

TITLE 5 DOMESTIC RELATIONS

CHAPTER 5-1 DOMESTIC RELATIONS

5-1-1 Preamble

This Chapter shall be known as the Colville Tribal Domestic Relations Chapter.

5-1-2 Cooperative Agreement

The Business Council shall be authorized to implement or modify the provisions of this Chapter through memorandums of understanding or other agreements with outside tribal, state, or federal entities having competent jurisdictions over domestic relations matters provided that such agreements are not in conflict with this Code.

5-1-3 Definitions

(a) "Adjusted Gross Income" means gross income minus allowable deductions.

(b) "Basic Child Support Obligations" means the monthly child support obligations of a parent calculated pursuant to the Child Support Guidelines, excluding amounts for day care, health care, and extraordinary expenses as set forth in this Chapter.

(c) "Child" means any person under the age of eighteen, or any person between the ages of eighteen and twenty-one who is attending high school or its equivalent, who is not emancipated according to the laws of the Colville Tribes and who is alleged to be the natural or adopted offspring of an absent or custodial parent; or, for the purposes of Post-secondary Education support, a person up to age twenty-four.

(d) "Child Support" means the total financial obligation a responsible parent has towards his or her child established through a judicial or administrative process.

(e) "Child Support Debt" means any monies, in-kind or traditional support recognized by the Tribes to be owed to or on behalf of a child to satisfy a basic child support obligation or to satisfy in whole or in part arrears or delinquency of such obligation, whether denominated as child support, spousal support, medical support or maintenance.

(f) "Child Support Guidelines" means all child support guidelines, schedules, and worksheets approved by the Colville Tribal Business Council, pursuant to this Chapter.

(g) "Child Support Order" means any judgment or order of the Colville Tribal Court, Superior Court of the State of Washington, any tribal court order where that Tribes accords the Colville Tribal Court reciprocal recognition, any court order or administrative order of another competent jurisdiction, or an administrative determination established by the State ordering payment of a set or determinable amount of child support, medical support, child care, or educational support.

(h) "Compensation" means any wages, salary and/or other compensation (including, but not limited to, overtime pay, hazard pay, tips, commissions, bonuses, and periodic payments for the member's retirement, pension, and insurance plans) paid to the member for his or her personal services to the government or business employer.

(i) "Court" means any judicial or administrative court of the Confederated Tribes of the Colville Reservation authorized to establish and enforce child support orders and establish paternity. This definition specifically includes the Administrative Law Judges.

(j) "Custodial Parent" means the parent who holds legal custody of the child pursuant to a court order, or who exercises physical custody of the child on the basis of an agreement between the parents or the absence of one parent. The term custodial parent shall also include a guardian or custodian appointed by a court of competent jurisdiction.

(k) "Divided Custody" means that one parent has primary physical custody of one or more children of the relationship and the other parent has primary physical custody of one or more children of the relationship.

(l) "Department" means the Colville Tribal Child Support Program.

(m) "Emancipated Child" means a person under the age eighteen who has been found by the court of competent jurisdiction to be free of parental supervision and control.

(n) "Employer" means any employer paying wages to one or more employees, including the Colville Business Council and its subordinate entities and all contractors and not-for-profit enterprises located within the boundaries of the Colville Reservation, or doing business with or for the Colville Tribes or its entities and any lands held in trust by the United States for the Colville Confederated Tribes.

(o) "Imputed Income" means the Colville Tribes median income established in the Child Support Guidelines to be applied when the Court has no reliable evidence upon which to base a child support award.

(p) "Income Withholdings" means the process whereby a court order is directed to an employer, bank, or agent holding monies or property of an obligor parent, to make payments or deliver property to satisfy a child support obligation in accordance with the order.

(q) "In Kind Support" means non-cash goods or services provided by an obligor parent as partial child support payments. In-kind support includes food, clothing, shelter, fuel, or firewood/pellets.

(r) "Net Earnings" means the amount remaining after deductions, by the United States, State of Washington or tribal government, under law, from the Compensation to the member, but excluding deductions from the Compensation to the member voluntarily undertaken by the member, for example, deductions undertaken voluntarily by the member for repayment of a loan from a credit union or bank.

(s) "Payee" means a person to whom a child support debt is owed.

(t) "Responsible Parent" means a natural parent, adoptive parent, or step-parent of a child who has been found to owe a duty to pay child support.

(u) "State" means the State of Washington, Department of Social and Health Services, Division of Child Support.

(v) "Tribal Court" means the Colville Tribal Court of the Confederated Tribes of the Colville Reservation.

(w) "Tribes" means the Confederated Tribes of the Colville Reservation, a federally recognized Indian Tribe confederated under a constitution adopted in February 26, 1938 and approved by the Commissioner of Indian Affairs April 29, 1938.

(Amended 7/19/07, Resolution 2007-414, Certified 8/3/07)

MARRIAGE

5-1-30

Marriage License

(a) No marriage shall be performed under authority of this Chapter unless the parties have first obtained a marriage license from the clerk of the Tribal Court.

(b) Upon payment of a fee to be set by the Tribal Court, the clerk shall issue a marriage license to persons who appear entitled to be married as provided in this Chapter.

(c) The clerk shall keep a public record of all marriage licenses and certificates issued.

(d) The marriage license, properly endorsed by the authorized person performing the marriage, shall be returned to the clerk who shall issue a marriage certificate to the parties.

5-1-31

Existing Marriages

(a) 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 Tribes.

(b) All marriages performed or entered into on the Reservation prior to the effective date of this Chapter, including those perfected according to tribal custom, are declared valid for all purposes under this Chapter. Parties to such marriages may obtain a marriage certificate upon proof to the clerk by affidavit or otherwise of the validity of their marriage, and payment of a fee to be set by the Tribal Court.

(c) Customary and common law marriages entered into subsequent to the adoption of this Chapter shall not be recognized by tribal law but may be recognized as valid pursuant to this section of this Chapter.

5-1-32

Persons Who May Marry

No marriage license shall be issued or marriage performed unless the persons to be married meet the following qualifications:

(a) 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 of his or her parent or guardian, properly notarized, to marry;

(b) At least one of the persons to be married is an enrolled member of the Confederated Tribes of the Colville Reservation;

(c) She or he has obtained a blood test to detect venereal disease within thirty (30) days prior to the marriage and such test results were negative or she or he files an affidavit attesting to the fact that she or he is free of venereal disease. A certificate of the test results or the affidavit shall be presented to the clerk before any license is issued.

(Amended 6/7/89, Resolution 1989-514)

5-1-33

Who May Perform Marriages

(a) A marriage may be solemnized and performed on the Reservation by any of the following:

(1) Recognized clergyman or person recognized by his religion as having authority to marry;

(2) A judge of the Tribal Court;

(3) Any person recognized by Washington State law as having authority to marry.

(b) 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 or she had such authority and that they have been lawfully married.

5-1-34

Marriage Ceremony

No particular form of marriage ceremony is required; Provided, however, that the persons to be married must declare in the presence of the person performing the ceremony, that they take each other as a married couple, and he or she must thereafter declare them to be married.

(Amended 9/5/13, Resolution 2013-716, Certified 9/11/13)

5-1-35

Void and Voidable Marriages

(a) Marriages between an ancestor and his or her 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.

(b) Marriages between a person who is at the time of the marriage married to another person still living are void; Provided, however, that such marriages will be considered valid until ruled otherwise by a court of competent jurisdiction if the party previously married:

(1) Actually believed, in good faith, that the prior marriage had been dissolved as a result of divorce or annulment; or

(2) Actually believed, in good faith, that his or her prior spouse was dead.

(c) When a marriage is contracted in good faith and in the belief that it is a valid marriage, the issue 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 issue of both parents.

(d) If neither party to a marriage is enrollable in the Confederated Tribes or if either party to a 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.

ANNULMENT

5-1-70

Grounds for Annulment

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

(a) 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 consent, such party freely cohabits with the other party to the marriage as husband and wife;

(b) The former spouse of either party was living, and the marriage with such former spouse was then in force;

(c) Either party was of unsound mind, unless such party, after coming into reason, freely cohabited with the other as married;

(d) 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 married;

(e) The consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as married;

(f) Impotence which continues and appears to be incurable; or

(g) Neither party to the marriage was enrollable as a member of the Colville Confederated Tribes.

(Amended 9/5/13, Resolution 2013-716, Certified 9/11/13)

5-1-71

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 for causes mentioned as follows:

(a) In subsection 5-1-70(a), by the party to the marriage who was married under the age of legal consent, within two years after arriving at the age of consent, 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 legal consent;

(b) In subsection 5-1-70(b), by either party during the life of the other, or by such former spouse;

(c) In subsection 5-1-70(c), by the party injured, or relative or guardian of the party of unsound mind, at any time before the death of either party;

(d) In subsection 5-1-70(d), by the party injured, within two years after the discovery of the facts constituting a fraud;

(e) In subsection 5-1-70(e), by injured party, within four years after the marriage;

(f) In subsection 5-1-70(f), by the injured party, within two years after the marriage.

(Amended 9/5/13, Resolution 2013-716, Certified 9/11/13)

5-1-72 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 surroundings of the parents may require.

5-1-73 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.

DISSOLUTION OF MARRIAGE

5-1-100 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. A final Decree of Divorce shall restore the parties to the status of unmarried persons.

5-1-101 Dissolution and Annulment Residency Requirement

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 Colville Tribes and have lived within the territorial jurisdiction of the Tribal Court for at least three months prior to bringing the action, except that an annulment may be granted where either party lives within the jurisdiction of the Tribal Court and the marriage was performed under authority of this Chapter.

5-1-102 Grounds for Dissolution

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

5-1-103 Right to Dissolution

Either spouse may obtain dissolution in all cases.

(Amended 9/5/13, Resolution 2013-716, Certified 9/11/13)

5-1-104 Maintenance and Suit Money—Restraint

(a) The Tribal Court may order either party to pay to the clerk for the benefit of the other party a sum of money for the temporary or permanent separate support and maintenance of the adverse party and the children, and to enable such party to prosecute and defend the action.

(b) The Tribal Court may temporarily or permanently restrain either party from doing certain acts harmful to the other or to the children, or to the property of either, pending the dissolution proceedings.

(c) Violation of a current and valid restraining order shall be a Class B offense under Chapter 3-1, Criminal Code. In addition, civil contempt pursuant to Chapter 2-2 or expulsion proceedings pursuant to Chapter 32 may be brought against any person violating a valid court order obtained pursuant to this section.

(Amended 7/19/07, Resolution 2007-414, Certified 8/3/07)

5-1-105 Pleadings—Findings—Decree

The petition for dissolution shall be in writing and signed by the petitioner or the petitioner's counsel or attorney. No Decree of Dissolution shall be granted upon default or otherwise, except upon legal evidence taken in the cause by the Tribal Court who 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 may be up to three months.

5-1-106 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, and parties, and the maintenance of the parties and children by alimony and child support, as may be equitable. Subsequent changes, modifications or new orders may be made by the Tribal Court with respect to the custody of the children as shall be reasonable and proper.

CHILD CUSTODY

5-1-120 Child Custody Proceeding—Commencement—Notice—Intervention

(a) A child custody proceeding is commenced in the Tribal Court:

(1) By a parent by filing a petition:

(A) For dissolution of marriage, annulment or declaration of invalidity; or

(B) Seeking custody of the child or;

(2) 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 alleges that neither parent is a suitable custodian.

(b) Notice of a child custody proceeding shall be given to the child's parent, guardian and custodian, who may appear and be heard and may file a responsive pleading. The Tribal Court may, upon a showing of good cause, permit the intervention of other interested parties.

5-1-121 Child Custody—Relevant Factors in Awarding Custody

The Tribal Court shall determine custody in accordance with the best interests of the child and, secondarily, the traditions and customs of the Colville Indian people. The Tribal Court shall consider all relevant factors including:

(a) The wishes of the child's parent or parents as to visitation privileges;

(b) The wishes of the child as to his or her custodian and as to visitation privileges;

(c) 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;

(d) The child's adjustment to his or her home, school, and community;

(e) The mental and physical health of all individuals involved; and

(f) The Indian heritage of the child.

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

5-1-122 Child Custody—Temporary Custody Order—Vacation of Order

(a) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by affidavit. The Tribal Court may award temporary custody after a hearing, or, if there is no objection, solely on the basis of the affidavits.

(b) If a proceeding for dissolution of marriage, legal separation, or declaration of invalidity 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 interests of the child require that a custody decree be issued.

(c) If a custody proceeding commences in the absence of a petition for dissolution of marriage, legal separation, or declaration of invalidity, is dismissed, any temporary order is vacated.

5-1-123 Child Custody—Temporary Custody Order or Modification of Custody Decree Affidavits Required

A party seeking a temporary custody order or modification of a custody decree shall submit together with the motion, an affidavit setting forth facts supporting the requested order or 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.

5-1-124 Child Custody—Interview with Child by Court—Advice of Professional Personnel

(a) The Tribal Court may interview the child in chambers to ascertain the child's wishes as to his or her custodian and as to visitation privileges. The Tribal Court may 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.

(b) The Tribal Court may seek the advice of professional 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 upon request. Counsel may call for cross-examination of any persons consulted by the Tribal Court.

5-1-125 Child Custody—Priority Status of Proceedings—Hearings—Record—Expenses of Witnesses

(a) Custody proceedings shall receive priority in being set for hearing.

(b) Either party may petition the Tribal Court to authorize the payment of necessary travel and other expenses incurred by any witness whose presence at the hearing the Tribal Court deems necessary to determine the best interests of the child.

(c) The Tribal Court without a jury 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 work of the Tribal Court.

(d) 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.

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

5-1-126

Child Custody—Visitation Rights

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.

(a) Any person may petition the Tribal Court for visitation rights at any time including, but not limited to, custody proceedings.

(b) The Tribal Court may modify an order granting or denying visitation rights whenever modification would serve the best interests 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.

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

5-1-127

Child Custody—Powers and Duties of Custodian—Supervision by Appropriate Agency When Necessary

(a) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his or her education, health care, and religious training, unless the Tribal Court after hearing, finds, upon motion by the non-custodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical, mental, or emotional health would be endangered.

(b) 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 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 by any party.

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

5-1-128

Child Custody Decree—Modification

(a) Except as otherwise provided in this Chapter, the Tribal Court shall not modify a prior custody decree unless it finds, upon the basis 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 or her 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:

(1) The custodian agrees to the modification;

(2) The child has been integrated into the family of the petitioner with the consent of the custodian or;

(3) The child's present environment is detrimental to his or her 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.

(b) 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 and court costs of the custodian against the petitioner.

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

SEPARATE MAINTENANCE AND PROPERTY RIGHTS

5-1-130

Separate Maintenance

(a) While living on the lands of the Colville Reservation, a spouse may bring an action for a decree of

separate maintenance.

(b) During the pendency of the action the Tribal Court may order either spouse to pay temporary maintenance.

(c) If it appears that a spouse is entitled to such, the Tribal Court shall grant a decree of separate maintenance awarding custody of children, maintenance, child support and expenses of suit as may be equitable under the circumstances.

(Amended 9/5/13, Resolution 2013-716, Certified 9/11/13)

5-1-131 Property Rights of Married Persons

(a) Either spouse can obtain, own, hold, give, sell or otherwise deal with real or personal property as if they were unmarried.

(b) Either spouse can enter into contracts and sue or be sued to the same extent and in the same manner as if unmarried.

(c) Neither spouse nor the property of either in which their spouse has no interest is liable for the debts or obligations of the other spouse solely by reason of marriage to the other spouse.

(d) A conveyance, transfer, or lien executed by either spouse in favor of the other shall be valid to the same extent as between other persons.

(e) The Colville Confederated Tribes shall accept the community property laws of the State of Washington currently in force at the time of any decree or order under this Chapter as its own; except as specifically provided in this Chapter.

(Amended 9/5/13, Resolution 2013-716, Certified 9/11/13)

5-1-132 Family Expenses

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

(Amended 9/5/13, Resolution 2013-716, Certified 9/11/13)

5-1-133 Custody of Children and Property

(a) Absent a judicial decree of property distribution or custody or otherwise, neither spouse can remove the other 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 wellbeing of the children, the children are thereafter provided with a more proper living environment, and application is made to the Tribal Court within ten (10) days for an order of the Tribal Court, modifiable at any time, approving such removal of the children.

(b) If either spouse abandons the other spouse, the abandoned spouse is entitled to custody of and legal guardianship over all children under the age of 18 unless a court of competent jurisdiction 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.

(Amended 9/5/13, Resolution 2013-716, Certified 9/11/13)

5-1-134 Maintenance Payments—To Whom Paid

(a) The Tribal Court may, upon its own motion or upon motion of either party, order maintenance payments to be made to:

(1) The person entitled to receive the payments, or

(2) The appropriate tribal department, person, corporation, or agency designed to administer them for the benefit of the child under the supervision of the Tribal Court or designated in accordance with any agreement between the Tribes and another jurisdiction; or

(3) The clerk of Tribal Court as trustee for remittance to the person entitled to receive the payments.

(b) If payments are made to the clerk of Tribal Court:

(1) The clerk shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order; and

(2) The parties affected by the order shall inform the clerk of the Tribal Court of any change of address or of other conditions that may affect the administration of the order.

(c) If an obligator fails to comply with a maintenance order then payment of such order may be obtained as provided by the collection of Debts Chapter of this Code.

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

GUARDIANSHIP

5-1-160

Jurisdiction

(a) The Tribal Court shall have authority, whenever it appears necessary or convenient, to appoint guardians for the persons and/or their estates, or for the purpose of actual or contemplated litigation (guardian ad litem) of either minors or persons incompetent by reason of physical or mental sickness or deficiency, advanced age, or chronic use of drugs or alcohol.

(b) The Tribal Court shall have authority to appoint guardians when the person for whom the guardianship is sought is a member of the Colville Tribes or the child of a member of the Tribes, whether or not he or she resides on the Reservation.

(c) The Tribal Court may, in its discretion, refer matters concerning the guardianship of a minor to a Juvenile Court.

(d) The Tribal Court may, in the process of administering an estate for which there is a valid will containing a designation of a guardian for minor children if orphaned by the deceased's death, appoint the person therein designated as guardian of the minors involved without the necessity of a separate guardianship hearing.

(e) If the person so designated is unable or unwilling to serve, or if such person's appointment is objected to by the child over 14 years of age, or if the Tribal Court deems such to be in the minor's best interest, a separate guardianship hearing shall be held as provided herein.

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

5-1-161

Petition

(a) Except as provided in the preceding section, guardianship proceedings shall be initiated by the filing of a petition by a relative or other person on behalf of the minor or incompetent, or by a minor himself if over 14 years of age. The Tribal Court may initiate proceedings to appoint a guardian if such appointment reasonably appears necessary and no other person has initiated such proceedings.

(b) The petition shall set forth the name of the petitioner; the petitioner's relationship to the minor or incompetent and shall list all known relatives of the minor or incompetent and their addresses, relationships and ages insofar as is known to petitioner; shall list all property of the minor or incompetent, real and personal, known to petitioner; shall list in detail the present conditions and circumstances which warrant the appointment of a guardian; shall pray that Letters of Guardianship be issued to himself, herself, or some other suitable person to act as guardian of the minor or incompetent.

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

5-1-162

Notice—Hearing

(a) The petitioner, or the clerk of the Tribal Court, if a minor or the Tribal Court itself initiates the proceeding, shall cause notice of the hearing to be given by mail or personal service to all known interested persons listed on the petition not less than five (5) days before a scheduled hearing. Such notice need not be given in the case of a minor whose parents appear and consent to waive such notice prior to the hearing or in the case of an adult where the spouse and children living on the Reservation appear and waive such notice. An appearance and waiver may be made personally or by affidavit to the Tribal Court.

(b) Hearing for minor: At a hearing conducted to appoint a guardian for a minor, the Tribal Court shall:

- (1) Examine the petition;
- (2) Determine the need to have a guardian appointed;
- (3) Examine the minor (if over 14 years of age) to determine who he would prefer to have as his guardian;
- (4) Determine which person, either the petitioner or some other person, is most suitable to act as guardian, and that person's willingness to act as such; and
- (5) Make an order appointing a guardian, setting forth the scope of the guardian's authority, whether or not security for his performance is to be required, and the duration of such appointment.

(c) Hearing for incompetent: At a hearing conducted to appoint a guardian for an incompetent, the Tribal Court shall:

- (1) Examine the petition;
- (2) Determine the need to have a guardian appointed by taking such testimony as any interested party wishes to present, but including not less than two doctors' reports, written or oral, under oath, to the effect that the incompetent is not presently able to handle his property or affairs, the anticipated duration of the incapacity, and that the best interests of the incompetent will be served by having a guardian appointed;
- (3) Determine which person, either the petitioner or some other person, is most suitable to act as guardian, and that person's willingness to act as such; and
- (4) Make an order appointing a guardian, setting forth the authority of the guardian, whether or not security for his performance is to be required, and the duration of such appointment.

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

5-1-163

Who May Serve as Guardian

Any adult person 21 years of age or older and subject to the jurisdiction of the Tribal Court may serve as a guardian. Preference shall be given to relatives of the minor or incompetent in order of their closeness of relationship and some preference shall also be given to a person with whom the minor or incompetent is living at the time of the guardianship hearing. Preference shall be given to the person preferred to act as his guardian by a minor or incompetent over 14 years of age, but in all cases, the Tribal Court shall determine the best interests of the minor or incompetent in selecting a guardian.

5-1-164

Security for Faithful Performance of Duties

The Tribal Court may, but need not, require a guardian to provide security in the form of a bond or otherwise to assure the faithful performance of the guardian's duties. Any surety of any such security will be deemed to have consented to the jurisdiction of the Tribal Court for purposes of action against such security.

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

5-1-165

Oath—Letters of Guardianship

(a) The guardian appointed by the Tribal Court shall be required to take an oath, the form of which to be prescribed by the Tribal Court, to the effect that he will faithfully perform his duties as guardian.

(b) Upon taking the oath and filing with the Tribal Court such security, if any, as may have been required, the guardian shall be issued Letters of Guardianship, issued by the clerk under the seal of the Tribal Court, as evidence of his appointment. Any limitations in the authority of the guardian shall be set forth on the letters so issued.

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

5-1-166

Inventory and Appraisal

(a) Within forty-five (45) days after the appointment of a general guardian or guardian of the property or estate of a minor or incompetent, the guardian shall prepare and submit to the Tribal Court an inventory and appraisal of the estate.

(b) The appraisal shall be made by three disinterested persons who shall certify under oath to their appraisal and may receive reasonable compensation for their services.

(c) No appraisal shall be required of items of obvious, readily ascertainable value, for example, bank account assets, or where the value of the entire estate is reasonably believed by the guardian to be less than \$1,000. If no appraisal is required, the guardian shall certify under oath to the obvious or estimated value of the assets not appraised.

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

5-1-167

Annual Accounting

(a) The guardian of every estate in value over \$1,000 shall submit an annual account of the estate to the Tribal Court for approval, on such notice as the Tribal Court may direct, in each year in which the value of the estate is or is reasonably believed to be in excess of \$1,000.

(b) Such account shall be verified on the oath of the guardian and shall contain an accounting of all additions to and any withdrawals from the estate, and shall be accompanied by supporting canceled checks, vouchers, receipts, statements, etc.

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

5-1-168

Guardians Compensation

(a) No guardian shall receive any compensation for acting as such, without the prior approval of the Tribal Court.

(b) The guardian of an estate in excess of \$3,000 in value may receive annual compensation for acting as such in an amount not less than \$25.00 nor greater than ten (10%) percent of the gross income of the estate; such compensation must be approved by the Tribal Court.

(c) The guardian of an estate less than \$3,000 in value shall receive no compensation unless specifically ordered by the Tribal Court for extraordinary service to the estate.

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

5-1-169

Powers and Responsibilities of Guardian

(a) Except as otherwise specifically ordered or limited by the Tribal Court:

(1) A guardian of the person of a minor or incompetent shall have the right to take or provide for the custody of the person of the minor or incompetent and shall be required to care for the health, safety and welfare of such minor or incompetent and provide for their education and medical care as needed or appropriate.

(2) A general guardian or guardian of the estate or property of a minor or incompetent shall have authority to invest, manage and dispose of the property of the minor or incompetent in a prudent and reasonable manner and expend such portions of the estate, income and then principle, as he shall deem reasonably necessary for the support, care, including medical care, and education of the

minor or incompetent given the size and nature of the estate and the station in life and needs of the minor or incompetent.

(3) A general guardian shall have power and authority to represent a minor or incompetent's best interests in actual, threatened or contemplated litigation or other proceedings of a legal nature (other than of a criminal nature and/or under a Juvenile Code), and to employ counsel, and settle or compromise suits or claims, subject to the approval of the Tribal Court.

(b) A guardian of any kind may petition the Tribal Court for authority to do any act about which he is uncertain of his authority, and the Tribal Court may grant such authority after such notice and hearing, if any, as the Tribal Court may direct, if such appears to be consistent with the best interests of the minor or incompetent.

(c) A guardian of any kind shall stand in a fiduciary relationship to the minor or incompetent ward; shall exercise a high degree of care in managing the estate of his ward; shall derive no personal benefit of any kind from his management of the estate of his ward; and shall be civilly liable to said ward for any losses to the estate attributable to a breach of these duties. Action to enforce such liability may be brought by the ward or a subsequently appointed guardian on behalf of the ward within two (2) years after the appointment of a new guardian or the removal of the incompetency or the arriving at the age of majority.

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

5-1-170 Discharge of Guardian

(a) Every guardian appointed as provided herein shall serve until discharged by the Tribal Court.

(b) A guardian of a minor, not otherwise incompetent, or the minor himself, may petition the Tribal Court on or after the date the minor reaches the age of majority to have the guardian discharged and the estate turned over to the minor. The Tribal Court shall grant such discharge with or without notice and hearing, upon the receipt of sufficient, competent evidence that the minor has reached the age of majority unless the minor appears to be otherwise incompetent, in which case a hearing shall be held to determine such fact.

(c) A person, other than a minor, who has had a guardian appointed for reasons of incompetency, or the guardian or a relative of such incompetent may petition the Tribal Court for a determination of his restoration to capacity and for the discharge of the guardian. The Tribal Court shall hold a hearing, after such notice to known interested persons as the Tribal Court shall direct, and receive evidence, both of a medical nature and otherwise, of the ward's competency. If it be found that the ward is of sound mind and capable of taking care of himself and his property, his restoration to capacity shall be adjudged and his guardianship and guardian discharged.

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

5-1-171 Guardianship

The clerk shall keep a separate, permanent file for each guardianship proceeding and shall file all papers relevant thereto, including petitions, notices, orders for hearings, etc. Any guardian duly appointed shall be entitled to receive, without charge, three certified copies of the Letters of Guardianship. Certified copies of filed papers shall be otherwise available at a fee per copy to be established by the Tribal Court.

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

5-1-172 Guardianship of Trust Property

The Tribal Court is hereby authorized to appoint a guardian of the trust estate of minors or incompetents using the procedures and safeguards outlined herein for the purpose of conveying or consenting to the conveyance of an interest in trust property owned by such minor or incompetent if it appears that the price to be paid is reasonable and adequate and that such sale is to the best interests of said minor or incompetent, the Tribal Court may enter an order authorizing such action. All actions taken by such guardian consenting to or conveying trust property shall be subject to the approval of the Superintendent.

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

5-1-173 Temporary Custody and Guardianship

The Tribal Court shall have the power to entertain and grant or deny petitions for temporary guardianship

and custody when it determines it to be in the best interest of the person involved.

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

PATERNITY

5-1-200 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.

5-1-201 Presumption of Paternity

(a) 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, declaration of invalidity, divorce, or dissolution, or after a decree of separation is entered by a court; or

(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 registrar of Vital Statistics, the Colville Tribal Enrollment Office or the Colville Tribal Child Support Program; or

(B) With his 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.

(D) 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

(E) He acknowledges his paternity of the child in a writing filed with the registrar of Vital Statistics, or the Colville Tribal Enrollment Office, or the Colville Tribal Child Support Program who shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the registrar of Vital Statistics. If another man is presumed under subsection (A), (B), (C) or (D) of this section to be the child's father, such acknowledgment shall give rise to the presumption of paternity only with the written consent of the otherwise presumed father or after such other presumption has been rebutted.

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

5-1-202 Uncontested Acknowledgement of Paternity by way of Paternity Affidavit

A man may acknowledge that he is the biological father of a child by filing with the Court or with the

Department a notarized affidavit stating he is the biological father of the child. The Court or the Department shall serve the child's mother a copy of the affidavit and a notice that she may request, in writing, a hearing to contest the man's acknowledgement of paternity. The mother shall have twenty (20) days to respond and request a hearing or the acknowledgement will be accepted by the Court or the Department.

(a) If a request for a hearing is made by the mother, the Court shall schedule a hearing no later than thirty (30) days from the date the request for a hearing was received and shall mail such notices of hearing to all parties.

(b) If the mother does not file a request for a hearing to contest the acknowledgement of paternity within twenty (20) days of the date the notice was served, the Court will issue an order accepting the acknowledgement as uncontested. The Court shall send the order to all parties and the Department of Vital Statistics of the state in which the child was born.

(Amended 7/19/07, Resolution 2007-414, Certified 8/3/07)

5-1-203

Artificial Insemination

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

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

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

(Amended 5/7/08, Resolution 2008-386, Certified 5/7/08)

5-1-204

Determination of Father and Child Relationship—Who May Bring Action— When Action Maybe Brought

(a) A child, a child's natural mother, a man alleged or alleging himself to be the father, a Child's guardian, a child's personal representative, the Colville Confederated Tribes, the State of Washington, or any interested party may bring an action 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 CTC § 5-1-201 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.

(1) Process shall be served to commence an action brought under this section within ninety (90) days of locating the alleged father. In an action brought by the Tribes or State of Washington pursuant to this Chapter the Tribes may be represented by the prosecutor or general counsel, the State may be represented by either the prosecuting attorney for the county where the action is brought or by the State Attorney General.

(c) Regardless of its terms, no agreement between an alleged or presumed father and the mother or child,

shall bar an action under this section.

(d) 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.

(e) Actions under this Chapter may be maintained as to any child, whether born before or after the enactment of this Chapter.

5-1-205

Jurisdiction

(a) The Court shall have jurisdiction of any action to determine paternity brought under this Chapter. The action may be joined with an action for divorce, dissolution, annulment, declaration of invalidity, separate maintenance, filiation, child support, or any other civil action in which paternity is an issue including proceedings in Juvenile Court.

(b) Any person who has sexual intercourse within the lands of the Colville Indian Reservation with a person who is a member or is eligible to become a member of the Colville Confederated Tribes thereby submits to the jurisdiction of the Courts of the Tribes as to an action brought under this Chapter with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by statute, personal jurisdiction may be acquired by personal service of summons outside the Reservation or by service in accordance with the tribal Code as now or hereafter amended.

(Repealed and replaced 9/27/01, Resolution 2001-563)

5-1-206

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 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 Court, shall be given notice of the action in a manner prescribed by the Court and an opportunity to be heard. The Court may align the parties.

5-1-207

Blood Tests or Genetic Tests

(a) Unless otherwise provided by this section, the Court may, upon request of a party shall, require the child, mother, and any alleged father who has been made a party to submit to blood tests or genetic tests of blood, tissue, or other bodily fluids which may be admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy. If an alleged father objects to a proposed order requiring him to submit to paternity blood or genetic tests, the 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 allegation is based. The Court shall order blood or genetic 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 or genetic testing appointed by the Court. The expert's verified report identifying the blood or genetic characteristics observed is admissible in evidence in any hearing or trial in the parentage action, if:

(1) 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

(2) 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 or genetic samples is admissible to establish the chain of custody. The Court may consider published sources as aids to interpretation of the test results.

(b) The Court, upon request by a party, shall order that additional blood or genetic tests be performed by the same or other experts qualified in paternity blood testing, if the party requesting additional tests advances the full costs of the additional testing within a reasonable time. The Court may order additional

testing without requiring that the requesting party advance the costs only if another party agrees to the advance the costs or if the Court finds, after hearing, that:

- (1) The requesting party is indigent; and
 - (2) 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.
- (c) In all cases, the Court shall determine the number and qualifications of the experts.
- (d) The Court may order that any party reimburse the Court, any party to a proceeding or any other person who advances or incurs cost for any testing under this section. The Court will not order such reimbursement if it would cause extreme undue financial hardship on any party.

5-1-208 **Evidence Relating to Paternity**

Evidence relating to paternity may include:

- (a) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;
- (b) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;
- (c) Blood or genetic test results, which are obtained as provided by this subchapter, weighted in accordance with evidence of the statistical probability of the alleged father's paternity;
- (d) 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 Court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and
- (e) All other evidence relevant to the issue of paternity of the child.

5-1-209 **Civil Action—Testimony—Evidence—Jury**

- (a) Any paternity action under this Chapter is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify.
- (b) Upon refusal of any witness, including a party, to testify under oath or produce evidence of any other kind on the ground that said witness may be incriminated thereby, and if a party requests the Court to order that person to testify or provide the evidence, the 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 by him, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but he shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which he has been ordered to testify pursuant to this section. He may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or for offering false evidence to the Court.
- (c) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.
- (d) 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 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 Court blood 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 Court shall be made a defendant in the action.

(e) The trial shall be by the Court without a jury.

5-1-210 **Judgment or Order Determining Parent and Child Relationship—Support Judgment and Orders—Custody**

(a) The judgment and order of the Court determining the existence or nonexistence of the parent and child relationship shall be determinative for all purposes.

(b) If the judgment and order of the Court is at variance with the child's birth certificate, the Court shall order that an amended birth certificate be issued.

(c) The judgment and order shall contain other appropriate provisions directed to the appropriate parties to the proceeding, concerning the duty of current and future child support, the extent of any liability for past child support furnished to the child if that issue is before the 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.

(d) Child support orders shall be for periodic payments which may vary in amount. The Court may limit the father's liability for past child support to the child to the proportion of the expenses already incurred as the Court deems just: Provided however, that the Court shall not limit or affect in any manner the right of nonparties to seek reimbursement for child support and other services previously furnished to the child.

(e) The Court shall order either or both parents owing a duty of child support to any child of the marriage in accordance with guidelines and worksheet adopted by Colville Business Council. The Court shall not consider conduct of a proposed custodian that does not affect the welfare of the child.

(f) In any dispute between the natural parents of a child and a person or persons who have:

(1) Commenced adoption proceedings or who have been granted an order of adoption, and

(2) 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 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.

5-1-211 **Action to Determine Mother and Child Relationship**

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

(Chapter 5-1, Adopted 3/5/86, Resolution 1986-645, Certified 3/9/87)

5-1-212 **Role of Colville Tribal Enrollment**

(a) Statement of purpose:

(1) The establishment of Indian Blood Quantum is essential to the furtherance of Colville Tribal Sovereignty. To the extent that parentage is not established and the incomplete information results in less than one-quarter Indian Blood, they will not be eligible for enrollment as a member of the Colville Confederated Tribes.

(2) This section is therefore intended to facilitate coordination between the Child Support Program and the Enrollment Office in establishing paternity to determine the correct blood quantum pursuant to the Constitutions and this Code for the purpose of enrollment.

(b) Exchange of Information:

(1) The Department, Tribal Court or the Administrative Law Judge shall provide the Enrollment Office with notice of each final decision establishing paternity of a Colville child within twenty (20) days or as soon as possible after filing of the decision. The information in such notice shall become part of the child's confidential file.

(2) A finding arrived at by an order of default shall not be binding in the determination of enrollment.

(Amended 7/19/07, Resolution 2007-414, Certified 8/3/07)

CHILD SUPPORT

5-1-240

Purpose

The purpose of this subchapter is to enhance the well-being and quality of life for children, by assuring that assistance in obtaining child support, including economic and medical support, is available to children through locating parents, establishing paternity, establishing child support obligations, and monitoring and enforcing obligations parents have to their children.

(Amended 7/19/07, Resolution 2007-414, Certified 8/3/07)

5-1-241

Administering Agency

The Colville Tribal Child Support Program shall have the authority to administer child support services by determining paternity and establishing, modifying, and enforcing child support orders in accordance with this Chapter and Chapter 2-4, Administrative Procedures Act.

(Amended 7/19/07, Resolution 2007-414, Certified 8/3/07)

5-1-242

Duty of Parent to Support Child

Every parent has a duty to support each and every child of that parent:

(a) Until the child reaches the age of eighteen (18); or

(b) Until the child graduates from high school or its equivalent up to the age of twenty (20); or

(c) Through the child's completion of post-secondary education up to the age of twenty-four if the Court has ordered a parent to pay for the post-secondary education expenses.

(Amended 7/19/07, Resolution 2007-414, Certified 8/3/07)

5-1-243

Scope of Child Support Guidelines

(a) The Child Support Guidelines shall establish the scale of minimum child support contributions and shall be used to determine the amount an obligor parent must pay for support of his or her child pursuant to this Chapter. The Guidelines shall place a duty for child support upon either or both parents based on their respective financial resources and the custodial arrangements for the child(ren) of the parents.

(b) The Child Support Guidelines must, at a minimum:

(1) Take into consideration all the gross income of the parents;

(2) Be based on specific descriptive and numeric criteria and result in a computation of an amount of child support which is sufficient to meet the basic needs of the child for housing, clothing, food, education, health care, recreation and goods and services required by physical and/or mental disability;

(3) Provide for the actual child care expenses reasonably necessary to enable both parents to maintain employment or to conduct an active search for employment;

(4) Provide for the child's health care needs, through health insurance coverage which supplements those health care goods and services provided by the federal government, where appropriate;

(5) Provide for review and revision, where appropriate, of the Child Support Guidelines at least once every three years to ensure that the amounts provided for in the schedule are periodically adjusted for increases or decreases in the costs associated with the care and support of children within the Colville;

(6) Provide for circumstances which may support written findings on the record of a judicial or administrative proceedings for the award of child support, to reduce support contributions on the basis of hardship to the obligor parent or other children while considering the best interest of the child(ren) who is/are the subject of the judicial or administrative proceedings; and

(7) Provide for an imputed Colville median income to be applied when the Court has no reliable evidence upon which to base a child support award.

(Amended 7/19/07, Resolution 2007-414, Certified 8/3/07)

5-1-244

Power and Duties of the Department

(a) Except where otherwise indicated, the Department shall have the power to promulgate rules and regulations necessary to carry out the provisions of this Chapter. This authority shall be exercised consistent with Chapter 2-4.

(b) The Department shall have the authority to conduct a child support enforcement program under this Chapter, including the authority to investigate claims of parentage and child support obligations, to locate absent parents, and to establish, modify and enforce child support obligations, to locate absent parents, and to establish, modify and enforce child support obligations.

(c) Except where otherwise indicated, the Department shall have the power to require alleged responsible parents to undergo blood testing and/or DNA testing, in accordance with rules and regulations promulgated by the Department, for the purpose of obtaining evidence relevant to the parentage of child(ren). Colville Traditional and customary objections to blood testing and/or DNA testing shall not be a basis for refusal to undergo such testing. The Department may require the alleged responsible parent to reimburse the Department for the costs of such blood testing and/or DNA testing.

(d) The Department shall have the authority to report the names and social security numbers of responsible parents and the amounts of unpaid public and/or support debt to credit reporting bureaus, and professional licensing agencies.

(e) The Department shall have the power to set or reset the schedule of fees required on the establishment and enforcement of public debt and child support, including application fees. Filing and other fees associated with the administrative process.

(f) The Department shall have the power to request and receive information from all the records of all divisions, departments, boards, agencies, or business entities of the Colville Tribes, and the same are authorized to provide such information as is necessary for child support purposes. In carrying out this duty the Department shall abide by the following:

(1) The Department may make such information available only to those officials of the Colville Tribes which are authorized to locate parents who have failed to provide child support for their child(ren) to establish, modify, or enforce court orders for child support, or to establish parentage. This information may be given to them only upon their assurance that it will be used in connection with their official duties under the child support enforcement program.

(2) Disclosure of information under this subsection shall comply with Section 402(a)(9) of the Social Security Act. In all support proceedings before the Court, there shall be compulsory disclosure by both parties of their respective financial status.

(Amended 7/19/07, Resolution 2007-414, Certified 8/3/07)

5-1-245

Assignment of Child Support Rights to the Department

(a) Assignment: A Public assignment of child support rights constitutes an obligation owed by the responsible parent to the Colville Tribes, or any state or federal agency. The assignment may be connected to the payment of TANF benefits to, or for the benefit of, the child(ren).

(1) A custodial parent who receives TANF benefits in his or her own behalf or for the benefit of a child shall assign all accrued child support rights for the TANF beneficiary child(ren) to the Colville Tribes, or other federal or state agency which made TANF payments to the custodial parent. Child support payments collected by the Department shall be allocated to the Colville Tribes as reimbursement to offset the TANF costs.

(2) A custodial parent who does not receive TANF benefits may apply for services from the Department under this Chapter upon their voluntary assignment of all accrued child support rights to the Colville Tribes. Provided, that the Department may change non-TANF recipient custodial parents fees for services provided under this Chapter, in accord with the fee schedule established pursuant to CTC 5-1-244 of this Chapter. Any child support payments collected by the Department shall be allocated to the custodial parent.

(3) The assignment of child support rights includes the right to prosecute any action to establish parentage, and to establish, modify, and/or enforce the amount of child support obligation, pursuant to this Chapter or any other provision of applicable Colville Tribal law. All such actions shall be brought in the name of the Colville Tribes, or such other federal or state agency which made TANF payments to the custodial parents.

(4) Upon making an assignment of child support rights to the Colville Tribes, the custodial parent shall cooperate with the Department throughout the child support proceedings.

(5) The custodial parent shall have the right to refuse to assign support rights to the Colville Tribes, or other federal or state agency, for good cause, based upon the best interest of the child(ren).

(b) Obligation: The responsible parent’s child support obligation shall be established through the processes provided in this Chapter.

(Amended 7/19/07, Resolution 2007-414, Certified 8/3/07)

5-1-246

Notice of Public Assignment of Child Support Rights to the Department

When the tribes or any state and/or federal agency has received an assignment of child support rights, the Department may issue a Notice of Public Assignment of Child Support Rights Service shall be by certified mail, return receipt requested. Provided, that when an attempt to serve by certified mail is unsuccessful, personal service shall be made by any person designated by the Department who has reached the age of eighteen (18) years, and who is neither identified as a child nor a custodial parent under the Notice of Public Assignment of Child Support Rights. Upon receiving an assignment of child support rights the Department may establish a child support obligation by default in the following manner:

(a) The Department shall serve the responsible parent a Notice of Public Assignment of Child Support Rights (hereinafter NPA). The Notice shall include the following statements:

(1) Name(s) of the child(ren) for whom paternity is alleged and for whom child support is being sought, and the name of the custodial parent;

(2) An amount of child support obligations which the Department has determined to be appropriate in accordance with the Colville Tribal Child Support Guidelines;

(3) If the responsible parent contests the allegations of paternity of the child(ren), or the amount of the child support obligation, the responsible parent must file a written answer and request for hearing within thirty (30) days of service with the Department; and

(4) If no written answer is received after thirty (30) days, the Court may enter a default order.

(b) In the event that the responsible parent contests the NPA the Department shall forward a copy of the NPA, the responsible parent's answer, proof of service and all information pertinent to the establishment of paternity and/or child support to the Court for a hearing. The Court shall schedule a hearing within thirty (30) days of the receipt of the information from the Department.

(c) If no timely written answer is received by the Department, the Department shall forward the NPA, proof of service and a written request for entry of a default order to the Court. The Court shall enter an order in accord with the NPA.

(d) The Department shall enforce the default order as provided in this Chapter.

(Amended 7/19/07, Resolution 2007-414, Certified 8/3/07)

5-1-247 Establishing Child Support by Stipulated Agreement

(a) The parties may enter into a stipulated agreement as to the level of the child support obligation. The Court will not approve an agreement that provides for a level of child support that is substantially less than that provided for by the Colville Tribal Child Support Guidelines unless the agreement complies with the procedures for a deviation outlined in the Colville Tribal Child Support Guidelines.

(b) The stipulated agreement must be signed and notarized and submitted to the Court for approval and enforcement. After the agreement is approved and filed by the Court, it shall have the same force and effect as an order issued directly by the Court. The obligation of the responsible parent shall commence on the date specified in the agreement, but no later than the date the agreement is approved and filed by the Court.

(Amended 7/19/07, Resolution 2007-414, Certified 8/3/07)

5-1-248 Child Support—Apportionment of Expense

(a) In a proceeding for dissolution of marriage, legal separation, declaration of invalidity, maintenance, or child support, after considering all relevant factors but without regard to marital misconduct, the 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 and worksheet established by this Chapter.

(b) Support judgment and orders shall be for periodic payments which may vary in amount. The Court may limit the responsible parent's liability for the past child support to the child to the proportion of the expenses already incurred as the Court deems just: Provided however, that the Court shall not limit or affect in any manner the right of nonparties to seek reimbursement for child support and other services previously furnished to the child.

5-1-249 Minor or Dependent Child—Court Appointed Attorney to Represent - Payment of Costs, Fees and Disbursements

The Court may appoint an attorney to represent the interests of a minor or dependent child with respect to his custody, support, and visitation. The 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 parties are indigent, the costs, fees, and disbursements may be borne by the Tribes.

5-1-250 Child Support Payments – To Whom Paid

The Court may, upon its own motion or upon motion of either party, order child support payments to be made to:

(a) The person entitled to receive the payments, or

(b) The Washington State Registry for processing and electronic disbursement.

5-1-251

Payment of Costs, Attorney's Fees, Etc.

The 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 counsel or attorney's fees or other professional fees in connection therewith, including sums for legal services rendered and costs.

5-1-252

Support Orders—Time Limit, Exception

A Court may not order payment for 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 Court under this Chapter shall not be included within the five-year period.

5-1-253

Temporary Support—Temporary Restraining Order—Preliminary Injunction—Support Debts, Notice

(a) If the Court has made a finding as to the paternity of a child, or if a party's acknowledgment of paternity has been filed with the Court, or the Colville Tribal Child Support Program or a party alleges he is the father of the child, any party may move for temporary child support for the child prior to the date of 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.

(b) Temporary Support: The Court may issue an order for temporary support in such amounts and on such terms as are just and proper on a case by case basis. The Court shall use the guidelines and worksheet in establishing such support orders as provided in this Chapter. A temporary order:

- (1) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearing proceedings;
- (2) May be revoked or modified;
- (3) Terminates when the final order is entered or when the petition is dismissed; and
- (4) May be entered in a proceeding for the modification of an existing order.

(c) Temporary Restraining Order: Any party may request the Court to issue a temporary restraining order or preliminary injunction, providing proper relief in the circumstances, and restraining or enjoining any party from:

- (1) Molesting or disturbing the peace of another party;
- (2) Entering the home of another party; or
- (3) Removing a child from the jurisdiction of the Court.

(d) The 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.

(e) A temporary restraining order or preliminary injunction:

- (1) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding;
- (2) May be revoked or modified;
- (3) Terminates when the final order is entered or when the petition is dismissed; and
- (4) May be entered in a proceeding for the modification of an existing order.

5-1-254 Support or Maintenance Payments—Order to Make Assignment Limit to Trust Income—Duty of Payor to Withhold and Transmit

The Court after hearing may order the person obligated to pay child support or maintenance to make an assignment of a part of his or her trust income to the person or agency entitled to receive the payments. The assignment is binding on the trustee or other payor of the funds two weeks after service upon him or her of notice that it has been made. The payor shall withhold from the trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding ten dollars as reimbursement for costs. Such other kinds of trust income includes proceeds of trust income, proceeds of the sales of trust property, proceeds from rents, royalties, leases and contracts related to trust property, including thinning, planting and logging. Money excluded for consideration are 181-D monies.

(Amended 7/19/07, Resolution 2007-414, Certified 8/3/07)

5-1-255 Enforcement of Order - Wage Withholding

(a) Automatic Wage Withholding:

- (1) A copy of the court's automatic wage withholding order shall be served on a responsible parent's employer within thirty-five (35) days of the entry of the order by the Court clerk.
- (2) No employer shall refuse to honor a wage withholding order or voluntary wage assignment executed pursuant to this Chapter. An employer shall begin withholding not more than fourteen (14) days after services of a wage withholding order or voluntary wage assignment made pursuant to this Chapter.
- (3) An employer who fails to withhold child support as required by this Chapter shall be liable for one-hundred percent (100%) of the support order, or the amount of support moneys that should have been withheld from the employee's earnings, whichever is the lesser amount of the employer.

(A) Fails or refuses, after being served with a wage assignment order, to deduct or promptly remit from the unpaid earnings the amounts of money required in the order;

(B) Fails or refuses to submit an answer to the notice of wage assignment after being served; or

(C) Is willing to comply with the other requirements of this Chapter.

(4) An employer may not discharge or prejudice any employee because his or her wages are subject to withholding for child support.

(5) An employer who repeatedly fails to withhold child support as required by this Chapter may have its Indian Business License issued by the TERO Department revoked or suspended until compliance with this Chapter is assured.

(b) Notice of Delinquency:

(1) As soon as it becomes evident that the non-custodial parent is delinquent in paying his or her child support obligation, the custodial parent or authorized public official may prepare and serve upon the non-custodial parent a notice of delinquency. Service of the notice shall be effected by sending the notice addressed to the non-custodial parent at his or her last known address, or by any method provided by law. The notice shall inform the non-custodial parent of the following:

(A) The terms of the child support enforcement order sought to be enforced;

(B) The period and total amount of the delinquency;

(C) The procedures to avoid immediate withholding pursuant to 5-1-255(d)(3);

(D) That an order to withhold income shall be served on the employer or other payor when the delinquency becomes equal to or more than the monthly order amount unless the non-custodial parent can prove there has been a mistake of fact pursuant to 5-1-255(d)(3).

(Resolution 2009-061, Certified 02/10/09)

(c) Order to Withhold Income and Give Security for Debt:

(1) The non-custodial parent has not filed a petition presenting good cause why income should not be withheld pursuant to 5-1-255(d)(1) or (d)(3), the Court shall serve an order to withhold income on the employer or other payor of the non-custodial parent. Such order shall direct that the noncustodial parent's wages and other benefits be withheld in an amount equal to the monthly support payment. An additional twenty percent (20%) of the support payment, or such amount as they may add, shall be withheld each month to compensate for any accrued delinquent payment until the delinquency is satisfied; provided that the total amount withheld does not exceed the limits established in 15 U.S.C § 1673.

(Resolution 2009-061, Certified 02/10/09)

(2) An employer or other payor served with an order to withhold income shall begin withholding not more than fourteen (14) days after service of notice. An order to withhold income shall be binding against future payor's upon actual notice of the order of service by personal delivery or certified mail upon the payor.

(d) Contesting Wage Withholding

(1) Income shall not be subject to withholding in any case where:

(A) Either the custodial or non-custodial parent demonstrates, and the tribunal enters a finding, that there is good cause not to require income withholding; or

(B) A signed written agreement is reached between the non-custodial and custodial parent, which provides for an alternative arrangement, and is reviewed and entered into the record by the tribunal;

(2) The Court may only stay the order to withhold income if it finds that the non-custodial parent has met the burden of showing good cause why income should not be withheld pursuant to subsection (1) above and upon a written order of the reasons for such cause.

(3) In cases where the non-custodial parent is at least one month delinquent in child support the only basis for contesting a withholding is a mistake of fact, which means an error in the amount of current or overdue support or in the identity of the alleged non-custodial parent.

(e) Seizure of Property: Upon issuance of a written order of execution, non-exempt real and personal property may be seized and sold in a reasonable manner after notice of the owner in payment of a child support obligation that has been adjudicated by the Courts. Ceremonial or religious property and real property held in trust for an individual or for the Colville Tribes are exempt from writs of execution.

(f) Publication of Names: The Court may authorize the publication of non-custodial parents' names in a newspaper of local circulation if the non-custodial parent is at least three months in arrears in paying current child support or owes \$1,000.00 or more in unpaid child support.

5-1-256

Enforcement of Judgments or Orders

(a) If existence of the father and child relationship is declared, or paternity or a duty of child support has been acknowledged or adjudicated 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, the public authority that 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.

(b) The Court may order support payments to be made to the tribal Child Support Program, the Tribal Department of Social Services, to a parent, the clerk of the Court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the Court.

(c) All remedies for the enforcement of judgments apply.

5-1-257

Full Faith and Credit for Foreign Child Support Orders

(a) Properly issued court and administrative orders, judgments or decrees of other Indian tribes, states, or federal agencies that relate to child support will be given full faith and credit pursuant to 28 U.S.C. § 1738B. Such orders will be considered properly issued when the issuing court or administrative agency had personal jurisdiction over the person claimed to be bound by the foreign order, subject matter jurisdiction over the matter, proper service of process under the law of the issuing jurisdiction was made on such person, and the order was issued according to the laws of that jurisdiction and does not violate the public policy of the Colville Confederated Tribes.

(b) A foreign order is authenticated by reasonable proof that the document tendered to the Clerk of the Court or Administrative Law Judge is a true copy of the foreign order as it is recorded in the agency or court of the issuing jurisdiction. An authentication stamp issued by a court clerk or custodian of records, or a court seal, is sufficient evidence of authenticity.

(c) Unless defects in jurisdiction are apparent on the face of the foreign order, the person contesting enforcement of the order has the burden of showing the order is not valid. Upon a failure to respond to notice of the order and to timely contest it, the Court shall enforce it as a Colville Tribal order.

(d) Where a foreign order is invalid by reason of a lack of personal jurisdiction in the agency or court of the issuing jurisdiction, the Court may adopt some or all of its provisions as an original order of the Colville Tribes to the extent that it does not violate the public policy of the Colville Tribes.

(Amended 7/19/07, Resolution 2007-414, Certified 8/3/07)

5-1-258

Modification of Judgment or Order—Continuing Jurisdiction

The Court has continuing jurisdiction to prospectively modify a judgment and order for future education and future support upon showing a substantial change of circumstances unless otherwise provided by the Business Council.

(Amended 3/21/96, Resolution 1996-128)

CHILD SUPPORT CHARGE-OFF STATUTE

5-1-290

Purpose

It is the Tribe's public policy that children are entitled to reasonable, adequate child support. In furtherance of the policy, the Tribes has entered into an agreement (Agreement) with the State of Washington, Division of Child Support (DCS), to provide a forum comparable to DCS' Conference Boards to resolve issues regarding child support arrears with the laws of the Tribes subject to the limitations set out in this Chapter.

5-1-291

Charge-Off

(a) This Chapter applies only to any child support debt due the State or Tribes from a responsible parent which is covered by the Agreement. Such child support debts may be written off and cease to be accounted as an asset by an order of the Tribal Court if, under the procedures in this Chapter, it is found there are no cost-effective means of collecting the debt under this Chapter.

(b) The Tribes may accept offers of compromise of disputed claims or may grant partial or total charge-off of child support arrears owed to the Tribes or State up to the total amount of public assistance paid to or for the benefit of the persons for whom the support obligation was incurred to the same extent that is allowed to the Department under RCW 74.20A.220 and as authorized by this Chapter.

(c) The rules set out in this Chapter shall govern the considerations to be made in the granting or denial of partial or total charge-off and offers of compromise of disputed claims of debt for support arrears.

(d) The rights of the payee under an order for support shall not be prejudiced if the Tribes accepts an offer of compromise, or grants a partial or total charge-off under this section.

(e) The responsible parent owing a support debt may execute a written extension or waiver of any, statute which may bar or impair the collection of the debt and the extension or waiver shall be effective according to its terms.

5-1-292

Procedures

(a) Tribal Forum—Tribal Court: The Tribal Court shall have the jurisdiction to inquire into, determine facts of, and attempt to resolve matters in which a responsible parent, custodian, or payee under an order asks for the Court's assistance regarding back child support arrears as defined in this Chapter.

(b) Intent and Purpose: The intent and purpose of using the Tribal Court for implementing this Chapter is to facilitate the speedy resolution of grievances and to assure that tribal law, custom and tradition are adequately considered in any hearing.

(c) Initiating a Case: An aggrieved person may commence an action under this Chapter by filing a request with the tribal Court.

(d) Request for Review: The person seeking relief under this Chapter shall request a review in writing. The Tribal Court or the Tribal Council or its designee may develop a form specifically for this purpose.

(e) Notice: The Tribal Court shall, upon receipt of a Request for Review, cause a notice of hearing to be mailed to the applicant, the State, the applicant's representative, and any other person or agency who is a party in interest to the proceeding. The notice shall state that a hearing has been scheduled, and inform the parties of the time and place of the hearing.

(f) Payee's Right to Notice and to Request a Court Hearing: Where the State is not providing public assistance to the payee, and the responsible parent timely requests a review under section 5-1-292(d), the hearing shall be scheduled for a date at least thirty (30) days after the notice is issued, and the notice shall state:

(1) The payee has twenty (20) days from the date of the notice to file a response with the Colville Tribal Court;

(2) The payee has a right to appear and participate in the hearing, and to be represented by counsel;

(3) Tribal Court's decision will become the final position on the arrearage's debt claimed owed by the State;

(4) If the payee does not appear at the Tribal Court hearing, the decision may be adverse to the payee's interest including a reduction in or charge-off of the amount of arrearages claimed owing in the responsible parent's case; and

(5) The payee may make a motion to the Tribal Court to be allowed to participate in the hearing by telephone. The Tribal Court will consider all circumstances, including, but not limited to, the

distance the payee would have to travel to the Courthouse, in deciding the motion to allow participation by telephone. The Tribal Court shall liberally allow telephone participation when in the interest of justice and fairness. Any decisions on said motions will be considered final for purposes of an appeal.

(g) Effect of Payee's Objection: If the payee objects to the hearing, the Tribal Court shall inform the responsible parent and the payee that a hearing shall be held on the objection, at which time the parties shall provide arguments to the Court why the application of the person seeking relief should or should not be heard by the Tribal Court. The Tribal Court shall issue specific findings of fact and conclusions of law on its ruling in such hearings, which shall be considered final for the purposes of further appeal before the Colville Tribal Appellate Court.

(h) Powers of Tribal Court: Hearings shall be held pursuant to [Chapters 1-1 and 2-2], Civil Proceedings, before the Tribal Court. The Tribal Court may, in addition, receive evidence by affidavit or other written submission when necessary or practicable together with affidavit or oral argument. The Tribal Court may designate persons having specific familiarity with the matter at issue or technical expertise with the subject to advise the Tribal Court.

(i) Written Decision to Issue: The Tribal Court shall make a written decision stating specific findings of fact, conclusions of law, and a judgment order on all cases brought under this Chapter. The findings of fact and conclusions of law shall, at a minimum, include findings and conclusions regarding:

- (1) Subject matter jurisdiction;
- (2) Personal jurisdiction over all of the parties;
- (3) The total amount of public assistance paid in the case;
- (4) The basis or bases for the decision.

5-1-293 Factors to Consider for Charge-Off Requests

The Tribal Court shall base a decision to grant partial or total charge-off of arrears owed to the State on the following considerations:

- (a) Error in law or bona fide legal defects that materially diminish chances of collection;
- (b) Substantial hardship;
- (c) Costs of collection action in the future that are greater than the amount to be charged off;
- (d) Settlement from lump-sum cash payment that is beneficial to the state considering future costs of collection and likelihood of collection; or
- (e) A correction of improperly calculated arrears; or
- (f) Tribal custom or tradition.

5-1-294 Substantial Hardship Considerations for Responsible Parent with Dependent Child

In making a determination of substantial hardship where a dependent child is in the home of the responsible parent, the Tribal Court shall measure the net income and all available assets and resources of the responsible parent against the needs standard for public assistance for the appropriate family size, as stated in WAC 388-250-1250, unless a tribal standard has been developed. The Tribal Court shall consider the necessity to apportion the responsible parent's income and resources on an equitable basis, with the child for whom the arrears accrued. When reviewing a claim of substantial hardship, the Tribal Court may consider the following information including, but not limited to:

- (a) The child on whose behalf support is owed is reunited with the responsible parent because the:
 - (1) Formerly separated parents have reconciled; or
 - (2) Child has returned to the responsible parent from foster care, the care of a relative, or the care of a custodian.
- (b) The responsible parent is aged, blind, or disabled and receiving Supplemental Security Income, Social Security, or other similar benefits.
- (c) The mother of the child is seeking charge-off of debt accrued on behalf of a child who was conceived as a result of incest or rape, and presents evidence of rape or incest, acceptable under 45 CFR 232, 43(c).
- (d) Payment on the arrears obligation interferes with the responsible parent's payment of current support to a child living outside the home.
- (e) The responsible parent has limited earning potential due to:
 - (1) Dependence on seasonal employment that is not considered in the child support order; or
 - (2) Illiteracy; or
 - (3) Limited English proficiency; or
 - (4) Other factors limiting employability or earning capacity.
- (f) The responsible parent's past efforts to pay support and the extent of the parent's participation in the child's parenting.
- (g) The size of the responsible parent's debt and the prospects for increased income and resources.

5-1-295

Substantial Hardship Considerations for Responsible Parent Without a Dependent Child

- (a) The Tribal Court may find that substantial hardship exists for a responsible parent, without finding hardship to a dependent child.
- (b) In making a determination of substantial hardship to an individual without a dependent child, the tribal Court shall measure the applicants income, assets, and resources against the needs standard as developed in section 5-1-294 above. In combination with the income test, the Tribal Court may consider the following factors when reviewing a claim of substantial hardship:
 - (1) The responsible parent is aged, blind, or disabled and receiving Supplemental Security Income, Social Security, or other similar benefits;
 - (2) The mother of a child is seeking relief from debt accrued on behalf of a child who was conceived as a result of incest or rape, and presents evidence of rape or incest, acceptable under 45 CFR 232.43(c); or
 - (3) The responsible parent has limited earning potential due to:
 - (A) Dependence on seasonal employment that is not considered in the child support order;
 - (B) Illiteracy;
 - (C) Limited English proficiency; or

(D) Other factors limiting employability or earning capacity.

(c) The Tribal Court may enter an order for a reduced payment on the support debt, or a conditional reduced payment on the support debt, when there is substantial hardship to a dependent child.

5-1-296 Partial, Total or Conditional Reduction or Charge-Off of Arrearages

The Tribal Court may:

(a) Reduce collection on the responsible parent's support debt to an amount that alleviates the hardship without altering the amount of the support where grounds to make an adjustment under section 5-1-293 exist, but the circumstances creating the hardship are temporary. Temporary hardship situations may include the factors listed in the previous subsections and in addition, the applicant's receipt of public assistance on the applicant's behalf or on behalf of a child in the applicant's home.

(b) Create incentives to promote payment or family unity by entering a conditional order of:

(1) Total or partial charge-off as allowed by this Chapter; or

(2) Reduced payment on the support debt.

(c) Condition reduced payment, or total or partial charge-off on:

(1) Continued payment according to a payment schedule imposed by the Tribal Court; or

(2) Continued reconciliation.

5-1-297 Incentives and Conditions—Limits

When creating incentives or providing conditional relief under this Chapter, the Tribal Court shall:

(a) Not create a conditional charge-off without specifying a period of performance after which the charge-off is irrevocable;

(b) Not create a charge-off conditioned on the parties remaining reconciled unless the parties have been reconciled for at least six (6) months at the time of the tribal Court hearing;

(c) Consider whether the conditions would create:

(1) Incentives for abuse or intimidation of the other party to the order;

(2) Incentives for fraud; or

(3) Unreasonable reluctance to obtain financial or medical assistance necessary for the health and best interests of the children.

5-1-298 Violations of Conditions—Effects

When the responsible parent violates the terms of a conditional charge-off or reduced repayment rate order imposed by a tribal Court under this Chapter the Tribal Court, after notice and opportunity for a hearing may enter an order providing:

(a) Any amount charged off by the Tribal Court under the decision prior to the violation shall remain uncollectible;

(b) The Tribal Court may order that the State may collect any further amount that would have been charged off under the decision after the date of violation; and

(c) The responsible parent may not reinstate terms of the decision by renewed compliance with the terms of the decision, unless the State agrees in writing to reinstate the conditional charge-off or repayment rate, or the Tribal Court orders it.

5-1-299 **Right of Appeal to Court of Appeals**

Any final written order entered by the Tribal Court under this Chapter may be appealed to the Court of Appeals pursuant to the Colville Tribal Code.

(Amended 9/2/10, Certified 9/9/10, Resolution 2010-652)

5-1-300 **Distribution of Decision**

The Tribal Court shall cause a copy of the decision to be distributed to the applicant, the applicant's representative, other parties in interest, the appropriate field office for action consistent with the decision of the Tribal Court, and the Director of DCS.

5-1-301 **Tribal Court Hearing Limits**

The tribal Court hearing under this Chapter is not a substitute for any constitutionally or statutorily required hearing under any other applicable laws. An aggrieved party may be represented before the Tribal Court by a spokesperson of the party's choice, who is allowed to practice before the Tribal Court. Neither the Tribes nor the State shall pay any costs incurred by the aggrieved person in connection with the tribal Court hearings under this Chapter.