

TABLED

Cherokee Council House  
Cherokee, Qualla Boundary (NC)

Date: JAN 10 2019

ORDINANCE NO. 454 (2019)

WHEREAS, The Tribal Council has authorized the administration of the federal Title IVD Child Support Enforcement program; and

WHEREAS, there are several required legal components absent from our tribal law; and

WHEREAS, in order to bring our tribal laws up to date a modification to the tribal child support enforcement law is needed.

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 read as follows:

**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 review the North Carolina Child support guidelines once every four years on the same schedule as the State reviews and modifies the guidelines. The court shall note any revisions made to the guidelines and ensure that the Court's local rules of practice are consistent with the North Carolina Child Support Guidelines if necessary. When deciding the amount of

**child support**—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.

**Sec. 110-2E. — Income withholding and 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).

(d)

*Initiating income withholding from employer.*

*To initiate income withholding, the Tribal IV-D agency must send the noncustodial parent's employer a notice using the standard Federal income withholding form.*

(e)

*Refund amounts improperly withheld.*

*The Tribal IV-D agency will promptly refund amounts which have been improperly withheld.*

**BE IT FINALLY 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: Office of the Attorney General*