

## **Title 7 – Domestic Relations**

### **Chapter 5 – Parent and Child**

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#### **Legislative History**

**Enacted:**

Domestic Relations, Ord. 188 (11/10/03), BIA (11/25/03).

**Repealed or Superseded:**

Domestic Relations, Ord. 101 (4/6/93), BIA (5/3/93) (repealing any and all prior domestic relations ordinances).

Law and Order Code, Ord. 7 (3/23/38), BIA (3/24/38) (Chapter III).

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**7-05.010 “Parent and Child Relationship” Defined.**

As used in this Title, “parent and child relationship” means the legal relationship existing between a child and his or her 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.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-05.020 Relationship Not Dependent on Marriage.**

The parent and child relationship extends equally to every child and to every parent, without regard to the marital status of the parents.

[History] Ord. 101 (4/6/93).

**7-05.030 How Parent and Child Relationship Established.**

The parent and child relationship between a child and:

- (A) The natural mother may be established by proof of her having given birth to the child, or under this Chapter;
- (B) The natural father may be established under this Chapter; or
- (C) An adoptive parent may be established by proof of adoption or under the laws of the Swinomish Indian Tribal Community.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-05.040 Presumption of Paternity.**

- (A) A man is presumed to be the natural father of a child if:
  - (1) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or dissolution, or after a decree of separation is entered by a Court;
  - (2) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born within three hundred (300) days after the termination of cohabitation;
  - (3) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his child;
  - (4) He acknowledges his paternity of the child in writing filed with the Registrar of Vital Statistics of the State of Washington, or the Swinomish Tribal Enrollment Office, who shall promptly inform the mother of the filing of the acknowledgement, and she does not dispute the acknowledgement within a reasonable time after being informed thereof,

in a writing filed with the Registrar of Vital Statistics or the Swinomish Enrollment Office. In order to enforce rights of residential time, custody and visitation, a man presumed to be the father as a result of filing a written acknowledgement must seek appropriate judicial orders under this Title; or

- (5) After the child's birth, he and the child's natural mother have married, or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; and
  - (a) He has acknowledged his paternity of the child in writing filed with the registrar of vital statistics or the Swinomish Tribal Enrollment Office;
  - (b) With his consent, he is named as the child's father on the child's birth certificate; or
  - (c) He is obligated to support the child under a written voluntary promise or by Court order.
- (B) A presumption under this Section may be rebutted in an appropriate action only by clear, cogent, and convincing evidence. If two (2) or more presumptions arise that conflict with each other, the presumption that 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.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-05.050 Artificial Insemination.**

- (A) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of the child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the Registrar of Vital Statistics, where it shall be kept confidential and in a sealed file.
- (B) The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived, unless the donor and the woman agree in writing that said donor shall be the father. The agreement must be in writing and signed by the donor and the woman. The physician shall certify their signatures and the date of the insemination and file the agreement with the

Registrar of Vital Statistics, where it shall be kept confidential and in a sealed file.

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

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-05.060 Determination of Father and Child Relationship - Who May Bring Action – When Action May Be Brought.**

- (A) A child, a child's natural mother, a man alleged or alleging himself to be the father, a child's guardian, a child's personal representative, the Swinomish Indian Tribal Community, or any interested party may bring an action at any time for the purpose of declaring the existence or nonexistence of the father and child relationship.
- (B) A man presumed to be a child's father under Section 7-04.040 may bring an action for the purpose of declaring the nonexistence of the father and child relationship only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.
- (C) In an action brought by the Tribe pursuant to this Chapter, the Tribe may be represented by either the tribal prosecutor or tribal attorney.
- (D) Regardless of its terms, no agreement between an alleged or presumed father and the mother or child, shall bar an action under this Section.
- (E) If an action under this Section is brought before the birth of the child, all proceedings may be stayed until after the birth, except service of process and discovery, including the taking of depositions to perpetuate testimony.
- (F) Actions under this Chapter may be maintained as to any child, whether born before or after the enactment of this Chapter.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-05.070 Jurisdiction.**

- (A) The Tribal Court shall have jurisdiction over any action brought under this

Chapter. The action may be joined with an action for divorce, dissolution, declaration of invalidity, separate maintenance, support, or any other civil action in which paternity is an issue including proceedings in juvenile court.

- (B) Any person who has sexual intercourse within the exterior boundaries of the Swinomish Indian Reservation with a person who is a member or is eligible to become a member of the Swinomish Indian Tribal Community thereby submits to the jurisdiction of the Courts of the Tribe as to an action brought under this Chapter with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by law, personal jurisdiction may be acquired by personal service of summons outside the Reservation or by service in accordance with the Rules of Civil Procedure as now or hereafter amended.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-05.080 Parties.**

- (A) The child shall be made a party to any action brought under this Chapter. If the child is a minor, the child may be represented by the child's general guardian or a guardian ad litem appointed by the Tribal Court. The child's mother or father may not represent the child as guardian or otherwise. The natural mother, each man presumed to be the father and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the Tribal Court, shall be given notice of the action in a manner prescribed by the Tribal Court and an opportunity to be heard.
- (B) Any party may cause to be joined as additional parties, other men alleged to be the father of the child, or any other person necessary for a full adjudication of the issues.
- (C) The failure or inability to join as a party an alleged or presumed father does not deprive the Tribal Court of jurisdiction to adjudicate some or all of the issues based on the evidence and parties available to it.
- (D) If more than one party is alleged to be the father of the child, the default of a party shall not preclude the Tribal Court from finding any other party to be the father of the child.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-05.090 Blood Tests.**

- (A) The Tribal Court may, and upon request of a party shall, require the child, mother, and any alleged father who has been made a party to submit to blood tests. If an

alleged father objects to a proposed order requiring him to submit to paternity blood tests, the Tribal Court may require the party making the allegation of possible paternity to provide sworn testimony, by affidavit or otherwise, stating the facts upon which the allegation is based. The Tribal Court shall order blood tests if it appears that a reasonable possibility exists that the requisite sexual contact occurred. The tests shall be performed by an expert in paternity blood testing appointed by the Tribal Court. The expert's verified report identifying the blood characteristics observed is admissible in evidence in any hearing or trial in the parentage action, if (1) the alleged or presumed father has had the opportunity to gain information about the security, validity, and interpretation of the tests and the qualifications of any experts, and (2) the report is accompanied by an affidavit from the expert that describes the expert's qualifications as an expert and analyzes and interprets the results. Verified documentation of the chain of custody of the blood samples is admissible to establish the chain of custody. The Tribal Court may consider published sources as aids to interpretation of the test results.

- (B) The Tribal Court, upon request by a party, shall order that additional blood tests be performed by the same or other experts qualified in paternity blood testing, if the party requesting additional tests advances the full costs of the additional testing within a reasonable time. The Tribal Court may order additional testing without requiring that the requesting party advance the costs only if another party agrees to advance the costs or if the Tribal Court finds, after hearing, that (1) the requesting party is indigent, and (2) the laboratory performing the initial tests recommends additional testing or there is substantial evidence to support a finding as to paternity contrary to the initial blood test results. The Tribal Court may later order any other party to reimburse the party who advanced the costs of additional testing for all or a portion of the costs.
- (C) In all cases, the Tribal Court shall determine the number and qualifications of the experts.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

#### **7-05.100 Evidence Relating to Paternity.**

Evidence relating to paternity may include:

- (A) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;
- (B) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;
- (C) Blood test results, weighted in accordance with evidence of the statistical probability of the alleged father's paternity;

- (D) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the Tribal Court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and
- (E) All other evidence relevant to the issue of paternity of the child.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-05.110 Civil Action – Testimony – Evidence – Jury.**

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

If, but for this Section, the witness would have been privileged to withhold the answer given or have evidence produced, the witness may not refuse to comply with the order on the basis of the privilege against self-incrimination; but the witness shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which he or she has been ordered to testify pursuant to the Section. The witness may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or for offering false evidence to the Tribal Court.

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

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

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-05.120 Judgment or Order Determining Parent and Child Relationship  
Support Judgment and Orders – Custody.**

- (A) The judgment and order of the Tribal Court determining the existence or nonexistence of the parent and child relationship shall be determinative for all purposes.
- (B) If the judgment and order of the Tribal Court is at variance with the child's birth certificate, the Tribal Court shall order that an amended birth certificate be issued.
- (C) The judgment and order shall contain other appropriate provisions directed to the appropriate parties to the proceeding, concerning the duty of current and future support, the extent of any liability for past support furnished to the child if that issue is before the Tribal Court; the furnishing of bond or other security for the payment of the judgment; or any other matter in the best interest of the child. The judgment and order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.
- (D) Support judgments and orders shall be for periodic payments, which may vary in amount. The Tribal Court may limit the father's liability for the past support to the child to the proportion of the expenses already incurred as the Tribal Court deems just. The Tribal Court shall not limit or affect in any manner the right of nonparties to seek reimbursement for support and other services previously furnished to the child.
- (E) After considering all relevant factors, the Tribal Court shall order either or both parents to pay an amount of support determined pursuant to Chapter 7-06.
- (F) On the same basis as provided in Chapter 7-04, the Tribal Court shall make residential provisions with regard to minor children of the parties, except that a parenting plan shall not be required unless requested by a party.



- (G) In any dispute between the natural parents of a child and a person or persons who have (1) commenced adoption proceedings or who have been granted an order of adoption, and (2) pursuant to a Court order, or placement by the Tribal Child Welfare Services or by a licensed agency, have had actual custody of the child for a period of one (1) year or more before court action is commenced by the natural parent or parents, the Tribal Court shall consider the best interest and welfare of the child, including the child's need for situational stability, in determining the matter of custody, and the parent or person who is more fit shall have the superior right to custody.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-05.130 Support Orders -Time Limit, Exception.**

The Tribal Court may not order payment for support provided or expenses incurred more than five (5) years prior to the commencement of the action. Any period of time in which the responsible party has concealed himself or avoided the jurisdiction of the Tribal Court under this Chapter shall not be included within the five (5) year period.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-05.140 Temporary Support -Temporary Restraining Order Preliminary Injunction - Support Debts, Notice.**

- (A) If the Tribal Court has made a finding as to the paternity of a child, or if a party's acknowledgement of paternity has been filed with the Tribal Court, or a party alleges he is the father of the child, any party may move for temporary support for the child prior to the date of entry of the final order. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.
- (B) Any party may request the Tribal Court to issue a temporary restraining order or preliminary injunction providing relief proper in the circumstances, and restraining or enjoining any party from:
- (1) Molesting or disturbing the peace of another party;
  - (2) Entering the home of another party; or
  - (3) Removing a child from the jurisdiction of the Tribal Court.
- (C) The Tribal Court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.

- (D) The Tribal Court may issue a temporary restraining order or preliminary injunction and an order for temporary support in such amounts and on such terms as are just and proper in the circumstances.
- (E) A temporary order, temporary restraining order, or preliminary injunction:
  - (1) Does not prejudice the rights of a party or any child that are to be adjudicated at subsequent hearings in the proceeding;
  - (2) May be revoked or modified;
  - (3) Terminates when the final order is entered or when the petition is dismissed; and
  - (4) May be entered in a proceeding for the modification of an existing order.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-05.150 Costs.**

- (A) The Tribal Court may order reasonable fees of experts and the child's guardian ad litem, and other costs of the action, including the cost of blood tests, to be paid by the parties in proportions and at times determined by the Tribal Court.
- (B) The Tribal Court may order that all or a portion of a party's reasonable attorneys' fees be paid by another party.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-05.160 Enforcement of Judgments or Orders.**

- (A) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this Chapter or under other or prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, or the child's confinement, education, support, or funeral, or by any other person, including a private agency, to the extent it has furnished or is furnishing these expenses.
- (B) The Tribal Court may order support payments to be made to a parent, the clerk of the Tribal Court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the Tribal Court.

- (C) All remedies for the enforcement of judgments apply.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-05.170 Modification of Judgment or Order - Continuing Jurisdiction.**

- (A) The Tribal Court has continuing jurisdiction to prospectively modify a judgment and order for future support upon a showing of a substantial change of circumstances.
- (B) A judgment or order entered under this Chapter may be modified without a showing of substantial change of circumstances that are substantial and continuing if:
  - (1) The order works a severe economic hardship on either party or the child;
  - (2) A party requests an adjustment in an order that was based on guidelines that determined the amount of support according to the child's age, and the child is no longer in the age category on which the current support amount is based;
  - (3) A child is still in high school, upon a finding that there is a need to extend support beyond the eighteenth (18<sup>th</sup>) birthday to complete high school; or
  - (4) There has been a change in the court adopted Child Support Schedule.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-05.180 Action to Determine Mother and Child Relationship.**

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

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-05.190 Hearing or Trials to be in Closed Court -Records Confidential.**

- (A) Any hearing or trial held under this Chapter shall be held in closed Tribal Court without admittance of any person other than those necessary to the action or proceeding or for the orderly administration of justice.
- (B) All papers and records, other than the final judgment and matters related to the enforcement of the final judgment, pertaining to the action or proceeding are subject to inspection by a nonparty only upon an order of the Tribal Court for

good cause shown following reasonable notice to all parties of the hearing where such order is sought.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).