

TABLED

Cherokee Council House

Cherokee, Qualla Boundary (NC)

SEP 06 2012

ORDINANCE NO. 308 (2012)

WHEREAS, The Eastern Band of Cherokee Indians has submitted the required federal plan to begin the administration of a federal Social Security Act welfare program, namely Title IV-D Child Support Enforcement; and

WHEREAS, the Cherokee Code must be updated to reflect the creation and authority of the Tribal Child Support Services program to carry out the provisions of such program.

NOW THEREFORE, BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians assembled, at which a quorum is present, that Chapter 110 of the Cherokee Code shall be amended to reflect the changes set forth below.

Article I.

Sec. 110. Purpose, Construction, Uniformity and Severability.

(1) The purposes of this chapter is to:

(A) Establish a Tribal Child Support Services Program as authorized under Section 455(f) of the Social Security Act set forth in the United States Code.

(B) Authorize the Tribal Child Support Services program to carry out the functions of such program in accordance with the Title IV-D of the Social Security Act, 42 U.S.C. §651 et seq., as amended, and Title IV-D rules and regulations.

- (2) This chapter shall be liberally constructed to provide child support for minor children under the jurisdiction of the Tribe and applied in a manner consistent with child support laws set forth in Chapter 50. All singular terms shall be construed to include the plural and all pronouns shall be construed to include both genders.
- (3) If any provision of this Chapter is determined a court of competent jurisdiction to be invalid for any reason, the remainder of the provisions shall remain in full force and effect and shall not be affected.

Sec. 110-1. - Definitions.

For purposes of this chapter, the following terms shall have the following meanings:

(1)

~~Construction. All singular terms shall be construed to include the plural and all pronouns shall be construed to include both genders.~~

(12)

~~Clerk shall mean the Clerk of the Cherokee Court of Indian Offenses or any successor Cherokee Indian Court.~~

(23)

~~Court shall mean the Cherokee Court of Indian Offenses or any successor Cherokee Indian Court.~~

(34)

~~Judge shall mean any judge of the Cherokee Court that is not a magistrate judge of Indian Offenses or any successor Cherokee Indian Court.~~

(45)

~~Child means any person under the age of 18 who is not otherwise emancipated, married or a member of the armed forces of the United States, or any person over the age of 18 for whom a court orders that support payments continue.~~

(56)

~~Child support order means a judgment, decree or order of the court requiring the payment of child support in periodic amounts or in a lump sum; and includes a permanent or temporary order; and an initial order or a modification of an order.~~

(67)

~~Disposable income means any form of periodic payment to an individual regardless of sources, including but not limited to wages,~~

salary, commission, per capita distributions of tribal gaming revenues, self-employment income, bonus pay, severance pay, sick pay, incentive pay, vacation pay, compensation as an independent contractor, worker's compensation, unemployment compensation benefits, disability, annuity, survivor's benefits, pension and retirement benefits, interest, dividends, rents, royalties, trust income and other similar payments, which remain after the deduction of amounts of federal State, and local taxes, Social Security, and involuntary retirement contributions. However, Supplemental Security Income, Work First Family Assistance, and other public assistance payments shall be excluded from disposable income. Unemployment compensation benefits shall be treated as disposable income only for the purposes of income withholding and the amount withheld shall not exceed 25 percent of the unemployment compensation benefits.

(78)

IV-D case means a case in which services have been applied for or are being provided by a ~~child support enforcement~~ Tribal Child Support Services program agency established pursuant to Title IV-D of the Social Security Act as amended.

(89)

Non-IV-D case means any case, other than a IV-D case, in which child support is legally obligated to be paid.

(94)

Initiating party means the party, the attorney for a party, a ~~child support enforcement~~ Tribal Child Support Services agency, or the clerk of court who initiates an action, proceeding, or procedure as allowed or required by law for the establishment or enforcement of a child support obligation.

(104)

Mistake of fact means that the obligor:

a.

Is not in arrears in an amount equal to the support payable for one month; or

b.

Did not request that withholding begin, if withholding pursuant to a purported request by the obligor for withholding; or

c.

Is not the person subject to the court order of support for the child named in the advance notice of withholding; or

d.

Does not owe the amount of current support or arrearages specified in the advance notice or motion of withholding; or

e.

Has a rate of withholding which exceeds the amount of support specified in the court order.

(112)

Modification means a change in a child support order that affects the amount, scope or duration of the order and modifies, replaces, supersedes or otherwise is made subsequent to the child support order.

(123)

Obligee in an IV-D case, means the ~~child support enforcement~~ Tribal Child Support Services agency, and in a non-IV-D case means the individual to whom a duty of support is owed or the individual's legal representative.

(134)

Obligor means the individual who owes a duty to make child support payments under a court order.

(145)

Parent means the natural or adoptive parent of a dependent child who has the legal duty to support said child and includes the father of a child born out-of-wedlock and the parents of a dependent child who is the custodial or noncustodial parent of the dependent child requiring support. If both the parents of the child requiring support were unemancipated minors at the time of the child's conception, the parents of both minor parents share primary liability for their grandchild's support until both minor parents reach the age of 18 or become emancipated. If only one parent of the child requiring support was an unemancipated minor at the time of the child's conception, the parents of both parents are liable for any arrearages in child support owed by the adult or emancipated parent until the other parent reaches the age of 18 or becomes emancipated.

(156)

Payor means any payor, including any federal, state, tribal or local governmental unit, of disposable income to an obligor.

(167)

Post-minority child support is child support that extends past a child's 18th birthday. If the child is still in primary or secondary school when the child reaches age 18, support payments shall continue until the child graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches age 20, whichever comes first, unless the court in its discretion orders that payments cease at age 18 or prior to high school graduation. In addition, in the event a serious physical or mental disability of the child prolongs the child's dependence upon his or her parental income past age eighteen, the court may order post-minority support. The order shall state in writing the reasons for extending support past the child's eighteenth birthday and the order shall establish a support amount which is fair and appropriate under the circumstances.

(178)

~~State shall mean and include the State of North Carolina and, its agencies and offices, charged with child support enforcement Tribal Child Support Services including, but not limited to, the Department of Human Resources and the Department of Social Services.~~

(189)

Tribal Program and Tribal agency shall have the same meaning and may be referred to as "program" or "agency" and shall include but not be limited to the Tribal Child Support Services program.

(19)

Tribe shall mean the Eastern Band of Cherokee Indians.

(Ord. No. 816, 5-19-2003)

Sec. 110-1.1- Additional powers and duties of Tribal Child Support Services.

(a) In addition to other powers and duties conferred upon the Tribal Child Support Services by this Chapter or other federal law, Tribal Child Support Services shall have the following powers and duties:

(1) —To issue a subpoena for the production of books, papers, correspondence, memoranda, agreements, or other information, documents, or records relevant to a child support establishment or enforcement proceeding or paternity establishment proceeding. The subpoena shall be signed by the agency attorney and shall state the name of the person or entity required to produce the information authorized under this section, and a description of the information compelled to be produced. The subpoena may be served in the manner provided for service of subpoenas under the North Carolina

Rules of Civil Procedure. The form of subpoena shall generally follow the practice in the Cherokee Court.

- (2) Return of the subpoena shall be to the person who issued the subpoena. Upon the refusal of any person to comply with the subpoena, it shall be the duty of any judge of the Cherokee Court, upon application by the person who issued the subpoena, to order the person subpoenaed to show cause why he should not comply with the requirements, if in the discretion of the judge the requirements are reasonable and proper. Refusal to comply with the subpoena or with the order shall be dealt with as for contempt of court and as otherwise provided by law. Information obtained as a result of a subpoena issued pursuant to this subdivision is confidential and may be used only by the Tribal Child Support Services program in conjunction with a child support establishment or enforcement proceeding or paternity establishment proceeding except that it shall not be confidential to the Tribal Enrollment Office upon written request in a formal action before the Tribal Enrollment Committee.
- (3) For the purposes of locating persons, establishing paternity, or enforcing child support orders, the Program shall have access to any information or data storage and retrieval system maintained and used by the Department of Transportation for drivers license issuance or motor vehicle registration, or by a law enforcement agency of the Tribe or this State for law enforcement purposes, as permitted pursuant to N.C.G.S. 132-1.4, except that the Program shall have access to information available to the law enforcement agency pertaining to drivers licenses and motor vehicle registrations issued in other states.
- (4) Establish and implement procedures under which in IV-D cases either parent or, in the case of an assignment of support, the Tribe may request that a child support order enforced under this Chapter be reviewed and, if appropriate, adjusted in accordance with the most recently adopted uniform statewide child support guidelines prescribed by the Conference of Chief District Court Judges, adopted pursuant to Sec.110-2A below.
- (5) Develop procedures for ensuring that when a noncustodial parent providing health care coverage pursuant to a court order changes employers and is eligible for health care coverage from the new employer, the new employer, upon receipt of notice of the order from the Program, enrolls the child in the employer's health care plan.
- (6) Develop and implement an administrative process for paternity establishment.
- (7) Establish and implement administrative procedures to change the child support payee to ensure that child support payments are made to the appropriate caretaker when custody of the child has changed.

- (8) Establish and implement expedited procedures to take the following actions relating to the establishment of paternity or to establishment of support orders, without obtaining an order from a judicial tribunal:
- a. Subpoena the parties to undergo genetic testing;
 - b. Implement income withholding in accordance with this Chapter;
 - c. For the purpose of securing overdue support, increase the amount of monthly support payments by implementation of income withholding procedures established under this Chapter or by notice and opportunity to contest to an obligor who is not subject to income withholding. Increases under this subdivision are subject to the limitations of this Chapter.
 - d. For purposes of exerting and retaining jurisdiction in IV-D cases, transfer cases between jurisdictions without the necessity for additional filing by the petitioner or service of process upon the respondent.
- (9) Implement, maintain, review and improve performance standards for the program. The performance standards shall include the following:
- a. Cost per collections.
 - b. Consumer satisfaction.
 - c. Paternity establishments.
 - d. Administrative costs.
 - e. Orders established.
 - f. Collections on arrearages.
 - g. Location of absent parents.
 - h. Other related performance measures.

Sec. 110-2. - Action for support of minor child.

(a)

Any parent, or any person, agency, organization or institution having custody of a child, or bringing an action or proceeding for the custody of such child, or a child by his guardian may institute an action for the support of such child as hereafter provided.

(b)

In the absence of pleading and proof that the circumstances otherwise warrant, the father and mother shall be primarily liable for the support of a child. In the absence of pleading and proof that the circumstances otherwise warrant, parents of a minor, unemancipated child who is the custodial or noncustodial parent of a child shall share this primary liability for their grandchild's support with the minor parent, the court determining the proper share, until the minor parent reaches the age of 18 or becomes emancipated. If both the parents of the child requiring support were unemancipated minors at the time of the child's conception, the parents of

both minor parents share primary liability for their grandchild's support until both minor parents reach the age of 18 or become emancipated. If only one parent of the child requiring support was an unemancipated minor at the time of the child's conception, the parents of both parents are liable for any arrearages in child support owed by the adult or emancipated parent until the other parent reaches the age of 18 or becomes emancipated. In the absence of pleading and proof that the circumstances otherwise warrant, any other person, agency, organization or institution standing in loco parentis shall be secondarily liable for such support. Such other circumstances may include, but shall not be limited to, the relative ability of all of the above-mentioned parties to provide support, or the inability of one or more of them to provide support, and the needs and estate of the child. The judge may enter an order requiring any one or more of the above-mentioned parties to provide for the support of the child as may be appropriate in the particular case, and, if appropriate, the court may authorize the application of any separate estate of the child to his support. Child support orders and modifications shall contain the name of each of the parties, the date of birth of each party, the social security number of each party, and the court docket number. However, the judge may not order support to be paid by a person who is not the child's parent, or an agency, organization or institution standing in loco parentis absent evidence and a finding that such person, agency, organization or institution has voluntarily assumed the obligation of support in writing. The preceding sentence shall not be construed to prevent the court from ordering the support of a child by an agency of the state or county which agency may be responsible under law for such child.

(Ord. No. 816, 5-19-2003)

Sec. 110-2A. - Amount of payment/monthly basis/termination.

(a)

Monthly basis. Payments ordered for the support of a child shall be on a monthly basis, due and payable on the first day of each month. The requirement that orders be established on a monthly basis does not affect the availability of garnishment of disposable earnings based on an obligor's pay period.

(b)

Amount.

(1)

Payments ordered for the support of a minor child shall be in such amounts as to meet the reasonable needs of the child for health, education, maintenance, having due regard to the estates,

earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and other facts of the particular case.

(2)

The Court shall first determine the amount of child support payments by applying the presumptive guidelines established pursuant to N.C.G.S. chapter 50-13.4(c1). However, upon request of any party, the Court shall hear evidence, and from the evidence, find the facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support. If, after considering the evidence, the Court finds by the greater weight of the evidence that the application of the guidelines would not meet or would exceed the reasonable needs of the child considering the relative ability of each parent to provide support or would be otherwise unjust or inappropriate the Court may vary from the guidelines. If the Court orders an amount other than the amount determined by application of the presumptive guidelines, the Court shall make findings of fact as to the criteria that justify varying from the guidelines and the basis for the amount ordered.

(3)

Per capita distribution of responsible parent: The responsible parent's per capita distribution of net gaming revenues shall be included in the income calculations. Additionally, when the responsible parent is incarcerated for a period that is expected to last one year or more, the Court may order that his or her child support obligation be set at an amount not to exceed 75 percent of his or her per capita distribution. The court shall make findings of fact to justify the percentage of the per capita distribution taken. The court shall hear evidence, and from the evidence find facts relating to the reasonable needs of the child for support and the relative ability of each parent to provide support.

(c)

In non-IV-D cases, payments for the support of a minor child shall be ordered to be paid to the person having custody of the child or any other proper agency, organization or institution, or to the TribalState Child Support Collection and Disbursement Unit, for the benefit of such child. In IV-D cases, payments for the support of a minor child shall be ordered to be paid to the TribalState Child Support Collection and Disbursement Unit for the benefit of the child.

(d)

Payments for the support of a minor child may, at the discretion of the court when monthly payments are not feasible, be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property or any interest therein, or a security interest in or possession of real property, as the court may order. In every case in which payment for the support of a minor child is ordered and alimony or alimony pendente lite is also ordered, the order shall separately state and identify each allowance.

(e)

Termination. Payments ordered for the support of a child shall terminate when the child reaches the age of 18 except:

(1)

If the child is otherwise emancipated, payments shall terminate at that time.

(2)

If the child is still in primary or secondary school when he reaches the age of 18, the court in its discretion may order support payments to continue until he graduates, otherwise ceases to attend school on a regular basis, fails to make satisfactory academic progress towards graduation, or reaches the age 20, whichever comes first, unless the Court in its discretion orders that payments cease at age 18 or prior to high school graduation.

(3)

In the case of graduation, or attaining age 20, payments shall terminate without order by the court, subject to the right of the party receiving support to show, upon motion and with notice to the opposing party, that the child has not graduated or attained the age of 20.

(4)

In the event a serious physical or mental disability prolongs the child's dependence upon his or her parental income past age 18, and the court has ordered post-minority support, this support shall terminate at such time as stated in the order.

(Ord. No. 816, 5-19-2003; Ord. No. 486, 1-13-2005; Ord. No. 715, 4-28-2009)

Sec. 110-2B. - Income withholding procedures; applicability.

(a)

Required contents of support orders. All child support orders, civil or criminal, entered or modified in this Court in IV-D cases shall include a provision ordering income withholding to take effect immediately. All child

support orders, civil or criminal, initially entered by this Court in non-IV-D cases shall include a provision ordering income withholding to take effect immediately, as provided in section 110-2D(d), unless one of the exceptions specified in 110-2D(d) applies. A non-IV-D child support order that contains an income withholding requirement and an IV-D child support order shall:

(1)

Require the obligor to keep the clerk of court or IV-D agency informed of the obligor's current residence and mailing address;

(2)

Require the obligor to cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income;

(3)

Require the custodial party to keep the obligor informed of:

a.

The custodial party's disposable income and the amount and effective date of any substantial change in this disposable income; and

b.

The current residence and mailing address of the child, unless the court has determined that notice to the obligor is inappropriate because the obligor has made verbal or physical threats that constitute domestic violence under Chapter 50B; and

(4)

Require the obligor to keep the initiating party informed of the name and address of any payor of the obligor's disposable income and of the amount and effective date of any substantial change in this disposable income.

(b)

Payment plan/work requirement for past-due support. In any IV-D case in which an obligor owes past-due support and income withholding has been ordered but cannot be implemented against the obligor, the court may order the obligor to pay the support in accordance with a payment plan approved by the court and, if the obligor is subject to the payment plan and is not incapacitated, the court may order the obligor to participate in such work activities, as defined under 42 U.S.C. § 607, as the court deems appropriate.

(c)

When obligor is subject to withholding.

(1)

In IV-D cases in which a new or modified child support order is entered, an obligor is subject to income withholding immediately upon entry of the order. In existing IV-D cases, an obligor shall become subject to income withholding on the date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month, or the date on which the obligor or obligee requests withholding.

(2)

In existing non-IV-D, an obligor shall be subject to income withholding on the earliest of:

a.

The date on which the obligor fails to make legally obligated child support payments in an amount equal to the support payable for one month;

b.

The date on which the obligor requests withholding; or

c.

The date on which the court determines, pursuant to a motion or independent action filed by the obligee under section 110-2D, that the obligor is or has been delinquent in making child support payments or has been erratic in making child support payments.

(3)

In IV-D cases where per capita distribution may be garnished to collect child support arrearage, if at the end of the month next preceding the garnishment hearing the obligor is delinquent on child support payments the court may issue an order for garnishment in an amount that will satisfy the child support arrears and an amount that will satisfy future child support payments from the date of the court order until the next per capita distribution based on the current monthly obligation.

The garnished funds shall be payable to and disbursed by the ~~North Carolina Child Support Enforcement~~ Tribal Child Support Services program Agency. After payment of the arrears to the obligee the remaining funds shall be disbursed to the obligee as each monthly obligation becomes due unless the obligor makes a timely monthly payment. The garnishment order shall remain in effect so long as the obligor is obligated to make child support payments.

Nothing in this subsection relieves the plaintiff from the notice requirements set out in Cherokee Code §16C-5(d)(3)(A), (B) and (C) before an order under this subsection is issued. However, once the notice requirements under §16C-5(d)(3)(A), (B) and (C) have been met, then this subsection shall govern all future procedures for per capita garnishments for child support.

Nothing in this subsection shall prevent the obligor from avoiding future per capita distribution garnishments once an order under this subsection has been issued by staying current on all monthly child support obligations until the obligor is relieved from the duty to pay child support. In this event the ~~North Carolina Child Support Enforcement~~ Tribal Child Support Services program Agency shall reimburse the obligor all monies held by it that is due to the obligor. Nothing in this subsection shall prevent a modification of child support.

(Ord. No. 816, 5-19-2003; Ord. No. 764, 5-10-2007)

Sec. 110-2C. - Implementation of withholding in IV-D cases.

(a)

Withholding based on arrearages or obligor's request.

(1)

Advance notice of withholding. When an obligor in a IV-D case becomes subject to income withholding, the obligee shall, after verifying the obligor's current employer or other payor, wages or other disposable income, and mailing address, serve the obligor with advance notice of withholding in accordance with the Rules of Civil Procedure.

(2)

Contents of advance notice. The advance notice to the obligor shall contain, at a minimum, the following information:

a.

Whether the proposed withholding is based on the obligor's failure to make legally obligated child support, alimony or post-separation support payments on the obligor's request for withholding, on the obligee's request for withholding, or on the obligor's eligibility for withholding under subsection 110-2B(c);

b.

The amount of overdue child support, overdue alimony or post_separation support payments, the total amount to be withheld, and when the withholding will occur;

c.

The name of each child or person for whose benefit the child support, alimony or post_separation support payments are due and information sufficient to identify the court order under which the obligor has a duty to support the child, spouse, or former spouse;

d.

The amount and sources of disposable income;

e.

That the withholding will apply to the obligor's wages or other sources of disposable income from current payors and all subsequent payors once the procedures under this section are invoked;

f.

An explanation of the obligor's rights and responsibilities pursuant to this section;

g.

That withholding will be continued until terminated pursuant to section 110-2A(e).

(3)

Contested withholding. The obligor may contest the withholding only on the basis of a mistake of fact, except that 110-1(11)a. is not applicable if withholding is based on the obligor's or obligee's request for withholding. To contest the withholding, the obligor must, within ten days of receipt of the advance notice of withholding, request a hearing and give notice to the obligee specifying the mistake of fact upon which the hearing request is based. If the asserted mistake of fact can be resolved by agreement between the obligee and the obligor, no hearing shall occur. Otherwise, a hearing shall be held and a determination made, within 30 days of the obligor's receipt of the advance notice of withholding, as to whether the asserted mistake of fact is valid. No withholding shall occur pending the hearing decision. The failure to hold a hearing within 30 days shall not invalidate an otherwise properly entered order. If it is determined that a mistake of fact exists, no withholding shall occur. Otherwise, within 45 days of the obligor's receipt of the advance notice of withholding, the obligee

shall serve the payor, pursuant to the Rules of Civil Procedure, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. In the event of appeal, withholding shall not be stayed. If the appeal is concluded in favor of the obligor, the obligee shall promptly repay sums wrongfully withheld and notify the payor to cease withholding.

(4)

Uncontested withholding. If the obligor does not contest the withholding within the ten-day response period, the obligee shall serve the payor, pursuant to the Rules of Civil Procedure, with notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk.

(5)

Payment not a defense to withholding. The payment of overdue support shall not be a basis for terminating or not implementing withholding.

(6)

Inability to implement withholding. When an obligor is subject to withholding, but withholding under this section cannot be implemented because the obligor's location is unknown, because the extent and source of his disposable income cannot be determined, or for any other reason, the obligee shall request the clerk to initiate enforcement proceedings.

(b)

Immediate income withholding. When a new or modified child support order is entered, the judge shall, after hearing evidence regarding the obligor's disposable income, place the obligor under an order for immediate income withholding. The IV-D agency shall serve the payor pursuant to the Rules of Civil Procedure, with a notice of his obligation to withhold, and shall mail a copy of such notice to the obligor and file a copy with the clerk. If information is unavailable regarding an obligor's disposable income, or the obligor is unemployed, or an agreement is reached between both parties which provides for an alternative arrangement, immediate income withholding shall not apply. The obligor, however, is subject to income withholding pursuant to 110-2C(a).

(c)

Subsequent payors. If the obligor changes employment or source of disposable income, notice to subsequent payors of their obligation to withhold shall be served as required by the Rules of Civil Procedure.

Copies of such notice shall be filed with the clerk of court and served upon the obligor by first class mail.

(d)

Multiple withholdings. The obligor must notify the obligee if the obligor is currently subject to another withholding for child support. In the case of two or more withholdings against one obligor, the obligee or obligees shall attempt to resolve any conflict between the orders in a manner that is fair and equitable to all parties and within the limits specified by 110-2E. If the conflict cannot be so resolved, an injured party, upon request, shall be granted a hearing. The conflict between the withholding orders shall be resolved in accordance with 110-2F.

(e)

Modification of withholding. When an order for withholding has been entered under this section, the obligee may modify the withholding based on changed circumstances. The obligee shall proceed as is provided in this section.

(f)

Applicability of section. The provisions of this section apply to IV-D cases only.

(Ord. No. 816, 5-19-2003)

Sec. 110-2D. - Implementation of withholding in non-IV-D cases.

(a)

Notwithstanding any other provision of law, when an obligor is delinquent in making child support payments or has been erratic in making child support payments, the obligee may apply to the court, by motion or in an independent action, for an order for income withholding.

(1)

The motion or complaint shall be verified and state, to the extent known:

a.

Whether the obligor is under a court order to provide child support and, if so, information sufficient to identify the order;

b.

Either:

1.

That the obligor is currently delinquent in making child support payments; or

2.

That the obligor has been erratic in making child support payments;

- c. The amount of overdue support and the total amount sought to be withheld;
- d. The name of each child for whose benefit support is payable; and,
- e. The name, location, and mailing address of the payor or payors from whom withholding is sought and the amount of the obligor's monthly disposable income from each payor.

(2)

The motion or complaint shall include or be accompanied by a notice to the obligor, stating:

- a. That withholding, if implemented, will apply to the obligor's current payors and all subsequent payors; and,
- b. That withholding, if implemented, will be continued until terminated pursuant to 110-2H.

At any time the parties may agree to income withholding by consent order.

(b)

Withholding based on obligor's request. The obligor may request at any time that income withholding be implemented. The request may be made either verbally in open court or by written request.

(1)

A written request for withholding shall state:

- a. That the obligor is under a court order to provide child support, and information sufficient to identify the order;
- b. Whether the obligor is delinquent and the amount of any overdue support;
- c. The name of each child for whose benefit support is available;
- d.

The name, location, and mailing address of the payor or payors from whom the obligor receives disposable income and the amount of the obligor's monthly disposable income from each payor;

e.

That the obligor understands that withholding, if implemented, will apply to the obligor's current payors and all subsequent payors and will be continued until terminated pursuant to 110-2H; and

f.

That the obligor understands that the amount withheld will include an amount sufficient to pay current child support, an additional amount toward liquidation of any arrearages, and a two dollar (\$2.00) processing fee to be retained by the employer for each withholding, but that the total amount withheld may not exceed the following percent of disposable income:

1.

Forty percent if there is only one order for withholding;

2.

Forty-five percent if there is more than one order for withholding and the obligor is supporting other dependent children or his or her spouse; or

3.

Fifty percent if there is more than one order for withholding and the obligor is not supporting other dependent children or a spouse.

(2)

A written request for withholding shall be filed in the office of the tribal court. If the request states and the clerk verifies that the obligor is not delinquent, the court may enter an order for withholding without further notice or hearing. If the request states or the clerk finds that the obligor is delinquent, the matter shall be scheduled for hearing unless the obligor in writing waives his right to a hearing and consents to the entry of an order for withholding of an amount the court determines to be appropriate. The court may require a hearing in any case. Notice of any hearing under this subdivision shall be sent to the obligee.

(c)

Order for withholding. If the judge finds after hearing evidence that the obligor, at the time of the filing of the motion or complaint was, or at the time of the hearing is, delinquent in child support payments or that the obligor has been erratic in making child support a payments in accordance with 110-2D(a), or that the obligor has requested that income withholding begin in accordance with 110-2D(b), the Court shall enter an order for income withholding, unless:

(1)

The obligor proves a mistake of fact, except that 110-11 is not applicable if withholding is based on the obligee's motion or independent action alleging that the obligor is delinquent or has been erratic in making child support payments; or

(2)

The court finds that the child support obligation can be enforced and the child's right to receive support can be ensured without entry of an order for income withholding; or

(3)

The court finds that the obligor has no disposable income subject to withholding or that withholding is not feasible for any other reason.

If the obligor fails to respond or appear, the court shall hear evidence and enter an order as provided herein.

(d)

Immediate income withholding. In non-IV-D cases, an obligor is subject to income withholding immediately upon entry of the order, unless either of the following applies:

(1)

One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding. For purposes of this paragraph, any finding that there is good cause not to require immediate income withholding must be based on at least:

a.

(2) A written determination that, and explanation by the court of why, implementing immediate wage withholding would not be in the best interests of the child; and

b.

Proof of timely payment of previously ordered support in cases involving the modification of support orders.

(2)

A written agreement is reached between the parties that provides for an alternative arrangement. For purposes of this paragraph, "written agreement" means a written alternative arrangement signed by both the custodial and noncustodial parent and in IV-D cases, by the ~~Child Support Enforcement~~ Tribal Child Support Services program Agency in cases in which there is an assignment of support rights to the ~~Tribe~~ State of North Carolina, and reviewed and entered in the record by the court.

The term "good cause" as used in this subsection includes a reasonable and workable plan for consistent and timely payments by some means other than income withholding. In considering whether a plan is reasonable, the court may consider the obligor's employment history and record of meeting financial obligations in a timely manner.

In entering an order for immediate income withholding under this subsection, the court shall follow the requirements and procedures as specified in other sections of this article, including amount to be withheld, multiple withholdings, notice to payor, and termination of withholding.

(e)

Notice to payor and obligor. If an order for income withholding is entered, a notice of obligation to withhold shall be served on the payor as required by Rule 4 of the North Carolina Rules of Civil Procedure. Copies of such notice shall be filed with the clerk of court and served upon the obligor by first class mail.

(f)

Modifications of withholding. When an order for withholding has been entered under this section, any party may file a motion seeking modification of the withholding based on changed circumstances. The clerk or the court on its own motion may initiate a hearing for modification when it appears that modification of the withholding is required or appropriate.

(Ord. No. 816, 5-19-2003)

Sec. 110-2E. - Amount to be withheld.

(a)

Computation of amount. When income withholding is implemented pursuant to this chapter, the amount to be withheld shall include:

(1)

An amount sufficient to pay current child support; and

(2)

An additional amount toward liquidation of arrearage; and

(3)

A processing fee of two dollars (\$2.00) to cover the cost of withholding, to be retained by the payor for each withholding unless waived by the payor.

The amount withheld may also include court costs and attorneys fees as may be awarded by the court.

(b)

Limits on amount withheld. Withholding for current support, arrearages, processing fees, court costs and attorneys fees shall not exceed 40 percent of the obligor's disposable income for one pay period from the payor when there is one order of withholding. The sum of multiple withholdings, for current support, arrearages, processing fees, court costs and attorneys fees shall not exceed:

(1)

Forty-five percent of disposable income for one pay period from the payor in the case of an obligor who is supporting his spouse or other dependent children; or

(2)

Fifty percent of disposable income for one pay period from the payor in the case of an obligor who is not supporting a spouse or other dependent children.

(c)

Contents of order and notice. An order or advance notice for withholding and any notice to a payor of his obligation to withhold shall state a specific monetary amount to be withheld and the amount of disposable income from the applicable payor on which the amount to be withheld was determined. The notice shall clearly indicate that in no event shall the amount withheld exceed the appropriate percentage of disposable income paid by a payor as provided in subsection (b).

(Ord. No. 816, 5-19-2003)

Sec. 110-2F. - Multiple withholding.

When an obligor is subject to more than one withholding for child support, withholding for current child support shall have priority over past-due support. Where two or more orders for current support exist, each family shall receive a pro rata share of the total amount withheld based on the respective child support orders being enforced.

(Ord. No. 816, 5-19-2003)

Sec. 110-2G. - Notice to payor; payor's responsibilities.

(a)

Contents of notice. Notice to a payor of his obligation to withhold shall include information regarding the payor's rights and responsibilities, the

amount of disposable income attributable to that payor on which that withholding is based, the penalties under this section, and the maximum percentages of disposable income that may be withheld as provided in section 110-2E.

(b)

Payor's responsibilities. A payor who has been properly served with a notice to withhold is required to:

(1)

Withhold from the obligor's disposable income and, within seven business days of the date the obligor is paid, send to the NC Child Support Collection and Disbursement Unit the amount specified in the notice and the date the amount was withheld, but in no event more than the amount allowed in section 110-2E; however, if a lesser amount of disposable income is available for any pay period, the payor shall either:

a.

Compute, and send the appropriate amount to the NC Child Support Collection and Disbursement Unit, using the percentages as provided in section 110-2E; or

b.

Request the initiating party to inform the payor of the proper amount to be withheld for that period;

(2)

Continue withholding until further notice from the IV-D agency, the clerk of the Tribal court, or the NC Child Support Collection and Disbursement Unit;

(3)

Withhold for child support before withholding pursuant to any other legal process under Tribal law against the same disposable income;

(4)

Begin withholding from the first payment due the obligor in the first pay period that occurs 14 days following the date the notice of the obligation to withhold was served on the payor;

(5)

Promptly notify the obligee in a IV-D case, or the clerk of Tribal court or the ~~Tribal~~ NC Child Support Collection and Disbursement Unit in a non-IV-D case, in writing;

a.

If there are one or more orders of child support withholding for the obligor;

b.

If there are one or more orders of alimony or post_separation support withholding for the obligor;

c.

When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;

d.

Of the payor's inability to comply with the withholding for any reason; and

(6)

Cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income.

(c)

Change in obligor's employment. If the obligor changes employment within the territorial jurisdiction of the Eastern Band of Cherokee Indians when withholding is in effect, the requirement for withholding shall continue, and;

(1)

In a IV-D case, the IV-D obligee shall make any necessary adjustments to the withholding, notify the obligor and his new employer in accordance with this section, and file a copy of the adjusted withholding with the clerk of Tribal Court;

(2)

In a non-IV-D case, the clerk shall serve a notice of obligation to withhold according to the terms of the withholding order on the new employer and on the obligor; if the obligor or payor gives notice that an adjustment to the withholding order, other than the change in payor, is needed, the matter shall be scheduled for hearing before a child support hearing officer or Cherokee~~district~~ court judge who shall make any necessary adjustments to the withholding.

(d)

The payor may combine amounts withheld from obligors' disposable incomes in a single payment to the Tribal~~NC~~ Child Support Collection and Disbursement Unit if the payor separately identifies by name and case number the portion of the single payment attributable to each individual obligor and the date that each payment was withheld from the obligors' disposable income.

(e)

- (1) Prohibited conduct by payor; civil penalty. Notwithstanding any other provision of law, when a court finds, pursuant to a motion in the cause filed by the initiating party joining the payor as a third party defendant, within 30 days notice to answer the motion, that a payor has willfully refused to comply with the provisions of this section, such payor shall be ordered to commence withholding and shall be held liable to the initiating party for any amount which such payor should have withheld, except that such payor shall not be required to vary the normal pay or disbursement cycles in order to comply with these provisions.

A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any obligor solely because of the withholding. When a court finds that a payor has taken any of these actions, the payor shall be liable for a civil penalty. For second and third offenses, the civil penalty shall be \$500.00 and \$1,000.00 respectively. Any payor who violates any provision of this paragraph shall be liable in a civil action for reasonable damages suffered by an obligor as a result of the violation, and an obligor discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his former position. The statute of limitations for actions under this section shall be one year.

(f)

Any payor who withholds the sum provided in any notice or order to the payor shall not be liable for any penalties under this section.

(Ord. No. 816, 5-19-2003)

Sec. 110-2H. - Termination of withholding.

A requirement that income be withheld for child support shall promptly terminate as to prospective payments when the payor receives notice from the court or IV-D agency that:

(1)

The child support order has expired or become invalid; or

(2)

The initiating party, the obligor, and the judge agree to termination because there is another adequate means to collect child support or arrearage; or

(3)

The whereabouts of the child and obligee are unknown, except that withholding shall not be terminated until all valid arrearages are paid in full.

(Ord. No. 816, 5-19-2003)

Sec. 110-21. - Modification of order for child support.

(a)

An order of the court for support of a minor child may be modified or vacated at any time, upon motion in the cause and a showing of changed circumstances by either party or anyone interested subject to the limitations of 110-21(d) and (e). In addition, every three years, upon the request of either parent, or if there is an assignment under this chapter, upon the request of the TribalState agency under the TribalState plan or of either parent, the TribalState Agency shall, with respect to a support order being enforced, taking into account the best interests of the child involved:

(1)

Review and, if appropriate, adjust the order in accordance with the presumptive guidelines referenced in 110-2A(b) if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines;

(2)

Apply a cost-of-living adjustment to the order in accordance with a formula developed by the State of North Carolina; or

(3)

Use automated methods to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment under the threshold established by the State.

No proof of change in circumstances is necessary in the 3-year cycle review.

(b)

Opportunity to request review of adjustment. If a review is conducted pursuant to subsection (a)(1), (2) or (3) above, either party may contest the adjustment, within 30 days after the date of the notice of the adjustment, by making a request for review and, if appropriate, adjustment of the order will be made in accordance with the presumptive guidelines.

(c)

Each past due child support payment is vested when it accrues and may not thereafter be vacated, reduced, or otherwise modified in any way for any reason, except that a child support obligation may be modified as otherwise provided by law, and a vested past due

payment is to that extent subject to divestment, if, but only if, a written motion is filed and due notice is given to all parties either:

(1)

Before the payment is due; or

(2)

If the moving party is precluded by physical disability, mental incapacity, indigency, misrepresentation of another party, or other compelling reason from filing a motion before the payment is due, then promptly after the moving party is no longer so precluded.

(d)

For purposes of this subsection, a child support payment or the relevant portion thereof, is not past due, and no arrearage accrues:

(1)

From and after the date of the death of the child for whose support the payment, or relevant portion, is made;

(2)

From and after the date of the death of the supporting party;

(3)

During any period when the child is living with the supporting party pursuant to a valid court order or to an express or implied written or oral agreement transferring primary custody to the supporting party;

(4)

During any period when the supporting party is incarcerated, is not on work release, and has no resources with which to make the payment. Note: if the supporting party continues to receive per capita payments from the tribal gaming revenues, then these per capita payments constitute a resource from which child support payments may be made.

(Ord. No. 816, 5-19-2003)

Sec. 110-2J. - Orders and agreements regarding medical support and health insurance for minor children.

(a)

The court may order a parent of a child or other responsible party to provide medical support for the child, or the parties may enter into a written agreement regarding medical support for the child. An order or agreement for medical support for the child may require one or both parties to pay the medical, hospital, dental or other health care related expenses.

- (b) The court shall order the parent of a child or other responsible party to maintain health insurance for the benefit of the child when health insurance is available at a reasonable cost. As used in this subsection, health insurance is considered reasonable in cost if it is employment related or other group health insurance, regardless of service delivery mechanism.
- (c) The party ordered or under agreement to provide health insurance shall provide written notice of any change in the applicable insurance coverage to the other party.
- (d) The employer or insurer of the party required to provide health, hospital, and dental insurance shall release to the other party, upon written request, any information on a minor child's insurance coverage that the employer or insurer may release to the party required to provide health, hospital, and/or dental insurance.
- (e) When a court order or agreement for health insurance is in effect, the signature of either party shall be valid authorization to the insurer to process an insurance claim on behalf of a minor child.
- (f) If the party who is required to provide health insurance fails to maintain the insurance coverage for the child, the party shall be liable for any health, hospital, or dental expenses incurred from the date of the court order or agreement that would have been covered by insurance if it had been in force.
- (g) When a noncustodial parent ordered to provide health insurance changes employment and health insurance coverage is available through the new employer, the obligee shall notify the new employer of the noncustodial parent's obligation to provide health insurance for the child. Upon receipt of notice from the obligee, the new employer shall enroll the child in the employer's health insurance plan.

(Ord. No. 816, 5-19-2003)

Sec. 110-2K. - Additional remedies for enforcement of support order.

In addition to the income withholding provisions of this chapter:

- (1)

The court may require the person ordered to make payments for the support of a child to secure the same by means of a bond, mortgage or deed of trust, or any other means ordinarily used to secure an obligation to pay money or transfer property, or by requiring the execution of an assignment of wages, salary or other income due or to become due.

(2)

The remedies of attachment and garnishment shall be available in an action for child support payments and for such purposes the child or person bringing an action for child support shall be deemed a creditor of the defendant. Additionally, a continuing wage garnishment proceeding for wages due or to become due may be instituted by motion in the original child support proceeding or by independent action through the filing of a petition.

(3)

The remedy of injunction shall be available in actions for child support.

(4)

Receivers may be appointed in actions for child support.

(5)

A child or other person for whose benefits an order for the payment of child support has been entered shall be a creditor pertaining to fraudulent conveyances.

(6)

A judgment for child support shall not be a lien against real property unless the judgment expressly so provides, sets out the amount of the lien in a sum certain, and adequately describes the real property affected, but past due periodic payments may by motion in the cause or by a separate action be reduced to judgment which shall be a lien as other judgments.

(7)

An order for the periodic payment of child support is enforceable by proceedings for civil contempt, and its disobedience may be punished by proceedings for criminal contempt.

(8)

An order for the payment of child support which has been appealed to the appellate division is enforceable in the trial court by proceedings for civil contempt during the pendency of the appeal. Upon motion of an aggrieved party, the court of the appellate division in which the appeal is pending may stay any order for civil

contempt entered for child support until the appeal is decided, if justice requires.

(9)

The specific enumeration of remedies in this section shall not constitute a bar to remedies otherwise available.

(Ord. No. 816, 5-19-2003)

Sec. 110-3. - Action by designated representatives.

A ~~Tribal~~state or county agency interested in the paternity or support of a dependent child residing on Cherokee Trust Lands ~~the Cherokee Indian Reservation~~ may, if the mother, father, custodian, or guardian of the child neglects to bring such action, institute civil proceedings in the Cherokee Indian Court against the responsible parent of the child or may pursue any action commenced by the mother, father, custodian or guardian for the maintenance of the child, including an ancillary action to establish paternity, if she or he fails to prosecute to final judgment. Any legal proceeding instituted under this section may be based upon information and belief. The parent of the child may be subpoenaed for testimony at the trial of the action to establish paternity of or to obtain support for the child. The husband-wife privilege shall not be grounds for excusing the mother or father from testifying at the trial nor shall said privilege be grounds for the exclusion of confidential communications between the husband and wife. If a parent called for examination declines to answer upon the grounds that his testimony may tend to incriminate him, the court may require him to answer, in which event he shall not thereafter be prosecuted for any criminal act involved in the conception of the child whose paternity is in issue or for whom support is sought, except for perjury committed in this testimony.

(Ord. No. 816, 5-19-2003)

Sec. 110-4. - Compelling disclosure of information respecting the nonsupporting responsible parent of a child receiving public assistance.

(a)

If a parent of any dependent child receiving public assistance fails or refuses to cooperate with the ~~Tribal~~state or county agency in locating and securing support from a non-supporting responsible parent, this parent may be cited to appear before the court and compelled to disclose such information under oath or may be declared ineligible for public assistance by the ~~Tribal~~state or county agency for as long as he fails to cooperate.

(b)

Any parent who, having been cited to appear before the court pursuant to subsection (a), fails or refuses to appear or fails or refuses to provide the

information requested, may be found in contempt of court and may be fined not more than \$100.00 or imprisoned not more than six months, or both.

(c)

Any parent who is declared ineligible for public assistance by a Tribal agency ~~the state or county agency~~ shall have his needs excluded from consideration in determining the amount of the grant.

(Ord. No. 816, 5-19-2003)

Sec. 110-5. - Acknowledgment of paternity and agreement to support.

(a)

In lieu of or in consideration of any legal proceeding instituted to establish paternity, written acknowledgment of paternity executed and sworn to by the putative father of the dependent child when accompanied by a written affirmation of paternity executed and sworn to by the mother of the dependent child and filed with and approved by the court shall have the same force and effect as a judgment of the court, subject to the right of either signatory to rescind within the earlier of:

(1)

Sixty days of the date the document is executed; or

(2)

The date of entry of an order establishing paternity or an order for the payment of child support.

(b)

Rescission. In order to rescind, a challenger must request the court to order the rescission and to include in the order specific findings of fact that the request for rescission was filed with the clerk of court within 60 days of the signing of the document. The court must also find that all parties, including the ~~child support enforcement~~ Tribal Child Support Services program ~~agency~~, if appropriate, have been served in accordance with the law of civil procedure. In the event the court orders rescission and the putative father is thereafter found not to be the father of the child, then the clerk of court shall send a copy of the order of rescission to the NC State Registrar of Vital Statistics. Upon receipt of an order of rescission, the NC State Registrar shall remove the putative father's name from the birth certificate. In the event that the putative father defaults or fails to present or prosecute the issue of paternity, the trial court shall find the putative father to be the biological father as a matter of law.

(c)

Court challenge. After 60 days have elapsed, execution of the document may be challenged in court only upon the basis of fraud, duress, mistake, or excusable neglect. The burden of proof shall be on the challenging party, and the legal responsibilities, including child support obligations, of any signatory arising from the executed documents may not be suspended during the challenge except for good cause shown.

(d)

Effect of agreement. A written agreement to support said child by periodic payments, which may include provisions for reimbursement for medical expenses incident to the pregnancy and birth of the child, accrued maintenance and reasonable expense of prosecution of the paternity action, when acknowledged before the clerk and filed with, and approved by a judge at any time shall have the same force and effect, retroactively or prospectively, in accordance with the terms of said agreement, as an order of support entered by the court and shall be enforceable and subject to the modification in the same manner as provided by law. The written affirmation shall contain the social security number of the person executing the affirmation, and the written acknowledgment. Voluntary agreements to support shall contain the social security number of each of the parties to the agreement. The written affirmations, acknowledgments and agreements to support shall be sworn to before a certifying officer or notary public or the equivalent or corresponding person of the state, territory, or foreign country where the affirmation, acknowledgment, or agreement is made, and shall be binding on the person executing the same whether the person is an adult or a minor. ~~The child support enforcement~~Tribal Child Support Services program agency shall ensure that the mother and putative father are given oral and written notice of the legal consequences and responsibilities arising from the signing of an acknowledgement of paternity, and of any alternatives to the execution of an acknowledgment or affirmation of paternity. Such mother shall not be excused from making such affirmations on the grounds that it may tend to disgrace and incriminate her; nor shall she thereafter be prosecuted for any criminal act involved in the conception of the child as to whose paternity she makes affirmation.

(e)

At any time after the filing of an acknowledgment of paternity with the court, upon the application of any interested party, the court shall cause a summons signed by him or by the clerk to be issued, requiring the putative father to appear in court at a time and place named therein, to show cause why the court should not enter an order for the support of the child by periodic payments. The order may include provisions for reimbursement for medical expenses incident

to the pregnancy and the birth of the child, accrued maintenance and reasonable expense of the action on the acknowledgment of paternity previously filed with the court. The amount of child support payments so ordered shall be determined as provided in subsection 110-2A(b). Provided that, in the case of a child, who upon reaching the age of 18 years is mentally or physically incapable of self-support, the putative father shall not be relieved of the duty of support unless said child is a long term patient in a facility owned or operated by the North Carolina Division of Mental Health. The prior judgment as to paternity shall be res judicata as to that issue and shall not be reconsidered by the court. All such payments shall be made through the clerk.

(Ord. No. 816, 5-19-2003)

Sec. 110-6. - Agreements of support.

In lieu of or in conclusion of any legal proceeding instituted to obtain support for a dependent child from the responsible parent, a written agreement to support said child by periodic payments executed by the responsible parent when acknowledged before the clerk, filed and approved by a judge shall have the same force and effect, retroactively and prospectively, in accordance with the terms of said agreement, as an order for support entered by the court, and shall be enforceable and subject to modification in the same manner and as provided by law. All such agreements must comply with the provisions of section 110-2A, including the presumptive guidelines established pursuant to N.C.G.S chapter 50-13.4(c1). If the Court orders an amount other than the amount determined by application of the presumptive guidelines, the Court shall make findings of fact as to the criteria that justify varying from the guidelines and the basis for the amount ordered. A responsible parent executing a written agreement under this section shall provide on the agreement the responsible parent's social security number. Payments under such agreements shall be paid to the Tribal State Child Support Collection and Disbursement Unit.

(Ord. No. 816, 5-19-2003)

Sec. 110-7. - Expedited procedures to establish paternity in IV-D cases.

(a)

In a IV-D court action, a local ~~child support enforcement~~ Tribal Child Support Services office may, without obtaining a court order, subpoena a minor child, the minor child's mother, and the putative father of the minor child (including the mother's husband, if different from the putative father) to appear for the purpose of undergoing blood or genetic testing to establish paternity. A subpoena issued pursuant to this section must be served in accordance with the Rules of Civil Procedure. Refusal to comply with a subpoena may be dealt with as for contempt of court, and as

otherwise provided under law. A party may contest the results of the genetic or blood test. If the results are contested, the agency shall, upon request and advance payment by the contestant, obtain additional testing.

(b)

A person subpoenaed to submit to testing pursuant to subsection (a) above may contest the subpoena. To contest the subpoena, a person must, within 15 days of receipt of the subpoena, request a hearing in the Cherokee Court. Notice of the hearing must be served by the petitioner on all parties to the proceeding. Service will be in accordance with the Rules of Civil Procedure. The hearing shall be held and a determination made within 30 days of the petitioner's request for hearing as to whether the petitioner must comply with the subpoena or undergo testing. If the trial court determines that the petitioner must comply with the subpoena, the determination shall not prejudice any defenses the petitioner may present at any future paternity litigation.

(Ord. No. 816, 5-19-2003)

Sec. 110-8. - Filing of affirmations, acknowledgments, agreements, orders, and fees.

All affirmations, acknowledgments, agreements and resulting orders entered into under the provisions of sections 110-5 and 110-6 shall be filed by the clerk. The filing fee for the institution of an action through the entry of an order under either of these provisions shall be \$10.00.

(Ord. No. 816, 5-19-2003)

Sec. 110-9. - Debt to state created.

(a)

Acceptance of public assistance by or on behalf of a dependent child creates a debt, in the amount of public assistance paid, due and owing to the ~~Tribes~~State of North Carolina by the responsible parent or parents of the child; provided, however, that in those cases in which child support was required to be paid incident to a court order during the time of receipt of public assistance, the debt shall be limited to the amount specified in such order. This liability shall attach only with respect to the period of time during which public assistance is granted, and only if the responsible parents were financially able to furnish support during this period.

(b)

The United States ~~and~~, the ~~Tribes~~State of North Carolina ~~and any court within the state~~ which has provided public assistance to, or on behalf of a dependent child, shall be entitled to share in any sum collected under this section, and their proportionate parts of such sum shall be determined in

accordance with the matching formulas in use during the period for which assistance was paid.

(c)

No action to collect such debt shall be commenced after the expiration of five years subsequent to the receipt of the last grant of public assistance.

(Ord. No. 816, 5-19-2003)

Sec. 110-10. - Garnishment for enforcement of child support obligations.

(a)

Notwithstanding any other provision of the law, in any case in which a responsible parent is under a court order or has entered into a written agreement pursuant to sections 110-5 and 110-6 to provide child support, a judge may enter an order of garnishment whereby no more than 40 percent of the responsible parent's monthly disposable earnings shall be garnished for the support of his minor child if there is only one child support order pending; 45 percent if there is more than one child support order pending and the obligor is supporting other dependent children or a spouse; or 50 percent if there is more than one child support order pending and the obligor is not supporting other dependent children or a spouse. The garnishee is the person, firm, association, or corporation by whom the responsible parent is employed.

(b)

The mother, father, custodian or guardian of the child or any designated representative interested in the support of a dependent child may move the court for an order of garnishment. The motion shall be verified and shall state that the responsible parent is under court order or has entered into a written agreement pursuant to sections 110-5 and 110-6 to provide child support, that said parent is delinquent in such child support or has been erratic in making child-support payments, the name and address of the employer of the responsible parent, the responsible parent's monthly disposable earnings from said employer (which may be based upon information and belief) and the amount sought to be garnished, not to exceed 40 percent of the responsible parent's monthly disposable earnings if there is only one child support order pending; 45 percent if there is more than one child support order pending and the obligor is supporting other dependent children or a spouse; or 50 percent if there is more than one child support order pending and the obligor is not supporting other dependent children or a spouse. The motion for the wage garnishment order along with a motion to join the alleged employer as a third-party garnishee defendant shall be served on both the responsible parent and the alleged employer. The period for answering or otherwise

responding to pleadings, motions and other papers issued pursuant to this section shall be in accordance with the time periods set forth in the Rules of the Cherokee Court, except that the alleged employer third-party garnishee shall have ten days from the date of service of process to answer both the motion to join him as defendant garnishee and the motion for the wage garnishment order.

(c)

In addition to the foregoing method for instituting a continuing wage garnishment proceeding for child support through motion, the mother, father, custodian, or guardian of the child or any designated representative interested in the support of a dependent child may, in an independent proceeding, petition the court for an order of continuing wage garnishment. The petition shall be verified and shall state the responsible parent is under court order or has entered into a written agreement pursuant to sections 110-5 and 110-6 to provide child support, that said parent is delinquent in such child support or has been erratic in making child support payments, the name and address of the alleged employer garnishee of the responsible parent, the responsible parent's monthly disposable earnings from said employer (which may be based on information and belief), and the amount sought to be garnished, not to exceed 40 percent of the responsible parent's monthly disposable earnings if there is only one child support order pending; 45% if there is more than one child support order pending and the obligor is supporting other dependent children or a spouse; or 50% if there is more than one child support order pending and the obligor is not supporting other dependent children or a spouse. The petition shall be served on both the responsible parent and his alleged employer in accordance with the provisions for service of process set forth in the Rules of the Cherokee Court. The time period for answering or otherwise responding to process issued pursuant to this section shall be in accordance with the time periods set forth in the Rules of the Cherokee Court.

(d)

Following the hearing held pursuant to this section, the court may enter an order of garnishment not to exceed 40 percent of the responsible parent's monthly disposable earnings if there is only one child support order pending; 45 percent if there is more than one child support order pending and the obligor is supporting other dependent children or a spouse; or 50 percent if there is more than one child support order pending and the obligor is not supporting other dependent children or a spouse. If an order of garnishment is entered, a copy of same shall be served on the responsible parent and the garnishee either personally or by certified or registered mail, return receipt requested. The order shall set forth sufficient findings of fact to support the action by the court and the amount

to be garnished for each pay period. The order shall be subject to review for modification and dissolution upon the filing of a motion in the cause.

(e)

Upon receipt of an order of garnishment, the garnishee shall transmit without delay to the clerk the amount ordered by the court to be garnished. These funds shall be disbursed to the party designated by the court.

(f)

Any garnishee violating the terms of an order of garnishment shall be subject to punishment as for contempt.

(Ord. No. 816, 5-19-2003)

Sec. 110-11. - Assignment of wages for child support.

The court may require the responsible parent to execute an assignment of wages, salary, or other income due or to become due whenever his employer's voluntary written acceptance of the wage assignment is filed with the court. Such acceptance remains effective until the employer files an express written revocation with the court.

(Ord. No. 816, 5-19-2003)

Sec. 110-12. - Use of unemployment compensation benefits for child support.

(a)

A responsible parent may voluntarily assign unemployment compensation benefits to a ~~child support enforcement~~ Tribal Child Support Services agency to satisfy a child support obligation. An assignment of less than the full amount of the support obligation shall not relieve the responsible parent of liability for the remaining amount.

(b)

Voluntary assignments of unemployment compensation benefits shall remain effective until the Employment Security Commission receives notification from the agency of an express written revocation by the responsible parent.

(c)

When a responsible parent declines to execute a voluntary assignment of unemployment compensation benefits, a child support agency may initiate garnishment proceedings. For purposes of such proceedings, "disposable earnings" include unemployment compensation benefits. The third-party garnishee defendant in such proceedings, the Employment Security Commission, is deemed to waive notice and consent to jurisdiction for entry of an appropriate court order.

(Ord. No. 816, 5-19-2003)

Sec. 110-13. - Acceptance of public assistance constitutes assignment of support rights to the state or county.

By accepting public assistance for or on behalf of a dependent child or children, the recipient shall be deemed to have made an assignment to the ~~State of North Carolina or to the county~~Tribal from which such assistance was received, of the right to any child support owed for the child or children up to the amount of public assistance paid. The ~~Tribestate or county~~ shall be subrogated to the right of the child or children or the person having custody to initiate a support action and to recover any payments ordered by the court.

(Ord. No. 816, 5-19-2003)

Sec. 110-13A. - Compelling disclosure of information respecting the nonsupporting responsible parent of a child receiving public assistance.

(a)

If a parent of any dependent child receiving public assistance fails or refuses to cooperate with the ~~Tribestate~~Tribal county in locating and securing support from a nonsupporting responsible parent, this parent may be cited to appear before a judge and compelled to disclose such information under oath and/or may be declared ineligible for public assistance by the state or county department of social services for as long as he fails to cooperate.

(b)

Any parent who, having been cited to appear before a judge pursuant to subsection (a), fails or refuses to appear or fails or refuses to provide the information requested may be found to be in contempt of court and may be fined not more than \$100.00 or imprisoned not more than six months or both.

(c)

Any parent who is declared ineligible for public assistance ~~by the state or county department of social services~~ shall have his needs excluded from consideration in determining the amount of the grant, and the needs of the remaining family members shall be met in the form of a protective payment.

(Ord. No. 816, 5-19-2003)

Sec. 110-14. - Duty of county to obtain support.

Whenever a ~~county~~Tribal agency ~~Department of Social Services~~ receives an application for public assistance on behalf of a dependent child and it shall appear to the satisfaction of the Tribal agency ~~county department~~ that the child has been abandoned by one or both of the responsible parents or that the responsible parent has failed to provide support for the child, the ~~county department~~Tribal agency shall take appropriate action to provide the parent responsible supports for the child.

(Ord. No. 816, 5-19-2003)

Sec. 110-15. - Duty of judicial officials to assist in obtaining support.

Any party to whom child support has been ordered to be paid, and who has failed to receive the ordered support payments for two consecutive months, may make application to the court for issuance of criminal process against the responsible parent for violation of Cherokee Code section 14-5.30 or other applicable Cherokee criminal provisions. It shall be the duty of the clerk to assist the applicant in the issuance of criminal process, and to supply such necessary child support records as are in his possession to the Tribal prosecutor and the court.

(Ord. No. 816, 5-19-2003)

Sec. 110-16. - Location of absent parent.

(a)

The Tribal Child Support Services program~~A state or county agency~~ may attempt to locate absent parents for the purpose of establishing paternity of or securing support for dependent children. The agency is to serve as a registry for the receipt of information which directly relates to the identity or location of absent parents, to assist any governmental agency or department in locating an absent parent, to answer interstate inquiries concerning deserting parents and to develop guidelines for coordinating activities with any governmental department, board, commission, bureau or agency in providing information necessary for the location of absent parents.

(b)

In order to carry out the responsibilities imposed under this chapter, the department may request information and assistance from any Tribal office. All officers and employees shall cooperate with the agency in the location of parents who have abandoned or deserted children with all pertinent information relative to the location, income, and property of such parents, notwithstanding any provisions of law making such information confidential.

(c)

Notwithstanding any other provision of law making such information confidential, an employer doing business within the territorial jurisdiction of the Eastern Band of Cherokee Indians or incorporated under the laws of the Tribe shall provide the Tribe~~State or County~~ department (which is charged with serving as a registry for receipt of information which relates to the identity or location of absent parents) with the following information

upon certification by the Tribal Department that the information is needed to locate a parent for the purpose of collecting child support or to enforce an order for child support: full name, social security account number, date of birth, home address, wages, existing or available medical, hospital and dental insurance coverage, and number of dependents listed for tax purposes.

(d)

Notwithstanding any other provision of law making this information confidential, any utility company, cable television company, or financial institution, including commercial or savings banks, savings and loan associations and cooperative banks, federal or State chartered credit unions, benefit associations, insurance companies, safe deposit companies, money market mutual funds, and investment companies doing business within the territorial jurisdiction of the Eastern Band of Cherokee Indians or incorporated under tribal laws shall provide the Tribal Child Support Services program Department with the following information upon certification by the program Department that the information is needed to locate a parent for the purpose of collecting child support or to establish or enforce an order for child support: full name, social security number, address, telephone number, account numbers, and other identifying data for any person who maintains an account at the utility company, cable television company, or financial institution. A utility company, cable television company, or financial institution that discloses information pursuant to this subsection in good faith reliance upon certification by the Tribal Department is not liable for damages resulting from the disclosure.

(e)

Employer reporting. Every employer within the territorial jurisdiction of the Eastern Band of Cherokee Indians shall report to the North Carolina Directory of New Hires the hiring of every employee for whom a federal W-4 form is required to be completed by the employee at the time of hiring. The employer shall report the information required under this subsection not later than 20 days from the date of hire, or, in the case of an employer who transmits new hire reports magnetically or electronically by two monthly transmissions, not less than 12 nor more than 16 days apart. The North Carolina Department of Health and Human Services shall notify employers of the information they must report under this subsection and of the penalties for not reporting the required information. The required forms will be provided by the Tribal Department to employers.

(1)

Report contents. Each report required by this subsection shall contain the name, address and social security number of the

employee, and the name and address of the employer and the employer's identifying number assigned under section 6109 of the Internal Revenue Code of 1986 and, if applicable, the employer's State employer identification number. Reports shall be made on the W-4 form or, at the option of the employer, an equivalent form, and may be transmitted magnetically, electronically, or by first-class mail.

(2)

Penalties for failure to report. Upon a finding that an employer has failed to comply with the reporting requirements of this subsection, the tribal court shall impose a civil penalty in an amount not to exceed \$25.00. If the court finds that an employer's failure to comply with the reporting requirements is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report, then the court shall impose upon the employer a civil penalty in an amount not to exceed \$500.00. Penalties collected under this subsection shall be deposited with the Tribal Finance Department and shall be used for the benefit of the Tribe's Social Services Division.

(3)

Entry of report data into directory. Within five business days of receipt of the report from the employer, the NC Department of Health and Human Services shall enter the information from the report into the Directory.

(4)

Notice to employer to withhold. Within two business days of the date the information was entered into the Directory, the NC Department of Health and Human Services or its designated representative shall transmit notice to the employer of the newly hired employee directing the employer to withhold from the income of the employee an amount equal to the monthly or other periodic child support obligation, including any past-due support obligation of the employee and subject to all applicable legal limitations, unless the employee's income is not subject to withholding.

(5)

Other uses of directory information. The following agencies may access information entered into the Directory from employer reports for the purposes stated:

a.

The Employment Security Commission for the purpose of administering employment security programs.

b.

The North Carolina Industrial Commission for the purpose of administering workers' compensation programs.

c.

The North Carolina Department of Revenue for the purpose of administering the taxes it has a duty to collect under chapter 105 of the NC General Statutes.

(6)

~~*Department may contract for services.* The NC Department of Health and Human Services may contract with other State or private entities to perform the services necessary to implement this section.~~

(7)

Information confidential. Except as otherwise provided in this section, information contained in the Directory is confidential and may be used only by the North Carolina State ~~Child Support Enforcement~~ Tribal Child Support Services Program.

(8)

Definitions. As used in this section, unless the context clearly requires otherwise, the term:

a.

"Business day" means a day on which NC State offices are open for business.

b.

"Department" means the Department of Health and Human Services.

c.

"Employee" means an individual who is an employee within the meaning of chapter 24 of the Internal Revenue Code of 1986. The term "employee" does not include an employee of a federal or State agency performing intelligence or counterintelligence functions, if the head of the agency has determined that reporting information as required under this section could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

d.

"Employer" has the meaning given the term in section 3401(d) of the Internal Revenue Code of 1986 and includes

persons who are governmental entities and labor organizations. The term "labor organization" shall have the meaning given that term in section 2(5) of the National Labor Relations Act, and includes any entity which is used by the organization and an employer to carry out requirements described in section 8(f)(3) of the National Labor Relations Act of an agreement between the organization and the employer.

ARTICLE II Genetic Tests

Sec. 110-17. - Competency of genetic tests; jury charge; taxing of expenses as costs.

(a)

In the trial of any criminal action or proceeding in any court in which the question of parentage arises, regardless of any presumptions with respect to parentage, the court, upon motion, shall order that the alleged parent defendant, the known natural parent, and the child submit to blood tests and/or any other approved tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged parent defendant, the known natural parent and the child. The results of those tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted as evidence when offered by a duly qualified, licensed practicing physician, duly qualified immunologist, duly qualified geneticist, or other duly qualified person. Upon receipt of a motion and entry of an order under the provisions of this section, the court shall proceed as follows:

(1)

Where the issue of parentage is to be decided by a jury, where the results of those tests and comparisons are not shown to be inconsistent with the results of any other tests and comparisons, and where the results of those tests and comparisons indicate that the alleged parent defendant cannot be the natural parent of the child, the jury shall be instructed that if they believe that the witness presenting the results testified truthfully as to those results, and if they believe that the tests and comparisons were conducted properly, then it will be their duty to decide that the alleged parent is

not the natural parent; where upon, the court shall enter the special verdict of not guilty; and

(2)

By requiring the Tribe or defendant, as the case may be, requesting the tests and comparisons pursuant to this subsection to initially be responsible for any of the expenses thereof and upon entry of a special verdict by incorporating a finding of parentage or nonparentage, by taxing the expense for tests and comparisons, in addition to any fees for expert witnesses whose testimonies supported the admissibility thereof, as costs.

(b)

In the trial of any civil action in which the question of parentage arises, the court before whom the matter may be brought, upon motion of the plaintiff, alleged parent defendant, or other interested party, shall order that the alleged parent defendant, the known natural parent and the child submit to any tests and comparisons which have been developed and adapted for purposes of establishing or disproving parentage and which are reasonably accessible to the alleged parent defendant, the known natural parent, and the child. The results of those tests and comparisons, including the statistical likelihood of the alleged parent's parentage, if available, shall be admitted in evidence when offered by a duly qualified, licensed or practicing physician, duly qualified immunologist, duly qualified geneticist, or other qualified person. Upon receipt of a motion and the entry of an order under the provisions of this section, the court shall proceed as follows:

(1)

Where the issue of parentage is to be decided by a jury, where the results of those tests and comparisons are not shown to be inconsistent with the results of any other blood tests and comparisons, and where the results of those tests and comparisons indicate that the alleged parent defendant cannot be the natural parent of the child, the jury shall be instructed that if they believe that the witness presenting the results testified truthfully as to those results, and if they believe that the tests and comparisons were conducted properly, then it will be their duty to decide that the alleged parent defendant is not the natural parent.

(2)

By requiring the plaintiff, the alleged parent defendant or other interested party requesting blood tests and comparisons pursuant to this section to initially be responsible for any of the expenses

thereof and upon the entry of a verdict of parentage or non-parentage, by taxing the expenses for tests and comparisons, in addition to any fees for expert witnesses whose testimonies supported the admissibility thereof, as costs.

ARTICLE III Support of Children Born Out-of-Wedlock

Sec. 110-18. - Civil action to establish paternity.

(a)

The paternity of a child born out of wedlock may be established by civil action. A certified copy of a certificate of birth of the child shall be attached to the complaint. Such establishment of paternity shall not have the effect of legitimization.

(b)

Proof of paternity pursuant to his section shall be by clear, cogent and convincing evidence.

(c)

No such action shall be commenced nor judgment entered after the death of the putative father.

(Ord. No. 816, 5-19-2003)

Sec. 110-19. - Custody and support of ~~illegitimate~~ children born out-of wedlock when paternity is established.

Upon and after the establishment of paternity of an ~~illegitimate~~ child born out-of-wedlock pursuant to this chapter, the rights, duties, and obligations of the mother and the father so established, with regard to support and custody of the child, shall be the same, and may be determined and enforced in the same manner, as if the child were the legitimate child of such father and mother. When paternity has been established, the father becomes responsible for medical expenses incident to the pregnancy and birth of the child.

(Ord. No. 816, 5-19-2003)

Sec. 110-20. - Parties to proceeding.

Proceedings under this chapter may be brought by:

(1)

The mother, the father, the child or the personal representative of the mother or the child.

(2)

When the child, or the mother in case of medical expenses, is likely to become a public charge, the Director of Social Services or his designee.

(Ord. No. 816, 5-19-2003)

Sec. 110-21. - Jurisdiction over nonresident or nonpresent persons.

The act of sexual intercourse within the boundaries of Cherokee Trust Land~~Cherokee Indian Reservation~~ constitutes sufficient minimum contact ~~with this forum~~ for the purposes of subjecting the person or persons participating therein to the jurisdiction of the Cherokee Court for actions brought under this chapter for paternity and support of any child who may have been conceived as a result of such act.

(Ord. No. 816, 5-19-2003)

Sec. 110-22. - Mother not excused on grounds of self-incrimination: not subject to penalty.

No mother of an ~~illegitimate~~ child born out-of-wedlock shall be excused, on the ground that it may tend to incriminate her or subject her to a penalty or a forfeiture, from attending and testifying, in obedience to a court subpoena, in any suit or proceeding based upon or growing out of the provisions of this chapter but no such mother shall be prosecuted or subjected to any penalty or forfeiture, for or on account of any transaction, matter, or thing as to which in obedience to a subpoena and under oath, she may so testify.

(Ord. No. 816, 5-19-2003)

Sec. 110-23. - Power of court to furnish state registrar with facts as to paternity of ~~illegitimate~~ children born out-of-wedlock judicially determined.

Upon the determination of the issues set out in the foregoing section and for the purpose of enforcing the payment of the sum fixed, the court is hereby given discretion, having regard for the circumstances of the case and the financial ability and earning capacity of the defendant and his willingness to cooperate, to make and order upon the defendant and to modify such order from time to time as the circumstances of the case may in the judgment of the court require. The order or orders made in this regard may include any or all of the following alternatives:

(1)

Commit the defendant to prison for a term not to exceed six months;

(2)

- Suspend sentence and continue the case from term to term;
- (3) Release the defendant from custody on probation conditioned upon the defendant's compliance with the terms of the probation and the payment of the sum fixed for the support and maintenance of the child;
- (4) Order the defendant to pay to the mother of the said child the necessary expenses of birth of the child and suitable medical attention for her;
- (5) Require the defendant to sign a recognizance with good and sufficient security, for compliance with any order which the court may make in proceedings under this chapter.

(Ord. No. 816, 5-19-2003)

Sec. 110-24. - Clerk of court to furnish state registrar with facts as to paternity of ~~illegitimate~~ children born out-of-wedlock judicially determined.

Upon the entry of a judgment determining the paternity of an ~~illegitimate~~ child born out-of-wedlock, the clerk of court shall notify the state registrar in writing of the name of the person against whom the judgment has been entered, together with the other facts disclosed by the record as it may assist in identifying the record on the birth of the child as it appears in the office of the state registrar. If the judgment is modified or vacated, that fact shall be reported by the clerk to the state registrar in the same manner. Upon receipt of the notification, the state registrar shall record the information upon the birth certificate of the ~~illegitimate~~ child.

ARTICLE IV. Sovereign Immunity; Jurisdiction; Costs

Sec. 110-25. - Jurisdiction; sovereign immunity.

- (a) Nothing in this chapter shall be deemed a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians nor to be a consent to the exercise of jurisdiction by the courts of the State of North Carolina over Tribal members or other persons residing on the Cherokee Indian Reservation or over disputes, controversies, transactions or events that occur within the jurisdiction of the Cherokee Court, Cherokee Indian Reservation.

~~(b)~~

~~This chapter confers the consent of the Eastern Band of Cherokee Indians to the State of North Carolina, its agencies or counties, to have standing and jurisdiction to institute actions in the Cherokee Court for purposes of enforcing and collecting child support under Tribal law as set forth within this chapter.~~

~~(Ord. No. 816, 5-19-2003)~~

Sec. 110-26. - Costs allowed by either party or apportioned in discretion of court.

(a)

Costs in the following matters shall be taxed against either party or apportioned among the parties in the discretion of the court:

(1)

In actions for divorce or alimony; and the court may both before and after judgment make such order respecting the payments of such costs as maybe incurred by either spouse from the sole and separate estate of either spouse, as may be just;

(2)

In proceedings regarding illegitimate children;

(3)

In custody proceedings.

(b)

The word "costs" as the same appears and is used in this section shall be construed to include reasonable attorney's fees in such amounts as the court shall in its discretion determine and allow.

(Ord. No. 816, 5-19-2003)

Sec. 110-27. - Full faith and credit for child support orders.

(a)

The Cherokee Tribal Court shall enforce according to its terms a child support order made consistently with this section by the court or administrative agency of another Indian Tribe or State which is authorized by law to establish the amount of child support payable or to make a modification of a child support order.

(b)

The Cherokee Court shall not seek or make a modification of such an order unless:

(1)

The Cherokee Court has jurisdiction to make such a child support order and

(2)

The court or administrative agency of the other Tribe or State no longer has continuing, exclusive jurisdiction of the child support order because that Tribe or State no longer is the Child's State or Tribe or the residence of any contestant; or each individual contestant has filed written consent with the Tribe or State of continuing exclusive jurisdiction for a court of another Tribe or State to modify the order and assume continuing, exclusive jurisdiction over the order.

(c)

Definitions.

(1)

For purposes of this subsection, "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

(2)

Certified foreign orders will be enforced as an order of the Cherokee Tribal Court when the foreign tribunal had personal jurisdiction over the person claimed to be bound by the foreign order, personal service of process was made on such person, the administrative or court proceedings offered substantial justice to such person, and the order does not violate Cherokee public policy

BE IT FURTHER ORDAINED that this ordinance shall be effective upon ratification by the Principal Chief and that all prior ordinances and resolutions that are inconsistent with this ordinance are rescinded.

Submitted by: Assistant Attorney General on behalf of Tribal Child Support Services