Designated Assignee" Any lender as defined in this Code may assign or transfer its interest in a Mortgage or Lease and/or Leasehold Mortgage to a Designated Assignee. If the Mortgage or Lease and/or Leasehold Mortgage falls under a federal agency homebuyer program or federal agency loan guarantee program, the Lender must seek written approval from the Tribe of a proposed Designated Assignee any time prior to such assignment, transfer or assumption, except where the U.S. government and federal agencies guaranteeing or insuring the Mortgage or Leasehold Mortgage acts as a Lender Designated Assignee.

(14) "Lessor" is the legal, beneficial, or equitable owner of property under a Lease, and may include the heir, successor, executor, administrator or assign of the lessor.

(15) "Lessee" is a tenant of a dwelling unit, user and/or occupier of real property, or the homebuyer under any federal mortgage program including the Mutual Help program. The lessee may, for purposes of federal agency home mortgage programs, be the Tribe or Indian Housing Authority.

(16) "Mortgage" is a lien as is commonly given to secure advances on, or the unpaid purchase price of a building or land, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or other term, as well as the credit instrument, or note, secured thereby.

(17) "Nuisance" is the maintenance or allowance on real property of a condition which one has the ability to control and which unreasonably threatens the health or safety of the public or neighboring land users or unreasonably and substantially interferes with the ability of neighboring property users to enjoy the reasonable use and occupancy of their property.

(18) "Owner" is any person or entity jointly or individually having legal title to all or part of land or a dwelling, including the legal right to own, manage, use or control a dwelling unit under a mortgage, long-term lease, or any other security arrangement.

(19) "Premises" is a dwelling unit and the structure of which it is a part, and all facilities and areas connected with it, including grounds, common areas, and facilities intended for the use of tenants or the use of which is promised for tenants.

(20) "Rent" is all periodic payments to be made to a landlord or lessor under a lease.

(21) "Shall", for the purposes of this Code, will be defined as mandatory or must.

(22) "Subordinate Lienholder" is the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a Mortgage under this Code, except the Tribe shall not be considered a subordinate lienholder with respect to any claim regarding a tribal tax on real property.

(23) "Tenant" is the lessee, sublessee, or person entitled under a lease or Mutual Help Occupancy Agreement to occupy a dwelling unit to the exclusion of others.

26-3 GROUND FOR EVICTION

26-3.01 A landlord may initiate proceedings to evict a tenant under the following circumstances:

(1) Nonpayment of rent under an agreement for the lease purchase or occupation of a dwelling unit when such payments are not made after ten (10) calendar days of the agreement date of payment, or ten (10) calendar days following the first day of the month in a month-to-month tenancy.

(2) Any arrearage in rent, costs, or damages which have been due and owing for thirty (30) calendar days or more. The receipt by a landlord of partial payments under an agreement shall not excuse the payment of any balance due upon demand.

(3) Nuisance, property damage, or destruction, injuries to the property, person or peace of other tenants, injuries or damage to common areas and property, or drug-related criminal activity.

(4) Serious or repeated violations of the rental agreement, any reasonable rules or regulations

adopted in accordance with this Code, or any applicable building or housing codes.

(5) Occupation of any premises without permission or agreement, following any demand by a person in authority over the premises to leave.

(6) Under other terms in the rental agreement which do not conflict with the provisions of this Code.

(7) Violation of any drug-free policy required by any federal or Tribal laws or regulations or insurance agreement, or any other activities that may render their insurance null and void.

26-4 NOTICE TO QUIT REQUIREMENTS

26-4.01 A Notice to Quit is required when a landlord desires to obtain possession of a dwelling unit, and when there exists one or more legally cognizable reasons to evict the tenant or tenants occupying the unit as set forth in 26-3. The landlord shall give notice to the adult tenants to quit possession of such dwelling unit according to the provisions of this Chapter.

(1) The purpose of the Notice to Quit is to provide advance notice to the tenant of a specific problem that needs to be addressed. It is also intended to induce the tenant to enter into discussions with the landlord in order to resolve the problem.

(2) The Notice to Quit shall be addressed to the adult tenants of the dwelling unit and shall state the legally cognizable reasons for termination of the tenancy and the date by which the tenant is required to quit possession of the dwelling unit.

(3) The Notice shall be in writing and contain the following:

- (a) The name of the tenant;
- (b) The address or description of the dwelling unit;
- (c) The date the tenant must quit possession or occupancy;
- (d) The reasons for the Notice to Quit
- (e) The signature, name and address of the landlord; and

(f) The date and place of the signing.

(4) The Notice must be delivered within the following periods of time:

- (a) No less than seven (7) calendar days prior to the date to quit specified in the notice for any failure to pay rent or other payments required by the agreement.
- (b) No less than three (3) calendar days prior to the date to quit specified in the notice of nuisance, serious injury to property, or injury to persons. In situations in which there is an emergency, such as a fire or condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health or safety, the notice may be made in a period of time which is reasonable, given the situation.
- (c) No less than fourteen (14) calendar days in all other situations.

26-5 SERVING THE NOTICE TO QUIT

26-5.01 The Notice to Quit must be served in the manner provided for service of summons and complaint in Chapter 6, Section 6-4. If the Notice cannot be given by personal service or mail, the notice may be delivered by certified mail, return receipt requested, at the last known address of the tenant or by securely taping a copy of the Notice to the main entry door of the premises in such a manner that it is not likely to blow away, and by posting a copy of the Notice in some public place near the premises, including a Tribal office, public store, or other commonly-frequented place and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises. Proof of service must be established in accordance with Chapter 6, Section 6-6 of the Law and Order Code.

26-6 PRE-EVICTION OPTIONS

26-6.01 After a Notice to Quit is served upon a tenant, the landlord and tenant may engage in discussions to avoid a proceeding to evict and to settle the issues between the parties. The agreement to enter into discussions will not affect the rights of the parties unless the parties reach an agreement to waive any of their rights.

(1) Where the parties mutually agree in good faith to proceed with such discussions, and Eviction procedures have been initiated, the Court shall upon request by both parties stay such proceedings until it is notified by one or both parties that a hearing is required or that a settlement has been reached.

26-7 ACTIONS FOR EVICTION

26-7.01 If, after the date set forth in the Notice to Quit for the tenant to quit possession of the dwelling unit, the tenant has not quit possession, the landlord may file a complaint in the manner provided by Chapter 6 of the Law and Order Code for eviction and such other relief as the Court may deem just and proper.

26-8 EVICTION PROCEDURES

26-8.01 Jurisdiction. The provisions of this section shall apply to all persons and property subject to the governing authority of the Kootenai Tribe as established by the Tribal Constitution, Tribal Code, or applicable federal law.

26-8.02 Unlawful Detainer. A Lessee, Sublessee, or other occupant of a Leasehold Estate subject to a Leasehold Mortgage shall be guilty of unlawful detainer if such person shall continue in occupancy of such Leasehold Estate without the requirement of any notice by the Lessor, after such person's Leasehold Estate has been foreclosed in a Leasehold Mortgage foreclosure proceeding in the Tribal Court.

26-8.03 Complaint and Summons. The lender or Federal Agency (which made, guaranteed or insured the mortgage loan) as appropriate, shall commence an action for unlawful detainer by filing with the Tribal Court, in writing, the following documents:

(1) A complaint, signed by the lender or Federal Agency, or an agent or attorney on their behalf:

(a) Citing facts alleging jurisdiction of the Tribal Court;

(b) Naming as defendants the mortgagors and any other record owner (including Sublessees and subordinate lien holders), of which the complainant has record notice (except the Tribe with respect to a claim for a Tribal tax on the Leasehold Estate subject to the Leasehold Mortgage);

(c) Describing the Leasehold Estate subject to the Leasehold Mortgage;

(d) Stating the facts concerning (1) the execution of the lease and the Leasehold Mortgage; (2) the recording of the Leasehold Mortgage; and (3) the facts upon which he or she seeks to recover;

(e) Stating any claim for damages or compensation due from the persons to be evicted; and

(f) Otherwise satisfying the requirements of the Tribal Court.

(2) A copy of the summons, issued in accordance with established Tribal Court rules and procedures, requiring the defendants to file a response to the complaint by the date specified in the summons. The deadline specified in the summons for filing a response shall be no less than 6 nor more than 30 days from the date of service of the summons and complaint. The summons shall notify the defendants that judgment will be taken against them in accordance with the terms of the complaint unless they file a response with the court by the date specified in the summons.

26-8.04 Service of Summons and Complaint. A copy of the summons and complaint shall be served upon the defendants in the manner provided by the Tribal Court rules for service of process in civil matters in Chapter 6.

26-8.05 Power of the Tribal Court. The Tribal Court shall enter an Order of Repossession if:

(1) Notice of suit is given by service of summons and complaint in accordance with applicable procedures provided herein; and

(2) The Tribal Court finds during pre-trial proceedings or at trial that the Lessee, Sublessee, or other occupant under color of law of the Leasehold Estate subject to the Leasehold Mortgage is guilty of an act of unlawful detainer.

26-8.06 Order of Repossession. Upon issuance, the Tribal Court shall have the authority to enter a judgment against the defendants for the following, as appropriate:

(1) back rent, unpaid utilities, and any charges due the Tribe, Tribal Housing Authority, other public Housing Authority, or Sublessor under any sublease or other written agreement (except for a Leasehold Mortgage);

(2) any and all amounts secured by the Leasehold Mortgage that are due the lender (or Federal Agency); and

(3) damages to the property caused by the defendants, other than ordinary wear and tear. The Tribal Court shall have the authority to award to the prevailing party its costs and reasonable attorneys fees in bringing suit.

26-8.07 Enforcement. Upon issuance of an Order of Repossession by the Tribal Court, Tribal law enforcement officers shall help plaintiffs enforce the same by evicting the defendants and their property from the unlawfully occupied Leasehold Estate. In all cases involving the lender or Federal Agency, the Order of Repossession shall be enforced no later than 45 days after a pre-trial proceeding or trial in which the Tribal Court finds against defendants, subject to Section 26-8.08, and provided, that no party exercised the right to cure a default or right of first refusal as described in Sections 26-15 and 26-16 of this ordinance.

26-8.08 Continuances in Cases Involving the Lender or Federal Agency (which originally made, insured or guaranteed) the mortgage loan. Except by agreement of all parties, there shall be no continuances in cases involving the lender or Federal Agency that will interfere with the requirement that the Order of Repossession be enforced not later than 45 days after a pre-trial proceeding or trial in which the Tribal Court finds

against defendants, subject to the sound discretion of the Court.

26-9 NO SELF-HELP EVICTION

26-9.01 Except by mutual consent of the parties, no landlord may compel a tenant to vacate any premises in a forceful fashion or way that causes a breach of the peace without giving a Notice to Quit and obtaining a Court order as provided in this Code.

26-10 PRIORITY

26-10.01 All mortgages recorded in accordance with the recording procedures set forth in this Chapter, including Leasehold Mortgages, and including loans guaranteed or held by a governmental agency, shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a Tribal leasehold tax assessed after the recording of the mortgage. In those cases where the government direct, guaranteed or insured mortgage is created as a second mortgage, the loan shall assume that position.

26-11 RECORDING OF MORTGAGE LOAN DOCUMENTS

26-11.01 All mortgages will be recorded in the Boundary County Recording Clerk's office or such other recording location as designated by the Tribal Council.

26-11.02 Tribal Recording Office. The Tribal Recording Clerk shall maintain in the Tribal Realty Program a system for the recording of mortgage loans and such other documents as the Tribe may designate by laws or resolution.

26-11.03 The Tribal Recording Clerk shall endorse upon any mortgage loan or other document received for recording:

(1) The date and time of receipt of the mortgage or other document;

(2) The filing number, to be assigned by the Tribal Recording Clerk, which shall be a unique number for each mortgage or other document received and;

(3) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

26-11.04 Upon completion of the above-cited endorsements, the Tribal Recording Clerk shall make a true and correct copy of the mortgage or other document and shall certify the copy as follows:

Kootenai Tribe of Idaho)
)ss.
 Kootenai Indian Reservation)

I certify that this is a true and correct copy of a document received for recording this date.

Given under my hand and seal this _____ day of _____.

(SEAL)

 (Signature)

 (Date)

2611.05 The Tribal Recording Clerk shall maintain the copy in the records of the recording system and shall return the original of the mortgage loan or other document to the person or entity that presented the same for recording.

26-11.06 The Tribal Recording Clerk shall also maintain a log of each mortgage loan or other document recorded in which there shall be entered:

(1) The name(s) of the Borrower/Mortgagor of each mortgage loan, identified as such;

(2) The name(s) of the Lender/Mortgagee of each mortgage loan, identified as such;

(3) The name(s) of the grantor(s), grantee(s) or other designation of each party named in any other documents filed or recorded;

(4) The date and time of the receipt;

(5) The filing number assigned by the Tribal Recording Clerk; and

(6) The name of the Tribal Recording Clerk or designee receiving the mortgage or document.

26-11.07 The certified copies of the mortgage loan and other documents and the log maintained by the Tribal Recording Clerk shall be made available for public inspection and copying. Rules for copying shall be established and disseminated by the Tribal Recording Clerk.

26-11.08 All mortgages will be recorded with the BIA in addition to any Tribal recording provisions.

26-12 FORECLOSURE PROCEDURES

26-12.01 A Borrower/Mortgagor shall be considered to be in default when he or she is thirty (30) days past due on his or her mortgage payment(s) or is in violation of any covenant under the mortgage for more than 30 days to the Lender/Mortgagee (i.e. the 31st day from the payment due date).

26-12.02 When a Borrower/Mortgagor is thirty days past due on his or her mortgage and before any foreclosure action or activity is initiated, the Lender/Mortgagee shall complete the following:

(1) Make a reasonable effort to arrange a face-to-face interview with the Borrower/Mortgagor. This shall include at least one trip to meet with the Borrower/Mortgagor at the mortgaged property.

(2) Lender/Mortgagee shall document that it has made at least one phone call to the Borrower/Mortgagor (or the nearest phone as designated by the Borrower/Mortgagor, able to receive and relay messages to the Borrower/Mortgagor) for the purpose of trying to arrange a face-to-face interview.

26-12.03 Lender/Mortgagee may appoint an agent to perform the services of arranging and conducting the face-to-face interview specified in this action.

26-12.04 When the Borrower/Mortgagor is past due on three installment payments and at least ten (10) days before initiating a foreclosure action in Tribal Court, the Lender shall advise the Borrower/Mortgagor in writing by mail or by posting

prominently on the unit, with a copy provided to the Tribe, as follows:

(1) Advise the Borrower/Mortgagor that information regarding the loan and default/delinquency will be given to credit bureaus.

(2) Advise the Borrower/Mortgagor of homeownership counseling opportunities/programs available through the Lender or otherwise.

(3) Advise the Borrower/Mortgagor of other available assistance regarding the mortgage/default.

(4) In addition to the preceding notification requirements, the Lender/Mortgagee shall complete the following additional notice requirements:

(a) notify the Borrower/Mortgagor that if the Leasehold Mortgage remains past due on three installment payments, the Lender/Mortgagee may ask the applicable governmental agency to accept assignment of the Leasehold Mortgage if this is an option of the governmental program;

(b) notify the Borrower/Mortgagor of the qualifications for forbearance relief from the Lender/Mortgagee, if any, and that forbearance relief may be available from the government; and

(c) provide the Borrower/Mortgagor with names and addresses of government officials to whom further communications may be addressed, if any.

26-12.05 If a Borrower/Mortgagor is past due on three or more installment payments and the Lender/Mortgagee has complied with the procedures set forth in the first part of this Section, the Lender/Mortgagee may commence a foreclosure proceeding in the Tribal Court by filing a verified complaint as set forth below.

26-13 FORECLOSURE COMPLAINT AND SUMMONS

26-13.01 The verified complaint in a mortgage foreclosure proceeding shall contain the following:

(1) The name of the Borrower/Mortgagor and each person or entity claiming through the Borrower/Mortgagor subsequent to the recording of the mortgage, including each Subordinate Lienholder (except the Tribe with respect to a claim for a Tribal leasehold), as a defendant;

(2) A description of the property subject to the Mortgage;

(3) A concise statement of the facts concerning the execution of the Mortgage or in the case of a Leasehold Mortgage the lease; the facts concerning the recording of the Mortgage or the Leasehold Mortgage; the facts concerning the alleged default(s) of the Borrower/Mortgagor; and such other facts as may be necessary to constitute a cause of action;

(4) True and correct copies of each promissory note, if a Leasehold Mortgage then a copy of the Lease, the Mortgage, or assignment thereof relating to the property (appended as exhibits); and

(5) Any applicable allegations concerning relevant requirements and conditions prescribed in (1) federal statutes and regulations; (2) Tribal Codes, Ordinances and regulations; and/or (3) provisions of the Lease or Leasehold Mortgage, or security instrument.

26-13.02 The complaint shall be verified by the Tribal Court Clerk along with a summons specifying a date and time of appearance for the Defendant(s).

26-14 SERVICE OF PROCESS AND PROCEDURES

26-14.01 Service of process shall be performed according to the procedures set forth in Chapter 6 of the Law and Order Code.

26-15 CURE OF DEFAULT BY SUBORDINATE LIENHOLDER

26-15.01 Prior to the entry of a judgment of foreclosure, any Borrower/Mortgagor or a Subordinate Lienholder may cure the default(s) under the Mortgage by making a full payment of the delinquency to the Lender/Mortgagee and all reasonable legal and Court costs incurred in foreclosing on the property. Any Subordinate Lienholder who has cured a default shall thereafter

have included in its lien the amount of all payments made by such Subordinate Lienholder to cure the default(s), plus interest on such amounts at the rate stated in the note for the mortgage. There shall be no right of redemption in any Leasehold Mortgage Foreclosure proceeding.

26-16 JUDGMENT AND REMEDY

26-16.01 This matter shall be heard and decided by the Tribal Court in a prompt and reasonable time period not to exceed sixty (60) days from the date of service of the Complaint on the Borrower/Mortgagor. If the alleged default has not been cured at the time of trial and the Tribal Court finds for the Lender/Mortgagee, the Tribal Court shall enter judgment:

(1) Foreclosing the interest of the Borrower/Mortgagor and each other defendant, including Subordinate Lienholder, in the Mortgage, and

(2) Assigning the Mortgage to the Lender/Mortgagee or the Lender's Designated Assignee; in the case of a Leasehold Mortgage, the Lease will be assigned to the Lender/Mortgagee or the Lender's Designated Assignee, subject to the following provisions:

- (a) The Lender shall give the Tribe the right of first refusal on any acceptable offer to purchase the Lease or Leasehold Mortgage which is subsequently obtained by the Lender or Lender's Designated Assignee.
- (b) The Lender or Lender's Designated Assignee may only transfer, sell or assign the Lease and/or Leasehold Mortgage to a Tribal member, the Tribe, or the Housing Authority.
- (c) Any other transfer, sale or assignment of the Lease or Leasehold Mortgage shall only be made to a Tribal member, the Tribe, or the Housing Authority during the remaining period of the leasehold.

26-17a NO MERGER OF ESTATES

26-17a.01 There shall be no merger of estates by reason of the execution of a Lease or a Leasehold Mortgage or the assignment or assumption of the same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the Leasehold Mortgage.

26-18 CERTIFIED MAILING TO TRIBE AND LESSOR

26-18.01 Any foreclosure proceedings on a Lease or Leasehold Mortgage where the Tribe or the Lessor is not named as a defendant, a copy of the summons and complaint shall be mailed to the Tribe and to the Lessor by certified mail, return receipt requested, within five (5) days after the issuance of the summons. If the location of the Lessor cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the Lessor in care of the superintendent of the applicable agency of the Bureau of Indian Affairs.

26-19 INTERVENTION

26-19.01 The Tribe or any Lessor may petition the Tribal Court to intervene in any Lease or Leasehold Mortgage foreclosure proceeding under this Code. Neither the filing of a petition for intervention by the Tribe, nor the granting of such a petition by the Tribal Court shall operate as a waiver of the sovereign immunity of the Tribe, except as may be expressly authorized by the Tribe.

26-20 APPEALS

26-20.01 Appeals under this Chapter shall be handled in accordance with the general tribal appellate provisions.

26-21 EFFECTIVE DATE

26-21.01 This Chapter shall take effect on September 6, 2000.

26-22 RETROACTIVE EFFECT

26-22.01 This Chapter shall apply to all rental agreements subject to the provisions of the Code, no matter when entered.

CHAPTER 26A
RESIDENTIAL LEASE APPROVAL ACT

26A-1 AUTHORITY

This Residential Lease Approval Act ("Act") is adopted pursuant to the Act to Implement the Federal Helping Expedite and Advance Responsible Tribal Home Ownership with Regard to Residential Leases enacted by the Kootenai Tribal Council on April 25, 2016 and the authority vested in the Tribal Council of the Kootenai Tribe of Idaho under Article IV, Section 1(d) of the Constitution of the Kootenai Tribe of Idaho.

26A-2 PURPOSE & DEFINITIONS

26A-2.01 The purpose of this Act is to streamline approval of residential leases of Tribal housing sites. This Act applies only to those Tribal housing sites located on Tribal Land held in Trust or Restricted Status and does not apply to housing sites located on unrestricted fee or individually owned land.

26A-2.02 This Act shall be liberally interpreted and construed to implement the Helping Expedite and Advance Responsible Tribal Home Ownership Act of 2012 ("HEARTH Act"), amended 25 U.S.C. 415, by establishing a process by which a Lease Agreement with the Tribe will not require the approval of the Secretary of the Interior ("Secretary") if the Lease Agreement is executed under this Act. Nothing in this Act is intended to expand the authority or responsibility of the Secretary beyond that provided under applicable federal statutes or regulations.

26A-2.03 Definitions. Definitions from Chapter 26A will apply to this Act unless otherwise noted in the text.

(1) "Tribal Land" shall mean any tract, or interest therein, in which the surface estate is owned by the Tribe in trust or restricted status, and includes such lands reserved for Bureau of Indian Affairs (BIA) administrative purposes. The term also includes the surface estate of lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

(2) "Trust" or "Restricted Land" shall mean any tract, or interest therein, held in trust or restricted status.

(3) "Trust" or "Restricted Status" shall mean

(a) That the United States holds title to the tract or interest in trust for the benefit of the Tribe or individual Indians; or

(b) That the Tribe or individual Indians hold title to the tract or interest, but can alienate or encumber it only with the approval of the United States because of limitations in the conveyance instrument under Federal law or limitations in Federal law.

26A-3 GOVERNING LAW

The laws of the Kootenai Tribe and applicable laws and regulations of the United States shall govern all leases authorized by this Act.

26A-4 AMENDMENT

This Act may be amended by majority vote of the Tribal Council, provided that no major substantive amendment hereto shall be effective unless approved by the Secretary in accordance with applicable federal laws and regulations.

26A-5 EFFECTIVE DATE

This Act shall become effective on the date of enactment by the Tribal Council and approval by the Secretary.

26A-6 SEVERABILITY

If any provision or provisions of this Act shall in the future be declared invalid by the Tribal Court or another court of competent jurisdiction, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

26A-7 APPROVAL OF LEASES

26A-7.01 All leases shall be subject to the approval of the Tribal Council.

26A-7.02 All leases shall be signed by the Chairperson or the Vice-Chairperson in the absence of the Chairperson.

26A-7.03 After the Secretary approves this Act, all leases approved and executed under this Act shall be effective without federal approval under 25 U.S.C. 415, unless the Secretary rescinds approval of this Act and reassumes responsibility for such approval.

26A-7.04 Any lease approved and executed under this Act shall refer to this Act as authority for its execution on behalf of the Tribe.

26A-8 LEASE REQUIREMENTS

All Leases shall be in writing, and at a minimum, shall:

26A-8.01 Describe the tract or parcel that is being leased, or on which the residential unit being leased is located with reference to a public or private survey plan, if available, in terms sufficient to determine the location;

26A-8.02 State the purpose of the Lease and authorized uses of the premises;

26A-8.03 Identify the parties to the Lease;

26A-8.04 State the effective date and term of the Lease, which shall not exceed twenty-five (25) years;

26A-8.05 If a Lease authorizes the Lessee to make permanent improvements during the term of the Lease, the Lease shall identify the general type and location of each improvement, and the responsibility for constructing, operating, maintaining, and managing the permanent improvements during the Lease term. The Lessee shall be required to provide reasonable notice to Lessor of the construction of any permanent improvements not described in the lease.

26A-8.06 Specify all rent and payment requirements, including payment due dates, payee, place of payment, and any interest;

26A-8.07 State the due diligence, performance bond, and insurance requirements that apply, if any;

26A-8.08 State the process for amendment, which shall be in writing, signed by both parties, and with the consent of any Mortgagee as defined in Chapter 26;

26A-8.09 State the governing law, which shall include the Tribe's laws and applicable federal statutes and regulations; and

26A-8.10 Include or attach all other provisions required under any applicable federal statutes or regulations, including without limitation, each of the required terms for leases set forth in 25 C.F.R. 162.313 such as, but not limited to:

(1) Use of Premises. It is herein agreed that during the lease term that there must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use of waste on Leased Premises.

(2) Violations of Lease. The Lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under 25 CFR § 162.014.

(3) Historic Preservation. If historic properties, archaeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the Lessee will contact the Tribe and the Bureau of Indian Affairs to determine how to proceed and appropriate disposition.

(4) Inspection of Premises. The Secretary, lender, applicable Federal Agency, and the Lessor and their authorized representatives shall have the rights, at any reasonable times during the term of this lease, and with reasonable notice, to enter upon the Leased Premises, or any part thereof, to inspect the same and all buildings and other improvements erected and placed thereon.

(5) Inspection of Records. The Lessor and the appropriate agencies may treat any failure by the Lessee to cooperate with a request to make appropriate records, reports, or information available for inspection and duplication as lease violation.

(6) Hold Harmless. The Lessee holds the Lessor and the United States harmless from any loss, liability, or damages resulting from the Lessee's use or occupation of the Leased Premises.

(7) Hazardous Materials. The Lessee indemnifies the Lessor and the United States against all liabilities or costs in relation to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or release or discharge or any hazardous material from the Leased Premises that occurs during the lease term, regardless of fault, with the exception that the Lessee is not required to indemnify the Lessor for liability or cost arising from the Lessor's negligence or willful misconduct.

(8) Improvements. All permanent improvements and responsibility for constructing, operating, maintaining, and managing permanent improvements under 25 CFR § 162.315 are of the Lessee during the term of this Lease including any renewal or extension thereof.

26A-9 LEASE APPLICATION AND APPROVAL PROCESS

26A-9.01 Individuals seeking residential leases at Housing Sites shall make application to the Tribal Council in person or in writing.

26A-9.02 The Tribal Council shall consider the application and approve or deny the application based on all relevant factors within sixty (60) days. Tribal Council may table the application pending additional information, if needed.

26A-10 TRUST RESPONSIBILITY OF UNITED STATES MAINTAINED

For any Lease requiring payments to be made to the Tribe, the Tribe shall provide the Secretary with such documentation of the lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States such that:

26A-10.01 The United States shall not be liable for losses sustained by any party to a lease executed; or

26A-10.02 Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the Tribe under Federal law (including regulations), the Secretary may, upon reasonable notice from the Tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any lease executed by the Tribe.

26A-11 TERMINATION OF LEASE

Leases executed under this Act may be terminated for non-compliance with applicable laws, ordinances, rules, regulations, and other legal requirements under 25 C.F.R. § 162.014 and the Kootenai Law and Order Code or any other provisions of the Lease.

26A-12 FORFEITURE OF LEASE

A Lessee may forfeit their lease by obtaining a Land Lease Cancellation Form from the Realty Department and submitting a signed, notarized original of such to the Realty Department. The Realty Department will forward the form rescinding the land lease to the Tribal Council for action. The property will then be offered in accordance with the Section 26A-9.

26A-13 LEASE EXTENSIONS

The Tribal Council will review requests for lease extensions on a case-by-case basis.

26A-14 ASSIGNMENT AND SUBLEASE

Assignments and subleases are prohibited, unless made pursuant to written consent of the Tribal Council and any federal agency providing mortgage assistance or guarantee as described in Chapter 26.

26A-15 RECORDING

26A-15.01 The Realty Department will provide the completed Lease and the Designation of a Beneficiary of Lease Form for signature by applicant. Lessee shall be required to pay lease rent as is indicated by the lease agreement prior to lease issuance. Following signing and payment of rent, the Realty Department will record and provide a certified copy to the Lessee. Original documents will be maintained by the Realty Department and provided to the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over the Tribe.

26A-15.02 In the case(s) where, under the lease terms, the Lessee is required to pay an amount equal to the property taxes, Lessee shall be required to pay a security deposit equal to the amount of the taxes for the previous year plus agree to pay any increase that may occur. Further, Lessee shall complete a waiver form authorizing future payments to be escrowed or automatically

deducted from payments owed to the individual by the Tribe.

26A-16 ENVIRONMENTAL REVIEW

The purpose of this Section is to establish an environmental review process that satisfies the requirements of 25 U.S.C. 415(h)(3)(B)(ii).

26A-16.01 The Tribal Council shall not approve a Lease under Section 26A-9 of this Act unless the Environmental Department has reviewed the Lease and such other information as may be necessary to identify and evaluate any substantial or potentially substantial change on the environment that could be construed as a significant effect on the environment, and has:

(1) Made a determination that the uses authorized by the Lease are included within the categorical exclusion stated in Section 26A-17 and provided that determination in writing to the Realty Department;

(2) Issued a final decision after following the procedure set forth in Section 26A-18; or

(3) Provided the Realty Department with notice that the Tribe has carried out a project or activity funded by a federal agency and that it has relied on the Environmental Review Process of the applicable federal agency rather than the procedures set forth in Section 26A-18.

26A-17 CATEGORICAL EXCLUSIONS

26A-17.01 The Tribal Council hereby finds that the following actions do not individually or cumulatively have a significant effect on the environment and, therefore, except as otherwise provided in subsection 26A-17.02, are categorically excluded from the procedures set forth in Section 26A-18:

(1) Approval of a Lease for residential use of an existing housing unit, including any associated improvements, access roads, and utilities;

(2) Approval of a Lease for five (5) acres or less of contiguous land for construction and residential use of a single structure of one (1) to four (4) dwelling units and any associated improvements, access roads, and utilities.

26A-17.02 Notwithstanding subsection 26A-17.01, the Environmental Department shall follow the procedures set forth in Section 26A-18 if it determines that extraordinary circumstances exist under which the residential use of the Premises may, individually or collectively, have a significant effect on the environment, including without limitation, as set forth below:

(1) Substantial controversy on environmental grounds;

(2) Presence of cultural resources; or

(3) Presence of historic properties.

26A-18 ENVIRONMENTAL REVIEW

Unless a categorical exclusion applies, the Environmental Department shall cause the effects on the environment of the intended uses authorized by the proposed Lease to be identified and evaluated as follows:

26A-18.01 If the Environmental Department determines that the uses authorized by the proposed Lease will not have a significant effect on the environment, then it shall cause the following to occur in order set forth below:

(1) A finding of no significant impact shall be issued and posted for a minimum of fifteen (15) calendar days in a prominent, noticeable place in the Administration Building.

(2) If there is a substantial interest in holding a public meeting, it shall be held in a manner determined by Tribal Council to provide an opportunity for Tribal citizens and Reservation residents to comment in writing or verbally on the finding of no significant impact.

(3) Comments shall be reviewed and analyzed and a report shall be issued by the Environmental Department responding to relevant and substantive comments, if any, regarding the finding of no significant impact. The report shall be posted for a minimum of fifteen (15) calendar days in a prominent, noticeable place in the Administration Building.

(4) A final decision confirming that the uses authorized by the proposed Lease are expected to have no significant effect on the environment shall be issued, sent to the Tribal Council for approval, and posted for fifteen (15)

calendar days in a prominent, noticeable place in the Administration Building.

26A-18.02 If the Environmental Department determines that the proposed Lease will have a significant effect on the environment, then it shall cause the following to occur in the order set forth below:

(1) A draft environmental review that identifies and evaluates any significant effect on the environment of uses authorized by the proposed Lease shall be issued and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Administration Building;

(2) A meeting on the draft environmental review shall be held in a manner determined by the Tribal Council to provide an opportunity for Tribal citizens and Reservation residents to comment in writing or verbally on any Significant Effect on the Environment of the uses authorized by the proposed Lease;

(3) Comments shall be reviewed and analyzed and a report by the Environmental Department shall be issued responding to relevant and substantive comments, if any, on any significant effect on the environment of the uses authorized by the proposed Lease. The report shall be posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Administration Building;

(4) A final environmental review describing the conclusions of the Environmental Department report on the issues and evidence gathered under this Section shall be issued and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Administration Building; and

(5) A final decision assessing the potential for any significant effect on the environment associated with the uses authorized by the Lease shall be issued, sent to the Tribal Council for approval, and posted for a minimum of thirty (30) calendar days in a prominent, noticeable place in the Administration Building.

26A-19 APPROVAL OF LEASEHOLD MORTGAGE

26A-19.01 All Leasehold Mortgages under a Lease must be separately authorized by the Tribal

Council, unless the Lease authorizes a Leasehold Mortgage and states the law governing foreclosure.

26A-19.02 After the Secretary approves this Act, all Leasehold Mortgages authorized under this Section shall be effective without federal approval under 25 U.S.C. 415, unless the Secretary rescinds approval of this Act and reassumes responsibility for such approval.

26A-20 RECORDING

All Leasehold Mortgage, assignments, amendments, and sales relating thereto shall be recorded at the Realty Department and the Bureau of Indian Affairs Land Titles and Records Office with jurisdiction over the Kootenai Indian Reservation, provided that, to the extent required by a Mortgagee a Leasehold Mortgage shall also be recorded in the appropriate county register of deeds.

26A-21 COMPLAINT

26A-21.01 An individual, corporation or government whose interests could be adversely affected by a decision of the Tribe to lease a housing site and who has reasonable grounds to believe that the Tribe has failed to comply with this Act ("Interested Party") has the right to file a Complaint under this Section.

26A-21.02 The Complaint shall be in writing, signed by the Interested Party, with a description of the alleged noncompliance with this Act that is the subject of the complaint, state all relief requested and submitted to the Tribal Council.

26A-21.03 The Tribal Council shall make reasonable efforts to resolve the Complaint informally, including, but not limited to, scheduling a meeting with the Interested Party for such purpose. All complaints resolved through such informal resolution shall be reduced to writing and signed by the Tribal Council and the Interested Party.

26A-21.04 If the Complaint is not resolved informally, the Tribal Council shall issue a decision on the Complaint, which shall be in writing and signed by the Tribal Council. The Tribal Council shall cause the decision to be delivered to the Interested Party no later than twenty (20) business days after receipt of the Complaint. The decision

of the Tribal Council shall constitute a final decision.

26A-22 APPEAL

In accordance with 25 U.S.C. 415(h)(8)(A), an Interested Party who has exhausted the Tribe's remedies set forth in Section 26A-21 may submit a petition to the Secretary, at such time and in such form as the Secretary deems appropriate, to review the Tribe's compliance with this Act.

26A-23 NO WAIVER OF SOVEREIGN IMMUNITY

Nothing in this Act shall be deemed to waive the sovereign immunity of the Tribe or any of its officials, employees, or representatives.

CHAPTER 27 FOREST TRESPASS

27-1 TITLE, PURPOSE AND DEFINITIONS

27-1.01 This chapter shall be known as the Kootenai Tribe of Idaho Forest Trespass Ordinance.

27-1.02 The purpose of this chapter is to obtain concurrent civil jurisdiction with the federal government to enforce 25 U.S.C. § 3106 and 25 C.F.R. § 163.29.

27-1.03 For the purposes of this chapter definitions shall be as defined in 25 C.F.R. § 163.1.

27-2 CONCURRENT JURISDICTION

27-2.01 Trespassers will be liable for civil penalties and damages to the tribal or federal enforcement agency and the beneficial Indian owners, and will be subject to prosecution for acts of trespass in tribal or federal court.

27-2.02 For trespass actions brought in tribal court, the measure of damages shall be as set forth in § 27-5 of this chapter. All other aspects of a tribal trespass prosecution brought under this chapter shall be that prescribed in the applicable chapters of the Law and Order Code of the Kootenai Tribe of Idaho.

27-2.03 For trespass action brought in federal court pursuant to this chapter or 25 C.F.R. § 163.29, the measure of damages will be as set forth in 25 C.F.R. § 163.29 and this chapter.

27-3 DETERMINATION OF TRESPASS

27-3.01 An authorized tribal or federal official operating under this chapter shall investigate and promptly determine if a trespass has occurred and issue a Notice of Trespass to the alleged trespasser and, if necessary, the possessor or potential buyer of any trespass products.

27-3.02 The Notice of Trespass shall inform the trespasser, buyer or possessor:

- (1) That a determination has been made that a trespass has occurred;
- (2) The basis for the determination;

(3) An assessment of the damages, penalties and costs;

(4) Of the seizure of forest products, if applicable; and

(5) That disposition or removal of Indian forest products taken in the trespass may result in criminal and/or civil action by the Tribe or the United States.

27-4 SEIZURE

27-4.01 On-Reservation Seizure. When authorized tribal or federal officials operating under this chapter have reason to believe that Indian forest products are involved in trespass, the officials may seize and take possession of the forest products involved in the trespass if the products are located on lands within tribal jurisdiction.

27-4.02 Notice of Seizure. The person seizing forest products involved in a trespass must at the time of seizure issue a Notice of Seizure to the possessor or claimant of the forest products indicating:

- (1) Date of the seizure;
- (2) Description of the forest products seized;
- (3) Estimated value of the forest products;
- (4) An indication of whether the forest products are perishable;
- (5) Name and authority of the person seizing the forest products; and
- (6) Notice that the seizure action may be challenged in the Tribal Court.

A copy of the Notice of Seizure shall be given to the possessor or claimant of the forest products at the time of seizure. If the possessor or claimant is unknown, the Notice of Seizure shall be posted on the trespass property and kept with the incident report.

27-4.03 Sale of Perishable Products. If the property seized is perishable and will lose

substantial value if not sold or otherwise disposed of, the authorized tribal or federal official may cause the forest products to be sold. Such sale action shall not stay a challenge of the seizure action.

All proceeds from the sale of the forest products shall be placed into an escrow account and held until adjudication or other resolution of the underlying trespass. If it is found that the forest products seized were involved in a trespass, the proceeds shall be applied to the amount of civil penalties and damages awarded. If it is found that a trespass has not occurred or the proceeds are in excess of the amount of the judgment awarded, the proceeds or excess proceeds shall be returned to the possessor or claimant.

27-4.04 Off-Reservation Seizure. When authorized tribal or federal officials operating under this chapter have reason to believe that Indian forest products are involved in trespass and that such products have been removed to land not under tribal or federal government supervision, the tribal or federal official responsible for investigation of the trespass shall immediately provide the following notice to the owner of the land or the party in possession of the trespass products:

- (1) That such products could be Indian trust property involved in a trespass; and
- (2) That removal or disposition of the forest products may result in criminal and/or civil action by the Tribe or the United States.

27-5 CIVIL PENALTIES AND DAMAGES

27-5.01 Civil penalties for trespass include, but are not limited to:

- (1) Treble damages, whenever any person, without lawful authority injures, severs or carries off from lands within tribal jurisdiction any forest product as defined in § 27-1.03. Proof of Indian ownership of the premises and commission of the acts by the trespasser are prima facie evidence sufficient to support liability for treble damages, with no requirement to show willfulness or intent. Treble damages shall be based upon the highest stumpage value obtainable from the raw materials involved in the trespass.

- (2) Payment of costs associated with damage to Indian forest land, including, but not limited to, rehabilitation, reforestation, lost future revenue and lost profits, loss of productivity and damage to other forest resources.
- (3) Payment of all reasonable costs associated with the enforcement of this chapter beginning with detection and including all processes through the prosecution and collection of damages, including, but not limited to, field examination and survey, damage appraisal, investigation assistance and reports, witness expenses, demand letters, court costs and attorney fees.
- (4) Interest calculated at the rate of eighteen percent (18%). Interest shall be based on treble the highest stumpage value obtainable from the raw materials involved in the trespass and calculated from the date of the trespass until payment is rendered.

27-5.02 Any cash or other proceeds realized from forfeiture of equipment or other goods or from forest products damaged or taken in the trespass shall be applied to satisfy civil penalties and other damages identified under this chapter. After disposition of real and personal property to pay civil penalties and damages resulting from trespass, any residual funds shall be returned to the trespasser. In the event that collection and forfeiture actions taken against the trespasser result in less than full recovery, civil penalties shall be distributed as follows:

- (1) Collection of damages up to the highest stumpage value of the trespass products shall be distributed pro rata between the Indian beneficial owners and any costs and expenses needed to restore the trespass land; and
- (2) Collections exceeding the highest stumpage value of the trespass product, but less than full recovery, shall be proportionally distributed pro rata between the Indian beneficial owners, the law enforcement agency and the cost to restore the trespass land. Forest management deductions shall not be

withheld where less than the highest stumpage value of the unprocessed forest products taken in trespass has been recovered.

27-5.03 Indian beneficial owners who trespass or who are involved in trespass upon their own land or undivided land in which such owners have a partial interest shall not receive their beneficial share of any civil penalties and damages collected in consequence of the trespass. Any civil penalties and damages defaulted in consequence of this provision instead shall be distributed first toward restoration of the land subject of the trespass and second toward costs of the enforcement agency in consequence of the trespass, with any remainder to the forest management deduction account of the Tribe.

27-5.04 Civil penalties and other damages collected under this chapter, except for penalties provided for in § 27-5.01(2) and (3) of this chapter, shall be treated as proceeds from the sale of forest products from the Indian forest land upon which the trespass occurred.

27-5.05 The Tribe may enter into settlements for the payment of any damages associated with a case brought under this chapter. In the absence of a court order, the Tribe shall submit such settlement to the Secretary for approval.

CHAPTER 28
SMOKE MANAGEMENT AND CROP RESIDUE DISPOSAL

28-1 COUNCIL FINDINGS

28-1.01 The Tribal Council is responsible for maintaining, promoting and protecting the general welfare and treaty and aboriginal rights of the people of the Kootenai Tribe of Idaho.

28-1.02 The Tribal Council possesses the inherent authority to regulate conduct occurring on its lands that meet the definition of Indian Country under federal law or lands within the exterior boundaries of the above-described lands that are not held in trust by the United States.

28-1.03 In meeting its responsibility to the Tribe and its members, especially those with conditions making them more sensitive to air pollutants including smoke, the Tribal Council must act to reduce the impact of smoke generated from field burning, and maintain the valuable and necessary tool of fire in the best management practices for farmers on Tribal lands.

28-1.04 The Tribal Council finds that the most efficient manner of implementing smoke management and crop residue programs at this time is through adoption of the Idaho state standards for crop residue disposal and use of the existing Idaho state regulatory framework for such purpose.

28-2 SMOKE MANAGEMENT AND CROP RESIDUE DISPOSAL STANDARDS AND REGULATIONS

28-2.01 The smoke management and crop residue disposal standards and regulations applicable within the Tribe's jurisdiction shall be those standards and regulations contained in Idaho Code §39-114 and IDAPA 58.01.01.618 through 624 and the applicable regulations promulgated thereunder, unless otherwise specified by the Council.

28-3 REGISTRATION OF FIELDS TO BE BURNED

28-3.01 All persons shall register each field located within the lands of the Kootenai Tribe of

Idaho with the Idaho State Department of Environmental Quality on an annual basis prior to burning crop residue in the same manner, including fees, as provided in Idaho Code §39-114 and IDAPA 58.01.01.618 through 624.

28-4 DETERMINATION OF BURN OR NO BURN DAYS

28-4.01 Burn days for fields within the lands of the Kootenai Tribe of Idaho shall be the same as those designated by the Director of the Idaho State Department of Environmental Quality under the IDAPA 58.01.01.618 through 624.

CHAPTER 29

PERSONNEL

29-1 TITLE AND PURPOSE.

29-1.01 This shall be known as the Kootenai Tribe of Idaho Personnel Policies and Procedures Ordinance.

29-1.02 The purpose of these personnel policies and procedures is to promote the physical, economic and social well-being of Kootenai Tribe of Idaho employees and to establish a means to extend fair treatment to all employees in a uniform and equitable manner. These personnel policies and procedures are intended to comply with all federal laws applicable to the Kootenai Tribe of Idaho. If any part of this manual conflicts with any such laws or any rules, regulations or conditions prescribed by any funding source, those regulatory specifications shall prevail.

29-1.03 Amendments. Amendments to the personnel policies and procedures may be recommended by any person at any time, but all proposed changes must be approved by the Tribal Council.

29-1.04 Applicability. These policies and procedures apply to all Tribal governmental personnel including full-time, part-time, and temporary employees. A copy of this chapter shall be given to each Tribal employee, who shall sign a statement saying they have read the chapter and received a copy.

29-1.05 Employment At Will. These policies and procedures are established as general guidelines to promote the efficient operation of the Tribal government and may be modified at any time at the sole discretion of the Tribal Council. Employment with the Tribe is considered "at-will" and entered into voluntarily. Employees are free to resign at any time, for any reason, with or without notice. Similarly, the Tribe is free to conclude the employment relationship at any time.

29-1.06 Tribal Employment Rights. These policies and procedures shall be interpreted consistent with the provisions of Chapter 19, Tribal Employment Rights and nothing herein shall be deemed to supersede the provisions of such chapter.

29-2 DEFINITION OF TERMS.

- (1) Absence Without Leave (AWOL) – Any unauthorized absence.
- (2) Administrative Leave – Periods of time during regular business hours that an employee receives compensation for, but does no actual work. For example, the Tribe has designated lunch hours and Friday afternoon as administrative leave. Those periods of time are included as hours worked for compensation purposes, but are not included as work for purposes of overtime.
- (3) Compensatory Time – The time required to compensate an exempt employee for authorized extra work related activities.
- (4) Tribe – The Kootenai Tribe of Idaho.
- (5) Chain of Command – The Chain of Command for each job position is determined by the Tribal Council and illustrated on the Tribal Governmental Organizational Chart.
- (6) Tribal Council – The governing body of the Kootenai Tribe of Idaho.
- (7) Disciplinary Action – An oral warning, written reprimand, special probation, suspension or dismissal taken for cause.
- (8) Disciplinary Probation – A period in which an employee must perform well in order to atone for prior misconduct and to continue in employment.
- (9) Dismissal – Involuntary termination of an employee's employment with the Kootenai Tribe of Idaho.

- (10) Employment Date – The date on which an employee commences performance of duties and is placed on the payroll.
- (11) Full-time Employee – An employee who works a normal work week of 32 or more hours.
- (12) Grievance – A written complaint delivered through the appropriate channels.
- (13) Leave – Authorized absence from regularly scheduled work hours which has been approved by proper authority.
- (14) Overtime – Time an employee is directed and authorized to work in excess of 40 hours per week.
- (15) Part-Time Employee – An employee who is regularly scheduled to work fewer than 32 hours per week.
- (16) Permanent Employee – An employee who has been retained in his/her appointed position after satisfactory completion of a ninety-day probationary period. This includes those employees who work 32 or more hours every week who shall be eligible for full fringe benefits.
- (17) Personnel Records – A confidential folder or file containing information related to an individual's employment.
- (18) Probation – A specific time period during which the employee's work is evaluated to determine fitness or career status. Also used in disciplinary cases to provide a specific period of time for an employee to improve performance or meet other criteria to avoid dismissal.
- (19) Probationary Employee – A full-time or part-time employee who has not completed the initial probationary employment period. Also used in disciplinary cases to provide a specific period of time for an employee to improve performance or meet other criteria to avoid dismissal.
- (20) Reprimand – A written warning to an employee that a Department Director believes a deficiency exists in the employee's work performance or conduct and improvement is needed.
- (21) Resignation – The termination of employment at the request of the employee.
- (22) Suspension – A disciplinary action which temporarily removes an employee from work, with or without pay.
- (23) Temporary Employee – An employee who has received an appointment for a specified limited period, on a full-time or part-time basis and whose appointment may be terminated without appeal. Employees in this status do not receive sick leave or annual leave or holiday pay.

29-3 RECRUITMENT AND SELECTION

29-3.01 Nondiscriminatory/Equal Opportunity Policy. The Kootenai Tribe of Idaho does not discriminate because of religion, race, creed, age, sex, sexual preference, ancestry, color, national origin, marital status, or physical handicaps, in its procedures for employment, upgrading, demotion, lateral assignment transfer, recruitment, layoff, termination, compensation, training, or other benefits. All personnel policies, procedures and actions shall be in accord with the provisions of the Law & Order Code of the Kootenai Tribe of Idaho and applicable federal law. Tribal preference or Indian preference shall be observed in accordance with Chapter 19, Tribal Employment Rights.

29-3.02 Advertisement of Positions. When a vacancy occurs in any position, or a new position is created, the vacancy shall be advertised for at least five (5) business days throughout the Kootenai Reservation by written announcement posted in the Tribal Office and at other public places designated by the Council. Announcements shall include the job description, the date the announcement was posted, the closing date for applications and the place where applications may be obtained and submitted. Any special requirements for advertisement of vacancies required by individual funding sources (for example, the Job Training Partnership Act-JTPA) shall be observed.

29-3.03 Applications. All applications for employment with the Tribe shall be made on forms prescribed by the Council. Application forms shall be identical for all applicants, except that

applicants who are eligible for special employment programs (e.g. JTPA) may be required to submit different or additional forms required by the program concerned. Resumes or additional information concerning employment history may be attached to an application.

29-3.04 Interviews. An Interview Committee consisting of at least three persons shall be appointed by the Tribal Council for each vacant position. All applications, which have been received for the position, shall be given to the Interview Committee as soon as practicable after the position advertisements has closed and the Committee has reviewed all applications. The Interview Committee shall conduct personal interviews and rank all applicants according to their experience, work records, suitability for the position, and other factors relevant to the job offered, and shall recommend the top-ranking applicant to the Tribal Council for employment. The final selection and the actual offer of employment shall be made by the Council. No one may be empowered to offer employment to any person except by formal decision of the Council.

29-3.05 Certification and Criminal Background Checks

(1) For certain job responsibilities, employees may be required to possess specific certifications or licenses. These may take the form of academic degrees, licenses from examining boards, or operating licenses for certain kinds of machinery. When such licenses or certifications are required, they will be incorporated in class specifications. Individuals shall be responsible for the maintenance of their certificates if they are a condition of their employment.

(2) The following classes of employees are subject to a criminal background check prior to beginning employment:

- (a) Individuals who come into contact with children as part of their regular job duties.
- (b) Individuals who transport or enter homes of the elderly as part of their regular job duties.
- (c) Individuals who come into contact with individuals with disabilities in need of support.
- (d) Individuals employed in the Tribal Accounting Department.

29-3.06 Bonding. Some job responsibilities may require employees to be bonded. The cost of bond shall be carried by the Kootenai Tribe of Idaho.

29-3.07 Liability. Employees are expected to perform their duties with prudent judgment and within the laws and regulations that apply.

(1) Employees who do so may not be considered negligent, and therefore not liable, for accidents or injuries which may occur.

(2) If an employee is negligent in the performance of duties and if negligent performance results in loss or damage to self, or other employees of Kootenai Tribe of Idaho property or premises, the employee may be held personally and legally liable for such loss or damage.

29-4 HARASSMENT POLICY

29-4.01 Harassment Prohibited. Harassment, including sexual harassment, is contrary to basic standards of conduct between individuals and is prohibited by the Kootenai Tribe of Idaho. Any employee who engages in such harassment will be subject to corrective action up to and including dismissal.

(1) Harassment is defined as verbal, physical or visual conduct of a racial, ethnic or other type which, in the employee's opinion, impairs his or her ability to perform the job.

(2) Sexual harassment is defined as unwelcome sexual advances or visual, verbal or physical conduct of a sexual nature. This definition includes many forms of offensive behavior,

including gender-based harassment of a person of the same sex as the harasser, conduct of sexual nature that creates an offensive, intimidating or hostile work environment; and coerced sexual conduct by a person in a position of authority in the workplace.

29-4.02 Procedure. An employee who believes he or she has been a victim of harassment should report such incident(s) to a supervisor or to the Tribal Council. Employees will not be penalized for reporting what they believe to be harassment under Tribal policy.

29-5 COMPENSATION AND REIMBURSEMENT.

29-5.01 Job Descriptions. Job descriptions will be approved by the Tribal Council and provided to all employees.

29-5.02 Pay Periods. Employees will be paid weekly.

29-5.03 Compensatory Time. On occasion, Tribal employees are required to work through lunch, after regular working hours or during periods of administrative leave. For purposes of compensatory time, only those hours actually worked may be counted. Work hours during which actual work does not occur, such as lunch hours and other administrative leave, will not be considered for purposes of compensatory time. Employees shall be allowed to accumulate compensatory time on an hour for hour basis when such extra hours are worked.

(1) The Tribal Employee who works extra hours must keep a daily record of hours worked and submit the record to the Tribal timekeeper on the employee's next time sheet.

(2) No more than 40 hours of compensatory time may be accumulated at one time, hours in excess of 40 shall be treated as voluntary work. Hatchery employees, and such other employees designated by Council, can accrue up to 80 hours of compensatory time.

(3) Compensatory time taken without the prior approval of the employee's supervisor shall be treated as unauthorized leave. Exceptions may be granted to the supervisor or a Council member in special circumstances.

29-5.04 Supervisory and Administrative Personnel (Exempt). Employees in a supervisory or administrative position are expected to work the time required to complete normal duties or to attend meetings and conferences. Exempt employees who work amounts of time in excess of 40 hours per week may be compensated upon approval of the Council.

29-5.05 Non-supervisory Personnel (Non-exempt); Overtime. As a general policy, overtime is disallowed. However, when employees are directed to work overtime, they shall be compensated with pay at the rate of one and one-half times the regular rate of pay. Only those hours actually worked may be counted for purposes of overtime. Work hours during which actual work does not occur, such as lunch hours and other administrative leave, will not be considered for purposes of overtime. Overtime will be paid within the pay period for which it was reported.

Approval for an employee to work overtime shall depend upon the following:

(1) Verification that the grant/contract(s) funding the employee(s) allows payment of overtime;

(2) Overtime work must be authorized in advance by the Tribal Council;

(3) [Repealed]

(4) Overtime compensation shall only be for the time worked in excess of 40 hours per week; and

(5) When computing an employee's hours for the purpose of determining overtime, all hours the employee worked during the week shall be counted.

29-5.06 Salaries and Wages. Position salaries shall be established by the Council within the limitations set by the appropriate funding sources. Employees shall be paid at a rate no lower than the federal minimum wage. Subject to this minimum wage, the salary for each position shall be in accordance with prevailing local practices for comparable positions, when such exist.

Salary increases and promotions will be granted by Council when warranted, subject to availability of funds, performance and the needs of the Tribe.

29-5.07 Probationary Period. The probationary period is an integral part of the selection procedure allowing the Department Director to train, observe, and evaluate the employee's performance in order to determine fitness for career status in the position. The probationary period shall be a minimum of 90 calendar days, but can be longer subject to Council discretion. The probationary period may be waived by the Tribal Council for in-house transfers.

(1) The following actions may be recommended by the Department Director to the Tribal Council for approval:

- (a) Based on satisfactory performance by the employee, that the employee be given permanent appointment.
- (b) Based on unsatisfactory performance, an employee that was an in house hire be demoted or returned to their former position, if available.
- (c) Based on unsatisfactory performance, that the employee be dismissed.
- (d) Based on the judgment of the immediate supervisor, the probationary period may be extended for up to an additional 90 calendar days.

29-6 EMPLOYMENT SEPARATIONS

29-6.01 Voluntary Termination. While employment with the Tribe is at-will, the Tribe requests that an employee who may voluntarily terminate employment give two week's notice to the Tribal Council.

29-6.02 Involuntary Termination. An employee who is dismissed without prejudice (because of budget restrictions, organization changes, etc.) may be given two weeks notice by the Tribal Council. In its discretion, the Council may give two weeks pay in lieu of notice. An employee who is dismissed for cause (with prejudice e.g. for misconduct) is not entitled to notice but may be dismissed immediately by the decision of the Tribal Council.

29-6.03 Severance Pay. Upon dismissal from or voluntary termination of employment with the Kootenai Tribe of Idaho, an employee shall receive, together with his/her accrued salary or wage, a cash payment in the amount of accrued unused leave. The amount of any employee's overdue indebtedness to the Kootenai Tribe of Idaho shall be deducted from the amount of compensation, up to the limits specified by federal wage laws, to be paid at severance according to the employee's written loan agreement.

29-7 EMPLOYEE CONDUCT.

29-7.01 General Conduct of the Kootenai Tribe of Idaho Employees. All employees shall conduct themselves in a professional manner to reflect favorably on the Kootenai Tribe's public image and to insure orderly working conditions. Employees should exercise the utmost discretion in regard to all

matters of official business and records. Any information which has been received by an employee on a confidential basis must be maintained in confidence.

29-7.02 Confidential Information. Employee may not disclose privileged or confidential information to any other individuals, including other employees or officials, except for official reasons and with the consent of the Tribal Council or by an order of a court of competent jurisdiction. All work products, including confidential information, produced by an employee in the performance of duties are the property of the Tribe.

(1) The following, but not limited to the following, shall be considered confidential information:

- (a) Discussion or materials from an executive session of the Tribal Council, unless the Council specifically authorizes disclosure
- (b) Client information of a personal nature, such as personal or household income, health, academic records, paternity, arrest records and court proceedings, except to the extent such information is necessary to determine the client's eligibility for Tribal services or to provide such services to the client
- (c) Employee information of a personal nature, such as personal or household income, health, academic records, previous criminal history, disciplinary actions and performance evaluations, except to the extent such information is necessary to determine an employee's or applicant's suitability for Tribal employment or in disciplinary proceedings
- (d) Tribal personnel records
- (e) Medical, counseling or other health related records
- (f) Cultural information
- (g) Any other information the Tribal Council directs shall be kept confidential

29-7.03 Public Statement. An employee may not speak to the public media as an official spokesman of the Kootenai Tribe of Idaho without prior clearance of the Tribal Chairman or his/her designee, who will determine the appropriate action to be taken. Any deviation from this policy will be considered a serious infraction of regulations and will be subject to disciplinary action.

29-7.04 Public Appearances. An employee who is asked by an outside agency or organization to appear as a guest speaker or invited program participant representing the Kootenai Tribe of Idaho must obtain prior clearance in writing from the Tribal Chairman or his/her designee. The written clearance shall be included in the employee's personnel record.

29-7.05 Gifts and Gratuities. Employees are prohibited from accepting gifts, money, and/or gratuities from persons performing services under contract or otherwise in a position to benefit from the employee's actions.

29-7.06 Employee Relations Policy. All personnel at all levels of the Kootenai Tribe of Idaho are obligated to respect one another's basic human rights and human dignity, and further, to work cooperatively in performing the Kootenai Tribe of Idaho's service. Any disputes between employees, if they cannot be settled at the individual level, should be dealt with at the staff meeting level before they are brought to the attention of the Council. Gossiping, griping, and criticizing other employees is not acceptable. If an employee has a complaint about another employee or about working conditions, the complaint should be aired openly through the Chain of Command rather than used as a basis for internal dissension.

29-8 DRUG AND ALCOHOL POLICY.

29-8.01 Alcohol and Drug-Free Workplace Policy. The Kootenai Tribe of Idaho has a strong commitment to provide a safe workplace for its employees. Consistent with that commitment, Kootenai Tribe of Idaho has adopted an alcohol and drug-free workplace policy.

(1) The use, sale, distribution, manufacture or possession of alcohol or drugs, paraphernalia, the unauthorized use of prescription drugs, the use of any legally obtained drug (prescriptions or over-the-counter medications) when such use adversely affects the employee's job performance or safety, or any combination thereof, on Tribal premises or any location at which company business is conducted, including Tribal vehicles and any private vehicle parked on company premises or work sites or used in the course of employment, is prohibited.

(2) In addition, reporting to work or working while under the influence of alcohol or drugs is forbidden. Employees who are taking prescription drugs or over-the-counter drugs that may affect their performance should discuss their situation with their supervisor and obtain permission before beginning work. Employees may be required to provide properly written medical authorization from a physician to work while using such authorized medications. Any violation of this policy will result in disciplinary action, up to and including dismissal.

29-8.03 Drug Testing.

(1) The Kootenai Tribe of Idaho will employ every legal means available to it to operate its business free from alcohol and drugs. Accordingly, drug testing shall be conducted for:

- (a) Applicants recommended for hire;
- (b) Employees where there is reasonable suspicion to suspect drug or alcohol use and/or intoxication in the workplace;
- (c) Employees involved in an on-the-job accident or on-the-job accident claim; and
- (d) Employees selected from the random selection pool

(2) This list is not intended to limit the events which would require a drug test and Kootenai Tribe of Idaho reserves the right to test for alcohol and drug abuse for other lawful reasons. Testing shall be conducted pursuant to policy adopted by the Tribal Council.

(3) A positive test result shall be deemed a violation of this policy and result in disciplinary action, up to and including dismissal. An employee has the right not to consent to being tested. However, refusal to submit to testing when requested will result in disciplinary action, up to and including immediate dismissal.

29-8.04 Other Illegal Usage. Off-the-job illegal drug use which could adversely affect an employee's job performance or which could jeopardize the safety of other employees, the people the Tribe serves, Tribal facilities, or where such usage could jeopardize the security of Tribal finances or business records, or where such usage adversely affects the public's trust in the ability of the Tribe to carry out its responsibilities, will not be tolerated.

29-8.05 Prescribed Medical Treatment. Employees undergoing prescribed medical treatment with a controlled substance that may affect the safe performance of their duties are required to obtain a doctor's written note indicating the drug will not impair the employee's work performance.

29-8.06 Employee Assistance Program. Employees may choose, or in some cases, be required to seek a treatment program for drug or alcohol abuse. Rehabilitative costs are the responsibility of the employee, although the Tribe may in certain situations provide or fund such services at the

discretion of the Tribal Council. Additionally, employees shall be notified of the assistance available through Tribal programs, such as the Tribal Drug and Alcohol Counselor.

Employees may be retained after a violation of this policy solely at the discretion of the Tribal Council. Reinstatement to employment may be conditioned upon the receipt of a negative test and the determination that the employee is drug and alcohol free and the risk of subsequent use of dangerous drugs or alcohol is sufficiently low to justify return to work.

Employees must agree to be subject to unannounced drug or alcohol testing for a time period determined by the Tribal Council. Such subsequent tests will be at the employee's expense. A positive result during this time period will result in immediate dismissal.

29-9 USE OF TRIBAL PROPERTY; WORKPLACE SAFETY

29-9.01 Safety and Use of Tribal Vehicles Policy. Certain employees may be assigned vehicles with which they commute between their homes and the office or for official Tribal business. It is against Kootenai Tribal policy to use Tribal vehicles without the express permission of the Tribal Council.

(1) In an effort to help insure the safety of all Tribal employees, the following outlines the Tribe's driving policies. This policy applies to any employee operating either a Tribal vehicle or a personally owned vehicle used for work purposes:

In order to drive a vehicle, the driver must:

- (a) Be at least 18 years of age;
- (b) Possess a valid state drivers license with no restrictions on driving privileges;
- (c) Have supervisor approval and be driving for Tribal business purposes;
- (d) Wear seatbelts and have passengers wear seatbelts when the vehicle is in motion;
- (e) Comply with all state, local and Tribal traffic laws and the lawful instructions of emergency and law enforcement personnel;
- (f) Abstain from ingesting controlled substances, intoxicating beverages, prescription drugs or other medications that caution against operating a motor vehicle;
- (g) Abstain from transporting drugs or alcohol, or transporting passengers who are intoxicated or in possession of drugs or alcohol;
- (h) Unless job requirements otherwise require, abstain from situations or activities that may adversely impact the driver's ability to safely operate a motor vehicle such as fatigue, adverse weather, illness, reading or use of a cell phone.

(2) Drivers shall report to their supervisor immediately the following situations:

- (a) Any medical or physical condition that may impair his or her ability to drive.
- (b) All on-duty incidents, including those that could result in a violation, citation, charge, arrest, warrant or civil action or result in damage that must be reported for insurance purposes.
- (c) Any suspension, revocation, cancellation or disqualification of driving privileges.

(3) In order to help enforce this policy all driver's driving records will be checked no less than annually by either the Tribe or by the Tribe's insurance company. An employee who operates a motor vehicle while on the job must consent to have his/her motor vehicle record checked at least once per year. Anyone found to be in violation of the above policies will have their driving privileges revoked. The Tribe reserves the right take further disciplinary action against anyone in violation of the above policies.

29-9.02 Other Tribal Property. It is against Kootenai Tribal policy to remove any Tribal property which includes computers or other equipment, merchandise, gas or other credit cards, funds or supplies from work premises without the express permission of the Tribal Council.

All computer equipment, software, network and any data produced on the computers belong to the Kootenai Tribe of Idaho. All use of this equipment and data produced and accessed on it shall be used only for legitimate Tribal purposes and consistent with employee's responsibilities.

29-9.03 Prosecution of Theft. All cases of employee theft shall be subject to civil prosecution in Tribal court. Civil fines shall be determined based on the damages toward the Tribe. Tribal policy is and will be to prosecute each case, without exception and without recourse. Instances of employee theft shall also be referred to appropriate law enforcement for criminal prosecution in Tribal court or other court of competent jurisdiction.

29-9.04 Internet & Electronic Mail. The use of computers and network equipment by employees is limited to official Tribal business. This policy prohibits activities on internal and external electronic mail networks such as: operating a business for personal gain; sending chain letters or soliciting money; offensive or harassing statements, sending, downloading or soliciting sexually oriented messages or images; distributing or printing copyrighted material (including articles and software) in violation of copyright laws. Employees are prohibited from the unauthorized use of passwords and encryption keys to access files, or to retrieve stored information. Violation is grounds for disciplinary action up to and including immediate dismissal.

29-9.05 Workplace Safety. It is Kootenai Tribal policy to protect the safety and health of all employees.

(1) Department Directors shall be responsible for, but not limited to, the following:

- (a) The safe conduct of employees while under their supervision.
- (b) Providing a written report to the Tribal Chairperson, Vice Chairperson or designated District Representative within two workdays from the time of occurrence of any on-the-job injury.
- (c) Conducting periodic work place inspections to identify safety and health hazards and provide copies of these inspections to the Tribal Council.

(2) If an accident or incident occurs, employees must report all accident or incidents, no matter how slight, immediately to their Department Director. Reporting on the next work shift is not an acceptable practice.

29-9.06 Electronic Devices. All electronic devices provided by the Tribe, including but not limited to cellular phones, PDA's, laptops, computers, and any mobile communication devices, must exclusively be used for Tribal purposes. Personal use of these devices is prohibited. Employees have no expectation of privacy with these devices and may be subject to discipline if discovered using electronic devices provided by the Tribe for personal use. To monitor productivity and ensure a discrimination free workplace, the Tribe reserves the right to monitor employee usage of all electronic devices it provides. Misuse of electronic devices provided by the Tribe will result in disciplinary action up to and including immediate dismissal.

29-10 DISCIPLINARY ACTION

29-10.01 General. An employee who violates the personnel policies of the Kootenai Tribe of Idaho or otherwise fails to perform according to minimum acceptable standards of work performance and conduct will be disciplined, up to and including dismissal. Nothing herein shall be deemed to modify the at-will employment relationship.

29-10.02 Poor Performance. In the case of poor performance, the Department Director shall call each instance to the attention of the employee and, if not satisfied with the employee's explanation, shall place a memorandum stating the nature of the instance, the date of the discussion, and the employee's response in the employee's personnel file. Two such written records within a six-month period shall warrant suspension of the employee without pay by the Department Director for a period of one week. Three such written records of performance deficiencies within a six-month period shall warrant bringing the matter to the attention of the Tribal Council for consideration and possible dismissal of the employee.

29-10.03 Disciplinary Probation. Disciplinary probation may be placed on an employee. This will not affect fringe benefits, vacation or sick leave accruals. Employees on disciplinary probation will not receive merit pay increases nor attend training workshops. Probation may not exceed three (3) months and must be made in writing by the Department Director to the employee, stating the reasons for the action. A copy is to be kept in the employee's personnel file.

29-10.04 Violation of Rules. Any employee who violates these personnel policies or minimum acceptable standards of conduct may be subject to suspension without pay, placement in probationary status, or immediate dismissal for cause.

Whenever possible, discipline shall be of increasingly progressive severity. In circumstances so egregious as to pose a threat to the physical safety of other persons or Tribal property or to impair the operations of the Tribe, the employee may be immediately dismissed. Examples of the kinds of action which can lead to this measure include, but are not limited to, absence without leave, drinking on the job, dishonesty, etc.

29-10.05 Just Cause for Discipline. Employees shall not violate Tribal rules and regulations. Conduct outside of work shall not be covered by these rules except as such conduct impacts job performance. Just cause for discipline, up to and including dismissal, shall include, but is not limited to, the following infractions:

- (1) Verbal harassment or intimidation of a Tribal employee, official or client.
- (2) Use of foul or abusive language.
- (3) Assaulting or threatening to assault a Tribal employee, official or client.
- (4) Refusal to carry out the directions or instructions of Department Directors.
- (5) Violation of the Personnel Ordinance and/or failure to follow the procedures as described herein.
- (6) Use or abuse of alcohol or narcotics (excluding prescription drugs used for their prescribed purpose) at work, or affecting job performance.
- (7) Excessive absenteeism or tardiness.
- (8) Misusing or damaging Tribal property.
- (9) Failure to follow the employee grievance procedure described herein or circumventing its provisions.
- (10) Instituting or threatening to institute disciplinary action against an employee without justification.
- (11) Intentionally or recklessly endangering the safety of other employees or violating safety rules or standards.
- (12) Disclosure of confidential information.
- (13) Deliberately falsifying Tribal records or deceiving Department Directors about job-related activities.
- (14) Theft of or destruction of Tribal property or funds or the property or funds of another employee.
- (15) Falsification or intentional misrepresentation of a material nature on an employee's application for employment.

- (16) Unsatisfactory job performance, after being given the means and the opportunity to improve.
- (17) Failure to return to work after an approved leave of absence.
- (18) Sexual harassment of employees, clients or Tribal members.
- (19) For probationary employees, failure to perform their job duties satisfactorily within the probationary period.
- (20) Conviction of or admission of a crime that reflects adversely on the reputation or image of the Tribe; affects, inhibits or prevents effective job performance; or makes it impossible for the person to work with other employees; such crimes to include, but not be limited to, murder, assault with a deadly weapon, crimes against children, child abuse and domestic violence.
- (21) Unexcused absence from work.

29-10.06 Levels of Disciplinary Action. Disciplinary action can take the following forms: written reprimands, suspension without pay, probation and dismissal. Factors to be taken into consideration in determining appropriate disciplinary action include, but are not limited to: severity and frequency of the infraction, level of responsibility of the employee and the employee's work history with the Tribe. While the employment relationship remains at-will and disciplinary levels may be skipped depending on the severity of the violation, the following disciplinary sequence shall generally be followed to the extent practical:

First Offense: Written reprimand to be included in the employee's personnel file.

Second Offense: Suspension without pay for a period not to exceed two weeks.

Third Offense: Dismissal.

29-10.07 Right of Appeal. An employee has the right to appeal any disciplinary action, including written warnings for poor performance, directly to the Tribal Council. The decision of the Tribal Council shall be final.

29-10.08 Political Activity. Employment with the Kootenai Tribal Government may not be offered as consideration or reward for the support or defeat of any political candidate or party for public office.

29-10.09 Nepotism and Conflict of Interest. Because of the small size of the qualified work force of the Kootenai Tribe of Idaho, it shall be permissible for persons who are members of the Tribal Council, or are immediate relatives of Tribal Council members, to be employed by the Tribal government.

29-11 EMPLOYEE GRIEVANCE PROCEDURE.

29-11.01 Policy. An employee who has been aggrieved by an action relating to working conditions, wages, discipline, or promotions may file a grievance under these provisions. Any employee who takes a grievance outside of these procedures shall be subject to disciplinary action.

29-11.02 Time Limits. If the Tribe fails to respond to a grievance within the limits established in this chapter, the grievance will be considered upheld. Denial of the grievance at any step does not prevent the employee from proceeding to the next step; however, a failure by the employee to adhere to the time limits set out herein shall be deemed a waiver of any subsequent grievance rights.

29-11.03 Procedure. Unless the employee and the Tribe otherwise agree in writing, all grievances shall proceed in the following manner:

- (1) Within five (5) working days of the occurrence, not including the date of the occurrence, or the time when the employee reasonably should have known of the occurrence, the employee shall try to resolve the situation by an informal discussion with the Department Director.

(2) If the informal discussion does not result in satisfactory agreement, the employee may present a formal written statement to the Department Director within five (5) working days, not including the date of the informal discussion. The written statement shall state the facts and the alleged problem and specify what relief is sought. Any alleged violation of a Kootenai Tribe of Idaho policy, regulation or contract shall be identified.

(3) The Department Director shall forward the employee's written statement to the Tribal Council the day it is received. If this is not possible, it should be forwarded at the first possible date and the employee should be notified, in writing, of the date the notice is received by the Tribal Council.

(4) The Tribal Council shall reply in writing within five (5) working days, not including the date the statement is received.

(5) If the written response does not provide satisfaction or if no written response was given within five (5) working days, the employee has five (5) working days, not including the date the response is received or the fifth day in the event no written response was given, to demand a hearing.

29-11.04 Hearing. A hearing shall be conducted by the Tribal Council, which must include at least one member of the Tribal Council from each Tribal District. The employee and the Department Director shall have the opportunity to present any evidence and arguments in support of their respective positions. A party shall have the right to confront and cross examine any witness called by the other party. Both parties shall have the opportunity to present arguments to the Tribal Council.

29-11.05 Findings. As soon as possible after a hearing, the Tribal Council shall present in writing its findings and decision to the parties. The decision shall be final and binding upon both the employee and the Kootenai Tribe of Idaho.

29-11.06 Remedies. An employee who is terminated or suspended may not remain on the job pending resolution of the grievance. In the event that the employee is successful in his grievance, the Tribal Council may award the employee lost wages.

29-11.07 Value of Precedent. A decision by the Tribal Council in one grievance shall not be a precedent for subsequent cases. Further, any deviation from these procedures which takes place in one case shall not be deemed a waiver of the right to insist on strict adherence to these procedures in a subsequent case.

29-12 TIME OFF FROM WORK.

29-12.01 Holidays. The following days shall be observed by the Kootenai Tribe of Idaho as holidays, and all employees shall be entitled to take compensated leave (in addition to other authorized leave) on these days:

- | | | |
|-----|-------------------------|--------------------------------------|
| (1) | New Year's Day | January 1 |
| (2) | Martin Luther King | January (as designated) |
| (3) | President's Day | February (as designated) |
| (4) | Good Friday | Friday before Easter (as designated) |
| (5) | Memorial Day | Last Monday in May |
| (6) | Independence Day | July 4 |
| (7) | Labor Day | First Monday in September |
| (8) | American Indian Day | Fourth Friday in September |
| (9) | Indigenous Peoples' Day | October |

(10)	Veterans Day	November 11
(11)	Thanksgiving	4th Thursday in November
(12)	Day After Thanksgiving	
(13)	Christmas Eve	December 24
(14)	Christmas Day	December 25
(15)	Employee's Birthday	

If one of the named holidays falls on a Saturday or Sunday, then the holiday shall be observed in accordance with national custom or law.

29-12.02 Personal Leave. Annual leave is provided and used for two general purposes which are to allow every employee an annual vacation period of extended leave for rest and recreation and to provide periods of time off for personal and emergency purposes.

(1) The Kootenai Tribe of Idaho provides annual leave for permanent employees which may be taken as earned. Approval and timing of vacation or use of annual leave shall be determined by the supervisor with due regard to the employee's wishes and the needs of the Kootenai Tribe of Idaho. For an employee's first two years of employment, leave will be accrued at the rate of 4 hours per week for a total of 208 hours per year. At the beginning of an employee's third year of employment, leave will be accrued at the rate of 4.5 hours per week for a total of 234 hours per year. At the beginning of an employee's fifth year of employment, leave will be accrued at the rate of 5 hours per week for a total of 260 hours per year.

(2) If at the end of the fiscal year an employee has a balance of leave hours, the employee will be paid for such hours up to eighty (80) hours. The remaining balance of any leave hours shall not be carried over.

(3) Each Department Director shall establish such policies and procedures as are necessary to insure that all employees are able to schedule and take accrued leave each full fiscal year.

(4) [Repealed.]

(5) The Accounting Department of the Kootenai Tribe of Idaho shall maintain a leave record for each employee.

(6) Holidays occurring during the time of annual leave will not be charged against annual leave.

(7) Employees are entitled to their annual leave pay prior to taking their annual leave. Employees wishing to receive their annual leave pay prior to taking their annual leave must do the following:

- (a) Make request of the accounting department in writing at least one day before such pay is required. Such request must include the timesheets for the period where the employee will be absent.
- (b) Employees are entitled to the paycheck for the previous week worked (if not already received), the week last worked, and all complete weeks that the employee will be gone.
- (c) An employee is not entitled to pay in advance for weeks that are only partially annual leave unless such week is at a start of a vacation. For example: if an employee will be gone Monday and Tuesday on annual leave but will be back on

Wednesday, they are not entitled to receive their annual leave pay prior to taking annual leave.

29-12.03 [Repealed]

29-12.04 Leave Without Pay. Leave without pay is a temporary unpaid status when absent from duty. Leave without pay may be granted, provided such leave may be scheduled without adversely affecting the operation of the Tribe.

(1) Approval. Requests for leave without pay shall be submitted in writing at least two weeks in advance to the employee's immediate supervisor and shall contain reasonable justification for approval. Leave without pay is granted at the Tribal Council's discretion, with the understanding that the employee intends to return to work upon completion of the leave and the retention of the employee is desirable. Seniority status of the employee while on leave without pay will not be affected.

29-12.05 Emergency Leave. The Tribal Council may approve emergency leave for employees with legitimate needs. Emergency leave beyond the employee's total leave balance shall be considered authorized leave without pay.

29-12.06 Authorized Absence. The Department Director or the Tribal Council may authorize the absence of employees due to conditions beyond their control (e.g. hazardous weather, office closure) without the absence being charged to the employees' leave.

29-12.07 Family and Medical Leave. It is the policy of the Kootenai Tribe of Idaho to provide eligible employees with extended leave benefits for certain family and medical reasons.

(1) Eligible employees are employees who have worked for the Tribe for at least 12 months; and completed at least 1250 hours of service during those 12 months.

(2) Eligible employees are entitled to 12 work weeks of unpaid leave during any 12 month period for one or more of the following reasons:

- (a) The birth and care of a newborn child of the employee;
- (b) The adoption or foster care placement of a child with the employee;
- (c) For the care of an immediate family member (spouse, child, parent) with a serious health condition; or
- (d) For medical leave when the employee is unable to work because of a serious health condition. A serious health condition is an illness or injury that involves a period of incapacity, continuing treatments by a health care provider, pregnancy or prenatal care, or a chronic or long term health condition. The Tribal Council will be responsible for determining whether an employee's condition qualifies him or her for extended medical leave.

If both spouses are employed by the Tribe, they are jointly entitled to a combined total of 12 work weeks of unpaid family leave for any of the circumstances described in sections (a)-(c) above.

29-12.08 Military Caregiver Leave. It is the policy of the Kootenai Tribe of Idaho to provide eligible employees with extended leave benefits for family members of covered servicemembers.

(1) An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness may take up to twenty-six (26) weeks of unpaid leave in a twelve (12) month period to provide care to a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty on active duty.

29-12.09 Military Exigency Leave. It is the policy of the Kootenai Tribe of Idaho to provide eligible employees with extended leave benefits for covered military members due to qualifying exigencies.

(1) For the purpose of section 29-12.09 a covered military member is the employee's spouse, son, daughter, parent or other next of kin approved by Council, who is a member of the National Guard or Reserves and who is under a call or order to active duty in support of a contingency operation.

(2) Qualifying exigency leave may be taken for any qualifying exigency arising out of the fact that a covered military member is on active duty or call to active duty status. Qualified exigencies include:

(a) Issues arising from a covered military member's short notice deployment (i.e., seven or less days notice);

(b) Military events, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs;

(c) Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member;

(d) Making or updating financial and legal arrangements to address a covered military member's absence;

(e) Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;

(f) Taking up to five days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment;

(g) Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member; and

(h) Any other event that the employee and Tribal Council agree is a qualifying exigency.

29-13 EMPLOYEE PERFORMANCE PROGRAM.

29-13.01 Employee Performance Program. Each employee's performance shall be evaluated (1) upon completion of the first ninety days of employment (the probationary period), and (2) fourteen days before the end of the funding program year under which the employee is being paid. In addition, each employee shall be given a special evaluation when being considered for salary increase, promotion, transfer, merit award, disciplinary action or separation, or at any other time directed by the Tribal Council. The evaluation shall be done by the employee's Department Director or Direct Supervisor on the standard form approved by the Tribal Council. In the case of senior staff employees under the immediate supervision of the Tribal Council, the evaluation shall be done by the person the Tribal Council so designates. Every report shall be reviewed by the Tribal Council before being made a permanent part of the employee's individual file and a basis for personnel action. The employee has a right to receive a copy of the evaluation report and to discuss it with the rating individual before the report is submitted for Tribal Council review. Every employee has the right to appeal an unfavorable evaluation directly to the Tribal Council if unable to resolve the difference through discussion with the rating individual.

CHAPTER 29 PERSONNEL

29-1 TITLE AND PURPOSE.

29-1.01 This shall be known as the Kootenai Tribe of Idaho Personnel Policies and Procedures Ordinance.

29-1.02 The purpose of these personnel policies and procedures is to promote the physical, economic and social well-being of Kootenai Tribe of Idaho employees and to establish a means to extend fair treatment to all employees in a uniform and equitable manner. These personnel policies and procedures are intended to comply with all federal laws applicable to the Kootenai Tribe of Idaho. If any part of this manual conflicts with any such laws or any rules, regulations or conditions prescribed by any funding source, those regulatory specifications shall prevail.

29-1.03 Amendments. Amendments to the personnel policies and procedures may be recommended by any person at any time, but all proposed changes must be approved by the Tribal Council.

29-1.04 Applicability. These policies and procedures apply to all Tribal governmental personnel including full-time, part-time, and temporary employees. A copy of this chapter shall be given to each Tribal employee, who shall sign a statement saying they have read the chapter and received a copy.

29-1.05 Employment At Will. These policies and procedures are established as general guidelines to promote the efficient operation of the Tribal government and may be modified at any time at the sole discretion of the Tribal Council. Employment with the Tribe is considered "at-will" and entered into voluntarily. Employees are free to resign at any time, for any reason, with or without notice. Similarly, the Tribe is free to conclude the employment relationship at any time.

29-1.06 Tribal Employment Rights. These policies and procedures shall be interpreted consistent with the provisions of Chapter 19, Tribal Employment Rights and nothing herein shall be deemed to supersede the provisions of such chapter.

29-2 DEFINITION OF TERMS.

- (1) Absence Without Leave (AWOL) – Any unauthorized absence.
- (2) Administrative Leave – Periods of time during regular business hours that an employee receives compensation for, but does no actual work. For example, the Tribe has designated lunch hours and Friday afternoon as administrative leave. Those periods of time are included as hours worked for compensation purposes, but are not included as work for purposes of overtime.
- (3) Compensatory Time – The time required to compensate an exempt employee for authorized extra work related activities.
- (4) Tribe – The Kootenai Tribe of Idaho.
- (5) Chain of Command – The Chain of Command for each job position is determined by the Tribal Council and illustrated on the Tribal Governmental Organizational Chart.
- (6) Tribal Council – The governing body of the Kootenai Tribe of Idaho.
- (7) Disciplinary Action – An oral warning, written reprimand, special probation, suspension or dismissal taken for cause.
- (8) Disciplinary Probation – A period in which an employee must perform well in order to atone for prior misconduct and to continue in employment.
- (9) Dismissal – Involuntary termination of an employee's employment with the Kootenai Tribe of Idaho.

- (10) Employment Date – The date on which an employee commences performance of duties and is placed on the payroll.
- (11) Full-time Employee – An employee who works a normal work week of 32 or more hours.
- (12) Grievance – A written complaint delivered through the appropriate channels.
- (13) Leave – Authorized absence from regularly scheduled work hours which has been approved by proper authority.
- (14) Overtime – Time an employee is directed and authorized to work in excess of 40 hours per week.
- (15) Part-Time Employee – An employee who is regularly scheduled to work fewer than 32 hours per week.
- (16) Permanent Employee – An employee who has been retained in his/her appointed position after satisfactory completion of a ninety-day probationary period. This includes those employees who work 32 or more hours every week who shall be eligible for full fringe benefits.
- (17) Personnel Records – A confidential folder or file containing information related to an individual's employment.
- (18) Probation – A specific time period during which the employee's work is evaluated to determine fitness or career status. Also used in disciplinary cases to provide a specific period of time for an employee to improve performance or meet other criteria to avoid dismissal.
- (19) Probationary Employee – A full-time or part-time employee who has not completed the initial probationary employment period. Also used in disciplinary cases to provide a specific period of time for an employee to improve performance or meet other criteria to avoid dismissal.
- (20) Reprimand – A written warning to an employee that a Department Director believes a deficiency exists in the employee's work performance or conduct and improvement is needed.
- (21) Resignation – The termination of employment at the request of the employee.
- (22) Suspension – A disciplinary action which temporarily removes an employee from work, with or without pay.
- (23) Temporary Employee – An employee who has received an appointment for a specified limited period, on a full-time or part-time basis and whose appointment may be terminated without appeal. Employees in this status do not receive sick leave or annual leave or holiday pay.

29-3 RECRUITMENT AND SELECTION

29-3.01 Nondiscriminatory/Equal Opportunity Policy. The Kootenai Tribe of Idaho does not discriminate because of religion, race, creed, age, sex, sexual preference, ancestry, color, national origin, marital status, or physical handicaps, in its procedures for employment, upgrading, demotion, lateral assignment transfer, recruitment, layoff, termination, compensation, training, or other benefits. All personnel policies, procedures and actions shall be in accord with the provisions of the Law & Order Code of the Kootenai Tribe of Idaho and applicable federal law. Tribal preference or Indian preference shall be observed in accordance with Chapter 19, Tribal Employment Rights.

29-3.02 Advertisement of Positions. When a vacancy occurs in any position, or a new position is created, the vacancy shall be advertised for at least five (5) business days throughout the Kootenai Reservation by written announcement posted in the Tribal Office and at other public places designated by the Council. Announcements shall include the job description, the date the announcement was posted, the closing date for applications and the place where applications may be obtained and submitted. Any special requirements for advertisement of vacancies required by individual funding sources (for example, the Job Training Partnership Act-JTPA) shall be observed.

29-3.03 Applications. All applications for employment with the Tribe shall be made on forms prescribed by the Council. Application forms shall be identical for all applicants, except that

applicants who are eligible for special employment programs (e.g. JTPA) may be required to submit different or additional forms required by the program concerned. Resumes or additional information concerning employment history may be attached to an application.

29-3.04 Interviews. An Interview Committee consisting of at least three persons shall be appointed by the Tribal Council for each vacant position. All applications, which have been received for the position, shall be given to the Interview Committee as soon as practicable after the position advertisements has closed and the Committee has reviewed all applications. The Interview Committee shall conduct personal interviews and rank all applicants according to their experience, work records, suitability for the position, and other factors relevant to the job offered, and shall recommend the top-ranking applicant to the Tribal Council for employment. The final selection and the actual offer of employment shall be made by the Council. No one may be empowered to offer employment to any person except by formal decision of the Council.

29-3.05 Certification and Criminal Background Checks

(1) For certain job responsibilities, employees may be required to possess specific certifications or licenses. These may take the form of academic degrees, licenses from examining boards, or operating licenses for certain kinds of machinery. When such licenses or certifications are required, they will be incorporated in class specifications. Individuals shall be responsible for the maintenance of their certificates if they are a condition of their employment.

(2) The following classes of employees are subject to a criminal background check prior to beginning employment:

- (a) Individuals who come into contact with children as part of their regular job duties.
- (b) Individuals who transport or enter homes of the elderly as part of their regular job duties.
- (c) Individuals who come into contact with individuals with disabilities in need of support.
- (d) Individuals employed in the Tribal Accounting Department.

29-3.06 Bonding. Some job responsibilities may require employees to be bonded. The cost of bond shall be carried by the Kootenai Tribe of Idaho.

29-3.07 Liability. Employees are expected to perform their duties with prudent judgment and within the laws and regulations that apply.

(1) Employees who do so may not be considered negligent, and therefore not liable, for accidents or injuries which may occur.

(2) If an employee is negligent in the performance of duties and if negligent performance results in loss or damage to self, or other employees of Kootenai Tribe of Idaho property or premises, the employee may be held personally and legally liable for such loss or damage.

29-4 HARASSMENT POLICY

29-4.01 Harassment Prohibited. Harassment, including sexual harassment, is contrary to basic standards of conduct between individuals and is prohibited by the Kootenai Tribe of Idaho. Any employee who engages in such harassment will be subject to corrective action up to and including dismissal.

(1) Harassment is defined as verbal, physical or visual conduct of a racial, ethnic or other type which, in the employee's opinion, impairs his or her ability to perform the job.

(2) Sexual harassment is defined as unwelcome sexual advances or visual, verbal or physical conduct of a sexual nature. This definition includes many forms of offensive behavior,

including gender-based harassment of a person of the same sex as the harasser, conduct of sexual nature that creates an offensive, intimidating or hostile work environment; and coerced sexual conduct by a person in a position of authority in the workplace.

29-4.02 Procedure. An employee who believes he or she has been a victim of harassment should report such incident(s) to a supervisor or to the Tribal Council. Employees will not be penalized for reporting what they believe to be harassment under Tribal policy.

29-5 COMPENSATION AND REIMBURSEMENT.

29-5.01 Job Descriptions. Job descriptions will be approved by the Tribal Council and provided to all employees.

29-5.02 Pay Periods. Employees will be paid weekly.

29-5.03 Compensatory Time. Compensatory time is time worked beyond 40 hours or on paid holidays during a work week. Work hours during administrative leave will not be considered for compensatory time. Work hours on paid holidays will be calculated on a 1:1 hour basis (e.g. if an employee works eight hours on a paid holiday he or she should insert sixteen hours on his or her timesheet). Tribal Council will adopt specific policies as to how to calculate compensatory time for lunch breaks. No payment of compensatory time will be made upon employment separation.

(1) The Tribal Employee who works extra hours must keep a daily record of hours worked and submit the record to the Tribal timekeeper on the employee's next time sheet.

(2) No more than 40 hours of compensatory time may be accumulated at one time, hours in excess of 40 shall be treated as voluntary work. Hatchery employees, and such other employees designated by Council, can accrue up to 80 hours of compensatory time.

(3) Compensatory time taken without the prior approval of the employee's supervisor shall be treated as unauthorized leave. Exceptions may be granted to the supervisor or a Council member in special circumstances.

29-5.04 Supervisory and Administrative Personnel (Exempt). Employees in a supervisory or administrative position are expected to work the time required to complete normal duties or to attend meetings and conferences. Exempt employees who work amounts of time in excess of 40 hours per week may be compensated upon approval of the Council.

29-5.05 Non-supervisory Personnel (Non-exempt); Overtime. As a general policy, overtime is disallowed. However, when employees are directed to work overtime, they shall be compensated with pay at the rate of one and one-half time the regular rate of pay. Only those hours actually worked may be counted for purposes of overtime. Work hours during which actual work does not occur, such as lunch hours and other administrative leave, will not be considered for purposes of overtime. Overtime will be paid within the pay period for which it was reported.

Approval for an employee to work overtime shall depend upon the following:

(1) Verification that the grant/contract(s) funding the employee(s) allows payment of overtime;

(2) Overtime work must be authorized in advance by the Tribal Council;

(3) [Repealed]

(4) Overtime compensation shall only be for the time worked in excess of 40 hours per week; and

(5) When computing an employee's hours for the purpose of determining overtime, all hours the employee worked during the week shall be counted.

29-5.06 Salaries and Wages. Position salaries shall be established by the Council within the limitations set by the appropriate funding sources. Employees shall be paid at a rate no lower than the federal minimum wage. Subject to this minimum wage, the salary for each position shall be in accordance with prevailing local practices for comparable positions, when such exist.

Salary increases and promotions will be granted by Council when warranted, subject to availability of funds, performance and the needs of the Tribe.

29-5.07 Probationary Period. The probationary period is an integral part of the selection procedure allowing the Department Director to train, observe, and evaluate the employee's performance in order to determine fitness for career status in the position. The probationary period shall be a minimum of 90 calendar days, but can be longer subject to Council discretion. The probationary period may be waived by the Tribal Council for in-house transfers.

(1) The following actions may be recommended by the Department Director to the Tribal Council for approval:

- (a) Based on satisfactory performance by the employee, that the employee be given permanent appointment.
- (b) Based on unsatisfactory performance, an employee that was an in house hire be demoted or returned to their former position, if available.
- (c) Based on unsatisfactory performance, that the employee be dismissed.
- (d) Based on the judgment of the immediate supervisor, the probationary period may be extended for up to an additional 90 calendar days.

29-6 EMPLOYMENT SEPARATIONS

29-6.01 Voluntary Termination. While employment with the Tribe is at-will, the Tribe requests that an employee who may voluntarily terminate employment give two week's notice to the Tribal Council.

29-6.02 Involuntary Termination. An employee who is dismissed without prejudice (because of budget restrictions, organization changes, etc.) may be given two weeks notice by the Tribal Council. In its discretion, the Council may give two weeks pay in lieu of notice. An employee who is dismissed for cause (with prejudice e.g. for misconduct) is not entitled to notice but may be dismissed immediately by the decision of the Tribal Council.

29-6.03 Severance Pay. Upon dismissal from or voluntary termination of employment with the Kootenai Tribe of Idaho, an employee shall receive, together with his/her accrued salary or wage, a cash payment in the amount of accrued unused leave. The amount of any employee's overdue indebtedness to the Kootenai Tribe of Idaho shall be deducted from the amount of compensation, up to the limits specified by federal wage laws, to be paid at severance according to the employee's written loan agreement.

29-7 EMPLOYEE CONDUCT.

29-7.01 General Conduct of the Kootenai Tribe of Idaho Employees. All employees shall conduct themselves in a professional manner to reflect favorably on the Kootenai Tribe's public image and to insure orderly working conditions. Employees should exercise the utmost discretion in regard to all

matters of official business and records. Any information which has been received by an employee on a confidential basis must be maintained in confidence.

29-7.02 Confidential Information. Employee may not disclose privileged or confidential information to any other individuals, including other employees or officials, except for official reasons and with the consent of the Tribal Council or by an order of a court of competent jurisdiction. All work products, including confidential information, produced by an employee in the performance of duties are the property of the Tribe.

(1) The following, but not limited to the following, shall be considered confidential information:

- (a) Discussion or materials from an executive session of the Tribal Council, unless the Council specifically authorizes disclosure
- (b) Client information of a personal nature, such as personal or household income, health, academic records, paternity, arrest records and court proceedings, except to the extent such information is necessary to determine the client's eligibility for Tribal services or to provide such services to the client
- (c) Employee information of a personal nature, such as personal or household income, health, academic records, previous criminal history, disciplinary actions and performance evaluations, except to the extent such information is necessary to determine an employee's or applicant's suitability for Tribal employment or in disciplinary proceedings
- (d) Tribal personnel records
- (e) Medical, counseling or other health related records
- (f) Cultural information
- (g) Any other information the Tribal Council directs shall be kept confidential

29-7.03 Public Statement. An employee may not speak to the public media as an official spokesman of the Kootenai Tribe of Idaho without prior clearance of the Tribal Chairman or his/her designee, who will determine the appropriate action to be taken. Any deviation from this policy will be considered a serious infraction of regulations and will be subject to disciplinary action.

29-7.04 Public Appearances. An employee who is asked by an outside agency or organization to appear as a guest speaker or invited program participant representing the Kootenai Tribe of Idaho must obtain prior clearance in writing from the Tribal Chairman or his/her designee. The written clearance shall be included in the employee's personnel record.

29-7.05 Gifts and Gratuities. Employees are prohibited from accepting gifts, money, and/or gratuities from persons performing services under contract or otherwise in a position to benefit from the employee's actions.

29-7.06 Employee Relations Policy. All personnel at all levels of the Kootenai Tribe of Idaho are obligated to respect one another's basic human rights and human dignity, and further, to work cooperatively in performing the Kootenai Tribe of Idaho's service. Any disputes between employees, if they cannot be settled at the individual level, should be dealt with at the staff meeting level before they are brought to the attention of the Council. Gossiping, griping, and criticizing other employees is not acceptable. If an employee has a complaint about another employee or about working conditions, the complaint should be aired openly through the Chain of Command rather than used as a basis for internal dissension.

29-8 DRUG AND ALCOHOL POLICY.

29-8.01 Alcohol and Drug-Free Workplace Policy. The Kootenai Tribe of Idaho has a strong commitment to provide a safe workplace for its employees. Consistent with that commitment, Kootenai Tribe of Idaho has adopted an alcohol and drug-free workplace policy.

(1) The use, sale, distribution, manufacture or possession of alcohol or drugs, paraphernalia, the unauthorized use of prescription drugs, the use of any legally obtained drug (prescriptions or over-the-counter medications) when such use adversely affects the employee's job performance or safety, or any combination thereof, on Tribal premises or any location at which company business is conducted, including Tribal vehicles and any private vehicle parked on company premises or work sites or used in the course of employment, is prohibited.

(2) In addition, reporting to work or working while under the influence of alcohol or drugs is forbidden. Employees who are taking prescription drugs or over-the-counter drugs that may affect their performance should discuss their situation with their supervisor and obtain permission before beginning work. Employees may be required to provide properly written medical authorization from a physician to work while using such authorized medications. Any violation of this policy will result in disciplinary action, up to and including dismissal.

29-8.03 Drug Testing.

(1) The Kootenai Tribe of Idaho will employ every legal means available to it to operate its business free from alcohol and drugs. Accordingly, drug testing shall be conducted for:

- (a) Applicants recommended for hire;
- (b) Employees where there is reasonable suspicion to suspect drug or alcohol use and/or intoxication in the workplace;
- (c) Employees involved in an on-the-job accident or on-the-job accident claim; and
- (d) Employees selected from the random selection pool

(2) This list is not intended to limit the events which would require a drug test and Kootenai Tribe of Idaho reserves the right to test for alcohol and drug abuse for other lawful reasons. Testing shall be conducted pursuant to policy adopted by the Tribal Council.

(3) A positive test result shall be deemed a violation of this policy and result in disciplinary action, up to and including dismissal. An employee has the right not to consent to being tested. However, refusal to submit to testing when requested will result in disciplinary action, up to and including immediate dismissal.

29-8.04 Other Illegal Usage. Off-the-job illegal drug use which could adversely affect an employee's job performance or which could jeopardize the safety of other employees, the people the Tribe serves, Tribal facilities, or where such usage could jeopardize the security of Tribal finances or business records, or where such usage adversely affects the public's trust in the ability of the Tribe to carry out its responsibilities, will not be tolerated.

29-8.05 Prescribed Medical Treatment. Employees undergoing prescribed medical treatment with a controlled substance that may affect the safe performance of their duties are required to obtain a doctor's written note indicating the drug will not impair the employee's work performance.

29-8.06 Employee Assistance Program. Employees may choose, or in some cases, be required to seek a treatment program for drug or alcohol abuse. Rehabilitative costs are the responsibility of the employee, although the Tribe may in certain situations provide or fund such services at the

discretion of the Tribal Council. Additionally, employees shall be notified of the assistance available through Tribal programs, such as the Tribal Drug and Alcohol Counselor.

Employees may be retained after a violation of this policy solely at the discretion of the Tribal Council. Reinstatement to employment may be conditioned upon the receipt of a negative test and the determination that the employee is drug and alcohol free and the risk of subsequent use of dangerous drugs or alcohol is sufficiently low to justify return to work.

Employees must agree to be subject to unannounced drug or alcohol testing for a time period determined by the Tribal Council. Such subsequent tests will be at the employee's expense. A positive result during this time period will result in immediate dismissal.

29-9 USE OF TRIBAL PROPERTY; WORKPLACE SAFETY

29-9.01 Safety and Use of Tribal Vehicles Policy. Certain employees may be assigned vehicles with which they commute between their homes and the office or for official Tribal business. It is against Kootenai Tribal policy to use Tribal vehicles without the express permission of the Tribal Council.

(1) In an effort to help insure the safety of all Tribal employees, the following outlines the Tribe's driving policies. This policy applies to any employee operating either a Tribal vehicle or a personally owned vehicle used for work purposes:

In order to drive a vehicle, the driver must:

- (a) Be at least 18 years of age;
- (b) Possess a valid state drivers license with no restrictions on driving privileges;
- (c) Have supervisor approval and be driving for Tribal business purposes;
- (d) Wear seatbelts and have passengers wear seatbelts when the vehicle is in motion;
- (e) Comply with all state, local and Tribal traffic laws and the lawful instructions of emergency and law enforcement personnel;
- (f) Abstain from ingesting controlled substances, intoxicating beverages, prescription drugs or other medications that caution against operating a motor vehicle;
- (g) Abstain from transporting drugs or alcohol, or transporting passengers who are intoxicated or in possession of drugs or alcohol;
- (h) Unless job requirements otherwise require, abstain from situations or activities that may adversely impact the driver's ability to safely operate a motor vehicle such as fatigue, adverse weather, illness, reading or use of a cell phone.

(2) Drivers shall report to their supervisor immediately the following situations:

- (a) Any medical or physical condition that may impair his or her ability to drive.
- (b) All on-duty incidents, including those that could result in a violation, citation, charge, arrest, warrant or civil action or result in damage that must be reported for insurance purposes.
- (c) Any suspension, revocation, cancellation or disqualification of driving privileges.

(3) In order to help enforce this policy all driver's driving records will be checked no less than annually by either the Tribe or by the Tribe's insurance company. An employee who operates a motor vehicle while on the job must consent to have his/her motor vehicle record checked at least once per year. Anyone found to be in violation of the above policies will have their driving privileges revoked. The Tribe reserves the right take further disciplinary action against anyone in violation of the above policies.

29-9.02 Other Tribal Property. It is against Kootenai Tribal policy to remove any Tribal property which includes computers or other equipment, merchandise, gas or other credit cards, funds or supplies from work premises without the express permission of the Tribal Council.

All computer equipment, software, network and any data produced on the computers belong to the Kootenai Tribe of Idaho. All use of this equipment and data produced and accessed on it shall be used only for legitimate Tribal purposes and consistent with employee's responsibilities.

29-9.03 Prosecution of Theft. All cases of employee theft shall be subject to civil prosecution in Tribal court. Civil fines shall be determined based on the damages toward the Tribe. Tribal policy is and will be to prosecute each case, without exception and without recourse. Instances of employee theft shall also be referred to appropriate law enforcement for criminal prosecution in Tribal court or other court of competent jurisdiction.

29-9.04 Internet & Electronic Mail. The use of computers and network equipment by employees is limited to official Tribal business. This policy prohibits activities on internal and external electronic mail networks such as: operating a business for personal gain; sending chain letters or soliciting money; offensive or harassing statements, sending, downloading or soliciting sexually oriented messages or images; distributing or printing copyrighted material (including articles and software) in violation of copyright laws. Employees are prohibited from the unauthorized use of passwords and encryption keys to access files, or to retrieve stored information. Violation is grounds for disciplinary action up to and including immediate dismissal.

29-9.05 Workplace Safety. It is Kootenai Tribal policy to protect the safety and health of all employees.

(1) Department Directors shall be responsible for, but not limited to, the following:

- (a) The safe conduct of employees while under their supervision.
- (b) Providing a written report to the Tribal Chairperson, Vice Chairperson or designated District Representative within two workdays from the time of occurrence of any on-the-job injury.
- (c) Conducting periodic work place inspections to identify safety and health hazards and provide copies of these inspections to the Tribal Council.

(2) If an accident or incident occurs, employees must report all accident or incidents, no matter how slight, immediately to their Department Director. Reporting on the next work shift is not an acceptable practice.

29-9.06 Electronic Devices. All electronic devices provided by the Tribe, including but not limited to cellular phones, PDA's, laptops, computers, and any mobile communication devices, must exclusively be used for Tribal purposes. Personal use of these devices is prohibited. Employees have no expectation of privacy with these devices and may be subject to discipline if discovered using electronic devices provided by the Tribe for personal use. To monitor productivity and ensure a discrimination free workplace, the Tribe reserves the right to monitor employee usage of all electronic devices it provides. Misuse of electronic devices provided by the Tribe will result in disciplinary action up to and including immediate dismissal.

29-10 DISCIPLINARY ACTION

29-10.01 General. An employee who violates the personnel policies of the Kootenai Tribe of Idaho or otherwise fails to perform according to minimum acceptable standards of work performance and conduct will be disciplined, up to and including dismissal. Nothing herein shall be deemed to modify the at-will employment relationship.

29-10.02 Poor Performance. In the case of poor performance, the Department Director shall call each instance to the attention of the employee and, if not satisfied with the employee's explanation, shall place a memorandum stating the nature of the instance, the date of the discussion, and the employee's response in the employee's personnel file. Two such written records within a six-month period shall warrant suspension of the employee without pay by the Department Director for a period of one week. Three such written records of performance deficiencies within a six-month period shall warrant bringing the matter to the attention of the Tribal Council for consideration and possible dismissal of the employee.

29-10.03 Disciplinary Probation. Disciplinary probation may be placed on an employee. This will not affect fringe benefits, vacation or sick leave accruals. Employees on disciplinary probation will not receive merit pay increases nor attend training workshops. Probation may not exceed three (3) months and must be made in writing by the Department Director to the employee, stating the reasons for the action. A copy is to be kept in the employee's personnel file.

29-10.04 Violation of Rules. Any employee who violates these personnel policies or minimum acceptable standards of conduct may be subject to suspension without pay, placement in probationary status, or immediate dismissal for cause.

Whenever possible, discipline shall be of increasingly progressive severity. In circumstances so egregious as to pose a threat to the physical safety of other persons or Tribal property or to impair the operations of the Tribe, the employee may be immediately dismissed. Examples of the kinds of action which can lead to this measure include, but are not limited to, absence without leave, drinking on the job, dishonesty, etc.

29-10.05 Just Cause for Discipline. Employees shall not violate Tribal rules and regulations. Conduct outside of work shall not be covered by these rules except as such conduct impacts job performance. Just cause for discipline, up to and including dismissal, shall include, but is not limited to, the following infractions:

- (1) Verbal harassment or intimidation of a Tribal employee, official or client.
- (2) Use of foul or abusive language.
- (3) Assaulting or threatening to assault a Tribal employee, official or client.
- (4) Refusal to carry out the directions or instructions of Department Directors.
- (5) Violation of the Personnel Ordinance and/or failure to follow the procedures as described herein.
- (6) Use or abuse of alcohol or narcotics (excluding prescription drugs used for their prescribed purpose) at work, or affecting job performance.
- (7) Excessive absenteeism or tardiness.
- (8) Misusing or damaging Tribal property.
- (9) Failure to follow the employee grievance procedure described herein or circumventing its provisions.
- (10) Instituting or threatening to institute disciplinary action against an employee without justification.
- (11) Intentionally or recklessly endangering the safety of other employees or violating safety rules or standards.
- (12) Disclosure of confidential information.
- (13) Deliberately falsifying Tribal records or deceiving Department Directors about job-related activities.
- (14) Theft of or destruction of Tribal property or funds or the property or funds of another employee.
- (15) Falsification or intentional misrepresentation of a material nature on an employee's application for employment.

- (16) Unsatisfactory job performance, after being given the means and the opportunity to improve.
- (17) Failure to return to work after an approved leave of absence.
- (18) Sexual harassment of employees, clients or Tribal members.
- (19) For probationary employees, failure to perform their job duties satisfactorily within the probationary period.
- (20) Conviction of or admission of a crime that reflects adversely on the reputation or image of the Tribe; affects, inhibits or prevents effective job performance; or makes it impossible for the person to work with other employees; such crimes to include, but not be limited to, murder, assault with a deadly weapon, crimes against children, child abuse and domestic violence.
- (21) Unexcused absence from work.

29-10.06 Levels of Disciplinary Action. Disciplinary action can take the following forms: written reprimands, suspension without pay, probation and dismissal. Factors to be taken into consideration in determining appropriate disciplinary action include, but are not limited to: severity and frequency of the infraction, level of responsibility of the employee and the employee's work history with the Tribe. While the employment relationship remains at-will and disciplinary levels may be skipped depending on the severity of the violation, the following disciplinary sequence shall generally be followed to the extent practical:

First Offense: Written reprimand to be included in the employee's personnel file.

Second Offense: Suspension without pay for a period not to exceed two weeks.

Third Offense: Dismissal.

29-10.07 Right of Appeal. An employee has the right to appeal any disciplinary action, including written warnings for poor performance, directly to the Tribal Council. The decision of the Tribal Council shall be final.

29-10.08 Political Activity. Employment with the Kootenai Tribal Government may not be offered as consideration or reward for the support or defeat of any political candidate or party for public office.

29-10.09 Nepotism and Conflict of Interest. Because of the small size of the qualified work force of the Kootenai Tribe of Idaho, it shall be permissible for persons who are members of the Tribal Council, or are immediate relatives of Tribal Council members, to be employed by the Tribal government.

29-11 EMPLOYEE GRIEVANCE PROCEDURE.

29-11.01 Policy. An employee who has been aggrieved by an action relating to working conditions, wages, discipline, or promotions may file a grievance under these provisions. Any employee who takes a grievance outside of these procedures shall be subject to disciplinary action.

29-11.02 Time Limits. If the Tribe fails to respond to a grievance within the limits established in this chapter, the grievance will be considered upheld. Denial of the grievance at any step does not prevent the employee from proceeding to the next step; however, a failure by the employee to adhere to the time limits set out herein shall be deemed a waiver of any subsequent grievance rights.

29-11.03 Procedure. Unless the employee and the Tribe otherwise agree in writing, all grievances shall proceed in the following manner:

(1) Within five (5) working days of the occurrence, not including the date of the occurrence, or the time when the employee reasonably should have known of the occurrence, the employee shall try to resolve the situation by an informal discussion with the Department Director.

(2) If the informal discussion does not result in satisfactory agreement, the employee may present a formal written statement to the Department Director within five (5) working days, not including the date of the informal discussion. The written statement shall state the facts and the alleged problem and specify what relief is sought. Any alleged violation of a Kootenai Tribe of Idaho policy, regulation or contract shall be identified.

(3) The Department Director shall forward the employee's written statement to the Tribal Council the day it is received. If this is not possible, it should be forwarded at the first possible date and the employee should be notified, in writing, of the date the notice is received by the Tribal Council.

(4) The Tribal Council shall reply in writing within five (5) working days, not including the date the statement is received.

(5) If the written response does not provide satisfaction or if no written response was given within five (5) working days, the employee has five (5) working days, not including the date the response is received or the fifth day in the event no written response was given, to demand a hearing.

29-11.04 Hearing. A hearing shall be conducted by the Tribal Council, which must include at least one member of the Tribal Council from each Tribal District. The employee and the Department Director shall have the opportunity to present any evidence and arguments in support of their respective positions. A party shall have the right to confront and cross examine any witness called by the other party. Both parties shall have the opportunity to present arguments to the Tribal Council.

29-11.05 Findings. As soon as possible after a hearing, the Tribal Council shall present in writing its findings and decision to the parties. The decision shall be final and binding upon both the employee and the Kootenai Tribe of Idaho.

29-11.06 Remedies. An employee who is terminated or suspended may not remain on the job pending resolution of the grievance. In the event that the employee is successful in his grievance, the Tribal Council may award the employee lost wages.

29-11.07 Value of Precedent. A decision by the Tribal Council in one grievance shall not be a precedent for subsequent cases. Further, any deviation from these procedures which takes place in one case shall not be deemed a waiver of the right to insist on strict adherence to these procedures in a subsequent case.

29-12 TIME OFF FROM WORK.

29-12.01 Holidays. The following days shall be observed by the Kootenai Tribe of Idaho as holidays, and all employees shall be entitled to take compensated leave (in addition to other authorized leave) on these days:

- | | | |
|-----|---------------------|--------------------------------------|
| (1) | New Year's Day | January 1 |
| (2) | Martin Luther King | January (as designated) |
| (3) | President's Day | February (as designated) |
| (4) | Good Friday | Friday before Easter (as designated) |
| (5) | Memorial Day | Last Monday in May |
| (6) | Juneteenth | June 19 |
| (7) | Independence Day | July 4 |
| (8) | Labor Day | First Monday in September |
| (9) | American Indian Day | Fourth Friday in September |

(10)	Indigenous Peoples' Day	October
(11)	Veterans Day	November 11
(12)	Thanksgiving	4th Thursday in November
(13)	Day After Thanksgiving	
(14)	Christmas Eve	December 24
(15)	Christmas Day	December 25

If one of the named holidays falls on a Saturday or Sunday, then the holiday shall be observed in accordance with national custom or law.

29-12.02 Personal Leave. Annual leave is provided and used for two general purposes which are to allow every employee an annual vacation period of extended leave for rest and recreation and to provide periods of time off for personal and emergency purposes.

(1) The Kootenai Tribe of Idaho provides annual leave for permanent employees which may be taken as earned. Approval and timing of vacation or use of annual leave shall be determined by the supervisor with due regard to the employee's wishes and the needs of the Kootenai Tribe of Idaho. For an employee's first two years of employment, leave will be accrued at the rate of 4 hours per week for a total of up to 208 hours per year. At the beginning of an employee's third year of employment, leave will be accrued at the rate of 4.5 hours per week for a total of up to 234 hours per year. At the beginning of an employee's fifth year of employment, leave will be accrued at the rate of 5 hours per week for a total of up to 260 hours per year. Annual leave shall not accrue during periods an employee is on annual leave. Employees will accrue annual leave during periods an employee is on compensatory time.

(2) If at the end of the fiscal year an employee has a balance of leave hours, the employee will be paid for such hours up to eighty (80) hours. The remaining balance of any leave hours shall not be carried over.

(3) Each Department Director shall establish such policies and procedures as are necessary to insure that all employees are able to schedule and take accrued leave each full fiscal year.

(4) [Repealed.]

(5) The Accounting Department of the Kootenai Tribe of Idaho shall maintain a leave record for each employee.

(6) Holidays occurring during the time of annual leave will not be charged against annual leave.

(7) Employees are entitled to their annual leave pay prior to taking their annual leave. Employees wishing to receive their annual leave pay prior to taking their annual leave must do the following:

- (a) Make request of the accounting department in writing at least one day before such pay is required. Such request must include the timesheets for the period where the employee will be absent.
- (b) Employees are entitled to the paycheck for the previous week worked (if not already received), the week last worked, and all complete weeks that the employee will be gone.

- (c) An employee is not entitled to pay in advance for weeks that are only partially annual leave unless such week is at a start of a vacation. For example: if an employee will be gone Monday and Tuesday on annual leave but will be back on Wednesday, they are not entitled to receive their annual leave pay prior to taking annual leave.

29-12.03 [Repealed]

29-12.04 Leave Without Pay. Leave without pay is a temporary unpaid status when absent from duty. Leave without pay may be granted, provided such leave may be scheduled without adversely affecting the operation of the Tribe.

(1) Approval. Requests for leave without pay shall be submitted in writing at least two weeks in advance to the employee's immediate supervisor and shall contain reasonable justification for approval. Leave without pay is granted at the Tribal Council's discretion, with the understanding that the employee intends to return to work upon completion of the leave and the retention of the employee is desirable. Seniority status of the employee while on leave without pay will not be affected.

29-12.05 Emergency Leave. The Tribal Council may approve emergency leave for employees with legitimate needs. Emergency leave beyond the employee's total leave balance shall be considered authorized leave without pay.

29-12.06 Authorized Absence. The Department Director or the Tribal Council may authorize the absence of employees due to conditions beyond their control (e.g. hazardous weather, office closure) without the absence being charged to the employees' leave.

29-12.07 Family and Medical Leave. It is the policy of the Kootenai Tribe of Idaho to provide eligible employees with extended leave benefits for certain family and medical reasons.

(1) Eligible employees are employees who have worked for the Tribe for at least 12 months; and completed at least 1250 hours of service during those 12 months.

(2) Eligible employees are entitled to 12 work weeks of unpaid leave during any 12 month period for one or more of the following reasons:

- (a) The birth and care of a newborn child of the employee;
- (b) The adoption or foster care placement of a child with the employee;
- (c) For the care of an immediate family member (spouse, child, parent) with a serious health condition; or
- (d) For medical leave when the employee is unable to work because of a serious health condition. A serious health condition is an illness or injury that involves a period of incapacity, continuing treatments by a health care provider, pregnancy or prenatal care, or a chronic or long term health condition. The Tribal Council will be responsible for determining whether an employee's condition qualifies him or her for extended medical leave.

If both spouses are employed by the Tribe, they are jointly entitled to a combined total of 12 work weeks of unpaid family leave for any of the circumstances described in sections (a)-(c) above.

29-12.08 Military Caregiver Leave. It is the policy of the Kootenai Tribe of Idaho to provide eligible employees with extended leave benefits for family members of covered servicemembers.

(1) An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness may take up to twenty-six (26) weeks of unpaid leave in a twelve (12) month period to provide care to a current member of the Armed Forces,

including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty on active duty.

29-12.09 Military Exigency Leave. It is the policy of the Kootenai Tribe of Idaho to provide eligible employees with extended leave benefits for covered military members due to qualifying exigencies.

(1) For the purpose of section 29-12.09 a covered military member is the employee's spouse, son, daughter, parent or other next of kin approved by Council, who is a member of the National Guard or Reserves and who is under a call or order to active duty in support of a contingency operation.

(2) Qualifying exigency leave may be taken for any qualifying exigency arising out of the fact that a covered military member is on active duty or call to active duty status. Qualified exigencies include:

- (a) Issues arising from a covered military member's short notice deployment (i.e., seven or less days notice);
- (b) Military events, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs;
- (c) Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member;
- (d) Making or updating financial and legal arrangements to address a covered military member's absence;
- (e) Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;
- (f) Taking up to five days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment;
- (g) Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member; and
- (h) Any other event that the employee and Tribal Council agree is a qualifying exigency.

29-13 EMPLOYEE PERFORMANCE PROGRAM.

29-13.01 Employee Performance Program. Each employee's performance shall be evaluated (1) upon completion of the first ninety days of employment (the probationary period), and (2) fourteen days before the end of the funding program year under which the employee is being paid. In addition, each employee shall be given a special evaluation when being considered for salary increase, promotion, transfer, merit award, disciplinary action or separation, or at any other time directed by the Tribal Council. The evaluation shall be done by the employee's Department Director or Direct Supervisor on the standard form approved by the Tribal Council. In the case of senior staff employees under the immediate supervision of the Tribal Council, the evaluation shall be done by the person the Tribal Council so designates. Every report shall be reviewed by the Tribal Council before being made a permanent part of the employee's individual file and a basis for personnel action. The employee has a right to receive a copy of the evaluation report and to discuss it with the rating individual before the report is submitted for Tribal Council review. Every employee has the right to appeal an unfavorable evaluation directly to the Tribal Council if unable to resolve the difference through discussion with the rating individual.

CHAPTER 30

PRIVACY ACT

30-1 TITLE AND PURPOSE

30-1.01 This shall be known as the Kootenai Tribe of Idaho Privacy Act.

30-1.02 The purpose of this privacy act is to provide certain safeguards for individuals against invasions of personal privacy. The Kootenai Tribe of Idaho uses computing tools such as databases and related software to conduct tribal business and to store personal information of individuals. In order to protect the privacy of individuals in information systems maintained by the Tribe, it is necessary to ensure that tribal privacy policy keeps up with technical advances.

30-2 DEFINITIONS

(1) "Tribe" shall mean the Kootenai Tribe of Idaho.

(2) "Maintain" shall include maintain, collect, use, or disseminate.

(3) "Record" shall mean any item, collection, or grouping of information about an individual that is maintained by the Tribe, including, but not limited to, education, financial transactions, medical history, and criminal or employment history, and that contains a name, or identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(4) "Routine Use" with respect to disclosure of a record, the use of such record for a purpose which is compatible with the purposes from which it was collected.

30-3 CONDITIONS OF DISCLOSURE

30-3.01 The Tribe shall not disclose any record by any means of communication except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains unless the disclosure of the record would be:

(1) For routine use by the Tribe;

(2) To a recipient who has provided the Tribe with advance adequate written assurance

that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(3) Used in a manner consistent with the preservation of the Tribe's historical identity;

(4) To appropriate Tribal, Federal, State, local, or foreign law enforcement and regulatory agencies when relevant to civil, criminal, or regulatory investigations, purposes, or prosecutions;

(5) When pursuant to a requirement by the Tribe for any lawful purpose; Or

(6) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual.

30-3.02 An individual who releases any record when there exists a reasonable belief that there is an emergency involving immediate danger or serious physical injury to any person or that an alleged perpetrator of a criminal act may flee the jurisdiction is protected from civil liability for this action.

30-4 ACCOUNTING OF SUCH DISCLOSURE

30-4.01 The Tribe shall account for any disclosure of records except as provided in 30-3.01(1), (4) and (5).

(1) The Tribe shall record the date, nature, and purpose of each disclosure; And

(2) The name and address of the person or agency to whom the disclosure is made.

30-5 ACCESS TO THE RECORDS

30-5.01 The Tribe may allow any individual to gain access to their record to review and copy.

30-5.02 The Tribe may allow an amendment of a record pertaining to an individual:

(1) To make a correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; And

(2) The individual makes a request not later than 10 business days prior to such amendment.

30-5.03 The Tribe reserves the right to refuse access to or amending of any record for any reason.

30-6 REQUIREMENTS OF THE TRIBE

30-6.01 The Tribe shall:

(1) Maintain in its records only such information about an individual as is relevant and necessary to the Tribe's purposes;

(2) Take reasonable steps to safeguard records;

(3) Inform the individual whom information is being collected from of:

- (a) The purpose for which the information is intended to be used;
- (b) The effects of not providing all or false information; and
- (c) That the rights of that individual are contained within this Act.

(4) Make timely determinations concerning the routine use of the record; And

(5) Ensure that records are safely terminated after their purpose has expired.

30-7 TRIBAL RIGHTS

30-7.01 The Tribe reserves the right to:

(1) Keep records on hand up to ten (10) years after a determination has been made or other amount of time if required by law;

(2) Verify and follow up on information provided in records;

(3) Seek additional data concerning records; And

(4) Routine use of records.

30-7.02 These rights are not limited and may be expanded at the discretion of Tribal Council.

30-8 FALSE STATEMENTS WITHIN RECORDS

30-8.01 An individual who either makes a false statement within a record or intentionally misrepresents themselves in a record may be punished:

(1) Under the criminal provisions of section 4-4.19; or

(2) Under the regulatory infraction provisions of section 5-3.08; or

(2) Remedies under federal law at 18 U.S.C. §1001.

30-9 RIGHT TO APPEAL

30-9.01 Appeals concerning any records must be made to Tribal Council.

30-9.02 The Tribal Council reserves discretion whether to hear an appeal.

30-9.03 The decision of the Tribal Council is final.

CHAPTER 31
AUTOMATED TELLER MACHINES

31-1 TITLE AND PURPOSE.

31-1.01 This ordinance shall be known as the Kootenai Tribe of Idaho Automated Teller Machine Businesses Ordinance. It is designed to regulate the possession and operation of automated teller machines on Kootenai Tribal Lands.

31-2 ENTITIES AUTHORIZED.

31-2.01 Businesses possessing the appropriate licenses and permits from the Tribe under the Law and Order Code, are permitted to operate automated teller machines on Kootenai Tribal Lands including the Kootenai River Inn Casino & Spa.

31-3 LAWS GOVERNING.

31-3.01 Automated teller machine businesses shall comply with all applicable laws and regulations of the Tribe related to operation of businesses on tribal lands, including any special laws or regulations adopted by the Council of the Kootenai Tribe of Idaho related to the operation of automated teller machines. Automated teller machine businesses shall also comply with all applicable federal laws and regulations related to operation of automated teller machines, including registration, if appropriate, with the United States Department of Treasury Financial Crimes Enforcement Network and the Internal Revenue Service, and implementation of necessary safeguards required by the federal government to combat money laundering and terrorism financing.

31-4 TRIBE NOT LIABLE.

31-4.01 The Tribe shall not be liable for the failure of automated teller machine businesses to comply with applicable federal law.

CHAPTER 32
SUPPLEMENTAL ASSISTANCE ACT

27-1 TITLE, PURPOSE AND DEFINITIONS

Section 1(e) of the Constitution, the Council hereby establishes rules for participation in Supplemental Assistance Programs.

32-1 PURPOSE

32-1.01 The Council of the Kootenai Tribe of Idaho recognizes that individual members may have certain conditions that put them at a disadvantage from enjoying the same quality of living that other members possess. The Council also recognizes that historical events have created disadvantages for the Tribe and its members and that the Tribal government has a responsibility to ensure the future of the Tribe. The Council promotes the social and general welfare of all its members such that they may enjoy an equal opportunity for the blessings of spiritual, educational, cultural, and economic growth for now and generations to come.

(1) Members who fail to participate in social, cultural, and/or political activities of the Tribe are not eligible for participation in Supplemental Assistance Programs.

(2) For purposes of assisting the Council in determining whether a member has participated fully in one or more of such activities, the following apply:

32-2 ELIGIBILITY FOR SUPPLEMENTAL ASSISTANCE PROGRAMS

32-2.01 Duly enrolled members of the Kootenai Tribe of Idaho who are also members of another Tribe and/or band of Indians who have during the previous two years received monies from those Tribes in the form of Tribal disbursements or supplemental assistance programs shall be excluded from eligibility for membership in Kootenai Supplemental Assistance Programs. In order to be eligible for Kootenai Supplemental Assistance Programs such members who are also members of another Tribe and/or band of Indians shall execute a waiver of other disbursements or benefits. This shall not be deemed to affect the membership status of any member of the Kootenai Tribe of Idaho.

(a) A member who is not, at the time of application to a Supplemental Assistance Program, a full-time resident of Boundary County, Idaho shall be deemed not to participate fully in such activities unless such person is not subject to the provisions of subsection (b), was a full-time resident of Boundary Country for not less than five continuous years prior to residing elsewhere, participated fully in one or more of such activities prior to departing and is temporarily residing outside Boundary County for purposes of schooling, military service, medical care or employment and unless such person continues to maintain close social and cultural ties with the Tribe.

32-2.02 Eligibility for Supplemental Assistance Programs is based on the elevated needs of certain Tribal members and the needs of the Tribe.

(b) A member of the Tribe who is a full-time resident of Boundary County at the time of application to a Supplemental Assistance Program, shall be deemed not to have participated fully in one or more of such activities unless such person participates fully in one or more of such activities and has been a resident of Boundary County for his or her entire life or, immediately preceding application to a Supplemental Assistance Program, for not less than five continuous years plus one year for each year such person is over the age of eighteen or one year for each year such person has not been a full-time resident of Boundary County, whichever is less.

32-2.03 The burden of proof to establish elevated needs warranting participation in a Supplemental Assistance Program rests on the applicant.

32-3 RESTRICTIONS ON PARTICIPATION IN SUPPLEMENTAL ASSISTANCE PROGRAMS

32-3.01 Pursuant to its authority under Article IV,

(c) The eligibility for Supplemental

Assistance Programs of the Tribe for members who are younger than the age of eighteen shall be determined by the eligibility of their parent(s) or legal guardian.

32-4 ESTABLISHING SUPPLEMENTAL ASSISTANCE PROGRAMS ON THE BASIS OF NEED

32-4.01 Supplemental Assistance Programs. The Council of the Kootenai Tribe of Idaho is authorized to create programs to provide supplemental assistance to individual Tribal members based on need. Such programs include but are not limited to:

(1) The Elder Supplemental Assistance Program. This program is established for the aid of elders who have generally not been able to equally share in employment and other opportunities due to the history of poverty, additional costs required for elders to take care of themselves and their families, and other special needs due to health and other concerns. This program is not income based but rather needs based. Due to the life expectancy of a Kootenai Elder, the entry age for the Elder Supplemental Assistance Program is age fifty-five (55). Assistance increases once the participant reaches the age of sixty-five (65).

(2) The Supplemental Assistance for School-Age Children Program. This program is established for the aid of school-age children to assist with the extra expenses associated with school attendance. This program is needs based – both the needs of the Tribe for educated members and the needs of school-age children and their families. An applicant to this program has the burden of proof to establish elevated needs. Tribal members may participate in this program until they reach the age of eighteen (18).

(3) The Supplemental Assistance for Higher Education. This program is established for the aid of any member pursuing higher education including, but not limited to, community college, university degrees, graduate studies, international studies, vocational programs, professional certification and licensing and training in the visual and performing arts. This program is based on the needs of individual members, as well as the needs of the Tribe for members with higher education.

(4) Utility Program. This program is established to ensure that Tribal member homes have basic electric, gas and/or other utility service. This program is based on the needs of the Tribe, the needs of individual members and the unique history of the Tribe.

32-5 ALLOCATION OF FUNDS FOR SUPPLEMENTAL ASSISTANCE PROGRAMS

32-5.01 The Tribal Council shall annually establish the amount available through each of the individual Supplemental Assistance Programs.

32-5.02 In determining the amount available in each program, Tribal Council shall take into consideration the totality of the economic circumstances surrounding the Tribe and the individuals qualifying for assistance.

32-6 BUDGETING

32-6.01 The Tribal Council shall annually designate funding sources that are available for the Supplemental Assistance Programs. Notwithstanding anything to the contrary, the assistance payments authorized hereunder shall be “unfunded” for tax purposes and no beneficiary shall have an interest in or right to any funds budgeted for or set aside for assistance payments until paid. Supplemental assistance payments shall remain assets of the Tribe until distributed, and the approved programs shall be administered at all times to avoid doctrines of constructive receipt or economic benefit.

32-7 PROCEDURES FOR REQUESTING FUNDS

32-7.01 Requests from Tribal members for participation in a Supplemental Assistance Program, except for the Elder Supplemental Assistance Program, shall be submitted in writing to the Finance Department. Requests should be accompanied by all documentation justifying the request.

32-8 CONTINUING ELIGIBILITY

32-8.01 Because qualification for a Supplemental Assistance Program is not income based but instead need based, participation in a Program is only authorized when a member's need

is demonstrable. Therefore the Tribal Council will oversee current participants to ensure that the purposes of this Act are fulfilled.

32-9 APPEALS

32-9.01 Any applicant or participant who is negatively and materially affected by a decision pertaining to a Supplemental Assistance Program may appeal the decision in writing. The Tribal Council will conduct a hearing if necessary. The Tribal Council's decision is final.

32-10 VIOLATION OF THIS ACT

32-10.01 Any person who:

(1) Intentionally violates or willfully fails to comply with any provision of this Act, or

(2) Participates or attempts to participate in any Supplemental Assistance Program by knowingly presenting false or fraudulent information to the Tribe shall be guilty of a crime and shall be subject to a maximum fine of \$5,000 or 1 year imprisonment or both. In the event that a court determines the Tribe does not possess criminal jurisdiction over an individual, the violation shall be considered regulatory in nature and such individual shall be subject to a maximum fine of \$5,000 or exclusion from Kootenai Lands or both.

CHAPTER 33
UTILITY PROGRAM

33-1 PURPOSE

33-1.01 The history of the Kootenai Tribe of Idaho is one of hardship and lack of basic electrical, gas and other utilities in Tribal member homes, which have resulted in Tribal member illness and death. The Tribe, therefore, establishes the Utility Program to ensure every Tribal member home has basic electricity, gas and/or other utility service.

33-2 HOW THE PROGRAM WORKS

33-2.01 Tribal Council will annually determine the amount of payment the Tribe will provide for basic utility service and make payments directly to the utility provider.

33- 3 ELIGIBILITY

33-3.01 Tribal Council will determine eligibility annually based on the Tribe's financial well-being and Tribal member needs and may take into consideration the following factors or other factors:

- (1) Number of Tribal members and Tribal children in home;
- (2) Location of Tribal member home on Kootenai Trust Lands; and/or
- (3) Location of Tribal member home relative to the Mission.

33-3.02 Tribal members should contact their District Representatives if they are not currently part of the Program to determine whether their Tribal member home is eligible for the Program.

33- 4 CONTINUING ELIGIBILITY

33-4.01 Tribal Council will annually determine whether to continue the Program, eligibility criteria and level of assistance.

33- 5 APPEALS

33-5.01 Tribal Council's decision is final and no appeals are allowed.

CHAPTER 34
NAME CHANGE ORDINANCE

34-1 JURISDICTION

34-1.01 Application for change of name of a Kootenai Tribal Member or the immediate family of a Kootenai Tribal Member, may be heard and determined by the Kootenai Tribal Court. The change of name shall be granted by the Court unless the Court finds that the change is not consistent with the public interest.

34-2 APPLICATION

34-2.01 An application for Name Change shall include the applicant's current legal name, place of birth, current residence, the proposed name and purpose for such name change and signature. If the father and mother are no longer living, the application should specify the name and address of the next closest relatives.

34-3 NOTICE AND HEARING

34-3.01 The Court shall schedule a hearing approximately six (6) weeks after the application is filed.

34-3.02 For at least four (4) weeks prior to the hearing, applicant shall make public notice of the application by posting at Tribal headquarters and any other location required by Tribal Council. Such notice shall include time and date of hearing.

34-3.03 Concurrently to posting, at least once a week for four (4) consecutive weeks prior to hearing, applicant shall make public notice of the application by publication in a newspaper of record. The Affidavit of Publication shall be filed with the Court before or at the hearing.

34-3.04 The Court shall conduct a hearing during which the Court may interview the applicant on the application. The Court may also interview supporters or hear objections to the application. Any objection should show cause why the name change should not be granted. At the conclusion of the hearing the Court shall make an order granting the name change or dismissing the application.

34-4 APPLICATION BY EMANCIPATED MINOR CHILD; COURT CONFERENCE

34-4.01 When an emancipated minor child applies for a change of name, the Court may, upon its own motion, confer with the child and may exclude from the conference the parents and other persons if the Court finds that such action would be in the best interests of the child. However, the Court shall permit a spokesperson for the child to attend the conference. Relevant, non-confidential facts of the conference shall be reported.

34-5 APPLICATION BY UNEMANCIPATED MINOR CHILD.

34-5.01 The Court may grant name changes to unemancipated minor children under this ordinance with the permission of a parent or legal guardian. The parent or legal guardian must be present at any court proceedings related to the name change.

34-6 RESTRICTIONS FOR CONVICTED SEXUAL OFFENDERS.

34-6.01 No name change will be granted to any individual who applies with the intent of avoiding registration as a sexual offender under applicable tribal, state and/or federal law.

34-6.02 If the Court grants a name change to any individual required to register as a convicted sexual offender under applicable tribal, state and/or federal law, the Court shall provide notice of the name change to the Idaho Sex Offender Registry and the Boundary County Sheriff's Office. This notice shall include the offender's known and new name, address, date of birth and social security number.

CHAPTER 35
EMANCIPATION ORDINANCE

35-1 PURPOSE

35-1.01 The purpose of this chapter is to provide for any Indian child who lives on Kootenai Lands or any child who is a Kootenai Tribe of Idaho tribal member and is at least sixteen (16) years of age, (a "Qualifying Minor") and is capable of self-support and managing his or her own financial affairs, to petition the Court to have the status of an emancipated person.

35-2 PETITION AND SUMMONS

35-2.01 Any Qualifying Minor may petition the Tribal Court for a determination that he or she be emancipated for general or limited purposes. The petition for emancipation shall set forth with specificity:

(1) The name, age, address and birth date of the Qualifying Minor;

(2) The name and address of each living parent of the Qualifying Minor;

(3) The name and address of the Qualifying Minor's guardian or custodian, if any;

(4) The reasons why emancipation would be in the best interest of the Qualifying Minor;

(5) The purposes for which emancipation is sought;

(6) The income and housing plan of the Qualifying Minor;

(7) How the Qualifying Minor would pay for medicine and health care costs through insurance or other programs, if emancipated;

(8) Whether Qualifying Minor is married; and

(9) The basis for the Court's jurisdiction.

35-3 CONSENT OR WRITTEN RECOMMENDATION

35-3.01 The Qualifying Minor must obtain either the consent of each living parent, guardian or custodian having control of the person or property

of the Qualifying Minor or an affidavit from a physician, clergy member, social worker, school administrator, law enforcement officer or other duly recognized responsible professional adult recommending emancipation and setting out the factual basis for the recommendation.

35-4 STANDARD TO BE APPLIED

35-4.01 Subject to the provisions of this Chapter, the Court may remove the disabilities of minority as requested in the petition if it is found to be in the best interests of the Qualifying Minor after a hearing. Emancipation may be for general purposes or the limited purposes specified in the Order.

35-5 RIGHTS OF EMANCIPATED MINORS

35-5.01 Except for specific constitutional and statutory age requirements, including but not limited to, voting, and use of alcoholic beverages or tobacco, a Qualifying Minor whose disabilities are removed for general purposes has the power and capacity of an adult including, but not limited to the right to control himself/herself and his/her property, the right to be domiciled where he/she desires, the right to receive and control all earnings, subject to the limitations in this ordinance, the right to sue and be sued and the capacity to contract.

35-5.02 An emancipated minor shall be subject to the jurisdiction of the adult courts for all criminal offenses.

35-6 PER CAPITA DISTRIBUTIONS LIMITED

35-6.01 No Early Distributions. An Order that a Qualifying Minor is emancipated shall not change the Qualifying Minor's ineligibility to receive direct payment of per capita distributions. Per capita distributions will be made in accordance with the Minors' Trust Fund Trust Agreement approved by the Council.

35-6.02 Exceptions. An Emancipated Minor may petition Tribal Council to receive up to 50% of his or her per capita distribution for the purposes of health, education and welfare. Such exceptions are at the complete discretion of Council and are not subject to appeal.

CHAPTER 36 TORT CLAIMS

36-1 TITLE, PURPOSE AND DEFINITIONS

36-1.01 Title. This Chapter shall be known as the Kootenai Tribe Tort Claims Act.

36-1.02 Purpose, Limitations, and Applicability

(1) The purpose of this Act is to establish a limited waiver of the Tribe's sovereign immunity from suit and to impose strict procedures under which a person may file an action or claim for monetary damages against the Tribe, its agents, employees and officers. This Act is not intended to be a general waiver of the Tribe's immunity and it shall be narrowly and strictly construed. The limited waiver provided under this Act is conditioned upon the claimant's full and complete compliance with all of the procedures contained in this Act.

(2) The provisions contained in this Chapter shall not limit or alter in any way its authority to enter into contracts containing a clear and unequivocal waiver of the Tribe's sovereign immunity from suit, including provisions for the enforcement thereof. Disputes alleging a breach of contract shall continue to be determined under the principles of contract law.

(3) This Chapter shall not apply to actions or claims arising from the operation and management of the Kootenai River Inn, Casino & Spa.

36-1.03 Definitions. As used in this Chapter, except as may be specifically provided otherwise, the following definitions shall apply.

(1) "Agent" means any person, whether paid or unpaid, when acting during the course of and within the scope of the actual authority expressly granted them by the Tribe.

(2) "Award" means money damages which the Tribal Court determines are payable to compensate for any injury recognized under this Act.

(3) "Claim" means any demand to recover damages from the Tribe, or an employee of the Tribe acting within the course and scope of his or her employment with the Tribe.

(4) "Claimant" means any person seeking compensation under the provisions of this Act.

(5) "Dangerous condition" means a physical aspect of a facility or the use thereof which constitutes an unreasonable risk to human health or safety, which is known to exist or which in the exercise of reasonable care should have been known to exist, and which condition is proximately caused by the negligent acts or omissions of the Tribe in constructing or maintaining such facility. For the purposes of this Act, a dangerous condition should have been known to exist if it is established that the condition had existed for such a period of time and was of such a nature that, in the exercise of reasonable care, such condition and its dangerous character should have been discovered.

A dangerous condition shall not exist solely because the design of any facility is inadequate nor due to the mere existence of wind, water, ice or temperature by itself, or by the mere existence of a natural physical condition. Nothing in this definition shall preclude an accumulation of water, snow or ice from being found to constitute a dangerous condition when the Tribe fails to use existing means available to it for the removal of such accumulation and when the Tribe had notice of such accumulation and reasonable time to act.

(6) "Employee" means a part- or full-time employee or an agent of the Tribe, when acting during the course of and within the scope of their employment. This term includes officers and directors of the Tribe when they are acting to fulfill their duties to the Tribe. This does not include agents or representatives of the United States, State of Idaho or any of their political subdivisions. The term "employee" shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the Tribe.

(7) "Injury" means injury to a person, death, or damage to or loss of property of whatever kind, which, if caused by the negligent or wrongful act or omission of a private person, would be a tort under Tribal law, applicable federal law, or, to the extent consistent with Tribal law, laws of the State of Idaho, and which is expressly covered by the Tribe's liability insurance.

(8) "Officer" means an officer, whether elected or appointed, whether paid or unpaid, when acting during the course of and within the scope of their actual authority expressly granted by the Tribe.

36-1.04 Sovereign Immunity Intact. The Tribe's immunity from suit shall remain in full force and effect except to the extent that it is waived by this Act. Members of the Tribal Council shall remain immune from suit for actions taken during the course of and within the scope of their duties as members of the Tribal Council, and nothing contained in this Act shall be construed otherwise.

36-2 LIMITED WAIVER OF SOVEREIGN IMMUNITY FROM SUIT

36-2.01 Forum Limitation. The Tribe may be sued under this Act solely in the Kootenai Tribal Court. Nothing contained in this Act shall be construed as a waiver of the Tribe's immunity from suit in any state, federal or provincial court or another tribe's court.

36-2.02 Instances Waiver Applies.

The Tribe's sovereign immunity from suit is waived in the following instances:

(1) Injuries proximately caused by the negligent acts or omissions of the Tribe.

(2) Injuries proximately caused by the acts or omissions of any agent, employee, or officer acting on behalf of the Tribe and within the scope of authority of that agent, employee or officer.

(3) Injuries proximately caused by the condition of any facility of the Tribe, provided the claimant establishes that the facility was in a dangerous condition.

36-2.03 Limitations of Waiver. Notwithstanding any other provisions, there shall be no exception to the sovereign immunity of Tribal entities, officials, employees or agents from claims for injury or damages alleged to have been sustained by:

(1) Policy decisions or the exercise of discretion made by a Tribal official, employee or agent in the exercise of judgment or discretion vested in the entity or individual;

(2) A decision made in good faith and without gross negligence in carrying out the law, except that this provision does not immunize a Tribal entity, officer, employee or agent for liability for false arrest, false imprisonment or malicious prosecution;

(3) Legislative or judicial action or inaction or administrative action or inaction of a legislative or judicial nature, such as adopting or failure to adopt a law or by failing to enforce a law;

(4) Issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization, nor by the termination or reduction of benefits under a Tribal assistance program if the Tribal entity, officer, employee or agent is authorized by law to determine whether or not such authorization or benefits should be issued, denied, suspended or revoked;

(5) Probation, parole, furlough or release from confinement of a prisoner or other detainee or from the terms and conditions or the revocation thereof except upon a showing of gross negligence;

(6) Any injury or damage caused by an escaping or escaped prisoner, a person resisting arrest, or by a prisoner to himself or herself, or to any other prisoner, except upon a showing of gross negligence;

(7) Decision made by the Tribe or any agent, employee, or officer of the Tribe in the implementation of the Indian Child Welfare Act or other laws respecting the placement or supervision of minors or incompetent persons;

(8) Claim based upon an act or omission of any agent, employee or officer of the Tribe exercising due care in the execution of any statute, rule or regulation, whether or not such statute, rule or regulation is valid;

(9) Claim based on the assessment or collection of any tax, or the detention of any goods or merchandise by a law enforcement officer.

(10) Floods, floodwaters, flood fighting activities, flood control structures, levees, dikes, drainage systems and other features or structures whose purpose is, in whole or in part, to control flooding or water levels, including those contained

in conservation projects, and all related activities including construction, improvement, repair and maintenance activities.

The enumeration of the above immunities shall not be construed to waive any other immunities or to assume any liability except as explicitly provided in this Act.

36-2.04 No Waiver if Liability Assumed by Others.

(1) Except for contracts of insurance issued to the Tribe as named insured, any exception to the immunity of the Tribe and assumption of liability under this Act does not apply in circumstances in which such liability has been or is hereafter assumed by third parties, including any other governmental body or agency, whether by indemnification or hold harmless agreement or otherwise.

(2) There shall be no waiver of sovereign immunity as to any claim or injury which is defended by the United States under the Indian Self-Determination and Education Assistance Act, the Federal Tort Claims Act, or any other federal law.

- (a) Upon certification by the Tribal Legal Department that defense of any claim of injury has been tendered to the United States, any action or proceeding on such claim shall be stayed by order of the Tribal Court without bond.
- (b) The action or proceeding in Tribal Court shall be dismissed, after notice to the parties and opportunity for a hearing, upon receipt of notice satisfactory to the Tribal Court that the United States has assumed defense of the claim of injury.
- (c) The stay shall be dissolved and an order directing further proceedings in the action or proceeding on the claim of injury shall be entered by the Tribal Court, after notice and hearing thereon, upon receipt of notice satisfactory to the Tribal Court that the United States has declined to assume defense of the claim of injury.

36-2.05 No Third Party Beneficiaries. The liability assumed by the Tribe under this Act shall not extend to any party or parties as third party beneficiary or otherwise, other than the party or parties to whom such liability is expressly assumed, and then only to the extent, circumstances and conditions specified thereby.

36-2.06 Workers and Unemployment Compensation Claims Excepted. Notwithstanding any other provision, there shall be no waiver of sovereign immunity under this Act for claims relating to workers' compensation, unemployment compensation, or claims or actions relating to employment decisions.

36-3 LIMITATIONS ON AWARDS, CLAIMS AND DAMAGES

36-3.01 Limitations on Awards. No judgment, order or award pertaining to any claim for monetary damages permitted by this Act shall be for more than the lesser of:

(1) The sum of \$250,000 for each individual claimant, but not exceeding the sum of \$1,000,000 for each accident or occurrence; or

(2) The limits of a valid and collectible liability insurance policy or policies carried by the Tribe covering such claim and in force at the time of such judgment, including deductible amounts to the extent appropriated by the Tribal Council, nor than for more than the amount of coverage provided for such claim under established claim reserves as appropriated by the Tribal Council or otherwise established pursuant to any self-insured liability or other Tribal government claims program approved and adopted pursuant to Tribal law and which are in effect at the time of such judgment order or award or special appropriation.

36-3.02 Any judgment, order or award issued pursuant to this Chapter may only be satisfied pursuant to the express provisions of the policy or policies of liability insurance or established self-insured or government claims program of the Tribe that are in effect at the time of each such judgment or award of special appropriation.

36-3.03 Unless allowed and recoverable under the Tribe's liability insurance or self-insurance plan, costs and attorney fees shall not be awarded against the Tribe.

36-3.04 Claims and Damages Limited.

(1) No rule of law imposing absolute or strict liability against the Tribe, its agents, employees or officers shall be applied in any action or claim for injuries under this Act.

(2) No award or other judgment imposing punitive or exemplary damages, or attorney fees, shall be applied against the Tribe, its agents, employees or officers in any action or claim for injuries under this Act

(3) No award for loss of consortium shall be applied against the Tribe, its agents, employees or officers in any action or claim for injuries under this Act.

(4) No award for pain and suffering or mental anguish shall be applied against the Tribe, its agents, employees or officers, except where such award does not exceed fifty percent (50%) of the actual damages sustained, and provided that any such award does not exceed the limits of the liability insurance policy of the Tribe applicable to the underlying action or claim.

36-4 ACTIONS OUTSIDE THE SCOPE OF AUTHORITY

36-4.01 This Act does not immunize agents, employees or officers of the Tribe from individual liability for the full measure of the recovery applicable to a claimant, if it is established that their conduct exceeded the scope of employment or authority. Claims for individual liability arising out of conduct which is found to exceed the scope of employment or authority that arise on the Kootenai Indian Reservation or otherwise within the jurisdiction of the Tribe shall be heard only in the Tribal Court.

36-4.02 If the Tribal Court determines that the injuries claimed for an act or omission of an agent, employee or officer were willful and wanton or otherwise outside the scope of employment or authority, the Tribe may request and the Court may order the individual defendant(s) named in the claim to reimburse the Tribe for costs and attorney fees which may have been incurred in the defense of the defendant(s).

36-5 NOTICE OF CLAIM

36-5.01 (1) Any person desiring to institute suit against the Tribe or any officer, employee or agent

of the Tribe as authorized by this Act shall, as a jurisdictional condition precedent to institution of such suit, provide notice to the Chairperson of the Tribal Council, Director of the Finance Department and Tribal Attorney General.

(2) The notices required by Section 36-5.01 shall be sent by certified mail, return receipt requested to the addresses of each of the required recipients. The notice shall be deemed given and effective as of the date of the last postmark of any written notice required by subsection (1) of this section.

36-5.02 The notice shall contain the following:

(1) The name, current address and telephone number of the claimant, and the name, current address and telephone number of the claimant's attorney, if any; and

(2) A concise statement describing the conduct, circumstances or other facts that brought about the injury. The statement must include the date and time when the injury occurred, the place where the injury occurred, the names of any Tribal agent, employee or officer involved, or who have knowledge of the facts giving rise to the injury, and the names, addresses and phone numbers, if known, of any other persons involved or who have knowledge of the facts; and

(3) A concise statement of the nature and extent of the injury claimed to have been suffered, including submission of relevant medical reports; and

(4) A statement of the amount of damages requested.

36-5.03 The notice required by section 36-5.01 shall be valid only if:

(1) It is given to the required parties no later than 180 days after the act or omission occurred giving rise to the injury; and

(2) It contains all of the information required in Section 36-5.02.

36-6 ACTION IN TRIBAL COURT

36-6.01 (1) No action may be brought in the Tribal Court until the expiration of 90 days after the date of the last notice required by Section 36-5.01 is given.

(2) No action brought under this Act shall be accepted for filing by any Tribal Judge unless the claimant at the same time files proof of compliance with Section 36-5.

an action for an injury in Tribal Court under this Act.

36-6.02 No action may be brought in Tribal Court under this Act for damages in excess of the amount set forth in the written notice of claim required by Section 36-5.02(4). Damages sought in excess of the amount stated in the written notice of the claim may be awarded by the Tribal Court only if the claimant proves the increased amount is based upon evidence not reasonably discoverable at the time the notice was given, or upon proof of intervening facts relating to the amount of the claim.

36-6.03 Any person filing an action in Tribal Court for money damages under this Act shall cause a copy of the complaint and summons to be served upon the Chairperson of the Tribal Council and the Tribal Attorney General.

36-6.04 A defendant in any action brought pursuant to this Act, whether for monetary damages or prospective declaratory, mandamus, injunctive or other extraordinary relief, shall have not less than 60 days after receipt of the complaint and summons, and such other time as the Tribal Court may allow, to file an answer or other responsive pleading or motion. No default judgment may be entered against the Tribe under this Act.

36-6.05 All actions commenced under this Act shall be tried by a Judge of the Tribal Court without a jury.

36-7 EXTINGUISHMENT OF CLAIMS

36-7.01 Any liability for monetary damages assumed by the Tribe for the acts or omissions of any agent, employee or officer of the Tribe under this Act shall be the exclusive remedy available to any person who suffers an injury caused by an agent, employee or officer of the Tribe.

36-7.02 Any claim for monetary damages assumed by the Tribe which otherwise would lie against an agent, employee or officer of the Tribe except for this Act is forever extinguished in favor of the remedy established and limited by this Act, whether or not the person in whose favor such remedy is created exercises the right to timely present written notice of any claim and commence

36-8 PRESERVATION OF CERTAIN CLAIMS, ACTIONS AND DEFENSES

36-8.01 (1) This Act expressly preserves defenses of qualified or absolute immunity to actions for monetary damages against agents, employees or officers of the Tribe in their individual capacities. By way of illustration rather than limitation, the defenses preserved by this Act include absolute legislative and judicial immunities, qualified and absolute executive immunities, and their derivatives, that were recognized in the common law and elaborated by federal courts in cases alleging violations of federal law.

(2) Except for the foregoing, this Act does not extinguish individual liability for monetary damages or immunize any agent, employee or officer of the Tribe for an injury if it is established that liability for the act or omission of such agent, employee or officer is not assumed by the Tribe under this Act and that such act or omission was outside the scope of authority of the agent, employee or officer of the Tribe. Notwithstanding the foregoing, any action for individual liability of any agent, employee or officer of the Tribe that is founded on an act or omission in excess of the authority of such agent, employee or officer shall be heard only in the Tribal Court.

36-8.02 A person who suffers an injury as a result of an act or omission of the Tribe or an agent, employee or officer acting on behalf of the Tribe may not use procedures other than those established in this Act to seek monetary damages, even if another remedy may be provided by another provision of Tribal law of general application. Notwithstanding the foregoing, this Act shall not bar any person from pursuing remedies in accordance with otherwise applicable law for claims relating to workers' compensation, unemployment compensation, or employee disciplinary actions taken pursuant to the Personnel Act or other applicable law.

36-8.03 Volunteers duly authorized by the Tribe or an agent, employee or officer of the Tribe shall have the same immunities under this Act as agents, employees and officers of the Tribe.

36-9 SEVERABILITY

36-9.01 If any part of this Act is invalidated by the Tribal Court, all parts of this Act shall be invalid unless, within 90 days of the judgment of the Tribal Court so declaring, the Tribal Council shall

ratify adoption of this Act without the part declared invalid. If application of this Act to any person is declared invalid by the Tribal Court, such invalidity shall not affect application of this Act to any other person, which may be given without such invalid application. To these ends, and consistent with this section, the provisions of this Act are declared to be severable.

36-10 APPLICABLE LAW

36-10.01 Tribal law, applicable federal law, and to the extent not inconsistent with Tribal law, Idaho substantive tort law, shall govern all claims and actions brought under this Act.

CHAPTER 37
HOTEL ACT

37-1 DEFINITIONS

37-1.01 As used herein, except as may be specifically provided otherwise, the following definitions shall apply.

(1) "Guest" means any person who is registered in a hotel, or who is in the hotel and intends to register, and each person in such hotel who is present in the hotel with the registrant at the registrant's invitation.

(2) "Hotel" means the Kootenai River Inn.

(3) "Hotel day" means a period which commences at three o'clock in the afternoon of each day and which concludes at three o'clock the following afternoon or at the posted checkout time of the following day in the event the guest is checking out, whichever occurs first. Rates per day for furnished rooms shall mean for such period, or any part thereof, following the time of acceptance of a room by the guest.

(4) "Hotelkeeper" means the Kootenai Tribe of Idaho or the operator, management company, proprietor, keeper, manager or lessee of the Kootenai River Inn.

37-2 POSTED INFORMATION

37-2.01 In each hotel there shall be posted in a plainly legible fashion, in a conspicuous place in each sleeping room, the following information:

(1) The maximum rates at which such room is rented;

(2) A copy of section 37-4 of this Act; and

(3) A copy of Title 18 United States Code, Section 1163, Embezzlement and Theft from Indian Tribal Organizations.

37-2.02 In each hotel there shall be posted a copy of this Act in a plainly legible fashion, in at least two (2) conspicuous places.

37-3 REGISTER

37-3.01 Every hotel shall keep a record of the arrival and departure of its guests in such a manner that the record will be permanent for at least one (1) year from the date of departure.

37-3.02 Hotel Register information is protected by the Privacy Act (Chapter 30) and may be released only to tribal and federal law enforcement officials when there is a legitimate law enforcement purpose.

37-4 LIABILITY FOR PROPERTY OF GUESTS

37-4.01 The hotelkeeper is under no obligation to accept for safekeeping any moneys, securities, jewelry, or precious stones of any kind belonging to any guest, and, if such are accepted for safekeeping, shall not be liable for the loss thereof unless such loss is the proximate result of fault or negligence of the hotelkeeper. The liability, if any, of the hotelkeeper to a guest shall be limited to one thousand dollars (\$1,000) for such loss, or such higher amount as the hotelkeeper may agree in writing to assume, if the hotel has given a receipt for the property to the guest, stating the value of the property accepted for safekeeping, on a form which states, in type large enough to be clearly noticeable, that the hotel is not liable for any loss exceeding one thousand dollars (\$1,000), or such higher amount as the hotelkeeper may agree in writing to assume, and is only liable for that amount if the loss is the proximate result of fault or negligence of the hotelkeeper.

37-4.02 The hotelkeeper shall not be liable or responsible to any guest for the loss of wearing apparel, goods, or other property, except as provided in subsection (1) of this section, unless such loss occurred as the proximate result of fault or negligence of such hotelkeeper. In case of such fault or negligence, the hotelkeeper shall not be liable for a sum greater than five hundred dollars (\$500) unless prior to the loss or damage the guest files with the hotelkeeper an inventory of his effects and the value thereof and the hotelkeeper is given the opportunity to inspect such effects and check them against such inventory. The hotelkeeper shall not be liable or responsible to any guest for the loss of effects listed in such

inventory in a total amount exceeding one thousand dollars (\$1,000) or such higher amount as the hotelkeeper may agree in writing to assume.

37-5 EVICTON OF GUESTS

37-5.01 A hotelkeeper shall have the right to evict a guest who has failed to pay his hotel bill when due. Before such eviction may occur, demand for payment of the bill must be made and the guest must be requested to leave if the bill is not paid. If the guest fails to pay the bill after such demand, the hotelkeeper may evict such guest by locking the door to his room, removing said guest's baggage and other personal property, or by any other peaceful means.

37-5.02 A hotelkeeper also shall have the right to evict a person, whether or not such person is a guest of the hotel, who:

(1) Is under the influence of alcohol, drugs or any other intoxicating substances;

(2) Is disorderly so as to disturb the peace of other guests;

(3) Seeks to use the hotel for any unlawful purpose;

(4) Seeks to bring property into the hotel which may be dangerous to other persons (such as firearms, explosives or hazardous or toxic substances) or the possession of which by such person is unlawful;

(5) Destroys, damages or defaces property of the hotel or its guests or threatens to do so;

(6) Would cause or permit any hotel room to exceed its maximum allowable occupancy as established by the hotelkeeper; or

(7) Refuses to abide by reasonable standards or policies established by the hotelkeeper for operation and management of the hotel.

37-6 HOTELKEEPER'S RESPONSIBILITY TO PROVIDE ACCOMMODATIONS

37-6.01 A hotelkeeper shall not be required to provide accommodations, facilities or privileges of a hotel to any person who:

(1) Is unwilling or unable to pay for the accommodations and services of the hotel. A hotelkeeper may require a prospective guest to demonstrate the ability to pay for the accommodations and services, including a damage deposit in a reasonable amount, by cash or acceptable credit card;

(2) The hotelkeeper reasonably believes to be under the influence of alcohol, drugs or any other intoxicating substances or who is disorderly so as to disturb the peace of other guests;

(3) The hotelkeeper reasonably believes seeks to use the hotel for any unlawful purpose;

(4) The hotelkeeper reasonably believes seeks to bring property into the hotel which may be dangerous to other persons (such as firearms, explosives or hazardous or toxic substances) or the possession of which by such person is unlawful;

(5) Destroys, damages or defaces property of the hotel or its guests or threatens to do so;

(6) Is under eighteen (18) years of age and unaccompanied by his parent or guardian. A hotelkeeper may condition the provision of accommodations, facilities or privileges of a hotel to persons under the age of eighteen (18) years by requiring the parent or guardian to:

(a) Agree in writing to accept liability for the costs of the accommodations, including the cost of the room, taxes, other charges and any damages to the hotel caused by such person or his invitees; and

(b) To provide an acceptable credit card or cash deposit sufficient to cover such costs;

(7) Would cause or permit any hotel room to exceed its maximum allowable occupancy as established by the hotelkeeper; or

(8) Refuses to abide by reasonable standards or policies established by the hotelkeeper for operation and management of the hotel.

37-7 PROOF OF FRAUDULENT INTENT IN
PROCURING FOOD, LODGING OR OTHER
ACCOMMODATIONS

37-7.01 Proof that lodging, food or other accommodation was obtained by any deception or false pretense, or by any false or fictitious show or pretense of any baggage or other property, or that any person absconded without paying or offering to pay for such food, lodging or other accommodation, or that any such person surreptitiously removed, or attempted to remove, his or her baggage, shall be prima facie proof of the intent necessary for the theft of the same.

37-7.02 Individuals found guilty of fraudulent intent in procuring food, lodging or other accommodations may be charged under federal law, 18 United States Code §1163 Embezzlement and theft from Indian tribal organizations, as well as applicable tribal law.

37-8 DAMAGE OR LOSS OF HOTEL
PROPERTY

37-8.01 Hotel reserves the right to charge individual guests or lead guests for the cost of repairing damage caused by the deliberate, negligent or reckless acts of guests to the hotel's property or structure including areas associated with the Hotel such as the Casino, Spa & Parking Lot. If such damage is discovered after guests have departed then Hotel may charge to the guest's credit / debit card, or send an invoice for the costs for payment to the registered address. Hotel will make every effort to repair any damage internally prior to contracting specialists, and will make every effort to keep costs to the guests to a minimum.

37-8.02 In extreme cases, guests may be charged with a regulatory infraction under Kootenai Tribe of Idaho, Law & Order Code, Chapter 5 or referred to Tribal, Federal or State authorities for prosecution.

CHAPTER 38
PROTECTION OF KOOTENAI TRADITIONAL KNOWLEDGE ACT

38-1 TITLE AND PURPOSE

This Chapter shall be known as the Protection of Kootenai Traditional Knowledge Act. The purpose of the Act is to prevent the exploitation of Kootenai Traditional Knowledge by non-Ktunaxa people, governments or entities.

38-2 APPLICATION

Kootenai Traditional Knowledge is owned in perpetuity by the Kootenai Tribe, Ktunaxa Nation, and/or individual Ktunaxa families.

Kootenai Traditional Knowledge includes, but is not limited to:

- (1) Traditional ecological knowledge, innovations and practices existing before or after the commencement of this Act, including traditional medicines,
- (2) Cultural property,
- (3) Cultural traditions, customs and expressions, including past, present and future manifestations, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies, visual and performing arts, and literature,
- (4) Spiritual and religious traditions, customs and ceremonies,
- (5) Intellectual property,
- (6) Histories, languages, oral traditions, philosophies, writing systems and literatures, and
- (7) Human and genetic resources,

whether in the public domain or not.

Nothing in this Act shall allow for, or advocate, the copyrighting of certain specific symbols or designs. The Kootenai Tribe holds these designs sacred as gifts from the Creator to the Ktunaxa people. However, such designs may appear as part of a larger work of copyrightable

material. The Kootenai Tribal Council further reserves the right to copyright such designs in the name of the Kootenai Tribe.

The Kootenai Tribal Council declares that archival records, including field notes, audio tapes, video tapes, photographs, which describe and depict esoteric ritual, ceremonial and religious knowledge are the cultural property of the Kootenai Tribe and Ktunaxa Nation.

38-3 COMMERCIAL USE

Any non-Ktunaxa government, entity or person using or proposing to use Kootenai Traditional Knowledge must:

- (1) Seek the free, prior and informed consent of the Tribe or other co-owners; and
- (2) Enter into an access and benefit sharing agreement with the Tribe or other co-owners.

38-4 NON-COMMERCIAL USES

The Tribe or another co-owner may, in accordance with their customs and practices and such other conditions as they consider appropriate, allow use of Kootenai Traditional Knowledge, so long as such Knowledge is not acquired for or does not subsequently become the subject of commercial use.

38-5 REMEDIES

- (1) This Act does not affect any rights of action or other remedies, civil or criminal, whether brought under this Act or any other enactment or any rule of law.
- (2) The Kootenai Tribal Court shall have subject matter jurisdiction over any matter brought by the Tribe or other co-owner of Kootenai Traditional Knowledge under this Act.

(3) To the extent the Kootenai Tribal Court has personal jurisdiction over a defendant, it may grant in addition to any other relief any one or more of the following:

- a. An account of profits,
- b. An order for a public apology,
- c. Forfeiture of any tangible items of Kootenai Traditional Knowledge or, alternatively,

compensation for loss of any tangible items of Kootenai Traditional Knowledge.

38-6 NO WAIVER OF SOVEREIGN IMMUNITY

Nothing herein shall be construed to waive the Tribe's sovereign immunity from suit.