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CHEROKEE COUNCIL HOUSE  
CHEROKEE, NORTH CAROLINA

MAR 02 2023

DATE

## ORDINANCE NO. 529 (2023)

*An ordinance amending C.C. Chapter 110 to include general welfare distributions in the definition of disposable income for purposes of calculating child support and clarifying that general welfare distributions are subject to child support orders.*

WHEREAS, the Eastern Band of Cherokee Indians is a sovereign Indian tribal nation with the inherent right to make laws and govern its own affairs, and it has expressed its laws in the Cherokee Code; and

WHEREAS, Cherokee Code (C.C.) Chapter 110 establishes a uniform system for the imposition and calculation of child support; and

WHEREAS, C.C. Chapter 110 should be amended to make clear that general welfare distributions are included within the definition of disposable income for purposes of calculating child support, and to make clear that general welfare distributions are subject to child support orders.

NOW THEREFORE BE IT ORDAINED by the Tribal Council of the Eastern Band of Cherokee Indians in Council assembled, at which a quorum is present, that C.C. §§ 110-1, 110-2A, 110-2B and 110-2I are amended to read as follows:

### **Sec. 110-1. Definitions.**

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

- (1) *Clerk* shall mean the Clerk of the Cherokee Court.
- (2) *Court* shall mean the Cherokee Court.
- (3) *Judge* shall mean any judge of the Cherokee Court that is not a magistrate judge.
- (4) *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.
- (5) *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.
- (6) *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, general welfare distributions of tribal gaming revenues, self-employment income, bonus pay, severance pay, sick pay, incentive pay,

1 vacation pay, compensation as an independent contractor, worker's compensation,  
2 unemployment compensation benefits, disability, annuity, survivor's benefits, pension  
3 and retirement benefits, interest, dividends, rents, royalties, trust income and other  
4 similar payments, which remain after the deduction of amounts of federal State, and  
5 local taxes, Social Security, and involuntary retirement contributions. However,  
6 Supplemental Security Income, Work First Family Assistance, and other public  
7 assistance payments shall be excluded from disposable income. Unemployment  
8 compensation benefits shall be treated as disposable income only for the purposes of  
9 income withholding and the amount withheld shall not exceed 25 percent of the  
10 unemployment compensation benefits.

11 (7) *IV-D case* means a case in which services have been applied for or are being provided  
12 by a Tribal Child Support Services program established pursuant to Title IV-D of the  
13 Social Security Act as amended.

14 (8) *Non-IV-D case* means any case, other than a IV-D case, in which child support is  
15 legally obligated to be paid.

16 (9) *Initiating party* means the party, the attorney for a party, a Tribal Child Support  
17 Services agency, or the clerk of court who initiates an action, proceeding, or procedure  
18 as allowed or required by law for the establishment or enforcement of a child support  
19 obligation.

20 (10) *Mistake of fact* means that the obligor:

- 21 a. Is not in arrears in an amount equal to the support payable for one month; or
- 22 b. Did not request that withholding begin, if withholding pursuant to a purported  
23 request by the obligor for withholding; or
- 24 c. Is not the person subject to the court order of support for the child named in the  
25 advance notice of withholding; or
- 26 d. Does not owe the amount of current support or arrearages specified in the advance  
27 notice or motion of withholding; or
- 28 e. Has a rate of withholding which exceeds the amount of support specified in the  
29 court order.

30 (11) *Modification* means a change in a child support order that affects the amount, scope or  
31 duration of the order and modifies, replaces, supersedes or otherwise is made  
32 subsequent to the child support order.

33 (12) *Obligee* in an IV-D case, means the Tribal Child Support Services agency, and in a  
34 non-IV-D case means the individual to whom a duty of support is owed or the  
35 individual's legal representative.

36 (13) *Obligor* means the individual who owes a duty to make child support payments under a  
37 court order.

38 (14) *Parent* means the natural or adoptive parent of a dependent child who has the legal  
39 duty to support said child and includes the father of a child born out-of-wedlock and  
40 the parents of a dependent child who is the custodial or noncustodial parent of the

1 dependent child requiring support. If both the parents of the child requiring support  
2 were unemancipated minors at the time of the child's conception, the parents of both  
3 minor parents share primary liability for their grandchild's support until both minor  
4 parents reach the age of 18 or become emancipated. If only one parent of the child  
5 requiring support was an unemancipated minor at the time of the child's conception,  
6 the parents of both parents are liable for any arrearages in child support owed by the  
7 adult or emancipated parent until the other parent reaches the age of 18 or becomes  
8 emancipated.

9 (15) *Payor* means any payor, including any federal, state, tribal or local governmental unit,  
10 of disposable income to an obligor.

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

22 (17) *State* shall mean the State of North Carolina and its agencies and offices.

23 (18) *Tribal program* and *Tribal agency* shall have the same meaning and may be referred to  
24 as "program" or "agency" and shall include but not be limited to the Tribal Child  
25 Support Services program.

26 (19) *Tribe* shall mean the Eastern Band of Cherokee Indians.

27

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

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

33 (b) Amount.

34 (1) Payments ordered for the support of a minor child shall be in such amounts as to meet  
35 the reasonable needs of the child for health, education, maintenance, having due regard  
36 to the estates, earnings, conditions, accustomed standard of living of the child and the  
37 parties, the child care and homemaker contributions of each party, and other facts of  
38 the particular case.

39 (2) The court shall review the North Carolina Child support guidelines once every four  
40 years on the same schedule as the State reviews and modifies the guidelines. The court

1 shall note any revisions made to the guidelines and ensure that the Court's local rules of  
2 practice are consistent with the North Carolina Child Support Guidelines if necessary.  
3 When deciding the amount of child support the Court shall first determine the amount  
4 of child support payments by applying the presumptive guidelines established pursuant  
5 to N.C.G.S. chapter 50-13.4(c1). However, upon request of any party, the Court shall  
6 hear evidence, and from the evidence, find the facts relating to the reasonable needs of  
7 the child for support and the relative ability of each parent to provide support. If, after  
8 considering the evidence, the Court finds by the greater weight of the evidence that the  
9 application of the guidelines would not meet or would exceed the reasonable needs of  
10 the child considering the relative ability of each parent to provide support or would be  
11 otherwise unjust or inappropriate the Court may vary from the guidelines. If the Court  
12 orders an amount other than the amount determined by application of the presumptive  
13 guidelines, the Court shall make findings of fact as to the criteria that justify varying  
14 from the guidelines and the basis for the amount ordered.

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

24 (c) In non-IV-D cases, payments for the support of a minor child shall be ordered to be paid to  
25 the person having custody of the child or any other proper agency, organization or  
26 institution, or to the Tribal Child Support Collection and Disbursement Unit, for the benefit  
27 of such child. In IV-D cases, payments for the support of a minor child shall be ordered to  
28 be paid to the Tribal Child Support Collection and Disbursement Unit for the benefit of the  
29 child.

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

36 (e) Termination. Payments ordered for the support of a child shall terminate when the child  
37 reaches the age of 18 except:

38 (1) If the child is otherwise emancipated, payments shall terminate at that time.

39 (2) If the child is still in primary or secondary school when he reaches the age of 18, the  
40 court in its discretion may order support payments to continue until he graduates,  
41 otherwise ceases to attend school on a regular basis, fails to make satisfactory  
42 academic progress towards graduation, or reaches the age 20, whichever comes first,

1 unless the Court in its discretion orders that payments cease at age 18 or prior to high  
2 school graduation.

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

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

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

11 (a) *Required contents of support orders.* All child support orders, civil or criminal, entered or  
12 modified in this Court in IV-D cases shall include a provision ordering income withholding  
13 to take effect immediately. All child support orders, civil or criminal, initially entered by  
14 this Court in non-IV-D cases shall include a provision ordering income withholding to take  
15 effect immediately, as provided in subsection 110-2D(d), unless one of the exceptions  
16 specified in subsection 110-2D(d) applies. A non-IV-D child support order that contains an  
17 income withholding requirement and an IV-D child support order shall:

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

20 (2) Require the obligor to cooperate fully with the initiating party in the verification of the  
21 amount of the obligor's disposable income;

22 (3) Require the custodial party to keep the obligor informed of:

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

25 b. The current residence and mailing address of the child, unless the court has  
26 determined that notice to the obligor is inappropriate because the obligor has  
27 made verbal or physical threats that constitute domestic violence under Chapter  
28 50B; and

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

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

38 (c) *When obligor is subject to withholding.*

- 1 (1) In IV-D cases in which a new or modified child support order is entered, an obligor is  
2 subject to income withholding immediately upon entry of the order. In existing IV-D  
3 cases, an obligor shall become subject to income withholding on the date on which the  
4 obligor fails to make legally obligated child support payments in an amount equal to  
5 the support payable for one month, or the date on which the obligor or obligee requests  
6 withholding.
- 7 (2) In existing non-IV-D, an obligor shall be subject to income withholding on the earliest  
8 of:
- 9 a. The date on which the obligor fails to make legally obligated child support  
10 payments in an amount equal to the support payable for one month;
- 11 b. The date on which the obligor requests withholding; or
- 12 c. The date on which the court determines, pursuant to a motion or independent  
13 action filed by the obligee under section 110-2D, that the obligor is or has been  
14 delinquent in making child support payments or has been erratic in making child  
15 support payments.
- 16 (3) In IV-D cases where per capita distribution or general welfare distribution may be  
17 garnished to collect child support arrearage, if at the end of the month next preceding  
18 the garnishment hearing the obligor is delinquent on child support payments the court  
19 may issue an order for garnishment in an amount that will satisfy the child support  
20 arrears and an amount that will satisfy future child support payments from the date of  
21 the court order until the next ~~per-capita~~ distribution based on the current monthly  
22 obligation.

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

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

33 Nothing in this subsection shall prevent the obligor from avoiding future per capita  
34 distribution garnishments or general welfare distribution garnishments once an order  
35 under this subsection has been issued by staying current on all monthly child support  
36 obligations until the obligor is relieved from the duty to pay child support. In this event  
37 the Tribal Child Support Services program shall reimburse the obligor all monies held  
38 by it that is due to the obligor.

39 Nothing in this subsection shall prevent a modification of child support.

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**Sec. 110-2I. 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 subsections 110-2I(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 Tribal agency under the Tribal plan or of either parent, the Tribal 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 subsection 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;

- 1 (3) During any period when the child is living with the supporting party pursuant to a valid  
2 court order or to an express or implied written or oral agreement transferring primary  
3 custody to the supporting party;
- 4 (4) During any period when the supporting party is incarcerated, is not on work release,  
5 and has no resources with which to make the payment. Note: if the supporting party  
6 continues to receive per capita payments or general welfare payments from the tribal  
7 gaming revenues, then these per capita payments constitute a resource from which  
8 child support payments may be made.

9

10 BE IT FURTHER ORDAINED this ordinance shall become effective upon ratification by the  
11 Principal Chief. Any prior ordinance that is in conflict with this ordinance is  
12 rescinded to the extent necessary to resolve the conflict.

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14 *Submitted by Michael McConnell, Attorney General.*