

**ORDINANCE
OF THE GOVERNING BODY OF
THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION, MONTANA**

BE IT ENACTED BY THE TRIBAL COUNCIL OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES THAT AMENDMENT NO. 31 SHALL AMEND ORDINANCE 103-A AS FOLLOWS:

Title III. Chapter 1. entitled "Domestic Relations" is amended as follows:

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

Title III. Chapter 1. Part 2. entitled "Paternity" is added with the following language:

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

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

3-1-202. Jurisdiction. (1) The Tribal Court shall have jurisdiction over any action to determine paternity under this Title, where the mother, the alleged father, or the child is a member of the Confederated Salish and Kootenai Tribes or is eligible to become a member.

(2) Any person who has sexual intercourse within the lands of the Flathead Reservation with a person who is a member or is eligible to become a member of the Confederated Salish and Kootenai Tribes thereby submits to the jurisdiction of the Tribal Court as to an action brought under this Title with respect to a child who may have been conceived by that act of intercourse.

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

3-1-203. Applicability. (1) All civil proceedings pertaining to the establishment of paternity shall comply with this Part.

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

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

3-1-205. Rules of Procedure in Paternity Proceedings. (1) Any paternity action under this Part is a civil action governed by Part 7 Rules of Practice in Actions and Proceedings before the Tribal Court, 1-2-7 CSKT Laws Codified, except where this Part specifies other procedures.

3-1-206. Definitions.

- (1) "Alleged Father" means any male who is asserted to be the biological father of a child.
- (2) "Adult Child" means a child eighteen (18) years or older.
- (3) "Child" means a person who is less than eighteen (18) years old who has not been emancipated by order of a court of competent jurisdiction or by legal marriage. The singular includes the plural.
- (4) "Court" means the Tribal Court of the Confederated Salish and Kootenai Tribes of the Flathead Reservation.
- (5) "Full Faith and Credit" means treatment of a foreign judgment in the same manner as a judgment of the Tribal Court, unless a party seeking to contest the validity or enforcement of the foreign order has established by a preponderance of the evidence that the court or agency issuing the order:
 - (a) did not have jurisdiction to enter the order;
 - (b) did not have personal jurisdiction over the party; or
 - (c) did not give the party reasonable notice and opportunity to be heard before the order was entered.
- (6) "Genetic Testing" means a DNA paternity test or other approved genetic testing by an accredited laboratory used to establish that the alleged father is the child's biological father.
- (7) "Party" means any parent, guardian, child, Tribe, or agency that has initiated, intervened, or been joined by service of process to a court case.
- (8) "Paternity" means fatherhood. '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.

(10) "TCSEP" means the Confederated Salish and Kootenai Tribes Child Support Enforcement Program.

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

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

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

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

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

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

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

(d) He acknowledges his paternity of the child in a writing filed with TCSEP and the Confederated Salish and Kootenai Tribal Court, who shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed TCSEP and the Confederated Salish and Kootenai Tribal Court. If another man is presumed under subsection (a), (b), (c), or (d) of this section to be the child's father, such acknowledgment shall give rise to the presumption of paternity only with the written consent of the otherwise presumed father or after such other presumption has been rebutted.

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

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

(a) Cases involving domestic violence:

(b) Cases involving incest or rape; or

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

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

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

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

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

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

(2) Who May File Petition. A petition to request the Court to establish paternity may be filed by anyone with standing, including but not necessarily limited to:

(a) An adult child;

(b) The child's legal guardian or primary custodian;

(c) The child's natural mother;

(d) An alleged father of the child; or

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

(3) Contents of Petition. A petition to establish paternity shall include:

- (a) The names, ages, addresses, and tribal affiliations, if any, of the child, Adult child or children;
- (b) The names, ages, addresses, and tribal affiliations, if any, of the natural mother, the alleged father(s), and of all others who have legal rights of custody, visitation, or support of the child;
- (c) A statement as to whether the natural mother and the alleged father are or were married, and the dates of marriage, separation, and divorce, if any;
- (d) A statement as to whether the natural mother and alleged father agree that the alleged father is the natural father of the child;
- (e) A statement as to whether there are other court or administrative paternity proceedings or state paternity affidavits concerning the child or whether parental rights have been terminated or suspended;
- (f) A certified copy of each child's birth certificate;
- (g) A Statement setting forth the factual basis for the alleged paternity of each child.

(4) Service and Summons. All parties, including any Adult child, the biological mother, and the man alleged in the petition to be the birth father, shall be served with the petition and a summons. The summons shall notify the party that the party must respond to the summons and petition by filing an answer with the Court and serving it on all parties. The summons shall further notify the party that, if the written response is not filed with the Court within fifteen (15) days after receipt of the summons and petition (excluding Saturdays, Sundays, and Tribal holidays, as provided by Rule 5), the Court may, without that party's response, enter a judgment of paternity by default.

3-1-212. Paternity Hearing. (1) Only those persons the Court finds to have a legitimate interest in the proceedings may attend hearings under this Part.

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

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

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

3-1-213. Evidence Relating to Paternity. (1) Genetic tests are the preferred method of establishing

paternity. Evidence relating to paternity may include:

- (a) Genetic test results, weighted in accordance with evidence of the statistical probability of the alleged father's paternity;
- (b) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;
- (c) An expert's opinion concerning the probability of the alleged father's paternity based upon the duration of the mother's pregnancy;
- (d) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts, and
- (e) Any other evidence relevant to the issue of paternity of the child.

3-1-214. Genetic Testing. (1) In all paternity proceedings, the Court shall require the child, mother, and alleged father(s) to submit to genetic tests, unless good cause exists not to require such testing, as provided in section 3-1-208.

(2) Lab Accredited. The tests shall be performed by an accredited paternity genetic testing lab approved by TCSEP.

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

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

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

3-1-215. Paternity Order. (1) The judgment or order of the Court determining whether or not an alleged father 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 a certified copy of the order to the Department of Vital Statistics of the state in which the child was born.

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

3-1-216. Disestablishment of Presumed Paternity. A man presumed to be a child's father under Section 3-1-207 of this chapter may bring an action for the purpose of declaring the nonexistence of the father and child relationship only if the action is brought within a reasonable time after obtaining

knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party. Regardless of its terms, no agreement between an alleged or presumed father and the mother or child shall bar an action under this section.

3-1-217. Paternity Records. The records filed in a paternity action shall be confidential. TCSEP and the parties to the case may view and obtain copies of the records. Access to other individuals or entities is subject to approval of the Court, for good cause shown.

3-1-218. Paternity Established by other Jurisdictions. Properly issued court and administrative orders, judgments, or decrees of other tribes, states, or federal agencies establishing paternity shall be given full faith and credit. Such orders will be considered properly issued when the issuing court or administrative agency had personal jurisdiction over the person claimed to be bound by the foreign order, subject matter jurisdiction over the matter, proper service of process under the law of the issuing jurisdiction was made on such person, and the order was issued according of the laws of that jurisdiction and does not violate the public policy of the Confederated Salish and Kootenai Tribes.

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

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

3-1-301. Purpose. The purpose of this Part is to provide child support guidelines and procedures for the establishment, modification and enforcement of child support orders, including enforcement of foreign child support orders and judgments. TCSEP will work to establish, modify, and enforce Child Support for all cases in the jurisdiction of the Tribal Court and in any case that is appropriately referred from a foreign jurisdiction. All Child Support Obligations will be based on the Child Support Guidelines and Schedule unless there is a finding by the Court that the application of these guidelines would be unjust or inappropriate in a particular case, or that deviation is in the best interest of the child.

3-1-302. Jurisdiction. The Tribal Court shall have jurisdiction under this Part over any action to establish, modify or enforce child support orders. The Tribal Court shall have jurisdiction to recognize and enforce foreign child support orders where the Tribe has personal jurisdiction over the obligor.

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

3-1-304. Rules of Procedure. Any child support action under this chapter is a civil action governed by the Part 7 Rules of Practice in Actions and Proceedings before the Tribal Court, 1-2-7 CSKT Laws Codified,

except where this Part specifies other procedures.

3-1-305. Definitions.

- (1) "Alleged Father" means any male who is asserted to be the biological father of a child.
- (2) "Child" means a person who is less than eighteen (18) years old who has not been emancipated by order of a court of competent jurisdiction or by legal marriage. The singular includes the plural.
- (3) "Child Support" means the financial obligation that a non-custodial parent owes toward his or her children.
- (4) "Custodial Parent" means the person who exercises primary physical custody of the child or children pursuant to a court order or 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.
- (5) "Full Faith and Credit" means treatment of a foreign judgment in the same manner as a judgment of the Tribal Court, unless a party seeking to contest the validity or enforcement of the foreign order has established by a preponderance of the evidence that the court or agency issuing the order:
 - (a) did not have jurisdiction to enter the order;
 - (b) did not have personal jurisdiction over the party; or
 - (c) did not give the party reasonable notice and opportunity to be heard before the order was entered.
- (6) "Non-custodial parent" means a parent who does not exercise primary physical custody of the child or children.
- (7) "Obligor" means the person with an obligation to pay child support, pursuant to an order of a court or administrative agency with jurisdiction to enter such order.
- (8) "Obligee" means the person or agency with the right to receive child support, pursuant to an order of a court or administrative agency with jurisdiction to enter such order.
- (9) "TANF" means the Temporary Assistance to Needy Families program, whether administered by the Confederated Salish and Kootenai Tribes, or another Tribe or a State.
- (10) "TCSEP" means the Confederated Salish and Kootenai Tribes Child Support Enforcement Program, which is the Tribal Agency designated by the Confederated Salish and Kootenai Tribal Council to establish, modify and enforce child support orders.

3-1-306. CSKT Tribal Child Support Enforcement Program (TCSEP). (1) The Confederated Salish and Kootenai Tribes Child Support Enforcement Program (TCSEP) is authorized to carry out the purposes set out in this Part. TCSEP shall be operated in compliance with Title IV-D of the Federal

Social Security Act (42 U.S.C. § 651) for the establishment of paternity, establishment and modification of child support obligations, enforcement of child support obligations, and location of custodial and non-custodial parents.

(2) TCSEP shall establish child support guidelines and a schedule for adoption by the Tribal Council. 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. The guidelines and schedule must be based on specific descriptive and numeric criteria; result in a computation of an amount of child support that is sufficient to meet the basic needs of the child; provide for a minimum amount of monthly child support, not less than \$25.00 per child, to establish the principal that every parent, regardless of income, has an obligation to provide financial support for a child; and establish a median income based on the tribe's government minimum wage to be imputed as income when the Court has no reliable evidence for a person upon which to base a child support award. TCSEP shall review its guidelines and schedule at least once every four (4) years to ensure that they remain current and shall make recommendations for revisions, as appropriate, to the Tribal Council.

(3) Upon request of a parent, an obligee, an obligor, or a tribal or state agency with authority to make such a request, TCSEP may initiate legal action; join a legal action; or otherwise act to establish parenthood of a child, locate a non-custodial parent, or to establish, modify, or enforce a child support obligation. In such an action, TCSEP does not represent the requesting party or any other party to the action, but instead acts on behalf of the child.

(4) TCSEP shall extend the full range of Child Support services to respond to all requests from outside jurisdictions. TCSEP and the Tribal Court shall comply with the Full Faith and Credit for Child Support Orders Act (28 U.S.C. 1738B), which requires that the Tribal Court extend full faith and credit to any child support order entered by any state or tribal court and to enforce those orders according to their terms. "Full Faith and Credit" means treatment of a foreign judgment in the same manner as a judgment of the Tribal Court, unless a party seeking to contest the validity or enforcement of the foreign order has established by a preponderance of the evidence that the court or agency issuing the order:

- (a) did not have jurisdiction to enter the order;
- (b) did not have personal jurisdiction over the party; or
- (c) did not give the party reasonable notice and opportunity to be heard before the order was entered.

(5) Upon request from TCSEP, the Tribes, any of its agencies, enterprises, or businesses, and any employer operating within the boundaries of the Flathead Reservation shall provide information to assist TCSEP in locating obligors, their income, and their assets. TCSEP may seek a subpoena from the Court to obtain the names, addresses, employment information, and other necessary data regarding an obligor.

(6) An attorney representing TCSEP 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.

(7)TCSEP shall keep confidential all information and records in its possession to the maximum extent consistent with performance of its duties.

(8)TCSEP shall maintain the Confederated Salish and Kootenai Tribes Child Support Registry for receipt and disbursement of child support payments.

(9) TCSEP shall prepare a recommendation for the amount of child support and health insurance obligation in each Child Support case filed with the Tribal Court, whether filed by TCSEP or by a parent or Adult Child. In making its recommendation, TCSEP shall be guided by the Child Support Guidelines and Schedule approved by the Tribal Council. TCSEP 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.

(a) In determining the parties' respective incomes, TCSEP shall include in the calculation of gross income all income from any source, except the following: benefits received from means-tested public assistance programs including, but not limited to, TANF, supplemental security income, food stamps, or any other program exempted by federal law; income of a parent's new spouse; and sums received as child support. A specific cash value shall be assigned to non-cash benefits. Seasonal income, overtime income, or fluctuating income shall be averaged. When income from a full-time job is consistent with income during the marriage, income earned as the result of overtime hours or a second job may be disregarded. 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. Adjusted Gross Income shall be calculated upon making deductions for federal taxes; FICA; Tribal, state, or local income taxes; Health insurance premiums to the extent paid by an obligor for the benefit of the child; Child support paid for another child to the extent actually paid; Court ordered spousal maintenance to the extent actually paid; Mandatory union and professional dues, and mandatory pension plan payments; and the amount of reasonable expense of an obligor for preexisting, jointly acquired debt of the parents to the extent payment of the debt is actually made.

(b)If a parent is unemployed or working below full earning capacity, TCSEP may impute income, with due consideration for the reasons, including whether the parent declined to accept or pursue employment or training opportunities, and the parent's job skills, training, work history, education, health, and age. If the Court finds that earnings are reduced as a matter of choice and not for reasonable cause, the Court shall impute income to a parent up to his or her earning capacity.

3-1-307. Pre-filing Child Support Obligations. The Court may not order payment for support provided or expenses incurred more than five (5) years prior to the commencement of a child support action. Any period of time in which the responsible party has concealed himself or avoided the jurisdiction of the Court under this chapter shall not be included within the five-year period.

3-1-308. Deviation from Child Support Guidelines and Schedule. (1) The Court may order

child support in an amount different from that which is provided in the Tribes Child Support Guidelines only if:

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

3-1-309. Confidentiality of Court Records and Proceedings. (1) The records filed in a Child Support action shall be confidential. Only TCSEP and parties to the case may view and obtain copies of the records. Access to other individuals or agencies is subject to approval of the Court, for good cause shown.

(2) The Court may order that the address and other location information regarding a party or child shall not be released to anyone other than TCSEP absent good cause shown.

(3) In addition to TCSEP and the parents, only those persons the Court finds to have a legitimate interest in the proceedings may attend hearings under this chapter.

3-1-310. Petition for Child Support. (1) Any parent, guardian, emancipated child, or agency authorized to establish, modify and enforce child support orders may file a petition for establishment of child support under this Part. The child support petition may be filed as a separate proceeding, or in connection with a petition for Dissolution or annulment, Paternity, or Child custody.

(2) A petition for establishment of child support shall contain as much of the following information as is reasonably available to the Petitioner:

- (a) The name, address, tribal affiliation, date and place of birth, and social security number of the petitioner, the responding party, and the child for who support is requested;
- (b) The child support obligation requested or agreed upon;
- (c) The proposed provision of health insurance for the child;
- (d) Any proposed work-related day care or extraordinary medical or educational expenses for the child;
- (e) The date proposed for the child support obligation to begin;
- (f) The proposed frequency of payment;

- (g) A proposed parenting plan, if any, or if custody is shared, the percentage of a year that each parent has physical custody of the child;
 - (h) A statement that the petitioner believes that the male party is the father of the child, document(s) indicating that he is the child's father, or a statement that the parties agree that the male party is the father of the child;
 - (i) a statement whether any of the following proceedings involving the parents or the child are pending or have taken place in any court or administrative agency, and if so, the date, name, and place of the court or agency:
 - (i) Child custody proceeding;
 - (ii) Child support proceeding;
 - (iii) Paternity establishment or disestablishment proceeding;
 - (iv) Proceeding requesting a domestic violence protective order or no-contact order; or
 - (v) Proceeding requesting a restraining orders involving the child or a party;
 - (j) A statement whether either parent has ever received state or tribal public assistance, and if so, the date(s) and name of the state or tribe providing assistance;
 - (k) All financial information for each parent, including employment, earnings, other sources of income, existing child support obligations of each party for children not the subject of the present Petition, and similar information;
 - (l) authorization for the release of all financial records to TCSEP;
 - (m) A statement regarding which parent should be allowed to claim the child as a dependent for income tax purposes; and
 - (n) Any recommendation made by TCSEP regarding child support and health insurance coverage.
- (3) The petitioner shall serve a copy of the petition and summons upon the parent against whom child support is to be established ("Respondent"), in the manner provided by Rule 9, Part 7, Rules of Practice in Actions and Proceedings before the Tribal Court, 1-2-7 CSKT Laws Codified. In addition, a copy of the Petition shall be mailed to or otherwise provided to TCSEP. The summons shall inform the Respondent of the following:
- (a) That an answer must be filed with the Court and served on the petitioning party within fifteen (15) days of the date of service of the petition, excluding weekends and Tribal holidays;
 - (b) That if the Respondent fails to enter a defense to the petition challenging the authority of the Court

to hear the matter by the date of the hearing, the hearing shall proceed on the basis of the Petition.

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

(d) That if the Respondent fails to pay child support under an order, the Court may authorize publication of Respondent's name in a local newspaper and/or suspension or denial of an Tribal licenses;

(e) That Respondent's employer or others with evidence of the Respondent's income may be subpoenaed to provide the Court with records of income;

(f) That if there is no reliable evidence of the respondent's income, income will be imputed according to the TCSEP Child Support Guidelines and Schedule;

(g) That if Respondent's income is reduced as a matter of choice and not for reasonable cause, the Court will impute income up to the presumed earning capacity; and

(h) That Respondent may enter into an agreed child support order.

3-1-311. Notice to Child Support Program. The Court shall include TCSEP on all notices of hearings in any paternity or child support action. Any party to such action shall include TCSEP as a party being served with copies of any documents filed with the Court.

3-1-312. Setting the Initial Child Support Hearing. When the Court receives a petition for child support, it shall set a hearing date which may not be more than twenty-eight (28) calendar days after the petition was served, unless continued for good cause.

3-1-313. Agreed Child Support Order. (1) The parties may enter into an agreement as to the level of child support obligation, subject to Court approval. The Court may approve an agreement that deviates from the Tribes Child Support Guidelines and Schedule only under the procedures established in Section 3-1- 308.

(2) TCSEP may assist the parties to develop an agreement under the Tribes Child Support Guidelines and Schedule.

(3) A proposed Agreed Child Support Order shall be signed by the parties and filed with the Court for approval and entry of the order.

(4) The Court may, upon its own motion, hold a hearing to review the proposed Agreed Order and to ensure that the parties understand the terms of the proposed order. If the Court finds that any consent was not truly voluntary, the proposed order shall not be entered.

3-1-314. Child Support Hearing. The Court shall review the Record and hear evidence in order to establish the child support obligation by applying the Tribes Child Support Guidelines and Schedule to the circumstances of the parties.

3-1-315. Child Support Order. (1) Payments under a child support order shall be made to TCSEP for distribution to the family, the Tribal TANF program, or a requesting State or Tribal IV-D agency. Payments made elsewhere than TCSEP must be reported to TCSEP by the payor within 30 days of payment.

(2) A child support order shall include the following:

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

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

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

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

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

(3) The date the child support obligation begins;

(4) The frequency of child support payments;

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

(6) a statement that each party shall notify TCSEP of any change of employer or change of address within ten (10) days of the change;

(7) a statement that should the obligated party fail to make a support payment, his/ her income is subject to being withheld ;

(8) a statement authorizing automatic income withholding as necessary to ensure compliance with the order, unless:

(a) there is a signed agreement between the parties that provides for an alternative arrangement that has been entered into the Court's record; or

(b) the Court finds by a preponderance of the evidence that there is good cause not to require withholding absent further Order of the Court.

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

3-1-316. Default Child Support Order. (1) If the Respondent fails to appear or otherwise defend, the Court may enter a default child support order upon finding that:

(a) Respondent was properly served with the petition and summons;

(b) Paternity has been established; and

(c) Primary residential custody and/or a parenting schedule has been established.

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

3-1-317. Modification of Child Support Orders. (1) When there has been a substantial change in circumstances that make the existing Order inadequate or unfair a party may request, by motion, modification of a Confederated Salish and Kootenai Tribal Court child support order.

(a) A motion for a modification of child support shall be accompanied by an affidavit setting forth the factual basis for the motion and the modification requested. The moving party shall serve the other parties affected by the modification request with the motion and affidavit. The Court may set a hearing no sooner than ten (10) days after service of the motion.

(b) Grounds for modification of a child support order may include, but are not limited to:

(i) A substantial increase or decrease in the gross income of either party;

(ii) A change in custody of a child; or

(iii) A substantial change in the Tribes Child Support Guidelines and Schedule.

(c) Both parties shall file updated financial information forms with TCSEP at least ten (10) days before the modification hearing, and TCSEP shall file its recommendation with the Court at least three days prior to the hearing.

3-1-318. Enforcement of Child Support Orders. (1) An obligee or TCSEP may file a motion for the Court to enforce payment of a child support order. The moving party shall serve the obligor with a copy of the motion. The Court shall set a show cause hearing no sooner than five (5) days and no later than twenty (20) days after service of the motion.

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

(a) Wage and income withholding;

(b) Attachment of assets;

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

(3) The foregoing remedies are in addition to those that may otherwise be available, and TCSEP is not

required to seek a writ of execution under Section 4-3-306.

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

3-1-319. Income Withholding. (1) All Child Support Orders must provide for automatic income withholding as necessary to comply with the order. Where the Order provides for automatic income withholding TCSEP may initiate withholding without further Court order including any writ of execution or garnishment. Automatic income withholding is the preferred method of child support collection and is applicable both to overdue child support obligations and to ongoing obligations as they become due. Income shall not be subject to withholding in any case where the Court finds that there is good cause not to require the withholding or where there is a signed agreement between the participants that provides for an alternative arrangement that is entered into the Court's record.

(2) Upon issuance of a Court Order authorizing income withholding, TCSEP shall provide an employer or other payee a Notice of withholding on the standard Federal Income Withholding form. The Notice shall recite penalties for failing to withhold or discriminating against the employee with a withholding order.

(3) In addition to other remedies, the Court may issue an order to an employer, trustee, financial agency, other person, or corporation on the reservation or over whom the Court otherwise has jurisdiction, to withhold and pay over to TCSEP or the person designated by the Court money due or to become due.

(4) An Employer may not discharge, refuse to employ, or take disciplinary action against an obligor parent due to a wage withholding requirement or request. An employer that has engaged in any of the above actions may be fined in an amount not to exceed \$500.00. An Employer who fails to withhold child support as ordered is liable for the full amount that should have been withheld, and may be fined an additional amount of up to \$500.00 for each civil contempt.

(5) Income shall be subject to withholding to the maximum amount permitted under the Consumer Credit Protection Act, 15 U.S.C. 1673(b) or Tribal law, whichever is less.

(6) An additional amount equal to 20% of the current support order shall be withheld and applied toward the liquidation of any overdue support, subject to the limits provided below. Where there is no current ongoing Child Support obligation, up to 10% of the non-custodial parent's gross income can be ordered to pay arrears, subject to the limits provided below.

(a) The maximum part of the aggregate disposable earnings of any person for any work week which is subject to withholding for the support of a minor child shall not exceed:

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

(ii) Sixty percent (60%) of such person's disposable earnings for that week if such person is not supporting a spouse or dependent child.

(iii) The fifty percent (50%) specified above shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in paragraph two (2) of this subsection shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or income assignment to enforce a support order with respect to a period which is prior to the twelve (12) week period which ends with the beginning of such work week.

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

(8) Income withholding must be carried out in compliance with the procedural due process requirements established by the Tribe or Tribal organization.

(9) TCSEP will promptly refund amounts which have been improperly withheld.

(10) TCSEP will promptly terminate income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

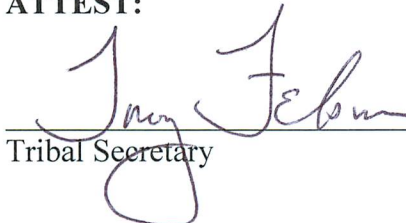
(11) The only basis for contesting a withholding is a mistake of fact, which for purposes of this paragraph, means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

CERTIFICATION

The foregoing Amendment No. 34 to Ordinance 103-A was duly enacted by the Tribal Council on the 4th day of August, 2016, with a vote of 5 for, 4 opposed, and 0 not voting pursuant to the authority vested in the Tribal Council by Article VI, Section 1(a), (l), (n), (p), (q), (r), and (u) of the Tribes' Constitution adopted and approved under Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended.


Chairman, Tribal Council

ATTEST:


Tribal Secretary