

CHAPTER 19- DOMESTIC RELATIONSHIPS

Section 19.1 Preamble

This Code shall be known as the Kickapoo Traditional Tribe of Texas (hereinafter known as "KTTT") Domestic Relationships Chapter.

Section 19.2 Definitions

For purposes of this Chapter, the following definitions shall apply:

- (1) "Common Law Marriage" or "Traditional Marriage" shall mean a relationship between two consenting adults that is recognized in the KTTT community as a family.
- (2) "Court clerk" or "clerk" shall mean the Clerk of the Tribal Court of the KTTT.
- (3) "Dissolution" shall mean the dissolving of a marriage by annulment and the termination of a marriage by divorce.
- (4) "Judge" or "Tribal Judge" shall mean any Judge of the Tribal Court.
- (5) "KTTT" shall mean the Kickapoo Traditional Tribe of Texas.
- (6) "Marriage" shall mean a consent relationship between a man and a woman that becomes a civil contract if entered into by two people capable of making the contract. Consent alone does not constitute a marriage. A conventional marriage relies upon the issuance of a license and the issuance of a marriage certificate as authorized by this Chapter. A common law marriage has no documentary requirements.
- (7) "Prenuptial Agreement" shall mean an agreement between fiancées about property ownership made so as to take effect upon marriage.
- (8) "Secretary" shall mean the Secretary of the Traditional Council of the Kickapoo Traditional Tribe of Texas.
- (9) "Tribal Council" shall mean the Traditional Council of the Kickapoo Traditional Tribe of Texas.
- (10) "Tribal Court" or "court" shall mean the Tribal Court of the KTTT.
- (11) "Tribal lands" shall mean all lands held in trust for the Tribe or its members in the United States. "Tribe" shall mean the KTTT.

Section 19.3 Marriage License/Certification

- (1) The license shall contain the following information for each person:
 - a. The full legal name;
 - b. Place of residence;
 - c. Age;
 - d. Date of Birth;
 - e. Sex
 - f. Tribal affiliation, if any;
 - g. A statement of whether the party has been previously married, and if so, how did the marriage end (i.e. divorce, annulment, or death), the identity of the former spouse, and the approximate dates of the prior marriage and dissolution of the marriage.
- (2) For purposes of obtaining all facts needed or required for the license/certification of marriage, the clerk at the time of application may question the applicants under oath. The information received shall be reduced to writing and sworn to by each applicant under penalty of perjury. The clerk may request any additional documentation as needed for verification of facts.
- (3) Upon payment of a fee to be set by the Kickapoo Traditional Tribal Council (hereinafter "Tribal Council"), the clerk shall issue a marriage license/certification of marriage to persons who appear entitled to be married as provided in this Chapter. Such fee shall be payable to the Secretary.
- (4) The clerk shall transmit all marriage, annulment and divorce related information to the Secretary, who will keep a public record of all marriage licenses and certificates of marriage issued and divorces and annulments granted.
- (5) All parties to all prospective marriages must be provided with notification of the availability of tests for venereal diseases and genetic defects. If one or more of the prospective spouses are members of KTTT, the notice shall include notification of the availability of tribal health care services available for such testing. The Tribe's Community Health Representative shall provide the Clerk with a list of centers available for the testing and treatment of genetic defects and diseases. The clerk shall provide a copy of this information to all persons applying for a marriage license. No medical examination or laboratory tests shall be required.

Section 19.4 Premarital Agreements

Fiancées may enter into premarital agreements. The agreement must be in writing and may only be changed after the marriage by written agreement. The agreements may involve any property of the parties but may not adversely affect child support. Agreements are enforceable without consideration.

Section 19.5 Existing and Previously Existing Marriages

- (1) Proceedings to establish the existence or non-existence of a marriage and issues related thereto shall be commenced and conducted in the manner provided by law for civil cases.
- (2) All marriages performed other than as provided for in this Chapter, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the KTTT.
- (3) All marriages entered into on Tribal lands, including those perfected according to Tribal custom, are declared valid for all purposes under this Chapter. Marriage certificates are available from the clerk upon payment of the fee to be set by the Tribal Council. Such fee shall be payable to the Secretary.
- (4) Marriages perfected by tribal custom that are registered with the Secretary shall be presumptively recognized as valid when registered within two (2) years of the adoption of this Chapter or the date of marriage, whichever is longer. Thereafter, the marriage must be proved by evidence presented to the Tribal Court. The evidence may be presented at trial in the following forms: orally, documentary evidence, audio evidence, visual evidence or by affidavit.
- (5) If the proof of the marriage is provided by affidavit, the affidavit must contain the following information: (a) a statement by the spouses that they were known as a family; (b) the spouses must sign an affidavit, witnessed by not less than two (2) individuals outside their immediate families, attesting to: (i) the tribal custom marriage' existence; and (ii) the month and year the tribal custom marriage occurred.
- (6) In the event that it is impossible or impracticable to obtain an affidavit containing the information contained in the preceding paragraph, a person claiming to be or to have been a spouse or is a person with an interest in establishing the marriage may petition the Tribal Court for a determination that the tribal custom marriage existed. Based on the totality of circumstances, the Tribal Judge shall determine the existence or non-existence of the tribal custom marriage, the inclusive dates of the marriage, the identities of all children of the marriage, and the date and method of dissolution, if any.

- (7) Whether the evidence is presented at trial or by affidavit, the Tribal Court shall recognize and certify tribal custom marriages provided that the following requirements are met by a preponderance of evidence: (a) the spouses must have been known as a family; (b) the tribal custom marriage existed; and (c) the approximate month and year the tribal custom marriage occurred.

Section 19.6 Persons Who May Marry

Neither a marriage license nor a certificate of marriage shall be issued unless the persons to be married meet the following qualifications:

- (1) She or he is at least 16 years old, and, if over 16 years of age but less than 18 years of age, has the written consent to marry of his/her custodial parent or guardian, properly notarized;
- (2) If neither of the person to be married is a member of the KTTT, both parties are to be over the age of 18. If a party is not a member of the KTTT, the non-member must be over the age of 18.

Section 19.7 Who May Perform Marriages

- (1) A marriage may be solemnized and performed on Tribal lands by any of the following:
 - a. a judge of the Tribal Court;
 - b. any person recognized by the State of Texas as having authority to marry; and
 - c. the husband and wife, who may self perform and then register by the following acts (a) obtaining a license to marry, (b) payment of applicable fees, (c) execution of an affidavit of Intention to Marry by both parties, and (d) filing it with the clerk.
- (2) No marriage solemnized or performed before any person professing to have authority to marry shall be invalid for want of such authority, if consummated in the belief of the parties or either of them that he had such authority and that they have been lawfully married.

Section 19.8 Marriage Ceremony

No marriage ceremony is required to recognize a registered marriage acknowledged by marriage certificate. Where a marriage ceremony occurs, no particular form of marriage ceremony is required, provided, however, that the persons to be married must declare in front of the person performing the ceremony, that they take each other as husband and wife, and the performer of the marriage must thereafter declare them to be husband and wife. Prior to the ceremony, the Tribal Judge shall obtain the license and determine the

fiancées to be the persons named on the license. For that purpose, the Tribal Judge may administer oaths and examine the fiancées or require documentary proof of any relevant information contained in the license.

Section 19.9 Completion of License/Certificate of Marriage

- (1) The Tribal Judge shall sign and endorse the license with a statement which shall include: (a) the time and place of the ceremony, if any; (b) names and places of residence of one or more witnesses to the statement of intent to be married; and (c) name, address, and title of the judge performing the ceremony, if any.
- (2) The Tribal Judge shall execute a Marriage Certificate, which shall certify the spouses have entered into the marriage. The clerk shall combine the license and certificate into one form and file it with the Secretary within ten (10) days of the ceremony.

Section 19.10 Void and Voidable Marriages

- (1) Marriages between an ancestor and his descendant, between brothers and sisters, of the half as well as the whole blood, between an uncle and his niece or an aunt and her nephew, or between first cousins are void from the beginning, whether or not the degree of relationship is legitimate or illegitimate.
- (2) Marriages between a person who is at the time of the marriage married to another person still living are void; provided, that such marriages will be considered valid until ruled otherwise by a court of competent jurisdiction if the party previously married:
 - a. actually believed in good faith, that the prior marriage had been dissolved as a result of divorce, annulment or custom; or
 - b. actually believed, in good faith, that his or her prior spouse was dead.
- (3) When the marriage is contracted in good faith and in the belief that it is a valid marriage, the children of such marriage born or conceived prior to the voiding or receiving notice of the invalidity of the marriage for any reason shall be the legitimate children of both parties.
- (4) If neither party to the marriage is incapable as a result of some cause or mental dysfunction or legal incapacity to enter into the marital state and such cause appears to be permanent, or if the consent of either party to marry was obtained by force or fraud; the marriage is voidable.

Section 19.11 Grounds for Annulment

A marriage may be annulled for any of the following causes existing at the time of marriage:

- (1) that the party on whose behalf it is sought to have the marriage annulled, was under the age of 18 years, and such marriage was contracted without the consent of his or her parents or guardian, or persons having charge of him or her, unless, after attaining the age of 18, such party freely cohabits with the other party to the marriage as husband and wife;
- (2) that the former husband or wife of either party was living, and the marriage of such former husband or wife was in force at the time of the requested annulment;
- (3) that either party was of unsound mind, unless such party, after coming into reason, freely cohabited with the other as husband and wife;
- (4) that the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband and wife; or that the consent of either party was obtained by force or threat of force, unless such party afterwards freely cohabits with the other as husband and wife.

Section 19.12 Action to Annul – Parties and Limitations

An action to obtain a Decree of Annulment of a marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

- (1) for causes mentioned in Subsection 1-1-70(1), by the party to the marriage who was married under the age of legal consent, within two years after arriving at the age of 18, or by a parent, guardian, or other person having charge of such minor male or female, at any time before such married minor has arrived at the age of 18.
- (2) for causes mentioned in Subsection 1-1-170(2), by either party during the life of the other, or by such former husband or wife;
- (3) for causes mentioned in Subsection 1-1-70(3), by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party;
- (4) for causes mentioned in Subsection 1-1-70(4), by the party injured, within two years after the discovery of the facts constituting a fraud; and

- (5) for causes mentioned in Subsection 1-1-70(5), by injured party, within four years after the marriage.

Section 19.13 Legitimacy of Children

When a marriage is annulled for any reason, children begotten before judgment are legitimate and succeed to the estate of both parents. The Tribal Court may at the time of granting the annulment or at any future time, make necessary orders for the custody and support of said child or children as the circumstances and the surrounding of the parents may require and as set out in the child support and custody sections of this Code.

Section 19.14 Conclusiveness of Judgment of Annulment

A judgment of annulment of a marriage is conclusive only as against the parties to the action and those claiming under them.

Section 19.15 Dissolution and Annulment Procedure

Proceedings in dissolution and annulment shall be commenced and conducted in the manner provided by law for civil cases, except as otherwise specifically provided herein. A final Decree of Divorce shall restore the parties to the status of unmarried persons.

Section 19.16 Dissolution and Annulment Residency Requirements and Waiting Periods

- (1) **General.** In order to maintain an action for divorce or annulment in the Tribal Court, at least one party to the marriage must be an enrolled member of the KTTT and have lived within the territorial jurisdiction of the Tribal Court for at least three months prior to bringing the action. In such cases, the dissolution may not be granted less than 60 days since the separation or filing of the case, whichever is less.
- (2) **Exception.** Where the parties are both non-tribal members and agree to the jurisdiction of the Tribal Court, no waiting period or residency requirements shall apply. However, in each such case, the agreed final Decree of Divorce shall be filed with the Petition for Dissolution.

Section 19.17 Grounds for Dissolution

The sole grounds for dissolution shall be the marriage is irretrievably broken.

Section 19.18 Right of Dissolution

The husband may in all cases obtain dissolution from his wife for the same causes and in the same manner as the wife may obtain dissolution from her husband.

Section 19.19 Restraint

The Tribal Court may temporarily or permanently retain either party from doing certain acts harmful to the other or to the children, or to the property of either, during the pendency of the dissolution proceeding. Violation of a current and valid restraining order shall be a crime punishable by confinement up to six (6) months in jail and the assessment of attorney's fees and costs and cost of court related to the violation of the order. In addition, civil contempt or expulsion proceedings may be brought against any person violating a valid court order obtained pursuant to this section. In the event that the Tribal Judge recommends expulsion, the recommendation shall be taken or rejected in accordance with the rules of expulsion/exclusion/banishment found in the KTTT's Penal Code.

Section 19.20 Pleadings – Findings -- Decree

The petition for dissolution shall be in writing and signed by the petitioner or the petitioner's attorney. No decree of dissolution (divorce or annulment) shall be granted upon default or otherwise, except upon legal evidence taken in the cause by the Tribal Court. The Tribal Court shall make and file its findings and decree upon the evidence. The decree shall become absolute upon entry unless the judge orders otherwise. In which case, the period of time until which it becomes absolute is three months. After such period, a final judgment is subject to being set aside or amended only on the grounds of fraud, duress, accident, mistake, or other grounds recognized as reasonable under Tribal Law. The Tribal Court shall retain jurisdiction of the case for one (1) year following the entry of the final judgment in all matters except the status of the marriage, where proof exists that the parties did not meet all requirements when the petition was filed.

Section 19.21 Counseling

Upon the filing of the petition, the clerk shall notify both spouses of the availability of marital counseling through the Tribe's mental health professionals. Such services are only to be offered in cases where one or more of the parties are a member of KTTT.

Section 19.22 Disposition of Property and Children

When a decree of dissolution is made, the Tribal Court may make such orders in relation to the children, property, parties, property of the parties and child support, as may be equitable and prescribed by this Code. Subsequent changes, modifications or new orders may be made by the Court with respect to the custody and support of the children.

Section 19.23 Child Custody Proceeding – Commencement – Notice -- Intervention

- (1) A child custody proceeding is commenced in the Tribal Court and governed by the rules applicable to civil cases unless otherwise stated:

- a. by a parent by filing a petition for dissolution of marriage or annulment; or by filing a petition seeking custody of a child; or
 - b. by a person other than a parent, by filing a petition seeking custody of the child; but only if the child is not in the physical custody of one of its parents or if the petitioner alleged that neither parent is a suitable custodian.
- (2) Notice of a child custody proceeding shall be given to the child's parents, guardian and custodian, who may appear and be heard and may file a responsive pleading. The Tribal Court may, upon showing of good cause, permit the intervention of other interested parties.

Section 19.24 Child Custody -- Relevant Facts in Awarding Custody

The KTTT favors joint conservatorship of the children by their parents. The presumption is that joint conservatorship should be granted. However, if circumstances exist that make joint conservatorship impracticable, the Tribal Court shall determine who should have sole conservatorship of the children based on a totality of circumstances test. The Tribal Court shall determine custody of the children in accordance with the best interests of the child and, secondarily, the traditions and customs of the KTTT people. The Tribal Court shall consider all relevant factors, including but not limited to:

- (1) the wishes of the child's parent or parents as to visitation privileges;
- (2) the wishes of the child as to his custodian and as to visitation privileges;
- (3) the interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may significantly affect the child's best interests;
- (4) the child's adjustment to his home, school and community;
- (5) the mental and physical health of all individuals involved; and
- (6) the Indian heritage of the child and the KTTT's compelling state interest in supervision of its children's upbringing and need for maintenance of its number of members.

The court shall not consider conduct of a proposed guardian that does not affect the welfare of the child.

Section 19.25 Child Custody -- Temporary Custody Order -- Vacation of Order

- (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by affidavit or other evidence. The Court may award

temporary custody after a hearing; or, if there is no objection, solely on the basis of affidavits.

- (2) If a proceeding for dissolution of marriage is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the Tribal Court finds, after a hearing, that the circumstances of the parents and the best interest of the child require that a custody decree be issued.

Section 19.26 Child Custody -- Temporary Custody Order or Modification of Custody Decree -- Affidavits Required

- (1) A party seeking a temporary custody order shall present evidence at a hearing or affidavits filed with the motion that supporting the granting of the requested relief.
- (2) A party seeking modification of a custody decree entered less than one year previously shall submit together with the motion, an affidavit alleging facts that constitute a material change in the circumstances of any of the parties which support the requested order of modification and shall give notice, together with a copy of the affidavit, to other parties to the proceedings, who may file opposing affidavits. The Tribal Court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted. Except as otherwise provided in this Chapter, the Tribal Court shall not modify a prior custody decree unless it finds, upon the bases of facts that have arisen since the prior decree or that were unknown to the Tribal Court at the time of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interests of the child. In applying these standards the Tribal Court shall retain the custodian established by the prior decree unless:
 - a. the custodian agrees to the modification;
 - b. the child is over 14 years of age and requests the modification;
 - c. the child has been integrated into the family of the petitioner with the consent of the custodian; or
 - d. the child's present environment is detrimental to this physical, mental or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.
- (3) If the Tribal Court finds that a motion to modify a prior custody order has been brought in bad faith, the Tribal Court shall assess the attorney's fees, expenses and court costs of the custodian against the petitioner.

Section 19.27 Child Custody -- Interview with Child by Court -- Advise of Professional Personnel

- (1) The Tribal Court may interview the child in chambers to ascertain the child's wishes as to the custodian and as to visitation privileges. The Tribal Court may, in its discretion, permit counsel to be present at the interview. The Tribal Court shall cause a record of the interview to be made and to be made part of the record in the case.
- (2) The Tribal court may seek the advice of Indian Child Welfare (hereinafter "ICWA") personnel or persons knowledgeable in the welfare of Indian children whether or not they are employed on a regular basis by the Tribal Court. The advice given shall be in writing and shall be made available by the Tribal Court to counsel or the parties upon request. Counsel or the parties may call for cross-examination of any persons consulted by the Tribal Court.

Section 19.28 Child Custody -- Priority Status of Proceedings -- Hearing -- Record -- Expense of Witnesses

- (1) Custody proceedings shall receive priority in being set for hearing.
- (2) Either party may petition the Court to authorize the payment of necessary travel or other expenses incurred by any witness whose presence at the hearing the Tribal Court deems necessary to determine the best interests of the child.
- (3) The Tribal Court shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the Tribal Court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the matter and the work of the Tribal Court.
- (4) If the Tribal Court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the Tribal Court may make an appropriate order sealing the record.

Section 19.29 Child Custody -- Visitation Rights

- (1) A parent, grandparent, or any other person able to show to the Tribal Court a traditional right or custom of child care, and not granted custody of the child may be granted reasonable visitation rights unless the Tribal Court finds, after a hearing, that visitation would endanger the child's physical, mental or emotional health. The Tribal Court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances.
- (2) The Tribal Court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child but the Tribal

Court shall not restrict a parent's or grandparent's visitation rights unless it finds that the visitation would endanger the child's physical, mental or emotional health.

Section 19.30 Child Custody -- Powers and Duties of Custodian -- Supervision by Appropriate Agency When Necessary

- (1) Except as otherwise agreed by the parties in writing at the time of the custody decree or upon order of the Tribal Judge, the joint conservators shall may determine the child's upbringing, including his education, health care, and religious training. In the event of the granting of sole conservatorship the sole conservator shall determine these matters. The custodial parent shall determine where the child shall live unless this authority is limited by agreement of the parties or upon good cause established by the evidence.
- (2) If both parents or all contestants agree to the order, or if the Tribal Court finds that in the absence of the order the child's physical, mental or emotional health would be endangered, the Tribal Court may order an appropriate ICWA agency which regularly deals with children to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out. Such order may be modified by the Tribal Court at any time upon petition of any party.

Section 19.31 Apportionment of Expense

In a proceeding for dissolution of marriage, child custody or child support, after considering all relevant facts but without regard to marital misconduct, the Tribal Court may order either or both parents owing a duty of support to any child of the marriage dependent upon either or both spouses to pay an amount reasonable or necessary for the support of the child in accordance with the guidelines established by this Chapter and any subsequent amendments.

Section 19.32 Minor or Dependent Child -- Court Appointed Attorney to Represent -- Payment of Costs -- Fees and Disbursements

The Tribal Court may appoint an attorney to represent the interests of a minor or dependent child with respect to his custody, support and visitation. Such an order shall not be issued unless the Tribal Court finds there is a custody dispute or special circumstances exist that necessitate such appointment. The Tribal Court shall enter an order for costs, fees and disbursements in favor of the child's attorney. The order shall be made against either or both parents, except that, if both parents are indigent, the costs, fees, and disbursements may be paid by the Tribe.

Section 19.33 Child Support Payments -- To Whom Paid

- (1) The Tribal Court may, upon its own motion or upon motion of any party, order child support payments to be made to: the Secretary as trustee for remittance to the custodian of the child.
- (2) If payments are made to the Secretary, such payments shall be accompanied by the following:
 - a. records listing the amount of payments, the date when payments are required to be made, the date of actual payment, and the names and addresses of the parties affected by the order; and
 - b. the parties affected by the order shall inform the Secretary of any change of address or of other conditions that may affect the administration of the order.

Section 19.34 Child Support -- Order to Make Assignment of Periodic Earnings or Trust Income -- Duty of Payor to Withhold and Transmit

The Court after hearing may order the person to pay child support by making an assignment of a part of his periodic earnings or trust income to the custodian by and through the Secretary. The assignment is binding on the employer, trustee or other payor of the funds two weeks after service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the Secretary. The employer, with the exception of any KTTT governmental or commercial entity, may deduct from each payment a sum not exceeding ten dollars as reimbursement for costs. The Secretary may deduct a handling fee as set by Tribal Council's resolution. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

Section 19.35 Payment of Costs, Attorney's Fees, etc.

The Tribal Court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party for maintaining or defending any proceeding under this Chapter and for reasonable attorney's fees, expenses or other professional fees in connection therewith.

Section 19.36 Property Rights of Married Persons

- (1) The KTTT is a community property nation. The husband and wife own a ½ undivided interest in all property of the marriage and are responsible for ½ of the debts of the marriage. Property obtained as a result of personal injury,

inheritance or owned before marriage is not marital property. Upon dissolution of the marriage, all marital property is to be divided equally between the spouses.

- (2) During the marriage spouses must confer with each other regarding acquisition and disposal of marital assets and the incurring of marital debt. When a wife or a husband enters into a contract in which their spouse has no interest, the non-interested spouse is not liable for the debts or obligations of the other spouse solely by reason of marriage to the other spouse.
- (3) A conveyance, transfer, or lien executed by either wife or husband in favor of the other shall be valid to the same extent as between other persons.
- (4) If either a wife or a husband disposes of community property assets without the permission of the other, the person disposing of the property is liable to the other spouse for damages related to the loss of the other spouse's interest in the asset.

Section 19.37 Family Expenses

The expenses of the family and the education of the children are chargeable upon the property of both husband and wife, and they may be enforced jointly or separately.

Section 19.38 Custody of Children and Property

- (1) Absent a judicial decree of property distribution or custody or otherwise, neither the husband nor the wife can remove the marital property or the children from the place of family dwelling without the consent of the other; provided, however, that children may be removed from the family residence by one parent without the consent of the other if such appears to be reasonably necessary to protect the physical well being of the children, the children are thereafter provided with a more proper living environment, and application is made to the Tribal Court within ten days for an order of the Tribal Court, modifiable at any time approving such removal of the children.
- (2) A KTTT child's residence and domicile shall not be changed from Tribal lands, where a child lives on such lands at the time of the separation of the parents, without order of the Tribal Court.
- (3) If either spouse abandons the other spouse and the children of the marriage, the abandoned spouse is entitled to custody of and legal guardianship over all children under the age of 18 unless the Tribal Court shall otherwise direct. Abandonment shall be defined as voluntary absence of a parent from the home in which the children reside for a period of 180 days without intent to return.

Section 19.39 “Parent and Child Relationship” Defined

As used in this Chapter, “parent and child relationship” means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties and obligations. It includes the mother and child relationship and the father and child relationship.

Sections 19.40 Presumption of Paternity

A man is presumed to be the natural father of a child if:

- (1) He and the child’s natural mother are or have been married to each other and the child is born during the marriage, or within three hundred days after the marriage is terminated by death, annulment or divorce;
- (2) Before the child’s birth, he and the child’s natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born within three hundred days after the termination of cohabitation; or
- (3) After the child’s birth, he and the child’s natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and
 - a. He has acknowledged his paternity of the child in writing filed with the Secretary; or
 - b. With the consent, he is named as the child’s father on the child’s birth certificate; or
 - c. He is obligated to support the child under a written voluntary promise or by court order.
- (4) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his child; or
- (5) When a man acknowledges his paternity of a child in a writing filed with the Secretary, the Secretary shall promptly inform the mother of the filing of the acknowledgment. If the mother or custodian does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the Secretary Parentage on the part of the filing man is presumed. If another man is presumed under subsection (1), (2), (3) or (4) of this section to be the child’s father,

such acknowledgement shall give rise to the presumption of paternity only with the written consent of the otherwise presumed father or after such other presumption has been rebutted.

A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption on the facts is founded on the weightier considerations of policy and logic shall control. The presumption is rebutted by a court decree establishing paternity of the child by another man.

Section 19.41 Determination of Father and Child Relationship -- Who May Bring Action -- When Action May be Brought

- (1) An action may be brought under this Subsection by:
 - a. A child, a child's natural mother, a man alleging himself to be the father, a child's guardian, a child's personal representative, the KTTT Tribe, or any interested party may bring an action in Tribal Court at any time for the purpose of declaring the existence or nonexistence of the father and child relationship.
 - b. A man presumed to be a child's father under section 1-1-221 may bring an action for the purpose of declaring the nonexistence of the father and child relationship only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.
- (2) In action brought by the Tribe, the Tribe may be represented by the Tribal Court prosecutor, a special prosecutor appointed by the Tribal Council, the Tribal Attorney and/or an attorney appointed by the Tribal Council at the sole discretion of the Tribal Council.
- (3) Regardless of its terms, no agreement between an alleged or presumed father and the mother of the child, shall bar an action under this subsection.
- (4) If an action under this section is brought before the birth of the child, all proceedings may be stayed until after the birth, except service of process and discovery, including the taking of depositions to perpetuate testimony.
- (5) Actions under this chapter may be maintained as to any child, whether born before or after the enactment of this Chapter.

Section 19.42 Jurisdiction

The Tribal Court shall have jurisdiction of any action to determine paternity brought under this Chapter. The action may be joined with an action for divorce, annulment, child support, child custody or any other civil action in which paternity is an issue including proceedings related to Juvenile Law.

Section 19.43 Parties

The child shall be made a party to the action. If the child is a minor, the child shall be represented by the child's general guardian or a guardian ad litem appointed by the Tribal Court. The child's mother or father may not represent the child as guardian or otherwise. The natural mother, each man presumed to be the father and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the Tribal Court, shall be given notice of the action in a manner prescribed by the Tribal Court and an opportunity to be heard. The Tribal Court may align the parties.

Section 19.44 Paternity Tests

- (1) The Tribal Court may, upon request of the party shall, require the child, mother, and any alleged father who has been made a party to submit to blood tests. If an alleged father objects to a proposed order requiring him to submit to paternity blood tests, the Tribal Court may require the party making the allegation of possible paternity to provide sworn testimony, by affidavit or otherwise, stating the facts upon which the paternity is based. The Tribal Court shall order blood tests if it appears that a reasonable possibility exists that the requisite sexual contact occurred. The tests shall be performed by an expert in paternity blood testing appointed by the Tribal Court. The expert's verified report identifying the blood characteristics observed is admissible in evidence in any hearing or trial in the parentage action, if (a) the alleged or presumed father has had the opportunity to gain information about the security, validity and interpretation of the tests and the qualifications of any experts, and (b) the report is accompanied by an affidavit from the expert which describes the expert's qualifications as an expert and analyzes and interprets the results. Verified documentation of the chain of custody of the blood samples is admissible to establish the chain of custody. The Tribal Court may consider published sources as aids to interpretation of the test results.
- (2) The Tribal Court, upon request by a party, shall order that additional tests, including but not limited to DNA tests, be performed by the same or other experts qualified in paternity testing, if the party requesting additional tests advances the full costs of the additional testing within a reasonable time. The Tribal Court may order additional testing without requiring that the requesting party advance the costs only if another party agrees to advance the costs or if the Tribal Court finds, after hearing, that (a) the requesting party is indigent, and (b) the laboratory

performing the initial tests recommends additional testing or there is substantial evidence to support a finding as to paternity contrary to the initial blood test results. The Tribal Court may later order any other party to reimburse the party who advanced the costs of additional testing for all or a portion of the costs.

- (3) In all cases, the Tribal Court shall determine the number and qualifications of the experts.

Section 19.45 Evidence Related to Paternity

Evidence relating to paternity may include:

- (1) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;
- (2) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;
- (3) Paternity test results, weighted in accordance with evidence of the statistical probability of the alleged father's paternity;
- (4) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the Tribal Court may, and upon request of a party shall, require the child, the mother and the man to submit to appropriate tests; and
- (5) All other evidence relevant to the issue of paternity of the child.

Section 19.46 Civil Action – Testimony – Evidence

- (1) Any paternity action under this Chapter is a civil action governed by the rules of civil procedure adopted by the Tribe. The mother of the child and the alleged father are competent to testify and may be compelled to testify.
- (2) Upon refusal of any witness, including a party, to testify under oath or produce evidence of any other kind on the grounds that said witness may be incriminated thereby, and if a party requests the Tribal Court to order that person to testify or provide the evidence, the Tribal Court shall then hold a hearing and shall so order, unless it finds that to do so would be clearly contrary to the public interest, and that person shall comply with the order.

If, but for this section, such a witness would have been privileged to withhold the answer given or the evidence produced and the witness has made an objection based on the privilege against self-incrimination, the witness may not refuse to comply with the order on the basis of the privilege against self-incrimination; but the witness shall not be prosecuted or subjected to criminal penalty or forfeiture

for or on account of any transaction, matter, or fact concerning which the witness has been ordered to testify pursuant to this section. The witness may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or for offering false evidence to the Tribal Court.

- (3) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition or characteristics of the child upon birth is not privileged.
- (4) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the Tribal Court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if he has undergone and made available to the Tribal Court paternity tests the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the Tribal Court shall be made a defendant in the action.

Section 19.47 Judgment or Order Determining Parent and Child Relationship – Child Support Judgment and Orders -- Custody

- (1) The Judgment and order of the Tribal Court determining the existence or nonexistence of the parent and child relationship shall be determinative for all purposes.
- (2) If the judgment and order of the Tribal Court is at variance with the child's birth certificate, the Tribal Court shall order that an amended birth certificate be issued.
- (3) The judgment and order shall contain other appropriate provisions directed to the appropriate parties to the proceeding, concerning the duty of current and future support, the extent of any liability for past support furnished to the child if that issue is before the Tribal Court; the custody and guardianship of the child, visitation privileges with the child; the furnishing of bond or other security for the payment of the judgment; or any other matter in the best interest of the child. The judgment and order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.
- (4) Support judgment and orders shall be for periodic payments which may vary in amount. The Tribal Court may limit the father's liability for the past support to the child to the proportion of the expenses already incurred as the Tribal Court deems just. Provided however, that the Tribal court shall not limit or affect in any manner the right of non-parties to seek reimbursement for support and other services previously furnished to the child.
- (5) In determining custody, the Tribal Court, in accordance with the best interest of the child, shall consider all relevant facts including:

- a. The wishes of the child's parents as to the child's custody and as to visitation;
- b. The wishes of the child as to the child's custodian and as to visitation privileges;
- c. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings, and any other person who may significantly affect the child's best interests;
- d. The child's adjustment to home, school and community;
- e. The mental and physical health of all individuals involved; and

The Indian heritage of the child and the customs of the Tribe. The Tribal Court shall not consider conduct of a proposed custodian that does not affect the welfare of the child.

- (6) In any dispute between the natural parents of a child and a person or persons who have (a) commenced adoption proceedings or who have been granted an order of adoption, and (b) pursuant to a court order, or placement by the Tribal Child Welfare Services or by a licensed agency, have had actual custody of the child for a period of one year or more before court action is commenced by the natural parent or parents, the Tribal Court shall consider the best welfare and interests of the child, including the child's need for situation stability, in determining the matter of custody, and the parent or person who is more fit shall have the superior right to custody. However, the rebuttable presumption is that the Indian parent is more fit than a non-Indian attempting adoption.

Section 19.48 Support Orders -- Time Limit; Exceptions

A court may not order payment for child support provided or expenses incurred more than five years prior to the commencement of the action. Any period of time in which the responsible party has concealed himself or avoided the jurisdiction of the Tribal Court under this Chapter shall not be included within the five-year period.

Section 19.49 Temporary Child Support -- Temporary Restraining Order -- Preliminary Injunction -- Permanent Injunction; Child Support Debts -- Notice

- (1) If the Tribal Court has made a finding as to the paternity of a child, or if a party's acknowledgement of paternity has been filed with the Secretary or a party alleges he is the father of the child, any party may move for temporary support for the child prior to the date of the entry of the final order. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

- (2) Any party may request the Tribal Court to issue a restraining order, preliminary injunction and/or permanent injunction, providing relief proper in the circumstances, and restraining or enjoining any party from:
 - a. Molesting or disturbing the peace of another party;
 - b. Going within a prescribed distance from the person, home or place of work of a party;
 - c. Entering the home of another party;
 - d. Removing or harming property or incurring additional marital debt in excess of reasonable and customary personal or business expenses; or
 - e. Removing a child from the custodian's home and/or the jurisdiction of the Tribal Court.
- (3) The Tribal Court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.
- (4) The Tribal Court may issue a temporary restraining order or preliminary injunction and an order for temporary child support in such amounts and on such terms as are just and proper in the circumstances and shall apply the child support percentages set out herein whenever such information can be ascertained.
- (5) A temporary order, temporary restraining order or preliminary injunction:
 - a. Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding;
 - b. May be revoked or modified;
 - c. Terminates when the final order is entered or when the petition is dismissed; and
 - d. May be entered in proceeding for the modification of an existing order.

Section 19.50 Enforcement of Judgments or Orders

- (1) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged under this Chapter or under other or prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child and/or the KTTT, when such has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or

funeral, or by any other person, including a private agency, to the extent it has furnished or is furnishing these expenses.

- (2) The Tribal Court may order support payments made to the Secretary for the benefit of the child.
- (3) All remedies for the enforcement of judgments apply.

Section 19.51 Modification of Judgment or Order -- Continuing Jurisdiction

The Tribal Court has continuing jurisdiction to prospectively modify a judgment and order for future education and future support upon showing a substantial change of circumstances.

Section 19.52 Action to Determine Mother and Child Relationship

Any interested party may bring an action to determine the existence or non-existence of a mother and child relationship. Insofar as practicable, the provisions of this Chapter applicable to the father and child relationship apply.

CHILD SUPPORT GUIDELINES

Section 19.53 General Guidelines

Child Support shall be based on the monthly net resources of the Obligor in the following percentages:

- 1 child – 20% of Obligor's Net Resources
- 2 children – 25% of Obligor's Net Resources
- 3 children – 30% of Obligor's Net Resources
- 4 children – 35% of Obligor's Net Resources
- 5 children – 40% of Obligor's Net Resources
- 6+ children – Not less than the amount for 5 children

Section 19.54 Application of Guidelines to Additional Net Resources

- (a) If the Obligor's net resources exceed \$7,500.00 per month, the Tribal Court shall presumptively apply the percentage guidelines to the portion of the Obligor's net resources that does not exceed that amount. Without further reference to the percentage recommended by these guidelines, the Tribal Court may order additional amounts of child support as appropriate, depending on the income of the parties and the proven needs of the child.
- (b) The proper calculation of the child support order that exceeds the presumptive amount established for the portion of the Obligor's net resources provided in the proceeding paragraphs requires that the entire amount of the presumptive award be subtracted from the proven needs of the child. After the presumptive award is

subtracted, the Tribal Court shall allocate between the parties the responsibility to meet the additional needs of the child according to the circumstances of the parties. However, in no event may the Obligor be required to pay more child support than the greater of the presumptive amount or the amount equal to 100% of the proven needs of the child.

Section 19.55 Partial Termination of Support Obligations

- (a) A child support order for more than one child shall provide that, on the termination of the support for a child, the level of support for the remaining child or children is in accordance with the child support guidelines.
- (b) A child support order is in compliance with the requirement of Subsection (a) if the order contains a provision that specifies:
 - (1) The events, including a child reaching the age of 18 years or otherwise having the disabilities of minority removed, that have the effect of terminating the Obligor's obligations to pay child support for that child; and
 - (2) The reduced total amount that the Obligor is required to pay each month after the occurrence of an event described by Subdivision (1).

Section 19.56 Computing Support for Children in More Than One Household

- (a) In applying the child support guidelines for an Obligor who has children in more than one household, the Tribal Court shall apply the percentage guidelines in this subchapter by making the following computations:
 - (1) Determine the amount of child support that would be ordered if all children whom the Obligor has the legal duty to support lived in one household by applying the schedule in this subchapter;
 - (2) Compute a child support credit for the Obligor's children who are not before the Tribal Court by dividing the amount determined under Subdivision (1) by the total number of children whom the Obligor is obligated to support and multiplying that number by the number of the Obligor's children who are not before the Tribal Court;
 - (3) Determine the adjusted net resources of the Obligor by subtracting the child support credit computed under subdivision (2) from the net resources of the Obligor; and
 - (4) Determine the child support amount for the children before the Tribal Court by applying the percentage guidelines for one household for the number of children of the Obligor before the Tribal Court to the Obligor's adjusted net resources.
- (b) For the purpose of determining a child support credit, the total number of an Obligor's children includes the children before the court for the establishment or modification of a support order and any other children, including children residing with the Obligor, whom the Obligor has the legal duty of support.
- (c) The child support credit with respect to children for whom the Obligor is obligated by an order to pay support is computed, regardless of whether the

obligor is delinquent in child support payments, without regard to the amount of the order.

Section 19.57 Alternative Method of Computing Support for Children in More Than One Household

In lieu of performing the computation under the preceding section, the court may determine the child support amount for the children before the court by applying the percentages in the table below to the obligor's net resources:

MULTIPLE FAMILY ADJUSTED GUIDELINES

(% OF NET RESOURCES)

Number of children before the court

Number of
Other
Children for
Whom the
Obligor has
A Duty of
Support

	1	2	3	4	5	6	7
0	20.00	25.00	30.00	35.00	40.00	40.00	40.00
1	17.50	22.50	27.38	32.20	37.33	37.71	38.00
2	16.00	20.63	25.20	30.33	35.43	36.00	36.44
3	14.75	19.00	24.00	29.00	34.00	34.67	35.20
4	13.60	18.33	23.14	28.00	32.89	33.60	34.18
5	13.33	17.86	22.50	27.22	32.00	32.73	33.33
6	13.14	17.50	22.00	26.60	31.27	32.00	32.62
7	13.00	17.22	21.60	26.09	30.67	31.38	32.00

Section 19.58 Findings in Child Support Order

(a) In rendering an order of child support, the Tribal Court shall make the findings required by Subsection (b) if:

(1) a party files a written request with the court not later than 10 days after the date of the hearing;

(2) a party makes an oral request in open court during the hearing; or

(3) the amount of child support ordered by the court varies from the amount computed by applying the percentage guidelines.

(b) If findings are required by this section, the court shall state whether the application of the guidelines would be unjust or inappropriate and shall state the following in the child support order:

"(1) the monthly net resources of the Obligor per month are \$ _____;

"(2) the monthly net resources of the obligee per month are \$ _____;

"(3) the percentage applied to the obligor's net resources for child support by the actual order rendered by the court is _____ %;

"(4) the amount of child support if the percentage guidelines are applied to the portion of the Obligor's net resources that does not exceed \$7,500.00 is \$ _____;

"(5) if applicable, the specific reasons that the amount of child support per month ordered by the court varies from the amount stated in Subdivision (4) are: _____; and

"(6) if applicable, the Obligor is obligated to support children in more than one household, and:

"(A) the number of children before the court is _____;

"(B) the number of children not before the court residing in the same household with the Obligor is _____; and

"(C) the number of children not before the court for whom the Obligor is obligated by a court order to pay support, without regard to whether the obligor is delinquent in child support payments, and who are not counted under Paragraph (A) or (B) is _____."

(c) The application of the guidelines under Section 1-1-237 does not constitute a variance from the child support guidelines requiring specific findings by the court under this section.

Section 19.59 Retroactive Child Support

(a) The child support guidelines are intended to guide the court in determining the amount of retroactive child support, if any, to be ordered.

(b) In ordering retroactive child support, the court shall consider the net resources of the Obligor during the relevant time period and whether:

(1) the mother of the child had made any previous attempts to notify the Obligor of his paternity or probable paternity;

(2) the Obligor had knowledge of his paternity or probable paternity;

(3) the order of retroactive child support will impose an undue financial hardship on the obligor or the obligor's family;
and

(4) the Obligor has provided actual support or other necessities before the filing of the action.

(c) It is presumed that a court order limiting the amount of retroactive child support to an amount that does not exceed the total amount of support that would have been due for the four years preceding the date the petition seeking support was filed is reasonable and in the best interest of the child.

(d) The presumption created under this section may be rebutted by evidence that the Obligor:

(1) knew or should have known that the Obligor was the father of the child for whom support is sought; and

(2) sought to avoid the establishment of a support obligation to the child.

(e) An order under this section limiting the amount of retroactive support does not constitute a variance from the guidelines requiring the court to make specific findings under Section 1-1-238

(f) Notwithstanding any other provision of this subtitle, the court retains jurisdiction to render an order for retroactive child support in a suit if a petition requesting retroactive child support is filed not later than the fourth anniversary of the date of the child's 18th birthday.

Section 19.60 Application of Guidelines to Children of Certain Disabled Obligor

In applying the child support guidelines for an obligor who has a disability and who is required to pay support for a child who receives benefits as a result of the Obligor's disability, the court shall apply the guidelines by determining the amount of child support that would be ordered under the child support guidelines and subtracting from that total the amount of benefits or the value of the benefits paid to or for the child as a result of the Obligor's disability.

Section 19.61 Application of Guidelines to Children of Obligor's Receiving Social Security

In applying the child support guidelines for an obligor who is receiving social security old age benefits and who is required to pay support for a child who receives benefits as a result of the obligor's receipt of social security old age benefits, the court shall apply the guidelines by determining the amount of child support that would be ordered under the child support guidelines and subtracting from that total the amount of benefits or the value of the benefits paid to or for the child as a result of the obligor's receipt of social security old age benefits.

Section 19.62 Court-Ordered Support for Disabled Child

(a) The court may order either or both parents to provide for the support of a child for an indefinite period and may determine the rights and duties of the parents if the court finds that:

(1) the child, whether institutionalized or not, requires substantial care and personal supervision because of a mental or physical disability and will not be capable of self-support; and

(2) the disability exists, or the cause of the disability is known to exist, on or before the 18th birthday of the child.

(b) A court that orders support under this section shall designate a parent of the child or another person having physical custody or guardianship of the child under a court order to receive the support for the child. The court may designate a child who is 18 years of age or older to receive the support directly.

Section 19.63 Amount of Support After Age 18 for Disabled Adult Child

In determining the amount of support to be paid after a child's 18th birthday, the specific terms and conditions of that support, and the rights and duties of both parents with respect to the support of the child, the court shall determine and give special consideration to:

(1) any existing or future needs of the adult child directly related to the adult child's mental or physical disability and the substantial care and personal supervision directly required by or related to that disability;

(2) whether the parent pays for or will pay for the care or supervision of the adult child or provides or will provide substantial care or personal supervision of the adult child;

(3) the financial resources available to both parents for the support, care, and supervision of the adult child; and

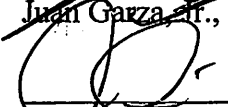
(4) any other financial resources or other resources or programs available for the support, care, and supervision of the adult child.

READ, PASSED, APPROVED and ENACTED ON May 27, 2008.



Juan Garza, Jr., Council Chairman

6/25/08
Date

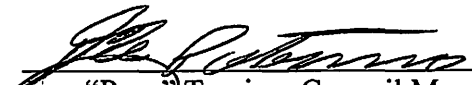


Jesus Anico, Council Secretary

06/25/08
Date

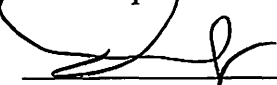
Rogelio Elizondo, Council Treasurer

Date



Jose "Pepe" Trevino, Council Member

6/25/08
Date



David J. Gonzalez, Council Member

6, 25, 08
Date