

PONCA TRIBE OF NEBRASKA
TRIBAL COUNCIL
AGENDA

AUGUST 26, 2018

9:00 AM

TRIBAL TRANSIT FACILITY
1800 SYRACUSE AVENUE
NORFOLK, NEBRASKA

- I. CALL TO ORDER
 - a. Invocation
 - b. Roll Call
- II. LAW & ORDER CODE PROPOSED REVISIONS (Ruthanne Gallup/Andrea Rodriguez)(p.2-3)
 - a. Title I – General Provisions – Discussion (p.4-5)
 - b. Title IV – Domestic Relations – Discussion (p.6-170)
- III. OTHER BUSINESS
- IV. EXECUTIVE SESSION
 - a. Deputy Director of Tribal Affairs Interviews (10 AM) (p.171)
- V. ADJOURN

AGENDA ITEM REQUEST
(for employees only)

DATE SUBMITTED: 07/30/2018

All agenda item requests must be approved by the Tribal Business Manager and forwarded to the Niobrara Office, Attn: Jan Colwell five (5) working days before the meeting.


Meeting of: X Tribal Council
 Executive Committee

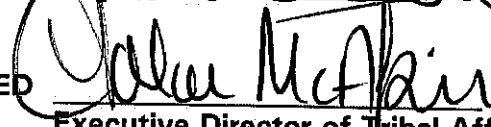
Meeting Date: 08/26/2018

Subject: Code Revision, changes to Title I and Title IV

ACTION REQUEST: (Please describe request in the form of a motion)
Requesting an Open Discussion before Tribal Council on proposed Code changes to Title I - change the list of holidays to take effect 1-1-19 and Title IV to take effect immediately. There are changes that include removing the Child Support Program, changing marriage and divorce procedures, and adding Elder abuse to the chapter on Domestic Violence.

Will there be support materials for this agenda item? X Yes No
(If there are support materials, one copy must be attached)

Submitted By: 

APPROVED 
Executive Director of Tribal Affairs

****** NOTICE: All Tribal Members ******

**LAW AND ORDER CODE REVISION
Discussion on August 26, 2018 at 9:00 a.m.
During Tribal Council Meeting**

****** NOTICE: All Tribal Members******

The Ponca Tribal Council will be reviewing proposed amendments to the Law and Order Code. The revisions are being considered because the Council wanted to ensure that the Holiday list in the Code is correct, that Domestic Partnership is added to Code, that child support program is removed from Code, and that Elders are protected from abuse.

There are changes being proposed to Title I, and Title IV. The revisions being considered include but are not limited to the following:

Title I will become effective 1-1-2019

- 1-1-15 Remove Christmas Eve and add Martin Luther King Jr Day

Title IV will become effective upon issuance of Tribal Council Resolution

- 4-2-11 Add Domestic Partnership to Code
- 4-4-3 Change grounds for dissolution
- 4-5-6 Add that extended family members may be granted visitation rights
- 4-6-1 Remove mention of child support program
- 4-8-2 Add Elder Abuse to the Code

A complete copy of the proposed amendments is available at the tribal offices, or one may be obtained by contacting Jan Colwell, Tribal Council Executive Assistant at 402-857-3391.

There will be a discussion by Tribal Council that is open for public comment on August 26, 2018 at 9:00 a.m. or as soon thereafter as it may be heard.

Written comments will be accepted until August 20, 2018. The written comments may be emailed to janc@poncatribes-ne.org or mailed to

Jan Colwell
P.O. Box 288
Niobrara, NE 68760

example when permitted by the laws of the Tribe and when no applicable specific Tribal common law is available.

3. Where possible, the common law of the Tribe shall supplement this Code and this Code shall be interpreted whenever possible as supplementing and not displacing the common law of the Tribe.

Section 1-1-15. Legal Holidays.

1. The following days shall be legal holidays of the Tribe:

- a. Sunday of each week;
- b. January 1, "New Year's Day;"
- c. May 12, "Chief Standing Bear Day: Remembering Our Leaders;"
- d. Last Monday in May, "Memorial Day;"
- e. July 4, "Independence Day;"
- f. First Monday in September, "Labor Day;"
- g. Fourth Monday in September, "Native American Day;"
- h. October 31, "Northern Ponca Restoration Day - Remembering our Elders;"
- i. November 11, "Veterans' Day;"
- j. Fourth Thursday in November, "Thanksgiving Day;"
- k. Fourth Friday in November, "Day After Thanksgiving;"
- l. December 24, "Christmas Eve;"
- m. December 25, "Christmas Day;" and
- n. Any other day the Tribal Council may, from time to time, declare to be a legal holiday.

2. With the exception of the holiday enumerated in subsection 1, paragraph a:

a. When any of the holidays enumerated in subsection 1 falls on a Sunday, the following Monday shall be observed as a holiday; and

b. When any of the holidays enumerated in subsection 1 falls on a Saturday, the preceding Friday shall be observed as a holiday.

Section 1-1-16. Closure of Offices.

1. Except as expressly provided elsewhere by the laws of the Tribe, offices, departments and agencies of the Tribe shall not be open, and no court or tribunal of the Tribe shall be open on a legal holiday.

2. The following entities of the Tribe shall not be subject to this Section:

a. Any law enforcement offices, agencies, and departments of the Tribe, including departments and commissions charged with the regulation of gambling, hunting, or fishing;

b. The Health Services Department; and

c. All economic enterprises of the Tribe.

Section 1-1-17. Computation of Time.

1. Whenever a time is prescribed in this Code, or otherwise provided or agreed upon, for the doing of an act or the occurrence of an event, such time shall be calculated by excluding the first day and including the last day.

2. If the last day in the time prescribed, provided or agreed upon for doing an act is a weekend or legal holiday, it shall be excluded from calculating the time for doing such act and the act may be performed on the next business day as though performed on the appointed day.

**CHAPTER 2
ESTABLISHMENT OF COURTS;
JUDGES AND OTHER COURT PERSONNEL**

Section 1-2-1. Definitions. Unless the context requires otherwise, as used in this Chapter:

**TITLE IV
DOMESTIC RELATIONS**

**CHAPTER 1
GENERAL PROVISIONS**

Section 4-1-1. Purpose and Policy. This Title shall be liberally construed and applied to promote its underlying purposes, which are to:

1. Protect and govern the family relations of the members of the Tribe and other persons in the territory of the Tribe;

2. Ensure the safety and vitality of families which are essential to the Tribe and its sovereignty and self-determination; and

3. Promote the health, safety and general welfare of the Tribe by providing uniform, efficient and equitable processes and procedures governing marriage, dissolution, separation, child custody and child support.

Section 4-1-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Court" means the Ponca Tribe of Nebraska Tribal Court, including the Court acting as the juvenile court of the Tribe.

2. "Custodian" means the person designated as such by agreement of the parties or in a custody decree or, in the absence thereof, the person granted sole physical custody of a child or with whom the child resides a majority of the time.

3. "Non-custodial parent" means a parent who is not a custodian of a child.

4. "Order for protection" means a temporary or permanent protective order, restraining order or injunction issued by a court on the grounds of domestic or family abuse pursuant to the laws of the jurisdiction where the order is issued and includes a court-approved consent agreement for an order for protection.

5. "Parent" means a person who has a legal parent-child relationship with a child which confers or imposes on the person legal rights, privileges, duties, and obligations and includes a

biological parent of a person, a person for who parentage is presumed or established pursuant to the laws of the Tribe, and a person who has lawfully adopted another person, including adoptions under the laws of the Tribe, but does not include unwed persons where parentage has not been acknowledged or established.

6. "Parent-child relationship" means the legal relationship between a child and a parent of the child incident to which the law confers or imposes rights, privileges, duties, and obligations and includes the mother-child relationship and the father-child relationship.

7. "Parenting time" means the time during which a parent is responsible for exercising caretaking functions with respect to a child.

Section 4-1-3. Subject Matter Jurisdiction.

1. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, the Court shall have original subject matter jurisdiction over all matters arising under this Title.

2. In any matter arising under this Title, if a prior action on the same matter has been commenced in the court of another jurisdiction involving the same individuals, the Court shall decline to assert original subject matter jurisdiction unless and until the prior action is dismissed.

Section 4-1-4. Personal Jurisdiction. Except for limitations, restrictions, or exceptions imposed by or under the authority of the Constitution or laws of the United States or by express provision elsewhere in the laws of the Tribe and in addition to any other personal jurisdiction the Court may exercise pursuant to the laws of the Tribe, the Court shall have jurisdiction over the following persons under this Title:

1. Individuals who are members or eligible to be members of the Tribe regardless of residence or domicile;

2. Individuals who are members of another federally recognized Indian tribe and who are residing or domiciled within the territory of the Tribe;

3. Individuals who are the parent or alleged parent of a child who is a member or eligible to be a member of the Tribe regardless of residence or domicile;

4. Individuals who are alleged to be the parent of a child, including an unborn child, whose parenting partner is a member of or eligible for membership in the Tribe or another federally recognized Indian tribe;

5. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, any other individual who resides or is domiciled within the territory of the Tribe where another party to the action is a member of the Tribe or is a member of another federally recognized Indian tribe who is residing or domiciled within the territory of the Tribe;

6. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, any other individual who resides or is domiciled within the territory of the Tribe who consents to the jurisdiction of the Court, provided that such consent, once given, may be revoked only with the permission of the Court;

7. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, any other individual who does not reside and is not domiciled within the territory of the Tribe who:

a. Is personally served with a summons within the territory of the Tribe;

b. Consents to the jurisdiction of the Court, provided that such consent, once given, may be revoked only with the permission of the Court;

c. Resided in the past with the child subject of the action within the territory of the Tribe;

d. Resided in the past within the territory of the Tribe and provided prenatal or other expenses or support for the child subject of the action;

e. Is the parent of a child subject of the action and such child resides within the territory of the Tribe as a result of the acts or directives of the individual;

f. Engaged in sexual intercourse within the territory of the Tribe and the child subject of the action may have been conceived by that act of intercourse; or

g. Is otherwise subject to the personal jurisdiction of the Court consistent with the laws of the Tribe.

8. Where the Court asserts jurisdiction over a parent under this Section, the parent's child whenever the Court deems it necessary or appropriate for the purpose of the proceedings;

9. Where the Court asserts jurisdiction over an individual under this Section, the individual's extended family whenever the Court deems it necessary or appropriate for the purpose of the proceedings.

Section 4-1-5. Procedure.

1. The procedures in the Court under this Title shall be governed by the rules of procedure for the Court which are not in conflict with this Title.

2. The Court may issue orders under this Title by telephone, facsimile, or other electronic means and such orders shall have the same force and effect as original written orders. Order issued by telephone shall be followed by a written order as soon thereafter as possible.

Section 4-1-6. Rights of Parties.

1. Every party to a proceeding under this Title has the following rights:

a. To be represented by legal counsel at his or her own expense in all proceedings in the matter;

b. To introduce evidence;

c. To be heard on his or her own behalf;

d. To have the Court compel the attendance of a witness on his or her behalf as permitted in this Chapter; and

e. To examine witnesses.

2. All parties shall be entitled to advance copies of court documents, including petitions and reports, unless deemed inappropriate by the Court.

Section 4-1-7. Summons and Service of Process.

1. Upon the filing of a petition in a proceeding under this Title, a summons shall be issued in accordance with the general rules governing the issuance of summons by the Court to the following:

a. Each respondent;

b. If the proceeding involves a child and his or her parent is not a petitioner or respondent, such child's parent, guardian, or custodian, except for parents whose parental rights to the child have been terminated; and

c. All known interested persons listed in the petition.

2. If the petition declares any person required to be issued a summons under this Section is unknown, the summons shall be issued to "All Whom it May Concern" and shall be deemed sufficient to authorize the Court to hear and determine the action as though such person had been described by his or her proper name.

3. The summons shall be served in accordance with the Tribal Rules of Civil Procedure and shall be made at least ten (10) days before the first hearing on the petition.

Section 4-1-8. Omission of Address from Pleadings.

1. Notwithstanding anything to the contrary in the laws of the Tribe, in any proceeding under this Title, if the petition states that disclosure of the petitioner's address could risk the safety of or result in physical or emotional harm to the petitioner, his or child, or any member of the petitioner's family or household, the petitioner may omit his or her address from all documents filed with the Court, provided that the petitioner must provide the Court a mailing address in a separate document.

2. If a petitioner has not disclosed an address pursuant to this Section and is not represented by legal counsel, the respondent shall serve all pleadings and other documents on the

petitioner by delivering the same to the Court or at an alternative address designated by the petitioner. The Court shall forward all such served documents received from the respondent to the petitioner.

3. If disclosure of petitioner's address is necessary to determine jurisdiction in a proceeding under this Title, the Court may order the disclosure to be made:

- a. After receiving the petitioner's consent;
- b. Orally and in chambers, out of the presence of the respondent, with a sealed record to be made; or
- c. After a hearing, if the Court takes into consideration the safety of petitioner, his or her child, and any member of the petitioner's family or household and finds such disclosure is in the interests of justice.

Section 4-1-9. Responsive Pleading.

1. The respondent and any person issued a summons may file a responsive pleading to any petition filed in a proceeding under this Title.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the rules of procedure for the Court for answering or responding to a claim or at least seven (7) business days before the hearing on the petition, whichever is earlier.

3. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the petition.

Section 4-1-10. Conduct of Hearings. All hearings involving proceedings under this Title shall be conducted in accordance with the following:

1. Hearings shall be informal in nature, but orderly;
2. Concerned parties shall be provided an opportunity to introduce evidence, be heard in their own behalf, and examine witnesses;

3. Any matter or information relevant and material to the subject matter of the hearing is admissible and may be received in evidence;

4. Hearsay evidence will not be excluded as long as it is reasonably reliable;

5. A verbatim record shall be taken of all hearings; and

6. A child may be temporarily excluded from any hearing if the Court finds it is in the best interests of the child.

Section 4-1-11. Witness Lists and Subpoenas.

1. In a proceeding under this Title, each party shall provide to each other party in the proceeding or their respective legal counsel with a list of names of all witnesses that will be called at any hearing under this Title. Such list shall be provided as soon as possible and in no event later than five (5) days prior to the hearing date set.

2. Upon request of a party or on the Court's own motion, the Court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers or other things at any hearing under the provisions of this Title.

Section 4-1-12. Notices of Hearings.

1. The Court shall ensure that the following persons are notified of each hearing in a proceeding under this Title:

a. Any party to the proceedings, including the petitioner, and their legal counsel;

b. Any person issued a summons who makes an appearance in the proceedings;

c. The parents, guardian or custodian of any child subject of the proceedings and their legal counsel;

d. Legal counsel, guardian ad litem or advocate for a child subject of the proceedings, if any;

e. Individuals providing care for a child subject of the proceedings;

f. The Tribal Attorney, if the Tribe is a party to the proceedings; and

g. Any other person the Court may direct to be notified.

2. When a party fails to appear in response to a notice of hearing, the Court may order the party's appearance by summons or subpoena.

Section 4-1-13. Appointment of Guardian Ad Litem.

1. At any stage of a proceeding conducted under this Title, the Court may appoint separate counsel or a spokesperson for a child subject of the proceeding to act as guardian ad litem representing the child's best interests.

2. A guardian ad litem shall be an officer of the Court for the purpose of representing the child's best interests and shall investigate the circumstances of each case where the guardian ad litem is appointed, including contacting family members, school officials, and other individuals having pertinent information regarding the child.

3. The Court may assess the cost of the guardian ad litem against the petitioner or any other party in the proceeding.

Section 4-1-14. Severability. If any chapter, section or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 4-1-15. Sovereign Immunity. Except where expressly waived by a section of this Title specifically referring to a waiver of sovereign immunity, nothing in this Title shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials or employees.

**CHAPTER 2
MARRIAGE**

Section 4-2-1. Purpose. This Chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

1. Recognize and acknowledge that marriage is a fundamental human right and an institution that strengthens family relationships and preserves the integrity, cohesiveness, and continuity of the Tribe;

2. Ensure that couples of the same sex and couples of opposite sex have equal access to marriage and to the protections, responsibilities, and benefits that result from marriage;

3. Provide adequate procedures for the solemnization and registration of marriage; and

4. Strengthen and preserve the integrity of marriage and safeguard family relationships.

Section 4-2-2. Jurisdiction. The Tribe shall have jurisdiction over all marriages licensed and performed within the territory of the Tribe and shall have the authority to issue marriage licenses to individuals who are residents within the territory of the Tribe.

Section 4-2-3. Nature of Marriage.

1. Marriage is a personal relationship between two persons arising out of a civil contract to which the consent of the parties is essential.

2. A marriage licensed, solemnized, and registered as provided in this Chapter is valid in the territory of the Tribe.

3. Nothing in this Chapter shall be deemed to repeal or render invalid any otherwise valid common law or traditional marriage that complies with Section 4-2-10 of this Chapter.

4. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by law.

Section 4-2-4. Who May Marry. The following persons may marry:

1. Every person, otherwise competent, who has attained the age of majority; and

2. A person of at least the age of seventeen (17) years, with the consent of the person's parents, guardian, custodian, or the Court, as provided in this Chapter.

Section 4-2-5. Prohibited Marriages.

1. The following marriages are prohibited:

a. A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

b. A marriage entered into where one or both parties are less than seventeen (17) years of age;

c. A marriage between lineal descendants or between siblings, whether the relationship is by the half or the whole blood or by adoption;

d. A marriage between an uncle or aunt and a niece or nephew, whether the relationship is by the half or the whole blood; and

e. A marriage between the children of two siblings or the children of two first cousins, whether the relationship is by the half or the whole blood.

2. Parties to a marriage prohibited under this Section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

3. Children born of a prohibited marriage are legitimate.

Section 4-2-6. Marriage License and Certificate.

1. The Court shall prescribe the form for an application for a marriage license, which shall include the following information:

a. Name, sex, occupation, address, social security number, date and place of birth of each party to the proposed marriage;

b. If either party was previously married, his or her name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

c. Name and address of the parents or guardian of each party;

d. Whether the parties are related to each other and, if so, their relationship; and

e. The name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent-child relationship with respect to the child have been terminated.

2. The Court shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

Section 4-2-7. License to Marry.

1. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the Tribal Court Administrator or his or her designee and paid the marriage license fee to be determined by the Court, the Tribal Court Administrator or his or her designee shall issue a license to marry and a marriage certificate form upon being furnished:

a. Satisfactory proof that each party to the marriage will have attained the age of majority at the time the marriage license is effective, or will have attained the age of seventeen (17) years and has either the consent to the marriage of his or her parents, guardian or custodian, or judicial approval; and

b. Satisfactory proof that the marriage is not prohibited.

2. A license to marry becomes effective when issued, unless the Court orders that the license is effective at a different time, and expires 180 days after it becomes effective.

Section 4-2-8. Judicial Approval.

1. The Court, after a reasonable effort has been made to notify the parents or guardian of each underage party, may order the Tribal Court Administrator to issue a marriage license and a marriage certificate form to a party aged at least seventeen (17), but not yet the age of majority, who has no parent capable

of consenting to his or her marriage, or whose parent, guardian or custodian has not consented to his or her marriage.

2. A marriage license and a marriage certificate form may be issued under this Section only if the Court finds that the underage party is capable of assuming the responsibilities of marriage and the marriage will serve his or her best interests. Pregnancy alone does not establish that the best interests of the party will be served.

3. The Court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

Section 4-2-9. Solemnization and Registration.

1. A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage, or, if no individual acting alone solemnized the marriage, a party to the marriage, shall complete the marriage certificate form and forward it to the Tribal Court Administrator.

2. If a party to a marriage is unable to be present at the solemnization, he or she may authorize in writing, notarized as an acknowledgment verifying the identity and confirmation of the signature of the party, a third person to act as his or her proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he or she may solemnize the marriage by proxy. If he or she is not satisfied, the parties may petition the Court for an order permitting the marriage to be solemnized by proxy.

3. Upon receipt of the marriage certificate, the Tribal Court Administrator or his or her designee shall register the marriage.

4. A marriage solemnized before a person professing to have authority to perform marriages is valid regardless of such lack of authority if the parties, or either of them, believe that they have been lawfully joined in marriage.

Section 4-2-10. Common Law and Traditional Marriage.

1. Even where there has been no solemnization or ceremony and no certificate of marriage issued, two persons shall be considered married in a common law marriage if:

- a. Each party is at least the age of majority;
- b. Each party consents to the marriage;
- c. The parties cohabit;
- d. The parties declare or hold themselves out to the public as spouses; and
- e. The marriage is not prohibited as provided in this Chapter.

2. Even where there has been no solemnization or ceremony and no certificate of marriage issued, two persons shall be considered married in a traditional marriage if:

- a. Each party is at least the age of majority;
- b. The parties are recognized as married under the customs and traditions of the Tribe; and
- c. The marriage is not prohibited as provided in this Chapter.

3. Notwithstanding the provisions of Section 4-2-13, a common law marriage contracted within or outside the territory of the Tribe shall not be recognized as valid if:

- a. One or more of the parties is not at least the age of majority; or
- b. It is a prohibited marriage under this Chapter.

4. Persons involved in common law or traditional marriages may obtain a marriage certificate upon proof to the Tribal Court Administrator by affidavit or otherwise of the validity of their marriage under this Section and payment of the fee for a marriage license.

Section 4-2-11. Domestic Partnership.

1. Domestic partnership is a personal relationship between two persons arising out of a civil contract to which the

consent of the parties is essential. For all purposes under the laws of the Tribe, domestic partners:

a. Shall be considered as and treated the same as married spouses; and

b. Any privilege, immunity, right, benefit, or responsibility granted or imposed by the laws of the Tribe to an individual because the individual is or was a spouse, or because the individual is or was an in-law to another individual, is granted on equal terms, substantive and procedural, to an individual because the individual is or was in a domestic partnership or is or was, based on a domestic partnership, related to another individual.

2. Without the requirement of any solemnization or ceremony, two persons may enter into a domestic partnership if:

a. Each party is eligible to marry under this Chapter;

b. Each party consents to the domestic partnership;

c. The parties cohabit;

d. The domestic partnership, if it were a formal marriage, would not be a prohibited marriage under this Chapter.

3. Notwithstanding the provisions of Section 4-2-13, a domestic partnership contracted within or outside the territory of the Tribe shall not be recognized as valid if:

a. One or more of the parties is not at least the age of majority; or

b. Were it a formal marriage, it would be a prohibited marriage under this Chapter.

4. Two individuals wishing to become partners in a domestic partnership may obtain a domestic partnership certificate upon completing and filing a registration of domestic partnership with the Tribal Court Administrator and payment of the fee for a marriage license. The Court shall prescribe the form for registration of a domestic partnership, which shall include any information required to obtain a

marriage license under this Section along with a declaration that both persons:

- a. Cohabitate with one another;
- b. Have chosen to share one another's lives in an intimate and committed relationship of mutual caring; and
- c. Desire of their own free will to enter into a domestic partnership.

5. The provisions governing judicial approval of marriage in this Chapter shall apply to individuals wishing to become domestic partners.

6. Nothing in this Section shall be deemed to repeal or render invalid any otherwise valid domestic partnership.

7. A domestic partnership may only be invalidated or dissolved as provided by law with respect to marriage, provided that a domestic partnership shall automatically terminate if the parties enter into a formal marriage to each other.

Section 4-2-12. Putative Spouse.

1. Any person who has cohabited with another to whom he or she is not legally married in the good faith belief that he or she was married to that person is a putative spouse until knowledge of the fact that he or she is not legally married terminates his or her status and prevents acquisition of further rights.

2. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his or her status, whether or not the marriage is prohibited or declared invalid.

3. If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the Court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

Section 4-2-13. Existing Marriages.

1. Except as expressly provided in this Chapter, all marriages which are valid under the laws of the jurisdiction where and when performed shall be recognized and valid within the territory and jurisdiction of the Tribe.

2. All marriages performed or entered into within the territory of the Tribe prior to the effective date of this Chapter, including common law marriages and those perfected according to Tribal custom and tradition, are declared valid for all purposes under this Code. Persons involved in such marriages may obtain a marriage certificate upon proof to the Tribal Court Administrator by affidavit or otherwise of the validity of their marriage, and payment of the fee for a marriage license.

CHAPTER 3 INVALIDITY OF MARRIAGE

Section 4-3-1. Purpose. This Chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

1. Protect the political integrity of the Tribe by ensuring the ability of individuals to have a marriage declared invalid;

2. Define the grounds upon which a marriage may be declared invalid; and

3. Provide adequate procedures for declaring a marriage invalid.

Section 4-3-2. Authority of Court. The Court shall have the authority to declare a marriage invalid whether the marriage was solemnized or registered under marriage license issued by the Tribal Court Administrator or under any other proper authority.

Section 4-3-3. Grounds for Invalidity. The Court shall enter an order declaring the invalidity of a marriage under the following circumstances:

1. A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances;

2. A party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage;

3. A party was under the age of seventeen (17) years, or was aged seventeen (17) but under the age of majority and did not have the consent of his or her parents, guardian or custodian, or judicial approval; or

4. The marriage is prohibited as provided in this Chapter 2 of this Title.

Section 4-3-4. Initiation of Proceedings.

1. Proceedings in the Court to declare a marriage invalid shall be initiated by the filing of a petition.

2. Petitions may be filed by:

a. For a reason set forth in Section 4-3-3(1) or Section 4-3-3(2), by either party or by the legal representative of the party who lacked capacity to consent;

b. For the reason set forth in Section 4-3-3(3), by the underage party or his or her parent, guardian or custodian.

c. For the reason set forth in Section 4-3-3(4), by either party, the legal spouse in case of a bigamous, polygamous or incestuous marriage, the appropriate state official, or a child of either party.

3. Petitions to declare a marriage invalid shall be captioned: "In Re the Marriage of: (name of spouse) and (name of spouse)".

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The name, address, and tribal affiliation of the petitioner;

b. The name, last known address, and tribal affiliation of each spouse to the marriage, if different from the petitioner, or the reasons that such information is unavailable;

c. The name, last known address, and tribal affiliation of any other interested persons, such as other spouses, or the reasons that such information is unavailable;

d. The name, sex, date and place of birth, current residence and tribal affiliation of all living children of the marriage, and whether either of the parties is pregnant;

e. The basis for the Court's jurisdiction;

f. The basis for the petitioner claiming the marriage is invalid; and

g. A request that the Court enter an order declaring the marriage invalid.

5. Each spouse subject of the petition who is not a petitioner shall be considered a respondent.

6. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 4-3-5. Hearing on Petition.

1. Upon the filing of a petition under this Chapter, the Court shall schedule and conduct a hearing on the petition.

2. The primary purpose of a hearing on the petition is to determine whether the marriage between the individuals listed in the petition is invalid.

3. The Court shall consider any and all relevant testimony or evidence presented at hearing.

4. The Court shall enter a declaration of invalidity of the marriage if the Court finds that the marriage is invalid under the laws of the Tribe.

5. The burden of proof for establishing that a marriage is invalid shall lie with the petitioner to demonstrate that such marriage is invalid under the provisions of this Chapter by a preponderance of the evidence.

Section 4-3-6. Order on Invalidity.

1. In addition to any other matters necessary for an order of the Court, an order declaring the invalidity of a marriage shall include:

a. The name, date of birth, and last four digits of the social security number of each of the parties;

b. The basis for the Court's jurisdiction;

c. The grounds for declaring or not declaring the marriage invalid;

d. If the Court finds the marriage is not invalid, a declaration that the marriage is not invalid;

e. If the Court finds the marriage is invalid, a declaration that the marriage is invalid as of the date of the marriage, unless the Court finds, after a consideration of all relevant circumstances, including the effect of a retroactive declaration on third parties, that the interests of justice would be served by making the declaration not retroactive; and

f. Any other findings or orders the Court deems necessary or desirable.

2. A final declaration of invalidity shall restore the parties to the status of unmarried persons.

3. An order declaring a marriage invalid or denying that a marriage is invalid is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 4-3-7. Time Limit for Action. A declaration of invalidity must be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage:

1. For a reason set forth in Section 4-3-3(1) or Section 4-3-3(2), no later than six (6) months after the petitioner obtained knowledge of the described condition;

2. For the reason set forth in Section 4-3-3(3), prior to the time the underage party reaches the age of majority; and

3. For the reason set forth in Section 4-3-3(4), at any time prior to the death of either party to the marriage or prior to six months after the estate of either party to the marriage is closed.

Section 4-3-8. Legitimacy of Children. Children born of a marriage declared invalid are legitimate.

Section 4-3-9. Conclusiveness of Declaration. A declaration of invalidity of a marriage is conclusive only as against the parties to the action and those claiming under them.

Section 4-3-10. Other Provisions of Title. The provisions of this Title relating to property rights of the spouses, maintenance, support, and custody of children on dissolution of marriage are applicable to non-retroactive declarations of invalidity.

CHAPTER 4 DISSOLUTION AND SEPARATION

Section 4-4-1. Purpose. This Chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

1. Promote the amicable settlement of disputes that have arisen between parties to a marriage;
2. Mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;
3. Make reasonable provision for spouse and minor children during and after litigation; and
4. Make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making ir retrievable breakdown of the marriage relationship the sole basis for its dissolution.

Section 4-4-2. Authority of Court.

1. The Court shall have the authority to grant dissolution and separation of marriage to individuals whether the marriage was solemnized or registered under marriage license issued by the Tribal Court Administrator or under any other proper authority.

2. The Court shall also have the authority to order the disposition of property within the jurisdiction of the Court, spousal maintenance, child support, and child custody following a decree of dissolution of marriage or legal separation issued by the court of another jurisdiction which lacked jurisdiction over one of the spouses, over a child of the parties, or to dispose of the property.

Section 4-4-3. Grounds for Dissolution.

1. A dissolution of marriage may be granted if the Court finds that there has been an irretrievable breakdown of the marriage relationship supported by evidence that:

a. The parties have lived separate and apart for a period of more than one-hundred eighty (180) days next preceding the commencement of the proceeding; or

b. There is serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage.

2. Defenses to dissolution of marriage and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, shall not be recognized and, to the extent such defenses previously existed, are abolished.

Section 4-4-4. Initiation of Proceedings.

1. Proceedings in the Court for a decree of dissolution or legal separation or for disposition of property after dissolution or legal separation shall be initiated by the filing of a petition.

2. Petitions may be filed by either or both spouses.

3. Petitions for dissolution of marriage or legal separation shall be captioned: "In Re the Marriage of: (name of spouse) and (name of spouse)".

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The name, address, tribal affiliation, and employment of each party;

b. The length of residence of each party in the territory of the Tribe;

c. The date of the marriage and the place at which it was registered;

d. The name, sex, date and place of birth, current residence and tribal affiliation of all living children of the marriage, and whether either of the parties is pregnant;

e. The basis for the Court's jurisdiction;

f. An allegation that the marriage is irretrievably broken;

g. Any arrangements as to support, custody, visitation and parenting time of the children and maintenance of a spouse; and

h. The relief sought.

5. A party to the marriage who is not a petitioner shall be considered a respondent.

6. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 4-4-5. Temporary Orders.

1. In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property or for maintenance or support following dissolution of marriage or legal separation by the court of another jurisdiction which lacked jurisdiction over one of the spouses, over a child of the parties, or to dispose of the property, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

2. As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit,

either party may request the Court to issue a temporary injunction for any of the following relief:

a. Restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him or her to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

b. Enjoining a party from harassing or disturbing the peace of the other party or of any child;

c. Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

d. Enjoining a party from removing a child from the jurisdiction of the Court; and

e. Providing other injunctive relief proper in the circumstances.

3. The Court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

4. Unless another time is specified in the temporary restraining order, a response may be filed within the time period provided in the rules of procedure for the Court for answering or responding to a motion.

5. On the basis of the showing made and in conformity with the provisions of this Chapter governing maintenance and Chapter 6 of this Title governing child support, the Court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

6. A temporary order or temporary injunction:

a. Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

b. May be revoked or modified before a final decree on a showing by affidavit of the facts necessary for revocation or modification of a final decree under this Chapter; and

c. Terminates when the final decree is entered or when the petition for dissolution or legal separation is dismissed.

Section 4-4-6. Separation Agreements.

1. To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and/or support, custody, and visitation of their children.

2. In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, visitation and parenting time of children, are binding upon the Court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the Court, that the separation agreement is unconscionable.

3. If the Court finds the separation agreement is unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, maintenance, and support.

4. The terms of the separation agreement providing for child custody, visitation and parenting time shall comply with and be subject to approval of the Court in accordance with Chapter 5 of this Title.

5. The terms of the separation agreement providing for child support shall comply with and be subject to approval of the Court in accordance with Chapter 6 of this Title.

6. If the Court finds that the separation agreement is not unconscionable as to disposition of property or maintenance, and not unsatisfactory as to support and custody, visitation and parenting time:

a. Unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or

b. If the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and state that the Court has found the terms not unconscionable.

7. Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

8. Except for terms concerning the support, custody, visitation and parenting time of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree.

9. On the written agreement of the parties or on the Court's own motion, the Court may order or refer parties to a proceeding under this Chapter to mediation or traditional dispute resolution regarding disposition of their property, maintenance, and/or support, custody, and visitation of their children to assist them in entering into a separation agreement pursuant to this Section, with the costs allocated between the parties, provided that:

a. The Court shall not order or refer the parties to mediation or traditional dispute resolution if an order for protection is in effect involving the parties or a preponderance of the evidence demonstrates that domestic or family abuse has occurred between the parties; and

b. If a party alleges that domestic or family abuse has occurred between the parties, but the allegation is not supported by a preponderance of the evidence, the Court shall order appropriate measures be taken to ensure the physical and emotional safety of the alleged victim of domestic or family abuse, including ordering that the parties not be required to have face-to-face contact and be placed in separate rooms during the mediation or traditional dispute resolution.

Section 4-4-7. Hearing on Petition.

1. Upon the filing of a petition under this Chapter, the Court shall schedule and conduct a hearing on the petition.

2. The primary purpose of a hearing on the petition is to determine whether the marriage is irretrievably broken and, if so, determine the disposition of any property owned by the parties, maintenance of either of the parties, and support, custody, visitation, and parenting time of the parties' children.

3. The Court shall consider any and all relevant testimony or evidence presented at hearing.

4. The Court shall make a finding of irretrievable breakdown in accordance with the following:

a. If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the Court, shall find the marriage is irretrievably broken;

b. If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the Court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation, and shall:

i. Make a finding whether the marriage is irretrievably broken; or

ii. Continue the matter for further hearing not fewer than thirty (30) nor more than sixty (60) days later and may suggest to the parties that they seek counseling. The Court, at the request of either party shall, or on its own motion may, order a conciliation conference. At the next hearing the Court shall make a finding whether the marriage is irretrievably broken.

c. A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

5. The Court shall make findings on the disposition of property and maintenance in accordance with the provisions of this Chapter.

6. The Court shall make findings on the custody and visitation of the parties' children, including the entry or approval of a parenting plan, in accordance with Chapter 5 of this Title.

7. The Court shall make findings on child support for the parties' children in accordance with Chapter 6 of this Title.

Section 4-4-8. Decree.

1. The Court shall enter a decree of dissolution or a decree of legal separation if:

a. The Court finds that one of the parties, at the time the action was commenced, was domiciled within the territory of the Tribe and that the domicile has been maintained for at least ninety (90) days prior to the Court entering the decree; and

b. The Court finds that the marriage is irretrievably broken.

2. In addition to any other matters necessary for an order of the Court, a decree of dissolution or legal separation shall include:

a. The basis for the Court's jurisdiction;

b. The disposition of property and debts between the parties, or provision for a separate, later hearing to complete such matters;

c. If there are children from the relationship, findings and determinations with respect to child custody, including the entry or approval of a parenting plan, and child support in accordance with the provisions of this Title, or provision for a separate, later hearing to complete such matters;

d. Determinations with respect to maintenance of either spouse in accordance with the provisions of this Chapter, or provision for a separate, later hearing to complete such matters;

e. If it is a decree of dissolution, an order returning the surname of either party to their surname before the marriage, if requested;

f. An order for either or both parties to sign or deliver all necessary legal documents to effect the provisions of the decree; and

g. Any other findings or orders the Court deems necessary or desirable.

3. If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the Court shall grant the decree in that form unless the other party objects.

4. A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

5. A decree of dissolution shall terminate the marriage of the parties. A decree of legal separation shall not terminate the marriage of the parties.

6. No earlier than six (6) months after entry of a decree of legal separation, the Court on motion of either party shall convert the decree to a decree of dissolution of marriage.

7. The Tribal Court Administrator shall give notice of the entry of a decree of dissolution or legal separation to the appropriate official of the jurisdiction where the marriage is registered, with the request that such official enter the fact of dissolution in the appropriate record.

8. A decree of dissolution or legal separation is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 4-4-9. Disposition of Property.

1. In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property following dissolution of marriage or legal separation by the court of another jurisdiction which lacked jurisdiction over one of the spouses or to dispose of the property, the Court shall set apart to each spouse his or her separate property and shall

divide the marital property, without regard to marital misconduct, in such proportions as the Court deems just and equitable after considering all relevant factors including:

- a. The duration of the marriage and any prior marriage of either party;
- b. Any antenuptial agreement of the parties;
- c. The age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;
- d. Custodial provisions;
- e. The value of the property set apart to each spouse;
- f. Whether the apportionment is in lieu of or in addition to maintenance;
- g. The opportunity of each for future acquisition of capital assets and income;
- h. The contribution or dissipation of each party in the acquisition, preservation, depreciation, or appreciation in value of the respective estates; and
- i. The contribution of a spouse as a homemaker or to the family unit.

2. For purposes of this Chapter, "marital property" means all property, including retirement benefits, acquired by either spouse subsequent to the marriage except for property that is:

- a. Separate property as provided in this Section; and
- b. Excluded by valid agreement of the parties.

3. For purposes of this Chapter, "separate property" means property of a spouse that is:

- a. Owned by the spouse before marriage and the increase, rents, issues and profits of that property;

b. Acquired by the spouse before or during the marriage by gift, bequest, devise, or descent or in exchange for property acquired by gift, bequest, devise, or descent, and the increase, rents, issues and profits of that property;

c. Acquired by the spouse after service of a petition for dissolution of marriage, legal separation or declaration of invalidity of marriage if the petition results in a decree of dissolution of marriage, legal separation or invalidity of marriage; and

d. Held in trust by the United States for the benefit of the spouse, whether acquired before or during the marriage.

4. In a proceeding under this Chapter, the Court may protect and promote the best interests of the child of the parties by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent child of the parties.

Section 4-4-10. Maintenance.

1. In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for maintenance following dissolution of marriage or legal separation by the court of another jurisdiction which lacked jurisdiction over one of the spouses, the Court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

a. Lacks sufficient property to provide for his or her reasonable needs; and

b. Is unable to support himself or herself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

2. The maintenance order shall be in amounts and for periods of time the Court deems just, without regard to marital misconduct, and after considering all relevant factors including:

a. The financial resources of the party seeking maintenance, including marital property apportioned to him or her, his or her ability to meet his or her needs independently, and the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

b. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

c. The standard of living established during the marriage;

d. The duration of the marriage;

e. The age and the physical and emotional condition of the spouse seeking maintenance; and

f. The ability of the spouse from whom maintenance is sought to meet his or her needs while meeting those of the spouse seeking maintenance.

3. Upon its own motion or upon motion of either party, the Court may order at any time that maintenance payments be made to the Tribal Court Administrator as trustee for remittance to the person entitled to receive the payments in accordance with the following:

a. The Tribal Court Administrator shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order; and

b. The parties affected by the order shall inform the Tribal Court Administrator of any change of address or of other condition that may affect the administration of the order.

4. The Court may order the person obligated to pay maintenance to make an assignment of a part of his or her periodic earnings or other income to the person entitled to receive the payments. The assignment shall be binding on the employer or other payor of the funds two (2) weeks after service upon it of notice that the assignment has been made. The employer or other payor shall withhold from the earnings or other income payable to the person obligated to support the

amount specified in the assignment and shall transmit the payments to the person specified in the order. An employer shall not discipline, discharge from employment or refuse to employ any person because his or her wages are subject to assignment under this subsection. An employer who disciplines, discharges from employment, or refuses to employ a person because of an assignment under this subsection shall be subject to a civil fine not to exceed eight hundred dollars (\$800).

5. If a party fails to make a required maintenance payment, the obligee may file a motion in the original proceeding to enforce the payment against the obligor, including requesting contempt proceedings.

Section 4-4-11. Child Custody. In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for child custody following dissolution of marriage or legal separation by the court of another jurisdiction which lacked jurisdiction over one of the spouses or the child of the parties, the Court shall order the custody, visitation and parenting time, including the entry or approval of a parenting plan, in accordance with the provisions of Chapter 5 of this Title.

Section 4-4-12. Child Support. In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for child support following dissolution of marriage or legal separation by the court of another jurisdiction which lacked jurisdiction over one of the spouses or the child of the parties, the Court shall order either or both parents owing a duty of support to a child to pay child support in accordance with the provisions of Chapter 6 of this Title.

Section 4-4-13. Legal Counsel's Fees. The Court, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this Chapter and for legal counsel's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The Court may order that the amount be paid directly to the legal counsel, who may enforce the order in his or her name.

Section 4-4-14. Independence of Provisions of Decree. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation or

parenting time is not suspended, but he or she may move the Court to grant an appropriate order.

Section 4-4-15. Modification and Termination of Decree.

1. Except as otherwise provided in this Chapter, either party subject to a decree which includes provisions for maintenance may, by motion in the same action in which the decree was issued, request the Court to modify or vacate the provision respecting maintenance in accordance with the following:

a. The provisions respecting maintenance may only be modified or vacated on the grounds of:

i. Changed circumstances so substantial and continuing as to make the terms unconscionable; or

ii. Unless it is otherwise agreed in writing or expressly provided in the decree that maintenance would continue, either party has died or the party receiving maintenance has remarried; and

b. The provisions of any decree respecting maintenance may be modified or vacated only as to installments accruing subsequent to the motion.

2. The provisions of a decree as to property disposition may not be revoked or modified unless the Court finds the existence of conditions that otherwise justify the reopening of a judgment under the laws of the Tribe.

3. The provisions of any decree respecting child custody may be modified in accordance with the provisions of Chapter 5. Unless otherwise agreed in writing or expressly provided in the decree, provisions respecting child custody shall terminate in accordance with the provisions of Chapter 5.

4. The provisions of any decree respecting child support may be modified in accordance with the provisions of Chapter 6. Unless otherwise agreed in writing or expressly provided in the decree, provisions respecting child support shall terminate in accordance with the provisions of Chapter 6.

**CHAPTER 5
CHILD CUSTODY AND VISITATION**

Section 4-5-1. Purpose. This Chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

1. Ensure that the best interests of children are the primary concern when making any orders regarding the physical or legal custody or visitation of children;

2. To assure that children have frequent and continuing contact with both parents after the parents have ended their relationship;

3. To encourage parents to share the rights and responsibilities of child rearing after the parents have ended their relationship; and

4. To maintain children's connection to their family and the Tribe even when their custody is in dispute.

Section 4-5-2. Definitions. Unless the context requires otherwise, in this Chapter:

1. "Custody decree" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, visitation, or parenting time with respect to a child and includes permanent and temporary orders, and initial orders and modifications.

2. "Joint custody" means joint physical custody and joint legal custody.

3. "Joint legal custody" means that both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

4. "Joint physical custody" means that each of the parents shall have significant periods of physical custody. Joint physical custody shall be shared by the parents in such a way so as to assure a child of frequent and continuing contact with both parents.

5. "Sole legal custody" means that one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child.

6. "Sole physical custody" means that a child shall reside with and be under the supervision of one parent, subject to the power of the Court to order visitation with the other parent.

Section 4-5-3. Jurisdiction.

1. The Court shall have jurisdiction to decide child custody matters by initial or modification decree if:

a. The child has resided in the territory of the Tribe for at least six (6) months before commencement of the proceedings;

b. The child had been residing in the territory of the Tribe within six (6) months before commencement of the proceedings and is absent from the territory of the Tribe because of his or her removal or retention by a person claiming his or her custody or for other reason, and a parent or person acting as parent continues to live in the territory of the Tribe;

c. It is in the best interests of the child that the Court assume jurisdiction because:

i. The child and his or her parents, or the child and at least one contestant, have a significant connection with the Tribe; and

ii. There is available in the territory of the Tribe substantial evidence concerning the child's present or future care, protection, training, and personal relationships;

d. The child is physically present in the territory of the Tribe and:

i. Has been abandoned; or

ii. It is necessary in an emergency to protect him or her because he or she has been subjected to or threatened with mistreatment or abuse or is neglected or dependent;

e. No other Indian tribe or state has jurisdiction under prerequisites substantially in accordance with paragraphs (a), (b), (c), or (d) of this subsection, or

another Indian tribe or state has declined to exercise jurisdiction on the ground that the Tribe is the more appropriate forum to determine custody of the child, and it is in the child's best interests that the Court assume jurisdiction.

2. Except under paragraphs (d) and (e) of subsection (1) of this Section, physical presence of the child or of the child and one of the contestants in the territory of the Tribe is not alone sufficient to confer jurisdiction on the Court to make a child custody determination.

3. Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his or her custody.

Section 4-5-4. Continuing Jurisdiction.

1. Jurisdiction of the Court over a proceeding under this Chapter is exclusively retained until terminated by any of the following situations:

a. The Court determines that neither the child, nor the child and one 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 in the territory of the Tribe concerning the child's care, protection, training, and personal relationships;

b. The Court or a court of another Indian tribe or state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the territory of the Tribe; or

c. The Court dismisses a petition or enters an order closing the matter.

2. Where the Court deems it appropriate, the Court may retain jurisdiction under this Section over persons who leave the territory of the Tribe.

Section 4-5-5. Custody of Child.

1. Except as otherwise provided in this Chapter, each parent of an unemancipated child, including a presumed parent, is equally entitled to the child's custody, services, and earnings and neither can transfer such custody, services, and

earnings to any other person without the written consent of the other parent except in case of death, desertion, or abandonment.

2. Except as otherwise provided in this Chapter, each parent of a child has the following rights and duties whether the parent is the custodian or non-custodial parent, provided that the Court may restrict or exclude any right or duty if the Court states the reason in support of the restriction or exclusion in its order:

a. The right to access and obtain copies of the child's educational, medical, dental, insurance, and other records or information;

b. The right of access to information regarding health or dental insurance available to the child;

c. The right to be informed by school officials about the child's welfare, educational progress and status, and attend educational conferences concerning the child, provided no school shall be required to hold a separate conference with each parent;

d. The right to reasonable access to the child by written, telephonic, and electronic means;

e. The duty to inform the other parent as soon as reasonably possible of a serious accident or serious illness for which the child receives health care treatment, including the name of the health care provider and the place of treatment;

f. The duty to inform the other parent if the child is the victim of an alleged crime, including the name of the investigating law enforcement officer or agency unless the other parent is the alleged perpetrator;

g. The duty to immediately inform the other parent of a change in residential telephone number and address, unless the Court finds such information should be withheld because of safety concerns; and

h. The duty to keep the other parent informed of the name and address of the school the child attends, unless the Court finds such information should be withheld because of safety concerns.

3. Except as otherwise provided in this Chapter, in any proceeding under this Chapter, the Court shall determine whether to grant joint or sole legal and physical custody to the parents or proposed custodian of the child subject of the proceedings, taking into account:

a. The ability of the parents and/or proposed custodian to cooperate effectively and consistently in matters that directly affect the joint parenting of the child, but not considering the inability of the parents and/or proposed custodian to cooperate effectively and consistently in matters that do not directly affect the joint parenting of the child;

b. The residential circumstances of each parent and proposed custodian; and

c. The best interests of the child.

4. Joint physical custody does not require an absolutely equal division of time between the parents and any proposed custodian.

5. A parent shall have sole responsibility for making routine decisions with respect to the child and for emergency decisions affecting the child's health and safety during that parent's parenting time.

6. Except for agreements and parenting plans related to custody permitted in this Chapter, an agreement, including an antenuptial agreement, which defines the rights or duties of the parties regarding physical or legal custody, parenting time, access, visitation, or other custodial rights or duties with respect to a child is void and may not be enforced.

Section 4-5-6. Visitation.

1. Except as provided in this Chapter, a non-custodial parent of a child is entitled to reasonable visitation rights, including parenting time, unless the Court finds by clear and convincing evidence, after a hearing, that visitation and/or parenting time would endanger the child's physical, mental, or emotional health.

2. Except as otherwise provided in this Chapter, any immediate or extended family member or person with a significant connection to the child who is not granted custody of the child

may be granted reasonable visitation rights unless the Court finds by clear and convincing evidence, after a hearing, that visitation would endanger the child's physical, mental, or emotional health or such visitation would interfere with the parent-child relationship.

3. Except as otherwise provided in this Chapter, a parent or any other immediate or extended family member or person with a significant connection to the child may file a petition under this Chapter at any time requesting visitation rights.

4. In a proceeding under this Chapter, the Court shall determine visitation and allocate parenting time according to the child's best interests. Except as otherwise provided in this Chapter, visitation and parenting time shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent. An order of the Court governing visitation shall protect the non-custodial parent's visitation rights where the non-custodial parent participates in family functions.

5. The Court may reduce, restrict or limit the visitation rights and/or parenting time of any person or any provision of a parenting plan if it finds, after a hearing:

a. In the case of a parent or custodian, the parent or custodian has willfully abandoned the child for an extended period of time;

b. In the case of a parent or custodian, the parent or custodian substantially refuses to perform parenting functions;

c. The person has a long term emotional or physical impairment resulting from drug, alcohol or other substance abuse that interferes with the person's ability to care for the child, including, in the case of a parent or custodian, the performance of parenting functions;

d. The person or a person residing with the person has engaged in physical, sexual, or emotional abuse of the child;

e. The person engages in abusive use of conflict that creates the danger of serious damage to the child's psychological development;

f. In the case of a parent or custodian, the parent or custodian withholds access to the child from the other parent for a protracted period without good cause;

g. The person or a person residing with the person has engaged in acts of domestic or family abuse, assault, or sexual assault which have caused bodily harm or the fear of such harm;

h. Any other basis for limiting or restricting custody or visitation provided in this Chapter; or

i. Such other factors as the Court expressly finds adverse to the best interests of the child.

6. Notwithstanding anything to the contrary in the laws of the Tribe, the Court may award visitation by and/or parenting time to a person who committed domestic or family abuse only if the Court finds that adequate provision for the safety of the child and the person who is a victim of domestic or family abuse can be made.

Section 4-5-7. Custody and Visitation When Sexual Assault.

1. Notwithstanding anything to the contrary in the laws of the Tribe, a person who commits an act of rape, incest, or sexual assault against another person which results in the birth of a child conceived as a result of the act of rape, incest, or sexual assault shall have no right to nor be granted custody of, visitation of, or parenting time with the child unless the victim of the rape, incest, or sexual assault expressly and voluntarily consents to such custody, visitation or parenting time.

2. Notwithstanding anything to the contrary in the laws of the Tribe, a persons who commits an act of rape, incest, or sexual assault against another person which results in the birth of a child conceived as a result of the act of rape, incest, or sexual assault shall be prohibited from bringing an action for custody, visitation or parenting time relating to such child.

Section 4-5-8. Allocation of Parental Responsibilities.

1. Except as otherwise agreed by the parties in writing at the time of the custody decree or otherwise provided in the custody decree, the custodian may determine the child's upbringing, including his or her:

a. Education, including the choice of schools and tutors;

b. Health, including all decisions relating to the medical, dental, and psychological needs of the child and to the treatments arising or resulting from those needs; and

c. Extracurricular activities.

2. The Court may limit a custodian's authority, after hearing and motion by the non-custodial parent, if the Court finds by clear and convincing evidence that, in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his or her emotional development significantly impaired.

3. The parties may agree or the Court may, according to the child's best interests, allocate decision-making responsibilities between the parties, including when the Court orders joint legal custody.

Section 4-5-9. Best Interests of Child.

1. The Court shall determine custody, visitation, and parenting time in accordance with the best interests of the child, which shall include the best means to secure the child's sense of belonging to family, community and the Tribe. It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents, but, between parents there is no presumption as to who will better promote the best interests of the child.

2. In determining the best interests of the child under this Chapter, the Court shall consider:

a. The wishes of the child's parent or parents as to his or her custody;

b. The wishes of the child as to his or her custodian, if the child is twelve (12) years of age or older;

c. The recommendation of the child's primary caretaker;

d. The love, affection, and other emotional ties existing between the parents or proposed custodian and child;

e. The interaction and interrelationship of the child with his or her parent or parents, siblings, extended family, any person who resides in, is present, or frequents the household where the child resides, and any other person who may significantly affect the child's best interests;

f. The child's adjustment to his or her home, school, and community;

g. The person best suited to provide parental guidance to the child in accordance with the beliefs, customs and traditions of the Tribe or, in the case of a non-member child, other cultural context of the child;

h. Availability of extended family to assist in the care and custody of the child;

i. The mental and physical health of all individuals involved, provided that a disability of a proposed custodian or the child shall not be determinative of custody unless the proposed custodial arrangement does not serve to protect the child's needs and sense of belonging;

j. The capacity and disposition of the proposed custodian to give the child love, affection, and guidance, and to continue educating and raising the child in the child's Tribal ways or, in the case of a non-member child, other cultural context of the child in addition to the child's religion or creed, if any;

k. Tribal affiliation of the parents and the child;

l. The child's Tribal, community, family and cultural background;

m. The extent of the participation of the proposed custodian in Tribal cultural activities or, in the case of a non-member child, other cultural activities of the child;

n. The making of false allegations, not made in good faith, by one parent or proposed custodian against the other, of harm to a child;

o. The effect of domestic or family abuse on the child if such abuse has occurred within the household of the child;

p. Except in cases in which a finding of domestic or family abuse has been made, the disposition of each proposed custodian to encourage and permit frequent and continuing contact with the child by the parents and other family of the child; and

q. Any other factors considered by the Court to be relevant to a particular proceeding under this Chapter.

3. In determining the best interests of the child, the Court may not use one factor to the exclusion of all others and shall not consider conduct of a parent or proposed custodian that does not affect his or her relationship to the child.

4. In a proceeding under this Chapter where the Court determines that domestic or family abuse has occurred:

a. There shall be a rebuttable presumption that it is detrimental to and not in the best interests of the child to be placed in the sole legal or physical custody or joint legal or physical custody of the perpetrator of the domestic or family abuse;

b. There shall be a rebuttable presumption that it is in the best interest of the child to be placed in the sole custody of and reside with the parent or proposed custodian who is not a perpetrator of domestic or family abuse in the location of that parent's choice, within or outside the territory of the Tribe;

c. In addition to the other factors that the Court must consider, the Court shall also consider:

i. The safety and well-being of the child and of the person who is the victim of domestic or family abuse as primary; and

ii. The perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person; and

d. If a parent or proposed custodian is absent or relocates because of domestic or family abuse by the another party, the absence or relocation shall not be a factor that weighs against the parent or proposed custodian in determining custody, visitation, or parenting time.

Section 4-5-10. Initiation of Proceedings.

1. Proceedings in the Court for custody and/or visitation of a child shall be initiated by the filing of a petition.

2. Petitions may be filed by:

a. A parent of the child;

b. If the child is not in the physical custody of one of his or her parents, a guardian or custodian of the child or another person who has physical care or custody of the child; or

c. Requesting visitation only, any immediate or extended family member or person with a significant connection to the child.

3. Petitions for custody and/or visitation of a child shall be captioned: "In Re the Custody of: (name(s) of child(ren)), (name(s) of petitioner(s)), Petitioner(s) vs. (name(s) of respondent(s)), Respondent(s)". A request for a child custody or visitation order may be combined with a proceeding for invalidity of a marriage, dissolution of marriage, legal separation, or child support under this Title, captioned as such proceeding, and conducted as part of such proceeding.

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The name, address, and tribal affiliation of the petitioner;

b. The name, last known address, and tribal affiliation of the respondent or the reasons that such information is unavailable;

c. The relationship of the petitioner to the child for whom custody and/or visitation is sought;

d. The relationship of the respondent to the child for whom custody and/or visitation is sought;

e. The name, sex, date and place of birth, current residence and tribal affiliation of the child for whom custody and/or visitation is sought or the reasons such information is unavailable;

f. If different from the petitioner and respondent and parental rights to the child have not been terminated, the names, last known addresses and tribal affiliation of the child's parents or the reasons that such information is unavailable;

g. If different from the petitioner, the names, last known addresses and tribal affiliation of the persons having legal custody or guardianship of the child or the reasons that such information is unavailable;

h. The basis for the Court's jurisdiction;

i. The basis for the petitioner requesting custody and/or visitation of the child;

j. If an agreement for custody and/or visitation exists, the details of such agreement and whether the petitioner requests an order upon such agreement;

k. A request that the Court enter an order for custody and/or visitation of the child.

5. The child's parents, except a parent who is a petitioner, shall be included as named respondents.

6. Two (2) or more children for whom custody and/or visitation is sought by the petitioner may be included in the same petition.

7. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 4-5-11. Child Custody in Other Proceedings. The Court may enter a custody decree without a petition filed under this Chapter or a separate hearing in:

1. An invalidity of marriage proceeding under Chapter 3 of this Title;
2. A dissolution of marriage or legal separation proceeding under Chapter 4 of this Title;
3. A parentage proceeding under Chapter 7 of this Title;
4. A child support proceeding under Chapter 6 of this Title;
5. A child in need of assistance proceeding under Title III of this Code;
6. A child offender proceeding under Title III of this Code; or
7. Any other proceeding which permits or requires the provision of child custody, visitation and/or parenting time under the laws of the Tribe.

Section 4-5-12. Temporary Orders.

1. A party to a proceeding under this Chapter may move for a temporary custody order. The motion must be supported by an affidavit setting forth facts supporting the requested order. The Court may award temporary custody under the standards of this Chapter after a hearing, or, if there is no objection, solely on the basis of the affidavits.

2. If a proceeding for invalidity of marriage, dissolution of marriage, legal separation, or child support is dismissed, any temporary custody order is vacated unless a parent or the child's guardian or custodian moves that the proceeding continue as a custody proceeding and the Court finds, after a hearing, that the circumstances of the parties and the best interests of the child require that a custody decree be issued.

3. If a proceeding commenced under this Chapter in the absence of a petition for invalidity of marriage, dissolution of marriage, legal separation, or child support is dismissed, any temporary custody order is vacated.

Section 4-5-13. Interviews.

1. The Court may interview the child in chambers to ascertain the child's wishes as to his or her custodian and as to visitation and parenting time, if the child is twelve (12) years of age or older. The Court may permit legal counsel to be present at the interview. The Court shall cause a record of the interview to be made and to be part of the record in the case.

2. The Court may seek the advice of professional personnel, whether or not employed by the Court on a regular basis, provided such personnel are knowledgeable in the welfare of Indian children. The advice given shall be in writing and made available by the Court to legal counsel upon request. Legal counsel may examine as a witness any professional personnel consulted by the Court.

Section 4-5-14. Investigations and Reports.

1. In contested proceedings under this Chapter, and in other proceedings under this Chapter if a parent or the child's guardian or custodian so requests, the Court may order an investigation and report concerning custodial arrangements for the child. Such investigation and report shall be grounded in the cultural context of the child. The investigation and report may be made by a guardian ad litem appointed by the Court on behalf of the child or the Department of Social Services, provided the Department of Social Services determines that it has the resources and authority to furnish such services to the parties in the matter.

2. In preparing a report concerning a child, the investigator may consult any person who may have information about the child and his or her potential custodial arrangements. Upon order of the Court, the investigator may refer the child to professional personnel for diagnosis, provided that such professional personnel are able to make diagnoses grounded in the cultural context of the child. Upon order of the Court, the investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's guardian or custodian, provided the child's consent must be obtained if he or she has reached the age of sixteen (16) years unless the Court finds that he or she lacks mental capacity to consent. Subject to objection from any party, the Court shall receive and accept the investigator's report and consider such report as it would any other evidence presented.

3. The investigator's report shall be served on the legal counsel for any party and on any party not represented by legal counsel at least ten (10) days prior to the hearing. The investigator shall make available to legal counsel for any party and to any party not represented by legal counsel the investigator's file of underlying data, reports, complete texts of diagnostic reports made to the investigator, and the names and addresses of all persons whom the investigator consulted. Any party to the proceeding may call the investigator and any person whom he or she has consulted for cross-examination. A party may not waive his or her right of cross-examination prior to the hearing.

Section 4-5-15. Parenting Plan.

1. In any proceeding under this Chapter, except a proceeding solely for visitation by an immediate or extended family member or person with a significant connection to the child, a parenting plan shall be developed and approved by the Court in accordance with this Section.

2. Any party to a proceeding under this Chapter may submit a proposed parenting plan to the Court for approval. To promote amicable settlement of disputes between parties regarding child custody and visitation, the parties may and are encouraged to submit a joint parenting plan. When a parenting plan has not been developed and submitted to the Court, the Court shall create the parenting plan in accordance with this Section.

3. On the written agreement of the parties or on the Court's own motion, the Court may order or refer parties to a proceeding under this Chapter to mediation or traditional dispute resolution to assist them in entering into a joint parenting plan pursuant to this Section, with the costs allocated between the parties, provided that:

a. The Court shall not order or refer the parties to mediation or traditional dispute resolution if an order for protection is in effect involving the parties or a preponderance of the evidence demonstrates that domestic or family abuse has occurred between the parties; and

b. If a party alleges that domestic or family abuse has occurred between the parties, but the allegation is not supported by a preponderance of the evidence, the Court shall order appropriate measures be taken to ensure the

physical and emotional safety of the alleged victim of domestic or family abuse, including ordering that the parties not be required to have face-to-face contact and be placed in separate rooms during the mediation or traditional dispute resolution.

4. The objective of any parenting plan shall be:

a. To provide for the child's care and maintain the child's emotional well-being;

b. To provide for the child's physical care and to maintain the child's emotional stability;

c. To provide for the child's changing needs as the child grows;

d. To promote and preserve the child's cultural heritage and tribal affiliation, if any;

e. To set forth the authority and responsibilities of each parent and any other individual seeking custody;

f. To minimize the child's exposure to harmful parental conflict;

g. To encourage parents and other parties seeking custody to meet their responsibilities through the parenting plan rather than by relying on court intervention; and

h. To otherwise protect the best interests of the child consistent with this Chapter.

5. A parenting plan shall include, but not be limited to:

a. Legal custody and physical custody of the child;

b. Provisions for the child's living arrangements and for the custodial responsibility of each parent and/or other individual seeking custody, which shall include either:

i. A custodial schedule that designates in which party's home the child will reside on given days of the year including birthdays, vacations, holidays, and weekends including weekends with holidays or

school in-service days preceding or following weekends; or

ii. A formula or method for determining such a schedule in sufficient detail that, if necessary, the schedule can be enforced in a subsequent proceeding.

c. Apportionment of parenting time, visitation, or other access to the child to the extent not included in provisions for the child's living arrangements;

d. A designation of decision-making responsibilities regarding the child;

e. Telephone access and transportation needs;

f. Provisions to ensure regular and continuous school attendance and progress for a school-age child;

g. Provisions for the parties to notify each other of a change of address, unless the Court finds such information should be withheld because of safety concerns; and

h. Any other issues and matters the parties agree to or the Court finds appropriate regarding the child.

6. A parenting plan may include:

a. Visitation with immediate or extended family members or other persons with a significant connection to the child;

b. Methods for dispute resolution other than a proceeding in the Court, including counseling, mediation, arbitration or traditional dispute resolution processes;

c. Provisions for suspension of parenting time, visitation, and other access until a modified custody order and parenting plan is in place when new findings of child abuse or neglect, domestic or family abuse, criminal activity affecting the best interests of the child, or violation of an order for protection occur; and

d. Consequences for failure to follow the parenting plan's provisions.

7. Each parenting plan filed under this Section shall be supported by an affidavit containing, to the extent known:

a. The name, address, tribal affiliation, and length of co-residence of any individuals with whom the child has lived for one (1) year or more, or in the case of a child less than one (1) year old, any individuals with whom the child has lived for any significant period of time since birth;

b. A description of the past allocation of caretaking and other parenting functions performed by both parents and any individual seeking an allocation of custodial responsibility, including at a minimum during the twenty-four (24) months preceding the filing of the proceeding;

c. A description of the employment and child-care schedules of any individual seeking an allocation of custodial responsibility, and any expected changes to these schedules in the future;

d. A schedule of the child's school and extracurricular activities;

e. A description of any limiting factors specified in this Chapter that are present in the case, including any restraining orders to prevent child abuse or domestic or family abuse, with case number and issuing court; and

f. A description of the known areas of agreement and disagreement with any other parenting plan submitted in the case.

8. If a party fails to comply with a provision of an approved parenting plan, the other parties' obligations under the parenting plan are not affected.

9. The Court shall approve a submitted parenting plan if the plan meets all of the requirements of this Chapter and is in the best interests of the child. If the parenting plan lacks any of the elements required by this Chapter or is not in the child's best interests, the Court shall either:

a. Modify the parenting plan and approve it plan as modified;

b. Reject the parenting plan and order the parties to develop a new parenting plan; or

c. Reject the parenting plan and create a parenting plan that meets the requirements of this Chapter and is in the best interests of the child.

Section 4-5-16. Hearing on Petition.

1. Upon the filing of a petition under this Chapter, the Court shall schedule and conduct a hearing on the petition.

2. The primary purpose of a hearing on the petition is to determine the custody, visitation and parenting time of the child subject of the petition.

3. If it finds that a public hearing may be detrimental to the child's best interests, the Court may exclude the public from the hearing, but shall admit any person who has a direct and legitimate interest in the particular case and may admit any person who has a legitimate educational or research interest in the work of the Court. If the Court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a proceeding under this Chapter be kept secret, the Court may make an appropriate order sealing the record.

4. The Court shall consider any and all reports allowed under this Chapter or ordered by the Court, and any additional relevant testimony or evidence presented at hearing.

5. Any person may request permission from the Court to participate in the hearing and the Court may grant the request, with or without a hearing, upon determining that the best interests of the child will be served by granting the request. The Court may attach appropriate conditions to any such grant of permission.

6. The Court shall determine the custody, visitation, and parenting time of the child in accordance with the provisions of this Chapter.

7. The burden of proof for establishment of custody, visitation, parenting time or a parenting plan of a child shall lie with the proponent of such custody, visitation, parenting time or parenting plan to demonstrate that such custody, visitation, parenting time or parenting plan is appropriate

under the provisions of this Chapter by a preponderance of the evidence.

Section 4-5-17. Custody Decree.

1. In addition to any other matters necessary for an order of the Court, a custody decree shall include:

- a. The basis for the Court's jurisdiction;
- b. The legal custody of the child, which shall be sole or joint;
- c. The physical custody of the child, which shall be sole or joint, and residence of the child;
- d. If neither parent is granted sole physical custody, a designation of the custodian;
- e. A parenting plan approved or created by the Court in accordance with this Chapter; and
- f. Any other findings or orders the Court deems necessary or desirable.

2. A custody decree is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 4-5-18. Supervision.

1. The Court may order supervision and other restrictions in a custody decree if:

- a. All parties agree to the order;
- b. The Court finds that, in the absence of the order, the child's physical health would be endangered or his or her emotional development significantly impaired; or
- c. The Court finds that domestic or family abuse has occurred.

2. An order for supervision or other restrictions may include any provision necessary to assure that the custodial or visitation terms of the decree are carried out and, in the case of a finding of domestic or family abuse, may also include:

a. An order that any exchange of the child shall occur in a protected setting;

b. An order that visitation or parenting time will be supervised by another person or agency;

c. An order that the perpetrator of domestic or family abuse attend and complete, to the satisfaction of the Court, a program of intervention for perpetrators of domestic or family abuse or other designated counseling as a condition of visitation;

d. An order that the perpetrator of domestic or family abuse abstain from possession or consumption of alcohol or controlled substances during visitation or parenting time and for twenty-four (24) hours preceding visitation or parenting time;

e. An order that the perpetrator of domestic or family abuse pay a fee to defray the costs of supervised visitation;

f. A prohibition on overnight visitation or parenting time;

g. A requirement of a bond from the perpetrator of domestic or family abuse for the return and safety of the child;

h. Whether or not visitation or parenting time is allowed, an order that the address of the child and the victim be kept confidential;

i. A referral, but not order, of the victim of domestic or family abuse to attend counseling relating to the victim's status or behavior as a victim, individually or with the perpetrator of domestic or family abuse, as a condition of receiving custody of, visitation of, or parenting time with the child; and

j. Any other provision necessary to provide for the safety of the child, the victim of domestic or family abuse, or other family or household member.

3. Supervision ordered under this Section may be carried out by the Court itself, an individual designated by the Court,

a private agency paid by the parties, or the Department of Social Services, provided that the Department of Social Services determines that it has the resources and authority to furnish such services to the parties. If the Court allows a family or household member to supervise visitation or parenting time, the Court shall establish conditions to be followed during visitation or parenting time.

Section 4-5-19. Modification of Custody Decree.

1. Any party subject to a custody decree or a party to the action in which the custody decree was issued may, by motion in the same action in which the custody decree was issued, request the Court to modify the custody decree in accordance with this Section.

2. The Court shall modify a prior custody decree only if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the Court at the time of entry of the prior decree, that:

a. A change has occurred in the circumstances of the custodian, a parent, or the child, provided that a finding that domestic or family abuse has occurred since the issuance of the last custody decree shall be deemed a change of circumstances; and

b. The modification is necessary to serve the best interests of the child.

3. In considering a motion to modify a custody decree, the Court shall retain the custodian appointed pursuant to the prior custody decree unless:

a. The custodian agrees to the modification;

b. The child has been integrated into the family of another person with consent of, or without objection from, the custodian;

c. The child's present environment endangers seriously his or her physical, mental, moral, or emotional health; or

d. The Court has found the custodian has willfully and persistently denied custody, visitation rights or parenting time with respect to a child to another at least

twice within three (3) years because the custodian failed to comply with the custody decree.

4. If a custodian seeks to relocate with the child for more than thirty (30) days to a residence which is more than sixty (60) miles from the current residence or otherwise substantially changes the geographical ties between the child and any person entitled to visitation with the child under a custody decree, the custodian shall seek a modification of the custody decree pursuant to this Section unless there is prior written agreement for the relocation. A hearing on any modification due to an intent to relocate shall be given a priority on the Court's docket. In determining whether the modification is in the best interests of the child, the Court shall take into account all relevant factors and:

a. The reasons the custodian wishes to relocate with the child;

b. The reasons why any party objects to the proposed relocation;

c. The good faith of each of the parties in requesting or opposing the relocation;

d. The history, relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent or custodian, sibling, and other significant person in the child's life;

e. Prior agreements of the parties;

f. Whether either parent or a person entitled to visitation with the child is subject to restrictions under this Chapter;

g. The age, developmental stage, and needs of the child, and the anticipated impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;

h. The quality of life, resources, and opportunities available to the child and to the custodian at the existing location and at the proposed new location;

i. The presence or absence of extended family at the existing location and at the proposed new location;

j. The continued cultural relationship between the child and the Tribe or, in the case of a non-member child, other cultural relationships of the child;

k. Any advantages of the child remaining with the custodian;

l. Any alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;

m. The financial impact and logistics of the relocation or its prevention;

n. Whether the Court will be able to fashion reasonable visitation and/or parenting time if the relocation is permitted; and

o. Any other relevant factors bearing on the best interests of the child.

5. The Court may modify the visitation and parenting time provisions of a custody decree whenever modification would serve the best interests of the child, except the Court shall not expand the visitation or parenting time of a person whose visitation rights have been reduced or restricted pursuant to Section 4-5-6 of this Chapter unless the person demonstrates a substantial change in circumstances specifically related to the basis for the reduction or restriction.

6. A motion made under this Section shall identify the person making the motion and shall set forth in clear and concise terms the grounds for modifying the custody decree.

7. The Court shall hold a hearing on all motions filed under this Section upon notice given to the parties to the original proceeding and any other individual granted custodial responsibilities or visitation under the prior custody decree.

8. In addition to any other remedies or sanctions provided for under the laws of the Tribe, legal counsel fees and costs shall be assessed against a party seeking modification if the Court finds that the modification action is vexatious and constitutes harassment.

Section 4-5-20. Enforcement of Custody Decree.

1. Any party subject to a custody decree or a party to the action in which the custody decree was issued may, by motion in the same action in which the custody decree was issued, request the Court to enforce the custody decree if another party fails to comply with the decree.

2. A motion made under this Section shall identify the person making the motion and shall set forth in clear and concise terms the failure to comply with the custody decree and the remedy requested.

3. The Court shall hold a hearing on all motions filed under this Section upon notice given to the parties to the original proceeding.

4. The Court may enforce a custody decree pursuant to a motion made under this Section if the movant proves by a preponderance of the evidence that another party has failed to comply with the custody decree.

5. The following remedies shall be available for enforcement of a custody decree and may be applied cumulatively:

a. If a substantial amount of parenting time has been made unavailable to the movant, compensatory parenting time, unless providing such compensatory parenting time is not consistent with the child's best interests;

b. Impose a civil fine of up to five hundred dollars (\$500) on the party;

c. Require the party to post a bond with the Court for a specified period of time to secure the party's compliance;

d. Award reasonable attorney's fees and costs;

e. Require the party who violated the custody decree to reimburse the other party for costs incurred as a result of the violation of the decree;

f. Injunction;

g. Contempt proceedings in accordance with the laws of the Tribe; and

h. Any and all other enforcement remedies available to enforce an order of the Court if the Court finds such remedies to be in the best interests of the child involved.

Section 4-5-21. Interference with Custody.

1. In addition to any other remedy available under the laws of the Tribe, if the Court finds that a person has willfully and persistently denied custody, visitation rights or parenting time with respect to a child to another in violation of a custody decree, the Court may:

a. Find the person in contempt of court in accordance with the laws of the Tribe;

b. Award the other person reasonable legal counsel's fees and costs; or

c. Impose a civil fine on the person in an amount not to exceed one thousand dollars (\$1,000) for each occurrence of denial of custody, visitation rights or parenting time.

2. It shall be a defense to an allegation of denial of custody, visitation rights or parenting time that the other party voluntarily relinquished the actual care, control, and possession of the child for the time involved in the allegation.

Section 4-5-22. Foreign Custody Decrees.

1. Any party subject to a custody decree made by the court of another federally recognized Indian tribe or state may, by petition, request the Court to recognize and enforce such custody decree in accordance with this Section.

2. A petition filed under this Section shall include:

a. Two copies, including one certified copy, of all custody decrees to be recognized and enforced, including any modification of a decree; and

b. Any specific remedies or enforcement allowed under the laws of the Tribe sought and the grounds for such remedies or enforcement.

3. Upon the filing of a petition under this Section, a summons shall be issued and served in accordance with the Tribal Rules of Civil Procedure. In addition to all other requirements of a summons issued by the Court, the summons shall also state that any person claimed to be bound by the order shall have the right to object to the recognition and enforcement of the custody decree within the time permitted as provided in this Section and that if no such objection is filed, the custody decree will be recognized and enforced without a hearing.

4. A party served with a summons pursuant to this Section shall have fourteen (14) days from the date of service of such summons to file an objection to recognition and enforcement of the custody decree.

5. If an objection is filed within the time period allowed, the Court shall set the matter for hearing. If no objections are timely filed, the Tribal Court Administrator or his or her designee shall issue a certification that no objections were timely filed and the Court shall enter an order that the custody decree is recognized and enforced pursuant to this Section.

6. Notwithstanding any objections filed and except as provided in this Section, the Court shall recognize and enforce a custody decree made by a court of another federally recognized Indian tribe or state unless the objecting party demonstrates to the Court at least one of the following:

a. The court did not have subject matter jurisdiction to hear the matter and enter an order;

b. The court did not have personal jurisdiction over the parties claimed to be bound by the order; or

c. The parties claimed to be bound by the order were not given reasonable notice and opportunity to be heard.

7. The Court may, in its discretion, decline to recognize and enforce a custody decree made by a court of another federally recognized Indian tribe or state pursuant to this Section if it finds that such federally recognized Indian tribe or state does not or would not recognize or enforce a custody decree issued by the Court under a standard substantially similar to the standard under this Section. In such cases, the Court may:

- a. Apply the standard of this Section;
 - b. Apply the standard that would be applied by such federally recognized Indian tribe or state to a custody decree of the Court; or
 - c. Determine whether to recognize and enforce the custody decree in accordance with the laws of the Tribe governing the recognition and enforcement of foreign orders generally.
8. If the objecting party demonstrates to the Court that an appeal from the custody decree is pending or will be taken, or that a stay of execution has been granted, the Court shall stay enforcement of the custody decree until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.
9. The Court shall not seek or make a modification of any custody decree subject to recognition and enforcement under this Section unless:
- a. The Court has jurisdiction to enter such a custody decree itself, notwithstanding the existence of the prior action in the court or administrative agency of the other federally recognized Indian tribe or state; and
 - b. Either:
 - i. The court of the other federally recognized Indian tribe or state no longer has exclusive, continuing jurisdiction to modify the decree, has declined to exercise such jurisdiction, or has determined that the Court would be a more convenient forum; or
 - ii. The child, the child's parents, and any person acting as a parent do not presently reside in the jurisdiction which issued the child support order.
10. Any custody decree issued by a court of another jurisdiction that is not a federally recognized Indian tribe or state may be recognized and enforced in accordance with the laws of the Tribe governing the recognition and enforcement of foreign orders generally.

11. No custody decree issued by a foreign court shall be enforced until it has been recognized by the Court in accordance with the laws of the Tribe.

12. Except for any limitations under this Section, a custody decree recognized pursuant to this Section shall be treated in all respects as a custody decree of the Court and may be enforced in the same manner as though it was originally issued by the Court.

13. This Section shall apply to a custody decree issued by the Court that has been lawfully modified by the court of another jurisdiction.

CHAPTER 6 CHILD SUPPORT

Section 4-6-1. Purpose. Children of the Tribe are one of its most important resources and the support of children is of paramount importance to the Tribe. The primary purposes and objectives of this Chapter are:

1. To establish the legal responsibility of parents to provide financially for their children's food, clothing, shelter, medical care, education and general well being;

2. To provide and ensure that all children within the jurisdiction of the Tribe receive adequate support to prepare such children to take their places as responsible adult members of the Tribe and community;

3. To establish a fair and equitable process for establishing, modifying and enforcing child support orders in a manner which provides for consistent treatment of all persons in similar circumstances;

4. To determine child support amounts and payments based on the real earning capability of parents demonstrated in current and prior work history;

5. To improve the efficiency of establishing child support obligations and amounts and enforcement of child support;

6. To preserve and strengthen family ties whenever possible; and

7. To preserve and strengthen a child's cultural and Tribal identity wherever possible.

Section 4-6-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Arrearage" means unpaid amounts of child support, medical support, child care, or unreimbursed medical expenses that accrue pursuant to an obligor's failure to pay child support pursuant to, or other failure to comply with, a child support order and includes any past child support included in a child support order which does not contain terms for repayment of such past child support.

2. "Child care support" means a portion of child support allocated for child care expenses of a child.

3. "Child support guidelines" means the child support guidelines promulgated by the Law and Justice Committee which establish the amount of child support for a child.

4. "Child support obligation" means the financial obligation a parent has towards his or her child, including for health insurance coverage or other medical support and child care support, whether such obligation is established through judicial or administrative process, by stipulation, by parentage of the child, by the laws of the Tribe, or otherwise.

5. "Child support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court, tribunal or administrative agency of a competent jurisdiction requiring the payment of child support in periodic amounts or in a lump sum, including for a child who has attained the age of majority under the law of the issuing jurisdiction.

6. "Disposable income" means the income of an individual remaining after deduction of any amounts required by law to be withheld, excluding deductions for child support, spousal support, garnishment and anything voluntary.

7. "Income" means earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of the Tribe, including, but not limited to salaries, wages, commissions, self-employment

income, worker's compensation, unemployment benefits, annuity payments, retirement and pension payments, disability payments, spousal maintenance, gaming winnings, and any form of benefits derived from an individual's status as an enrolled member of a federally recognized Indian tribe.

8. "Medical support" means providing health care coverage for a child by carrying health insurance for the child or by contributing to the cost of health insurance, public coverage, unreimbursed medical expenses, and uninsured medical expenses of the child.

9. "Non-cash child support" means child support provided to a family in the nature of goods and/or services rather than in cash which directly contributes to the needs of a child, such as making repairs to automobiles or a home, clearing or upkeep of property, providing a means for travel, providing needed resources for a child's participation in Tribal customs and practices, or other goods or services that contribute to the needs of a child, and can be reasonably assigned a cash value.

10. "Obligee" means a person or government agency to which child support payments are owed.

11. "Obligor" means a person who is required to pay child support.

12. "Public assistance" means temporary financial assistance provided to eligible persons by a government agency based on need.

Section 4-6-3. Continuing Jurisdiction.

1. Jurisdiction of the Court over a proceeding under this Chapter is retained until terminated by any of the following situations:

a. The child subject of the action becomes an adult;

b. All of the parties to the proceeding have filed written consents with the Court to allow the court of another jurisdiction to modify the child support order issued in the proceeding or assume continuing, exclusive jurisdiction over the order; or

c. The Court dismisses the proceeding or enters an order closing the matter and removing it from its continuing jurisdiction.

2. Where the Court deems it appropriate, the Court may retain jurisdiction under this Section over individuals who leave the territory of the Tribe.

Section 4-6-4. Confidentiality of Court Records.

1. The Court record of proceedings under this Chapter shall include transcripts, recordings of hearings, complaints, petitions, motions, memoranda, briefs, reports, findings of the Court, Court orders, and any other reports or papers filed in the action, whether maintained in paper form, electronically, or otherwise.

2. Except where expressly provided otherwise in this Chapter, the Court record of proceedings under this Chapter shall be held confidential and shall not be provided or open to inspection to any but the following:

- a. Personnel of the Court;
- b. The child subject of the proceedings and his or her legal counsel or guardian ad litem;
- c. The child's parent, guardian or custodian and his or her legal counsel;
- d. Legal counsel requesting discovery as permissible under the laws of the Tribe;
- e. The Department of Social Services;
- f. The Domestic Violence Department;
- g. The Tribal Attorney;
- h. Another court having jurisdiction over an action involving the parties or the child subject of the action;
- i. An agency of another government engaged in the establishment of parentage, child support, or the enforcement of child support for the child subject of the proceedings; or

j. Any other person, by order of the Court, having legitimate interest in the particular case or the work of the Court, provided the Court may place appropriate restrictions on such access to ensure the confidentiality of records.

3. The Court shall not release information on the location or whereabouts of a party or a child to another person:

a. Against whom an order for protection is in effect with respect to the party or the child; or

b. If the Court has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or the child.

4. When providing service by publication in a proceeding under this Chapter, the name of the child in the matter shall not be disclosed, provided that the child's initials may be published.

5. Any person who willfully discloses confidential information protected under this Section other than as expressly authorized in this Section shall be subject to a civil fine not to exceed eight hundred dollars (\$800).

Section 4-6-5. Confidentiality of Hearings. The general public shall be excluded from all hearings under this Chapter and only the following shall be allowed to be present in the hearings:

1. The parties and their legal counsel;
2. Witnesses; and
3. Other persons determined to be appropriate by the Court, in its discretion.

Section 4-6-6. Child Support Guidelines.

1. Subject to the approval of the Tribal Council, the Law and Justice Committee shall establish by rule of the Court child support guidelines which shall apply to all child support cases that come before the Court. Subject to the approval of the Tribal Council, the Law and Justice Committee may, in lieu of developing child support guidelines, designate the child support guidelines of a state as the child support guidelines of the Tribe.

2. The guidelines shall establish the scale of minimum child support contributions and shall be used to determine the amount an obligor must pay for support of a child.

3. The guidelines shall, at a minimum:

a. Take into account:

i. All earnings, income and resources of both parents, including real and personal property;

ii. Non-cash contributions of both parents, including fuel, clothing and child care, provided that the guidelines identify the types of non-cash resources which are permitted and the specific dollar amount of the support obligation which the non-cash resources satisfy;

iii. The earnings history and potential of each parent;

iv. The reasonable necessities of the child and each parent;

v. The number of children to be supported;

vi. The educational, physical and emotional needs of the child for whom child support is sought;

vii. Any preexisting child support orders the parents are subject to;

viii. Any other current dependents of both parents other than the child for whom child support is sought;

ix. The percentage of parenting time of each parent, whether designated as visitation, physical custody, or parenting time, provided that the parenting time of less than ten percent (10%) shall not be taken into account; and

x. Any other criteria the Law and Justice Committee determines to be appropriate;

b. Set forth standards for determining and applying imputed income for a parent who is voluntarily unemployed or voluntarily and unreasonably underemployed;

c. Reflect the best interests of the child;

d. Be based on specific descriptive and numeric criteria;

e. Result in a computation of an amount of child support which is sufficient to meet the basic needs of the child for housing, clothing, food, education, health care, recreation and goods and services required by physical and/or mental disability;

f. Provide for the actual child care expenses reasonably necessary to enable both parents to maintain employment or education, or to conduct an active search for employment;

g. Provide for the child's health care needs, through health insurance coverage or otherwise, which supplements any health care provided by the Tribe or another government, where appropriate;

h. Provide for a minimum child support amount per child;

i. Provide for circumstances, which may support written findings on the record of a Court proceeding for the award of child support, in reducing support contributions on the basis of hardship to parent paying child support or other children while considering the best interests of the child who is subject of the Court proceeding; and

j. Provide for an imputed income to be applied when the Court has no reliable evidence upon which to base a child support award.

4. The guidelines may provide for certain circumstances which will permit deviation from the standard formula of the guidelines, including, but not limited to:

a. Costs of a health plan or insurance incurred by the parents; and

b. Social security, veteran's benefits or other government benefits paid to the child, or another administering the funds for the use and benefit of the child, as a result of a parent's disability or retirement.

5. There shall be a rebuttable presumption in any proceeding for the award of child support that the amount of the award that results from the application of the guidelines established pursuant to this Section is the correct amount of child support to be awarded.

6. The guidelines shall be reviewed and updated at least every four (4) years to ensure that their application results in the determination of appropriate child support amounts, including accounting for increases or decreases in the costs associated with the care and support of children.

Section 4-6-7. Duty to Support Child.

1. The parents of a child are jointly and severally obligated for the necessary maintenance, education and support of the child suitable to the child's circumstances and in accordance with their respective means.

2. If the parent of a child is a minor, the parents of the minor parent shall bear the responsibility for support of the child until the minor parent reaches the age of majority or is emancipated.

3. The termination of parental rights to a child terminates the parent's child support obligation from the date of such termination of parental rights, but not before.

4. Subject to the circumstances of each case, any other person, agency, organization or institution may be secondarily liable for the support of a child, provided the Court finds that such person, agency, organization or institution has assumed the obligation of support.

5. The Court may compel either or both parents to provide for the support of their child in accordance with this Chapter.

6. An agreement purporting to relieve a person with a duty to support a child of any current or future duty of child support is void and may not be enforced.

Section 4-6-8. Duration of Support Obligation.

1. Unless dates for the commencement or termination of a child support obligation are specified by an order of child support, an order of child support is effective in the month in which the order is entered and continues until the end of the month in which the child support obligation terminates as provided in this Section.

2. Except as otherwise provided in this Section, a parent's child support obligation terminates upon the earliest of:

a. The date of entry of an order terminating the parent's parental rights to the child or the effective date of such termination, whichever is later, but not prior to such date;

b. The date of entry of an adoption decree for the child or the effective date of such adoption, whichever is later, but not prior to such date, provided the parent's parental rights to the child are not retained;

c. The date of entry of an order of emancipation of the child or the effective date of such emancipation, whichever is later, but not prior to such date, provided that the obligation of support shall resume upon the revocation of such emancipation;

d. The date entered on a marriage certificate if the child lawfully marries, but not prior to such date;

e. The death of the child or the parent; or

f. When the child reaches the age of majority.

3. The Court, in its discretion, may order the payment of child support to continue after the age of majority if:

a. The child continues to reside with the person to whom child support is paid and requires substantial care because of a mental or physical disability and will not be capable of self-support and the disability exists or the cause of the disability is known to exist on or before the date the child reaches the age of majority, provided that payment of child support shall terminate at the end of the month in which the child obtains the age of twenty-one (21);

b. The child is still in primary or secondary school when he or she reaches the age of majority and continues to reside with the person to whom child support is paid, provided that payment of child support shall terminate at the end of the first month in which the child:

i. Graduates; or

ii. Otherwise ceases to attend school on a regular basis; or

c. It is appropriate to provide for the medical support of a child who attends post-secondary school, including college or university, provided that payment of medical support shall terminate at the end of the month in which the child:

i. Graduates;

ii. Otherwise ceases to attend school on a regular basis; or

iii. Reaches the age of twenty-four (24) years.

4. If an arrearage for child support or fees or costs exists at the time a child support obligation terminates, payments shall continue in the same amount and be applied to the arrearage until all arrearages and fees or costs are satisfied or until further order of the Court.

Section 4-6-9. Amount of Support Obligation.

1. Payments ordered for the support of a minor child shall be in such amounts as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case.

2. Unless the Court finds that the best interests of the child require a lump sum child support payment, child support shall be on a monthly basis, due and payable on the first day of each month, provided that the monthly basis of child support payments shall not affect the availability of wage withholding or garnishment based on an obligor's pay period.

3. The Court shall first determine the amount of child support payments by applying the child support guidelines established by the Law and Justice Committee pursuant to this Title.

4. Upon request of a party, the Court may deviate from the amount of child support payments which would be required under the child support guidelines if, after considering all of the circumstances of the case, the Court:

a. Finds that use of the child support guidelines is unjust to or inappropriate for the child or any of the parties;

b. Identifies the amount of child support that would be required under the child support guidelines; and

c. Makes findings of fact as to the criteria that justify varying from the child support guidelines and the basis for the amount ordered.

5. This Section shall not prohibit or limit the Court from entering a child support order that is agreed to by the parties that deviates from the child support guidelines, provided such agreement is in the best interests of the child.

6. Until a child support order is entered, the amount of a parent's child support obligation shall be the amount determined in accordance with the child support guidelines commencing on the first day of a parent's physical absence from the home for a period of at least thirty (30) consecutive days where the nature of such absence is the result of substantial severance of marital and/or family ties and responsibilities resulting in the child losing or having a substantial reduction of physical care, communication, guidance and support from the parent.

Section 4-6-10. Child Care Expenses.

1. The Court may order the payment of child care expenses of a child where such expenses are necessary for any of the parties to be employed, seek employment, or attend school or training to enhance employment income. Such child care expenses shall be divided between the parties based on their proportionate share of income determined pursuant to the child support guidelines, provided that any child care support ordered

must be based on the actual child care expenses incurred and shall be adjusted by the amount of the estimated federal and state child care credit payable on behalf of the child.

2. The Court shall determine child care expenses in accordance with the following:

a. The Court shall require verification of employment or school attendance and documentation of child care expenses from the parties;

b. If child care expenses fluctuate during the year because of a party's seasonal employment or school attendance or extended periods of parenting time with the other party, the Court shall determine child care expenses based on an average monthly cost; and

c. The Court may allow the party with whom the child does not reside to care for the child while the party with whom the child resides is working or attending school, provided that allowing the party with whom the child does not reside to care for the child shall not be a reason to deviate from the guidelines.

3. If there is a substantial increase or decrease in child care expenses, the parties may request that the Court modify the order in accordance with the provisions of this Chapter and the Court may provide that a change in the amount of the child care support which is based on a substantial increase or decrease in the actual child care expenses is effective as of the date the expense is increased or decreased.

4. An order to pay child care support under this Section shall separately state the amount allocated for child care support. Such amount shall be considered child support but shall not be subject to a cost-of-living adjustment.

Section 4-6-11. Medical Support.

1. The Court may order a party to provide medical support for the child. An order to provide medical support may require one or both parties to:

a. Provide medical, hospital, dental and other health insurance for the child; and

b. Pay the medical, hospital, dental or other health care related expenses of the child not covered by insurance.

2. If a party has appropriate health insurance, the Court shall order the party to carry health insurance for the child. Health insurance shall be considered appropriate if it is accessible by the child, provides comprehensive coverage, and is reasonable in cost. If more than one party has appropriate health insurance, the Court shall order the party with the most appropriate health insurance to carry health insurance for the child, provided that if all available health insurance is comparable with regard to accessibility and comprehensiveness for the child, the Court shall presume that the least costly health insurance is the most appropriate.

3. The Court shall order the actual health care of the child not covered by appropriate health insurance, including if no party has appropriate health insurance available and all unreimbursed and uninsured health expenses, to be paid by the parties based on their proportionate share of income determined pursuant to the child support guidelines.

4. When the Court orders a party to carry health insurance for a child that is provided by an employer or other third party, notice of such order shall be served on such employer or other third party in accordance with the Tribal Rules of Civil Procedure within ten (10) business days of entry of the order. Such notice shall include:

a. A copy of the order to provide medical support;

b. Information regarding the employer's or other third party's rights and responsibilities under this Section; and

c. The civil fines and other remedies under this Section.

5. An employer or other third party who has been properly served with a notice regarding medical support is required to:

a. If applicable or necessary, forward the medical support order to its health plan administrator within ten (10) business days after the notice was served on the employer or other third party;

b. If enrollment of the party ordered to carry health insurance for the child is necessary to obtain dependent health care coverage under the plan and the party is not enrolled in the health plan, enroll the party in the plan;

c. Enroll the child as a beneficiary in the health plan and withhold any required premiums from the income or wages of the party ordered to carry health insurance for the child;

d. Enroll the party, if necessary, and the child immediately and without regard to any open enrollment periods;

e. Within thirty (30) calendar days after the notice was served on the employer or other third party, provide written proof to the other parties to the order and the Court that the child has been enrolled or that application for enrollment has been made; and

f. Promptly notify the other parties to the order and the Court in writing:

i. When there is any change in the applicable insurance coverage;

ii. When the party ordered to carry health insurance for the child terminates employment or otherwise ceases to be entitled to health insurance from the employer or other third party, and provide the party's last known address and the name and address of his or her new employer, if known;

iii. Of the employer's or third party's inability to comply with the order for any reason.

6. A requirement that a child be covered by health insurance shall promptly terminate as to future coverage when the employer or other third party receives notice from the Court that the coverage is no longer required.

7. If an employer or other third party knowingly fails to comply with an order under this Section after being served with a notice of the order, the Court may:

a. Find the employer or other third party in contempt in accordance with the laws of the Tribe;

b. Hold the employer or other third party liable for one hundred percent (100%) of any uninsured medical expenses incurred by the child while the child was eligible to be enrolled in the health plan and for any other premium costs incurred as a result of the employer's or other third party's failure; and

c. Impose a civil fine on the employer or third party in an amount not to exceed eight hundred dollars (\$800).

8. An employer shall not discipline, discharge from employment or refuse to employ any person because he or she is ordered to provide health insurance for the person's child. An employer who disciplines, discharges from employment, or refuses to employ a person because of an order to provide health insurance for the person's child shall be subject to a civil fine not to exceed eight hundred dollars (\$800).

9. A party ordered to provide health insurance for a child may challenge such order at any time by motion. Such a motion shall set forth in clear and concise terms the basis for challenging the order. The Court shall hold a hearing on a motion filed under this subsection upon notice given to the parties to the child support proceeding and may withdraw or modify the order to provide health insurance, as appropriate, if the movant proves one or more of the following by a preponderance of the evidence:

a. The enrollment of the child in the health insurance plan is improper due to a mistake of fact; or

b. There is an agreement between the parties for an alternative method of providing health insurance for the child approved by the Court.

10. If a party is ordered to provide health insurance for a child, such party shall:

a. Provide written notice to the other party of any change in the applicable insurance coverage; and

b. Be liable for any medical, hospital, dental or other health expenses incurred from the date of the order

that would have been covered by insurance had it been in force, if such fails to maintain the insurance coverage for the child.

11. The Tribe shall comply with an order issued by the Court in accordance with this Section for any person employed by the Tribe, provided that the Tribe shall not be subject to any fines, penalties or other enforcement provisions in this Section, except that the Court may find an officer or employee of the Tribe responsible for enrolling the child in the health plan in contempt in accordance with the laws of the Tribe for refusal to comply with an order issued by the Court in accordance with this Section without regard to any immunity of such officer or employee.

Section 4-6-12. Payment to Court.

1. Unless the Court finds that child support payments must be made to another person or agency, including an agency to whom child support payments have been assigned, or there is good cause that payment should be made directly to the obligee, any child support payments ordered by the Court, including past due support, arrearages and reimbursement of public assistance, shall be paid to the Tribal Court Administrator or his or her designee, on behalf of the Court, for remittance to the obligee or other person entitled to receipt of such payments.

2. Unless provided otherwise by a child support order or applicable law, with each child support payment received, the Tribal Court Administrator shall:

a. First apply the payment to satisfy current child support and, second, to satisfy any arrearages; and

b. Remit any portion of the payment due a government agency for the provision of public assistance and any remaining amount not remitted to such government agency to the obligee.

3. If the Tribal Court Administrator receives a child support payment pursuant to a request for assistance in collecting support from another child support enforcement agency, the Tribal Court Administrator shall apply and remit the payment in accordance with its arrangement with the child support enforcement agency.

Section 4-6-13. Exemption from Attachment. Except as expressly provided in this Chapter, child support shall not be subject to execution, garnishment, attachment, or other process except to satisfy that child support.

Section 4-6-14. Voluntary Agreement. In lieu of or in settlement of a proceeding under this Chapter, the parents may enter into a voluntary child support agreement which may include provisions for medical support and child care expenses in accordance with this Chapter. The agreement shall be submitted to the Court for approval, subject to any conditions and limitations the Court may impose. Once the agreement is filed with the Court and approved by the Court, such agreement shall have the same force and effect, retroactively and prospectively, in accordance with the terms of said agreement, as a child support order entered by the Court and shall be enforceable and subject to modification in the same manner.

Section 4-6-15. Initiation of Proceedings.

1. Except as otherwise expressly provided in this Chapter, proceedings in the Court for a child support order shall be initiated by the filing of a petition.

2. Petitions may be filed by:

a. A parent, guardian, or custodian of the child for whom support is sought;

b. A parent, guardian or other legal representative of a minor parent on behalf of or for the benefit of the minor parent's child; or

c. The Department of Social Services, on behalf of the Tribe, for a child in its custody for whom support is sought.

3. Petitions for a child support order shall be captioned: "(name(s) of petitioner(s)), Petitioner(s) vs. (name(s) of respondent(s)), Respondent(s)". A request for a child support order may be combined with a proceeding for invalidity of a marriage, dissolution of marriage, legal separation, or child custody under this Title, captioned as such proceeding, and conducted as part of such proceeding.

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. Unless the petitioner is the Tribe, the name, address, and tribal affiliation of the petitioner;

b. The name, last known address, tribal affiliation, and employment of the respondent or the reasons that such information is unavailable;

c. The relationship of the petitioner to the child for whom support is sought;

d. The relationship of the respondent to the child for whom support is sought;

e. The name, sex, date and place of birth, current residence and tribal affiliation of the child for whom support is sought or the reasons such information is unavailable;

f. If different from the petitioner and respondent and parental rights to the child have not been terminated, the names, last known addresses and tribal affiliation of the child's parents or the reasons that such information is unavailable;

g. If different from the petitioner, the names, last known addresses and tribal affiliation of the persons having legal custody or guardianship of the child or the reasons that such information is unavailable;

h. The basis for the Court's jurisdiction;

i. The basis for the respondent's obligation to provide support for the child;

j. If an agreement for support exists, the details of such agreement and whether the petitioner requests an order upon such agreement;

k. A request that the Court enter a child support order.

5. The child's parents, except a parent who is a petitioner, shall be included as named respondents.

6. Two (2) or more children for whom child support is sought by the petitioner may be included in the same petition.

7. A petition may be filed under this Chapter and a child support order entered any time prior to the child reaching the age of majority and for an additional three (3) year period following the child reaching the age of majority, and it may include retroactive relief to the date of the child's birth or two (2) years prior to the date of the filing of the petition, whichever is less.

8. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 4-6-16. Child Support in Other Proceedings. The Court may enter a child support order without a petition filed under this Chapter or a separate hearing in:

1. An invalidity of marriage proceeding under Chapter 3 of this Title;

2. A dissolution of marriage or legal separation proceeding under Chapter 4 of this Title;

3. A parentage proceeding under Chapter 7 of this Title;

4. A child custody proceeding under Chapter 5 of this Title;

5. A child in need of assistance proceeding under Title III of this Code;

6. A child offender proceeding under Title III of this Code; or

7. Any other proceeding which permits or requires the provision of child support under the laws of the Tribe.

Section 4-6-17. Orders to Facilitate Proceedings. In any proceeding under this Chapter, on motion of any party or on the Court's own motion, the Court may issue orders, including subpoenas, necessary to facilitate the proceeding and the establishment and collection of child support, including orders to assist in locating a parent or other party responsible for

the support of a child and determining the employment and income of a party.

Section 4-6-18. Hearing on Petition.

1. Upon the filing of a petition under this Chapter, the Court shall schedule and conduct a hearing on the petition.

2. The primary purpose of a hearing on the petition is to determine whether the respondent has a child support obligation for the child named in the petition and, if so, the amount of the obligation, and to enter any other appropriate order.

3. The Court shall consider any and all reports allowed under this Chapter or ordered by the Court, and any additional relevant testimony or evidence presented at hearing.

4. The Court shall enter a child support order if the Court finds that any party has an obligation to support the child and pay child support to another under the laws of the Tribe.

5. The burden of proof for establishment of an obligation to support and the amount of child support shall lie with the proponent of such obligation and amount to demonstrate that such obligation and amount are appropriate under the provisions of this Chapter by a preponderance of the evidence.

Section 4-6-19. Child Support Order.

1. In addition to any other matters necessary for an order of the Court, a child support order shall include:

a. The name, date of birth, and last four digits of the social security number of each of the parties, including the child for whom support is sought;

b. The basis for the Court's jurisdiction;

c. Findings that state each parent's gross income, income subject to child support, and any other significant evidentiary factors affecting the child support determination;

d. If the Court deviates from the child support guidelines, findings that state the amount of child support computed under the child support guidelines, the reasons

for the deviation, and how the deviation serves the best interests of the child;

e. The specific amount of child support to be paid and by whom;

f. The frequency with which child support payments will be made or, if in the best interests of the child, that the child support will be paid as a lump sum;

g. That child support payments are to be made to the Tribal Court Administrator in accordance with this Chapter, unless the Court finds that payments must be made to another person or agency receiving payments for the child or directly to the obligee;

h. That child support payments shall be distributed to the custodial parent, guardian or custodian of the child, or, if there is a showing the payments to the custodial parent, guardian or custodian are not in the best interest of the child, a trustee or conservator of the child;

i. If child care support is included, the amount of child support allocated for child care expenses;

j. If appropriate health insurance for the child is available:

i. Which parent must carry health insurance for the child;

ii. The cost of premiums and how the cost is allocated between the parents;

iii. How unreimbursed expenses will be allocated and collected by the parents; and

iv. The circumstances, if any, under which the obligation to provide health insurance for the child will shift from one parent to the other;

k. If appropriate health insurance for the child is not available, whether a contribution for medical support is required;

l. A decision as to who may claim the child as a dependent for purposes of income taxes;

m. That the parties shall cooperate with the Tribal Court Administrator and provide the Tribal Court Administrator with their social security number, date of birth, residential and mailing addresses, telephone number, motor vehicle operator's license number, employer's name, address, and telephone number, and any other information required by the Tribal Court Administrator within ten (10) days of entry of the order;

n. That the parties shall inform the Tribal Court Administrator of any change in address, employment or other condition that may affect administration of the order within ten (10) days of such change;

o. That child support payments shall be paid by income withholding as provided in this Chapter or, if the Court determines income withholding is not required under the provisions of this Chapter, the manner of making child support payments, findings supporting the exemption from income withholding, and a statement that a delinquency in payment will result in an income withholding order being issued; and

p. Any other findings or orders the Court deems necessary or desirable.

2. The amount of child support in a child support order shall not be construed to be an amount per child unless specified by the Court in the child support order.

3. A child support order is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 4-6-20. Modification of Support.

1. Any party subject to a child support order, a party to the action in which a child support order was issued, or, in the case public assistance is being paid to or for the benefit of the child subject of the child support order, the Tribe may, by motion in the same action in which the child support order was issued, request the Court to modify or vacate the child support order in accordance with this Section.

2. A child support order may be modified on the grounds of:

a. A substantial change in circumstances, provided that at least six (6) months have passed since the entry of the current child support order;

b. Incarceration or involuntarily institutionalization of one of the parties for longer than sixty (60) consecutive days, unless the obligor has the means to pay support while incarcerated or involuntarily institutionalized;

c. If the child support amount in the existing child support order is based on the incarceration or involuntarily institutionalization of one of the parties, release of the party from incarceration or institutionalization, provided at least sixty (60) days have passed since such release and the party remains released;

d. Public assistance is being paid to or for the benefit of the child subject of the current child support order, provided that the motion is filed by the Tribe;

e. Updated child support guidelines that modify the child support amount, provided that at least one (1) year has passed since the entry of the current child support order; or

f. The modification is for a technical or corrective matter that does not alter the child support amount, such as changing to whom child support payments are distributed.

3. A child support order may be vacated on the grounds that the child support obligation has terminated in accordance with the provisions of this Chapter.

4. A motion made under this Section shall identify the person making the motion and shall set forth in clear and concise terms the grounds for modifying or vacating the child support order.

5. The Court shall hold a hearing on all motions filed under this Section upon notice given to the parties to the original proceeding.

6. The Court may modify or vacate a child support order pursuant to a motion made under this Section only if the movant proves by a preponderance of the evidence that there are grounds for such modification or vacating as provided in this Section.

7. For purposes of this Section, a substantial change of circumstances shall be limited to:

a. Substantially increased or decreased gross income of the parties, provided that a decrease by at least twenty percent (20%) through no fault or choice of the party shall be presumed to be a substantial change in circumstances;

b. Substantially increased or decreased need of a parent or the child that are the subject of the order;

c. Receipt of public assistance;

d. A change in the cost of living for either party as measured by the Federal Bureau of Labor Statistics;

e. Extraordinary medical expenses of the child not provided for in the existing child support order;

f. The addition or substantial increase or decrease of work-related or education-related child care expenses; or

g. The application of the child support guidelines to the current circumstances of the parties results in a calculated child support payment that is at least twenty percent (20%) higher or lower than the amount in the current child support order.

8. The following, by themselves, shall not be considered a substantial change in circumstances:

a. Voluntary unemployment or voluntary underemployment; and

b. Responsibility for the support of an additional child born after entry of the current child support order.

9. An order granting a motion to modify a child support order shall become effective from the date the motion was filed. An order granting a motion to vacate a child support order shall

become effective on the date provided in the order or, if no such date is provided, on the date of entry.

10. An order vacating a child support order shall not vacate any other provisions of the child support order, including provisions establishing parentage, unless otherwise expressly provided in the order vacating the child support order.

Section 4-6-21. Enforcement of Child Support Order.

1. Any obligee or other person receiving payments under a child support order may, by motion in the same action in which the child support order was issued, request the Court to enforce the child support order if the obligor fails to comply with the order.

2. A motion made under this Section shall identify the person making the motion and shall set forth in clear and concise terms the failure to comply with the child support order and the remedy requested.

3. The Court shall hold a hearing on all motions filed under this Section upon notice given to the parties to the original proceeding.

4. The Court may enforce a child support order pursuant to a motion made under this Section if the movant proves by a preponderance of the evidence that the obligor has failed to comply with the child support order.

5. The following remedies shall be available for enforcement of a child support order and may be applied cumulatively:

a. Requiring the execution of an assignment of wages, salary or other income due or to become due;

b. Income withholding in accordance with the provisions of this Chapter;

c. Attachment and garnishment in accordance with the laws of the Tribe;

d. Interception of federal and/or state tax refunds;

e. Interception of any worker's compensation or unemployment insurance benefits;

f. Submission to credit bureaus;

g. Any other collection methods available and appropriate including, but not limited to, seizure of bank accounts and suspension of hunting, fishing, professional and driver's licenses;

h. Interest, not to exceed the United States prime rate, assessed and applied to any accrued arrearages;

i. Writ of execution against non-exempt property;

j. Providing security for child support payments by means of a bond, mortgage, deed of trust, or any other means ordinarily used to secure an obligation to pay money;

k. Injunction;

l. The appointment of receivers;

m. Lien against real property, provided the order sets out the amount of the lien in a sum certain and adequately describes the real property affected;

n. Contempt proceedings in accordance with the laws of the Tribe; and

o. Any and all other enforcement remedies available to enforce an order of the Court.

Section 4-6-22. Income Withholding.

1. Except as provided in this Section, all child support orders issued by the Court shall include a provision requiring the obligor to pay support by income withholding.

2. The Court may grant an exception to the mandatory income withholding required in this Section if:

a. A party demonstrates there is good cause not to require immediate withholding and, at a minimum:

i. Implementing immediate income withholding would not be in the best interests of the child;

ii. There is proof of timely payment of previously ordered support, if any; and

iii. The obligor is required to keep the Court informed of any employment-related health insurance to which the obligor has access; or

b. The parties, including any assignee of child support payments, reach a written agreement that provides for an alternative arrangement for assuring the regular payment of child support, provided that any failure to comply with the agreement shall subject the obligor to income withholding under this Section and the agreement, at a minimum:

i. Describes the manner in which regular child support payments are assured;

ii. Is reviewed and approved by the Court and entered into the Court's records; and

iii. The obligor is required to keep the Court informed of any employment-related health insurance to which the obligor has access.

3. An income withholding order shall direct that the obligor's wages, income and other benefits be withheld in an amount equal to the monthly child support payment divided proportionally over the number of payments due the obligor during the month.

4. If there are any arrearages in child support payments, an income withholding order may also direct that an additional twenty percent (20%) of the child support payment or such amount as the Court may order after notice and hearing shall be withheld each month until the delinquency is satisfied.

5. Notwithstanding anything else to the contrary in this Section, the total amount withheld from an obligor's wages, income or other benefits shall not exceed fifty (50%) of the obligor's disposable income for a week.

6. An obligor may execute a voluntary income assignment voluntarily authorizing income withholding from current or future income due the obligor from an employer or payer in an amount sufficient to meet any child support obligation.

7. When an obligor is subject to more than one withholding for child support, whether pursuant to an income withholding order or voluntary income assignment, withholding for current child support shall have priority over past-due support. Where two or more child support orders for current child support exist, each family shall receive a pro rata share of the total amount withheld based on the respective child support orders being enforced. The Tribal Court Administrator shall allocate withheld amounts across multiple child support orders to ensure that allocation shall not result in withholding for one of the child support obligations not being implemented.

8. The Tribal Court Administrator shall serve notice to withhold pursuant to an income withholding order or voluntary income assignment on the employer or other payer of the obligor in accordance with the Tribal Rules of Civil Procedure within ten (10) business days of entry of the order, provided that notice of a voluntary income assignment may be provided to the employer or payer in any manner agreed to by the employer or payer. Such notice shall be on the form required by applicable law and include:

a. A copy of the income withholding order or voluntary income assignment, as the case may be;

b. Information regarding the employer's or payer's rights and responsibilities under this Section;

c. The amount of disposable income attributable to the employer or payer on which the withholding is based;

d. The civil fines and other remedies under this Section; and

e. The maximum amount of disposable income that may be withheld as provided in this Section.

9. An employer or payer who has been properly served with a notice to withhold is required to:

a. Begin withholding from the first payment due the obligor that occurs fourteen (14) calendar days following the date the notice to withhold was served on the employer or payer;

b. Within seven (7) business days of the date the obligor is paid, send the amount withheld and the date the amount was withheld to the Tribal Court Administrator or as otherwise directed in the income withholding order or voluntary income assignment;

c. Continue withholding until further notice from the Court;

d. Withhold for child support before withholding pursuant to any other legal process against the same disposable income;

e. Promptly notify the obligee and the Court in writing:

i. If there are one or more orders of child support withholding for the obligor;

ii. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payer, and provide the obligor's last known address and the name and address of his or her new employer, if known;

iii. Of the employer's or payer's inability to comply with the withholding for any reason; and

f. Cooperate fully with the verification of the amount of the obligor's disposable income.

10. A requirement that income be withheld for child support shall promptly terminate as to future payments when the employer or payer receives notice from the Court that the withholding is no longer required, provided that withholding shall not be terminated for any valid arrearages until such arrearages are paid in full.

11. If an employer or payer knowingly fails to withhold and/or remit child support as required by this Section after being served with a notice to withhold, the Court may:

a. Find the employer or payer in contempt in accordance with the laws of the Tribe;

b. Hold the employer or payer liable for one hundred percent (100%) of the amount of child support ordered or

the amount of monies that should have been withheld, whichever is less; and

c. Impose a civil fine on the employer or payer in an amount not to exceed eight hundred dollars (\$800).

12. An employer shall not discipline, discharge from employment or refuse to employ any person because his or her wages are subject to an income withholding order or voluntary income assignment. An employer who disciplines, discharges from employment, or refuses to employ a person because of an income withholding order or voluntary income assignment shall be subject to a civil fine not to exceed eight hundred dollars (\$800).

13. An employer or other payer may deduct a fee of up to three dollars (\$3.00) per month for administrative costs incurred by the employer for withholding amounts pursuant to an income withholding order under this Section.

14. An obligor may challenge an income withholding order at any time by motion. Such a motion shall set forth in clear and concise terms the basis for challenging the income withholding order. The Court shall hold a hearing on a motion filed under this subsection upon notice given to the parties to the child support proceeding and may withdraw or modify the income withholding order, as appropriate, only if the movant proves a mistake of fact by a preponderance of the evidence. Demonstration of a mistake of fact shall require a showing of one or more of the following:

a. In a case where withholding is based on arrearages:

i. That there has been a mistake in the identity of the obligor; or

ii. That the delinquency has been cured;

b. There is an error in the amount of support or arrearages;

c. There is a mistake in the identity of the obligor; or

d. There is an agreement between the obligor and the obligee for an alternative method of payment approved by the Court.

15. The Tribal Court Administrator shall promptly refund any monies improperly withheld from an obligor's income and shall ensure that income withholding is promptly terminated where there is no longer a current child support order and any arrearages have been satisfied.

16. The Tribe shall withhold and remit child support in accordance with an income withholding order issued by the Court in accordance with this Section or a voluntary income assignment executed under this Section for any obligor employed by the Tribe, provided that the Tribe shall not be subject to any fines, penalties or other enforcement provisions in this Section, except that the Court may find an officer or employee of the Tribe responsible for withholding support in contempt in accordance with the laws of the Tribe for refusal to comply with an income withholding order issued by the Court in accordance with this Section without regard to any immunity of such officer or employee.

Section 4-6-23. Seek Employment Order.

1. Any obligee or other person receiving payments under a child support order may, by motion in the same action in which the child support order was issued or by separate petition, request the Court to enter an order requiring the obligor subject to a child support order to seek employment if:

a. Employment of the obligor cannot be verified;

b. The obligor has arrearages in an amount equal to or greater than three times the obligor's monthly child support payment; and

c. The obligor is not in compliance with a written payment plan.

2. The Court shall hold a hearing on all motions or petitions filed under this Section upon notice given to the parties subject of the child support order.

3. The Court may enter an order to seek employment if it finds that the obligor:

- a. Has not provided proof of gainful employment; and
 - b. Has not consented to income withholding in accordance with this Chapter or entered into a written payment plan approved by the Court.
4. In addition to any other matters necessary for an order of the Court, an order to seek employment shall:
- a. Order that the obligor seek employment within a specified amount of time;
 - b. Order that the obligor file a written report with the Court on a weekly basis which contains:
 - i. At least five (5) new attempts to find employment or a report of having found employment;
 - ii. The names, addresses, and telephone numbers of any employers with whom the obligor attempted to seek employment; and
 - iii. The name of the individual contact with whom the obligor made application or inquiry for employment;
 - c. Notify the obligor that failure to comply with the order may subject the obligor to other enforcement actions under this Chapter, including contempt;
 - d. Order that the obligor provide the Court with verification of any reason for noncompliance with the order; and
 - e. Specify the duration of the order, not to exceed three (3) months.

Section 4-6-24. Receipt of Public Assistance.

1. Acceptance of public assistance by or on behalf of a child creates a debt, in the amount of public assistance paid, due and owing to the Tribe by the responsible parent, guardian or custodian of the child, provided that:

- a. If child support was required to be paid pursuant to a child support order during the time of receipt of

public assistance, the debt shall be limited to the amount specified in such order; and

b. The debt shall only attach with respect to the period of time during which public assistance is granted and only if the responsible parent, guardian or custodian was financially able to furnish support during this period.

2. A party who receives public assistance may be required to assign accrued child support rights and payments for the public assistance to the government agency which provided the public assistance. The assignment of rights shall authorize the Tribe or government agency providing the public assistance to bring an action in the Court to establish a child support order and to collect on that order on behalf of the government expending the public assistance and to distribute monies collected to such government.

3. No action to collect a debt or assignment under this Section shall be commenced after the expiration of five (5) years subsequent to the receipt of the last grant of public assistance.

Section 4-6-25. Non-Cash Child Support. A non-cash child support payment may satisfy a child support obligation, including arrearages, only where:

1. The parties agree to the non-cash child support as a form of payment for child support;

2. The Court approves of the non-cash child support in a written order;

3. The order states the specific dollar amount of the child support obligation;

4. The order describes the type of non-cash child support that will be permitted to satisfy the child support obligation;

5. The order states the value of the permitted non-cash child support in a specific dollar amount based on the fair market value of the non-cash child support;

6. No more than fifty percent (50%) of any child support obligation is met by the non-cash child support; and

7. The non-cash child support is not used to satisfy child support that has been assigned to a public agency.

Section 4-6-26. Overpayments. If an obligor has overpaid child support because of a modification or error in the amount owed or collected, other than the result of an improper income withholding, the Tribal Court Administrator shall:

1. Apply the amount of the overpayment to reduce the amount of any child support arrearages or other debts owed to the obligee; and

2. If an overpayment exists after the reduction of any arrearage or other debt, reduce the amount of the child support remitted to the obligee by an amount no greater than twenty percent (20%) of the current monthly child support amount and remit this amount to the obligor until the overpayment is reduced to zero.

Section 4-6-27. Arrearages.

1. The remedies available for the collection and enforcement of child support in this Chapter apply to arrearages, including those in which the child for whom support is owed is emancipated and the obligor owes past support or has an accumulated arrearage as of the date of the child's emancipation.

2. Parties may compromise any arrearages owed by one party to another, whether or not such arrearages have been entered in a court order or judgment.

3. An obligee or other person receiving payments under a child support order, may enter into agreements with obligors to reduce and otherwise manage arrearages, including, but not limited to:

a. In the case of the Tribe or another jurisdiction receiving payments by assignment or reimbursement for public assistance, agreements to compromise or charge-off arrearages owed to the Tribe or such other jurisdiction;

b. Graduated payment plans tailored to the individual financial circumstances of the obligor; and

c. Agreements suspending or waiving interest on arrearages as an incentive for satisfying a child support

obligation or complying with a payment plan, provided that any interest that is suspended or waived may be reinstated if the obligor fails to comply with the payment plan.

4. Any agreement to compromise or charge off any arrearages shall be submitted to the Court for approval. In approving any such proposed agreement, the Court shall take into consideration:

a. The best interests of the child for whom the arrearages are intended;

b. The amount of the arrearages;

c. The amount of the current support order;

d. Any pending request for modification;

e. The earnings and individual financial circumstances of the obligor; and

f. The obligor's ability to make any proposed payment in the agreement.

5. An agreement purporting to waive past-due child support or arrearages is void and may not be enforced unless the obligee and any assignee of the child support payments have consented to the agreement in writing and the agreement has been approved by the Court in accordance with this Section.

Section 4-6-28. Foreign Child Support Orders.

1. Any party subject to a child support order or an income withholding order made by the court or administrative agency of another federally recognized Indian tribe or state may, by petition, request the Court to recognize and enforce such child support order or income withholding order in accordance with this Section.

2. A petition filed under this Section shall include:

a. Two copies, including one certified copy, of all child support orders or income withholding orders to be recognized and enforced, including any modification of an order;

b. A sworn statement by the party seeking recognition and enforcement or a certified statement by the custodian of the records showing the amount of any arrearages;

c. The name of the obligor and, if known, the obligor's address, social security number, date of birth, employer name and address, and any other source of income;

d. A description and location of any property of the obligor within the territory of the Tribe not exempt from execution;

e. The name and address of the obligee and, if applicable, the agency or person to whom child support payments are to be remitted; and

f. Any specific remedies or enforcement allowed under the laws of the Tribe sought and the grounds for such remedies or enforcement.

3. Upon the filing of a petition under this Section, a summons shall be issued and served in accordance with the Tribal Rules of Civil Procedure. In addition to all other requirements of a summons issued by the Court, the summons shall also state that the obligor or any other person claimed to be bound by the order shall have the right to object to the recognition and enforcement of the order within the time permitted as provided in this Section and that if no such objection is filed, the order will be recognized and enforced without a hearing.

4. A party served with a summons pursuant to this Section shall have fourteen (14) days from the date of service of such summons to file an objection to recognition and enforcement of the order.

5. If an objection is filed within the time period allowed, the Court shall set the matter for hearing. If no objections are timely filed, the Tribal Court Administrator or his or her designee shall issue a certification that no objections were timely filed and the Court shall enter an order that the order is recognized and enforced pursuant to this Section.

6. Notwithstanding any objections filed, the Court shall recognize and enforce a child support order or income withholding order made by a court or administrative agency of

another federally recognized Indian tribe or state unless the objecting party demonstrates to the Court at least one of the following:

a. The court or administrative agency did not have subject matter jurisdiction to hear the matter and enter an order;

b. The court or administrative agency did not have personal jurisdiction over the parties claimed to be bound by the order; or

c. The parties claimed to be bound by the order were not given reasonable notice and opportunity to be heard.

7. If the objecting party demonstrates to the Court that an appeal from the child support order or income withholding order is pending or will be taken, or that a stay of execution has been granted, the Court shall stay enforcement of the child support order or income withholding order until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated.

8. The Court shall not seek or make a modification of any child support order subject to recognition and enforcement under this Section unless:

a. The Court has jurisdiction to enter such a child support order itself, notwithstanding the existence of the prior action in the court or administrative agency of the other federally recognized Indian tribe or state; and

b. Either:

i. The child and each party subject of the child support order no longer resides in the jurisdiction which issued the child support order; or

ii. Each party subject of the child support order has filed written consent with the court or administrative agency that issued the child support order for a court of another jurisdiction to modify the child support order and assume continuing, exclusive jurisdiction over the child support order.

9. Any child support order or income withholding order issued be a court or administrative agency of another

jurisdiction that is not a federally recognized Indian tribe or state may be recognized and enforced in accordance with the laws of the Tribe governing the recognition and enforcement of foreign orders generally.

10. No child support order or income withholding order issued by a foreign court or administrative agency shall be enforced until it has been recognized by the Court in accordance with the laws of the Tribe.

11. Except for any limitations under this Section, a child support order or income withholding order recognized pursuant to this Section shall be treated in all respects as an order of the Court and may be enforced in the same manner as though it was originally issued by the Court, except that, unless otherwise ordered by the Court, the law of the jurisdiction which issued the order shall apply to the nature, extent, amount and duration of payments and other obligations under the order.

12. This Section shall apply to a child support order issued by the Court that has been lawfully modified by the court or administrative agency of another jurisdiction.

Section 4-6-29. No Limitation of Actions. Notwithstanding any other law of the Tribe, there shall be no time limitation in which to commence a cause of action to enforce a child support order or collect arrearages.

CHAPTER 7 PARENTAGE

Section 4-7-1. Purpose. The Tribe recognizes that parentage is a multi-faceted relationship that is often more than just a biological relationship. Parentage also involves social and economic parenthood which may or may not accompany a biological relationship and which may result in a child having more than two parents in some cases. The primary purposes and objectives of this Chapter are:

1. To establish a process by which the parental heritage of the children of the Tribe may be identified;

2. To determine parentage in accordance with the realities of a particular family and the intentions of the family; and

3. To ensure that the interests of children are protected to the fullest extent possible.

Section 4-7-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Acknowledged parent" means a person who has established a parent-child relationship by executing a recognition of parentage in accordance with this Chapter.

2. "Adjudged parent" means a person who has been adjudicated by a court of competent jurisdiction to be the parent of a child.

3. "Alleged parent" means a person who alleges himself or herself to be, or is alleged to be, the parent or a possible parent of a child, but whose parentage has not been determined. The term does not include:

a. A presumed parent;

b. A person whose parental rights have been terminated or declared not to exist; or

c. A donor.

4. "Assisted reproduction" means a method of causing pregnancy other than sexual intercourse, including, but not limited to:

a. Intrauterine insemination;

b. Donation of eggs;

c. Donation of embryos;

d. In-vitro fertilization and transfer of embryos;
and

e. Intracytoplasmic sperm injection.

5. "Donor" means a person who produces or provides his or her own human reproductive material from which a child is conceived or an embryo created through the use of his or her own human reproductive material for assisted reproduction, but does not include:

- a. A husband who provides sperm or a wife who provides eggs to be used for assisted reproduction by the wife;
 - b. A woman who gives birth to a child by means of assisted reproduction, except for gestational mothers; or
 - c. A person who is a parent or intended parent as a result of assisted reproduction or pursuant to a gestational agreement.
6. "Genetic testing" means an analysis of genetic markers to exclude or identify a person as the parent of a child. The term includes an analysis of one or a combination of the following:
- a. Deoxyribonucleic acid; and
 - b. Blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.
7. "Gestational mother" means an adult woman who gives birth to a child under a gestational agreement.
8. "Human reproductive material" means a sperm, an ovum or another human cell or human gene, and includes a part of any of them.
9. "Intended parent" means a person who intends, or two persons who are married or in a marriage-like relationship who intend, to be a parent of a child and, for that purpose, the person or two persons make an agreement with another person before the child is conceived that:
- a. The other person will be a donor or the birth mother of a child conceived through assisted reproduction; and
 - b. The person, or the two persons, will be the child's parent or parents on the child's birth, regardless of whether that person's or those persons' human reproductive material was used in the child's conception.
10. "Parentage index" means the likelihood of genetic parentage calculated by computing the ratio between:

a. The likelihood that the tested person is the parent, based on the genetic markers of the tested person, the other parent, and child, conditioned on the hypothesis that the tested person is the parent of the child; and

b. The likelihood that the tested person is not the parent, based on the genetic markers of the tested person, the other parent, and child, conditioned on the hypothesis that the tested person is not the parent of the child and that the parent is of the same ethnic or racial group as the tested person.

11. "Presumed parent" means a person who, pursuant to this Chapter, is recognized as the parent of a child until that status is rebutted or confirmed in a judicial proceeding.

12. "Surrogacy" means an arrangement where a woman agrees to be the birth mother of a child and will surrender the child to the intended parents of the child who will be the child's parents, regardless of whether the child is conceived using her own human reproductive material.

Section 4-7-3. No Discrimination Based on Marital Status. A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other.

Section 4-7-4. Parental Liability for Child.

1. Except as provided in this Section or expressly elsewhere in the laws of the Tribe, neither parent nor child is answerable, as such, for the acts of the other.

2. The parent of an unemancipated child residing with such parent, or placed by such parent under the care of other persons, may be held liable for damages to property or for personal injury attributable to an intentional, willful, malicious or wanton act of the child, but not to exceed one thousand five hundred dollars (\$1,500.00).

3. Maximum recovery from any parent or parents of a child shall not exceed the amount provided in this Section for any one act of such child or children, if two or more children of the same parent or parents commit the same act.

4. Damages allowed under this Section may be assessed by the Court in any dispositional order in any case brought against the child or parent by the Tribe pursuant to Title III of this Code.

5. Nothing in this Section shall limit the amount of damages recoverable by an action against the child, except that any amount so recovered shall be reduced and apportioned by any amount received from the parent or parents.

Section 4-7-5. Establishment of Parent-Child Relationship.

1. Unless the person cannot be considered a parent of a child under another provision of this Chapter, a person is considered the parent of a child where:

a. There is a presumption of parentage that has not been rebutted;

b. The person is the birth mother or biological father of the child and the child is not born as a result of assisted reproduction or surrogacy;

c. If the child was born as a result of assisted reproduction and not surrogacy:

i. The person is the birth mother of the child;

ii. The person was married to or in a marriage-like relationship with the birth mother of the child when the child was conceived, unless the person did not consent to be the child's parent or withdrew consent to be the child's parent before the child was conceived;

iii. The person is an intended parent, unless the person withdrew from the agreement providing for him or her to be an intended parent before the child was conceived; or

iv. If the person became deceased prior to the child being conceived, the person consented to assisted reproduction and being the child's parent even after the person's death;

d. If the child was born as a result of surrogacy pursuant to a gestational agreement, the person is an

intended parent under the gestational agreement and the person did not withdraw from the agreement before the child was conceived;

e. The person is a gestational mother or donor and there is an agreement with the parents or intended parents that the person will be a parent of the child;

f. The person has executed a recognition of parentage consistent with this Chapter, unless the recognition has been timely rescinded or successfully challenged;

g. The person adopted the child; or

h. The person has been adjudicated to be the parent of the child by a court of competent jurisdiction.

2. Except as otherwise specifically provided by the laws of the Tribe, unless and until parental rights are terminated, a parent-child relationship established under this Chapter applies for all purposes.

3. Nothing in this Chapter shall be construed as limiting the number of individuals that can be considered a parent of a child.

Section 4-7-6. Presumption of Parentage.

1. A person is presumed to be the parent of a child if:

a. Unless the person has joined in a recognition of parentage recognizing another person as the parent, he or she was married to or in a marriage-like relationship with the child's other parent:

i. On the day of the child's birth; or

ii. Within three hundred (300) days before the child's birth, if the marriage was terminated by death, declaration of invalidity, decree of separation, or decree of dissolution;

b. After the birth of the child, the person and the child's other parent married each other or entered into a marriage-like relationship, the person voluntarily asserted his or her parentage of the child, and:

i. The assertion is made in writing and filed with the Court, the Enrollment Department, or a government agency maintaining birth records;

ii. He or she agreed to be and is named as the child's parent on the child's birth certificate; or

iii. He or she is obligated to support the child as his or her own in a written document or pursuant to a child support order;

c. Scientifically reliable genetic testing reveals a statistical probability of parentage at ninety-two percent (92%) or more;

d. A birth certificate of the child is signed by the person; or

e. While the child is under the age of majority, he or she has resided in the same household with the child and openly holds out the child as his or her own.

2. There shall be no presumption of parentage under this Section if:

a. The person is excluded from being considered a parent under the provisions of this Chapter; or

b. The parentage of the person would conflict with the parentage of another person under Section 4-7-5 of this Chapter.

3. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic shall control.

4. For purposes of this Section, marriage includes a marriage in apparent compliance with the law, even if the marriage is or could be declared invalid.

5. A presumption of parentage under this Section may be rebutted only by an adjudication under the provisions of this Chapter.

Section 4-7-7. Persons Not Considered Parents.

1. A donor shall not be a parent of a child conceived by means of assisted reproduction, unless there is a written agreement with the parents or intended parents expressly providing that the donor will be a parent of the child.

2. A gestational mother shall not be a parent of a child conceived in accordance with a gestational agreement, unless the gestational agreement expressly provides that the gestational mother will be a parent of the child.

3. An individual who withdraws consent to assisted reproduction before the placement of human reproductive material shall not be a parent of the resulting child.

4. A person who commits an act of rape, incest, or sexual assault against another person which results in the birth of a child conceived as a result of the act of rape, incest, or sexual assault shall not be a parent of the child, provided that the victim of the rape, incest, or sexual assault or the child, once an adult, may bring an action to establish the parentage of such person. Notwithstanding anything to the contrary in this Chapter, a persons who commits an act of rape, incest, or sexual assault against another person which result in the birth of a child conceived as a result of the act of rape, incest, or sexual assault shall be prohibited from bringing a parentage action under this Chapter relating to such child.

Section 4-7-8. Recognition and Denial of Parentage.

1. At any time, including during a parentage proceeding under this Chapter, a parent of a child and a person claiming to be the genetic parent of a child may acknowledge parentage for the child in a written recognition of parentage. A recognition of parentage shall:

a. Be in writing;

b. Be signed and notarized under penalty of perjury by the parent of the child and the parent seeking to establish his or her parentage;

c. Other than the parent of the child party to the recognition, state that the child whose parentage is being acknowledged:

i. Does not have a presumed parent or has a presumed parent whose full name is stated; and

ii. Does not have another acknowledged or adjudged parent which conflicts with the parentage of the person acknowledging parentage;

d. State that the parent seeking to establish his or her parentage is not a gestational mother or donor of the child;

e. State whether there has been genetic testing and, if so, that the acknowledging parent's claim of parentage is consistent with the results of the testing, if applicable to the basis for establishing parentage; and

f. State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of parentage of the child and that after the rescission period has ended a challenge to the acknowledgment is permitted only on the basis of fraud, duress, or material mistake of fact.

2. A recognition of parentage is void if:

a. It states that another person is a presumed parent, unless a denial of parentage is signed or otherwise authenticated by the presumed parent, or the other presumed parentage does not conflict with the acknowledged parentage;

b. Another person other than the parent of the child signing the recognition has acknowledged parentage in a previous valid recognition of parentage, unless the previous recognition has been timely rescinded or successfully challenged, or the previously acknowledged parentage does not conflict with the current acknowledged parentage;

c. Another person other than the parent of the child has been adjudicated to be a parent, unless the adjudicated parentage does not conflict with the acknowledged parentage;

d. The person seeking to establish his or her parentage is a gestational mother or donor of the child, unless there is a written agreement with the parents or intended parents expressly providing that the gestational mother or donor will be a parent of the child;

e. It falsely denies the existence of a presumed, acknowledged, or adjudged parent of the child; or

f. It falsely states that the person seeking to establish his or her parentage is not a gestational mother or donor of the child.

3. A presumed parent may sign a denial of his or her parentage. The denial is valid only if:

a. A recognition of parentage signed, or otherwise authenticated, by another parent is filed with the Court, the Enrollment Department, or a government agency maintaining birth records;

b. The denial is in writing, and is signed, or otherwise authenticated, under penalty of perjury; and

c. The presumed parent has not previously:

i. Recognized his or her parentage, unless the previous recognition has been timely rescinded or successfully challenged; or

ii. Been adjudicated to be the parent of the child.

4. A recognition of parentage and a denial of parentage:

a. May be contained in a single document or may be signed in counterparts;

b. May be executed separately or simultaneously, provided that if the recognition and denial are both necessary, neither is valid until both are executed;

c. May be signed before the birth of the child;

d. Take effect on the birth of the child or the execution of the document, whichever occurs later; and

e. May be signed by a minor if the document is otherwise in compliance with this Chapter.

5. Parties shall send a recognition of parentage and denial of parentage to the appropriate agency maintaining birth

records to request the amendment of the birth record of the child, if appropriate.

6. Except as otherwise provided in Section 4-7-9 of this Chapter:

a. A valid recognition of parentage filed with the Court, the Enrollment Department, or a government agency maintaining birth records is equivalent to an adjudication of parentage of a child and confers upon the acknowledged parent all of the rights and duties of a parent; and

b. A valid denial of parentage by a presumed parent filed with the Court, the Enrollment Department, or a government agency maintaining birth records in conjunction with a valid recognition of parentage is equivalent to an adjudication of the nonparentage of the presumed parent and discharges the presumed parent from all rights and duties of a parent.

7. The Court shall give full faith and credit to a recognition of parentage or denial of parentage effective in another federally recognized Indian tribe or state if the recognition or denial has been signed and is otherwise in compliance with the law of the other jurisdiction.

8. The Court shall prescribe standard forms that parents may sign to recognize and deny parentage under this Section and shall not charge for filing a recognition of parentage, denial of parentage, or rescission of either. A valid recognition of parentage or denial of parentage is not affected by a later modification of the prescribed form.

Section 4-7-9. Rescinding and Challenging Recognition or Denial of Parentage.

1. A signatory may rescind a recognition of parentage or denial of parentage by commencing a proceeding to rescind before the earlier of:

a. Sixty (60) days after the effective date of the recognition or denial; or

b. The date of the first hearing, in a proceeding to which the signatory is a party, before the Court to adjudicate an issue relating to the child, including a proceeding that establishes child support or child custody.

2. After the period for rescission under this Section has expired, a signatory of a recognition of parentage or denial of parentage may commence a proceeding to challenge the recognition or denial only on the basis of fraud, duress, or material mistake of fact. There is no time limitation on when a party may commence a proceeding to challenge the recognition or denial of parentage under this subsection.

3. Every signatory to a recognition of parentage and any related denial of parentage shall be made a party to a proceeding to challenge the recognition or denial.

4. For the purpose of challenging a recognition of parentage or a denial of parentage, a signatory submits to the personal jurisdiction of the Court by signing the recognition or denial.

5. Except for good cause shown, during the pendency of a proceeding to challenge a recognition of parentage or a denial of parentage, the Court shall not suspend the legal responsibilities of a signatory arising from the recognition, including the duty to pay child support.

6. A proceeding to challenge a recognition of parentage or a denial of parentage shall be conducted in the same manner as a proceeding to adjudicate parentage under this Chapter.

7. At the conclusion of a proceeding to rescind a recognition of parentage or a denial of parentage, the Court shall send its order, or instruct the parties to do so, to the appropriate state agency to request the amendment of the birth record of the child, if appropriate.

Section 4-7-10. Gestational Agreements.

1. A prospective gestational mother, her spouse if married, a donor or the donors, and the intended parents may enter into a written agreement which provides that:

a. The prospective gestational mother agrees to pregnancy by means of assisted reproduction;

b. The prospective gestational mother, her spouse if married, and the donors relinquish all rights and duties as the parents of a child conceived through assisted reproduction, unless the parties agree otherwise; and

c. The intended parents will be the parents of the child.

2. A gestational agreement may provide for payment of consideration.

3. To be valid, a gestational agreement must be approved by the Court under this Section. The intended parents and the prospective gestational mother and her spouse, if married, may, by petition, request the Court to approve the gestational agreement in accordance with this Section. The Court shall enter an order approving the gestational agreement if:

a. Each intended parent, the gestational mother and her spouse, if any, are each party to the agreement;

b. Each party has voluntarily entered into the agreement and understands its terms;

c. Adequate provision has been made for all reasonable health-care expense associated with the agreement until the birth of the child, including responsibility for those expenses if the agreement is terminated;

d. The agreement does not limit the right of the prospective gestational mother to make decisions to safeguard her health or that of the embryos or fetus;

e. The consideration, if any, paid to the prospective gestational mother is reasonable;

f. Unless waived by the Court, a home study has been completed by the Department of Social Services or another agency or individual qualified to perform a home study; and

g. The Court finds that the intended parents are fit to be the parents of the child.

4. A gestational agreement may be terminated:

a. By the prospective gestational mother, her spouse if married, or any of the intended parents before the prospective gestational mother becomes pregnant by means of assisted reproduction, by giving written notice of termination to all other parties; or

b. By the Court for good cause shown.

5. A party who terminates a gestational agreement shall file a notice of the termination with the Court in the same action in which the agreement was approved. On receipt of the notice, the Court shall vacate the order approving the gestational agreement and the agreement shall be unenforceable unless the terminating party is an intended parent and there is still at least one more intended parent, the other parties to the agreement do not wish to terminate the agreement, and the agreement is otherwise still subject to Court approval under this Section. Neither a prospective gestational mother nor her spouse, if any, shall be liable to the intended parents for terminating a gestational agreement pursuant to this Section.

6. Upon birth of a child to a gestational mother, the intended parents shall file notice with the Court that the child has been born to the gestational mother within three hundred (300) days after assisted reproduction. Upon the filing of such notice, the Court shall issue an order:

a. Confirming that the intended parents are the parents of the child;

b. If necessary, ordering that the child be surrendered to the intended parents; and

c. Directing the government agency maintaining birth records to issue a birth certificate naming the intended parents as parents of the child.

7. A gestational agreement does not apply to the birth of a child conceived by means of sexual intercourse.

8. If a birth results under a gestational agreement that is not approved by the Court in accordance with this Section, the parent-child relationship shall be determined in accordance with this Chapter, provided that the Court shall have the authority to retroactively approve a gestational agreement that otherwise substantially complies with this Section.

9. Nothing in this Section shall prevent the Court from recognizing a gestational agreement entered into in another jurisdiction and valid under the laws of that jurisdiction.

Section 4-7-11. Confidentiality of Court Records.

1. The Court record of proceedings under this Chapter shall include transcripts, recordings of hearings, complaints, petitions, motions, memoranda, briefs, reports, findings of the Court, Court orders, and any other reports or papers filed in the action, whether maintained in paper form, electronically, or otherwise.

2. Except where expressly provided otherwise in this Chapter, the Court record of proceedings under this Chapter shall be held confidential and shall not be provided or open to inspection to any but the following:

- a. Personnel of the Court;
- b. The child subject of the proceedings and his or her legal counsel or guardian ad litem;
- c. The child's parent, guardian or custodian and his or her legal counsel;
- d. Legal counsel requesting discovery as permissible under the laws of the Tribe;
- e. The Department of Social Services;
- f. The Domestic Violence Department;
- g. The Tribal Attorney;
- h. Another court having jurisdiction over an action involving the parties or the child subject of the action;
- i. An agency of another government engaged in the establishment of parentage, child support, or the enforcement of child support for the child subject of the proceedings; or
- j. Any other person, by order of the Court, having legitimate interest in the particular case or the work of the Court, provided the Court may place appropriate restrictions on such access to ensure the confidentiality of records.

3. The Court shall not release information on the location or whereabouts of a party or a child to another person:

a. Against whom an order for protection is in effect with respect to the party or the child; or

b. If the Court has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or the child.

4. Notwithstanding anything to the contrary in this Chapter, a final order issued in a proceeding under this Chapter shall be available for public inspection.

5. When providing service by publication, the name of the child in the matter shall not be disclosed, provided that the child's initials may be published.

6. Any person who willfully discloses confidential information protected under this Section other than as expressly authorized in this Section shall be subject to a civil fine not to exceed eight hundred dollars (\$800).

Section 4-7-12. Confidentiality of Hearings. The general public shall be excluded from all hearings under this Chapter and only the following shall be allowed to be present in the hearings:

1. The parties and their legal counsel;
2. Witnesses; and
3. Other persons determined to be appropriate by the Court, in its discretion.

Section 4-7-13. Initiation of Proceedings.

1. Except as otherwise expressly provided in this Chapter, proceedings in the Court to establish parentage shall be initiated by the filing of a petition.

2. Petitions may be filed by:

a. The child for whom parentage is sought to be established;

b. A parent, guardian, or custodian of the child for whom parentage is sought to be established;

c. A parent, guardian or other legal representative of a minor parent on behalf of or for the benefit of the minor parent's child;

d. An intended parent;

e. A person whose parentage of the child is to be adjudicated;

f. An authorized adoption agency or licensed child placement agency; or

g. The Department of Social Services, on behalf of the Tribe, for a child in its custody for whom parentage is sought to be established.

3. Petitions to establish parentage of a child shall be captioned: "In Re the Parentage of (child's or children's name(s)): (name(s) of petitioner(s)), Petitioner(s) vs. (name(s) of respondent(s)), Respondent(s)". A request for establishment of parentage may be combined with a proceeding for invalidity of marriage, dissolution of marriage, legal separation, child support, or child custody under this Title, a proceeding for adoption or termination of parental rights under Title 3 of this Code, a probate proceeding, or any other appropriate proceeding, captioned as such proceeding, and conducted as part of such proceeding.

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. Unless the petitioner is the Tribe, the name, address, and tribal affiliation of the petitioner;

b. The name, last known address, and tribal affiliation of the respondent or the reasons that such information is unavailable;

c. The relationship of the petitioner to the child for whom parentage is sought to be established;

d. The relationship of the respondent to the child for whom parentage is sought to be established;

e. The name, sex, date and place of birth, current residence and tribal affiliation of the child for whom

parentage is sought to be established or the reasons such information is unavailable;

f. If different from the petitioner, the names, last known addresses and tribal affiliation of the child's parents for whom parentage is established or the reasons that such information is unavailable;

g. If different from the petitioner, the names, last known addresses and tribal affiliation of the persons having legal custody or guardianship of the child or the reasons that such information is unavailable;

h. The basis for the Court's jurisdiction;

i. The basis alleged for the respondent being a parent of the child;

j. If an agreement or acknowledgment of parentage exists, the details of such agreement;

k. A request that the Court enter an order establishing the respondent as a parent of the child or such other relief requested.

5. The child's parent, except a parent who is a petitioner, and any person whose parentage of the child is to be adjudicated shall be included as named respondents. If not the petitioner, the child shall also be made a party to the action.

6. Two (2) or more children for whom parentage is sought to be established in a common parent may be included in the same petition.

7. A petition to establish parentage of a child who has become an adult may only be brought by the child.

8. If a petition to establish parentage of a child is filed before the birth of the child, the proceeding shall be stayed until after the birth of the child, except for service of process, discovery, and, except as prohibited by this Chapter, collection of specimens for genetic testing.

9. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 4-7-14. Admission of Parentage. A party in a proceeding under this Chapter may admit to the parentage of a child by filing a pleading to that effect or by admitting parentage under penalty of perjury when making an appearance or during a hearing. If the Court finds that there is no reason to question the admission, the Court shall issue an order adjudicating the child to be the child of the person admitting parentage.

Section 4-7-15. Temporary Orders for Support.

1. In a proceeding under this Chapter, the Court may issue a temporary child support order if such child support order is appropriate and the individual ordered to pay support is:

- a. A presumed parent of the child;
- b. Petitioning to have his or her parentage adjudicated;
- c. Identified as the parent through genetic testing conducted in accordance with this Chapter;
- d. An alleged parent who has declined to submit to genetic testing;
- e. Shown by clear and convincing evidence to be the parent of the child; or
- f. The parent of the child.

2. A temporary child support order issued under this Section may also include provisions for custody and visitation in accordance with the provisions of this Title.

Section 4-7-16. Orders to Facilitate Proceedings. In any proceeding under this Chapter, on motion of any party or on the Court's own motion, the Court may issue orders, including subpoenas, necessary to facilitate the proceeding and the establishment of parentage of the child, including orders for genetic testing and to assist in locating a parent or other party required to adjudicate the parentage of the child.

Section 4-7-17. Hearing on Petition.

1. Upon the filing of a petition under this Chapter, the Court shall schedule and conduct a hearing on the petition.

2. The primary purpose of a hearing on the petition is to determine whether the respondent is the parent of the child named in the petition and, if so, enter any other appropriate order.

3. The Court shall consider any and all reports allowed under this Chapter or ordered by the Court, and any additional relevant testimony or evidence presented at hearing.

4. The Court shall enter a parentage order if the Court finds the respondent is a parent of the child under the laws of the Tribe.

5. The burden of proof for establishment of parentage shall lie with the proponent of such parentage to demonstrate that the person is a parent by clear and convincing evidence.

Section 4-7-18. Order of Parentage.

1. In addition to any other matters necessary for an order of the Court, a parentage order shall include:

a. The name, date of birth, and last four digits of the social security number of each of the parties, including the child for whom parentage is sought to be established;

b. The basis for the Court's jurisdiction;

c. Findings regarding the basis for the Court's determination of parentage;

d. A decision as to whether the respondent or other party to the proceeding is a parent of the child;

e. If requested by a party for good cause shown, an order that the name of the child is changed;

f. If the determination of parentage differs from the child's birth certificate, an order to have the birth certificate appropriately amended;

g. Any other provision in the best interest of the child, including payment of support, payment of expenses of

the mother's pregnancy, custody of the child, and visitation with the child; and

h. Any other findings or orders the Court deems necessary or desirable.

2. An order issued under this Section is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 4-7-19. Binding Effect of Parentage Determination.

1. Except as otherwise provided in this Section, a determination of parentage is binding on:

a. All signatories to a recognition or denial of parentage; and

b. All parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of this Title.

2. A child is not bound by a determination of parentage under this Chapter unless:

a. The determination was based on an unrescinded recognition of parentage and the recognition is consistent with the results of genetic testing;

b. The adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown; or

c. The child was a party or was represented in the proceeding determining parentage by legal counsel or a guardian ad litem.

3. In a proceeding to dissolve a marriage, the Court is deemed to have made an adjudication of the parentage of a child if the Court acts under circumstances that satisfy the jurisdictional requirements of this Title and the final order:

a. Expressly identifies a child as a "child of the marriage," "issue of the marriage," or similar words indicating that the spouse is the parent of the child; or

b. Provides for support of the child by the spouse unless parentage is specifically disclaimed in the order.

4. Except as otherwise provided in this Section, a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.

5. A party to an adjudication of parentage may challenge the adjudication only under the laws of the Tribe relating to appeal, vacating judgments, or other judicial review.

Section 4-7-20. Order for Genetic Testing.

1. Except as otherwise provided in this Chapter, the Court shall order the child and other designated individuals to submit to genetic testing in accordance with this Chapter if:

a. The order for testing is supported by the sworn statement of a party to the proceeding alleging parentage and stating facts establishing a reasonable probability of the requisite sexual contact between the individuals;

b. The order for testing is supported by the sworn statement of a party to the proceeding denying parentage and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child; or

c. The Court otherwise finds that there is good cause to believe the individuals are the genetic parents of the child and are not otherwise excluded from being the parents of the child.

2. The Court may deny issuing an order for genetic testing if the Court determines that:

a. The conduct of the parent or the alleged parent bars that party from denying parentage and it would be inequitable to disprove the parent-child relationship between the child and the alleged parent;

b. The parentage of the child is based on another provision of this Chapter other than genetic parentage and the results of genetic testing would not alter or modify that parentage determination;

c. A legal proceeding for adoption of the child whose parentage is sought to be established is pending in a court of competent jurisdiction, unless establishment of parentage is required for the purposes of the adoption proceeding; or

d. The genetic testing or establishment of parentage is reasonably likely to result in physical or emotional harm to the child or to the child's parent, guardian or custodian or otherwise would not be in the best interests of the child.

3. Notwithstanding anything to the contrary in this Chapter, the Court shall not order genetic testing if the alleged parent is otherwise excluded from being considered a parent of the child under the provisions of this Chapter, provided that if the alleged parent committed an act of rape, incest, or sexual assault which resulted in the birth of the child conceived as a result of the act of rape, incest, or sexual assault, the Court may order the genetic testing if the victim of the rape, incest, or sexual assault or the child, once an adult, expressly and voluntarily consents to such genetic testing.

4. If a request for genetic testing of a child is made before birth, the Court may not order in-utero testing.

5. If two or more individuals are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

6. Upon the request of a party who contests the result of genetic testing, the Court shall order additional genetic testing, provided that, if the previous genetic testing identified a person as the parent of the child under this Chapter, the Court may not order additional testing unless the party provides advance payment for the testing.

Section 4-7-21. Standards for Genetic Testing.

1. Genetic testing must be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:

a. The American Association of Blood Banks, or a successor to its functions;

b. The American Society for Histocompatibility and Immunogenetics, or a successor to its functions; or

c. An accrediting body designated by the federal Secretary of Health and Human Services.

2. A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

3. If a genetic-testing specimen is not available from a person who may be the parent of a child and the Court finds that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested, the Court may order the following individuals to submit specimens for genetic testing:

a. The parents of the person;

b. Brothers and sisters of the person;

c. Other children of the person and their parents;
and

d. Other immediate or extended family members of the person necessary to complete genetic testing.

4. Based on the ethnic or racial group of an individual, the testing laboratory shall determine the databases from which to select frequencies for use in calculation of the probability of parentage. If there is disagreement as to the testing laboratory's choice, the following rules shall apply:

a. The individual objecting may require the testing laboratory, within thirty (30) days after receipt of the report of the test, to recalculate the probability of parentage using an ethnic or racial group different from that used by the laboratory;

b. The individual objecting to the testing laboratory's initial choice shall:

i. If the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or

ii. Engage another testing laboratory to perform the calculations; and

c. The testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate and, if available, the testing laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.

5. If, after recalculation using a different ethnic or racial group, genetic testing does not rebuttably identify a person as the parent of a child under this Chapter, an individual who has been tested may be required to submit to additional genetic testing.

6. Any person gathering a specimen for genetic testing pursuant to an order of the Court, at the request of the parent and alleged parent, or as otherwise authorized under the laws of the Tribe and any hospital, laboratory or other entity employing such person, may not be held liable for damages to the party from whom the specimen is gathered if the specimen is gathered with usual and ordinary care.

Section 4-7-22. Report of Genetic Testing Results.

1. The results of genetic testing shall be set forth in a report and, if ordered as part of a proceeding under this Chapter, filed with the Court.

2. A report of genetic testing must be in writing and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of this Chapter is self-authenticating.

3. Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:

a. The names and photographs of the individuals whose specimens have been taken;

b. The names of the individuals who collected the specimens;

c. The places and dates the specimens were collected;

d. The names of the individuals who received the specimens in the testing laboratory; and

e. The dates the specimens were received.

Section 4-7-23. Results of Genetic Testing.

1. Under this Chapter, a person is rebuttably identified as the parent of a child if the genetic testing complies with this Chapter and the results disclose that:

a. The person has at least a ninety-two percent (92%) probability of parentage, using a prior probability of 0.50, as calculated by using the combined parentage index obtained in the testing; and

b. A combined parentage index of at least 100 to 1.

2. A person identified under this Section as the parent of the child may rebut the genetic testing results only:

a. By other genetic testing satisfying the requirements of this Chapter which:

i. Excludes the person as a genetic parent of the child; or

ii. Identifies another person as the possible parent of the child; or

b. By demonstrating by clear and convincing evidence that the person is excluded from being considered a parent of the child under the provisions of this Chapter.

3. If a child has a presumed, acknowledged, or adjudged parent in addition to the child's other parent, the results of genetic testing are inadmissible to adjudicate parentage unless performed:

a. With the consent of both the parent and the presumed, acknowledged, or adjudged parent; or

b. Pursuant to an order of the Court issued under this Chapter.

Section 4-7-24. Payment of Costs of Genetic Testing. Subject to the assessment of costs in accordance with the Tribal Rules of Civil Procedure, the cost of initial genetic testing shall be paid:

1. By the individual who made the request;
2. As agreed by the parties; or
3. As otherwise ordered by the Court.

Section 4-7-25. Limitations of Actions.

1. An action to establish parentage of a child may be commenced by the child at any time, even after the child becomes an adult or an earlier proceeding to adjudicate parentage has been dismissed based on the application of a statute of limitations then in effect.

2. An action to establish parentage of a child may be commenced by a person other than the child at any time until the child reaches the age of majority, but not thereafter.

CHAPTER 8 DOMESTIC AND ELDER ABUSE

Section 4-8-1. Purpose. This Chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

1. Provide for the protection of persons within the territory of the Tribe;
2. Secure the safety of persons within the territory of the Tribe, which will serve the spiritual, emotional, mental, physical, and financial welfare of such persons, and the best interests of the Tribe;
3. Improve any conditions or home environment which may be jeopardizing the safety of persons within the territory of the Tribe;
4. Preserve a person's freedom to work, live, and worship without threat of harm by another individual;

5. Protect the peace and security of the Tribe and its individual residents from abuse;

6. Provide mechanisms for providing protective services and placements for elders and vulnerable adults who are victims of abuse and neglect; and

7. Provide procedures for securing an order for protection from the Court.

Section 4-8-2. Definitions. Unless the context requires otherwise, in this Chapter:

1. "Advocate" means an employee of or, after receiving training in the area, volunteer for a program for victims of domestic or family abuse and/or sexual assault, including the Department, who has a primary function of:

a. Rendering advice, counseling, or assistance to victims of domestic or family abuse;

b. Supervising the employees or volunteers of the program; or

c. Administering the program.

2. "Assault" means:

a. An attempt to cause or purposely, knowingly or recklessly causing physical harm to another;

b. Negligently, purposely or knowingly causing physical harm to another with a deadly weapon; or

c. Attempting by physical menace to put another in fear of imminent physical harm.

3. "Caretaker" means:

a. A person who is required by the laws of the Tribe or other applicable law to provide services or resources to an elder or vulnerable adult, including a guardian, conservator, guardian ad litem, court appointed special advocate, and juvenile court advocate;

b. A person who has voluntarily undertaken to provide care or resources to an elder or vulnerable adult, including a family or household member;

c. A person who takes possession of the home, funds, assets, or property or estate of another person, whether with or without right or lawful authority; or

d. An institution or agency which voluntarily provides or is required by the laws of the Tribe or other applicable law to provide services or resources to an elder or vulnerable adult and any such institution or agency which receives anything of value in return for providing services or resources to an elder or vulnerable adult, or an employee of such institution or agency.

4. "Dating" and "dating relationship" means a social relationship of a romantic or intimate nature between two or more persons, but does not include a casual acquaintance or ordinary fraternization between persons in a business or social context.

5. "Department" means the Ponca Tribe of Nebraska Domestic Violence Department.

6. "Domestic or family abuse" means the occurrence of one or more of the following acts by a family or household member or caretaker, but does not include acts of self-defense:

a. Assault, harassment, intimidation, or stalking against another family or household member or elder or vulnerable adult;

b. Placing a family or household member or elder or vulnerable adult in fear of physical harm;

c. Causing a family or household member or elder or vulnerable adult to engage in sexual activity:

i. Involuntarily;

ii. Without consent;

iii. When the family or household member or elder or vulnerable adult is incapable of consenting due to alcohol or drug impairment, being unconscious or asleep, or incapacity; or

iv. With consent obtained by force, threat of force, intimidation, fraud, or duress;

d. Attempting to cause or purposefully, knowingly, or recklessly causing emotional abuse to a family or household member or elder or vulnerable adult;

e. Exploitation or attempted exploitation of an elder or vulnerable adult;

f. Attempting neglect or purposeful, knowing, or reckless neglect of a family or household member or elder or vulnerable adult; or

g. Attempting to cause isolation or causing isolation to a family or household member or elder or vulnerable adult.

7. "Elder" means a person who is fifty-five (55) years or more of age.

8. "Emotional abuse" means a pattern of ridiculing or demeaning, making derogatory remarks, verbally harassing, or threatening to inflict physical or emotional harm on another person.

9. "Exploitation" means knowingly or purposely, by deception or intimidation, obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use a person's funds, assets, or property with the intent to temporarily or permanently deprive the person of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the person by another person who stands in a position of trust and confidence with the person, has a business relationship with the person, or, regardless of whether by deception or intimidation, knows or reasonably should know that the person lacks the capacity to consent and includes:

a. Breaches of fiduciary relationships, such as the misuse of power of attorney or the abuse of guardianship or conservatorship duties, resulting in the unauthorized appropriation, sale or transfer of funds, assets, or property;

b. Unauthorized taking of personal funds, assets, or property;

c. Misappropriation, misuse, or transfer of funds belonging to a person from a personal or joint account; or

d. Failure to effectively use a person's income, funds, and assets for the necessities required for that person's support and maintenance.

10. "Family or household member" means a member of a person's immediate or extended family and:

a. Persons who are current or former spouses or domestic partners;

b. Persons who are or were in a marriage-like relationship;

c. Persons who live together or who have lived together;

d. Persons who are dating or who have dated;

e. Persons who are engaged in or who have engaged in a sexual relationship;

f. Persons who are related or formerly related by marriage or a marriage-like relationship;

g. Persons who have a child in common; and

h. Minor children of a person in a relationship that is described in this subsection.

11. "Harassment" means willfully and maliciously engaging in a knowing pattern of conduct or series of acts over a period of time directed at a specific person that would cause a reasonable person to be seriously alarmed, annoyed, or harassed and the conduct in fact seriously alarms, annoys, or harasses the person and serves no legitimate purpose. A person's acts constitute harassment if, with intent to harass or with knowledge that the person is harassing another person, the person:

a. Anonymously or otherwise contacts, communicates, or causes a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic, or written means in a manner that harasses;

b. Continues to follow another person in or about a public place for no legitimate purpose after being asked to desist;

c. Repeatedly commits an act or acts that harass another person;

d. Surveils or causes another person to surveil a person for no legitimate purpose; or

e. On more than one occasion makes a false report to a law enforcement, credit, or social service agency about the person.

12. "Intimidation" means communicating a threat to another person, with the intent:

a. That the other person engage in conduct against the other person's will;

b. That the other person be placed in fear of retaliation for a prior lawful act; or

c. Of causing the other person to evacuate or abandon a dwelling, building, or other structure.

13. "Isolation" means any knowing or purposeful act intended to prevent or to actually prevent a person from receiving his or her mail, telephone calls, or visitors or preventing the person from having contact with immediate or extended family, friends, or concerned persons, provided that an act shall not constitute isolation if it is performed:

a. Pursuant to the instruction of a licensed physician or nurse who is caring for the person at the time the instruction is given and the instruction is given as part of the persons' medical care; or

b. In response to a reasonably perceived threat of danger to the person or his or her property.

14. "Neglect" means a caretaker's failure or omission to provide a person with the care, supervision, and services necessary to maintain the person's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine and medical services, that a

prudent person would consider essential for the well-being of the person or failure or omission to make reasonable effort to protect a person from abuse, neglect, or exploitation by another person and includes:

a. Failure to assist in personal hygiene, or in the provision of food, clothing or shelter;

b. Failure to provide medical care for physical and mental health needs, provided that no person shall be deemed neglected for the sole reason that he or she voluntarily relies on treatment by spiritual or religious means in lieu of medical treatment;

c. Failure to prevent malnutrition; and

d. Abandoning an elder or dependent adult for indefinite periods of time.

15. "Physical injury" means the impairment of physical condition and includes any skin bruising, pressure sores, bleeding, failure to thrive, malnutrition, dehydration, burns, fracture of any bone, subdural hematoma, soft tissue swelling, injury to any internal organ, or any physical condition that imperils health or welfare.

16. "Protective placement" means the placement of an elder or vulnerable adult in the care of another person, in a hospital, nursing home, residential care facility, or similar institution, or transfer of the elder or vulnerable adult from one such person or institution to another.

17. "Protective services" means services provided to a person appropriate to prevent and/or resolve domestic or family abuse, including social case work, psychiatric and health evaluation, home care, day care, legal assistance, social services, health care, case management, guardianship, conservatorship, and other such services.

18. "Stalking" means purposefully engaging in a course of conduct where a person maintains visual or physical proximity to a specific person or directs verbal, written or other threats whether express or implied, to a specific person on two or more occasions over a period of time, however short, but does not include constitutionally protected activity. A person engages in stalking if the person purposely or knowingly engages in a

course of conduct that is directed toward another person and if that conduct either:

a. Would cause a reasonable person to fear for the person's safety or the safety of that person's immediate or extended member and that person in fact fears for their safety or the safety of that person's immediate or extended family member; or

b. Would cause a reasonable person to fear death of that person or that person's immediate or extended family member and that person in fact fears death of that person or that person's immediate or extended family member.

19. "Vulnerable adult" means an adult who lacks sufficient understanding or capacity to make or communicate responsible decisions concerning himself or herself by reason of infirmities of aging, mental illness, mental deficiency, physical illness or disability, developmental disabilities, chronic use of drugs, chronic intoxication, or other like incapacity, or otherwise is unable to protect himself or herself against significant harm or exploitation, regardless of whether the person has been declared incapacitated by a court.

Section 4-8-3. Domestic Violence Department.

1. There is hereby established a Domestic Violence Department as an agency of the Tribe, under the authority of the Tribe, and delegated the powers, duties, and responsibilities set forth in this Chapter and as otherwise provided by the laws of the Tribe.

2. The Department shall consist of a Director and such other personnel and employees as may be required.

Section 4-8-4. General Authority of Department. The Department shall have the following powers, duties and responsibilities:

1. To assist in the enforcement of this Chapter and all laws of the Tribe relating to domestic or family abuse and take the initiative in securing enforcement of laws for the protection of persons from domestic or family abuse where no adequate provision is made for such enforcement;

2. To work with victims of domestic or family abuse in a way that is characteristic of the Tribe's cultural traditions, customs, and values and address the well-being and protection of

persons, families, and communities of the Tribe and the Tribe itself as well as others within the territory of the Tribe from domestic or family abuse;

3. To make resources available for victims of domestic or family abuse to make decisions and choices affecting their present and future protection and stability;

4. To promote the protection of children, families, other persons, communities, and the Tribe from domestic or family abuse;

5. To refer cases involving victims of domestic or family abuse to the Department of Social Services for appropriate services from the Department of Social Services, including protective placement and protective services for elders and vulnerable adults;

6. To collaborate and cooperate with such other agencies of the Tribe, other tribes, the United States, and the states as are necessary to achieve the purposes of this Chapter and other laws of the Tribe administered by the Department; and

7. To promulgate rules and regulations, not inconsistent with this Chapter and subject to the approval of Tribal Council, as it deems necessary or desirable in carrying out its duties.

Section 4-8-5. Domestic Violence Workers. The Department may employ domestic and family abuse advocates and other domestic and family abuse workers who shall have the authority, within and subject to the resources of the Department, to:

1. Respond to law enforcement requests or victim requests to assist victims of domestic or family abuse;

2. Receive reports of domestic or family abuse and investigate such reports;

3. Immediately conduct or have conducted an investigation in accordance with the provisions of this Chapter upon receipt of any report or information that a person is a victim of domestic or family abuse;

4. Assess victim needs and act as a resource for community service referrals;

5. Provide necessary and emergency intervention services or arrange for the provision of services by other agencies for victims of domestic or family abuse;

6. Assist victims of domestic or family abuse in contacting the victim's family or friends and arrange for emergency shelter as needed;

7. Assist elders and vulnerable adults in being placed in the care of appropriate persons, agencies, and institutions and, when they are wards of the Court, make such placements;

8. Supervise placements of elders and vulnerable adults;

9. Offer short-term crisis counseling and intervention to victims of domestic or family abuse;

10. Assist victims of domestic or family abuse in the identification of witnesses;

11. Assist victims of domestic or family abuse in securing an order for protection in accordance with this Chapter, including presenting to the Court on behalf of such victims in order to secure such orders;

12. File petitions in the name of the Tribe for the appointment of guardians or conservators for elders and vulnerable adults who are victims of domestic or family abuse;

13. Assist victims of domestic or family abuse in determining losses suffered by the victim and assist the victim in his or her request for restitution, as appropriate;

14. Accompany victims of domestic or family abuse to court proceedings;

15. Inform victims of domestic or family abuse in writing about his or her rights;

16. Engage in follow-up contact with victims of domestic or family abuse after case disposition;

17. Document contact information and resources provided;

18. Report data to the agencies of other jurisdiction as required; and

19. Perform such other duties and responsibilities designated by the Director of the Department or his or her designee.

Section 4-8-6. Confidentiality of Department Records.

1. Except where expressly provided otherwise in the laws of the Tribe, names, records, and other information concerning persons applying for or receiving services from the Department shall be held confidential and shall not be provided or open to inspection to any but the following:

a. The person applying for or receiving services and their legal counsel or the person's guardian or conservator;

b. Persons directly connected with the administration of the Department or the services applied for or provided to the person;

c. Other Tribal departments and agencies, the Tribal Attorney, agencies of other governments, and private agencies directly involved in the services applied for or provided to the person;

d. Institutions and agencies that have legal responsibility or authorization to care for, treat or supervise the person applying for or receiving services and have a need for the information; and

e. To others when the person applying for or receiving services has authorized the release of information or otherwise waived confidentiality expressly in writing.

2. Nothing in this Section shall prevent the Department from releasing information:

a. To the Tribal Attorney for purposes of assisting or representing the Department;

b. In a proceeding in a court to which the Department is a party, participating, or representing the Tribe;

c. To the Tribal Attorney, law enforcement agencies, domestic and family abuse advocates, other Tribal

departments and agencies, agencies of other governments, and others as necessary in order to protect a person from domestic or family abuse or self-harm;

d. For the purpose of assisting in finding a placement or home for an elder or vulnerable adult, provided that such release of information is limited to the minimal information necessary to find such placement or home; or

e. When a person applying for or receiving services authorizes the release of information or otherwise waives confidentiality expressly in writing.

Section 4-8-7. Use of Other Resources. In carrying out its duties and responsibilities:

1. The Department shall use psychiatric, psychological, and therapeutic counseling and other services available to the Tribe, both from internal and external sources;

2. The Department may refer matters, including reports of domestic or family, for investigation to state or federal authorities or other appropriate professionals or authorities and the Department may adopt and treat the results of any such referred investigation, including any determinations therein, as its own, which the Court shall then treat as though conducted directly by the Department; and

3. The Department may rely upon and adopt an investigation, including any determinations therein, made by another investigating agency or authority, including investigations of domestic or family abuse, as its own and the Court shall treat such investigation as though conducted directly by the Department.

Section 4-8-8. Domestic Violence Advisory Teams.

1. The Department may establish a domestic violence advisory team. The domestic violence advisory team may include licensed or certified medical and health professionals, representatives of the Department, representatives of the Department of Social Services, representatives of the Health Services Department, representatives of the Culture Department, mental health professionals, attorneys and lay counsel, and representatives of the Tribal community.

2. The domestic violence advisory team shall be technical and advisory in nature. It shall in no manner undermine the authorities and responsibilities of individual agencies.

3. The domestic violence advisory team shall conduct its activities in accordance with the policies and rules and regulations of the Department.

4. The Department may promulgate rules and regulations for the development and operation of the domestic violence advisory team.

Section 4-8-9. Reporting Domestic Violence.

1. The following persons are mandated to report suspected domestic or family abuse under the circumstances set forth in this Section:

- a. Physicians, hospital interns or residents, surgeons, physician's assistants, religious practitioners, osteopaths, chiropractors, and podiatrists;
- b. Registered nurses, licensed practical nurses, nurse practitioners, nurse's aides, and midwives;
- c. Dentists, dental assistants, and hygienists;
- d. Coroners;
- e. Psychiatrists and other mental health professionals or counselors;
- f. Social workers and substance abuse counselors;
- g. Teachers, school counselors or other school personnel;
- h. Law enforcement officers;
- i. Licensed or registered child care providers and residential care, nursing home, and institutional personnel; and
- j. In the case of exploitation, banks, depository institutions, and credit unions.

2. Any person who is mandated to report under this Section whose observation or examination of any person discloses evidence that domestic or family abuse is occurring, or is about to occur and he or she believes the victim is in imminent risk of harm shall immediately report or cause reports to be made of such information to the Tribal Attorney, the Department, law enforcement officials, or such other agency of the Tribe with jurisdiction over domestic and family abuse.

3. Any other person who has knowledge of or observes a person whom he or she reasonably suspects has been a victim of domestic or family abuse may report such suspected instances of domestic or family abuse in the manner provided in this Section. Persons reporting under this subsection, except those mandated to report under subsection 1 of this Section, may remain anonymous.

4. A report under this Section shall be made by telephone or in person, and may be followed by a written report. The report shall include:

- a. The name, address and tribal affiliation, if any, of the victim;
- b. The nature and extent of the domestic or family abuse;
- c. Previous domestic or family abuse involving the individuals, if known;
- d. The name, address and tribal affiliation, if any, of the person alleged to be responsible for the domestic or family abuse, if known;
- e. The name and address of the person or agency making the report, unless anonymous as permitted in this Section; and
- f. Any other information that such person believes might be helpful.

5. Any person making a report pursuant to this Section may take or cause to be taken photographs or x-rays of the victim and the vicinity involved and such photographs or x-rays may be introduced into evidence at a hearing.

6. The reporting duties under this Section are individual, and no supervisor or administrator may impede or inhibit such reporting duties and no person making such report shall be subject to any sanction for making such report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established, provided that they are not inconsistent with the provisions of this Section.

7. Any person making a report or providing information pursuant to this Section or an investigation conducted by the Department, other law enforcement officials, or an agency of the Tribe with jurisdiction over domestic and family abuse, including the submission of copies of medical examination, treatment, or hospitalization records, pursuant to this Section shall be immune from any civil or criminal liability by reason of such action unless such person acted with malice and without reasonable cause. The provisions of this subsection shall not extend to any person alleged to have committed an act or acts of domestic or family abuse or child abuse or neglect which is the subject of the report or investigation.

8. Any person mandated to report a case of known or suspected domestic or family abuse under this Section who knowingly fails to do so or willfully prevents someone else from doing so shall be subject to a civil fine not to exceed five hundred dollars (\$500).

9. Any person who refuses to provide any information which is required to be furnished under this Section shall be subject to civil fines not to exceed five hundred dollars (\$500) per day for each day that such information is not furnished after it is first requested.

10. Any person who makes a report of suspected domestic or family abuse with malice or knowing it to be false shall be subject to a civil fine not to exceed five hundred dollars (\$500).

11. The Department of Social Services and the Health Services Department may refer any case involving domestic or family abuse to the Department without making a report under this Section and such referral shall be deemed compliance with this Section.

Section 4-8-10. Central Registry.

1. The Department shall maintain a central registry of reports, investigations, and evaluations made under this Chapter.

2. The registry shall contain the information furnished by all persons. Data shall be kept in the central registry until the family or household member or caretaker who committed the alleged act of domestic or family abuse has passed away or, in the case of an institution or agency, ceases services as a caretaker.

3. Except as otherwise provided in this Chapter, data and information in the central registry shall be confidential and shall be made available only with the approval of the Director of the Department to the Court, other social service agencies, public health and law enforcement agencies, licensed health practitioners, and health and educational institutions licensed or regulated by the Tribe. A request for the release of information must be submitted in writing, and such request and its approval shall be made a part of the child's file.

4. Notwithstanding anything to the contrary in this Chapter and excepting social security numbers or other data or information the Department deems necessary to keep confidential to protect victims of domestic or family abuse, data and information in the central registry involving a civil or criminal complaint that was filed with a court in any jurisdiction shall be available to the public on written request to the Department, including:

a. The names of persons and entities against whom the civil or criminal complaint was filed;

b. The dates of the conduct set forth in the complaint;

c. The general nature of the complaint;

d. The disposition of the complaint; and

e. Any orders issued in the civil or criminal proceeding.

5. Orders contained in the registry which are in effect and have not expired or been vacated, superseded, or otherwise made ineffective shall be made available at all times during

regular office hours of the Tribe to a court, law enforcement agency, or other governmental agency upon request.

6. The Department and its staff and any other person that distributes information in the registry in good faith that is not confidential under this Section is immune from civil liability or criminal penalty based on the release of such information.

7. The Department may enter into agreements with other jurisdictions to share and aggregate data and information in the central registry.

Section 4-8-11. Investigation of Reports.

1. Within thirty (30) days of receiving a report under this Chapter or any other referral, notice, or report of domestic or family abuse, the Department and law enforcement officers shall complete an investigation of the report or refer the report to other appropriate authorities for investigation.

2. Investigating personnel shall have the authority, without the consent of or advanced notice to and out of the presence of any family or household member or caretaker to:

a. Interview an alleged victim of domestic or family abuse;

b. Take photographs of the areas of trauma visible on the victim; and

c. Conduct or have conducted medical and psychological examinations or testing of the victim.

3. Upon completion of an investigation, including a referred investigation, the Department shall make a determination as to whether evidence exists to substantiate the allegation of domestic or family abuse. If the report is substantiated, the information shall be added to the central registry for domestic or family abuse and the Department shall take appropriate action, including pursuing an action under this Chapter and referring the matter to the Department of Social Services, other social services, or law enforcement agencies. If the allegations are not substantiated by the evidence, the Department shall close the case and it will not be recorded into any domestic or family abuse registry. If the Department is unsure whether the allegations are substantiated, it may request

the input of the Tribal Attorney or other appropriate professionals or authorities to attempt to make a determination.

4. The fact that the Department conducts an investigation of alleged domestic or family abuse shall not preclude the Department or any domestic and family abuse advocates or other domestic and family abuse workers employed by the Department from assisting and representing the victim of domestic or family abuse subject of such investigation in accordance with this Chapter and the rules, regulations, and policies of the Department and shall not constitute a conflict of interest.

Section 4-8-12. Protective Services and Placement.

1. An elder or vulnerable adult may be placed under protective services or in a protective placement voluntarily until such time as the elder or vulnerable adult voluntarily withdraws consent to such services or placement when:

a. The elder or vulnerable adult requests the Department of Social Services to provide protective services or protective placement;

b. The Department of Social Services determines the elder or vulnerable adult is in need of such services or placement; and

c. The Department of Social Services determines that it has the resources and capability to provide such services or placement.

2. An elder or vulnerable adult may be placed under protective services or in a protective placement involuntarily on an emergency basis, temporarily, or on a permanent basis through a guardian only if:

a. The elder or vulnerable adult is a victim of domestic or family violence;

b. The circumstances of the domestic or family violence necessitate or require protective services or protective placement;

c. The Tribal Court orders such services or placement in a proceeding under this Chapter; and

d. If such services or placement is to be provided by the Department of Social Services, the Department of Social Services determines that it has the resources and capability to provide such services or placement.

3. If the Court orders an elder or vulnerable adult to be placed under protective services or protective placement, the Court shall set a review hearing every sixty (60) days while such order is in effect until permanent care is made for the elder or vulnerable adult. An elder or vulnerable adult shall be considered under permanent care if:

a. The elder or vulnerable adult is returned to the care of his or her caretaker;

b. A guardian is appointed for the elder or vulnerable adult;

c. The elder or vulnerable adult is placed with a caretaker and is intended to remain with the caretaker; or

d. The elder or vulnerable adult is in another permanent living situation which no longer necessitates the Court's review.

4. In any protective placement of an elder or vulnerable adult, preference shall be given to placement in the following order:

a. An immediate or extended family member of the elder or vulnerable adult;

b. A friend of the elder or vulnerable adult or his or her family;

c. A residential care facility or nursing home licensed or approved by the Tribe;

d. Another residential care facility or nursing home; or

e. A twenty-four (24) hour health facility, such as a hospital.

5. Subject to the preferences in this Section, when any elder or vulnerable adult is placed outside of his or her home or residence or that of his or her family or household member or

caretaker, the elder or vulnerable adult shall be placed in a home:

- a. Which is the least restrictive to the liberty and rights of the elder or vulnerable adult and provides the most independence consistent with his or her welfare and needs;
- b. Which strengthens the elder's or vulnerable adult's capacity for self-maintenance;
- c. If possible, that is a familiar environment;
- d. In which the elder's or vulnerable adult's needs may be met;
- e. That facilitates and encourages visitation; and
- f. That is in close proximity to the home of the elder's or vulnerable adult's family, unless the best interests or special needs of the elder or vulnerable adult require otherwise.

6. When an elder or vulnerable adult is provided protective services, such services shall be those appropriate to ensure that the elder or vulnerable adult is protected from serious injury or death due to suspected or actual domestic or family abuse, that remedies the effects of such domestic or family abuse in accordance with the elder's or vulnerable adult's needs, and seeks to maintain the elder or vulnerable adult in his or her familiar environment by strengthening, to the extent possible, his or her capacity for self-maintenance, including:

- a. Social services case management by case managers and workers, domestic and family violence advocates, and/or other domestic and family violence workers;
- b. The development of an appropriate individualized service plan;
- c. Appropriate referrals, including to legal services and advocates;
- d. Emergency services;
- e. Counseling and psychological services;

f. Temporary shelter, alternative housing, and housing assistance;

g. Respite and other in-home supportive services;

h. Transportation; and

i. Other health-related services.

7. Protective services may be delivered to the family or caretaker of an elder or vulnerable adult in order to protect the elder or vulnerable adult.

8. Where no other suitable guardian or conservator is available, the Department of Social Services may be appointed as public guardian or public conservator of an elder or vulnerable adult who is a victim of domestic or family abuse, temporarily or permanently, provided that the Department of Social Services shall not be appointed unless it determines that it has the resources and capability to serve as such public guardian or public conservator.

Section 4-8-13. Authority of Court. The Court has jurisdiction to issue orders for protection when the petitioner and/or respondent resides or is domiciled in the territory of the Tribe or when the domestic or family abuse occurred within the territory of the Tribe.

Section 4-8-14. Confidentiality of Court Records.

1. The Court record of proceedings under this Chapter shall include transcripts, recordings of hearings, complaints, petitions, motions, memoranda, briefs, reports, findings of the Court, Court orders, and any other reports or papers filed in the action, whether maintained in paper form, electronically, or otherwise.

2. Except where expressly provided otherwise in this Chapter, the Court record of proceedings under this Chapter shall be held confidential and shall not be provided or open to inspection to any but the following:

a. Personnel of the Court;

b. The petitioner and his or her legal counsel;

- c. Legal counsel requesting discovery as permissible under the laws of the Tribe;
- d. The Department;
- e. The Department of Social Services;
- f. The Tribal Attorney;
- g. Another court having jurisdiction over an action involving the parties to the action;
- h. A law enforcement agency of the Tribe or another government; or
- i. Any other person, by order of the Court, having legitimate interest in the particular case or the work of the Court, provided the Court may place appropriate restrictions on such access to ensure the confidentiality of records.

3. The Court shall not release information on the location or whereabouts of a party or a party's child to another person if the Court has reason to believe that the release of the information to that person may result in domestic or family abuse or physical or emotional harm to the party or the party's child.

4. Any person who willfully discloses confidential information protected under this Section other than as expressly authorized in this Section shall be subject to a civil fine not to exceed eight hundred dollars (\$800).

Section 4-8-15. Confidentiality of Hearings. The general public shall be excluded from all hearings under this Chapter and only the following shall be allowed to be present in the hearings:

- 1. The parties and their legal counsel;
- 2. An advocate accompanying a person seeking an order for protection;
- 3. Any person accompanying a person seeking an order for protection if his or her presence is requested by the person seeking the order for protection;

4. Witnesses; and

5. Other persons determined to be appropriate by the Court, in its discretion.

Section 4-8-16. Privileges.

1. Notwithstanding any other provision of law, there shall be no restrictions concerning a spouse testifying against his or her spouse or any privilege of confidentiality between spouses in any proceeding under this Chapter.

2. Notwithstanding any other provision of law, there shall be no restrictions concerning a physician or other health practitioner testifying about his or her patient or any privilege of confidentiality between a physician or other health practitioner in any proceeding under this Chapter.

Section 4-8-17. Advocate-Victim Privilege.

1. Except as otherwise provided in this Section or elsewhere in the laws of the Tribe, confidential oral communications between a victim of domestic or family abuse and an advocate, and written records and reports concerning the victim are privileged. The privilege can be claimed by:

a. The victim; or

b. The person who was the advocate at the time of the communication, unless the victim is deceased or waived the privilege.

2. The privilege provided under this Section does not relieve a person from any duty imposed pursuant to applicable law requiring reporting of child abuse or neglect.

3. No person may claim the privilege provided in this Section when providing evidence in any judicial proceeding involving an alleged abused or neglected child.

Section 4-8-18. Subpoenas and Visitation Warrants.

1. Upon request of the Department or the Department of Social Services and regardless of whether a proceeding has been initiated under this Chapter, the Court may issue subpoenas for the release of medical and financial records in order to

facilitate a pending investigation of reported domestic or family abuse.

2. Upon the request of the Department or the Department of Social Services, the Court may issue a visitation warrant if it is shown:

a. There is reasonable cause to believe an elder or vulnerable adult is a victim of or subject to domestic or family abuse; and

b. The Department or the Department of Social Services has been denied or has not had open access to the elder or vulnerable adult or his or her residence.

3. A visitation warrant shall allow the Department or the Department of Social Services to enter the elder's or vulnerable adult's residence, assess the elder's or vulnerable adult's living conditions, and interview the elder or vulnerable adult without the consent of the family or household member or caretaker. Law enforcement may accompany the Department or the Department of Social Services in executing a visitation warrant and a visitation warrant may request or order such accompaniment by law enforcement. A visitation warrant shall be enforceable the same as any other order of the Court, including through contempt proceedings in accordance with the laws of the Tribe.

Section 4-8-19. Proceedings of a Civil Nature. Proceedings in cases under this Chapter shall be regarded as civil proceedings, with the Court exercising both legal and equitable powers.

Section 4-8-20. Initiation of Proceedings.

1. Proceedings in the Court to obtain an order for protection shall be initiated by the filing of a petition.

2. Petitions may be filed by:

a. A person who is, has been, or ~~claims to be~~reports being a victim of domestic or family abuse;

b. A parent, guardian, custodian, caretaker, or other representative on behalf of a minor, elder, or incapacitated person who is, has been, or ~~claims to be~~reports being a victim of domestic or family abuse;

c. A caretaker of a person who is, has been, or ~~claims to be~~reports being a victim of domestic or family abuse;

d. A next friend of a person who is, has been, or ~~claims to be~~reports being a victim of domestic or family abuse;

e. The Department of Social Services on behalf of an elder or incapacitated person who is, has been, or ~~claims to be~~reports being a victim of domestic or family abuse for the purposes of obtaining protective services or protective placement for such elder or incapacitated person; or

f. An advocate or the Department on behalf of a person who is, has been, or ~~claims to be~~reports being a victim of domestic or family abuse.

3. Petitions for an order for protection shall be captioned: "(name(s) of petitioner(s)), Petitioner(s) vs. (name(s) of respondent(s)), Respondent(s)".

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The name, tribal affiliation and, except as provided herein, address of the petitioner;

b. The name, last known address, employer, employer address, and tribal affiliation of the respondent or the reasons that such information is unavailable;

c. If the petition is filed on behalf of another, the relationship of the petitioner to the victim of domestic or family abuse;

d. The name, tribal affiliation, date of birth, and relationship to the petitioner and respondent of each child of each party;

e. The basis for the Court's jurisdiction;

f. A description of the relationship between the parties;

g. A statement listing each civil or criminal action involving both parties;

h. Information regarding the use, possession, and ownership of firearms by the respondent which shall include a description and location, if known by the petitioner, of each firearm owned and/or possessed by the respondent;

i. A statement, including dates, location, names of persons involved, and specific details of the domestic or family abuse alleged, ~~including a copy of any police reports~~;

j. The basis for the petitioner requesting an order for protection; and

k. A request that the Court enter an order for protection in favor of the petitioner.

5. In addition to the information required herein, a petition under this Section may also include such supporting documents the petitioner desires to include, such as letters, notes, text messages, and police reports.

56. The family or household member or caretaker who committed the alleged act of domestic or family abuse shall be included as the named respondent.

67. Two or more petitioners, including the Department and the Department of Social Services, may join in the filing of the same petition involving the same person who is, has been, or ~~claims to be~~ reports being a victim of domestic or family abuse.

78. The Court shall not charge any filing fee for the filing of a pleading under this Chapter.

89. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 4-8-21. Emergency Protection Order.

1. The Court may issue ~~a written or oral~~ an emergency order for protection ex parte without a hearing if it appears from the face of a verified petition and any supporting affidavits or sworn oral testimony communicated by telephone or other appropriate means ~~that:~~

~~_____a.~~ that:

a. The respondent has been arrested for an act of domestic or family abuse which is the subject of the petition;

b. A person's life or health is in imminent danger before the matter can be heard on notice;

bc. A person is in immediate danger of domestic or family abuse before the matter can be heard on notice;

ed. The respondent has committed an act of domestic or family abuse within the past year or within a longer period of time if the Court finds that good cause exists to consider a longer period, provided that any time the respondent has been incarcerated or ~~out of~~ residing more than one hundred (100) miles away from the territory of the Tribepetitioner shall not be ~~considered; or~~

~~_____d~~ counted in determining the amount of time since the respondent committed an act of domestic or family abuse; or

e. In the case of an elder or vulnerable adult, the person:

i. Is at risk of imminent physical or emotional harm or exploitation before the matter can be heard on notice;

ii. Is incapacitated and cannot consent to protective services or protective placement; and

iii. Has no one known to the petitioner who is authorized by law or court order to give consent on an emergency basis.

2. If the Court issues an order for protection ex parte without a hearing, the Court shall:

a. Issue a summons to the respondent in accordance with this Title;

b. Issue an order to the respondent to show cause why the emergency order for protection should not remain in effect which states in bold-faced type or capital letters

that the emergency order for protection shall automatically become a final order for protection without a hearing unless the respondent requests a hearing within five (5) business days after service of the order to show cause and emergency order for protection; and

c. Cause the petition, the emergency order for protection, the order to show cause, and summons to be served on the respondent in a manner other than by publication.

3. If the respondent requests a hearing within five (5) business days after service of the order to show cause and emergency order for protection on the respondent, the Court shall set a date for a hearing on the petition:

a. Within fifteen (15) days after ~~filing of the request for a hearing if~~ the ~~petition if~~ emergency order for protection:

i. ~~The order a~~wards temporary custody of a minor child to the petitioner;

ii. Excludes the respondent from the residence of the petitioner; or

iii. Awards possession and use of an automobile to the petitioner; or

b. Within thirty (30) days after ~~filing of the petition~~request for a hearing in all other cases.

~~3. Subject to expiration of the order as provided in this Section, an~~4. If the respondent does not request a hearing within five (5) business days after service of the order to show cause and emergency order for protection on the respondent, the Court shall:

a. Enter a default against the respondent in accordance with the Tribal Rules of Civil Procedure; and

b. Enter a final protection order in accordance with this Chapter, provided that the terms of the final protection order shall be identical to the terms of the emergency order for protection except with respect to duration.

5. If the petitioner or the Court desires to include any matters in a final order for protection that were not included in an emergency order for protection issued ex parte without a hearing, the Court shall schedule and conduct a hearing on the petition in accordance with this Chapter.

6. An emergency order for protection issued ex parte without a hearing may not be dismissed without a hearing.

~~4. Unless earlier vacated by the Court after hearing, an emergency order for protection issued ex parte without a hearing shall, unless both parties agree to its extension, expire at the earlier of:~~

~~a. The expiration provided in the order;~~

~~b. The issuance or denial of an order for protection after hearing on the petition; or~~

~~c. Thirty (30) days from the entry of the order, unless the hearing is continued by the Court for good cause shown beyond the thirty (30) days.~~

Section 4-8-22. Hearing on Petition.

1. Except in the case of an emergency order for protection which has been converted to a final order for protection in accordance with this Chapter, upon the filing of a petition under this Chapter, the Court shall schedule and conduct a hearing on the petition as expeditiously as possible, but no later than thirty (30) days from the date the petition was filed.

2. The primary purpose of a hearing on the petition is to determine whether an order for protection should be issued.

3. The Court shall consider any and all relevant testimony or evidence presented at hearing.

4. The Court may issue an order for protection if it finds by a preponderance of the evidence that domestic or family abuse has occurred or is likely to occur between the parties to the proceeding.

5. The Court may find that domestic or family abuse occurred regardless of whether the person alleged to have

committed domestic or family abuse has been arrested, charged, or convicted.

6. The following shall not be considered a defense or otherwise prevent the issuance or enforcement of an order for protection:

- a. Intoxication;
- b. Substance abuse;
- c. Spousal immunity; or
- d. Provocation.

Section 4-8-23. Protection Order.

1. In addition to any other matters necessary for an order of the Court, an order for protection, including an emergency order, shall:

a. State the appearances of all parties and failures to appear;

b. Describe any prior orders of the Court relating to the parties which are superseded or altered by the order for protection, including custody decrees and visitation orders;

c. Include the following statements in bold-faced type or capital letters:

Violation of this order could result in confinement in jail and/or a fine of up to five hundred dollars (\$500) ~~or more~~ for each violation or up to five thousand dollars (\$5,000) for each subsequent violation.

If this order requires the respondent to leave the petitioner's residence or prohibits the respondent from entering or staying at the petitioner's residence, the respondent shall leave and not enter or stay at petitioner's residence even if invited to do so by the petitioner or any other person. Such invitation does not void this order for protection.

2. An order for protection, including an emergency order, may include any of the following relief:

a. Enjoining the respondent from threatening to commit or committing acts of domestic or family abuse against the petitioner and any designated family or household member;

b. Prohibiting the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;

c. Removal and exclusion of the respondent from the residence of the petitioner, regardless of ownership of the residence;

d. Ordering the respondent to stay away from the residence of, school of, place of employment of, or any specified place frequented by the petitioner and any designated family or household member;

e. Prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court;

f. Ordering the respondent to surrender any dangerous weapon in his or her possession to ~~the Court or~~ law enforcement;

g. Ordering possession and use of an automobile and other essential personal effects, regardless of the ownership of the essential personal effects, and direct 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;

h. Restraining one or both parties during the pendency of the action from transferring, encumbering, concealing, or disposing of property except as authorized by the Court and requiring that an accounting shall be made to the Court for all such transfers, encumbrances, dispositions, and expenditures;

i. Granting temporary custody of a minor child to the petitioner;

j. In the case of an elder or vulnerable adult:

i. Removal of the elder or vulnerable adult from the place where domestic or family abuse has taken or is taking place, including the elder's or vulnerable adult's home or residence;

ii. Making the elder or vulnerable adult a ward of the Court and ordering temporary guardianship or conservatorship of the elder or vulnerable adult until the matter can be addressed through a guardianship or conservatorship proceeding;

iii. Ordering the commencement of a guardianship or conservatorship proceeding pursuant to Title III of the Code for the elder or vulnerable adult;

iv. Placing the elder or vulnerable adult under protective supervision where the elder or vulnerable adult is permitted to remain in the home where the Department of Social Services or other designated agent provides supervision and assistance to correct the domestic or family abuse, provided that the Department of Social Services shall only be ordered to provide supervision if the Department of Social Services determines that it has the resources and capability to do so;

v. Ordering protective services or protective placement for the elder or vulnerable adult in accordance with this Chapter; and

vi. Requiring the respondent or a caretaker or other appropriate person who is not a respondent to account for the elder or vulnerable adult's funds, assets, and/or property;

k. If the order is issued after notice and a hearing:

i. Specifying arrangements for visitation of any minor child by the respondent and require supervision of that visitation by a third party or

deny visitation if necessary to protect the safety of the petitioner or child;

ii. Ordering the removal of a guardian or conservator who is the respondent;

iii. When there is a reasonable suspicion of drug and/or alcohol use, ordering the respondent to submit to alcohol and drug testing and attend and successfully complete alcohol and drug evaluation, education, and/or treatment;

iv. Ordering the respondent to attend and successfully complete appropriate counseling services;

v. Ordering the respondent to pay the petitioner's legal counsel's fees;

vi. Ordering the respondent to pay rent or make payment on a mortgage on the petitioner's residence and pay for the support of the petitioner and minor child if the respondent is found to have a duty to support the petitioner or minor child;

vii. Ordering the respondent to reimburse the petitioner or other person for any expenses associated with the domestic or family abuse, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property;

viii. Requiring the respondent to pay restitution as compensatory damages to the victim of domestic or family abuse for any injuries or damages resulting from the respondent's acts;

ix. Ordering the respondent to pay the costs and fees incurred by the petitioner in bringing the action; ~~and~~

l. Ordering 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; and

m. Ordering any other matters the Court deems necessary or appropriate.

3. No order issued under this Chapter shall in any manner affect title to any real property.

4. The Court shall not grant a mutual order for protection to opposing parties.

5. Unless the order provides otherwise a lesser time, an order for protection issued upon notice and hearing is effective until further order of the Court for one year from the date of entry and no longer, provided that the petitioner may file a motion to renew a protection order on or after thirty (30) days before the expiration of the previous protection order.

6. The issuance of an order of protection under this Chapter or any relief authorized under this Chapter shall not preclude any other relief provided by the laws of the Tribe.

7. If a respondent is not served with an order for protection issued by the Court within sixty (60) days after the order for protection is issued, the Court, after notice to the petitioner, shall vacate the order and dismiss the action without prejudice against the respondent or order that service be made within a specified time. But, if the petitioner shows good cause for the failure, the Court shall extend the time for service for an appropriate period.

8. An order for protection is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 4-8-24. Restitution.

1. When the Court orders restitution in an order for protection, such order shall direct the respondent to pay the victim the full amount of the victim's losses, including:

a. Medical services relating to physical, psychiatric, or psychological care;

b. Physical and occupational therapy or rehabilitation;

c. Necessary transportation, temporary housing, and child care expenses;

d. Lost income;

e. Legal counsel's fees plus any costs incurred in obtaining an order for protection;

f. Any funds, assets, or property lost as a result of exploitation of the victim; and

g. Any other losses suffered by the victim as a result of domestic or family abuse.

2. In the event the Tribe has provided any services to a victim subject to restitution under this Section, the order of restitution shall provide that the respondent pay such amount to the Tribe regardless of whether the Tribe is or becomes a party to the proceeding. The Department shall be permitted to submit any documentation of costs to the Tribe on behalf of the victim resulting from the respondent's acts for purposes of restitution and the Court shall accept such documentation in calculating the amount of restitution due the Tribe without requiring the Tribe to become a party to the proceedings. The Tribe shall be permitted to intervene in any proceeding under this Chapter for the purposes of seeking such restitution.

23. An order for restitution shall be enforceable in the same manner as a judgment in a civil action and may be enforced by the victim named in the order even if the victim is not the petitioner.

Section 4-8-25. Delivery of Order.

1. Upon issuance of an order for protection, including an emergency order, the Court shall:

a. Transmit, by the end of the next business day after the order is issued, a copy of the order for protection to any and all appropriate law enforcement agencies or agencies designated by the petitioner; ~~and~~

b. Transmit, within twenty-four (24) hours, a copy of the order to the Department for inclusion in the central registry established under this Chapter; and

c. To the extent possible, transmit a copy of the order to the state registry for such orders.

2. The Court or any party in a proceeding under this Chapter may deliver an order for protection granted pursuant to

this Chapter to any appropriate law enforcement agency at any time while the order is effective.

3. Each law enforcement agency which receives an order for protection issued by the Court under this Chapter shall have the authority to make such order and its contents available to other law enforcement officers for enforcement of such order.

4. If the Court vacates, dismisses, or modifies an order for protection, including an emergency order, the Court shall transmit the order vacating, dismissing, or modifying the order for protection to the same agencies and registries to which it transmitted the original order for protection in accordance with this Section.

Section 4-8-26. Effect of Action by Parties. 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 act contrary to the exclusion or order does not waive or nullify an order for protection.

Section 4-8-27. Court-Ordered Mediation Prohibited. The Court shall not order parties to a proceeding under this Chapter into mediation or traditional dispute resolution or refer them to mediation or traditional dispute resolution for resolution of the issues in a petition for an order for protection.

Section 4-8-28. Rights of Victims. A person's right to seek an order for protection under this Chapter shall not be affected by:

1. The departure of that person from the residence or household to avoid domestic or family abuse;

2. The person's use of reasonable force in self-defense against the perpetrator of domestic or family abuse;

3. Evidence that the person previously filed a petition under this Chapter and subsequently reconciled with the perpetrator of domestic or family abuse;

4. Solely a lapse of time between an act of domestic or family abuse and the filing of a petition under this Chapter;

5. Evidence that a married victim did not file an action for divorce, legal separation, and/or invalidity of marriage; or

6. Evidence that the victim left the territory of the Tribe.

Section 4-8-29. Effect of Other Proceedings.

1. At any hearing in a proceeding under this Chapter, each party has a continuing duty to inform the Court of any civil or criminal action involving both parties filed within the previous five (5) years that was not listed in the petition.

2. An order for protection is in addition to and not in lieu of any other available civil or criminal proceedings.

3. A petitioner is not barred from seeking an order pursuant to this Chapter because of other pending proceedings.

4. Except as expressly provided in the laws of the Tribe, the Court shall not dismiss a proceeding under this Chapter or delay granting relief in such proceeding because of the existence of a pending action between the parties unless agreed to by all parties to the proceeding, including the victim.

Section 4-8-30. Modification of Order.

1. Any party to an order for protection issued under this Chapter or, if different, the petitioner in the proceeding in which such order was issued may, by motion in the same action in which the order for protection was issued, request the Court to modify or vacate the order in accordance with this Section, including extending such order.

2. A motion made under this Section shall identify the person making the motion and shall set forth in clear and concise terms the reasons for modifying or vacating the order for protection.

3. The Court shall hold a hearing on all motions filed under this Section upon notice given to the parties to the original proceeding.

4. The Court may modify or vacate an order for protection pursuant to a motion made under this Section if the movant proves by a preponderance of the evidence that there are grounds for such modification or vacating.

5. If there has been no violation of the existing order for protection prior to the motion to modify or vacate, the

Court shall take this fact as evidence of the effectiveness of the order for protection in assuring the safety of the petitioner. The Court shall 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.

Section 4-8-31. Violation of Order.

1. Any person who knowingly, willfully, or purposely violates an order for protection or visitation warrant issued under this Chapter shall be subject to a civil fine not to exceed five hundred dollars (\$500) for each such violation, provided that any subsequent violation of an order for protection or visitation warrant by the same person within one (1) year shall result in a civil fine not to exceed five thousand dollars (\$5,000) for each such violation.

2. In addition to the civil fines provided herein, the Court may enforce an order for protection or visitation warrant issued under this Chapter using any and all other enforcement remedies available to enforce an order of the Court.

Section 4-8-32. Foreign Protection Orders.

1. Any person may request the Court to recognize and enforce a valid order for protection made by the court of another federally recognized Indian tribe or state by filing a certified copy of such order with the Court.

2. The Court shall act upon a valid order filed in accordance with this Section in the same manner as the Court acts upon an order for protection issued by the Court itself.

3. A valid order for protection filed in accordance with this Section has the same effect and must be enforced in the same manner as an order for protection issued by the Court.

4. An order for protection filed in accordance with this Section is valid if:

a. The court which issued the order has or had jurisdiction over the parties and the subject matter under the laws of the issuing tribe or state; and

b. The person against whom the order was issued had reasonable notice and an opportunity to be heard, provided that an order issued ex parte without a hearing is valid if

notice and opportunity to be heard is provided within the time required by the laws of the issuing tribe or state and within a reasonable time after the order was issued.

5. An order for protection issued by another jurisdiction against one who has petitioned for an order for protection shall not be recognized or enforced by the Court if:

a. No cross or counter petition was filed seeking such an order for protection; or

b. A cross or counter petition was filed and the court did not make specific findings that each party was entitled to such an order.

6. The Court shall not recognize or enforce any provision of an otherwise valid order for protection filed under this Section which purports to determine or provide for ownership or right to possession of any property belonging to the Tribe or any of its members, including provisions excluding an individual from the residence of the parties, provided that the Court shall issue its own order providing for the right of possession to and excluding any party from such property in accordance with the provisions of this Chapter.

7. The Court shall enforce all provisions of a valid order for protection filed under this Section whether or not such relief is available under this Chapter or otherwise within the territory of the Tribe.

8. The Court shall not notify or require notification of the party against whom an order for protection has been issued that the order for protection has been filed or recognized and enforced under this Section unless requested to do so by the party protected under such order.

9. The Court shall not make available publicly ~~on the Internet~~ any information regarding the recognition and enforcement, filing of a petition for, or issuance of an order for protection under this Section if such publication would be likely to publicly reveal the identity or location of the party protected under such order, provided that the Court may share information contained in secure, governmental registries for purposes of enforcing the order for protection.

10. Any order for protection that is otherwise consistent with this Section shall be enforced the same as an order of the

Court issued under this Chapter regardless of whether such order is filed in accordance with this Section.

11. Any order for protection issued by a court of another jurisdiction that is not a federally recognized Indian tribe or state may be recognized and enforced in accordance with the laws of the Tribe governing the recognition and enforcement of foreign orders generally.

Section 4-8-33. Order for Possession.

1. Any party to a valid order for protection made by the court of another jurisdiction which either purports to determine or provide for ownership or right to possession of any property belonging to the Tribe or any of its members, including provisions excluding an individual from the residence of the parties, or does not make any provision for which party may remain in possession or shall be excluded from the residence of the parties to the order may request an order for possession from the Court by filing a petition for such order in accordance with this Section.

2. A petition filed under this Section shall include:

a. A certified copy of the valid order for protection;

b. Information concerning the residence of the parties and whether such residence is or was shared by the parties at the time the order for protection was made; and

c. Any specific requests with respect to possession or exclusion from the residence of the parties.

3. The Court shall issue an order for possession in the form of an order for protection under the same standards it would apply to a petition for an order for protection under this Chapter, taking into consideration:

a. Whether the parties cohabitated or resided together in the residence or on the property at the time the order for protection was issued; and

b. Any applicable laws, regulations or other authority, including leases, which may restrict which party is permitted to reside in the residence or on the property.

4. The Court shall have the authority to issue an order for possession under this Section ex parte without a hearing as part of a recognition and enforcement of a valid order for protection made by the court of another federally recognized Indian tribe or state pursuant to Section 4-8-23 of this Chapter. If the Court issues an order for possession ex parte without a hearing, the Court shall conduct a hearing on the possession of the residence or property if a party subject to such order files an objection to the order of possession within seven (7) days of receiving notice of such order, provided that such hearing shall be held within seven (7) days of the filing of such objection and the filing of such objection shall not stay or prevent the enforcement of such order for possession pending the hearing.