

Title XXXVIII

CHILD SUPPORT CODE

CHAPTER 1. GENERAL PROVISIONS

§38-1-1 Citation; Authority and Purposes

This chapter may be referred to as the “Child Support Code” and is enacted pursuant to Article VIII, Sections 1(c), (k), (m), (p), and (q) of the Revised Constitution and Bylaws of the Tribe. The purposes of this chapter are to:

- (1) establish a tribal Child Support Enforcement Program as authorized under section 455(f) of the Social Security Act of 1935, Pub. L. 74-271, 49 Stat. 620 (codified as amended at 42 U.S.C. § 655(f));
- (2) designate the Tribe’s Child Support Enforcement Program as the Child Support Enforcement Agency for MBCI with the authority granted to it in accordance with Title IV-D;
- (3) provide for the Establishment of Parentage;
- (4) provide for the Establishment, modification, and termination of Child Support Orders;
- (5) provide for the Enforcement of Child Support Orders;
- (6) provide for the collection and distribution of Child Support payments;
- (7) provide for the Location of parents and assets; and
- (8) provide for the administrative and judicial procedures for the Establishment, modification, termination, and Enforcement of Child Support consistent with the basic guarantees of due process of law and other applicable protections of the Indian Civil Rights Act of 1968, Pub. L. 90-284, (codified as amended at 42 U.S.C. § 1302).

§38-1-2 Definitions

- (1) “IV-D Services” means the services that are authorized or required for: the Establishment of Parentage; Establishment, modification, and Enforcement of support orders; and Location of Non-Custodial Parents under Title IV-D.
- (2) “Acknowledged Parent” means an Individual who has established a Parent-Child Relationship under section 38-3-3 of this title.
- (3) “Adjudicated Parent” means an Individual who has been adjudicated to be a Parent of a Child by a court with jurisdiction.
- (4) “Alleged Genetic Parent” means an Individual who is alleged to be, or alleges that the Individual is, a genetic Parent or possible genetic Parent of a Child whose Parentage has not been adjudicated. The term includes an alleged genetic father and alleged genetic mother. The term does not include:
 - (a) a Presumed Parent;

- (b) an Individual whose parental rights have been terminated or declared not to exist;
or
 - (c) a Donor.
- (5) “Administrative Procedures” means a method by which support orders are made and enforced by an executive agency rather than by courts and judges.
 - (6) “Arrearage” means the total amount of an unpaid Child Support Obligation by a parent who is obligated to pay.
 - (7) “Assignment” means any transfer of rights to Child Support by a Custodial Parent to the Tribe or other State or federal agency.
 - (8) “Assisted Reproduction” means a method of causing pregnancy other than sexual intercourse. The term includes:
 - (a) intrauterine or intracervical insemination;
 - (b) donation of gametes;
 - (c) donation of embryos;
 - (d) in-vitro fertilization and transfer of embryos; and
 - (e) intracytoplasmic sperm injection.
 - (9) “Birth” includes stillbirth.
 - (10) “Child” means an individual who has not reached the age of twenty-one (21) or otherwise been emancipated and whose Parentage may be determined under this title.
 - (11) “Child Support” means the financial obligation a Non-Custodial parent has towards his or her Child(ren) whether entered into voluntarily or ordered by a court or administrative agency.
 - (12) “Child Support Order” and “Child Support Obligation” mean a judgment, decree or order, whether temporary, final or subject to modification, issued by a court of competent jurisdiction, Tribunal or an administrative agency for the support and maintenance of a Child, including a Child who has attained the age of majority under the law of the issuing jurisdiction, or of the parent with whom the Child is living, which provides for monetary support, health care, Arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, Income Withholding, attorney’s fees and other relief.
 - (13) “Child Support Enforcement (‘CSE’) Agency” means an agency that exists under Title IV-D that locates Non-Custodial Parents or putative fathers, establishes, enforces and modifies Child Support, and collects and distributes Child Support money. A CSE agency is operated by state, local or tribal governments according to the Child Support Enforcement Program guidelines as set forth in Title IV-D.
 - (14) “Combined Relationship Index” means the product of all tested relationship indices.

- (15) “Consumer Reporting Agency” means any person which for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports under subsection 603(f) of the Fair Credit Reporting Act of 1970, Pub. L 91-508, 84 Stat. 1114-2 (codified as amended at 15 U.S.C. § 1681a(f)).
- (16) “Court” means the Civil Division of the Choctaw Tribal Court System, the powers and duties of which are described in Title I of the Choctaw Tribal Code.
- (17) “Custodial Parent” means the parent with legal custody of the Child(ren) or who exercises physical custody of the Child(ren), may be a parent, relative, legal guardian, or custodian appointed by a court.
- (18) “Default” means failure of a defendant to appear, or file an answer or response in a civil case, after having been properly served with a summons and complaint.
- (19) “Donor” means an Individual who provides gametes intended for use in Assisted Reproduction, whether or not for consideration. The term does not include:
- (a) a Woman who gives Birth to a Child conceived by Assisted Reproduction; or
 - (b) a Parent under section 38-3-6 of this chapter.
- (20) “Enforcement” means the application of remedies to obtain payment of a Child Support or Medical Support obligation contained in a Child and/or spousal support order.
- (21) “Establishment” means the process of determining Parentage and/or obtaining a court or administrative order for Child Support.
- (22) “Ethnic or Racial Group” means, for the purpose of Genetic Testing, a recognized group that an Individual identifies as the individual’s ancestry or part of the ancestry or that is identified by other information.
- (23) “Gamete” means sperm, egg, or any part of a sperm or egg.
- (24) “Genetic Testing” means an analysis of genetic markers to identify or exclude a genetic relationship.
- (25) “Hypothesized Genetic Relationship” means an asserted genetic relationship between an Individual and a Child.
- (26) “Income Assignment” means an Assignment by operation of law or by court or administrative order of a portion of the monies, income or periodic earning and due and owing to the non-custodial parent, to the person entitled to the support or to another person designated by the support order or Assignment. An Income Assignment may be for payment of current support, Arrearages, or both.

- (27) “Income Withholding” means the automatic deductions made from wages or income to pay a debt such as Child Support. Income Withholding usually is incorporated into the Child Support Order and may be voluntary or involuntary. An employer must withhold support from a Non-Custodial Parent’s wages and transfer that withholding to the appropriate agency.
- (28) “Indian Tribe” means any Indian or Alaska Native tribe, band, Tribe, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of federally recognized Indian Tribal governments as published in the Federal Register pursuant to section 104 of the Federally Recognized Indian Tribal List Act of 1994, Pub. L 103-454, 108 Stat. 4791 (codified as amended at 25 U.S.C. §479a-1).
- (29) “Individual” means a natural person of any age.
- (30) “Intended Parent” means an Individual, married or unmarried, who manifests an intent to be legally bound as a Parent of a Child conceived by assisted reproduction.
- (31) “Judge” means the presiding judge of the Civil Division of the Choctaw Tribal Court System.
- (32) “Location” means information concerning the physical whereabouts of the Non-Custodial Parent, or the Non-Custodial Parent’s employer(s), other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.
- (33) “Lien” means a claim upon property to prevent sale or transfer of that property until a debt is satisfied.
- (34) “Man” means a male Individual of any age.
- (35) “Medical Support” means health or dental insurance coverage or health benefits ordered to be paid by a parent(s) for the benefit of a minor Child(ren).
- (36) “Non-Custodial Parent” means a parent who does not have legal or physical custody of the Child(ren) and has an obligation to pay Child Support. Also referred to as the Obligor.
- (37) “Non-Cash Support” means support provided to a family in the nature of goods and/or services, rather than in cash and has a certain and specific dollar value.
- (38) “Obligee” means a person or entity to whom Child support is owed. Also referred to as the Custodial Parent.
- (39) “Obligor” means the person who is obligated to pay Child support. Also referred to as the Non-Custodial Parent.
- (40) “Offset” means an amount of money intercepted from a Non-Custodial parent’s State or federal tax refund or from an administrative payment such as federal retirement benefits to satisfy a Child Support debt.
- (41) “Parent” means an Individual who has established a Parent-Child Relationship under subsection 38-3-2(1) of this title.

- (42) “Parentage” or “Parent-Child Relationship” means the legal relationship between a Child and a Parent of a Child.
- (43) “Payment Plan” means, but is not limited to, a plan approved by a judicial or administrative court or a Child Support Enforcement agency to make periodic payments of past due support to reduce the Obligor’s Arrearage. A Payment Plan usually consists of a monthly Payment Plan that includes current support and past due support. The plan may provide for an Income Assignment or similar plan to insure the past due support will be paid.
- (44) “Presumed Parent” means an Individual who under subsection 38-1-2(4) of this chapter is presumed to be a Parent of a Child, unless the presumption is overcome in a judicial proceeding or a court adjudicates the Individual to be a Parent.
- (45) “Probability of Parentage” means, for the Ethnic or Racial Group to which an Individual alleged to be a parent belongs, the probability that a Hypothesized Genetic Relationship is supported, compared to the probability that a genetic relationship is supported between the Child and a random Individual of the Ethnic or Racial Group used in the Hypothesized Genetic Relationship, expressed as a percentage incorporating the Combined Relationship Index and a prior probability.
- (46) “Program” means the Mississippi Band of Choctaw Indians Child Support Enforcement Program.
- (47) “Public Assistance” means benefits granted from tribal, federal or State programs to aid eligible recipients (eligibility requirements vary between particular programs). Applicants for certain types of Public Assistance (e.g., TANF) are automatically referred to their tribal or State IV-D agency for Child Support services.
- (48) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in its perceivable form.
- (49) “Relationship Index” means a likelihood ratio that compares the probability of a genetic marker given a Hypothesized Genetic Relationship and the probability of a genetic marker given a genetic relationship between the Child and a random Individual of the Ethnic or Racial Group used in the Hypothesized Genetic Relationship.
- (50) “Sign” means, with present intent to authenticate or adopt a Record:
- (a) to execute or adopt a tangible symbol; or
 - (b) to attach to or logically associate with the record an electronic symbol, sound, or process.
- (51) “Signatory” means an individual who signs a Record.
- (52) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession under the jurisdiction of the United States. The term includes an Indian Tribe.

- (53) “TANF” means the Temporary Assistance for Needy Families program as found at section 401 Social Security Act of 1935, Pub. L. 74-271, 49 Stat. 620 (codified as amended at 2 U.S.C. §§ 601-619).
- (54) “Title IV-D” means Title IV-D of the Social Security Amendments of 1974, Pub. L. 93-647, 88 Stat. 2337 (codified as amended at 42 U.S.C. §§ 651-669(d)), as implemented by 45 C.F.R. Parts 301-310.
- (55) “Transfer” means, depending on context, either:
 - (a) a procedure for Assisted Reproduction by which an embryo or sperm is placed in the body of the Woman who will give Birth to the Child; or
 - (b) the lawful removal of a case or action from the jurisdiction of one court to another court.
- (56) “Tribe” means the Mississippi Band of Choctaw Indians, a federally-recognized Indian Tribe.
- (57) “Tribunal” means a court or administrative agency authorized to establish, enforce or modify support orders, or determine parentage.
- (58) “Witnessed” means that at least one Individual who is authorized to Sign has signed a Record to verify that the Individual personally observed a Signatory Sign the Record.
- (59) “Woman” means a female Individual of any age.

§38-1-3 Designation of Title IV-D Program

The Mississippi Band of Choctaw Indians Child Support Enforcement Program shall be the designated Title IV-D agency for the Tribe with all the authority granted to it in accordance with Title IV-D and applicable laws of the Tribe, including this title.

§38-1-4 Powers and Duties of the Program

The Program shall be authorized to provide Title IV-D Services that include, but are not limited to:

- (1) administer and manage the plan and services of its tribal Title IV-D program;
- (2) establish Administrative Procedures for Parentage Establishment and Establishment, modification, termination and Enforcement of Child Support Orders consistent with these Codes and the rules and regulations set forth by Title IV-D;
- (3) establish Parentage in accordance with this chapter;
- (4) establish, modify, and terminate Child Support Orders through court or administrative action;
- (5) enforce Child Support Orders through court or administrative actions;

- (6) initiate legal action to provide Child Support services, including appeals;
- (7) adopt policies and procedures for the Tribe for Child Support services;
- (8) adopt rules and regulations for Child Support services, subject to the approval of the Tribal Council;
- (9) negotiate agreements and or contracts as necessary for Child Support services under tribal and federal law, subject to the approval of the Tribal Council;
- (10) establish and maintain Child Support records, files and accounting;
- (11) provide Location services for parents and assets; and
- (12) collect and distribute Child Support payments.

§38-1-5 Services

- (1) Services Provided. The Program may provide the following Title IV-D Services that include, but are not limited to:
 - (a) the Location of the parents and their assets through local, State and federal agencies and private sources;
 - (b) the Establishment of paternity through court or administrative action in accordance with this title and Title IV-D.;
 - (c) the Establishment and modification of Child Support Obligations through court or administrative action;
 - (d) the Enforcement of Child Support Orders through court or administrative action;
 - (e) a review of Child Support Orders for modification; and
 - (f) the collection and distribution of Child Support payments.
- (2) Services Not Provided. The Program shall not provide services for the following:
 - (a) the Establishment or modification of visitation rights or custody;
 - (b) Establishment or modification of spousal support;
 - (c) the dissolution of a marriage;
 - (d) enforce marital property settlements; or
 - (e) provide legal advice to custodial and non-custodial parties.
- (3) Termination of Service. The Program may terminate Child Support services under the following circumstances:

- (a) when the Program receives a written request for termination of services from the person to whom services are being provided;
- (b) when the minor Child is no longer eligible for Child Support or entitled to Child Support; or
- (c) when an applicant receiving services has violated any term or condition set forth by the Program.

§38-1-6 Eligibility; Assignment

- (1) Eligibility and Application. Child Support services are available to an applicant who qualifies under Title IV-D.
- (2) Assignment. An applicant for Child Support services shall assign their Child Support rights to the Program, which shall distribute the payment to the appropriate agency or individual.
- (3) Tribe Has Priority. An Assignment of Child Support to the Tribe shall have first priority over any prior or subsequent Assignments.

§38-1-7 Application Fee

The Program will not charge an application fee.

§38-1-8 Intergovernmental Procedures; Full Faith and Credit

- (1) Intergovernmental Procedures. The Program shall extend the full range of services available under its Tribal IV-D plan to respond to all requests from and cooperate with other tribal and State IV-D agencies.
- (2) Full Faith and Credit. The Tribe shall recognize Child Support Orders issued by other tribes and tribal organizations and by states, in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act of 1994, Pub. L. 103-383, 108 Stat. 4064 (codified as amended at 28 U.S.C. § 1738B).

§38-1-9 Confidentiality of Records

All applications, information and records received or obtained by the Program are confidential and shall only be opened under authorized tribal or federal laws in accordance with Title IV-D.

- (1) The use or disclosure of personal information received or maintained by the Program is limited to purposes directly connected with the administration of the Program or Titles IV-A of the Social Security Act of 1935, Pub. L. 74-271, 49 Stat. 620 (codified as amended at 42 U.S.C. §§ 601-619) and XIX of the Social Security Act Amendments of 1965, Pub. L. 89-97, 79 Stat. 286 (codified as amended at 42 U.S.C. §§ 1396-1-1396w-5) with the administration of other programs or purposes prescribed by the Secretary of the U.S. Department of Health and Human Services in regulations.

- (2) No employee or agent of the Program shall provide any information referred to in this title, except as provided, to any public or private agency or individual. Information may be disclosed and shared between a state, tribal or federal agency as necessary in the collection of Child Support in accordance with Title IV-D.
- (3) Information shall not be released on the whereabouts of one party or the Child to another party against whom a protective order with respect to the former party or the Child has been entered.
- (4) Information shall not be released on the whereabouts of one party of the Child to another person if there is reason to believe that the release of the information to that party could result in physical or emotional harm to the party or the Child.
- (5) Unauthorized disclosure of any such information may subject the disclosing party to criminal and/or civil liability. Criminal prosecution may result in conviction, punishable by a fine of up to \$500 per offense.

§38-1-10 Attorneys

- (1) Attorneys. An attorney employed by or under contract with the Tribe shall represent and act on behalf of the Tribe when providing IV-D Services. An attorney-client relationship shall not exist between the attorney and any other party other than the Tribe, regardless of the name in which the action is brought.
- (2) No Representation of Parties by Tribe Attorneys. An attorney employed to represent the Tribe in Child Support and related proceedings shall not provide any form of legal representation to any person who is a party, an interested party, or a beneficiary in a matter in which the Tribe is providing services. Such attorney shall not represent any party, an interested party, or a beneficiary in any other legal matters or proceedings.
- (3) Information to be Provided to Applicants and Recipients Regarding Legal Representation. The Program shall inform the applicant or recipient of Child Support services that no attorney-client relationship exists between the attorney and the applicant or recipient and that the attorney does not provide legal representation to the applicant.

§38-1-11 Locating Parents

- (1) Parent Locator Service. The Tribe's parent locator service may be used to obtain information for Parentage Establishment and for other Child Support related proceedings.
- (2) Attempts to Locate. Attempts to locate Custodial Parents or Non-Custodial Parents and/or sources of income and assets shall be made when Location is required to take necessary action in a case. Reasonably available sources of information and records shall be used to locate Custodial Parents or Non-Custodial Parents and their sources of income and assets.

§38-1-12 Financial Disclosure

The parents shall provide a complete disclosure of assets on a financial affidavit for purposes of Child Support and related proceedings, except as otherwise provided.

§38-1-13 Applicant Cooperation

An applicant shall cooperate with the Program in Child Support and related proceedings. Non-cooperation may result in the closure of the applicant's case for failure to cooperate. If notification is required for non-cooperation by other state, tribal or federal agencies, the Program shall notify the appropriate agency of the non-cooperation of the applicant.

§38-1-14 Reasonable Costs

The Program may seek reasonable costs against a party in Child Support and related proceedings. These costs include, but are not limited to: court filing fees, process server fees, mailing fees, and Genetic Testing fees performed in accordance with this title.

§38-1-15 Overpayment

When an obligor has overpaid a Child Support Obligation and there are no Arrearages, the Program shall refund the amount from the Obligee.

§38-1-16 Relation to Electronic Signatures in Global and National Commerce Act

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

§38-1-17 Transitional Provision

This chapter applies to a pending proceeding to adjudicate parentage commenced before the effective date of this chapter for an issue on which a judgment has not been entered.

§38-1-18 Severability

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§38-1-19 Repealer

All statutes, ordinances, and resolutions that are inconsistent with this chapter are hereby repealed.

CHAPTER 2. JURISDICTION, CIVIL PROCEDURE, FULL FAITH AND CREDIT, SOVEREIGN IMMUNITY

§38-2-1 Jurisdiction

- (1) General. The Court shall have jurisdiction over Child Support and related proceedings involving an Individual who is the subject of such proceedings if one or more of the following prescribed conditions are fulfilled:
 - (a) the Individual is an Indian, or eligible for membership of a federally recognized tribe who resides within lands subject to the jurisdiction of the Tribe;
 - (b) a Child who is a member or is eligible for membership of a federally recognized tribe who resides within lands subject to the jurisdiction of the Tribe;
 - (c) the Individual resided with the Child in lands subject to the jurisdiction of the Tribe;
 - (d) the Individual resided on lands subject to the jurisdiction of the Tribe and provided pre-natal expenses and/or other support for the Child;
 - (e) the Child resides on lands subject to the jurisdiction of the Tribe as a result of the acts or directives of the individual;
 - (f) the Individual engaged in sexual intercourse on lands subject to the jurisdiction of the Tribe and the Child may have been conceived by that act of intercourse;
 - (g) the Individual asserted parentage in a putative father registry maintained by any State or tribal registry agency;
 - (h) the Individual is a member of the Tribe or the Child is a member or eligible for membership in the Tribe;
 - (i) the Individual submits to the jurisdiction of the Court by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction; or
 - (j) there is any basis consistent with these Codes or the Constitution of the Mississippi Band of Choctaw Indians, the United States, or the State of Mississippi for the exercise of personal jurisdiction.
- (2) Personal Jurisdiction Over All Interested Parties Not Required. Lack of personal jurisdiction over a Child and the Custodial Parent does not preclude the Court from making a Child Support Order binding on the Non-Custodial Parent who is subject to the Child Support Order.

§38-2-2 Transfer

The Program may accept Transfer cases from other State and tribal IV-D agencies, and may Transfer cases to other State and tribal IV-D agencies, if appropriate.

§38-2-3 Venue

Venue for all Child Support actions initiated by the Program shall be the Civil Division of the Choctaw Tribal Court System.

§38-2-4 Civil Procedure

The civil procedure to be followed shall be those set forth in Title VI of the Choctaw Tribal Code, unless otherwise specified in this title.

§38-2-5 Filing Fee

The Clerk of the Court shall not charge filing fees for pleadings made by and for the Program.

§38-2-6 Full Faith and Credit

The Tribe shall give full faith and credit to a valid court order from other tribal and State administrative bodies and courts in accordance with the federal Full Faith and Credit for Child Support Orders Act of 1994, Pub. L. 103-383, 108 Stat. 4064 (codified as amended at 28 U.S.C. § 1738B).

§38-2-7 Sovereign Immunity

Nothing in this chapter shall be deemed a waiver of the sovereign immunity of the Tribe.

CHAPTER 3. PARENTAGE AND GENETIC TESTING

§38-3-1 General Provisions

- (1) Scope.
 - (a) This chapter applies to an adjudication or Determination of Parentage.
 - (b) This chapter does not create, affect, enlarge, or diminish parental rights or duties under tribal laws other than this chapter.
 - (c) This chapter does not authorize or prohibit an agreement between one or more Intended Parent(s) and a Woman who is not an Intended Parent in which the Woman agrees to become pregnant through Assisted Reproduction and which provides that each Intended Parent is a Parent of a Child conceived through Assisted Reproduction. If a Birth results under the agreement and the agreement is unenforceable, the Parent-Child Relationship is established as provided in section 38-3-1 through 38-3-6 of this chapter.
- (2) Authorized Court. The Civil Division of the Choctaw Tribal Court System, the powers and duties of which are described in Title I of the Choctaw Tribal Code, may adjudicate Parentage under this chapter.
- (3) Applicable Law. The Court shall apply the laws of the Mississippi Band of Choctaw Indians to adjudicate Parentage. The applicable law does not depend on:
 - (a) the place of Birth of the Child; or
 - (b) the past or present residence of the Child.
- (4) Data Privacy. A proceeding under this chapter is subject to applicable law other than this chapter which governs the health, safety, privacy, and liberty of a child or other Individual who could be affected by disclosure of information that could identify the Child or other individual, including address, telephone number, digital contact information, place of employment, Social Security number, and the Child's day-care facility or school.
- (5) Establishment of Maternity and Paternity. To the extent practicable, a provision of this chapter applicable to a father-child relationship applies to a mother-child relationship and a provision of this chapter applicable to a mother-child relationship applies to a father-child relationship.
- (6) No Effect on Tribal Enrollment. Determination of Parentage under this chapter has no effect on tribal enrollment.

§38-3-2 Parent-Child Relationship

- (1) Establishment of Parent-Child Relationship. A Parent-Child Relationship is established between an Individual and a Child if:
 - (a) the Individual gives birth to the Child;

- (b) there is a presumption under subsection 38-3-2(4) of this chapter of the Individual's Parentage of the Child, unless the presumption is overcome in a judicial proceeding;
 - (c) the Individual is adjudicated a Parent of the Child under section 38-3-5 of this chapter;
 - (d) the Individual adopts the Child;
 - (e) the Individual acknowledges Parentage of the Child under section 38-3-3 of this chapter, unless the acknowledgement is rescinded under subsection 38-3-3(6) of this chapter or is successfully challenged under sections 38-3-3(7) and 38-3-5 of this chapter;
 - (f) the Individual's Parentage of the Child is established under section 38-3-6 of this chapter.
- (2) No Discrimination Based on Marital Status of Parent. A Parent-Child Relationship extends equally to every Child and Parent, regardless of the marital status of the Parent.
- (3) Consequences of Establishing Parentage. Unless parental rights are terminated, a Parent-Child Relationship established under this chapter applies for all purposes, except as otherwise provided by applicable law other than this chapter.
- (4) Presumption of Parentage.
- (a) An Individual is presumed to be a Parent of a Child if:
 - (i) except as otherwise provided under applicable law other than this chapter:
 - (A) the Individual and the Woman who gave Birth to the Child are married to each other and the Child is born during the marriage, whether the marriage is or could be declared invalid;
 - (B) the Individual and the Woman who gave Birth to the Child were married to each other and the Child is born not later than 300 days after the marriage is terminated by death, divorce, dissolution, annulment, or declaration of invalidity, or after a decree of separation or separate maintenance, whether the marriage is or could be declared invalid; or
 - (C) the Individual and the Woman who gave Birth to the Child married each other after the Birth of the Child, whether the marriage is or could be declared invalid, the individual at any time asserted Parentage of the Child, and:
 - (I) the assertion is in a Record filed with the State agency maintaining Birth records; or

- (II) the Individual agreed to be and is named as a Parent of the Child on the birth certificate of the Child; or
- (ii) the Individual resided in the same household with the Child for the first two years of the life of the Child, including any period of temporary absence, and openly held out the Child as the Individual's Child.
- (b) A presumption of Parentage under this subsection may be overcome, and competing claims to Parentage may be resolved only by an adjudication under section 38-3-5 of this chapter.

§38-3-3 Voluntary Acknowledgment of Parentage

- (1) Acknowledgement of Parentage. A Woman who gave Birth to a Child and an alleged genetic father of the Child, Intended Parent under section 38-3-6 of this chapter, or Presumed Parent may Sign an acknowledgement of Parent to establish the Parentage of the Child.
- (2) Execution of Acknowledgement of Parentage.
 - (a) An acknowledgment of Parentage under subsection 38-3-3(1) of this chapter must:
 - (i) be in a record signed by the Woman who gave Birth to the Child and by the Individual seeking to establish a Parent-Child Relationship, and the signatures must be attested by a notarial officer or witnessed;
 - (ii) State that the child whose parentage is being acknowledged:
 - (A) does not have a Presumed Parent other than the individual seeking to establish the Parent-Child Relationship or has a Presumed Parent whose full name is stated; and
 - (B) does not have another Acknowledged Parent, Adjudicated Parent, or Individual who is a parent of the child under section 38-3-6 of this chapter other than the Woman who gave Birth to the Child; and
 - (i) State that the signatories understand that the acknowledgment is the equivalent of an adjudication of Parentage of the Child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred two years after the effective date of the acknowledgment.
 - (b) An acknowledgement of Parentage is void if, at the time of signing:
 - (i) an Individual other than the Individual seeking to establish Parentage is a Presumed Parent; or
 - (ii) an Individual, other than the Woman who gave Birth to the Child or the Individual seeking to establish Parentage, is an acknowledged or Adjudicated Parent or a Parent.

- (3) Rules for Acknowledgment of Parentage.
- (a) An acknowledgment of Parentage or may be signed before or after the Birth of the Child.
 - (b) Subject to subsection 38-3-3(3)(a) of this chapter, an acknowledgment of Parentage takes effect on the Birth of the Child or filing of the document with the State agency maintaining Birth records, whichever occurs later.
 - (c) An acknowledgment of Parentage signed by a minor is valid if the acknowledgment complies with this chapter.
- (4) Effect of Acknowledgment of Parentage. Except as otherwise provided in subsections 38-3-3(6) and 38-3-3(7) of this chapter, an acknowledgment of Parentage that complies with this section and is filed with the State agency maintaining Birth records is equivalent to an adjudication of Parentage of the Child and confers on the Acknowledged Parent all rights and duties of a Parent.
- (5) Ratification Barred. A court conducting a judicial proceeding or an administrative agency conducting an administrative proceeding is not required or permitted to ratify an unchallenged acknowledgment of Parentage.
- (6) Procedure for Rescission.
- (a) A Signatory may rescind an acknowledgment of Parentage by filing with the relevant State agency a rescission in a signed Record which is attested by a notarial officer or Witnessed, before the earlier of:
 - (i) one year after the effective date under subsection 38-3-3(3) of this chapter of the acknowledgment; or
 - (ii) the date of the first hearing before a court in a proceeding, to which the Signatory is a party, to adjudicate an issue relating to the Child, including a proceeding that establishes support.
 - (b) If an acknowledgment of Parentage is rescinded under subsection 38-3-3(6)(a) of this chapter, the State agency maintaining Birth records shall notify the woman who gave Birth to the Child that the acknowledgment has been rescinded. Failure to give the notice required by this subsection does not affect the validity of the rescission.
- (7) Challenge After Expiration of Period for Rescission.
- (a) After the period for rescission under subsection 38-3-3(6) of this chapter expires, but not later than two years after the effective date under subsection 38-3-3(3) of an acknowledgment of Parentage, a Signatory of the acknowledgment may commence a proceeding to challenge the acknowledgment, including a challenge brought under subsection 38-3-5(2)(i) of this chapter, only on the basis of fraud, duress, or material mistake of fact.

- (b) A challenge to an acknowledgment of Parentage by an Individual who was not a Signatory to the acknowledgment is governed by subsection 38-3-5(2)(e) of this chapter.
- (8) Procedure for Challenge by Signatory.
- (a) Every Signatory to an acknowledgment of Parentage must be made a party to a proceeding to challenge the acknowledgment.
 - (b) By signing an acknowledgment of Parentage, a Signatory submits to personal jurisdiction in a proceeding to challenge the acknowledgment, effective on the filing of the acknowledgment with the State agency maintaining Birth records.
 - (c) The Court may not suspend the legal responsibilities arising from an acknowledgment of Parentage, including the duty to pay child support, during the pendency of a proceeding to challenge the acknowledgment of Parentage, unless the party challenging the acknowledgment shows good cause.
 - (d) A party challenging an acknowledgment of Parentage has the burden of proof.
 - (e) If the Court determines that a party has satisfied the burden of proof under subsection 38-3-3(8)(d) of this chapter, the Court shall order the State agency maintaining Birth records to amend the Birth record of the child to reflect the legal parentage of the child.
 - (f) A proceeding to challenge an acknowledgment of Parentage must be conducted under section 38-3-5 of this chapter.
- (9) Full Faith and Credit. The Court shall give full faith and credit to an acknowledgment of Parentage effective in another State if the acknowledgment was in a signed Record and otherwise complies with law of the other State.
- (10) Form for Acknowledgment of Parentage.
- (a) The State agency maintaining Birth records shall prescribe form for an acknowledgment of Parentage.
 - (b) A valid acknowledgment of Parentage is not affected by a later modification of the form under subsection 38-3-3(10)(a) of this chapter.
- (11) Release of Information. The State agency maintaining Birth records may release information relating to an acknowledgment of Parentage to a Signatory of the acknowledgment, courts, federal agencies, and child support agencies.

§38-3-4 Genetic Testing

- (1) Scope of Section; Limitation on Use of Genetic Testing.
- (a) Section 38-3-4 governs Genetic Testing of an Individual in a proceeding to adjudicate Parentage, whether the Individual:

- (i) voluntarily submits to testing; or
 - (ii) is tested under an order of the Court.
 - (b) Genetic Testing may not be used:
 - (i) to challenge the Parentage of an Individual who is a parent under section 38-3-6 of this chapter; or
 - (ii) to establish the parentage of an Individual who is a Donor.
- (2) Authority to Order or Deny Genetic Testing.
- (a) Except as otherwise provided in sections 38-3-4 or 38-3-5 of this chapter, in a proceeding under this chapter to determine Parentage, the Court shall order the Child and any other Individual to submit to Genetic Testing if a request for testing is supported by the sworn statement of a party:
 - (i) alleging a reasonable possibility that the individual is the Child's genetic Parent; or
 - (ii) denying genetic Parentage of the Child and stating facts establishing a reasonable possibility that the Individual is not a genetic Parent.
 - (b) A Child-Support Agency may order Genetic Testing only if there is no presumed, acknowledged, or Adjudicated Parent of a child other than the Woman who gave birth to the Child.
 - (c) The Court may not order in utero Genetic Testing.
 - (d) If two or more Individuals are subject to court-ordered Genetic Testing, the Court may order that testing be completed concurrently or sequentially.
 - (e) Genetic testing of a Woman who gave Birth to a Child is not a condition precedent to testing of the Child and an Individual whose genetic Parentage of the Child is being determined. If the Woman is unavailable or declines to submit to Genetic Testing, the Court may order Genetic Testing of the Child and each Individual whose genetic Parentage of the Child is being adjudicated.
 - (f) In a proceeding to adjudicate the Parentage of a Child having a Presumed Parent or an Individual who claims to be a Parent under subsection 38-3-5(2)(d) of this chapter, or to challenge an acknowledgment of Parentage, the Court may deny a motion for Genetic Testing of the Child and any other Individual after considering the factors in subsections 38-3-5(2)(h)(i)-(ii) of this chapter.
 - (g) If an Individual requesting Genetic Testing is barred under section 38-3-5 of this chapter from establishing the Individual's Parentage, the Court shall deny the request for Genetic Testing.

- (h) An order under this section for Genetic Testing is enforceable by contempt.
- (3) Requirements for Genetic Testing.
- (a) Genetic Testing must be of a type reasonably relied on by experts in the field of Genetic Testing and performed in a testing laboratory accredited by:
 - (i) the AABB, formerly known as the American Association of Blood Banks, or a successor to its functions; or
 - (ii) an accrediting body designated by the Secretary of the United States Department of Health and Human Services.
 - (b) A specimen used in Genetic Testing may consist of a sample or a combination of samples of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each Individual undergoing Genetic Testing.
 - (c) Based on the Ethnic or Racial Group of an individual undergoing Genetic Testing, a testing laboratory shall determine the databases from which to select frequencies for use in calculating a relationship index. If an Individual or the Program objects to the laboratory's choice, the following rules apply:
 - (i) Not later than 30 days after receipt of the report of the test, the objecting Individual or the Program may request the Court to require the laboratory to recalculate the Relationship Index using an Ethnic or Racial Group different from that used by the laboratory.
 - (ii) The party objecting to the laboratory's choice under this subsection shall:
 - (A) if the requested frequencies are not available to the laboratory for the Ethnic or Racial Group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or
 - (B) engage another laboratory to perform the calculations.
 - (iii) The laboratory may use its own statistical estimate if there is a question which Ethnic or Racial Group is appropriate. The laboratory shall calculate the frequencies using statistics, if available, for any other Ethnic or Racial Group requested.
 - (d) If, after recalculation of the Relationship Index under subsection 38-3-4(3)(c) of this chapter using a different Ethnic or Racial Group, Genetic Testing under subsection 38-3-4(5) does not identify an Individual as a genetic Parent of a child, the Court may require an Individual who has been tested to submit to additional Genetic Testing to identify a genetic Parent.
- (4) Report of Genetic Testing.

- (a) A report of Genetic Testing must be in a Record and signed under penalty of perjury by a designee of the testing laboratory. A report complying with the requirements of section 38-3-4 of this chapter is self-authenticating.
- (b) Documentation from a testing laboratory of the following information is sufficient to establish a reliable chain of custody and allow the results of Genetic Testing to be admissible without testimony:
 - (i) the name and photograph of each Individual whose specimen has been taken;
 - (ii) the name of the Individual who collected each specimen;
 - (iii) the place and date each specimen was collected;
 - (iv) the name of the individual who received each specimen in the testing laboratory; and
 - (v) the date each specimen was received.

(5) Genetic Testing Results; Challenge to Results.

- (a) Subject to a challenge under subsection 38-3-4(5)(b) of this chapter, an Individual is identified under this chapter as a genetic Parent of a Child if Genetic Testing complies with section 38-3-4 of this chapter and the results of the testing disclose:
 - (i) the individual has at least a 99 percent Probability of Parentage, using a prior probability of 0.50, as calculated by using the combined Relationship Index obtained in the testing; and
 - (ii) a Combined Relationship Index of at least 100 to 1.
- (b) An individual identified under subsection 38-3-4(5)(a) of this chapter as a genetic Parent of the Child may challenge the Genetic Testing results only by other Genetic Testing satisfying the requirements of section 38-3-4 of this chapter which:
 - (i) excludes the Individual as a genetic Parent of the Child; or
 - (ii) identifies another Individual as a possible genetic Parent of the child other than:
 - (A) the Woman who gave birth to the child; or
 - (B) the Individual identified under subsection 38-3-4(5)(a) of this chapter.
- (c) Except as otherwise provided in Section 38-3-4(10) of this chapter, if more than one Individual other than the Woman who gave Birth is identified by Genetic Testing as a possible genetic Parent of the Child, the Court shall order each individual to submit to further Genetic Testing to identify a genetic Parent.

- (6) Cost of Genetic Testing.
- (a) Subject to assessment of fees under section 38-3-5 of this chapter, payment of the cost of initial Genetic Testing must be made in advance:
- (i) by the Program in a proceeding in which the Program is providing services;
 - (ii) by the Individual who made the request for Genetic Testing;
 - (iii) as agreed by the parties; or
 - (iv) as ordered by the Court.
- (b) If the cost of Genetic Testing is paid by the Program, the Program may seek reimbursement from the genetic Parent whose Parent-Child Relationship is established.
- (7) Additional Genetic Testing. The Court shall order additional Genetic Testing on request of an Individual who contests the result of the initial testing under section 38-3-4(5) of this chapter. If initial Genetic Testing under subsection 38-3-4(5) of this chapter identified an Individual as a genetic Parent of the Child, the Court may not order additional testing unless the contesting Individual pays for the testing in advance.
- (8) Genetic Testing When Specimen Not Available.
- (a) Subject to subsection 38-3-4(8)(b) of this chapter, if a genetic-testing specimen is not available from an Alleged Genetic Parent of a Child, an Individual seeking Genetic Testing demonstrates good cause, and the Court finds that the circumstances are just, the Court may order any of the following Individuals to submit specimens for Genetic Testing:
- (i) a Parent of the Alleged Genetic Parent;
 - (ii) a sibling of the Alleged Genetic Parent;
 - (v) another child of the Alleged Genetic Parent and the Woman who gave Birth to the other Child; and
 - (vi) another relative of the Alleged Genetic Parent necessary to complete Genetic Testing.
- (b) To issue an order under this section, the Court must find that a need for Genetic Testing outweighs the legitimate interests of the individual sought to be tested.
- (9) Deceased Individual. If an Individual seeking Genetic Testing demonstrates good cause, the Court may order Genetic Testing of a deceased Individual.
- (10) Identical Siblings.

- (a) If the Court finds there is reason to believe that an Alleged Genetic Parent has an identical sibling and evidence that the sibling may be a genetic Parent of the Child, the Court may order Genetic Testing of the sibling.
 - (b) If more than one sibling is identified under subsection 38-3-4(5) of this chapter as a genetic Parent of the Child, the Court may rely on nongenetic evidence to adjudicate which sibling is a genetic Parent of the Child.
- (11) Confidentiality of Genetic Testing.
- (a) Release of a report of Genetic Testing for parentage is controlled by applicable law other than this chapter.
 - (b) An Individual who intentionally releases an identifiable specimen of another Individual collected for Genetic Testing under section 38-3-4 of this chapter for a purpose not relevant to a proceeding regarding Parentage, without a court order or written permission of the Individual who furnished the specimen, commits an appropriate level misdemeanor offense.

§38-3-5 Proceedings to Adjudicate Parentage

- (1) Nature of Proceeding.
- (a) Proceeding Authorized. A proceeding may be commenced to adjudicate the Parentage of a Child. Except as otherwise provided in this chapter, the proceeding is governed by Title VI of the Choctaw Tribal Code.
 - (b) Standing to Maintain Proceeding. Except as otherwise provided in section 38-3-3 of this chapter and subsections 38-3-5(2)(c) through 38-3-5(2)(f) of this chapter, a proceeding to adjudicate Parentage may be maintained by:
 - (i) the Child;
 - (ii) the Woman who gave Birth to the Child, unless a court has adjudicated that she is not a Parent;
 - (iii) an Individual who is a Parent under this chapter;
 - (iv) an Individual whose Parentage of the Child is to be adjudicated;
 - (v) the Program or other governmental agency authorized by applicable law other than this chapter;
 - (vi) an adoption agency authorized by applicable law other than this chapter or licensed child-placement agency; or
 - (vii) a representative authorized by applicable law other than this chapter to act for an Individual who otherwise would be entitled to maintain a proceeding but is deceased, incapacitated, or a minor.

(c) Notice of Proceeding.

- (i) the petitioner shall give notice of a proceeding to adjudicate Parentage to the following Individuals:
 - (A) the Woman who gave Birth to the Child, unless a court has adjudicated that she is not a Parent;
 - (B) an Individual who is a Parent of the Child under this chapter;
 - (C) a presumed, acknowledged, or Adjudicated Parent of the Child; and
 - (D) an Individual whose Parentage of the Child is to be adjudicated.
- (ii) An Individual entitled to notice under subsection 38-3-5(1)(c)(i) of this chapter has a right to intervene in the proceeding.
- (iii) Lack of notice required by subsection 38-3-5(1)(c)(i) of this chapter does not render a judgment void. Lack of notice does not preclude an Individual entitled to notice under subsection 38-3-5(1)(c)(i) of this chapter from bringing a proceeding under subsection 38-3-5(2)(f)(ii) of this chapter.

(d) Personal Jurisdiction.

- (i) The Court may adjudicate an Individual's Parentage of a Child only if the Court has personal jurisdiction over the Individual.
- (ii) A court with jurisdiction to adjudicate Parentage may exercise personal jurisdiction over a nonresident Individual, or the guardian or conservator of the Individual, if the conditions prescribed in Section 201 of the Uniform Interstate Family Support Act, as amended, are satisfied.
- (iii) Lack of jurisdiction over one Individual does not preclude the Court from making an adjudication of Parentage binding on another Individual.

(e) Venue. Venue for a proceeding to adjudicate parentage is in the Civil Division of the Choctaw Tribal Court System.

(2) Special Rules for Proceeding to Adjudicate Parentage.

(a) Admissibility of Results of Genetic Testing.

- (i) Except as otherwise provided in subsection 38-3-4(1)(b) of this chapter, the Court shall admit a report of Genetic Testing ordered by the Court under subsection 38-3-4(2) as evidence of the truth of the facts asserted in the report.
- (ii) A party may object to the admission of a report described in subsection 38-3-5(2)(a)(i), not later than 14 days after the party receives the report. The party shall cite specific grounds for exclusion.

- (iii) A party that objects to the results of Genetic Testing may call a Genetic Testing expert to testify in person or by another method approved by the Court. Unless the Court orders otherwise, the party offering the testimony bears the expense for the expert testifying.
- (ii) Admissibility of a report of Genetic Testing is not affected by whether the testing was performed:
 - (A) voluntarily or under an order of the Court or the Program; or
 - (B) before, on, or after commencement of the proceeding.

(b) Adjudicating Parentage of Child with Alleged Genetic Parent.

- (i) A proceeding to determine whether an Alleged Genetic Parent who is not a Presumed Parent is a Parent of a Child may be commenced:
 - (A) before the Child reaches the age of 21.
- (ii) Except as otherwise provided in subsection 38-3-5(2)(i) of this chapter, subsection 38-3-5(2)(b) of this chapter applies in a proceeding described in subsection 38-3-5(2)(b)(i) of this chapter if the Woman who gave Birth to the Child is the only other Individual with a claim to Parentage of the Child. The Court shall adjudicate an Alleged Genetic Parent to be a Parent of the Child if the Alleged Genetic Parent:
 - (A) is identified under subsection 38-3-4(5) of this chapter as a genetic Parent of the Child and the identification is not successfully challenged under subsection 38-3-4(5);
 - (B) admits Parentage in a pleading, when making an appearance, or during a hearing, the Court accepts the admission, and the Court determines the Alleged Genetic Parent to be a Parent of the Child;
 - (C) declines to submit to Genetic Testing ordered by the Court, in which case the Court may adjudicate the Alleged Genetic Parent to be a Parent of the Child even if the Alleged Genetic Parent denies a genetic relationship with the Child;
 - (D) is in default after service of process and the Court determines the Alleged Genetic Parent to be a Parent of the Child; or
 - (E) is neither identified nor excluded as a genetic Parent by Genetic Testing and, based on other evidence, the Court determines the Alleged Genetic Parent to be a Parent of the Child.
- (iii) Except as otherwise provided in subsection 38-3-5(2)(i) of this chapter and subject to other limitations in subsection 38-3-5(2) of this chapter, if in a

proceeding involving an Alleged Genetic Parent, at least one other Individual in addition to the Woman who gave Birth to the Child has a claim to Parentage of the Child, the Court shall adjudicate parentage under subsection 38-3-5(2)(h) of this chapter.

(c) Adjudicating Parentage of Child with Presumed Parent.

- (i) A proceeding to determine whether a Presumed Parent is a Parent of a Child may be commenced:
 - (A) before the Child reaches the age of 21.
- (ii) A presumption of Parentage under subsection 38-3-2(4) of this chapter cannot be overcome after the Child attains two years of age unless the Court determines:
 - (A) the Presumed Parent is not a genetic Parent, never resided with the Child, and never held out the Child as the Presumed Parent's Child; or
 - (B) the Child has more than one Presumed Parent.
- (iii) Except as otherwise provided in subsection 38-3-5(2)(i) of this chapter, the following rules apply in a proceeding to adjudicate a Presumed Parent's Parentage of a Child if the Woman who gave Birth to the Child is the only other Individual with a claim to Parentage of the Child:
 - (A) If no party to the proceeding challenges the Presumed Parent's Parentage of the Child, the Court shall adjudicate the Presumed Parent to be a Parent of the Child.
 - (B) If the Presumed Parent is identified under subsection 38-3-4(5) of this chapter as a genetic Parent of the Child and that identification is not successfully challenged under subsection 38-3-4(5) of this chapter, the Court shall adjudicate the Presumed Parent to be a Parent of the Child.
 - (C) If the Presumed Parent is not identified under subsection 38-3-4(5) as a genetic Parent of the Child and the Presumed Parent or the Woman who gave Birth to the Child challenges the Presumed Parent's Parentage of the Child, the Court shall adjudicate the Parentage of the Child in the best interest of the Child based on the factors under subsections 38-3-5(2)(h)(i)-(ii) of this chapter.
- (iv) Except as otherwise provided in subsection 38-3-5(2)(i) of this chapter and subject to other limitations in subsection 38-3-5(2) of this chapter, if in a proceeding to adjudicate a Presumed Parent's Parentage of a Child, another Individual in addition to the Woman who gave birth to the Child asserts a claim to Parentage of the Child, the Court shall adjudicate parentage under subsection 38-3-5(2)(h) of this chapter.

(d) Adjudicating Claim of De Facto Parentage of Child.

- (i) A proceeding to establish Parentage of a Child under section 38-3-5(2)(d) may be commenced only by an Individual who:
 - (A) is alive when the proceeding is commenced; and
 - (B) claims to be a de facto Parent of the Child.
- (ii) An Individual who claims to be a de facto Parent of a Child must commence a proceeding to establish Parentage of a Child under section 38-3-5(2)(d):
 - (A) before the Child attains 21 years of age; and
 - (B) while the Child is alive.
- (iii) The following rules govern standing of an Individual who claims to be a de facto Parent of a Child to maintain a proceeding under subsection 38-3-5(2)(d):
 - (A) The Individual must file an initial verified pleading alleging specific facts that support the claim to Parentage of the Child asserted under subsection 38-3-5(2)(d). The verified pleading must be served on all parents and legal guardians of the Child and any other party to the proceeding.
 - (B) An adverse party, parent, or legal guardian may file a pleading in response to the pleading filed under subsection 38-3-5(2)(d)(iii)(A) of this chapter. A responsive pleading must be verified and must be served on parties to the proceeding.
 - (C) Unless the Court finds a hearing is necessary to determine disputed facts material to the issue of standing, the Court shall determine, based on the pleadings under subsections 38-3-5(2)(d)(iii)(A)-(B) of this chapter, whether the Individual has alleged facts sufficient to satisfy by a preponderance of the evidence the requirements of paragraphs subsections 38-3-5(2)(d)(iv)(A)-(G) of this chapter. If the Court holds a hearing under subsection 38-3-5(2)(d)(iii) of this chapter, the hearing must be held on an expedited basis.
- (iv) In a proceeding to adjudicate Parentage of an Individual who claims to be a de facto Parent of the Child, if there is only one other Individual who is a Parent or has a claim to Parentage of the Child, the Court shall adjudicate the Individual who claims to be a de facto Parent to be a Parent of the Child if the Individual demonstrates by clear-and-convincing evidence that:
 - (A) the Individual resided with the Child as a regular member of the Child's household for a significant period;

- (B) the Individual engaged in consistent caretaking of the Child;
 - (C) the Individual undertook full and permanent responsibilities of a Parent of the Child without expectation of financial compensation;
 - (D) the Individual held out the Child as the Individual's Child;
 - (E) the Individual established a bonded and dependent relationship with the Child which is parental in nature;
 - (F) another Parent of the Child fostered or supported the bonded and dependent relationship required under subsection 38-3-5(2)(d)(iv)(E); and
 - (G) continuing the relationship between the Individual and the Child is in the best interest of the Child.
- (iii) Subject to other limitations in subsection 38-3-5(2) of this chapter, if in a proceeding to adjudicate Parentage of an Individual who claims to be a de facto Parent of the Child, there is more than one other Individual who is a Parent or has a claim to Parentage of the Child and the Court determines that the requirements of subsection 38-3-5(2)(d)(iv) are satisfied, the Court shall adjudicate Parentage under subsection 38-3-5(2)(h).

(e) Adjudicating Parentage of Child with Acknowledged Parent.

- (i) If a Child has an Acknowledged Parent, a proceeding to challenge the acknowledgment of Parentage, brought by a Signatory to the acknowledgment or denial, is governed by subsections 38-3-3(7) and 38-3-3(8) of this chapter.
- (ii) If a Child has an Acknowledged Parent, the following rules apply in a proceeding to challenge the acknowledgment of Parentage brought by an Individual, other than the Child, who has standing under subsection 38-3-5(1)(b) and was not a Signatory to the acknowledgment:
 - (A) The Individual must commence the proceeding not later than two years after the effective date of the acknowledgment.
 - (B) The Court may permit the proceeding only if the Court finds permitting the proceeding is in the best interest of the Child.
 - (C) If the court permits the proceeding, the Court shall adjudicate Parentage under subsection 38-3-5(2)(h).

(f) Adjudicating Parentage of Child with Adjudicated Parent.

- (i) If a child has an Adjudicated Parent, a proceeding to challenge the adjudication, brought by an Individual who was a party to the adjudication or received notice under subsection 38-3-5(1)(c) of this chapter, is governed by the rules governing a collateral attack on a judgment.
- (ii) If a child has an Adjudicated Parent, the following rules apply to a proceeding to challenge the adjudication of Parentage brought by an individual, other than the Child, who has standing under subsection 38-3-5(1)(b) of this chapter and was not a party to the adjudication and did not receive notice under subsection 38-3-5(1)(c) of this chapter:
 - (A) The Individual must commence the proceeding not later than two years after the effective date of the adjudication.
 - (B) The Court may permit the proceeding only if the Court finds permitting the proceeding is in the best interest of the Child.
 - (C) If the court permits the proceeding, the Court shall adjudicate Parentage under subsection 38-3-5(2)(h).
- (g) Adjudicating Parentage of Child of Assisted Reproduction.
 - (i) An Individual who is a Parent under section 38-3-6 of this chapter or the Woman who gave Birth to the Child may bring a proceeding to adjudicate Parentage. If the Court determines the Individual is a Parent under section 38-3-6 of this chapter, the Court shall adjudicate the Individual to be a Parent of the Child.
 - (ii) In a proceeding to adjudicate an individual's Parentage of a Child, if another individual other than the Woman who gave Birth to the Child is a Parent under section 38-3-7 of this chapter, the Court shall adjudicate the Individual's Parentage of the Child under subsection 38-3-5(2)(h) of this chapter.
- (h) Adjudicating Competing Claims of Parentage.
 - (i) Except as otherwise provided in subsection 38-3-5(2)(i) of this chapter, in a proceeding to adjudicate competing claims of, or challenges under subsections 38-3-5(2)(c)(iii) and 38-3-5(2)(e)-(f) of this chapter to, parentage of a Child by two or more Individuals, the Court shall adjudicate parentage in the best interest of the Child, based on:
 - (A) the age of the Child;
 - (B) the length of time during which each Individual assumed the role of Parent of the Child;
 - (C) the nature of the relationship between the Child and each Individual;

- (D) the harm to the Child if the relationship between the Child and each Individual is not recognized;
 - (E) the basis for each Individual’s claim to Parentage of the Child; and
 - (F) other equitable factors arising from the disruption of the relationship between the Child and each Individual or the likelihood of other harm to the Child.
- (ii) If an individual challenges Parentage based on the results of Genetic Testing, in addition to the factors listed in subsection 38-3-5(2)(h)(i), the Court shall consider:
 - (A) the facts surrounding the discovery the Individual might not be a genetic Parent of the Child; and
 - (B) the length of time between the time that the Individual was placed on notice that the Individual might not be a genetic Parent and the commencement of the proceeding.
 - (iii) The Court may not adjudicate a Child to have more than two parents under this chapter.
- (i) Precluding Establishment of Parentage by Perpetrator of Sexual Assault.
 - (i) In this section, “Sexual Assault” has the same meaning as the criminal offense set forth in Title III, Chapter 3, Section 29 of the Choctaw Tribal Code.
 - (ii) In a proceeding in which a Woman alleges that a Man committed a Sexual Assault that resulted in the Woman giving Birth to a Child, the Woman may seek to preclude the Man from establishing that he is a Parent of the Child.
 - (iii) Subsection 38-1-5(2)(i) of this chapter does not apply if:
 - (A) the Man described in 38-3-5(2)(i)(ii) has previously been adjudicated to be a Parent of the Child; or
 - (B) after the Birth of the Child, the Man established a bonded and dependent relationship with the Child which is parental in nature.
 - (iv) Unless subsections 38-3-3(7) or 38-3-5(2)(b) of this chapter applies, a Woman must file a pleading making an allegation under 38-3-5(2)(i)(ii) of this chapter not later than two years after the Birth of the Child. The Woman may file the pleading only in a proceeding to establish Parentage under this chapter.
 - (v) An allegation under subsection 38-3-5(2)(i)(ii) may be proved by:

- (A) evidence that the Man was convicted of a Sexual Assault, or a comparable crime in another jurisdiction, against the Woman and the Child was born not later than 300 days after the Sexual Assault; or
 - (B) clear-and-convincing evidence that the Man committed Sexual Assault against the Woman and the Child was born not later than 300 days after the Sexual Assault.
- (vi) Subject to subsections 38-3-5(2)(i)(i)-(iv) of this chapter, if the Court determines that an allegation has been proved under subsection 38-3-5(2)(i)(v) of this chapter, the Court shall:
- (A) adjudicate that the Man described in subsection 38-3-5(2)(i)(ii) is not a Parent of the Child;
 - (B) require the State agency maintaining Birth records to amend the birth certificate if requested by the Woman and the Court determines that the amendment is in the best interest of the Child; and
 - (C) require the Man pay to Child support, Birth-related costs, or both, unless the Woman requests otherwise and the Court determines that granting the request is in the best interest of the Child.
- (3) Hearing and Adjudication.
- (a) Temporary Order.
- (i) In a proceeding under section 38-3-5 of this chapter, the Court may issue a temporary order for Child support if the order is consistent with applicable law other than this chapter and the Individual ordered to pay support is:
 - (A) a Presumed Parent of the Child;
 - (B) petitioning to be adjudicated a Parent;
 - (C) identified as a genetic Parent through Genetic Testing under subsection 38-3-4(5) of this chapter;
 - (D) an Alleged Genetic Parent who has declined to submit to Genetic Testing;
 - (E) shown by clear-and-convincing evidence to be a Parent of the Child; or
 - (F) a Parent under this chapter.
 - (ii) A temporary order may include a provision for custody and visitation under applicable law other than this chapter.

- (b) Combining Proceedings.
 - (i) Except as otherwise provided in 38-3-5(3)(b)(ii) of this chapter, the Court may combine a proceeding to adjudicate Parentage under this chapter with a proceeding for adoption, termination of parental rights, child custody or visitation, child support, divorce, dissolution, annulment, declaration of invalidity, or legal separation or separate maintenance, administration of an estate, or other appropriate proceeding.
 - (ii) A respondent may not combine a proceeding described in subsection 38-3-5(3)(b)(i) of this chapter with a proceeding to adjudicate Parentage brought under the Uniform Interstate Family Support Act, as amended.
- (c) Proceeding Before Birth. A proceeding to adjudicate Parentage may be commenced before the Birth of the Child and an order or judgment may be entered before Birth, but enforcement of the order or judgment must be stayed until the Birth of the Child.
- (d) Child as Party; Representation.
 - (i) A minor Child is a permissive party but not a necessary party to a proceeding under section 38-3-5 of this chapter.
 - (ii) The Court shall appoint an attorney, guardian ad litem, or similar person to represent a Child in a proceeding under section 38-3-5 of this chapter, if the Court finds that the interests of the Child are not adequately represented.
- (e) Court to Adjudicate Parentage. The Court shall adjudicate parentage of a Child without a jury.
- (f) Hearing; Inspection of Records.
 - (i) On request of a party and for good cause, the Court may close a proceeding under section 38-3-5 of this chapter to the public.
 - (ii) A final order in a proceeding under section 38-3-5 of this chapter is available for public inspection. Other papers and records are available for public inspection only with the consent of the parties or by Court order.
- (g) Dismissal for Want of Prosecution. The Court may dismiss a proceeding under this chapter for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.
- (h) Order Adjudicating Parentage.
 - (i) An order adjudicating Parentage must identify the Child in a manner provided by applicable law other than this chapter.

- (ii) Except as otherwise provided in subsection 38-3-5(3)(h)(iii) of this chapter, the Court may assess filing fees, reasonable attorney's fees, fees for Genetic Testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under subsection 38-3-5 of this chapter. Attorney's fees awarded under subsection 38-3-5(3)(h)(ii) may be paid directly to the attorney, and the attorney may enforce the order in the attorney's own name.
- (iii) The Court may not assess fees, costs, or expenses in a proceeding under section 38-3-5 of this chapter against the Program, except as provided by applicable law other than this chapter.
- (iii) In a proceeding under this section 38-3-5 of this chapter, a copy of a bill for Genetic Testing or prenatal or postnatal health care for the Woman who gave Birth to the Child and the Child, provided to the adverse party not later than 10 days before a hearing, is admissible to establish:
 - (A) the amount of the charge billed; and
 - (B) that the charge is reasonable and necessary.
- (iv) On request of a party and for good cause, the Court in a proceeding under section 38-3-5 of this chapter may order the name of the Child changed. If the Court order changing the name varies from the name on the Birth certificate of the Child, the Court shall order the State agency maintaining Birth records to issue an amended birth certificate.
- (i) Binding Effect of Determination of Parentage.
 - (i) Except as otherwise provided in 38-3-5(3)(i)(ii):
 - (A) a Signatory to an acknowledgment of Parentage is bound by the acknowledgment as provided in subsection 38-3-3; and
 - (B) a party to an adjudication of Parentage by a court acting under circumstances that satisfy the jurisdiction requirements of section 201 of the Uniform Interstate Family Support Act, as amended, and any Individual who received notice of the proceeding are bound by the adjudication.
 - (ii) A Child is not bound by a determination of Parentage under this chapter unless:
 - (A) the determination was based on an unrescinded acknowledgment of Parentage and the acknowledgment is consistent with the results of Genetic Testing;
 - (B) the determination was based on a finding consistent with the results of Genetic Testing, and the consistency is declared in the determination or otherwise shown;

- (C) the determination of Parentage was made under section 38-3-6 of this chapter; or
 - (D) the Child was a party or was represented by an attorney, guardian ad litem, or similar person in the proceeding.
- (iii) In a proceeding for divorce, dissolution, annulment, declaration of invalidity, legal separation, or separate maintenance, the Court is deemed to have made an adjudication of Parentage of a Child if the Court acts under circumstances that satisfy the jurisdiction requirements of section 201 of the Uniform Interstate Family Support Act, as amended, and the final order:
- (A) expressly identifies the child as a “child of the marriage” or “issue of the marriage” or includes similar words indicating that both spouses are parents of the child; or
 - (B) provides for support of the Child by a spouse unless that spouse’s Parentage is disclaimed specifically in the order.
- (ii) Except as otherwise provided in subsection 38-3-5(3)(i)(ii) or subsection 38-3-5(2)(f), a determination of Parentage may be asserted as a defense in a subsequent proceeding seeking to adjudicate Parentage of an individual who was not a party to the earlier proceeding.
- (iii) A party to an adjudication of Parentage may challenge the adjudication only under applicable law other than this chapter relating to appeal, vacation of judgment, or other judicial review.

§38-3-6 Assisted Reproduction

- (1) Scope of Section. Section 38-3-6 of this chapter does not apply to the Birth of a child conceived by sexual intercourse.
- (2) Parental Status of Donor. A Donor is not a Parent of a Child conceived by Assisted Reproduction.
- (3) Parentage of Child of Assisted Reproduction. An Individual who consents under section 38-3-6(4) of this chapter to Assisted Reproduction by a Woman with the intent to be a Parent of a Child conceived by the Assisted Reproduction is a Parent of the Child.
- (4) Consent to Assisted Reproduction.
 - (a) Except as otherwise provided in subsection 38-3-6(4)(b) of this chapter, the consent described in subsection 38-3-6(3) of this chapter must be in a Record signed by a Woman giving Birth to a Child conceived by Assisted Reproduction and an Individual who intends to be a Parent of the Child.

- (b) Failure to consent in a Record as required by subsection 38-3-6(4)(a) of this chapter, before, on, or after Birth of the Child, does not preclude the Court from finding consent to parentage if:
 - (i) the Woman or the Individual proves by clear-and-convincing evidence the existence of an express agreement entered into before conception that the Individual and the Woman intended they both would be Parents of the Child; or
 - (ii) the Woman and the Individual for the first two years of the Child's life, including any period of temporary absence, resided together in the same household with the Child and both openly held out the Child as the Individual's Child, unless the individual dies or becomes incapacitated before the Child attains two years of age or the Child dies before the Child attains two years of age, in which case the Court may find consent under this subsection to Parentage if a party proves by clear-and-convincing evidence that the Woman and the Individual intended to reside together in the same household with the Child and both intended the Individual would openly hold out the Child as the Individual's Child, but the Individual was prevented from carrying out that intent by death or incapacity.

(5) Limitation on Spouse's Dispute of Parentage.

- (a) Except as otherwise provided in subsection 38-3-6(5)(b) of this chapter, an Individual who, at the time of a Child's Birth, is the spouse of the Woman who gave birth to the Child by assisted reproduction may not challenge the Individual's Parentage of the Child unless:
 - (i) not later than two years after the Birth of the Child, the individual commences a proceeding to adjudicate the individual's Parentage of the Child; and
 - (ii) the Court finds the Individual did not consent to the Assisted Reproduction, before, on, or after Birth of the Child, or withdrew consent under subsection 38-3-6(7) of this chapter.
- (b) A proceeding to adjudicate a spouse's Parentage of a Child born by Assisted Reproduction may be commenced at any time if the Court determines:
 - (i) the spouse neither provided a Gamete for, nor consented to, the Assisted Reproduction;
 - (ii) the spouse and the Woman who gave Birth to the Child have not cohabited since the probable time of Assisted Reproduction; and
 - (iii) the spouse never openly held out the Child as the spouse's Child.
- (c) Subsection 38-3-6(5) of this chapter applies to a spouse's dispute of Parentage even if the spouse's marriage is declared invalid after Assisted Reproduction occurs.

- (6) Effect of Certain Legal Proceedings Regarding Marriage. If a marriage of a Woman who gives Birth to a Child conceived by Assisted Reproduction is terminated through divorce or dissolution, subject to legal separation or separate maintenance, declared invalid, or annulled before Transfer of gametes or embryos to the Woman, a former spouse of the Woman is not a Parent of the Child unless the former spouse consented in a Record that the former spouse would be a Parent of the Child if Assisted Reproduction were to occur after a divorce, dissolution, annulment, declaration of invalidity, legal separation, or separate maintenance, and the former spouse did not withdraw consent under subsection 38-3-6(7) of this chapter.
- (7) Withdrawal of Consent.
- (a) An individual who consents under subsection 38-3-6(4) of this chapter to Assisted Reproduction may withdraw consent any time before a Transfer that results in a pregnancy, by giving notice in a record of the withdrawal of consent to the Woman who agreed to give Birth to a Child conceived by Assisted Reproduction and to any clinic or health-care provider facilitating the Assisted Reproduction. Failure to give notice to the clinic or health-care provider does not affect a determination of Parentage under this chapter.
- (b) An Individual who withdraws consent under subsection 38-3-6(7)(a) of this chapter is not a Parent of the Child under section 38-3-6 of this chapter.
- (7) Parental Status of Deceased Individual.
- (a) If an Individual who intends to be a Parent of a Child conceived by Assisted Reproduction dies during the period between the Transfer of a Gamete or embryo and the Birth of the Child, the Individual's death does not preclude the establishment of the Individual's Parentage of the Child if the Individual otherwise would be a Parent of the Child under this chapter.
- (b) If an Individual who consented in a Record to Assisted Reproduction by a Woman who agreed to give Birth to a Child dies before a Transfer of gametes or embryos, the deceased Individual is a Parent of a Child conceived by the Assisted Reproduction only if:
- (i) either:
- (A) the Individual consented in a Record that if Assisted Reproduction were to occur after the death of the Individual, the Individual would be a Parent of the Child; or
- (B) the Individual's intent to be a Parent of a Child conceived by Assisted Reproduction after the Individual's death is established by clear-and-convincing evidence; and
- (ii) either:
- (A) the embryo is in utero not later than 36 months after the Individual's death; or

(B) the child is born not later than 45 months after the Individual's death.

CHAPTER 4. CHILD SUPPORT ESTABLISHMENT

§38-4-1 General

- (1) Applicability. This article governs the Establishment of Child Support for a minor Child as defined in this title.
- (2) Orders. In all Child Support cases, the Court shall order the payment of Child Support pursuant to the Child Support guidelines set forth in subsection 38-4-3 of this chapter.
- (3) Initiation of Action. The Tribe, mother, father, guardian, custodian, Child, or other agency responsible for the support of the Child may initiate an action for Child Support.
- (4) Age Requirement. An action to establish Child Support shall be initiated before the minor Child reaches the age of 21.
- (5) Parent Requirement. Child Support shall only be established for a biological or legally adopted Child of the parents.
- (6) No Support of Stepchildren Required. A parent shall not be responsible or liable for the support of a step-child(ren).
- (7) Adopted Children. Parents have the same legal duty of support for an adopted Child as for a biological Child.
- (8) Obligor and Obligees. In the payment and receipt of Child Support, the Non-Custodial Parent or the person responsible for the payment of Child Support shall be designated the “Obligor” and the custodial parent or the person who receives the Child Support shall be designated the “Obligee.”

§38-4-2 Child Support; Age of Majority; Emancipation Minor Parents

- (1) Age Limitation; Emancipation. A Child shall be entitled to support by their parents until either:
 - (a) the Child reaches the age of 21; or
 - (b) the Court determines that the Child is emancipated in accordance with Title IX, Chapter 3, Section 10 of the Choctaw Tribal Code.
- (c) Minor Parents. Minor parents are responsible for the financial support of their Child. The Court may deviate from the Child Support guidelines if the minor parents are attending high school. When the minor parent emancipates, the Court may modify the order in accordance with the Child Support guidelines.

§38-4-3 Child Support Guidelines

(1) In General.

- (a) If the obligor’s monthly gross income is \$1,500 or above, the following Child Support award guidelines shall be a rebuttable presumption in all proceedings regarding the awarding or modifying of child support:

Number of Children Due Support	Percentage of Adjusted Gross Income That Should Be Awarded for Support
1	16%
2	24%
3	28%
4	31%
5	34%
6 or more	An additional 2% for each additional child

- (b) If the obligor’s monthly gross income is less than \$1,500, the following Child Support award guidelines shall be a rebuttable presumption in all proceedings regarding the awarding or modifying of child support:

Number of Children Due Support	Percentage of Adjusted Gross Income That Should Be Awarded for Support
1	14%
2	22%
3	26%
4	29%
5	32%
6 or more	An additional 2% for each additional child

- (c) The guidelines provided for in subsections 38-4-3(1)(a)-(b) of this chapter apply unless the Judge makes a written finding or specific finding on the Record that the application of the guidelines would be unjust or inappropriate in a particular case as determined under the criteria specified in subsection 38-4-3(2) of this chapter.

- (d) The amount of “adjusted gross income” as that term is used in subsections 38-4-3(1)(a)-(b) of this chapter shall be calculated as follows:

- (i) determine gross income from all potential sources that may reasonably be expected to be available to the absent parent including, but not limited to, the following: wages and salary income; income from self-employment; income from commissions; income from investments, including dividends, interest income and income on any trust account or property; absent Parent’s portion of any joint income of both parents; workers’ compensation, disability, unemployment, annuity and retirement benefits, including an Individual Retirement Account (IRA); any other payments made by any person, private entity, or government; alimony; any income earned from an interest in or from inherited property; any other form of earned income; and gross income shall exclude any monetary benefits

derived from a second household, such as income of the absent Parent's current spouse;

- (ii) Subtract the following legally mandated deductions:
 - (A) federal, State and local taxes. Contributions to the payment of taxes over and beyond the actual liability for the taxable year shall not be considered a mandatory deduction;
 - (B) social security contributions;
 - (C) retirement and disability contributions except any voluntary retirement and disability contributions;
- (iii) if the Obligor is subject to an existing Court order for another Child or children, subtract the amount of that court-ordered support;
- (iv) if the absent Parent is also the Parent of another Child or other children residing with the absent Parent, then the Court may subtract an amount that it deems appropriate to account for the needs of said Child or children;
- (v) Compute the total annual amount of adjusted gross income based on subsections 38-4-3(1)(d)(i)-(iv) of this chapter, then divide this amount by twelve (12) to obtain the monthly amount of adjusted gross income.

Upon conclusion of the calculation of subsections 38-4-3(1)(d)(i)-(v) of this chapter, multiply the monthly amount of adjusted gross income by the appropriate percentage designated in subsections 38-4-3(1)(a)-(b) of this chapter to arrive at the amount of the monthly Child Support award.

- (e) In cases in which the adjusted gross income as defined in this section is more than One Hundred Thousand Dollars (\$100,000.00) or less than Ten Thousand Dollars (\$10,000.00), the Judge shall make a written finding in the record as to whether or not the application of the guidelines established in this section is reasonable. The Court shall take into account the basic subsistence needs of the Obligor who has a limited ability to pay.
- (f) Imputation of income shall not be based upon a standard amount in lieu of fact-gathering. In the absence of specific sufficient evidence of past earnings and employment history to use as the measure of an Obligor's ability to pay, the recommended Child Support Obligation amount should be based on available information about the specific circumstances of the Obligor. This can include, but is not limited to, such factors as assets, residence, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the Obligor, prevailing earnings level in the local community, and other relevant factors in the case.
- (g) The Program shall review the appropriateness of these guidelines every four years and report its findings to the Tribal Council no later than the first day of the regular

legislative session of that year. The Tribal Council shall thereafter amend these guidelines when it finds that amendment is necessary to ensure that equitable support is being awarded in all cases involving the support of minor children.

- (h) All orders involving support of minor children, as a matter of law, shall include reasonable medical support. Notice to the Obligor's employer that medical support has been ordered shall be on a form as prescribed by the Program. In any case in which the support of any Child is involved, the Court shall make the following findings either on the record or in the judgment:
 - (i) the availability to all parties of health insurance coverage for the Child(ren);
 - (ii) the cost of health insurance coverage to all parties.

The Court shall then make appropriate provisions in the judgment for the provision of health insurance coverage for the Child(ren) in the manner that is in the best interests of the Child(ren). If the Court requires the Custodial Parent to obtain the coverage then its cost shall be taken into account in establishing the Child Support award. If the Court determines that health insurance coverage is not available to any party or that it is not available to either party at a cost that is reasonable as compared to the income of the parties, then the Court shall make specific findings as to such either on the Record or in the judgment. In that event, the Court shall make appropriate provisions in the judgment for the payment of medical expenses of the Child(ren) in the absence of health insurance coverage.

- (2) Criteria for Overcoming Presumption that Guidelines are Appropriate. The rebuttable presumption as to the justness or appropriateness of an award or modification of a Child Support award based upon the guidelines established by subsection 38-4-3(1) of this chapter, may be overcome by the Judge making a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined according to the following criteria:
 - (a) Extraordinary medical, psychological, educational or dental expenses.
 - (b) Independent income of the Child.
 - (c) The payment of both Child Support and spousal support to the Obligee.
 - (d) Seasonal variations in one or both parents' incomes or expenses.
 - (e) The age of the Child, taking into account the greater needs of older children.
 - (f) Special needs that have traditionally been met within the family budget even though the fulfilling of those needs will cause the support to exceed the proposed guidelines.
 - (g) The particular shared parental arrangement, such as where the Non-Custodial Parent spends a great deal of time with the Child(ren) thereby reducing the financial expenditures incurred by the Custodial Parent, or the refusal of the Non-

Custodial Parent to become involved in the activities of the Child, or giving due consideration to the Custodial Parent's homemaking services.

- (h) Total available assets of the Obligee, Obligor and the Child.
 - (i) Payment by the Obligee of childcare expenses in order that the Obligee may seek or retain employment, or because of the disability of the Obligee.
 - (j) Any other adjustment which is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt.
- (3) Incarceration Not to Be Considered Voluntary Unemployment or Underemployment When Establishing or Modifying Child Support Order. The Court may not consider incarceration as intentional or voluntary unemployment or underemployment when establishing or modifying a Child Support order.

§38-4-4 Address Requirement; Service

- (1) Address Information. All Child Support Orders shall require the parties to keep the Program informed of their current addresses and an address of record for service. An address of record for service may be different from a party's physical address.
- (2) Change of Address. Any change of address shall be provided to the Program within 30 days of the change. The address of a party shall be protected from disclosure if evidence of domestic violence or Child abuse is found or it is determined that disclosure could be harmful to a party or Child.
- (3) Service. The address of record may be used for service of notices and orders in accordance with this title.

§38-4-5 Child Support Order

- (1) Contents of Child Support Order. A Child Support Order shall provide the following:
 - (a) the names of the Obligor and Obligee;
 - (b) the name or names of the Child(ren) before the Court;
 - (c) a provision for the monthly Child Support amount;
 - (d) a provision for the amount of any past due support and a Payment Plan for the past due support, if applicable;
 - (e) a provision for a judgment for past due support and a Payment Plan for the past due support, if applicable;
 - (f) a provision for medical and dental insurance;
 - (g) a provision for unreimbursed medical expenses;

- (h) a provision for immediate Income Withholding;
 - (i) a provision for childcare costs, if applicable;
 - (j) a provision for a current address and an address for service; and
 - (k) such other information or requirements as determined appropriate and reasonable by the Court.
- (2) Commencement of Obligation. The obligations shall commence, unless otherwise ordered, on the first day of the month immediately following the month in which the Child Support Order was issued.
 - (3) Statement of Amount. The amount of a Child Support Order shall not be construed to be an amount per Child unless specified by the Court. If there is more than one Child in the Child Support Order and one of the Children has attained the age of majority or is no longer entitled to support, the Child Support Order may be modified.
 - (4) Support of the Child. The Child Support Order may include a provision, if the Court deems it appropriate, to assure that the Child Support payment shall be used for the support of the Child.

§38-4-6 Arrearage

A judgment for Arrearage may be included in each Child Support Order if there is past due Child Support owed as well as a payment schedule for the judgment. Failure to state a past due amount in the order does not bar collection of the amount.

§38-4-7 Non-Cash Support

- (1) Non-Cash Support. The Court may allow part of the Child Support Obligation to be paid with Non-Cash Support, if the Obligee agrees to the use of a non-cash payment being used, and the Child Support Order states:
 - (a) the specific dollar amount of the support obligation; and
 - (b) the type and amount of Non-Cash Support that will be permitted to satisfy the Child Support Obligation.
- (2) Satisfaction of Public Assistance Monies. Non-cash payments shall not be permitted to satisfy any tribal, State or federal public assistance monies.

§38-4-8 Payments

Child support payments shall be made to the Program, except as otherwise provided. When payments are made to the Program, the Program shall distribute the payment to the appropriate agency or individual.

§38-4-9 Judge's Signature

The Judge shall Sign the Child Support Order and the Child Support computation form which establishes or modifies Child Support.

§38-4-10 Voluntary Agreement

Parents may establish Child Support through a voluntary agreement in accordance with the child support guidelines. In the event of such agreement, the parties shall Sign and date the Child Support Order, the Child Support computation form, and a waiver of right to service of process before submission to the Court. Once signed, the agreed order, computation form, and waiver shall be submitted to the Court for approval and signature, including any evidence, for approval without the parties being present at a court hearing.

§38-4-11 Rebuttable Presumption

There shall be a rebuttable presumption in any proceeding for Child Support that the amount of the award is the correct amount of Child Support to be awarded.

§38-4-12 Liability for Past Support

In an Establishment case for Child Support, the Court may award an additional judgment to reimburse the expenses of support and education of the Child from the date of birth to the date the order is entered. If the determination of Parentage is based upon a presumption arising under subsection 38-3-5(2)(c) of this title, the Court shall award an additional judgment to reimburse all or part of the expenses of support and education of the Child from at least the date the presumption first arose to the date the Child Support Order is entered, except that no additional judgment need be awarded for amounts accrued under a previous order for the Child's support.

§38-4-13 Termination of Parental Rights; Adoption

- (1) Termination of Parental Rights. When a parent terminates his or her parental rights, the termination does not end the duty of either parent to support their Child. The duty ends when a court terminates the parent's duty to support their Child, or if there is a signed written agreement between the parties to terminate the duty to support and approved by a court. If there is a Child Support Arrearage, the Arrearage shall be due until paid in full unless waived by the Court or by a signed written agreement between the parties that waives the Arrearage and is approved by the Court.
- (2) Adoption. If an adoption of a Child is pending, a Child Support Order shall remain in effect until notice is received that the final decree of adoption has been entered by the applicable court. If there is a Child Support Arrearage, the Arrearage shall be due until paid in full, unless waived by the Court or by a signed written agreement between the parties that waives the Arrearage and is approved by the Court.

§38-4-14 Modification

- (1) Petition to Modify. A Child Support Order may be modified upon petition of an Obligor, Obligee or the Program.

- (2) Modification Upon Material Change in Circumstances. Child Support Orders may be modified upon a material change in circumstances that includes, but is not limited to:
 - (a) an increase or decrease in income;
 - (b) when a Child reaches the age of 21;
 - (c) when a Child ceases to be entitled to support pursuant to the support order; or
 - (d) a change in childcare costs or Medical Support.
- (3) Effective Date of Modification. An order of modification shall be effective upon the date the motion to modify was filed, unless the parties agree to another or the Court finds that the material change of circumstances did not occur until a later date.
- (4) Voluntary Modification. If the parties agree to a modification, the Court shall review the modification to insure that it complies with the Child Support guidelines.

§38-4-15 No Retroactive Modification

A Child Support Order shall not be modified retroactively.

§38-4-16 Temporary Orders

- (1) The Court may upon proper application establish a temporary order for Child Support in accordance with the Child Support guidelines.
- (2) A temporary order may be vacated or modified prior to or in conjunction with a final order or decree.
- (3) A temporary order terminates when the final judgment on all issues, except attorney fees and costs, is rendered or when the action is dismissed.

§38-4-17 Prior Born Children

If an obligor has a Child Support Order and later has additional Children born or adopted, the Obligor may not be permitted to modify the order for the prior born Child to support a Child born or adopted later.

§38-4-18 Past Due Support

A final order for modification shall state whether past due support is owed and set a payment schedule. The failure to state a past due amount does not bar an action to collect the past due amount.

§38-4-19 Review of Child Support Orders; Review of Guidelines

- (1) The Program shall conduct a review of a Child Support order at least once every four (4) years to ensure that the Child Support order is in accordance with the Child Support guidelines and Title IV-D.

- (2) If the Program determines that the Child Support order is not in accordance with the Child support guidelines, the Program shall initiate action to modify the Child Support order.
- (3) An order of modification shall be effective upon the date the motion to modify the Child Support Order was filed.
- (4) Either a Non-Custodial Parent or Custodial Parent may request a review of the Child Support Order.
- (5) The Program shall conduct a review at least once every four years to ensure the Child Support guidelines are appropriate Child Support award amounts and in accordance with Title IV-D. After the quadrennial review, the Program will recommend that the Tribal Council revise the Child Support guidelines as appropriate.

§38-4-20 Redirection of Child Support Upon Change in Physical Custody

Whenever physical custody of the Child is changed, the Child Support payments shall be redirected to the new custodian, except for the amount of unpaid support still owed to the previous custodian or to the tribal or State Child Support agency.

§38-4-21 No Statute of Limitations

Court-ordered Child Support shall be owed until paid in full and it shall not be subject to a statute of limitation.

§38-4-22 TANF Money Owed to a State or Tribe

When a State or tribe expends TANF money for the benefit of a dependent Child, the payment of the TANF money creates a support debt owed to a State or Indian Tribe by the person(s) responsible for the support of the dependent Child. The amount of the amount of support debt shall be equal to the amount of TANF money expended for the benefit of the dependent Child, unless otherwise provided through a court or administrative order.

§38-4-23 Income Assignment

- (1) Every Child Support Order or a modification of such order shall provide for an immediate Income Assignment provision, regardless of whether support payments are in arrears.
- (2) The Income Assignment shall withhold the necessary amount to comply with the Child Support Order for the monthly obligation. If there is overdue Child Support, the Income Assignment must withhold an amount to be applied toward satisfaction of the Arrearage.
- (3) The total amount to be withheld from an individual's income for current and past due support shall not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act of 1968, Pub. L. 90-321, 82 Stat. 146 (codified as amended at 15 U.S. Code § 1673(b)), as implemented by 29 C.F.R § 870.11.
- (4) Income shall not be subject to withholding in any case where:

- (a) either the Custodial Parent or Non-Custodial Parent demonstrates, and the Court finds there is good cause not to require immediate Income Withholding; or
 - (b) a signed written agreement is reached between the Custodial Parent and Non-Custodial Parent, which provides for an alternative arrangement, and is approved by the Court.
- (5) If the Obligor has multiple withholding orders, the Program shall allocate amounts to be withheld from each order to ensure that all orders are implemented. In no case shall an allocation result in a support obligation not being implemented.
 - (6) Where immediate Income Withholding is not in place, the income of the Obligor shall become subject to withholding on the date on which the payments the Obligor has failed to make are at least equal to the support payable for one month.
 - (7) The only basis for contesting a withholding order is a mistake of fact, which means:
 - (a) an error in the amount of current or overdue support; or
 - (b) in the identity of the alleged Obligor.
 - (8) The Program shall terminate Income Withholding in cases where there is no longer a current order for support and all Arrearages have been satisfied.
 - (9) The Program shall refund amounts which have been improperly withheld.
 - (10) The Program shall be responsible to receive and process Income Withholding orders from any State, Indian Tribe, or other entity and to ensure such orders are properly and promptly served on employers located within the Tribe's jurisdiction.
 - (11) The Income Assignment issued pursuant to this section shall remain in effect as long as any support monies are owed. Payment of any support monies shall not prevent the Income Assignment from taking effect.
 - (12) Nothing in this section shall limit the authority of the Program to use its administrative powers conferred by law to collect delinquent support without the necessity of a court order.

§38-4-24 Voluntary Income Assignment

An Obligor may execute a voluntary Income Assignment at any time. The voluntary Assignment shall be filed with the Court and take effect after service on the employer.

§38-4-25 Employer Notice of Income Assignment; Requirements

- (1) The Program shall send the employer notice of the Income Assignment using the standard federal form prescribed by the Secretary of the U.S. Department of Health and Human Services.

- (2) The Income Withholding shall take effect on the next pay period of the Obligor after the employer receives notice. The employer shall withhold the amounts specified in the notice on each pay period. The amounts withheld shall be sent to the Program within seven business days after the date upon which the Obligor is paid. The employer shall include with each payment a report that states the date the amount was withheld from the Obligor's income.
- (3) The amount withheld, including any fee under this section, by the employer shall not exceed the limits permitted under §303(b) of the Consumer Credit Protection Act of 1968, Pub. L. 90-321, 82 Stat. 146 (codified as amended at 15 U.S. Code § 1673(b)), as implemented by 29 C.F.R § 870.11.
- (4) If the amount of support due in the notice exceeds the maximum authorized under subsection 38-4-25(4) of this chapter, the employer shall pay the amount due up to the statutory limit and send written notice to the Program or person designated to receive payments that the amount due exceeds the amount subject to withholding.
- (5) The employer shall notify the Program within ten days of the date when the Obligor terminates employment and provide the Obligor's last known address and the name and address of the Obligor's new employer, if known.
- (6) If the employer fails to withhold in accordance with the provisions of the income Assignment order, the employer will be liable for the accumulated amount the employer should have withheld and paid from the Obligor's income.
- (7) The employer may not discipline, suspend, discharge or refuse to employ an Obligor because of an Income Assignment. Any employer who violates this section shall be subject to a civil fine of \$500 for the unlawful discipline, suspension, discharge, or refusal to employ.
- (8) The employer may combine withheld amounts from two or more obligors' income in a single payment to each appropriate agency requesting withholding and separately identify the portion of the single payment which is attributable to each individual Obligor.
- (9) The Income Assignment is binding on the employer until further notice by the Program.
- (10) Any payment made pursuant to the provisions of section 38-4-25 of this chapter by the employer shall be made payable to the Program.
- (11) An Income Assignment issued pursuant to this section shall have priority over any other subsequent garnishments against the same income.
- (12) The employer may deduct from the income of the Obligor a sum not exceeding Five Dollars (\$5.00) per pay period but not to exceed Ten Dollars (\$10.00) per month as reimbursements for costs incurred by the employer in complying with the Income Assignment.
- (13) The Income Assignment applies to any current or subsequent employer. If the Obligor changes employment where an income assignment is in place, the Program shall notify the new employer pursuant to this section that the Income Assignment is binding on the new employer.

- (14) Two or more income assignments may be levied concurrently. Any current support due shall be paid before the payment of any Arrearages or support debt payment.
- (15) The employer shall verify the Obligor's address, employment, earnings, income, benefits, and dependent health insurance information upon request of the Program.

§38-4-26 Registration of Foreign Child Support Order

- (1) Any other State or tribal Child Support Order shall be registered with the Court for the purpose of obtaining jurisdiction for Enforcement of the withholding.
- (2) After registration of a foreign Child Support Order, the Program shall notify the Obligor that the Child Support Order has been registered with the Tribe and is a valid order and enforceable as if originally issued in the Court.

CHAPTER 5. CHILD SUPPORT ENFORCEMENT

§38-5-1 General

- (1) The Program may initiate an Enforcement proceeding that includes, but is not limited to:
 - (a) Enforcement of current Child Support payments;
 - (b) Establishment and Enforcement of a Child Support judgment; and
 - (c) review and modification of Child Support Orders.
- (2) The Program may use applicable Child Support Enforcement remedies in accordance with Title IV-D that includes, but are not limited to: Income Withholding; revocation of a driver's license, hunting and fishing licenses, and professional licenses; consumer credit reporting; passport denial; use of State and federal income tax refund Offset programs; use of Lien and levy; contempt proceedings; and, any other civil remedy available for the Enforcement of a Child Support Order or judgment.
- (3) An action to enforce Child Support may be brought by the Program, parent, guardian, child, or other public agency responsible for the support of the Child.
- (4) The Program is authorized to initiate legal action and appeal orders as necessary to implement the provisions of this section.

§38-5-2 Judgment for Arrearage

- (1) When an Obligor fails to pay current Child Support and an Arrearage accumulates, said Arrearage becomes a judgment by operation of law, and becomes effective on and after the scheduled payment date in the Child Support Order.
- (2) A party or the Program may initiate an action to obtain a formal order of judgment from the Court; however, a judgment by operation of law shall have the full force and effect of a judgment of the Court and shall be enforced under the laws of the Tribe and/or in accordance with the laws of the adjudicating court.
- (3) A judgment shall be accorded full faith and credit with other Indian tribes and states.
- (4) A Child Support judgment is not subject to retroactive modification by the Tribe or by any other Indian Tribe or State except that the Court may permit a modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given to the Obligee or (where the Obligee is the petitioner) to the Obligor.
- (5) A Child Support judgment shall not become dormant for any purpose. The Program shall follow applicable laws regarding judgments and Liens.
- (6) Except as otherwise provided, a judgment for past due Child Support shall be enforceable until paid in full.

§38-5-3 Arrearage

- (1) The Court shall determine the amount of Arrearage of any Child Support Obligation and set a payment schedule.
- (2) The parties may voluntarily agree on an Arrearage payment schedule, subject to approval by the Court.
- (3) Any amounts determined to be past due by the Court may be subsequently enforced by indirect civil contempt proceedings

§38-5-4 Liens; Workers Compensation; Release

- (1) Liens arise by operation of law against real and personal property for amounts of overdue support owed by an Obligor who resides or owns property within a State.
- (2) Past due Child Support shall become a Lien by operation of law upon the real and personal property of the Obligor at the time they become past due.
- (3) A judgment or order for current support or an Arrearage of Child Support shall be a Lien upon real property owned by the Obligor or upon any real property which may be acquired by the Obligor prior to the release of the Lien.
- (4) The Program shall comply with the rules and procedures regarding the recording and service of a Lien or extension of a Lien on personal and real property within a State or Indian Tribe in accordance with the applicable law.
- (5) The judgment or order shall not become a Lien for any sums prior to the date they severally become due and payable.
- (6) A judgment for an Arrearage of Child Support shall become a Lien upon benefits payable as a lump sum received from a worker's compensation claim of the Obligor. The filing and service for a workers compensation claim for Child Support shall follow applicable State workers compensation statutes.
- (7) The provisions of this section shall not authorize a sale of any property to enforce a Lien which is otherwise exempted by tribal, State or federal law.
- (8) A Lien shall be released upon the full payment of the amount of the Arrearage.
- (9) All Liens shall be given full faith and credit.

§38-5-5 Tribal and Individual Exempt Property

Tribal religious and/or ceremonial property, individual tribal trust property, individual religious and/or ceremonial property, and Individual Indian Money ("IIM") accounts are exempt from Liens.

§38-5-6 Initiated Income Assignment; Notice; Hearing

- (1) If an Income Assignment has not been ordered for the collection of Child Support, the Program shall initiate an Income Assignment when the Obligor has failed to make a Child Support payment at least equal to the support payable for one month, regardless of whether support payments are in arrears.
- (2) The only basis for contesting a withholding order under this section is a mistake of fact which means an error in the amount of current or overdue support or in the identity of the alleged Obligor.
- (3) In cases where the Program initiates an Income Assignment, notice to the Obligor shall be given and served according to law. The notice shall inform the Obligor at a minimum that:
 - (a) the withholding has commenced;
 - (b) the amount of overdue support that is owed, if any, and the amount of wages that will be withheld;
 - (c) the provision for withholding applies to any current or subsequent employer or period of employment;
 - (d) the procedures available for contesting the withholding, and the only basis for contest of such withholding is a mistake of fact;
 - (e) the Assignment shall remain as long as the support order is in effect;
 - (f) the payment of any support monies will not prevent an Income Assignment from taking effect; and
 - (g) the Obligor shall be required to keep the Program informed of the name and address of the current employer and health information.
- (4) If the Obligor challenges the Income Assignment, the Obligor may request a hearing by giving written notice to the Program. The Obligor has 15 days from the date of service of the notice to request a hearing. On receipt of the request for a hearing, the Program shall schedule the request on the next available court date.
- (5) The Court shall hear the matter and unless the Obligor successfully shows there is a mistake of fact, the Court shall enter an order that grants an Income Assignment and a judgment for Arrearage, if any, and a payment schedule for the Arrearage.
- (6) The order shall be a final judgment for purposes of appeal.
- (7) If within 15 days of date of service of the notice, the Obligor fails to request a hearing, pursuant to this section, or after having requested a hearing fails to appear at the hearing, the Court shall enter an order that grants an Income Assignment and a judgment for Arrearage, if any, and a payment schedule for the Arrearage.
- (8) A copy of the order shall be served upon the Obligor certified mail return receipt restricted delivery or if the Program has an address of record through regular mail.

- (9) The Obligor may voluntarily request an Income Assignment be initiated for the next due date, or earlier if so requested.

§38-5-7 Spousal Support

The Program is authorized to enforce an established spousal support Obligation as long as a Child Support Obligation is being enforced by the Program and the minor Child lives with the spouse or former spouse.

§38-5-8 Revocation or Suspension of Licenses

- (1) The Program may initiate Enforcement proceedings for the suspension or revocation of a professional license, hunting and fishing license, or driver's license of an Obligor who is in noncompliance with a Child Support Order.
- (2) Before the Program initiates proceedings for the suspension or revocation of a license(s), the Program shall issue a notice to the Obligor that states his/her license(s) will be suspended within 90 days after service, unless the Obligor notifies the Program within those 90 days and:
 - (a) pays the entire past-due support or enters into a Payment Plan approved by the Program; and/or
 - (b) complies with all orders and subpoenas regarding Parentage or Child Support.
- (3) The notice to the Obligor shall be served according to law.
- (4) The Obligor may submit a written request for a hearing to the Program within 20 days after the date of service of the notice. Upon receipt of the request for hearing, the Program shall schedule a hearing on the next available court date.
- (5) The Court shall determine whether the Obligor is in noncompliance with an order for support and whether suspension or revocation of a license is appropriate or whether probation is appropriate.
- (6) If an Obligor fails to respond to the notice issued under this section, fails to request a timely hearing, or fails to appear at a scheduled hearing, the Court shall enter an order of suspension, revocation, non-issuance, or non-renewal of a license to the licensing board and to the Obligor.
- (7) The order for suspension or termination of a license for noncompliance of a Child Support order shall be sent to the appropriate State or tribal licensing board.
- (8) For licenses issued by the State, the Program shall follow applicable State statutes.

§38-5-9 Probation

The Court may grant probation if the Obligor enters into a court-ordered Payment Plan to repay past due support and provides proof that the Obligor is complying with all other orders for support. Probation shall be conditioned upon full compliance with the order(s). If the Court grants probation,

the probationary period shall not exceed three years and the terms of the probation shall provide for automatic suspension or revocation of the license if the Obligor does not fully comply with the order.

§38-5-10 Reinstatement; Termination of Orders

- (1) An Obligor whose license(s) have been revoked or suspended may request in writing to the Program that the license(s) be reinstated.
- (2) The Court may reinstate the Obligor's license, if the Obligor has paid either:
 - (a) the current Child Support and monthly Arrearage payments for the current month and two months immediately preceding; or
 - (b) paid an amount equivalent to three months of Child Support and Arrearage payments; and
 - (c) is in full compliance with other provisions of the support order.
- (3) If the Program proceeds to terminate an order for revocation or suspension of a license, the Program shall serve on the Obligea a copy of the motion for reinstatement of the Obligor's licenses and notice of hearing. The motion and notice may be sent by regular mail if there is an address of record on file with the Program or served according to law.
- (4) If the license is reinstated, a copy of the order reinstating a license shall be sent to the Obligea and Obligor and appropriate State or tribal licensing board.
- (5) If the Obligor's license is reinstated and he/she fails to make Child Support payments, the Obligor's license(s) may again be suspended or revoked.
- (6) The Program shall proceed to terminate an order for suspension or revocation when the Obligor has paid his Child Support debt in full, without the necessity of a hearing. The order to reinstate a license shall be sent to the Obligor and Obligea and appropriate state or tribal licensing board.
- (7) For licenses issued by the State or another Indian Tribe, the Program shall follow applicable State or tribal statutes.

§38-5-11 Employment; Find-Job Order

- (1) Employment Requirement. A person who is ordered to pay Child Support through either court or administrative action shall be required to maintain employment to meet his or her Child Support obligation.
- (2) Action for Order for Employment. If an Obligor is in arrears for Child Support in an amount greater than three (3) times the Obligor's total monthly support payments and is not in compliance with a written Payment Plan, and the Obligor claims inability to pay court-ordered Child Support because of unemployment or underemployment, the Program may initiate an action to obtain an order to require an unemployed or underemployed Obligor to find employment through job search programs or job-training programs. To initiate such

action, the Program must schedule an administrative conference with the Obligor or a court hearing to determine if he or she is noncompliant due to unemployment or underemployment.

- (3) Notice to Obligor. Notice of the administrative conference or court hearing shall be sent to the Obligor in noncompliance with a Child Support order because of unemployment or underemployment through one of the following methods: (a) first-class mail to the Obligor's last known address with a certificate of mailing; (b) certified mail, return receipt restricted delivery; or (c) personal service with proof of service certificate. The notice shall include the following information:
 - (i) the name of the Obligor;
 - (ii) the name of the Obligee and the Child or Children for whom support is owed;
 - (i) the telephone number and contact number for the Program;
 - (ii) statements that the Obligor is in noncompliance with a court or administrative support order and the amount of the past due support; the time, date and place of an administrative conference or court hearing set in said matter, the consequences of the Obligor's failure to appear at the said hearing or conference, the Obligor's burden of proof at the hearing or conference, and a description of the order that may be issued following the hearing or conference, all as set forth in subsections 38-5-11(4) and 38-5-11(5) of this chapter; and
 - (iii) A statement that if a Program administrative conference has been set, the Obligor has the right to request transfer of the proceedings to the Court prior to the conference, or to appeal a Program administrative find-job order to the Court following a Program conference within ten days from the date of the order.
- (4) Hearing; Order. The Obligor shall be responsible for providing documentation for good cause not to participate in an employment search or job training program. If the Obligor fails to appear at the hearing or appears and is determined to be unemployed or underemployed, the Court or Program in an administrative conference shall enter a find-job order setting forth such findings and directing the Obligor to participate in job-finding or job-training programs and accept available employment. Such an order may require the Obligor to register with a State and/or tribal employment agency for employment or job training. The order shall require the Obligor to file a weekly report with the Program showing at least five (5) attempts to find employment, including the name, address and phone number of a contact person with whom the obligor sought employment. The Program shall submit the order to the Court for approval. A copy of the order will be mailed to the Obligor by first-class mail with a certificate of mailing.
- (5) Failure to Comply. If an Obligor fails to report or otherwise comply with a find-job order without good cause, Enforcement proceedings may be initiated against the Obligor. The Obligor shall be responsible for the verification of any reason for noncompliance with a find-job order.
- (6) Order Duration. The duration of the order shall not exceed three (3) months.

§38-5-12 Passport Denial

The Program may refer a judgment for Child Support to the Secretary of Health and Human Services for passport denial, revocation or restriction pursuant to Title IV-D.

§38-5-13 Reporting to Consumer Reporting Agency

- (1) The Program may report to a consumer reporting agency in the name of an Obligor who is delinquent in the payment of support and the amount of overdue support owed by the Obligor.
- (2) The Obligor shall be notified before the release of the information to the consumer reporting agency and given a reasonable opportunity to contest the accuracy of such information.
- (3) Information shall be given only to an entity that has furnished evidence satisfactory to the Program that it is a consumer reporting agency as so defined in 15 U.S.C. § 1681a(f).

§38-5-14 State and Federal Tax Offset Programs; Administrative Offset

- (1) The Program may use a State tax Offset program or services to collect Child Support debts.
- (2) The Program may use the federal tax Offset program or services to collect Child Support debts.
- (3) The Program may use administrative offsets to collect Child Support debts.

§38-5-15 Indirect Civil Contempt

- (1) The Program may initiate indirect civil contempt proceedings or any other pleading to secure compliance with a Child Support Order.
- (2) In a proceeding for indirect contempt, the pleading must be verified through an affidavit of the party initiating the proceeding.
- (3) In a proceeding for contempt, prima facie evidence of an indirect civil contempt of court shall be held when:
 - (a) Proof that:
 - (i) the Child Support Order was made, filed and served on the Obligor;
 - (ii) the Obligor had actual knowledge of the existence of the order;
 - (i) the order was granted by Default after prior due process notice to the parent; or
 - (ii) the parent was present in court at the time the order was announced; and
 - (b) the Obligor is in noncompliance with the order.

- (4) Unless otherwise provided by law, punishment for direct or indirect contempt shall be the imposition of a fine in a sum not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in jail not exceeding six (6) months, or by both, at the discretion of the Court.
- (5) If a contemnor is committed to the custody of the Choctaw Detention Center to serve the sentence imposed by the Court, the contemnor may thereafter only be discharged from the custody of the Choctaw Detention Center:
 - (a) upon payment in full of the adjudicated Arrearage;
 - (b) upon serving the full sentence;
 - (c) upon an agreement by the parties as to payment of the Arrearages, subject to any conditions and approval by the Court; or
 - (d) upon payment of a lump sum amount to be determined by the Court. The Court shall determine the amount by:
 - (i) the circumstances giving rise to the contempt;
 - (ii) the total amount of the adjudicated Arrearage; and
 - (iii) evidence of the Obligor's attempts to reduce the Arrearage prior to the contempt proceeding.
- (6) Contemnors incarcerated pursuant to this section shall not be given credit for good time, trustee time, or any other credit for time served. Contemnors incarcerated pursuant to the provisions of this section shall serve flat time.

§38-5-16 Purge Fee; Referral

- (1) When an Obligor is found guilty of indirect contempt of court for failure to pay Child Support or other court-ordered provisions for Child Support, the Obligor may purge the contempt through a Payment Plan that requires:
 - (a) The Obligor to make current support payments as well as paying the Arrearage or some portion thereof either paying the full amount of the Arrearage or if the full amount of the Arrearage is not paid in a lump sum, then by making additional monthly payments, exclusive of day care expenses.
 - (b) The Arrearage payments made under this section shall be applied to reduce the amount of Child Support Arrearage.
- (2) The Arrearage payments made under this section shall continue until the Child Support Arrearage has been paid in full, at which time the contempt shall be deemed purged.
- (3) If an Obligor is found guilty of indirect contempt, the Court may refer the contemnor to a State or tribal employment program, in accordance with section 38-5-11 of this chapter for employment services or training as a condition of probation. If the Obligor fails to comply

with the State or tribal employment program requirements, the Obligor shall be sentenced accordingly.

§38-5-17 Waivers or Credits; Payments to Children

- (1) The Obligee may waive or give credit for past due Child Support.
- (2) No waiver or credit is allowed for tribal, federal or State owed money, unless waived by the tribal, State or federal agency that issued the money.
- (3) Payments to children are considered gifts to the children.

§38-5-18 Exceptions to Enforcement Proceedings

- (1) An Obligor who currently receives TANF payments shall be exempt from Child Support Enforcement actions while currently receiving TANF payments or any other State or tribal Public Assistance benefits.
- (2) An Obligor who claims unemployment because of a physical and/or mental health problem shall provide documentation of such claim by a licensed physician or licensed mental health professional. The Obligor shall be responsible for providing documentation of the physical or mental health treatment plan with the time it may take to complete the plan. Upon completion of the treatment plan, the terms regarding unemployment in subsection 38-5-18(4) of this chapter shall be in force.
- (3) An Obligor who claims unemployment because of a physical or mental disability shall provide documentation that they have applied for disability determination with the Social Security Administration. The Obligor shall provide to the Court documentation that he or she has applied to a State department of rehabilitation services for assistance in becoming employable. If the Obligor is determined to be employable by the State department of rehabilitation services, the Obligor shall provide documentation that such parent has made every effort to cooperate in obtaining employment pursuant to subsection 38-5-18(4) of this chapter.
- (4) An Obligor who claims unemployment in subsections 38-5-18(2) and 38-5-18(3) of this chapter shall be required to register with the State employment security commission or a State and/or tribal employment agency for employment. The Obligor is responsible for making a good faith effort to obtain employment either through the employment services and personal initiative, providing documentation of employment registration to the Court, and providing documentation of an employment application. The Obligor must demonstrate he or she is actively seeking employment and/or training as provided by the employment agency and is willing to work.
- (5) These provisions shall not apply to an only parent caring for the Child or Children in the home, when daycare services are not available or when it is unreasonable to place the Child or Children in day care services.

§38-5-19 Interest

The Program may charge interest on past due support obligations stemming from Court orders but is not required to charge interest; however, the Program shall charge the statutory rate of interest on State-owed, or other tribal-owed judgments as required by full faith and credit.

§38-5-20 Expedited Procedures

- (1) The Program has the authority to enter orders in the following actions without the necessity of obtaining an order from any other judicial or administrative court:
 - (a) To require both parents to appear for Genetic Testing in cases where Parentage has not been established or admitted.
 - (b) To subpoena any financial or other information needed to establish, modify or enforce a support order, provided that the subpoena complies with applicable tribal, federal or State statutes.
 - (c) In cases where there is support Arrearages, to secure assets by:
 - (i) offsetting or seizing periodic or lump-sum payments from:
 - (A) a State or local agency, including unemployment compensation, workers' compensation, and other benefits; and
 - (B) judgments, settlements, and lotteries.
 - (ii) attaching and seizing assets of the Obligor held in financial institutions
 - (iii) attaching public and private retirement funds; and
 - (iv) imposing Liens in accordance with this title.
 - (d) To increase the amount of monthly support payments to include amounts for the purpose of securing overdue support.
 - (e) If an Income Assignment is not ordered or in place by operation of law, the Program is authorized to implement Income Withholding.
 - (f) To obtain access, subject to safeguards on privacy and information security, and subject to the non-liability of entities that afford such access under this subparagraph, to information contained in the following records.
 - (i) Records of other State and local government agencies, including: (A) vital statistics; (B) State and local tax and revenue records; (C) records concerning real and titled personal property; (D) records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnership and other business entities; (E) employment security records; (F) records of agencies administering Public

Assistance programs; (G) records of the motor vehicle department; and (H) corrections records.

- (ii) Certain records held by private entities with respect to individuals who owe or are owed support, consisting: (A) the names of addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities and cable television companies, pursuant to an administrative subpoena; and (B) information on such individuals held by financial institutions.
- (2) Such procedures listed in subsection 38-5-20(1) of this chapter shall follow due process safeguards, including (as appropriate) notice to the Obligor, opportunity for Obligor to contest the action and opportunity for appeal.

§38-5-21 Reimbursement of Costs

The Program shall seek reasonable costs against the Obligor in the Enforcement of Child Support cases. These costs include, but are not limited to: court filing fees, process server fees, mailing fees, and Genetic Testing fees.

§38-5-22 Bankruptcy

Current and past due Child Support owed on behalf of a Child is not dischargeable by bankruptcy.