

TITLE V
CHIPPEWA CREE TRIBAL
DOMESTIC RELATIONS

TITLE 5 – Domestic Relations

Legislative History:

- **Resolution # 63-20**: Approved May 18th, 2020. “the Chippewa Cree Tribal Business Committee has recognized that in order to ensure the Chippewa Cree Tribal Court operates in an effective and efficient manner, it is necessary to amend Title V Domestic Relations, Chapter 6, Child Support Program established within the Chippewa Cree Tribal Law and Order Code.”

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TITLE V. DOMESTIC RELATIONS

Chapter 1. MARRIAGES

1.1 Jurisdiction:

The Tribal Court shall have jurisdiction over marriage of members of the Chippewa-Cree Tribe, and of other persons, including Non-Indians, who consent to the Court's jurisdiction. Judges of the Tribal Court are authorized to perform marriage ceremonies.

1.2 Valid Marriage

The following are valid marriages under this Code:

- 1) A marriage for which a license has been issued by the Tribal Court and which has been solemnized by a Tribal Judge, or by recognized clergyman, or by a Tribal Elder; and
- 2) A common law marriage. A common law marriage exists when two persons who are capable of forming a marriage have agreed to be married, have openly cohabitated, have held themselves out as married to the community, and are considered to be married by the community.

1.3 License.

The Clerk of Court, if there is no showing that the proposed marriage is prohibited, shall issue a marriage license upon payment of the license fee and upon the filing of:

- 1) The written application of the parties if they are over eighteen (18) years of age, or of the parties and the parent(s) or legal guardian of any party under eighteen (18) years of age; and
- 2) A certificate of a physician that the Medical Examination required by Section 1.5 of this Title has been preformed.

1.4 Application for License.

The Business Committee of the Chippewa-Cree Tribe shall prescribe the form for an application for a marriage license, which shall include the following information:

- 1) Name, Sex, Address, date and place of birth of each party to proposed marriage;
- 2) If either party was previously married, his 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;
- 3) Name and Address of the parents or guardian of each party;

- 4) Whether the parties are related to each other and, if so, their relationship;
- 5) Whether or not either party is an enrolled member of the Chippewa-Cree Tribe; and
- 6) The name and date of birth of any children of whom both parties are parents born prior to the making of the application unless their parental rights have been terminated.

1.5 Medical Examination.

No marriage license may be issued unless the parties submit a certification of a physician stating that within two months of the application for marriage license:

- 1) Each party has been examined by the physician; and
- 2) The physician has explained to the parties in the presence of both so much of the results of the examinations as is likely to affect their mutual life or their children.

1.6 Prohibited Marriages.

- 1) The following marriages are prohibited;
 - (a) A marriage entered into while one of the parties is married to another person.
 - (b) A marriage between an ancestor and a descendant or between a brother and a sister or between first cousins;
 - (c) A marriage between an uncle and a niece or between an aunt and a nephew.
 - (d) Any other marriages prohibited by Tribal custom and tradition.
- 2) Children born of a prohibited marriage are;
 - (a) Legitimate; and
 - (b) Tribal members of otherwise qualified.

Chapter 2 ANNULMENT

2.1 Grounds for Annulment.

The Tribal Court shall have jurisdiction to hear and determine matters of annulment upon the application of one of the parties:

- 1) When either party to the marriage was incapable of consenting to the marriage, because of age;
- 2) When consent was obtained by force, fraud, or duress;
- 3) When the party making application was of unsound mind at the time of Marriage;
- 4) When either party was at the time of the marriage incapable of consummating the marriage and the incapacity is continuing;
- 5) When the marriage is prohibited.

2.2 Waiver of Grounds for Annulment:

Except for a prohibited marriage, if, after the disclosure or termination of any of the above defects, the parties continue to live together as husband and wife for a period of six (6) months, the marriage shall not later be subject to annulment because of the defect.

2.3 Procedure:

Procedures for annulment must be instituted by the party under the disability or upon whom the force, fraud, or duress was imposed.

Chapter 3 DIVORCE OR SEPERATION

3.1 Grounds for Divorce.

A marriage shall be dissolved by divorce or legal separation in the Tribal Court, upon petition by one or both of the parties to the marriage, if:

- 1) At the time the action is filed, at least one (1) of the parties has lived within or has been domiciled within the Court's jurisdiction for the preceding ninety (90) days, or has significant connections with the Chippewa-Cree Tribe;
- 2) The Court finds that the marriage is irretrievably broken;
- 3) To the extent that it has jurisdiction to do so, the court has provided for child custody, child support, support of either spouse, or a deposition of property. The Court may provide a separate, later hearing to complete these matters.

3.2 Complaint.

The complaint shall state the marriage is irretrievably broken, and shall set forth:

- 1) The age, occupation and residence of each party and the length of residence there;
- 2) The date of the marriage and the place at which it was registered;
- 3) That the jurisdictional requirements are met;
- 4) The names, ages and addresses of all living children of the marriage and whether the wife is pregnant;
- 5) Any proposed arrangements as to support, custody and visitation of the children and maintenance of either spouse;
- 6) Whether divorce or legal separation is sought.

3.3 Service and Response:

If one party files the petition, the other party must be served in the manner prescribed in the Civil Procedure Title of this code, and may, within fourteen (14) days after the date of service, file a verified response. No decree may be entered until twenty (20) days after the date of service.

3.4 Irretrievable Breakdown:

- 1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievable broken or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievable broken.
- 2) 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:

- (a) Make a finding whether the marriage is irretrievably broken; or
 - (b) Continue the matter for further hearing not more than sixty (60) days later and may suggest to the parties that they seek counseling.
- 3) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

3.5 Temporary Orders.

During the proceedings for divorce or legal separation, the Tribal Court may make temporary orders:

- 1) Requiring the husband or wife to provide for the separate maintenance of his or her spouse and children as the Court may deem just;
- 2) Providing for the care, custody and maintenance of the minor children of the marriage;
- 3) Ordering the restraint of either spouse from in any manner threatening or interfering with the other spouse or with the minor children.

3.6 Judgments.

In addition to the dissolution of marriage by decree, the Tribal Court shall have the power to impose judgment as follows:

- 1) For future custody and care of the minor children of the marriage as may be in the best interest of the children;
- 2) For payment of an amount of money for either party to contribute toward the education and support of the children;
- 3) For payment of an amount of money or personal property for their personal party to contribute to the maintenance of the other;
- 4) For the recovery of and delivery to each of the parties any of their personal property in the possession or control of the other;
- 5) For the whatever equitable distribution of marital property the Court deems just and proper based on consideration of age of the parties, health, education and skills, financial circumstances of each, and the duration of the marriage;
- 6) For the restoration of the maiden name of the wife.

3.7 Separation Agreement.

The parties in an action for legal separation or divorce may enter into a separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody and visitation of their children. The terms of the separation agreement, except those providing the support, custody and visitation of the children, are binding on the Court, unless finds the agreement to be unconscionable.

3.8 Best Interest of the Child.

The Court shall have jurisdiction to determine child custody if the child is domiciled or resides within the Court's jurisdiction or if it is in the best interest of the child that the Tribal Court assume jurisdiction. The Court shall determine child custody in accordance with the best interest of the child.

3.9 Decree.

A decree of dissolution of marriage or of legal separation is final when entered, subject to the right appeal. The Clerk of Court shall give notice of the entry of a decree of dissolution or legal separation, to the clerk of court in the place where marriage was registered and to a party to the marriage who did not appear in the proceedings.

3.10 Modification and Termination of Provisions for Maintenance, Support, and Property Disposition:

- 1) A decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to the motion for modification.
- 2) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under section (I) may only be made:
 - (a) Upon a showing of changed circumstances so substantial and Continuing as to make the terms unconscionable; or
 - (b) Upon written consent of the parties.
- 3) The provisions as to property disposition may not be revoked or modified by the court, except:
 - (a) Upon written consent of the parties.
 - (b) If the Court finds the existence of conditions that justify the reopening of the judgment under the laws of the Tribe.
- 4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.
- 5) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or committed to a lump- sum payment, to the extent just and appropriate in the circumstances.

3.11 Payment of Maintenance or Support to Court:

- 1) Upon its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the Clerk of the Tribal Court as trustee for remittance to the person entitled to receive the payments.
- 2) The clerk of the Tribal Court 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.

Chapter 4 ADOPTION

4.1 Who May Be Adopted.

Any minor, a person under eighteen (18) years of age, may be adopted if:

The minor has no living parent, or;

The parental rights of the living parents of the minor have been terminated,

The living parents consent to the adoption. A adult may be adopted, with his or her written consent.

4.2 Consent to Adoption.

Written consent to an adoption is required of:

Any living parent of the child, except for those parents whose parental rights have been terminated, and

The legal guardian or custodian of the child, of there is any, and;

The court, if neither the parents, guardians or custodians are empowered to consent, and;

The child, if he or she is over twelve (12) years of age.

4.3 Petition for Adoption.

A petition for adoption shall be filed by the prospective adoptive parent and shall state: The full name, age and place of residence of the petitioner, and if a married Couple, the place and date of the marriage;

The date and place of birth of the child, if known;

The name now used for the child and, if a change in name is desired, the new name;

That it is the desire of petitioner that the relationship of parent and child been established between petitioner and child;

Facts, if any, which excuse consent on the part of a parent for adoption.

The written consent required may filed with the petition or, with the Court's consent, after the filing of the petition.

4.4 Investigation.

After the filing of a petition for adoption, the Court shall order an investigation to be conducted by the Department of Social Services. The report of the investigation shall be filed with the Court within thirty (30) days of the order for investigation, and shall state:

Whether the child is legally free for adoption;

Whether the proposed name is a suitable one for the child;

That medical and social histories have been provided to the adoptive parents;

Any other circumstances and conditions of which the Court should have knowledge;

A recommendation for or against the proposed adoption.

4.5 Hearing:

All parties who must give consent to the adoption must be given notice of the adoption hearing, according to the Rules of Civil Procedure in this Code. All adoption hearings shall be private and closed to the public. The Court shall conduct the hearing to determine if the

adoption is in the best interest of the person to be adopted.

4.6 Decree:

If the person to be adopted is a member of the extended family of the petitioner, or if the Court finds that the best interest of the person to be adopted will be served, the Court may grant a final decree of adoption.

In all other cases, the Court, if it finds that the adoption is in the best interest of the person to be adopted, may issue a temporary decree of adoption. After a temporary decree has been granted, the Department of Social Services shall observe the adoptive home and report in writing to the Court within six (6) months on any circumstances or conditions which may have a bearing on the adoption. After six (6) months from the date of the temporary decree, the petitioner may apply to the Court for a final decree of adoption. After a hearing on the application, the Court may enter a final decree of adoption if it is satisfied that the adoption is in the best interest of the child. If the adoption is denied, the Court shall issue an order as to the future custody of the child.

4.7 Withdrawal of Consent:

Consent to an adoption may be withdrawn at any time before the entry of the final decree.

CHAPTER 5 GUARDIANSHIP

5.1 Persons for Whom Guardian May be Appointed:

The Court may appoint, upon motion or on its own, a guardian for the care of the person or property of a minor or incapacitated person who shall be known as the ward.

5.2 Investigation:

The Court shall require a report from the Social Services Department on the suitability of the parties involved to be guardian and ward.

5.3 Notice:

Notice of the time and place of hearing of a petition for the appointment of a guardian is to be given to: the minor or incapacitated person, if he is fourteen (14) or more years of age, and to the minor's parents or custodian or to the incapacitated person's nearest living relative or caretaker.

5.4 Hearing:

At the hearing, if the Court finds that a qualified person seeks appointment, notice has been given, and the welfare and best interest of the minor or incapacitated person will be served by the requested appointment, it shall make the appointment. In other cases, the Court may dismiss the proceedings or make any other order that will serve the best interest of the minor or incapacitated person.

5.5 Powers and Duties of Guardians:

The powers and duties of the guardian shall be those stated in the order of appointment. The Court may grant the guardian the powers and responsibilities of the parent of a minor child; the custody of the ward; the power to oversee the minor or incapacitated person's property, except that no property may be disposed of without the Court's approval; or any

limited powers that the Court feels are in the ward’s best interest (such as power consent to marriage or power to approve expenditures).

5.6 Reporting to the Court:

Any guardian appointed under this Section shall advise the Court at least once per year, or more often at the Court’s request, of the actions of the guardian on behalf of the ward or his property. The guardian shall also advise the Court of his actions on behalf of the ward at the time the guardianship is terminated.

5.7 Termination of Guardianship.

Termination of the guardianship shall occur:

- 1) When the minor ward becomes eighteen (18) or;
- 2) Upon application by the guardian, if granted by the court, or;
- 3) Upon the death of the guardian or ward, or;
- 4) Upon a determination by the Court that the ward is no longer incapacitated.

Chapter 6 CHILD SUPPORT

CHILD SUPPORT PROGRAM

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Part I. General Provisions

5-6-101. Introduction

The young people of the Chippewa-Cree Tribe are the Tribe’s most important resources and their welfare is of paramount importance to the Tribe. The Chippewa Cree Tribal Judicial system is designed to preserve the unity and welfare of the family, the integrity of the family and safeguard family relationships whenever possible and to secure the rights of children, parents, guardians, and custodians, or other parties who come before the family court under the provisions of this Code.

5-6-102. Jurisdiction and Residency

- 1) Personal and Subject Matter Jurisdiction are determined by Title 1 of the CCT Law and Order Code.
- 2) To file a case with the CSP, an individual must have physically resided on the reservation for three months, or be considered domiciled on the reservation even if temporarily living elsewhere.

Part II: Paternity

5-6-201. Purpose – Paternity

The purpose of this article is to ensure that the father of each Chippewa Cree child or child residing on the Rocky Boy's Indian Reservation, up to and including at least 18 years of age, is identified and paternity established in order to protect the best interest of all children regarding such matters as enrollment, customs and traditions of the Tribe, survivorship and inheritance, health, support, and Social Security benefits. Establishment of paternity shall be a function of the Child Support Program.

5-6-202. General Provisions

- 1) Statute of Limitations. No statute of limitations applies to an action to establish paternity.

5-6-203. Definitions – Paternity

- 1) "Alleged father" means any man who might be the biological father of a child.
- 2) "Adult child" means a child 18 years or older.
- 3) "Child" means a person who is less than 18 years old who has not been emancipated by order of a court of competent jurisdiction or by legal marriage.
- 4) "Court" means the Chippewa Cree Tribal Court of the Rocky Boy's Indian Reservation.
- 5) "Genetic testing" means a DNA paternity test or other approved testing used to establish that the alleged father is the child's biological father with a probability of paternity of 99 percent or higher.
- 6) "Party" means the parent, guardian, child, alleged father, Tribe, or Tribal Child Support Program to whom certain rights accrue, including, but not limited to, with certain restrictions and limitations: the right to be notified of proceedings; to retain counsel or, in some cases, to secure Court-approved spokespersons; to appear and present evidence; to call, examine, and cross-examine witnesses; the unlimited or restricted right to discovery and the inspection of records; and the right to request a hearing or appeal a final order.
- 7) "Paternity" means fatherhood.
- 8) "Establishing paternity" means identifying the father of a child and legally determining that he is the father.
- 9) "Presumption" means a fact assumed to be true under law.

5-6-204. Presumption of Paternity

- 1) A man is presumed to be the natural father of a child if:
 - a. He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the

marriage is terminated by death, annulment, declaration of invalidity, divorce, or dissolution, or after a decree of separation is entered by a Court; or

- b. Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born within 300 days after the termination of cohabitation; or
 - c. After the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:
 - d. He has acknowledged his paternity of the child in writing filed with the Montana Office of Vital Records or the Chippewa Cree Tribal Enrollment Office; or
 - e. With his consent, he is named as the child's father on the child's birth certificate; or
 - f. He is obligated to support the child under a written voluntary promise or by Court order.
- 2) A presumption under this section may be rebutted in an appropriate action by a preponderance of evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a Court decree establishing paternity of the child by another man or an order of the Court disestablishing paternity.

5-6-205. Good Cause Not to Establish Paternity

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

- 1) Cases involving domestic violence;
- 2) Cases involving incest or rape; or
- 3) Cases where identification of the father is not in the best interest of the child.
- 4) Adoption

5-6-206. Petition to Determine Paternity.

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

- 1) A petition to determine paternity shall include the following:
 - a. Evidence of a presumption of paternity;
 - b. The child's name, birth place and date of birth;
 - c. The name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;
 - d. The dates of marriage, separation, and divorce, if applicable;
 - e. A statement that the natural mother and alleged father agree or disagree the alleged father is the biological parent;
 - f. A statement whether there are any judicial or administrative paternity, dependency, termination of parental rights, minor in need of care, adoption proceedings, or paternity affidavits concerning the child;
 - g. A request to change the child's name, if applicable;
 - h. The probable time or period of time during which conception took place in accordance with Title V of the CCT Law and Order Code.
 - i. A certified copy of the child's birth certificate and any tribal enrollment documentation shall be attached to the petition.

5-6-207. Determination of Paternity

- 1) Paternity is established in the following ways:
 - a. The alleged father voluntarily acknowledges he is the father of the child or,
 - b. Genetic Testing.
 - c. If a child is born during a marriage, the husband of the child's mother is presumed to be the father. This is a rebuttable presumption.
 - i. If an individual claims paternity, he must complete an affidavit stating he believes he is the father of the child, and request genetic testing to establish paternity.
- 2) If the mother of the child's husband denies paternity of the child, he will have to complete an affidavit stating he is not the biological father and request genetic testing to prove he is not the biological father of the child. All proceedings in this section shall be in accordance with the procedures for civil actions of this Tribal Code and the rules of the court.
- 3) Establishment of paternity under this section has no effect on Tribal enrollment or membership.

5-6-208. Pre-Trial Proceedings or Traditional Circles

- 1) Within 30 days after an action to declare the existence or nonexistence of the father-child relationship has been filed, an informal closed hearing shall be held. On the basis of the information produced at the pre-trial hearing, the Judge

conducting the hearing shall evaluate the probability of determining the existence or non-existence of the father and child relationship in a trial, and may recommend that the parties settle this matter. If the matter cannot be settled, the action shall be set for trial, in accordance with Title V of the CCT Law and Order Code.

- 2) Traditional Circles. The proceedings may be referred to the Traditional Circle if both parties stipulate to this forum. The proceedings will be conducted pursuant to the Traditional Circle Code.

5-6-209. Clinical Test Evidence

- 1) In a contested paternity action a party must request the court to order the mother, child, and the alleged father to submit to an examination according to current scientific methods for the determination of paternity probability. The results of the tests together with the opinions and conclusions of the testing laboratory shall be filed with the CSP. ~~The cost of the test shall be paid by the father should it be found he is the father. If he is not found to be the father, the mother shall pay the cost of the test.~~
- 2) Only persons licensed by the appropriate authorities may collect the specimens necessary, for the purpose of testing to determine parentage. Such person may not be held liable for the damages to the party from whom the blood or tissue is drawn.
- 3) Evidence relating to paternity may include one or more of the following:
 - a. Evidence of sexual intercourse between the mother and the alleged father and possible time of conception;
 - b. An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;
 - c. Laboratory test results, weighted in accordance with evidence, if available of the statistical probability of the alleged father's paternity;

All other evidence relevant to the issue of paternity, according to Title V of the CCT Law and Order Code.

5-6-210. Paternity Established by Other Jurisdictions.

Properly issued court and administrative orders, judgments, or decrees of other tribes, states, or Federal agencies establishing paternity will be given full faith and credit. Such orders will be considered properly issued when the issuing court or administrative agency had personal jurisdiction over the person claimed to be bound by the foreign order, subject matter jurisdiction over the matter, proper service of process under the law of the issuing jurisdiction was made on such person, and the order was issued according to the laws of that jurisdiction and does not violate the public policy of the Chippewa Cree Tribe. Although the Tribe will not establish default paternity judgments, it will recognize foreign paternity judgments entered by default provided that evidence of service of process on the alleged father and any other requirement established by that

state or tribe is met.

5-6-211. Paternity Order.

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

Part III. Child Support

5-6-301. Purpose

The purpose of this section is to determine child support obligations for minors through the Child Support Program (CSP) of the Chippewa Cree Tribe (CCT).

5-6-302. Support – General

- 1) In a proceeding for a determination of child support obligation, the Court shall order either or both parents owing a duty of support to provide reasonable child support in a culturally appropriate manner, without regard to the misconduct of either parent.
- 2) The child support obligation is not limited to monetary payment.
- 3) These proceedings will be handled in accordance with the due process requirements set forth in TITLE II, Civil Procedure, Chapter 2, Commencement of Action and Preliminary Matters of the CCT Law and Order Code.
- 4) Statute of Limitations. The statute of limitations for the enforcement of child support is tolled from the child's birth until the child reaches the age of 18 or 19 if still enrolled in high school. Under extraordinary circumstances, and under the discretion of the Court, a child support obligation may continue for an adult child until the age of 24 for educational or medical expenses. Factors to be considered include income of the parents, aptitude and ability of the adult child and parental expectations.

5-6-303. Definitions – Child Support.

- 1) "Alleged father" means any man who might be the biological father of a child.
- 2) "Child" means a person who is less than 18 years old who has not been emancipated by order of a court of competent jurisdiction or by legal marriage.
- 3) "Child support" means the financial obligation that noncustodial parent owes toward his or her children, whether such obligation is established through a judicial or administrative process or by stipulation of the noncustodial parent. The financial obligation of a noncustodial parent shall be met through the payment of

monies and/or through the provision of other services or resources, as ordered by the Court or as agreed by the parties.

- 4) “Child Support Program” means the Tribes’ program designated by the Chippewa Cree Tribal Business Committee and/or Tribal Sub-Committee to administer and enforce this code.
- 5) “Guidelines” and/or “schedule” means the Tribal Child Support Program’s Child Support Guidelines and Schedule approved by the Chippewa Cree Tribal Business Committee and/or Tribal Sub-Committee. These guidelines may be modified upon approval from the Committee.
- 6) “Court” means the Chippewa Cree Tribal Court of the Rocky Boy’s Indian Reservation.
- 7) “Custodial parent” means the person who holds legal custody of the child or children pursuant to a Court order, or who exercises primary physical custody of the child or children on the basis of an agreement between the parents or by the absence of one parent. A legal guardian with primary physical custody of the child or children and standing in the position of the parent shall have the same rights to child support as a custodial parent.
- 8) “Employer” means all persons or entities who agree to compensate another for services performed.
- 9) “Noncustodial parent” means a parent of a child, whether or not conceived during the course of marriage, who does not hold legal custody of the child pursuant to a Court order, or who does not exercise physical custody of the child on the basis of agreement between the parents or by the absence of one parent.
- 10) “Obligor” means the person with an obligation to pay child support.
- 11) “Obligee” means the person or agency with the right to receive child support.
- 12) “Party” means the parent, guardian, child, Tribe, or Tribal Child Support Program to whom certain rights accrue, including, but not limited to, with certain restrictions and limitations: the right to be notified of proceedings; to retain counsel or, in some cases, to secure Court-approved spokespersons; to appear and present evidence; to call, examine, and cross-examine witnesses; the unlimited or restricted right to discovery and the inspection of records; and the right to request a hearing or appeal a final order.
- 13) “Parenthood” means the position, function, and standing of a parent.
- 14) “TANF” means the Temporary Assistance to Needy Families program, whether administered by the Chippewa Cree Tribe, or another tribe or a state.

5-6-304. Chippewa Cree Tribal Child Support Program.

The Chippewa Cree Tribal Child Support Program is established to carry out the purposes set out in this chapter. The Program shall be operated in compliance with Title IV-D of the Social Security Act (42 U.S.C. 651) for the establishment of paternity, establishment and modification of child support obligations, enforcement of child support obligations, and location of custodial and noncustodial parents.

- 1) Authority. Upon request of the parent, an obligee, an obligor, or a Tribal or State agency with authority to make such a request, the Child Support Program may initiate legal action; join a legal action; or otherwise act to establish parenthood of a child, locate a noncustodial parent, or to establish, modify, or enforce a child support obligation. In such an action, the Child Support Program does not represent the requesting party or any other party to the action, but instead represents the Tribe's interest in determining parentage and securing financial and medical support for the children involved.
 - a. Upon the request of the Child Support Program, the Chippewa Cree Tribe, any of its agencies, enterprises, or businesses, and any employer operating within the boundaries of the Rocky Boy's Indian Reservation shall provide information to assist it in locating obligors, their income, and their assets. The Child Support Program is further authorized to seek a subpoena from the Court to obtain the names, addresses, employment information, and other necessary data regarding an obligor.
 - b. An attorney representing the Child Support Program has an attorney-client relationship only and exclusively with the Chippewa Cree Tribe and with its Child Support Program. The attorney does not have an attorney-client relationship with any applicant for or recipient of child support services. Any communication between the attorney and a mother, father, alleged father(s), child, or any other party in a paternity or child support action shall not be considered privileged or confidential unless specifically required by Tribal or Federal law.
1. Confidentiality. The Child Support Program shall keep confidential all information and records in its possession except when release is necessary to carry out its duties. The Tribe will abide by all rules and regulations regarding confidentiality and safeguarding in accordance with 45 CFR 309.80. CCT CSP staff will disclose no confidential information without written consent of the individual receiving CSP, except as provided by this document. Every staff person shall sign a certification that the person has read and understands these policies and procedures and agrees, through their signature, to abide by them. Every staff person will be required to sign a confidentiality agreement with the CCT CSP Director. The procedures outlined in this section will apply to current and former staff regardless of whether employment ended upon voluntary or involuntary status from CCT CSP.
 - a. Standardized forms authorizing the release and/or exchange of confidential information shall be used and shall contain the following:
 - i. Name of Client;
 - ii. Date;
 - iii. Name and address of the person or entity to whom the information is to be provided;

- iv. Specific kind of information to be disclosed;
 - v. Reason for the disclosure;
 - vi. Period of time the consent is to be in force;
- b. Standardized forms for individuals or entities requesting confidential information from the program shall be used and shall contain the following:
- i. Name of requestor;
 - ii. Address of requestor;
 - iii. Date of request;
 - iv. Reason for requested disclosure;
 - v. Specific information requested;
 - vi. Signature of requestor;
 - vii. Date information is released.
- c. The following confidential information will not be released:
- i. Case Narratives;
 - ii. Employment or financial related information except the computation of debt;
 - iii. Contact information of another party;
 - iv. Social Security numbers of another party;
 - v. Any other information CCT CSP deems as confidential;
 - vi. Any information regarding the whereabouts of a party or parties or children of the parties when a protective order has been entered
 - vii. Any information regarding the whereabouts of a party or parties or children of the parties when the Tribe has reason to believe that release of information will cause physical or emotion harm to the party or child.
- d. Exceptions to this policy are as follows:
- i. To meet specific standards of the CCT CSP when it is necessary for the establishment of paternity; establishment or modification of child support; location of parents; or enforcement of child support orders.
 - ii. Information needed and/or ordered in the Chippewa Cree Tribe Tribal Court
 - iii. The amount of child support collected or disbursed may be disclosed to a tribal TANF program or to a state TANF program for their use in determining eligibility of the person who paid the support or the person to whom the support was or should have been paid;

- iv. To the Chippewa Cree Tribe Indian Child Welfare Program or Child Protective Services to report suspected abuse or neglect of a child;
 - v. To tribal Adult Protective Services or Tribal Health Program to report suspected abuse or neglect of an adult; and
 - vi. While ensuring that anonymity is protected, to track use of tribal services and statistics.
- e. Requests from the CCT CSP for information from the Federal Parent Locator Service must be limited to individuals involved in cases of the CCT CSP.
 - f. When disclosure of information is requested of the CCT CSP, the Program staff's first attempt will be to obtain the written consent of the individual by notifying him/her that the request was made and mailing a release form to him or her.
 - g. All disclosures made, both with and without the consent of the individual, shall be documented in the case file, including the date of disclosure, person or entity receiving information, nature of information disclosed and reasons for disclosure. If the information was not disclosed, there shall be a statement documenting why the information was not disclosed.
 - h. All records of individuals and families shall be stored in a manner ensuring security and confidentiality. Records shall be maintained in locked fireproof cabinets, in a secure room with a lockable door.
- 2) Program Recommendations and Assistance. The Child Support Program shall prepare a recommendation about the child support and day care, health insurance obligation and extraordinary expenses for each case, using a form developed by the Program. In making its recommendation, the Child Support Program shall be guided by the Chippewa Cree Tribe's Child Support Guidelines and Schedule. The Program's recommendation shall be filed with the petition. The Program shall make assistance available to parents in developing agreements for child support and health insurance. Parents may obtain these services before they file a petition or they may be referred by the Court.
 - 3) Working with Other Programs: The Child Support Program will extend the full range of services available to the Tribe to respond to all requests from, and cooperate with, State and other Tribal IV-D agencies.
 - 4) Child Support Order Recognition: The Tribe recognizes child support orders issued by other Tribes and Tribal organizations, and by States, in accordance with

the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B.

5-6-305. Who May Bring Action to Establish, Modify, or Enforce Child Support Orders.

- 1) A child, the natural mother, any recognized child support program, social service agency, tribally recognized guardian, a man presumed to be the father of the child, or a court appointed guardian may bring an action at any time during the minority of the child for the purpose of establishing child support obligations.
- 2) An action under this chapter may be joined with an action for divorce, annulment, custody, or support, according to Title V of the CCT Law and Order Code.

5-6-306. Petition to Determine Child Support

After Paternity has been established, the Court may establish child support obligations, and must provide a written determination which, at a minimum, contains the following information:

- 1) The name, address, tribal affiliation, year and place of birth of the parents or legal custodial parents and the child for whom support is requested;
- 2) The child support obligation requested or stipulated;
- 3) The proposed provision for health insurance for the child;
- 4) Any proposed work-related day care or extraordinary medical expenses;
- 5) The date the child support obligation is to begin and terminate;
- 6) The proposed frequency of support payments;
- 7) A statement requiring child support payments be made by wage withholding;
- 8) A statement from the CSP will assure the following proceedings have been completed whether any of the following proceedings involving the parents or the child are pending or have taken place in any court or administrative agency, and if so, the date of the proceeding and the name and place of the court or agency:
 - a. Child Custody Proceeding;
 - b. Child Support Proceeding;
 - c. Paternity Proceeding;
 - d. Proceeding requesting a protective, restraining or no-contact order involving the child or a party.
- 9) A statement whether either parent has received state or tribal public assistance, and if so, the date(s) and name(s) of the state or tribe providing assistance;
- 10) Financial information;
- 11) Authorization for the release of all financial records to the Chippewa Cree Tribe Tribal Court and the CSP;
- 12) Which parent should be allowed to claim the child as a dependent for income tax purposes; and

- 13) The recommendation of the CSP regarding child support and health insurance coverage, if applicable.

5-6-307. Factors Court Shall Consider

In determining the child support obligation and the period during which the duty of support is owed, the court shall consider the Tribe's customs and all relevant factors including but not limited to:

- 1) The resources of the parents;
- 2) The standard of living that the child would have enjoyed if living with both parents;
- 3) The physical and emotional condition of the child and the child's educational and medical needs;
- 4) The cost of day care for the child;
- 5) Any custody arrangement that is decided upon;
- 6) The needs of any person, other than the child, whom either parent is legally obligated to support and;
- 7) Any additional non-cash contribution made by a parent to the child that has been approved by the court.

In-Kind Values that have been stipulated in Traditional Circle sessions or stipulation conferences coordinated by the Child Support Program

5-6-308. Agreed Order for Support

- 1) In lieu of a contested hearing under this chapter, the parties may enter into an agreement as to the level of child support obligation in accordance with this section. The Court may only approve an agreement for a deviation from the Child Support Guidelines and Schedule under the procedures established in 5-6-315.
- 2) Role of Child Support Program. The Child Support Program shall assist the parties to develop the agreement under the Child Support Guidelines and Schedule.
- 3) Form. The signed and notarized agreement shall be submitted to the Court for approval and entry of the order. The agreed order shall have the same force as any other order issued by the Court.
- 4) Court Review. The Court shall hold a hearing to review the agreed order and ensure that the parties understand the terms of the proposed order. If the Court finds that any consent was not truly voluntary, the agreed order shall not be entered and the case shall proceed to a hearing.

5-6-309. Order for Support

The Court shall review the contents of the petition and hear any additional evidence in order to establish the child support obligation by applying the Chippewa Cree Tribe

Child Support Guidelines and Schedule to the circumstances of the parties. The standard of proof for establishment of the amount of the child support obligation shall be by a preponderance of the evidence.

The Court shall make written findings concerning the obligor's income used as the basis for the guidelines calculation and any other significant evidentiary factors affecting the determination of child support.

If the Court establishes an order permitting non-cash payments, the order must indicate whether non-cash payments will satisfy support obligations, and if so;

- i. Require that Tribal support orders allowing non-cash payments also state the specific dollar amount of the support obligation; and
- ii. Describe the type(s) of non-cash support that will be permitted to satisfy the underlying specific dollar amount of the support order; and
- iii. Provide that non-cash payments will not be permitted to satisfy assigned support obligations;

5-6-310. Default Order for Support

When the respondent fails to appear or otherwise defend, the Court may enter a default child support order. The Court may enter a default child support order based upon the evidence contained in the child support petition and the recommendation of the Child Support Program, and upon finding the following:

- 1) The respondent was given proper service of the petition and summons and proper notice of the hearing; and
- 2) Paternity has been established.

5-6-311. Modification of Child Support

- 1) A child support order may be modified by a court as to support, only as to installments accruing after notice to the parties of the motion for modification.
- 2) A motion to modify an order shall be accompanied by an affidavit or declaration and shall state the requested relief.
- 3) Parties shall file updated financial information forms at least ten (10) days before the modification hearing, except that:
 - a. In stipulated modification orders no financial information need be filed with the Court unless ordered by the Court; and
 - b. A party is not required to provide his or her financial information as part of the Court record provided that party has made full and complete financial disclosure to the CSP and that Program has certified that it has reviewed the financial information and its recommendations is based upon that information.

- 4) Modification is appropriate if:
 - a. There is a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or
 - b. Upon written consent of the parties;
- 5) Child Support orders may be modified for future support only.

5-6-312. Enforcement of Support

This service is available to parents of children using CSP for determination of their child support obligations, and to parents seeking enforcement of other support orders.

- 1) A request to enforce a child support order must be accompanied by: the child support order, an affidavit or declaration stating the length of time the obligation has been overdue, or facts supporting a history of non-compliance, the amount of overdue child support; and the requested relief. The total amount shall not exceed the limits imposed by the Consumer Credit Protection Act.
- 2) Voluntary income assignments may be completed and signed by the obligor. CSP staff shall send the standardized form to the individual in control of the funds being assigned by the obligor.
- 3) In addition to other remedies beyond basic income withholding orders, such as a writ of execution, the court may issue an order to an employer trustee, financial agency, other person, or corporation on the reservation, to withhold and pay over to the CSP or the person designated by the Court or the parent, money due or to become due.
- 4) Employer Relations. Employers may not take any discharge, refuse to employ, or take disciplinary action against an obligor parent due to a wage withholding requirement or request, In the event that any employer has engaged in the above actions shall be fined in an amount not to exceed \$500.00.
 - i. Employers who fail to withhold child support as ordered are liable for the full amount that should have been withheld. The CSP may also pursue a civil contempt, which shall carry a fine of up to \$500.00 for each contempt.
- 5) Withholding Across Borders. CSP shall send the income withholding order through the IV-D agency. The IV-D agency will present the income withholding order to the enterprise for processing and income withholding. If a tribe does not have an agreement with the Office of Child Support Enforcement (“OCSE”) to operate a CSE program, the CSP shall contact the tribal court, follow proper tribal procedures and request the court to honor the withholding order.
- 6) Other methods of enforcement are:
 - a. Attachment of the obligor’s assets, as subject to a writ of execution per Title II of the CCT Law and Order Code.
 - b. An order intercepting retirement, contract or non-wage payments; and

- c. An order revoking or suspending any business license issued by the CCT, or any license or privilege to exercise any CCT treaty right until payment is made.
- 7) Basic steps when a case is received for enforcement:
- a. New cases are to be reviewed by Program staff to ensure that signed orders and direct pay affidavits are in the file and the named children are in the obligee's custody.
 - b. Arrears are calculated and a letter is sent to both the obligor and the obligee to notify him or her of the amount of arrears.
 - c. There may be a cost incurred for services with the CSP. Qualifying individuals may apply for waiver, subject to CSP staff approval.
- 8) Monitoring Enforcement of a Child Support Order:
- a. For each CSP case, staff either monitors the monthly payment when payment is made to the Tribe, or assists the obligee upon request, when payment is made directly to the obligee.
 - b. When the person owing support makes payment through the Tribe:
 - i. Payment is deposited into the Chippewa Cree Tribe Child Support Program Account.
 - ii. Program staff will record the amount of the payment and the application of the money (to the obligee, to the TANF program for current reimbursement or for arrears payments).
 - iii. Program staff will fill out the tribal requisition form for the Finance Department to send a check in the appropriate amount to the obligee, a state, or tribe that requested program services.
 - iv. Program staff will mail a statement of the account to both the obligee and obligor every year.
 - c. When a party has made payment to a state, the CSP will:
 - i. Mail a statement of the account to both the obligee and obligor yearly.
 - ii. Receive notification from the state of the payment for current TANF reimbursement or for arrears payment.
 - iii. Record the amount of the payment and the application of the money (to the obligee, to the TANF program for current reimbursement or for arrears payments.)
 - iv. Fill out the tribal requisition form for the Finance Department to send a check in the appropriate amount to the custodian of the children, a state, or tribe that requested program services.
- 9) Multiple Orders. Only those orders from Courts having jurisdiction will be recognized.
- 10) Other Provisions Concerning Income Withholding:

- a. The CSP shall add an addition 20% of the current support ordered amount to the amount of withholding to liquidate past-due child support.
- b. The CSP will promptly refund amounts which have been improperly withheld.
- c. The CSP will promptly terminate income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.
- d. If the employer fails to withhold income in accordance with the provision of the income withholding order, the employer will be liable for the accumulated amount the employer should have withheld from the noncustodial parent's income.
- e. Income shall not be subject to withholding in any case where:
 - i. Either the custodial or noncustodial parent demonstrates, and the tribunal enters a finding, that there is good cause not to require income withholding; or
 - ii. A signed written agreement is reached between the noncustodial and custodial parent, which provides for an alternative arrangement, and is reviewed and entered into the record by the Court.
- f. Where immediate income withholding is not in place, the income of the noncustodial parent shall become subject to withholding, at the earliest, on the date on which the payments which the noncustodial parent has failed to make under a Tribal support order are at least equal to the support payable for one month.
- g. The only basis for contesting a withholding is a mistake of fact, which for purposes of this paragraph, means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.
- h. To initiate income withholding, the Tribal IV-D agency must send the noncustodial parent's employer a notice using the standard Federal income withholding form.
- i. The CSP must allocate withheld amounts across multiple withholding orders to ensure that in no case shall allocation result in a withholding for one of the support obligations not being implemented.
- j. The CSP is responsible for receiving and processing income withholding orders from States, Tribes, and other entities, and ensuring orders are properly and promptly served on employers within the Tribe's jurisdiction.

5-6-313. Confidentiality.

- 1) All current and future CSP staff members and employees will be required to comply with all safeguarding procedures that are applicable to all confidential

information handled by the CSP and that are designed to protect the privacy rights of the parties, as outlined under 45 CFR 309.65 (a) (5).

- 2) To meet confidentiality requirements, all current and future CSP staff members and employees will be required to sign the Chippewa Cree Tribe Confidentiality Forms and strictly abide by any and all confidentiality requirements.
- 3) Sanctions in an amount not to exceed \$500.00 shall be imposed for the unauthorized use or disclosure of information covered by paragraphs (1) and (2).

5-6-314. Child Support Guidelines and Schedule.

The Child Support Program shall establish child support guidelines and a schedule for adoption by the Chippewa Cree Tribal Business Committee and/or Tribal Sub-Committee. The guidelines shall set the scale of minimum child support contributions and shall be used to determine the amount an obligor parent must pay for support of his or her child pursuant to this chapter. The guidelines shall place a duty for child support upon either or both parents based on their respective financial resources and the custodial arrangements for the child(ren). The guidelines and schedule must, at a minimum:

- 1) Be based on specific descriptive and numeric criteria and result in a computation of an amount of child support which is sufficient to meet the basic needs of the child;
- 2) Provide a sufficient basis to support written findings for the award of child support;
- 3) Provide for a minimum amount of monthly child support, not less than \$50.00 per child, to establish the principle that every parent, regardless of income, has an obligation to provide financial support for a child; and
- 4) Establish a median income based on the State of Montana minimum wage to be imputed as income when the Court has no reliable evidence for a person upon which to base a child support award.
- 5) Provide that there shall be a rebuttable presumption, in any proceeding for the award of child support, that the amount of the award that would result from the application of the guidelines established consistent with this section is the correct amount of child support to be awarded.
- 6) These guidelines shall be applied to all cases unless there is a written finding or a specific finding on the record of the Court that the application of the guidelines would be unjust or inappropriate in a particular case in accordance 5-6-315 of this chapter. Such findings must take into consideration the needs of the child.

The Chippewa Cree Tribal Child Support Program shall review its guidelines and schedule every four years to ensure that they remain current and shall make recommendations for revisions as appropriate to the Chippewa Cree Tribal Business Committee and/or Tribal Sub-Committee.

5-6-315. Deviation from Child Support Guidelines and Schedule.

The Court may order child support in an amount different from that which is provided in

the Child Support Guidelines, only if:

- 1) The party requesting deviation shows by a preponderance of the evidence that application of the guidelines is inappropriate, unjust, or causes substantial hardship in the particular case;
- 2) Deviation is in the best interest of the child;
- 3) The Court enters written findings of the reasons justifying deviation under this section; and
- 4) The Court sets out in its order what the monthly support obligation would have been under the schedule without the deviation and what the Court is ordering as the monthly support obligation with the deviation.

5-6-316. Policy on State of Montana’s Child Support Enforcement Division Notification.

A notification from the State to the Tribe, for purposes of child support enforcement, shall be recognized in accordance with the terms set forth in a valid Memorandum of Agreement between the two sovereigns.

5-6-317. Child Support Obligation of Incarcerated Parents

- 1) A monthly support obligation established under any provision of this code and in effect after July 22, 2019, suspends by operation of law upon incarceration of the obligor under a sentence of one hundred eighty days or longer, excluding credit for time served before sentencing. The monthly support obligation shall be reinstated six (6) months after the obligor is released from incarceration.
- 2) Notwithstanding subsection 1, a monthly support obligation may be established for an obligor who is incarcerated under a sentence of one hundred eighty days or longer if the obligation is based on actual income of the obligor.
- 3) As used in this section, “incarceration” means placement of an obligor in a custodial setting in which the obligor is not permitted to earn wages from employment outside the correctional facility, and does not include probation or work release.
- 4) The suspension of a monthly support obligation under subsection 1 does not affect any past-due support that is owed before the expiration of the obligation.

5-6-318. Marital Estoppel

The Chippewa Cree Tribe recognizes termination of a child support order by marital estoppel. The Tribe considers a child support order void on the date of marriage or remarriage of the parties involved. During the period of remarriage neither party will be obligated to pay child support. The Chippewa Cree Tribe believes that during marriage or remarriage of the parties, it is in the best interests of the children involved for their married parents to be exempt from paying child support to one another however remarriage does not remove any prior obligations to pay accrued amounts of child

support owed (arrears).

If the parties later legally separate or divorce, a new order for child support must be established; the first order cannot be reactivated. Obligor and obligee Parties who marry another party are not exempt from paying child support (e.g., If Mom is the obligor and marries another man who is not the Dad, she is not exempt from paying support to the Dad.)

5-6-318. Voluntary Termination of Parental Rights

Voluntary termination of the child-parent relationship by the obligor parent (Parental Rights) shall not affect the obligor's child support obligation.

5-6-318. Sovereign Immunity.

Nothing in this chapter shall be construed as a waiver of sovereign immunity of the Chippewa Cree Tribe.

6.1 Support – General.

In a proceeding for a determination of child support, shall order either or both parents owing a duty of support to provide reasonable child support in a culturally appropriate manner, without regard to the misconduct of either parent. Support is not limited to monetary payment.

6.2 Jurisdiction.

Jurisdiction shall be recognized in accordance with the terms set forth in the Memorandum of Agreement between the Chippewa Cree Tribe and the State of Montana. (See Title V, Part I, Chapter 2, Section 2.2; also see Section III subsection (A) of the Chippewa Cree Child Support Program Procedures Manual)

6.3 Who May Bring Action to Establish, Modify or Enforce, Child Support Order(s).

A child, her natural mother, child support program, social service agency, parent of the mother if the mother has died, or a man presumed to be the father, or a court appointed guardian may bring an action at any time during the minority of the child for the purpose of declaring the existence of the father-child relationship. An action may also be brought for the purpose of declaring the non-existence of the father-child relationship only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. An action under this chapter may be joined with an action for divorce, annulment, custody, or support. (Title V, Part VIII, Chapter 1, Section 1.4)

6.4 Petition to Determine Paternity.

A petition to determine paternity shall include the following:

- 1) Evidence of a presumption of paternity;
- 2) The child's name, birth place and date of birth;
- 3) The name of the child's mother and the name of the person or agency having custody of the child, if other than the mother; or
- 4) The dates of marriage, separation, and divorce, if applicable;
- 5) A statement that the natural mother and alleged father agree or disagree the alleged father is the biological parent;
- 6) A statement whether there are any judicial or administrative paternity, dependency, termination of parental rights, minor in need of care, adoption proceedings, or paternity affidavits concerning the child;
- 7) A request to change the child's name, if applicable;
- 8) The probable time or period of time during which conception took place. (Title V, Part VIII, Chapter 1, Section 1.2);
- 9) A certified copy of the child's birth certificate and tribal enrollment shall be attached to the petition.

6.5 Determination of Paternity.

Paternity is established in the following ways:

- 1) The alleged father voluntarily acknowledges he is the father of the child. The court will decide if genetic testing is necessary.
- 2) If a child is born during a marriage, the husband of the child's mother is presumed to be the father. If he denies paternity, he will have to complete an affidavit stating he is not the father and request genetic testing to prove he is not the biological father of the child. (See Clinical Test Section 1.7 of this Chapter)
- 3) The alleged father denies he is the father after being named by the child's mother. The alleged father will have to complete an affidavit stating he is not the father and request genetic testing to prove he is not the biological father of the child. (See Clinical Test Section 1.7 of this Chapter)

All proceedings in this section shall be in accordance with the procedures for civil actions of this Tribal Code and the rules of the court.

A judgment of the court establishing the identity of the father of the child shall be conclusive of the fact in all subsequent determinations of inheritance and in the criteria for enrollment with the Chippewa Cree Tribe.

If the paternity of any child is not established, the child shall be presumed to have one-half degree of the Indian blood of the mother for purposes of meeting the criteria for enrollment with the Chippewa Cree Tribe. (Title V, Part VIII, Chapter 1, Section 1.1)

6.6 Pre-Trial Proceedings or Traditional Circles.

- 1) As soon as practicable after an action to declare the existence or nonexistence of the father-child relationship has been brought, an informal closed hearing shall be held. On the basis of the information produced at the pre-trial hearing, the Judge conducting the hearing shall evaluate the probability of determining the existence or non-existence of the father and child relationship in a trial and may recommend that the parties settle this matter, if the matter cannot be settled, the action shall be set for trial. (Title V, Part VIII, Chapter 1, Section 1.5 (1))
- 2) Traditional Circles. (See Title V, Part VI, Chapter 1)

6.7 Clinical Test Evidence.

- 1) In any action or proceeding, upon motion of any interested party, for good cause shown, may request the court to order the mother, child, and the alleged father to submit to an examination of blood and tissue specimens for the purpose of testing any genetic systems that are generally accepted within the scientific community for the determination of paternity probability. The results of the tests together with the opinions and conclusions of the testing laboratory shall be filed with the Child Support Program. The cost of the test shall be paid by the father should it be found he is the father. Otherwise the mother shall pay the cost of the test.
- 2) Only persons licensed by the appropriate authorities may draw blood or tissue for the purpose of testing to determine parentage. Such person may not be held liable for the damages to the party from whom the blood or tissue is drawn.

- 3) Evidence relating to paternity may include one or more of the following:
 - (a) Evidence of sexual intercourse between the mother and the alleged father and possible time of conception;
 - (b) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;
 - (c) Laboratory test results, weighted in accordance with evidence, if available of the statistical probability of the alleged father's paternity;
 - (d) All other evidence relevant to the issue of paternity. (Title V, Part VIII, Chapter 1, Section 1.6)

6.8 Civil Action; Judge Tribal.

An action under this section is a civil action governed by the rules of civil procedure of the Chippewa-Cree Tribe Law and Order Code. The matter shall be held in the family court without a jury. (Title V, Part VIII, Chapter 1, Section 1.7 (1))

6.9 Petition to Determine Child Support.

After the Paternity has been established: A petition for child support maybe filed, and must be completed on a form approved by the Child Support Program and at a minimum shall contain:

- 1) The name, address, tribal affiliation, date and place of birth, and social security number of the parents or legal custodial parents and the child for whom support is requested;
- 2) The child support obligation requested or stipulated;
- 3) The proposed provision for health insurance for the child;
- 4) Any proposed work-related day care or extraordinary medical expenses;
- 5) The date the child support obligation is to begin and terminate;
- 6) The proposed frequency of support payments;
- 7) A statement whether child support payments should be made by wage withholding;
- 8) A statement from the Child Support Program will assure the following proceedings have been completed whether any of the following proceedings involving the parents or the child are pending or have taken place in any court or administrative agency, and if so, the date of the proceeding and the name and place of the court or agency:
 - (a) Child Custody Proceeding;
 - (b) Child Support Proceeding;
 - (c) Paternity Proceeding;

- (d) Proceeding requesting a protective, restraining or no-contact order involving the child or a party.
- 9) A statement whether either parent has received state or tribal public assistance, and if so, the date(s) and name(s) of the state or tribe providing assistance;
 - 10) Financial information;
 - 11) Authorization for the release of all financial records to the Chippewa Cree Tribe Tribal Court and the Child Support Program;
 - 12) Which parent should be allowed to claim the child as a dependent for income tax purposes; and
 - 13) The recommendation of the Child Support Program regarding child support and health insurance coverage, if applicable.

6.10 Factors Court Shall Consider.

In determining the child support obligation and the period during which the duty of support is owed, the court shall consider the Tribe's customs and all relevant factors including but not limited to:

- 1) The resources of the child;
- 2) The resources of the parent;
- 3) The standard of living that the child would have enjoyed;
- 4) The physical and emotional condition of the child and the child's educational and medical needs;
- 5) The cost of day care for the child;
- 6) Any custody arrangement that is decided upon;
- 7) The needs of any person, other than the child, whom either parent is legally obligated to support and;
- 8) Any additional non-monetary contribution made by a parent to the child that has been approved by the court.
- 9) *Include In-Kind Values*

6.11 Order for Support.

The Court must make a written finding of the basis for ordering a parent to provide support to a child. If the court does not order a parent owing a duty to support a child, the court shall state its reasons for not ordering child support.

6.12 Modification of Child Support.

- 1) A child support order may be modified by a court as to maintenance or support only as to installments accruing after notice to the parties of the motion for modification.
- 2) A motion to modify an order shall be accompanied by an affidavit or declaration and shall state the requested relief.
- 3) Both parties shall file updated financial information forms at least ten (10) days before the modification hearing, except that:
 - (a) In agreed modification orders no financial information need be filed with the Court unless ordered by the Court; and
 - (b) A party is not required to provide his or her financial information as part of the Court record provided that party has made full and complete financial disclosure to the Child Support Program and the Program has certified that it has reviewed the financial information and its recommendation is based upon that information.
- 4) Modification is appropriate if:
 - (a) There is a showing of changed circumstances so substantial and continuing as to make the terms unconscionable;
 - (b) Upon written consent of the parties;
- 5) Child Support orders may be modified for future support only.

6.13 Enforcement of Support.

- 1) A request to enforce a child support order must be accompanied by: the child support order, an affidavit or declaration stating the length of time the obligation has been overdue, or facts supporting a history of non-compliance, the amount of overdue child support; and the requested relief.
- 2) Voluntary income assignments completed and signed by the non-custodial parent. Program staff then sends the standardized form to the employer.
- 3) In addition to other remedies, the court may issue an order to an employer trustee, financial agency, or other person, or corporation on the reservation, to withhold and pay over to the Child Support Program or the person designated by the Court, or the parent, money due or to become due.
 - (a) Income withholding. The Judge must include a statement in the order that should the obligated party fail to make a support payment, her income is subject to be withheld.
- 4) Other methods of enforcement are:
 - (a) A Federal Income Tax Refund Offset in favor of the Child Support Program or the moving party;

- (b) Attachment of the party's assets;
- (c) An order intercepting Federal, Tribal or Tribal Enterprise retirement, contract or non wage payments;
- (d) An order revoking or suspending any business license issued by the Chippewa Cree Tribe, or any license or privilege to exercise any Chippewa Cree Tribe treaty right until payment is made.

5) Basic steps when a case is received for enforcement:

- (a) New cases are to be reviewed by Program staff to ensure that signed orders and direct pay affidavits are in the file and the named children are in the custodial parent's custody.
- (b) Arrears are calculated and a letter is sent to both the non-custodial and custodial parent to notify him or her of the amount of arrears.

6) Monitoring Enforcement of a Child Support Order:

- (a) For each Child Support Program case, staff either monitors the monthly payment when payment is made to the Tribe or assists the custodial parent upon request when payment is made directly to him/her.

- (b) When the person owing support makes payment through the Tribe: *develop fiscal policy*

- i. Payment is deposited into the Child Support Program Account.
- ii. Program staff will record the amount of the payment and the application of the money (to the custodial parent, to the TANF program for current reimbursement or for arrears payments).
- iii. Program staff will fill out the tribal requisition form for the Finance Department to send a check in the appropriate amount to the custodial parent of the children, a state or tribe that requested program services.
- iv. Program staff will mail a statement of the account to both parties every year.

- (c) When a party has made payment to a state, the Child Support Program will:

- i. Mail a statement of the account to both parties yearly.
- ii. Receive notification from the state of the payment for current TANF reimbursement or for arrears payment.
- iii. Record the amount of the payment and the application of the money (to the custodial parent, to the TANF program for current reimbursement or for arrears payments.)

- iv. Fill out the tribal requisition form for the Finance Department to send a check in the appropriate amount to the custodial parent of the children, a state or tribe that requested program services.
- 7) Multiple Orders: If there are two or more orders, and only one of the tribunals would have continuing, exclusive jurisdiction, the order of that tribunal is the controlling order.
 - (a) If there are two or more orders and more than one tribunal could claim continuing, exclusive jurisdiction, an order issued by a tribunal in the current home state of the child is the controlling order. If an order has not been entered in the current home state of the child, the order most recently entered is the controlling order.
 - (b) If there are two or more orders and none of the tribunals can claim continuing, exclusive jurisdiction, the tribunal of the state having jurisdiction over the parties shall issue a child support order which would become the controlling order.
- 8) Default: The court shall issue a written order based on the best information available. The defaulting parent's income may be used as long as there is a reasonable and adequate evidence presented to verify such income.
- 9) A statute of limitations of ten (10) years shall be effect in all cases where a child is born and none of the presumptions under this part have been met. (Title V, Part VIII, Chapter 1, Section 1.8 (1))

6.14 Policy on State of Montana's Child Support Enforcement Division Notification.

A notification from the State to the Tribe shall be recognized in accordance with the terms set forth in the Memorandum of Agreement between the two sovereigns.