

CHAPTER 126 - PARENTAGE

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GENERAL PROVISIONS

SECTION 126.011 Applicability of chapter. This chapter applies to all persons, no matter when born.

SECTION 126.021 Definitions. As used in this chapter, unless the context otherwise requires:

1. “Custodial parent” means the parent of a child born out of wedlock who has been awarded physical custody of the child or, if no award of physical custody has been made by a court, the parent with whom the child resides.
2. “Nonsupporting parent” means the parent of a child born out of wedlock who has failed to provide an equitable share of his child’s necessary maintenance, education and support.
3. “Parent and child relationship” means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties and obligations. It includes the mother and child relationship and the father and child relationship.

SECTION 126.031 Relationship of parent and child not dependent on marriage; primary physical custody of child born out of wedlock.

1. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.
2. Except as otherwise provided in a court order for the custody of a child:
 - (a) Except as otherwise provided in paragraph (b), the mother of a child born out of wedlock has primary physical custody of the child if:
 - (1) The mother has not married the father of the child; and
 - (2) A judgment or order of a court, or a judgment or order entered pursuant to an expedited process, determining the paternity of the child has not been entered.
 - (b) The father of a child born out of wedlock has primary physical custody of the child if:
 - (1) The mother has abandoned the child to the custody of the father; and
 - (2) The father has provided sole care and custody of the child in her absence.
3. For the purposes of this section, “abandoned” means failed, for a continuous period of not less than 6 weeks, to provide substantial personal and economic support.
4. As used in this section, “expedited process” has the meaning ascribed to it in [SECTION 126.161](#).

SECTION 126.041 Establishment of relationship. The parent and child relationship between a child and:

1. The natural mother may be established by proof of her having given birth to the child, or under this chapter, or [SECTION 125B.150](#) or [130.701](#).
2. The natural father may be established under this chapter, or [SECTION 125B.150](#), [130.701](#) or [425.382](#) to [425.3852](#), of the Nevada Revised Statutes.
3. An adoptive parent may be established by proof of adoption.

SURROGACY AGREEMENTS

SECTION 126.045 Contract requirements; treatment of intended parents as natural parents; unlawful acts.

1. Two persons whose marriage is valid under [chapter 122](#) may enter into a contract with a surrogate for assisted conception. Any such contract must contain provisions which specify the respective rights of each party, including:

- (a) Parentage of the child;
- (b) Custody of the child in the event of a change of circumstances; and
- (c) The respective responsibilities and liabilities of the contracting parties.

2. A person identified as an intended parent in a contract described in subsection 1 must be treated in law as a natural parent under all circumstances.

3. It is unlawful to pay or offer to pay money or anything of value to the surrogate except for the medical and necessary living expenses related to the birth of the child as specified in the contract.

4. As used in this section, unless the context otherwise requires:

(a) "Assisted conception" means a pregnancy resulting when an egg and sperm from the intended parents are placed in a surrogate through the intervention of medical technology.

(b) "Intended parents" means a man and woman, married to each other, who enter into an agreement providing that they will be the parents of a child born to a surrogate through assisted conception.

(c) "Surrogate" means an adult woman who enters into an agreement to bear a child conceived through assisted conception for the intended parents.

PATERNITY GENERALLY

SECTION 126.051 Presumptions of paternity.

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

(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 285 days after the marriage is terminated by death, annulment, declaration of invalidity or divorce, or after a decree of separation is entered by a court.

(b) He and the child's natural mother were cohabiting for at least 6 months before the period of conception and continued to cohabit through the period of conception.

(c) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is invalid or could be declared invalid, and:

(1) If the attempted marriage could be declared invalid only by tribal court, the child is born during the attempted marriage, or within 285 days after its termination by death, annulment, declaration of invalidity or divorce; or

(2) If the attempted marriage is invalid without a tribal court order, the child is born within 285 days after the termination of cohabitation.

(d) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child.

(e) Blood tests or tests for genetic identification made pursuant to [SECTION 126.121](#) show a probability of 99 percent or more that he is the father.

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

SECTION 126.053 Voluntary acknowledgment of paternity.

1. After the expiration of the period described in subsection 2, an affidavit for the voluntary acknowledgment of paternity developed by the State Board of Health pursuant to [SECTION 440.283](#) of the Nevada Revised Statutes shall be deemed to have the same effect as a judgment or order of a court determining the existence of the relationship of parent and child if the affidavit is signed in this or any state or other reservation by the mother and father of the child. An affidavit for the voluntary acknowledgment of paternity that is signed pursuant to this subsection is not required to be ratified by the tribal court of this state before the affidavit is deemed to have the same effect as a judgment or order of the tribal court determining the existence of the relationship of parent and child.

2. A person who signs an acknowledgment of paternity in this state or other reservation may rescind the acknowledgment:

- (a) Within 60 days after the acknowledgment is signed by both persons; or

(b) Before the date on which an administrative or judicial proceeding relating to the child begins if that person is a party to the proceeding,
↳ whichever occurs earlier.

3. After the expiration of the period during which an acknowledgment may be rescinded pursuant to subsection 2, the acknowledgment may not be challenged except upon the grounds of fraud, duress or material mistake of fact. The burden of proof is on the person challenging the acknowledgment to establish that the acknowledgment was signed because of fraud, duress or material mistake of fact.

4. Except upon a showing of good cause, a person's obligation for the support of a child must not be suspended during a hearing to challenge a voluntary acknowledgment of paternity.

ACTION TO DETERMINE PATERNITY

SECTION 126.071 Who may bring action; when action may be brought.

1. A child, his natural mother, a man presumed or alleged to be his father or an interested third party may bring an action pursuant to this chapter to declare the existence or nonexistence of the father and child relationship.

2. If an action under this section is brought before the birth of the child, all proceedings must be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

3. Upon the request of any of the persons listed in subsection 1, the tribal attorney shall take such action as is necessary to establish the parentage of a child.

SECTION 126.081 Period of limitations.

1. An action brought under this chapter to declare the existence or nonexistence of the father and child relationship is not barred until 3 years after the child reaches the age of majority.

2. This section does not alter the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

SECTION 126.091 Jurisdiction; venue.

1. The tribal court has jurisdiction of an action brought under this chapter. The action may be joined with an action for divorce, annulment, separate maintenance or support.

SECTION 126.101 Parties.

1. The child must be made a party to the action. If he is a minor, he must be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. If a tribal attorney brings an action pursuant to [SECTION 125B.150](#) and the interests of the child:

(a) Are adequately represented by the appointment of the tribal attorney as his guardian ad litem.

(b) Are not adequately represented by the appointment of the tribal attorney as his guardian ad litem, the Ely Shoshone Social Services must be appointed as guardian ad litem in the case.

2. The natural mother and a man presumed to be the father under [SECTION 126.051](#) must be made parties, but if more than one man is presumed to be the natural father, only a man presumed pursuant to subsection 2 of [SECTION 126.051](#) is an indispensable party. Any other presumed or alleged father may be made a party.

3. The court may align the parties.

SECTION 126.105 Service of process. Whenever service of process is required in an action brought under this chapter to determine the existence or nonexistence of the paternal relationship by certified mail, restricted delivery, with return receipt requested.

SECTION 126.111 Pretrial hearing; testimony.

1. The tribal court shall endeavor to resolve the issues raised in an action pursuant to this chapter by an informal hearing.

2. As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing must be held. The tribal court may order that the hearing be held before the tribal judge. The public shall be barred from the hearing. A record of the proceeding or any portion thereof must be kept if any party requests or the tribal court orders. Strict rules of evidence need not be observed, but those prescribed in [SECTION 233B.123](#) apply.

3. Upon refusal of any witness, including a party, to testify under oath or produce evidence, the tribal court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the tribal court may grant him immunity from prosecution for all criminal offenses shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness who has been granted immunity to obey an order to testify or produce evidence is a civil contempt of the tribal court.

4. Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

SECTION 126.121 Tests for typing of blood or genetic identification; admissibility in tribal court; effect of refusal to submit to test.

1. The tribal court may, and shall upon the motion of a party, order the mother, child, alleged father or any other person so involved to submit to one or more tests for the typing of blood or taking of specimens for genetic identification to be made by qualified physicians or other qualified persons, under such restrictions and directions as the tribal court or judge deems proper. Whenever such a test is ordered and made, the results of the test must be received in evidence and must be made available to a judge conducting a hearing pursuant to [SECTION 126.111](#). Unless a party files a written objection to the result of a test at least 30 days before the hearing at which the result is to be received in evidence, the result is admissible as evidence of paternity without foundational testimony or other proof of authenticity or accuracy. The order for such a test also may direct that the testimony of the experts and of the persons so examined may be taken by deposition or written interrogatories.

2. If any party refuses to submit to or fails to appear for a test ordered pursuant to subsection 1, the court may presume that the result of the test would be adverse to the interests of that party or may enforce its order if the rights of others and the interests of justice so require.

3. The tribal court, upon reasonable request by a party, shall order that independent tests for determining paternity be performed by other experts or qualified laboratories.

4. In all cases, the court shall determine the number and qualifications of the experts and laboratories.

SECTION 126.131 Evidence relating to paternity; evidence of costs of certain medical services.

1. Evidence relating to paternity may include:

(a) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception.

(b) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy.

(c) The results of any test for the typing of blood or taking of specimens for genetic identification that is:

(1) Of a type acknowledged as reliable by an organization approved by the Secretary of Health and Human Services; and

(2) Performed by a laboratory which is accredited by such an organization.

(d) An expert's opinion concerning the results of a blood test or test for genetic identification, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity.

(e) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts.

(f) All other evidence relevant to the issue of paternity of the child.

2. Bills or receipts for the costs of:

(a) Medical care received during the pregnancy;

(b) The birth of the child; or

(c) Tests for the typing of blood or taking of specimens for genetic identification to determine the paternity of the child,

→ are prima facie evidence of the amounts incurred for those services and are admissible as evidence without the foundational testimony of a third party.

SECTION 126.141 Pretrial recommendations.

1. On the basis of the information produced at the pretrial hearing, the tribal judge conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement must be made to the parties, which may include any of the following:

(a) That the action be dismissed with or without prejudice.

(b) That the matter be compromised by an agreement among the alleged father, the mother and the child, in which the father and child relationship is not determined but in which a defined economic obligation, fully secured by payment or otherwise, is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the tribal judge conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the tribal judge conducting the hearing shall consider the best interest of the child, discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the tribal court may order that the alleged father's identity be kept confidential. In that case, the tribal court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him.

(c) That the alleged father voluntarily acknowledge his paternity of the child.

2. If the parties accept a recommendation made in accordance with subsection 1, judgment may be entered accordingly.

3. If a party refuses to accept a recommendation made under subsection 1 and blood tests or tests for genetic identification have not been taken, the tribal court shall require the parties to submit to blood tests or tests for genetic identification, if practicable. Thereafter the tribal judge shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action must be set for trial.

4. The guardian ad litem may accept or refuse to accept a recommendation under this section.

5. The pretrial hearing may be terminated and the action set for trial if the judge conducting the hearing finds unlikely that all parties would accept a recommendation he might make under subsection 1 or 3.

SECTION 126.143 Order for temporary support of child. After an action is set for trial pursuant to [SECTION 126.141](#), the tribal judge shall, upon the motion of a party, issue an order providing for the temporary support of the child pending the resolution of the trial if the tribal judge, master, or referee determines that there is clear and convincing evidence that the party against whom the order is issued is the father of the child.

SECTION 126.151 Trial: Applicability of Nevada Rules of Civil Procedure; admissibility of evidence of other sexual contact; without jury.

1. An action under this chapter is a civil action governed by the Nevada Rules of Civil Procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Subsections 3 and 4 of [SECTION 126.111](#) and [SECTION 126.121](#) and [126.131](#) apply.

2. In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning that man's sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the alleged father has undergone and made available to the court blood tests or tests for genetic identification, the results of which show a probability less than 99 percent that he is the father of the child.

3. The trial must be by the court without a jury.

SECTION 126.161 Contents and effect of judgment or order.

1. A judgment or order of the tribal court, or a judgment or order entered pursuant to an expedited process, determining the existence or nonexistence of the relationship of parent and child is determinative for all purposes.

2. If such a judgment or order of this Reservation is at variance with the child's birth certificate, the judgment or order must direct that a new birth certificate be issued as provided in [SECTION 440.270](#) to [440.340](#), inclusive.

3. If the child is a minor, such a judgment or order of the tribal court must provide for his support as required by [chapter 125B](#) and must include an order directing the withholding or assignment of income for the payment of the support unless:

(a) One of the parties demonstrates and good cause is found by the tribal court, or pursuant to the expedited process, for the postponement of the withholding or assignment; or

(b) All parties otherwise agree in writing.

4. Such a judgment or order of the tribal court may:

(a) Contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Direct the father to pay the reasonable expenses of the mother's pregnancy and confinement. The tribal court may limit the father's liability for past support of the child to the proportion of the expenses already incurred which the court deems just.

5. If the tribal court enters such a judgment or order it shall ensure that the social security numbers of the mother and father are:

(a) Provided to the Division of Welfare and Supportive Services of the Department of Health and Human Services.

(b) Placed in the records relating to the matter and, except as otherwise required to carry out a specific statute, maintained in a confidential manner.

6. As used in this section, "expedited process" means a voluntary acknowledgment of paternity, judicial procedure or an administrative procedure established by this tribe or another tribe or state, as that term is defined in [SECTION 130.10179](#), to facilitate the collection of an obligation for the support of a child.

SECTION 126.171 Costs. The tribal court may order reasonable fees of counsel, experts and the child's guardian ad litem, and other costs of the action and pretrial proceedings, including blood tests or tests for genetic identification, to be paid by the parties in proportions and at times determined by the tribal court.

SECTION 126.181 Enforcement of judgment or order.

1. If the parent and child relationship has been established, the obligation of a parent may be enforced in the same or independent proceedings by the other parent, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.

2. The tribal court may order support payments to be made to the custodial parent or a person or the Ely Shoshone Social Services designated to administer them for the benefit of the child under the supervision of the court.

3. Willful failure to obey the judgment or order of the tribal court is a civil contempt of the tribal court. All remedies for the enforcement of judgments apply.

SECTION 126.191 Modification of judgment or order. Except as otherwise provided in [SECTION 125B.140](#) and [chapter 130](#), the court has continuing jurisdiction to modify the judgment or order as to custody, visitation or support.

SECTION 126.193 Cause of action subsequent to issuance of order: Notice and service of process. If, after a court issues an order establishing the paternity of a child, a subsequent cause of action between the parties concerning the support of the child is initiated, the requirements for notice and service of process shall be deemed to have been met with respect to a party to the proceeding who cannot be found if:

1. The party initiating the proceeding shows proof that diligent effort has been made to ascertain the location of the missing party; and

2. Written notice of the initiation of the proceeding has been mailed to the mailing address of the missing party or the address of the missing party's employer as those addresses appear in the information required to be filed pursuant to subsection 2 of [SECTION 126.163](#).

SECTION 126.201 Right to counsel.

1. At the pretrial hearing and in further proceedings, any party may be represented by counsel. If a party is financially unable to obtain counsel, the court may appoint counsel to represent that party with respect to the

determination of the existence or nonexistence of the parent and child relationship and the duty of support, including without limitation the expenses of the mother's pregnancy and confinement, medical expenses for the birth of the child and support of the child from birth until trial.

SECTION 126.211 Hearings and records: Confidentiality. Any hearing or trial held under this chapter must be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the tribal court or of a file in the Ely Shoshone Social Services or elsewhere, are subject to inspection only upon consent of the tribal court and all interested persons, or in exceptional cases only upon an order of the tribal court for good cause shown.

SECTION 126.221 Substitution of certificate of birth. Upon order of a court of this state or upon request of a court of another state, the State Registrar of Vital Statistics shall prepare a new certificate of birth consistent with the findings of the court and substitute the new certificate for the original certificate of birth as provided in [SECTION 440.270](#) to [440.340](#), inclusive of the Nevada Revised Statutes.

SECTION 126.223 Entry of default upon failure to plead or defend in action. If a man who is alleged to be the father of a child in an action brought pursuant to this chapter fails to plead or otherwise defend against the action as provided in the Nevada Rules of Civil Procedure, the clerk of the court shall enter his default upon a showing of proof of service of process and any other showing required pursuant to the Nevada Rules of Civil Procedure.

ACTION TO DETERMINE MATERNITY

SECTION 126.231 Who may bring action; provisions of chapter applicable to action. Any interested party may bring an action to determine the existence of a mother and child relationship. Insofar as practicable, the provisions of this chapter applicable to the father and child relationship apply to that action.

PROCEEDINGS TO COMPEL SUPPORT

SECTION 126.291 Proceedings not exclusive; fees.

1. If the tribal court finds that a parent and child relationship exists, it may assess against the nonsupporting parent, in addition to any support obligation ordered a reasonable collection fee. If the tribal court finds that the nonsupporting parent would experience a financial hardship if required to pay the fee immediately, it may order that the fee be paid in installments, each of which is not more than 25 percent of the support obligation for each month.

3. All fees collected pursuant to this section must be deposited in the general fund of the Ely Shoshone Finance Department.

SECTION 126.295 Form of complaint; verification. The complaint must be in writing and verified by oath or affirmation of the complainant.

SECTION 126.301 Absence of defendant. If the defendant fails to appear, the tribal court may proceed as if he were present and hear the complaint. The tribal court shall require the plaintiff to establish the facts, and shall give full and careful consideration to all evidence presented and the rights and claims of the plaintiff, defendant and children, and the best interests of the child or children involved. The tribal court shall, upon its own findings or the verdict of the jury, make such orders as it would make if the defendant were present.

SECTION 126.311 Effect of death, absence or insanity of plaintiff. If after the complaint has been filed, the plaintiff dies, becomes insane or cannot be found within the jurisdiction, the proceeding does not abate, but the child may be substituted as complainant by his guardian ad litem.

SECTION 126.321 Effect of death of defendant. In case of the death of the defendant, the action to compel support may be prosecuted against the personal representatives of the deceased with like effect as if he were living, subject as regards the measure of support to the provisions of this chapter. No personal representative may be required to post a bond.

SECTION 126.331 Payment to trustee.

1. The tribal court may require the payments to be made to the custodial parent, a public agency or a person designated by the tribal court as trustee.

2. If the Division of Welfare and Supportive Services of the Department of Health and Human Services has provided money for the support of the child, the tribal court shall direct that payment be made to the Division as provided for in [SECTION 425.360](#) of the Nevada Revised Statutes.

3. Except as otherwise provided in subsection 1 of [SECTION 425.410](#) of the Nevada Revised Statutes, the payments must be made to a trustee if the custodial parent does not reside within the jurisdiction of the tribal court or has assigned his right to receive support to a public agency in state or other reservation.

4. The trustee shall report to the court annually, or more often, as directed by the tribal court, the amounts received and paid over.

MISCELLANEOUS PROVISIONS

SECTION 126.371 Promise to furnish support for child: Enforcement; confidentiality.

1. Any promise in writing to furnish support for a child, growing out of a supposed or alleged parent and child relationship, does not require consideration and is enforceable according to its terms.

2. In the best interest of the child or the custodial parent, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.