

Kickapoo Tribe of Oklahoma

Child Support Code

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**Kickapoo Tribe of Oklahoma
Child Support Code**

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KICKAPOO TRIBE OF OKLAHOMA
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Chapter 1. Name, Purpose and Jurisdiction

Section 1. Name of Ordinance

Be it enacted by the Kickapoo Tribe of Oklahoma (hereinafter referred to as the "Tribe") this statute shall be entitled "Kickapoo Tribe of Oklahoma Child Support Services Code 2010".

Section 2. Purpose – Legal Obligation to Support Children

This chapter shall be construed to effectuate the following purposes:

1. Establish the legal responsibility of parents to provide financially for their children's food, clothing, shelter, medical care, education and general well being;
2. Establish, as policy, an adequate standard of support for children;
3. Make support payments more equitable by ensuring consistent treatment of all persons in similar circumstances;
4. Make support payments based on the real earning capability of parents demonstrated in current and prior work history; and
5. Improve the efficiency of child support establishment and enforcement.

Section 3. Jurisdiction

Except as provided by federal law the Kickapoo Tribe of Oklahoma District Court shall have jurisdiction over all territory within the boundaries now known as Kickapoo Lands and to all tribal jurisdiction of the Kickapoo Tribe of Oklahoma, (north of the North Canadian River (Pottawatomie County), West of Kickapoo Street in Shawnee (Pottawatomie County), South of the Deep Fork River (Lincoln County), and east of the Indian Meridian Road (Oklahoma County), and it's tribal membership consenting to the jurisdiction and proceedings:

1. Concerning any action to determine and establish child support brought under this Code and any action that may be joined with any civil action for divorce, dissolution, annulment, declaration of invalidity, separate maintenance, or any other juvenile action brought pursuant to the Kickapoo Tribe of Oklahoma Juvenile Code(s).
2. Concerning any person who is a member of the Kickapoo Tribe of Oklahoma or a minor who is eligible to be a member of the Kickapoo Tribe of Oklahoma.

3. Concerning any person who is alleged to be the parent of a Kickapoo Child residing within the jurisdiction of the Kickapoo Tribe of Oklahoma.

Chapter 2. Definitions

1. **“Adjusted Gross Income”** shall mean gross income minus allowable deductions.
2. **“Advocate”** shall mean, in lieu of an attorney, a non-lawyer may act as a lay counselor, who performs routine tasks requiring some knowledge of the law and procedures, and who is employed by the Kickapoo Tribe of Oklahoma Child Support Services (KTOCSS) and who may appear in court on behalf of the KTOCSS or the Tribe’s interest.
3. **“Arrearage”** shall mean the total unpaid child support obligation owed by a parent who is required by either an administrative or court order to pay child support.
4. **“Basic Child Support Obligation”** shall mean the monthly child support obligation of a parent calculated pursuant to the Child Support Guidelines, excluding amounts for day care, health care, and extraordinary expenses as set forth in Chapter 10.
5. **“Child”** shall mean any enrolled member of the Kickapoo Tribe of Oklahoma under the age of eighteen (18) years of age.
6. **“Child Support”** shall mean the financial obligation a non-custodial parent has towards his or her child(ren), whether such obligation is established through judicial or administrative process, by stipulation of the non-custodial parent, or by parentage of any child(ren).
7. **“Child Support Guidelines”** shall mean a standard method for setting child support obligations based on the income of the parent(s) and other factors as determined under the laws of the Kickapoo Tribe of Oklahoma or other applicable federal laws.
8. **“Child Support Order”** shall mean any order, judgment or decree from a court of competent jurisdiction that establishes paternity, establishes, modifies, and enforces support obligations for any child(ren), or establishes either or private debt for unpaid support.
9. **“Court”** shall mean the Kickapoo Tribe of Oklahoma Tribal Court or a court of a state or territory having competent jurisdiction to determine a non-custodial parent’s liability for child support.
10. **“Custodial Parent”** shall mean the parent who holds legal custody of the child pursuant to a court order, or who exercised physical custody of the child on the basis of agreement between the parents or in the absence of one parent. The term “custodial parent” shall also include a guardian or custodian appointed by a court of competent jurisdiction.
11. **“Default”** shall mean the failure of a person to file an answer or response in a civil case within the prescribed period of days after having been served with a summons and petition.

12. **“Delinquent”** shall mean any payment under an order for support, which becomes due and remains unpaid.
13. **“Emancipation”** shall mean that time when a child either reaches the age of eighteen (18); or if regularly and continuously enrolled in high school reaches the age of twenty (20); or if the child marries and maintains his/her own household; or when the child enlists in military services; or is emancipated by an order from a court of competent jurisdiction.
14. **“Employer”** shall mean any employer paying wages to one or more employees, including the Tribe and its subordinate entities.
15. **“Imputed Income”** shall mean the Kickapoo Tribe of Oklahoma median income established in the Child Support Guidelines to be applied when the Court has no reliable evidence upon which to base a child support award.
16. **“Income Withholding”** shall mean the process whereby a court order is directed to an employer, bank, or agent holding monies or property of an obligor parent, to make payments or deliver property to satisfy a child support obligation in accordance with the order.
17. **“In-Kind Support”** shall mean non-cash goods or services provided by an obligor parent as partial child support payment. In-kind support may include, but is not limited to, food, clothing, or shelter.
18. **“Indian”** shall mean any person that is a member of a federally recognized Indian Tribe
19. **“Kickapoo Business Committee”** shall mean the legislative body of the Kickapoo Tribe of Oklahoma as defined by Article V of the Kickapoo Tribe of Oklahoma Constitution. (As ratified on December 10, 1977)
20. **“Kickapoo Tribe of Oklahoma Child Support Services (KTOCSS)”** shall mean the office established by the Tribe that has the delegated authority for administering or supervising the Tribe’s child support program in accordance with 42 U.S.C. 654 (Social Security Act).
21. **“Non-Custodial Parent”** shall mean a parent of a child either during the course of marriage or outside 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.
22. **“Obligee”** shall mean the person or entity to whom a legal obligation is owed for child support pursuant to a court or administrative order.
23. **“Obligor”** shall mean a non-custodial parent or other person with a legal obligation to provide child support pursuant to a court or administrative order.

24. **“Payee”** shall mean the person or organization in whose name child support is paid.
25. **“Payor”** shall mean a person or other entity with a present legal obligation, whether as an employer, buyer of goods, debtor, pension fund, or otherwise, to pay an obligor.
26. **“Petition”** shall mean a written pleading as defined by the Kickapoo Tribe of Oklahoma Civil Procedure Code or the laws of the Kickapoo Tribe of Oklahoma.
27. **“Putative Father”** shall mean a man whose legal relation to a particular child has not been legally established, but who has been named as the father by the child’s mother, or is subject to a presumption of paternity.

Chapter 3. Kickapoo Tribe of Oklahoma Child Support Services –Powers and Program Services.

Section 1. Kickapoo Tribe of Oklahoma Child Support Services

The KTOCSS, a tribal IV-D agency, is the single tribal agency authorized under this Code to perform the services and functions included in this or other sections. KTOCSS is authorized to function in accordance with Title IV, Part D, of the Federal Social Security Act, 42 U.S.C. 651, *et seq.*, as amended. The KTOCSS shall have the authority to assist Kickapoo children and families in the establishment, enforcement, and modification of child support orders; establishment of paternity; and locating non-custodial parents. Such authority shall extend to:

- A. Provision of child support collection services, parent location services and paternity determination services to enable KTOCSS to participate in programs established by federal law;
- B. Initiation of legal action needed to implement the provisions of this Code, as well as regulation as provided in other Nation's codes or customs and state or federal codes;
- C. Requesting tribal agencies and political subdivisions of state, county or municipal governments to search their records and furnish to KTOCSS information concerning the names and addresses needed to assist in locating non-custodial parents or obligors;
- D. Requesting information to assist in locating such individuals from any state agency, political subdivision of a state, person, sole proprietorship, corporation, utility, partnership, association or organization doing business in Indian Country, who shall provide such information to the KTOCSS when there is reason to believe that non-custodial parents are not providing for their children; and
- E. Other authorities as provided in this Code, as well as authorities which may be or are provided in tribal, state and federal laws and/or regulations pertaining to providing child support services to Indian nations.

Section 2. Powers of Kickapoo Tribe of Oklahoma Child Support Services (KTOCSS)

- A. Except where otherwise provided and subject to the Tribe's approval process, KTOCSS shall have the power to promulgate rules, regulations, policies and procedures necessary to carry out the provisions of this Code.
- B. KTOCSS shall have the authority to conduct child support services under this Code, including, but not limited to, the authority to investigate claims of paternity and child

support obligation; to locate non-custodial parents; and assisting in the enforcement, establishment and modifications of child support obligations including medical support, throughout the processes contained in this Code.

- C. KTOCSS shall have the authority to conduct genetic testing of putative parents and their children in accordance with this Code, for the purpose of obtaining evidence relative to the paternity of a child. Kickapoo or other Native American traditional/or customary objections to genetic testing shall not be a basis for refusal to undergo such testing. KTOCSS may require the putative non-custodial parent to reimburse KTOCSS for the costs associated with genetic testing. If a parent refuses to participate in genetic testing without showing good cause, KTOCSS may resolve the issue of paternity against the party's interest in accordance with Chapter 5 of this Code.
- D. KTOCSS shall be exempt from any filing fees required of individuals in the Tribe's courts in matters pertaining to the official functions and duties of the KTOCSS.
- E. KTOCSS shall have the authority to request and receive information from the following entities, including but not limited to: other state IV-D agencies, other tribal IV-D agencies, municipal authorities, public utilities, cable companies and financial institutions, in order to locate non-custodial parent(s) or obligor(s) and their assets.
- F. The Tribe may enter into cooperative agreements and/or contracts as necessary to implement the provisions of this Code.
- G. KTOCSS shall have authority to request the court issue a subpoena in order to obtain the names, addresses, employment information and all other necessary data regarding non-custodial parents or obligors.

Section 3. Program Services

- A. Services provided by the KTOCSS shall include, but may not necessarily be limited to:
 - 1. Assisting custodial parents or guardians by using tribal, local, state and federal sources in locating non-custodial parents or obligors who have a financial obligation to support their children.
 - 2. Establishing paternity upon request of the custodial parent, or a court of competent jurisdiction, or the KTOCSS; when paternity has not been legally established and the mother is not married at the time of birth of the child, or if both parents sign an affidavit acknowledging paternity. Pursuant to 45 C.F.R. Sec. 309, the KTOCSS need not attempt to establish paternity when it is determined:
 - a. The child was conceived as the result of rape, incest, sexual abuse of a minor, or sexual assault; and/or

- b. A legal proceeding for adoption is pending before a court of competent jurisdiction; and/or
 - c. The establishment of paternity is reasonably likely to resulting in physical or emotional harm to the child or to the child's custodian.
3. Establishing support including medical support, through the request of temporary child support order during proceedings for dissolution of marriage for the child(ren) of such marriage;
4. Requesting a monthly child support obligation for the guardian of the child(ren) against the mother and the father according to the child support guidelines as set forth in this code;
5. Assisting in the enforcement of administrative orders or court orders of the Tribe or other Tribal IV-D or state agency a the request of the other nations or states; and
6. Assisting in the modifications of child support orders that receive tribal or public assistance and to review cases for compliance with the guidelines.

B. Attorneys and Staff employed by KTOCSS

1. Attorneys and advocates employed by KTOCSS for the establishment of paternity and to establish, enforce and collect a child support obligation under Part D of Title IV of the Federal Social Security Act, 42 U.S.C., Sections 651 et seq., or attorneys acting for KTOCSS through an agreement may not represent the Tribe or State of Oklahoma in administrative or civil actions involving the same parties.
2. KTOCSS attorneys and advocates represent the Tribe and not the interests of any other party. Providing services under Title IV-D of the Federal Social Security Act, 42 U.S.C., Sections 651 et seq., does not create an attorney-client relationship with any other party.
3. Non-attorney employees are prohibited from providing legal advice to custodial parents, guardians or non-custodial parents.

Section 4. Obligation

The non-custodial parent's child support obligation shall be established as provided in this Code, or by a voluntary agreement, which meets the requirements of this Code:

- A. The obligation shall commence, unless otherwise stated, on the first day of the month following the signing of the court order which established the amount of the child support payment;
- B. The amount of the child support obligation shall be in the amount set in the order; and
- C. Until there is a court order to administrative order entered, the amount of the child support obligation shall be presumed to be the amount determined by KTOCSS in accordance with the guidelines.

Section 5. Notice of Administrative Assignment of Child Support Rights

When the Tribe or a state or federal agency has received an assignment of child support rights, the KTOCSS may issue a Notice of Administrative Assignment of Child Support Rights. Notice and a copy of the assignment shall be served to the parents and any applicable employer. The notice shall include:

- A. A statement providing the name(s) of the child(ren) for whom an obligation is alleged, for whom child support is being sought, and the name of the custodial parent;
- B. A statement of the child support obligation accrued and a demand for immediate payment for those cases wherein a court of administrative order has established the child support obligation;
- C. A statement of child support obligation, which the KTOCSS office has determined to be appropriate, in accordance with the guidelines, for those cases in which no court or administrative order has established the child support obligation;
- D. A statement that the non-custodial parent's property will be subject to collection action, including but not limited to income assignment, garnishment, financial institution account attachment, income tax refund interception, attachment and execution on real property held in fee simple, whether located within or outside the boundaries of the Kickapoo Tribal lands and personal property wherever located;
- E. A statement that the non-custodial parent is responsible for notifying the KTOCSS of any change of address or employment;
- F. A statement that all fees associated with the collection of child support may be charged against the non-custodial parent; and
- G. Other such information as the KTOCSS deems appropriate.

Chapter 4. Pleadings

Section 1. Pleadings

Pleadings, motions, answers and other similar actions shall be in compliance with the Civil Procedures Code of the Tribe. Every pleading of a party represented by a licensed attorney or advocate shall be signed by at least one attorney or advocate of record in his individual name, whose address and telephone number shall be stated. A party who is not presented by an attorney or advocate shall sign his pleading and state his address and telephone number. Except when otherwise specifically provided by rule or statute/code provision, pleadings need not be verified or accompanied by affidavit.

Section 2. Filing Pleadings and Filing Fee with Court Clerk

The Court Clerk may charge any tribe, state agency or other entity the usual and customary fee for filing any document with the court clerk and may charge the customary fee for making copies of any document. The Court Clerk shall waive all fees incurred by the KTOCSS operated by and/or for the benefit of the Tribe.

Section 3. Docketing of Orders

A true copy of any order made pursuant to this Code shall be filed with the Court Clerk in accordance with court rules.

Chapter 5. Paternity Proceedings

Section 1. Acknowledging Paternity by Affidavit

- A. Except as otherwise provided by law, a woman who gives birth to a child is the natural mother of the child.
- B. Both the woman and man may sign a paternity affidavit, which is a notarized written statement by the putative father and the biological mother acknowledging paternity. This is an uncontested process allowing a father to swear under oath that he is the biological parent of a minor child. Such statement acknowledging paternity shall have the same legal effect as an order of paternity entered in a court proceeding.
- C. However, if either the mother or the alleged father should change their mind about the acknowledgement of the paternity, each shall have six (6) months from the date of signing the paternity affidavit to file a rescission of affidavit acknowledging paternity with the KTOCSS or the court and request a hearing. After six (6) months the affidavit acknowledging paternity shall be accepted by the court.
- D. After the six-month period referred to in paragraph C of this section, a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger. Legal responsibilities including, but not limited to, child support obligations, of any signatory arising from the acknowledgement shall not be suspended during the challenge, except for good cause shown.

Section 2. Paternity Proceedings – Establishing Paternity through Court Order

A. Petition to Determine Paternity

1. A child, a child's legal guardian, a custodian of the child, the child's natural mother, an alleged father of a child, or attorneys or advocates for the KTOCSS may file a petition requesting the Kickapoo Tribe of Oklahoma Tribal Court to establish paternity.
2. The petition shall be duly verified by the party alleging paternity and stating the facts in support thereof. The proceedings shall be entitled in the name of the Kickapoo Tribe of Oklahoma against the accused as defendant.

B. Notice

1. All parties including the biological mother and each man alleged to be the natural father shall be given notice of the petition and of all hearings, and shall be given an opportunity to be heard.

2. Notice shall be by:

- a. Personal service, or
- b. Certified mail return receipt to the last known address, or
- c. Publication, or
- d. Any other method that may be prescribed by the Kickapoo Tribe of Oklahoma Law.

C. Summons

The summons is to be served on the alleged father(s) along with the petition and shall include a notice indicating:

1. Being named in a petition alleging paternity;
2. The right to request genetic testing to indicate the probability that an alleged father is not the natural father of the child(ren) in questions;
3. If the defendant fails to answer the petition within thirty (30) days or fails to appear for the hearing after having been properly served, then the court shall proceed to determine issues of paternity, support, custody and visitation.

D. Hearing on Paternity

1. If the defendant fails to appear after having been properly served, the court shall issue the findings and enter an order determining paternity.
2. If the defendant appears and does not admit to paternity, the court may order the mother, child and putative father to submit to genetic testing. If a party refuses to submit to such testing, the court may resolve the question of paternity against such party or enforce its order if the rights of others and the interest of justice so require.

E. Presumption of Paternity

Except as otherwise provided, a man is presumed to be the natural father of a child if:

1. 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 ten (10) months after the termination of the marriage by death, annulment, declaration of invalidity, divorce or dissolution, or after decree of separation is entered by a court, or

2. The child(ren) is/are born out-of-wedlock and the man and woman subsequently marry;
3. Before the child's birth, the alleged father and the child's natural mother have co-habited and the child is born within ten (10) months after the termination of co-habitation; or
4. Statistical probability of paternity at ninety-five percent (95%) or more by scientifically reliable genetic testing.

F. Evidentiary Standard

1. The petitioner has the burden of proving, by clear and convincing evidence, that the putative father is, in fact, the natural father.
2. Evidence of statistical probability of paternity established at nine-five (95%) or more creates a rebuttable presumption of paternity. Clear and convincing evidence may be used to rebut the presumption. The evidence shall be admitted on behalf of the defendant.
3. Evidence of statistical probability established at ninety-eight percent (98%) or more creates a conclusive presumption of paternity.
4. The party receiving the copy of the genetic testing results from a qualified expert and/or laboratory, shall send all parties a copy of the genetic test results by certificate of mailing to the last known address of each party.
5. Any objection to genetic testing results must be made in writing within ten (10) days from the date of mailing of the genetic test results. Any hearing on the issue of paternity shall not be held sooner than ten (10) days after a filing of objection to the genetic test. If no objection is filed within the specified time, the genetic test will be admitted as evidence of paternity without the need for foundation testimony or any further evidence of paternity.
6. If the court finds that the evidence based upon the medical, scientific and genetic tests shows that the defendant is not the parent of the child, said evidence shall be conclusive proof of non-paternity and the court shall dismiss the action without prejudice.

G. Effect on Presumption of Legitimacy

Except as otherwise provided by law, the presumption of legitimacy of a child born during wedlock is overcome when the court finds that the conclusions of all

the experts, as disclosed by the evidence and based upon genetic tests, show that the husband is not the father of the child.

- H. The death of the mother shall not abate an action which is brought under this section, and it will not prevent the KTOCSS from bringing an action for the support of the child.
- I. For the purpose of enforcing a child support obligation, an action to establish paternity shall be available to a child if commenced within one (1) year after the child reaches the age of eighteen (18) or is emancipated by a court order.
- J. Joiner of Sexual Partners as Defendants
 - 1. All persons who have engaged in a sexual relationship with a woman during the possible time of conception of a child, for whom paternity is not determined, may be joined as defendants in an action to determine the paternity of the child.
 - 2. When more than one defendant is named or joined in a paternity action, the court shall order all defendants to appear. The court shall order genetic testing of all defendants who are duly served, including defendants who fail to answer or appear. The court may order the mother, the child or any other individuals as necessary to make a determination of paternity, to submit to genetic testing.
 - 3. After paternity is determined by the court, the court shall dismiss the paternity action with prejudice against all other defendants who are not determined to be the natural father.

Section 3. Orders Determining Paternity and Child Support

A. Kickapoo Tribe of Oklahoma Child Support Guidelines

The guidelines shall establish the scale of minimum child support contributions, which shall be used to determine the amount an obligor must provide for support of his or her child(ren) pursuant to this code. The guidelines shall place a duty for child support upon both parents based on their respective financial resources and the custodial arrangements of the child(ren). Child support guidelines must, at a minimum:

- 1. Take into consideration all gross income of both parents;
- 2. Be based on specific descriptive and numeric criteria and result in a statutory computation of an amount of child support, which provides for

the basic needs of the child(ren) for housing, clothing, food, education, health care, recreation and goods and services required by physical and/or mental disability.

3. Provide for the actual child care expenses reasonable necessary to enable both parents to maintain employment or to conduct an active search for employment;
4. Provide for the child(ren)'s health care needs, through health insurance coverage, which supplement those health care goods and services provided by the federal government, where appropriate.
5. Provide for review and revision, where appropriate, of the guidelines at least once every three (3) years to ensure that the amounts provided for in the guidelines are periodically adjusted for increases or decreases in the costs associated with the care and support of children;
6. Provide for circumstances, which may support written findings on the record of a judicial proceeding for the award of child support, in reducing support contributions on the basis of hardship to the non-custodial parent or other children, while considering the best interest of the child(ren) who is/are the subject of the judicial proceeding; and
7. Provide for an imputed medium income to be applied when the court has no reliable evidence upon which to base a child support award.

B. Reimbursement to the Mother of Reasonable Expenses of Providing for Child(ren)

1. Notwithstanding any other Kickapoo Tribe of Oklahoma law, an individual who has been legally determined to be the father of a child pursuant to this Code, may be ordered to pay all or a portion of the reasonable expenses of providing for the child(ren) or the amount of public assistance paid prior to the determination of paternity, taking into account the considerations listed in Section A, provided that liability may be imposed for no more than five (5) years preceding the filing of the action.
2. Copies of the bills for genetic testing are admissible as evidence without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred for such services or for genetic testing on behalf of the child.

C. Provisions to be included in paternity orders.

All orders that establish paternity will contain the following provisions:

1. Adjudication of parentage
2. Determination of current child support owed pursuant to the KTOCSS Guidelines
3. Determination of arrears and payments thereon
4. Medical insurance coverage
5. Child care costs
6. Income assignments
7. Enforcement remedies
8. Addresses of record for the parties
9. Costs, including genetic testing if any, and payment thereon.

Chapter 6. Proceedings and Orders Establishing Child Support

Section 1. Establishment Proceedings

- A. Any parent, guardian, or emancipated child, with or without an attorney, may initiate an action for child support by filing a petition with the Clerk of the Court and serving the petition upon the parents against whom child support is to be established.
- B. Except as provided in Chapter 3, Section 3 (B), attorneys or advocates for KTOCSS may appear or initiate an action brought under this section on behalf of any person upon his/her request and proper application pursuant to rules and regulations adopted by KTOCSS.
- C. Upon receipt of proof of services of the summons and petition on the defendant, the Court shall schedule a hearing to determine child support no sooner than twenty-one (21) days after the defendant receives notice of the child support action.
- D. Answers must be filed with the court and served on the petitioning party within twenty-one (21) days of the date of service of the petition.
- E. Default. If the defendant fails to appear at the hearing upon a showing of valid service and the petitioner presents evidence of the obligation by the defendant, the court shall enter an order of child support obligation pursuant to the evidence.
- F. Upon request of either party the court may issue subpoenas to the defendant, his or her employer, or any other party in possession of relevant information to appear or produce documents to the court. Failure to comply with such a subpoena may be punishable as contempt of court.
- G. Stipulated Agreements. At any time prior to the date of the hearing, the parties may enter into a stipulated agreement as to the level of the child support obligation. The signed and notarized voluntary agreement shall be submitted to the court for approval and enforcement. After the agreement is approved and filed by the court, it shall have the same force as an order issued by the court. The obligation of the defendant to pay child support shall commence on the date specified in this agreement, but no later than the date the agreement is approved and filed by the court.
- H. Hearing Procedures and Findings.
 - 1. The Court shall establish the amount of child support obligation of the obligor parent by using the Kickapoo Tribe of Oklahoma's Child Support Guidelines set forth in Chapter 10.

2. The standard of proof for establishment of the amount of child support obligation shall be by a preponderance of the evidence.
3. Findings. The court shall make findings in the record as to: gross income, adjusted gross income, basic child support obligation, medical child care, and educational support, in-kind support, support obligation in a shared physical or divided custody situation, the total child support award, and reasons for deviation, if any, from the Guidelines. The findings may be made by incorporating the Child Support Guidelines worksheet containing this information into the court file.

Section 2. Content and Effect of Orders

- A. Payments under a child support order shall be made to the KTOCSS for distribution to the custodial parent or other resident guardian of the child or through a trustee if there is a showing the payments to the custodial parent or guardian are not in the best interest of the child. The non-custodial parent has the burden of showing that the custodial parent is not the most appropriate trustee of child support payments for the child.
- B. Each order for child support or maintenance payments shall include a provision that the non-custodial parent and custodial parents notify the KTOCSS of any change of employer or change of address in writing, within ten (10) days of such change.
- C. In the event the order contains a determination of child support obligations, the order shall provide for an automatic income assignment, attachment of state and Indian gaming winnings, and interception of income tax refunds as a means for collection of any child support obligation. Wages shall not be subject to withholding only where:
 1. One of the parties demonstrates and the court finds that there is good cause not to require immediate income withholding; or
 2. The parties reach a written agreement which provides for an alternative arrangement.
- D. Child support orders entered before the effective date of this Code may also be made subject to automatic wage withholding upon a finding of good cause by the Court upon request by either parent or KTOCSS.
- E. A child support order shall constitute a lien on the real or personal property of the person that is filed against from the date of its filing in the office of the clerk of the court where any of the property is situated. A copy of the recorded notice shall be sent to the person whose property is attached at his or her last known

address. Ceremonial and religious property and real property held in trust for an individual or for the Kickapoo Tribe of Oklahoma are exempt from such liens.

- F. Every person has a duty to support each and every child of that parent until the child reaches the age of eighteen (18), or until the child graduates from high school or its equivalent up to the age of twenty (20). No hearing shall be required to extend such support up to the age of twenty (20) years if the child is regularly and continuously attending high school.

Section 3. Parental Support of Children with Disabilities

The court may order either or both parents to provide for the support of a child eighteen (18) years of age or older for an indefinite period if the court finds:

- A. The child requires substantial care because of a mental or physical disability and will not be capable of self-support, and
- B. The disability exists or the cause of the disability is known to exist on or before the eighteenth (18) birthday of the child.

Section 4. Termination of Parental Rights

Except as provided by Section 5, the termination of parental rights shall not terminate the duty or obligation of either parent to support the child(ren).

Section 5. Adoption of a Child

Child support orders entered by the court shall remain in effect until the court receives notice that the final decree of adoption has been entered. Child support arrearage shall be due and owing until paid in full. Parties who adopt a child shall be responsible for the support of any adopted child in the same manner as any biological child.

Chapter 7. Modification of Child Support Orders

Obligations of a non-custodial parent may be modified upon entry of an order by the court. Either parent or the KTOCSS may petition the court for a modification order based upon a showing of substantial change of circumstances supported by affidavit.

A. Modifications may be requested:

1. If there is an increase or decrease of 15% in the current “gross income” amount of the current child support order; or
2. By either custodial or non-custodial parent or guardian who is not receiving public or tribal assistance, whose order has not been modified within three years;
3. By the KTOCSS if it determines proof of the modification criteria in this chapter exists.

B. A petition for modification shall require:

1. Notice advising the parents/guardian of the procedure, standard for review and inform them of their rights to appear and object to any proposed changes;
2. A copy of the substantial change affidavit upon which the request or petition is based.

C. A hearing shall be set on the next available court docket.

D. If the court approves the modifications, the order shall become effective from the date the petition was filed.

Chapter 8. Proceedings for Enforcement of Child Support Orders

Section 1. Initiation of Enforcement Action

In any action affecting dissolution of marriage or in any other action provided for under the Tribe's law, wherein the court has made a child support order concerning the care, custody and support of the child(ren), attorneys or advocates for KTOCSS shall have the authority to enforce such order as set forth by the court.

Section 2. Remedies

A. Voluntary income assignments

1. A signed, voluntary income assignment may be submitted to the court for approval and enforcement. A voluntary income assignment may be sufficient to meet the child support obligation calculated by the court or KTOCSS. After the court approves the assignment, it shall be filed with the court clerk. The obligation of the non-custodial parent to pay child support shall commence on the date that the stipulated agreement was filed.
2. A voluntary income assignment made pursuant to this section shall be served on an obligor's employer within ten (10) days of the entry of the order by the court clerk.

B. Notice of Delinquency and Petition for Enforcement of Child Support Orders.

1. In the event that the obligor is at least one (1) month delinquent in paying his or her child support obligation, the KTOCSS may file a notice of delinquency in the court and serve a copy of the same upon the obligor. The notice of delinquency shall be verified and inform the obligor of the following:
 - a. The terms of the child support order sought to be enforced;
 - b. The period and total amount of the delinquency; and
 - c. The procedures to avoid immediate withholding.
2. Order to Withhold Income
 - a. If fourteen (14) days after the service of the notice of delinquency, the obligor has not filed a petition presenting good cause why income should not be withheld, an order to withhold income shall be served on the employer or other payer of the obligor. Such order shall direct that the obligor's wages and other benefits be withheld in an amount equal

to the monthly support payment. An additional twenty percent (20%) of the support payment, or such amount as the court may order after notice and hearing, shall be withheld each month to compensate for any accrued delinquent payment until the delinquency is satisfied; provided that the total amount withheld does not exceed the limits established in 15 U.S.C., Section 1673.

- b. A payor served with an order to withhold income shall begin withholding not more than fourteen (14) days after service of the notice. An order to withhold income shall be binding against future payors upon actual notice of the order of service by personal delivery or certified mail upon the payor.
- c. If the obligor wants to prevent an order to withhold income from being served, he or she must file a petition to stay service with the clerk of the court within the fourteen (14) days after service of the notice of delinquency. Grounds for the petition to stay service shall be limited to:
 - 1) A dispute concerning the existence or the amount of the delinquency;
 - 2) Evidence that the delinquency has been cured since the filing of the notice; or
 - 3) Evidence of the court-approved agreement between the obligor and the obligee for an alternative method of payment.
- d. The court may only waive the order to withhold income if it finds that the obligor has met the burden of showing good cause why income should not be withheld and upon a written order of the reasons for such cause.

C. Employers and Income Withholding

1. A copy of the court's automatic wage withholding order shall be served on an obligor's employer within ten (10) business days from the entry of the order by the Kickapoo Tribal Court Clerk.
2. No employer shall refuse to honor a wage withholding order or voluntary wage assignment executed pursuant to this Chapter.
3. An employer who fails to withhold child support as required by this Chapter shall be liable for one-hundred percent (100%) of the support order, or the amount of support monies that should have been withheld from the obligor's earnings, whichever is the lesser amount if the employer

fails or refuses, after being served with a wage assignment order, to deduct or promptly remit from the unpaid earnings the amount of money required in the order.

4. An employer may not discharge or prejudice any employee because his or her wages are subject to withhold for child support.
5. As permitted by law, an employer who repeatedly fails to withhold child support as required by this Chapter may have any license issued by the Kickapoo Tribe of Oklahoma revoked or suspended until compliance this Chapter is assured.

D. Seizure of Property

When payment of child support obligation has been adjudicated delinquent by the courts, the court may issue a writ of execution for the collection of child support debt or judgment. If allowable by federal law, the write of execution shall direct the Kickapoo Tribe of Oklahoma Police Department to seize non-exempt real and personal property for sale, after giving proper notice to the owner. Ceremonial or religious property or Indian trust real property including Individual Indian Money (IIM) accounts as defined by federal law shall be exempt from such writs.

E. Suspension or Denial of Licenses

Multiple refusals to comply with Kickapoo Child Support Orders may also result in the suspension or denial of occupational, fishing, recreational, and motor vehicle licenses. A court order to suspend or deny Kickapoo-issued licenses shall be binding on and given effect by the license-issuing agencies. Orders affecting licenses issued by other governmental agencies shall be sent to such agencies for enforcement.

F. Punishment for Contempt – Failure to Comply with Child Support Orders.

1. The Kickapoo Tribal Court has the power to enforce an order for child support and punish an individual for failure to comply therewith, as set forth in subsection 2 of this section.
2. Unless otherwise provided for by law, punishment for direct or indirect contempt may be by the imposition of a fine in a sum not exceeding five hundred dollars (\$500.00) or by imprisonment in the county jail not exceeding six (6) months, or by both, at the discretion of the court.
3. In the case of indirect contempt for the failure to comply with an order for child support, the factors that shall be used by the court in determining the sentence and purge fee are:

- a. The proportion of child support that was unpaid in relation to the amount of support that was ordered paid;
 - b. the proportion of the child support that could have been paid by the party found in contempt in relation to the amount of support that was ordered paid;
 - c. The present capacity of the party founding in contempt to pay any arrearages;
 - d. Any willful actions taken by the party found in contempt to reduce factor (c);
 - e. The past history of compliance or noncompliance with the support order; and
 - f. Willful acts to avoid the jurisdiction of the court.
4. When the tribal court makes an order compelling a parent to furnish child support,
- a. proof that:
 - 1) the order was made, filed, and served on the parent, or
 - 2) the parent had actual knowledge of the existence of the order, or
 - 3) the order was granted by default after prior due process notice to the parent, or
 - 4) the parent was present in court at the time the order was pronounced; and
 - b. proof of noncompliance with the order,

shall be prima facie evidence of an indirect civil contempt of court.

Section 3. Charge Off of Support Arrearages

- A. The Kickapoo Tribe of Oklahoma may accept offers of compromise of disputed claims or may grant partial or total charge-off of child support arrears owed to a tribe or a state up to the total amount of public assistance paid to or for the benefit of the persons for whom the support obligation was incurred subject to the tribe's or state's approval of the same.

- B. The current and future rights of the payee under an order for support shall not be adversely affected if the Tribe accepts an offer of compromise, or grants a partial or total charge-off under this section.
- C. Factors to Consider for Charge Off Requests. The Court shall base a decision to grant partial or total charge-off of arrears owed to the Tribe or the State of Oklahoma on the following considerations:
1. Error in law or bona fide legal defects that materially diminish chances of collection; or
 2. Substantial hardship; or
 3. Costs of collection action in the future that are greater than the amount to be charged off; or
 4. Settlement from lump-sum cash payment that is beneficial to the Tribe or to the State of Oklahoma considering future costs of collection and likelihood of collection; or
 5. A correction of improperly calculated arrears; or
 6. Tribal custom or tradition.
- D. Substantial Hardship Considerations for Responsible Parent. In making a determination of substantial hardship, the following information may be considered but not limited to:
1. Hardship to a dependent child or children in the home of the responsible parent;
 2. The child on whose behalf support is owed is reunited with the responsible parent;
 3. Payment on the arrears obligation interferes with the responsible parent's payment of current support to a child living outside the home;
 4. The responsible parent has limited earning potential;
 5. The responsible parent's past efforts to pay support and the extent of the parent's participation in the child's parenting.

Section 4. Government Records

- A. The KTOCSS may request and shall receive information from the records of all departments, boards, bureaus or agencies of the Tribe, and the same are

authorized to provide such information as is necessary for the purpose of child support enforcement unless expressly prohibited by federal law.

- B. The KTOCSS may make such information available only to those officials of the Tribe who are authorized to locate parents who have failed to provide child support for their child(ren); to establish, modify or enforce court orders for child support; or to establish paternity. This information shall be given only for use in connection with official duties under the child support services program.
- C. Disclosure of information under this subsection shall comply with Section 402 (A)(iv) of the Social Security Act. In all support order proceedings, hearings or other actions before the court, there shall be compulsory disclosure by both parties of their respective financial status.

Section 5. Bankruptcy

In accordance with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), 11 U.S.C. Sec. 101 et seq., all current and past due child support owed on behalf of a child shall not be discharged by bankruptcy. A copy of the Notice of Bankruptcy is to be filed with the KTOCSS.

Section 6. Statute of Limitations

Notwithstanding any other Kickapoo Tribe of Oklahoma law, no statute of limitations shall apply to any action to enforce a child support order or property to satisfy an unpaid child support debt.

Chapter 9. Representation: Appeals: Full Faith and Severability

Section 1. Right of Representation; Limitation of Fees and Expenses

In any court hearing under this Code, any party may be represented before the court by a spokesperson of the party's choice, who is allowed to practice before the court. The Tribe shall not be required to pay for any legal fees and expenses incurred by any part in connection with proceedings under this Code.

The court shall allow for interpreters to assist those party's who require translation in the Kickapoo Language. All translators shall be approved by the Court and subject to being "sworn-in" prior to partaking in any child support hearing matter.

Section 2. Right of Appeal to Kickapoo Tribe of Oklahoma Supreme Court

Any final order entered by the court under this Code may be appealed to the Kickapoo Tribe of Oklahoma Supreme Court. The Supreme Court review shall be based on the record and the decision of the tribal court.

Section 3. Full Faith and Credit

The Tribe shall give full faith and credit to other court orders from the Court of Indian Offenses, Tribal IV-D agencies, state agencies, courts and administrative bodies per U.S.C. Title 28, Part V, Chapter 115, Sec. 1738B (Full Faith and Credit for Child Support Orders). For purposes of this Code, the Kickapoo Tribe of Oklahoma Trial Court shall have the authority to review for proper jurisdiction any court or administrative orders, judgments or decrees of a foreign jurisdiction.

Section 4. Severability

Should any provisions of this Code be held unlawful or void for any reason by the court, the remaining provisions of this Code shall continue in full force and shall not be affected.

CHAPTER 10. KICKAPOO TRIBE OF OKLAHOMA CHILD SUPPORT GUIDELINES

- A. Except in those cases where parties represented by counsel have agreed to a different disposition, there shall be a rebuttable presumption in any judicial or administrative proceeding for the award of child support that the amount of the award which would result from the application of the guidelines is the correct amount of child support to be awarded.
- B. The court may deviate from the amount of child support indicated by the child support guidelines if the amount of support so indicated is unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of the children.
- C. The court shall not take into account any stepchildren of such parent in making the determination, but in making such determination, the court may take into account the reasonable support obligation of either parent as to only natural or legally adopted minor children in the custody of the parent.
- D. For purposes of this section, the noncustodial parent is the “obligor” and the “obligee” is the person or agency with the right to receive child support.
- E. The Child Support Guidelines are as follows:
 1. All child support shall be computed as a percentage of the combined gross income of both parties. The Child Support Guidelines Schedule as provided in this Code shall be used for such computation. The child support obligations of each parent shall be computed. The obligor’s share shall be paid monthly to the obligee and shall be due on a specific date.
 2. Income shall be defined as follows:
 - a) “Gross income” includes earned and passive income from any source, except as excluded in this section.

Gross income shall not include benefits received from means-tested public assistance programs, but not limited to, TANF, Supplementary Security Income, food stamps, or any other program exempted by federal law, or sums received as child support or income of a parent’s new spouse.
 - b) “Earned income” is defined as income received from labor, or on the sale of goods or services and includes, but is not limited to, income from:
 - 1) salaries,
 - 2) wages, commissions,
 - 3) bonuses, and

- 4) severance pay.
- c) "Passive income" is defined as all other income and includes, but is not limited to, income from:
 - 1) dividends
 - 2) pensions,
 - 3) rent
 - 4) interest income,
 - 5) trust income, including income received from land held in trust by the United States, or per capita payments,
 - 6) annuities
 - 7) social security benefits,
 - 8) unemployment insurance benefits,
 - 9) disability insurance benefits,
 - 10) gifts, prizes or gaming winnings,
 - 11) royalties.
3. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required to produce income.
 - a. A determination of business income for tax purposes shall not control for purposes of determining a child support obligation.
 - b. The trial court shall carefully review income and expenses from self-employment or operation of a business to determine an appropriate level of gross income available to the parent to satisfy a child support obligation.
 - c. Expense reimbursement or in-kind payments received by a parent in the course of employment of self-employment or operation of a business shall be counted as income if they are significant and reduce personal living expenses. Said payments may include but are not limited to a company car, free housing, or reimbursed meals.
4. For purposes of computing gross income of the parents, the court shall include for each parent, whichever is most equitable, either:
 - a. All earned and passive monthly income, or

- b. If a parent is unemployed or working below full earning capacity, the court may consider the reason. If earnings are reduced as a matter of choice and not for reasonable cause, the Court may impute income to a parent up to his or her earning capacity, or,
 - c. The minimum wage paid for a forty-hour work week, or the Kickapoo median income, or
 - d. If a parent is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of the actual gross monthly gross income; or
 - e. If a minor noncustodial parent or a custodial person is under 16 years of age, imputed gross income for the minor parent is not used. If a minor noncustodial parent is between 16 and 18 years of age and regularly and continuously attending high school, impute gross income for the minor parent(s) based upon minimum wage at 20 hours per week.
 - f. Under special circumstances and when the court deems appropriate, the court may allow part of the child support obligation to be paid with in-kind contributions and/or services. If the court orders a portion of the child support obligation to be met with in-kind contributions, the court shall first assign a fair market value to the in-kind contributions and/or services and apply that amount to the obligation owed. The maximum percentage that will be allowed for in-kind goods and services will be fifty percent (50%). No monthly child support payment can be paid solely by in-kind goods and services. A one time in-kind contribution shall not relieve a non-custodial parent from future obligations or any remaining arrears.
5. The amount of any preexisting court order for current child support for children not before the court or for support alimony arising in a prior case shall be deducted from gross income to the extent payment is actually made under the order.
 6. The results of paragraphs 2, 3, 4, and 5 of this subsection shall be denominated "adjusted gross income".
 7. In cases in which one parent has sole custody, the adjusted monthly gross income of both parents shall be added together and the Child Support Guideline Schedule consulted for the total combined base monthly obligation for child support.
 8. After the total combined child support is determined, the percentage share of each parent shall be allocated by computing the percentage contributions of

each parent to the combined adjusted gross income and allocating that same percentage to the child support obligation to determine the base child support obligation of each parent.

- a. In cases where shared parenting time has been ordered by a district court or agreed to by the parents, the base monthly obligation shall be adjusted. "Shared parenting time" means that each parent has physical custody of the child overnight for more than one hundred twenty (120) nights each year.
- b. An adjustment for shared parenting time shall be made to the base monthly child support obligation by following formula: The total combined base monthly child support obligation shall be multiplied by one and one-half (1-1/2). The result shall be designating the adjusted combined child support obligation.
- c. To determine each parent's adjusted child support obligation, the adjusted combined child support obligation shall be divided between the parents in proportion to their respective adjusted gross incomes.
 - 1.) The percentage of time a child spends with each parent shall be calculated by determining the number of nights the child is in the physical custody of each parent and dividing that number by three hundred sixty-five (365).
 - 2.) Each parent's share of the adjusted combined child support obligation shall then be multiplied by the percentage of the time the child spends with the other parent to determine the base child support obligation owed to the other parent.
 - 3.) The respective adjusted base child support obligations for each parent are then offset, with the parent owing more base child support paying the difference between the two amounts to the other parent. The base child support obligation of the parent owing the lesser amount is then set at zero dollars.
- d. The parent owing the greater amount of base child support shall pay the difference between the two amounts as a child support order. In no case shall the amount of child support ordered to be paid exceed the amount of child support which would otherwise be ordered to be paid if the parents did not participate in shared parenting time.
- e. In no event shall the provisions of this paragraph be construed to authorize or allow the payment of child support by the custodial parent to the noncustodial parent.

10. The actual medical and dental insurance premium for the child shall be allocated between the parents in the same proportion as their adjusted gross income and shall be added to the base child support obligation.
 - a. If the insurance policy covers a person other than the child before the court, only that portion of the premium attributed to the child before the court shall be allocated and added to the base child support obligation.
 - b. If the obligor pays the medical insurance premium, the obligor shall receive credit against the base child support obligation for the obligee's allocated share of the medical insurance premium.
 - c. If the obligee pays the medical insurance premium, the obligor shall pay the obligor's allocated share of the medical insurance premium to the obligee as part of the base child support obligation.

11. In cases of split custody, where each parent is awarded custody of at least one of the natural or legally adopted children, the child support obligation for each parent shall be calculated by application of the Child Support Guidelines for each custodial arrangement. The parent with the larger child support obligation shall pay the difference between the two amounts to the parent with the smaller child support obligation.
 - a. The court shall determine the "actual" child care expenses reasonably necessary to enable either or both parents to be employed, or seek employment, or attend school or training to improve employment income.
 - b. The actual child care costs incurred shall be allocated and paid monthly in the same proportion as base child support.
 - c. The court shall require the obligee to provide the obligor with timely documentation of any change in the amount of the child care costs. Upon request by the obligor, whose requests shall not exceed one each month, or upon order of the court, the obligee shall provide the documentation of the amount of incurred child care costs which are related to employment, employment search or education or training as authorized by this paragraph.
 - d. If the court determines that it will not cause detriment to the child or will not cause undue hardship to either parent, in lieu of

payment of child care expenses incurred during employment, employment search or while the obligee is attending school or training, the obligor may provide care for the child during that time.

12. Reasonable and necessary medical, dental, orthodontic, optometric, psychological, or any other physical or mental health expenses of the child incurred by either parent and not reimbursed by insurance may be allocated in the same proportion as the parents' adjusted gross income as separate items that are not added to the base child support obligation. If reimbursement is required, the parent who incurs the expense shall be reimbursed by the other parent within thirty (30) days of receipt of documentation of the expense.
13. Transportation expenses of a child between the homes of the parents may be divided between the parents in proportion to their adjusted gross income.
14. The costs of any traditional cultural activities for the child may be divided between the parents in proportion to their adjusted gross income.
 - a.
 - 1.) Child support orders may be modified upon material change in circumstances.
 - 2.) Modification of the Child Support Guideline Schedule shall not alone be a material change in circumstances for child support orders.
 - 3.) Providing support for children born to or adopted by either parent after the entry of a child support order shall not alone be considered a material change in circumstances.
 - 4.) An order of modification shall be effective upon the date the motion to modify was filed, unless the parties agree to the contrary or the court makes a specific finding of fact that the material change of circumstances did not occur until a later date.
 - b.
 - 1.) A child support order shall not be modified retroactively regardless of whether support was ordered in a temporary order, a decree of divorce, an order establishing paternity, modification of an order of support, or other action to establish or enforce support.
 - 2.) All final orders shall state whether past due support and interest has accrued pursuant to any temporary order, and the amount due, if any; however, failure to state a specific past due

amount shall not bar collection of that amount after entry of the final support order.

- b. The amount of a child support order shall not be construed to be an amount per child unless specified by the court in the order. A child reaching the age of majority or otherwise ceasing to be entitled to support pursuant to the support order shall constitute a material change in circumstances, but shall not automatically serve to modify the order.
- 15.
- a. At any time after the issuance of a child support order, either parent may request the other parent to provide the information necessary for an informal review and adjustment process. Information shall be provided to the requesting parent within forty (45) days of the request.
 - b. Requested information may include verification of income, proof and costs of children's medical insurance, and current and projected child care costs. If shared parenting time has been awarded by the court, documentation of past and prospective overnight visits shall be exchanged.
 - c. Exchange of requested information may occur once a year or less often, by regular mail.
 - d.
 - 1.) If the parents agree to a modification of a child support order, their agreement shall be in writing.
 - 2.) The modification agreement shall be submitted to the trial court. The court shall review the modification to confirm that the child support obligation complies with the Child Support Guidelines and that all necessary parties pursuant to this Code have been notified. If the court approves the modification, it shall be filed with the court.