Council of the Cherokee Nation

Cherokee Nation Tribal Council
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Legislation Text

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AN ACT AMENDING TITLE 43 OF THE CHEROKEE NATION CODE ANNOTATED AND TO FURTHER ADOPT THE FIRST MODERN DAY CHEROKEE NATION FAMILY PLANNING AND DISOLUTION CODE

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

This act shall be known as the Family Planning and Modernization Act and codified as Title 43 Sections 1 through 601-903 of the Cherokee Nation Code Annotated.

Section 2. Purpose

To amend Title 43 of the Cherokee Nation Code Annotated, and to further adopt the first modern day Cherokee Nation family planning and dissolution code. Chapter 5, titled Office of Child Support Services (43 CNCA § 500-518), is unaffected by this Act and shall remain in full force and effect until further legislation is enacted.

Section 3. Legislative History

Legislative Act 26-04

Section 4. Definitions

For purposes of this Title: As specifically set out in "Section 5. Substantive Provisions" contained herein.

Section 5. Substantive Provisions

TITLE 43

MARRIAGE AND FAMILY

CHAPTER 1

GENERAL PROVISIONS

§ 1. Definition of Marriage

§ 2. Consanguinity

Marriages between ancestors and descendants of any degree, of a stepfather with a stepdaughter, stepmother with stepson, between uncles and nieces, aunts and nephews, except in cases where such relationship is only by marriage, between brothers and sisters of the half as well as the whole blood, and first cousins are declared to be incestuous, illegal and void, and are expressly prohibited. Provided, that any marriage of first cousins performed in another state authorizing such marriages, which is otherwise legal, is hereby recognized as valid and binding in this state as of the date of such marriage.

§ 3. Persons Having Capacity to Marry

A. Any unmarried person who is at least eighteen (18) years of age and not otherwise disqualified is capable of contracting and consenting to marriage.

B. 1. Except as otherwise provided by this subsection, no person under the age of eighteen (18) years shall enter into the marriage relation, nor shall any license issue therefor, except:

a. upon the consent and authority expressly given by the parent or guardian of such underage applicant in the presence of the authority issuing such license,

b. upon the written consent of the parent or guardian of such underage applicant executed and acknowledged in person before a judge of the district court or the court clerk.,

c. if the parent or guardian resides outside of the Cherokee Nation, upon the written consent of the parent or guardian executed before a judge or clerk of a court of record. The executed foreign consent shall be duly authenticated in the same manner as proof of documents from foreign jurisdictions,

d. if the certificate of a duly licensed medical doctor or osteopath, acknowledged in the manner provided by law for the acknowledgment of deeds, and stating that such parent or guardian is unable by reason of health or incapacity to be present in person, is presented to such licensing authority, upon the written consent of the parent or guardian, acknowledged in the same manner as the accompanying medical certificate,

e. if the parent or guardian is on active duty with the Armed Forces of the United States, upon the written permission of the parent or guardian, acknowledged in the manner provided by law for acknowledgment of deeds by military personnel authorized to administer oaths. Such permission shall be presented to the licensing authority, accompanied by a certificate executed by a commissioned officer in command of the applicant, to the effect that the parent or guardian is on active duty in the Armed Forces of the United States, or

f. upon affidavit of three (3) reputable persons stating that both parents of the minor are deceased, or mentally incompetent, or their whereabouts are unknown to the minor, and that no guardian has theretofore been appointed for the minor. The judge of the district court issuing the license may in his or her discretion consent to the marriage in the same manner as in all cases in which consent may be given by a parent or guardian.

2. Every person under the age of sixteen (16) years is expressly forbidden and prohibited from entering into the marriage relation except when authorized by the court:

a. in settlement of a suit for seduction or paternity, or

b. if the unmarried female is pregnant, or has given birth to a child and at least one parent of each minor, or the guardian or custodian of such child, is present before the court and has an opportunity to present evidence in the event such parent, guardian, or custodian objects to the issuance of a marriage license. If they are not present the parent, guardian, or custodian may be given notice of the hearing at the discretion of the court.

3. A parent or a guardian of any child under the age of eighteen (18) years who is in the custody of the Cherokee Nation, Indian Child Welfare, Department of Human Services, or the Department of Juvenile Justice shall not be eligible to consent to the marriage of such minor child as required by the provisions of this subsection.

4. Any certificate or written permission required by this subsection shall be retained by the official issuing the marriage license.

C. No marriage may be authorized when such marriage would be incestuous under this chapter.

§ 4. Marriage License Requirement

No person shall enter into or contract the marriage relation, nor shall any person perform or solemnize the ceremony of any marriage in the Cherokee Nation without a license being first issued by the clerk of the district court, authorizing the marriage between the persons named in such license.

§ 5. Issuance and Validity of Marriage License

A. Persons desiring to be married in this state shall submit an application in writing signed and sworn to in person before the clerk of the district court by both of the parties setting forth:

1. The place of residence of each party;

2. The full legal name and the age of each party as they appear upon or are calculable from a tribal citizenship photo ID card, certified copy of the birth certificate, the current driver license or identification card, the current passport or visa, or any other certificate, license or document issued by or existing pursuant to the laws of any nation or of any state, or political subdivision thereof, accepted as proof of identity and age;

3. That the parties are not disqualified from or incapable of entering into the marriage relation.

B. 1. Upon application pursuant to this section and the payment of ten dollars ($10.00), if the clerk of the district court is satisfied of the truth and sufficiency of the application and that there is no legal impediment to such marriage, the court clerk shall issue the marriage license authorizing the marriage and a marriage certificate, which shall be incorporated as one document. As required by law, the marriage certificate shall be completed immediately following the marriage, and the marriage license and certificate shall be returned to the court clerk.

C. The marriage license shall only be valid within the Cherokee Nation reservation boundaries.

§ 6. Contents of License - Time of Return

A. The marriage license provided for in this title shall contain:

1. The date of its issuance;

2. The name of the court issuing the license, and the name of the city or town and county in which the court is located;

3. The full legal names of the persons authorized to be married by the license, , their ages, and their places of residence;

4. Directions to any person authorized by law to perform and solemnize the marriage ceremony;

5. The date by which the completed marriage certificate, along with the marriage license, shall be returned to the court clerk, which shall not be more than thirty (30) days from the date of its issuance; and

6. Any other information, declarations, seals and signatures, as required by law.

B. The marriage certificate provided for in this title shall contain appropriate wording and blanks to be completed and endorsed, as required by this title, by the person solemnizing or performing the marriage ceremony, the witnesses, and the persons who have been married.

§ 7. Performance or Solemnization of Marriages - Witnesses

A. All marriages must be contracted by a formal ceremony performed or solemnized in the presence of at least two adult, competent persons as witnesses, by a justice or judge or retired justice or judge of Cherokee Nation, a current or previous Principal Chief of the Cherokee Nation, a current or previous Deputy Principal Chief of the Cherokee Nation, or tribal Elder or spiritual leader, or an ordained or authorized preacher or minister of the Gospel, priest or other ecclesiastical dignitary of any denomination who has been duly ordained or authorized by the church to which he or she belongs to and who is at least eighteen (18) years of age.

B. 1. The justice or judge shall place his or her order of appointment on file with the office of the court clerk.

2. The tribal Elder or spiritual leader, or preacher, minister, priest, rabbi, or ecclesiastical dignitary who is a resident of the Cherokee Nation shall have filed, in the office of the court clerk, a copy of the credentials or authority from his or her church or synagogue authorizing him or her to solemnize marriages.

3. The tribal Elder or spiritual leader, or preacher, minister, priest, rabbi, or ecclesiastical dignitary who is not a resident of Cherokee Nation, but has complied with the laws of the tribe or state of which he or she is a resident, shall have filed once, in the office of the court clerk, a copy of the credentials or authority from his or her tribe, spiritual grounds, church or synagogue authorizing him or her to solemnize marriages.

4. The filing by resident or nonresident tribal Elder or spiritual leader, preachers, ministers, priests, rabbis, ecclesiastical dignitaries or judges shall be effective in and for all of Cherokee Nation; provided, no fee shall be charged for such recording.

5. A current or previous Principal Chief of the Cherokee Nation and a current or previous Deputy Principal Chief of the Cherokee Nation, shall not be required to file a certification with the Court Clerk.

C. No person herein authorized to perform or solemnize a marriage ceremony shall do so unless the license issued therefor be first delivered into his or her possession nor unless he or she has good reason to believe the persons presenting themselves before him or her for marriage are the identical persons named in the license, and for whose marriage the same was issued, and that there is no legal objection or impediment to such marriage.

D. Marriages between persons belonging to any society, church, group, or assembly or group which have no ordained minister, may

be solemnized by the persons and in the manner prescribed by and practiced in any such society, church, group, or assembly.

§ 8. Endorsement and Return of Marriage License

A. The person performing or solemnizing the marriage ceremony shall, immediately upon the completion of the ceremony, endorse upon the license authorizing the marriage:

1. His or her name and official or clerical designation;

B. The witnesses to the ceremony shall endorse the marriage certificate, attesting to their presence at the ceremony, with their names and addresses.

C. The marriage license, along with the completed marriage certificate shall be transmitted without delay to the court clerk who issued the license and certificate.

§ 9. Record of Application, License and Certificate - Book

The clerk of the district court issuing any marriage license shall make a complete record of the application, license, and certificate thereon, on an optical disc, microfilm, microfiche, imaging, in a book kept by the judge or clerk for that purpose, properly indexed, or by electronic means using any method approved by the Supreme Court; and the record of the license shall be made before it is delivered to the person procuring the same, and the record of the certificate shall be made upon the return of the license; provided, that all records pertaining to the issuance of such license shall be open to public inspection during office hours; provided further, that after recording of the original license and completed certificate as hereinbefore required, it shall be returned to the persons to whom the same was issued, with the issuing officer's certificate affixed thereon showing the book and page or case number where the same has been recorded.

§ 10. Additional Evidence to Determine Legal Capacity Before Issuance of Marriage License

If the clerk of the district court before whom application for a marriage license is made shall be in doubt of the legal capacity of the parties for whose marriage a license is sought, to enter into the marriage relation, such clerk shall require additional evidence to that contained in the application, and may swear and examine witnesses or require affidavits in proof of the legality of such marriage, and unless satisfied of the legality thereof, he shall not issue a license therefor.

§ 11. Copies of Certified Records as Evidence

Copies of any record required to be made and kept by the judge of the district court under the provisions of this chapter, certified to by the judge of said court, under his official signature and seal, shall be received as evidence in all courts of this state.

§ 12. Common Law Marriage

Cherokee Nation shall recognize that a “common law marriage” exists when parties, capable of entering into a marital relation, agree to become husband and wife without a formal ceremony, and thereafter publicly maintain such relation.

§ 13. Reserved

§ 14. Penalty for Solemnizing Unlawful Marriage

Any person authorized to solemnize the rites of matrimony within the Cherokee Nation, who shall knowingly solemnize the rites of matrimony between persons prohibited by this chapter, from intermarrying shall be deemed guilty of a felony, and upon conviction thereof shall be fined in any sum not exceeding Five Hundred Dollars ($500.00) and or imprisonment not less than one (1) year nor more than three (3) years.

§ 15. Unlawfully Issuing Marriage License, Concealing Record or Performing Marriage Ceremony - Penalty

Any clerk of the district court, knowingly issuing any marriage license, or concealing any record thereof, contrary to the provisions of this chapter, or any person knowingly performing or solemnizing the marriage ceremony contrary to any of the provisions of this chapter, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by imprisonment in jail not more than one (1) year or by both such fine and imprisonment.

§ 16. Unlawful Solicitation of Performance of Marriage Ceremony

It shall be unlawful for any person to solicit directly or indirectly within any courthouse, premises or grounds or lots on which a courthouse may be located in any county within the Cherokee Nation for himself or for and on behalf of any other person, the performance of a marriage ceremony.

§ 17. Punishment for Violation of Act

Any person violating this act shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed Twenty-five Dollars ($25.00) for the first conviction, and for any second or subsequent conviction by a fine of not less than Twenty-five Dollars ($25.00) nor more than One Hundred Dollars ($100.00).

§ 18. Injunction Restraining Violation of Act

In addition to the other penalties provided for a violation of this act, a cause of action shall exist in favor of any citizen of Cherokee Nation, or in favor of the Cherokee Nation on the relation of the Attorney General of the Cherokee Nation to apply to the district court for an injunction restraining the violation of this act.

§ 19. Unlawful Sale of Papers Relating to Marriage Licenses - Penalty

It shall be unlawful for the court clerk to sell, offer for sale, or permit the sale of any paper or instrument relating, directly or indirectly, to marriage licenses issued from the office of said court clerk except the license herein. Provided, any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Ten Dollars ($10.00) nor more than One Hundred Dollars ($100.00), or by imprisonment in the county jail for not less than five (5) days

nor more than ten (10) days, or by both such fine and imprisonment.

§ 20. Computation of Time

The time within which an act is to be done, as provided for in this title, shall be computed by excluding the first day and including the last day. If the last day is a legal holiday, it shall be excluded.

§ 21 to 35 Reserved

§ 36. Marriage License - Issuance - Delivery to Clergy or Other Qualified Person - Return - Penalties

Marriage licenses shall be issued to all applicants who are entitled under the laws of the Cherokee Nation to apply for a marriage license and to contract matrimony. Any person obtaining a marriage license from the court clerk shall deliver the license, within ten (10) days from the date of issue, to the qualified person who is to officiate before the marriage can be performed. The license issued shall be returned by qualified person who officiated the marriage or the persons married to the licensing authority who issued the same within five (5) days succeeding the date of the performance of the marriage therein authorized.

§ 101. **Grounds for Divorce**

The district court may grant a divorce for any of the following causes:

First. Abandonment for one (1) year.

Second. Adultery.

Third. Impotency.

Fourth. When the wife at the time of her marriage was pregnant by another than her husband.

Fifth. Extreme cruelty.

Sixth. Fraudulent contract.

Seventh. Incompatibility.

Eighth. Habitual drunkenness.

Ninth. Gross neglect of duty.

Tenth. Imprisonment of the other party in a tribal, state or federal penal institution under sentence thereto for the commission of a felony at the time the petition is filed.

Eleventh. The procurement of a final divorce decree without this state by a husband or wife which does not in this state release the other party from the obligations of the marriage.

Twelfth. Insanity for a period of five (5) years, the insane person having been an inmate of a tribal, state, or federal institution for the insane in some other state for such period, or of a private sanitarium, and affected with a type of insanity with a poor prognosis for recovery; provided, that no divorce shall be granted because of insanity until after a thorough examination of such insane person by three physicians, one of whom shall be a superintendent of the hospital or sanitarium for the insane in which the insane

defendant is confined, and the other two to be appointed by the court before whom the action is pending, and any two of such physicians shall agree that such insane person, at the time the petition in the divorce action is filed, has a poor prognosis for recovery; provided, further, however, that no divorce shall be granted on this ground to any person whose husband or wife is an inmate of a tribal, state, or federal institution in any state, unless the person applying for such divorce shall have been a resident of the reservation of the Cherokee Nation for at least five (5) years prior to the commencement of an action; and provided further, that a decree granted on this ground shall not relieve the successful party from contributing to the support and maintenance of the defendant. The court shall appoint a guardian ad litem to represent the insane defendant, which appointment shall be made at least ten (10) days before any decree is entered.

The district court may grant a divorce for: Incompatibility.

§ 102. Residency Requirement of Plaintiff or Defendant - Army Post or Military Reservation

A. Except as otherwise provided by subsection B of this section, the petitioner or the respondent in an action for divorce or annulment of a marriage must have been an actual resident, in good faith, of the Cherokee Nation, for six (6) months immediately preceding the filing of the petition.

B. Any person who has been a resident of any United States army post or military reservation within the Cherokee Nation, for six (6) months immediately preceding the filing of the petition, may bring action for divorce or annulment of a marriage or may be sued for divorce or annulment of a marriage.

§ 103. Venue - Divorce, Annulments, and Separate Maintenance

A. The venue of any action for divorce, annulment of a marriage or legal separation shall be in the district court of Cherokee Nation accepting civil filings and or as prescribed by Cherokee Nation District Court Rules. The action may be assigned for trial to any district court judge by the chief judge of the district court

2. An action for legal separation may be brought in the county in which either party is a resident at the time of the filing of the petition.

B. The court may, upon application of a party, transfer an action for divorce, annulment of marriage or legal separation at any time after filing of the petition to any district where venue would be proper under subsection A of this section, if good cause is shown.

§ 104. Personal Jurisdiction - Persons Once Living Within the State - Service

A. A court may exercise personal jurisdiction over a person, whether or not a resident of Cherokee Nation, who lived within Cherokee Nation in a marital or parental relationship, or both, as to all obligations for alimony and child support where the other party to the marital relationship continues to reside in Cherokee Nation. When the person who is subject to the jurisdiction of the court has departed from the Cherokee Nation, he may be served outside of the Cherokee Nation by any method that is authorized by the statutes of the Cherokee Nation.

B. The Court has jurisdiction over all natives.

C. The Court has jurisdiction over all persons that consent to jurisdiction.

D. The Court has jurisdiction over all persons allowed by Federal law whether or not the person consents.

§ 105. Petition - Summons

A. A proceeding for dissolution of marriage, an annulment of a marriage, or a legal separation shall be titled "In re the Marriage of _______ and ______".

B. The initial pleading in all proceedings under this title shall be denominated a petition. The person filing the petition shall be called the petitioner. A responsive pleading shall be denominated a response. The person filing the responsive pleading shall be called the respondent. Other pleadings shall be denominated as provided in the Rules of Civil Procedure, except as otherwise provided in this section.

C. The petition must be verified as true, by the affidavit of the petitioner.

D. A summons may issue thereon, and shall be served, or publication made, as in other civil cases.

E. Wherever it occurs in this title or in any other title of the Cherokee Nation statutes or in any forms or court documents prepared pursuant to the provisions of the Cherokee Nation statutes, the term "divorce" shall mean and be deemed to refer to a "dissolution of marriage" unless the context or subject matter otherwise requires.

§ 106. Answer May Allege Cause - New Matters Verified by Affidavit

A. The respondent, in his or her response, may allege a cause for a dissolution of marriage, annulment of the marriage or legal separation against the petitioner, and may have the same relief thereupon as he or she would be entitled to for a like cause if he or she were the petitioner.

B. When new matter is set up in the answer, it shall be verified as to such new matter by the affidavit of the respondent.

§ 107. Reserved

§ 107.1 Time for Final Order Where Minor Children Involved - Waiver - Educational Program Exceptions

A. 1. In an action for divorce where there are minor children involved, the court shall not issue a final order thereon for at least ninety (90) days from the date of filing the petition which ninety (90) days may be waived by the court for good cause shown and without objection by either party.

2. The court may require that within the ninety-day period specified by paragraph 1 of this subsection, the parties attend and complete an educational program.

B. This section shall not apply to divorces filed and any other the following apply to a party::

1. Abandonment for one (1) year;

2. Extreme cruelty;

3. Habitual drunkenness;

4. Imprisonment of the other party in a state or federal penal institution under sentence thereto for the commission of a felony at the time the petition is filed;

5. The procurement of a final divorce decree outside this state by a husband or wife which does not in this state release the other party from the obligations of the marriage;

6. Insanity for a period of five (5) years, the insane person having been an inmate of a state institution for the insane, or an inmate of a state institution for the insane in some other state for such period, or an inmate of a private sanitarium, and affected with a type of insanity with a poor prognosis for recovery;

7. Conviction of any crime involving child abuse committed upon a child of either party to the divorce by either party to the divorce; or

8. A child of either party has been adjudicated deprived as a result of the actions of either party to the divorce and the

party has not successfully completed the service and treatment plan required by the court.

C. After a petition has been filed in an action for divorce where there are minor children involved, the court may make any such order concerning property, children, support and expenses of the suit as provided for in Section 110 of this title, to be enforced during the pendency of the action, as may be right and proper.

D. The court may issue a final order in an action for divorce where minor children are involved before the ninety-day time period set forth in subsection A of this section has expired, if the court finds reconciliation is unlikely.

§ 107.3 Proceeding for Disposition of Children

A. 1. In any proceeding when the custody or visitation of a minor child or children is contested by any party, the court may appoint an attorney at law as guardian ad litem upon motion of the court or upon application of any party to appear for and represent the minor children.

2. The guardian ad litem may be appointed to objectively advocate on behalf of the child and act as an officer of the court to investigate all matters concerning the best interests of the child. In addition to other duties required by the court and as specified by the court, a guardian ad litem shall have the following responsibilities:

a. review documents, reports, records and other information relevant to the case, meet with and observe the child in appropriate settings, and interview parents, caregivers and health care providers and any other person with knowledge relevant to the case including, but not limited to, teachers, counselors and child care providers,

b. advocate for the best interests of the child by participating in the case, attending any hearings in the matter and advocating for appropriate services for the child when necessary,

c. monitor the best interests of the child throughout any judicial proceeding,

d. present written factual reports to the parties and court prior to trial or at any other time as specified by the court on the best interests of the child, which determination is solely the decision of the court, and

e. the guardian ad litem shall, as much as possible, maintain confidentiality of information related to the case and is not subject to discovery..

3. Expenses, costs, and attorney fees for the guardian ad litem may be allocated among the parties as determined by the court.

4. Attorneys whom regularly act as a guardian ad litem shall regularly attend continuing legal education courses that pertain to same.

B. When property, separate maintenance, or custody is at issue, the court:

1. May refer the issue or issues to mediation if feasible unless a party asserts or it appears to the court that domestic violence or child abuse has occurred, in which event the court shall halt or suspend professional mediation unless the court specifically finds that:

a. the following three conditions are satisfied:

(1) the professional mediator has substantial training concerning the effects of domestic violence or child abuse on victims,

(2) a party who is or alleges to be the victim of domestic violence is capable of negotiating with the other party in mediation, either alone or with assistance, without suffering an imbalance of power as a result of the alleged domestic violence, and

(3) the mediation process contains appropriate provisions and conditions to protect against an imbalance

of power between parties resulting from the alleged domestic violence or child abuse, or

b. in the case of domestic violence involving parents, the parent who is or alleges to be the victim requests mediation and the mediator is informed of the alleged domestic violence; and

2. When custody is at issue, the court may order, in addition to or in lieu of the provisions of paragraph 1 of this subsection, that each of the parties undergo individual counseling in a manner that the court deems appropriate, if the court finds that the parties can afford the counseling.

C. As used in this section:

1. "Child abuse or neglect" shall have the same meaning as "abuse" or "neglect" as defined elsewhere in the Cherokee Nation statutes or shall mean the child has been adjudicated deprived as a result of the actions or omission of either parent pursuant to the Cherokee Nation Children's Code; and

2. "Domestic violence" shall have the same meaning as such term is defined elsewhere in the Cherokee Nation statutes.

D. During any proceeding concerning child custody, should it be determined by the court that a party has intentionally made a false or frivolous accusation to the court of child abuse or neglect against the other party, the court shall proceed with any or all of the following:

1. Find the accusing party in contempt for perjury and refer for prosecution;

2. Consider the false allegations in determining custody; and

3. Award the obligation to pay all court costs and legal expenses encumbered by both parties arising from the allegations to the accusing party.

§ 108. Equally Wrong Parties - Divorce Granted to Both Parties - Powers of Court When Granting Alimony Without Divorce or Refusing Divorce

That the parties appear to be in equal wrong shall not be a basis for refusing to grant a divorce, but if a divorce is granted in such circumstances, it shall be granted to both parties. In any such case or where the court grants alimony without a divorce or in any case where a divorce is refused, the court may for good cause shown make such order as may be proper for the custody, maintenance and education of the children, and for the control and equitable division and disposition of the property of the parties, or of either of them, as may be proper, equitable and just, having due regard to the time and manner of acquiring such property, whether the title thereto be in either or both of said parties.

§ 109. Best Interest of Child Considered in Awarding Custody or Appointing Guardian - Joint Custody - Plan - Arbitration.

A. In awarding the custody of a minor unmarried child or in appointing a general guardian for said child, the court shall consider what appears to be in the best interests of the physical and mental and moral welfare of the child.

B. The court, pursuant to the provisions of subsection A of this section, may grant the care, custody, and control of a child to either parent or to the parents jointly.

For the purposes of this section, the terms joint custody and joint care, custody, and control mean the sharing by parents in all or some of the aspects of physical and legal care, custody, and control of their children.

C. If either or both parents have requested joint custody, said parents shall file with the court their plans for the exercise of joint care, custody, and control of their child. The parents of the child may submit a plan jointly, or either parent or both parents may submit separate plans. Any plan shall include but is not limited to provisions detailing the physical living arrangements for the child, child support obligations, medical and dental care for the child, school placement, and visitation rights. A plan shall be accompanied by an affidavit signed by each parent stating that said parent agrees to the plan and will abide by its terms. The plan and affidavit

shall be filed with the petition for a divorce or legal separation or after said petition is filed.

D. The court shall issue a final plan for the exercise of joint care, custody, and control of the child or children, based upon the plan submitted by the parents, separate or jointly, with appropriate changes deemed by the court to be in the best interests of the child. The court also may reject a request for joint custody and proceed as if the request for joint custody had not been made.

E. The parents having joint custody of the child may modify the terms of the plan for joint care, custody, and control. The modification to the plan shall be filed with the court and included with the plan. If the court determines the modifications are in the best interests of the child, the court shall approve the modifications.

F. The court also may modify the terms of the plan for joint care, custody, and control upon the request of one parent. The court shall not modify the plan unless the modifications are in the best interests of the child.

G. 1. The court may terminate a joint custody decree upon the request of one or both of the parents or whenever the court determines said decree is not in the best interests of the child.

2. Upon termination of a joint custody decree, the court shall proceed and issue a modified decree for the care, custody, and control of the child as if no such joint custody decree had been made.

H. In the event of a dispute between the parents having joint custody of a child as to the interpretation of a provision of said plan, the court may appoint an arbitrator to resolve said dispute. The arbitrator shall be a disinterested person knowledgeable in domestic relations law and family counseling. The determination of the arbitrator shall be final and binding on the parties to the proceedings until further order of the court.

If a parent refuses to consent to arbitration, the court may terminate the joint custody decree.

I. 1. In every proceeding in which there is a dispute as to the custody of a minor child, a determination by the court that domestic violence, stalking, or harassment has occurred raises a rebuttable presumption that sole custody, joint legal or physical custody, or any shared parenting plan with the perpetrator of domestic violence, harassing or stalking behavior is detrimental and not in the best interest of the child, and it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic violence, harassing or stalking behavior.

2. For the purposes of this subsection:

a. "domestic violence" means the threat of the infliction of physical injury, any act of physical harm or the creation of a reasonable fear thereof, or the intentional infliction of emotional distress by a parent or a present or former member of the household of the child, against the child or another member of the household, including coercive control by a parent involving physical, sexual, psychological, emotional, economic or financial abuse,

b. "stalking" means the willful course of conduct by a parent who repeatedly follows or harasses another person, and

c. "harassment" means a knowing and willful course or pattern of conduct by a parent directed at another parent which seriously alarms or is a nuisance to the person, and which serves no legitimate purpose including, but not limited to, harassing or obscene telephone calls or conduct that would cause a reasonable person to have a fear of death or bodily injury.

3. If a parent is absent or relocates as a result of an act of domestic violence by the other parent, the absence or relocation shall not be a factor that weighs against the parent in determining custody or visitation.

4. The court shall consider, as a primary factor, the safety and well-being of the child and of the parent who is the victim of domestic violence or stalking behavior, in addition to other facts regarding the best interest of the child.

5. The court shall consider the history of the parent causing physical harm, bodily injury, assault, verbal threats, stalking, or harassing behavior, or the fear of physical harm, bodily injury, or assault to another person, including the minor child, in determining issues regarding custody and visitation.

§ 109.1 - Custody of Child During Separation without Divorce

If the parents of a minor unmarried child are separated without being divorced, the judge of the district court, upon application of either parent, may issue any civil process necessary to inquire into the custody of said minor unmarried child. The court may award the custody of said child to either party or both, in accordance with the best interests of the child, for such time and pursuant to such regulations as the case may require.

§ 109.2 - Determination of Paternity, Custody and Child Support

A. Except as otherwise provided, in any action concerning the custody of a minor unmarried child or the determination of child support, the court may determine if the parties to the action are the parents of the children. In a paternity action, prior to genetic testing to establish paternity, the court may award custody to the presumed father if it would be in the best interests of the child. As used in this subsection, "presumed father" means a man who, by operation of law, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.

B. If the parties to the action are the parents of the children, the court may determine which party should have custody of said children, may award child support to the parent to whom it awards custody, and may make an appropriate order for payment of costs and attorney fees.

§ 109.3 - Child Custody, Visitation, and Guardianship - Domestic Abuse, Stalking, or Harassment

In every case involving the custody of, guardianship of or visitation with a child, the court shall consider evidence of domestic abuse, stalking and/or harassing behavior properly brought before it. If the occurrence of domestic abuse, stalking or harassing behavior is established by a preponderance of the evidence, there shall be a rebuttable presumption that it is not in the best interest of the child to have custody, guardianship, or unsupervised visitation granted to the person against whom domestic abuse, stalking or harassing behavior has been established.

§ 109.5 - Presumption of Legal Custody

When an order has been entered which provides for payment of child support and the legal custodian places physical custody of the child with any person, subject to the provisions of the Cherokee Nation Children's Code or this title, without obtaining a modification of the order to change legal custody, the placement of the physical custody, by operation of law, shall create a presumption that such person with whom the child was placed has legal physical custody of the child for the purposes of the payment of child support and the obligee shall remit such child support obligation to the person with whom the placement was made.

§ 109.6 - Certain Information and Records to be Available to Both Custodial and Noncustodial Parent

Any information or any record relating to a minor child which is available to the custodial parent of the child, upon request, shall also be provided the noncustodial parent of the child. Provided, however, that this right may be restricted by the court, upon application, if such action is deemed necessary in the best interests of the child. For the purpose of this section, "information" and "record" shall include, but not be limited to, information and records kept by the school, physician and medical facility of the minor child.

§ 110 - Orders Concerning Property, Children, Support and Expenses

A. 1. Except as otherwise provided by this subsection, upon the filing of a petition for dissolution of marriage, annulment of a

marriage or legal separation by the petitioner and upon personal service of the petition and summons on the respondent, or upon waiver and acceptance of service by the respondent, an automatic temporary injunction shall be in effect against both parties pursuant to the provisions of this section:

a. restraining the parties from transferring, encumbering, concealing, or in any way disposing of, without the written consent of the other party or an order of the court, any marital property, except in the usual course of business, for the purpose of retaining an attorney for the case or for the necessities of life and requiring each party to notify the other party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures made after the injunction is in effect,

b. restraining the parties from:

(1) intentionally or knowingly damaging or destroying the tangible property of the parties, or of either of them, specifically including, but not limited to, any electronically stored materials, electronic communications, social network data, financial records, and any document that represents or embodies anything of value,

(2) making any withdrawal for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account,

(3) withdrawing or borrowing in any manner all or any part of the cash surrender value of any life insurance policies on either party or their children,

(4) changing or in any manner altering the beneficiary designation on any life insurance policies on the life of either party or any of their children,

(5) canceling, altering, or in any manner affecting any casualty, automobile, or health insurance policies insuring the parties' property or persons,

(6) opening or diverting mail addressed to the other party, and

(7) signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instruments payable to either party without the personal signature of the other party,

c. requiring the parties to maintain all presently existing health, property, life and other insurance which the individual is presently carrying on any member of this family unit, and to cooperate as necessary in the filing and processing of claims. Any employer-provided health insurance currently in existence shall remain in full force and effect for all family members,

d. enjoining both parties from molesting or disturbing the peace of the other party or of the children to the marriage,

e. restraining both parties from disrupting or withdrawing their children from an educational facility and programs where the children historically have been enrolled, or day care,

f. restraining both parties from hiding or secreting their children from the other party,

g. restraining both parties from removing the minor children of the parties, if any, beyond the jurisdiction of the Cherokee Nation, acting directly or in concert with others, except for vacations of two (2) weeks or less duration, without the prior written consent of the other party, which shall not be unreasonably withheld, and

h. requiring, unless otherwise agreed upon by the parties in writing, the delivery by each party to the other within thirty (30) days from the earlier of either the date of service of the summons or the filing of an initial pleading by the respondent, the following documents:

(1) the federal and state income tax returns of each party for the past two (2) years and any nonpublic,

limited partnership and privately held corporate returns for any entity in which either party has an interest, together with all supporting documentation for the tax returns, including but not limited to W-2 forms, 1099 forms, K-1 forms, Schedule C and Schedule E. If a return is not completed at the time of disclosure, the parties shall provide the documents necessary to prepare the tax return of the party, to include W-2 forms, 1099 forms, K-1 forms, copies of extension requests and estimated tax payments,

(2) two (2) months of the most recent pay stubs from each employer for whom the party worked,

(3) statements for the past six (6) months for all bank accounts held in the name of either party individually or jointly, or in the name of another person for the benefit of either party, or held by either party for the benefit of the minor child or children of the parties,

(4) documentation regarding the cost and nature of available health insurance coverage for the benefit of either party or the minor child or children of the parties,

(5) documentation regarding the cost and nature of employment or educationally related child care expenses incurred for the benefit of the minor child or children of the parties, and

(6) documentation regarding all debts in the name of either party individually or jointly, showing the most recent balance due and payment terms.

2. If either party is not in possession of a document required pursuant to subparagraph h of paragraph 1 of this subsection or has not been able to obtain the document in a timely fashion, the party shall state in verified writing, under the penalty of perjury, the specific document which is not available, the reasons the document is not available, and what efforts have been made to obtain the document. As more information becomes available, there is a continuing duty to supplement the disclosures.

3. Nothing in this subsection shall prohibit a party from conducting further discovery pursuant to code and or Court Rule..

4. a. The provisions of the automatic temporary injunction shall be printed as an attachment to the summons and the petition and entitled "Automatic Temporary Injunction Notice".

b. The automatic temporary injunction notice shall contain a provision which will allow the parties to waive the automatic temporary injunction. In addition, the provision must state that unless both parties have agreed and have signed their names in the space provided, that the automatic temporary injunction will be effective. Along with the waiver provision, the notice shall contain a check box and space available for the signatures of the parties.

5. The automatic temporary injunction shall become an order of the court upon fulfillment of the requirements of paragraph 1 of this subsection unless and until:

a. the automatic temporary injunction is waived by the parties. Both parties must indicate on the automatic temporary injunction notice in the space provided that the parties have both agreed to waive the automatic temporary injunction. Each party must sign his or her own name on the notice in the space provided, or

b. a party, no later than three (3) days after service on the party, files an objection to the injunction and requests a hearing. Provided, the automatic temporary injunction shall remain in effect until the hearing and a judge orders the injunction removed.

6. The automatic temporary injunction shall be dissolved upon the granting of the dissolution of marriage, final order of legal separation or other final order.

7. Nothing in this subsection shall preclude either party from applying to the court for further temporary orders, pursuant to this section, an expanded automatic temporary injunction, or modification or revocation thereto.

8. a. With regard to an automatic temporary injunction, when a petition for dissolution of marriage, annulment of a marriage, or a legal separation is filed and served, a peace officer shall use every reasonable means to enforce the injunction which enjoins both parties from molesting or disturbing the peace of the other party or the children of

the marriage against a petitioner or respondent, whenever:

(1) there is exhibited by a respondent or by the petitioner to the peace officer a copy of the petition or summons, with an attached Temporary Injunction Notice, duly filed and issued pursuant to this section, together with a certified copy of the affidavit of service of process or a certified copy of the waiver and acceptance of service, and

(2) the peace officer has cause to believe that a violation of the automatic temporary injunction has occurred.

b. A peace officer shall not be held civilly or criminally liable for his or her action pursuant to this paragraph if his or her action is in good faith and without malice.

B. After a petition has been filed in an action for dissolution of marriage or legal separation either party may request the court to issue:

1. A temporary order:

a. regarding child custody, support or visitation,

b. regarding spousal maintenance,

c. regarding payment of debt,

d. regarding possession of property,

e. regarding attorney fees, and

f. providing other injunctive relief proper in the circumstances.

All applications for temporary orders shall set forth the factual basis for the application and shall be verified by the party seeking relief. The application and a notice of hearing shall be served on the other party in any manner provided for in the Rules of Civil Procedure.

The court shall not issue a temporary order until at least five (5) days' notice of hearing is given to the other party.

After notice and hearing, a court may issue a temporary order granting the relief as provided by this paragraph; and/or

2. A temporary restraining order. If the court finds on the basis of a verified application and testimony of witnesses that irreparable harm will result to the moving party, or a child of a party if no order is issued before the adverse party or attorney for the adverse party can be heard in opposition, the court may issue a temporary restraining order which shall become immediately effective and enforceable without requiring notice and opportunity to be heard to the other party. Provided, for the purposes of this section, no minor child or children temporarily residing in a licensed, certified domestic violence shelter in the state shall be removed by an ex parte order. If a temporary restraining order is issued pursuant to this paragraph, the motion for a temporary order shall be set within ten (10) days.

C. Any temporary orders and the automatic temporary injunction, or specific terms thereof, may be vacated or modified prior to or in conjunction with a final decree on a showing by either party of facts necessary for vacation or modification. Temporary orders and the automatic temporary injunction terminate when the final judgment on all issues, except attorney fees and costs, is rendered or when the action is dismissed. The court may reserve jurisdiction to rule on an application for a contempt citation for a violation of a temporary order or the automatic temporary injunction which is filed any time prior to the time the temporary order or injunction terminates.

D. Upon granting a decree of dissolution of marriage, annulment of a marriage, or legal separation, the court may require either party to pay such reasonable expenses of the other as may be just and proper under the circumstances.

E. The court may in its discretion make additional orders relative to the expenses of any such subsequent actions, including but not limited to writs of habeas corpus, brought by the parties or their attorneys, for the enforcement or modification of any interlocutory

or final orders in the dissolution of marriage action made for the benefit of either party or their respective attorneys.

§ 110.1 - Policy for Equal Access to Minor Children by Parents

It is the policy of this state to assure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interests of their children and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or dissolved their marriage, provided that the parents agree to cooperate and that domestic violence, stalking, or harassing behaviors are not present in the parental relationship. To effectuate this policy, if requested by a parent, the court may provide substantially equal access to the minor children to both parents at a temporary order hearing, unless the court finds that shared parenting would be detrimental to the child.

§ 110.2 - Court Order to Submit to Blood, Saliva, Urine, or Other Test

In any action in which the custody of or the visitation with a child is a relevant fact and at issue, the court may order the mother, the child or father to submit to blood, saliva, urine or any other test deemed necessary by the court in determining that the custody of or visitation with the child will be in the best interests of the child. If so ordered and any party or child refuses to submit to such tests, the court may enforce its order if the rights of others and the interests of justice so require unless such individual is found to have good cause for refusing to cooperate.

§ 111 - Indirect Contempt for Disobeying Property Division Orders

Any order pertaining to the division of property pursuant to a divorce or separate maintenance action, if willfully disobeyed, may be enforced as an indirect contempt of court.

§ 111.1 - Order to Provide Minimum Visitation for Noncustodial Parent - Violation of Order

A. 1. Any order providing for the visitation of a noncustodial parent with any of the children of such noncustodial parent shall provide a specified minimum amount of visitation between the noncustodial parent and the child unless the court determines otherwise.

2. Except for good cause shown and when in the best interests of the child, the order shall encourage additional visitations of the noncustodial parent and the child and in addition encourage liberal telephone communications between the noncustodial parent and the child.

3. The court may award visitation by a noncustodial parent who was determined to have committed domestic violence or engaged in stalking behavior as defined in Section 109 of this title, if the court is able to provide for the safety of the child and the parent who is the victim of that domestic violence.

4. In a visitation order, the court shall provide for the safety of the minor child and victim of domestic violence, stalking, or harassment as defined in Section 109 of this title, and subject to the provisions of Section 109 of this title, may:

a. order the exchange of a child to be facilitated by a third party where the parents do not have any contact with each other,

b. order an exchange of a child to occur in a protected setting,

c. order visitation supervised by another person or agency,

d. order the abusive, stalking, or harassing parent to pay a fee to help defray the costs of supervised visitation or

other costs of child exchanges, including compensating third parties,

e. order the abusive, stalking, or harassing parent to attend and complete, to the satisfaction of the court, an intervention program for batterers certified by the Office of the Attorney General,

f. prohibit unsupervised or overnight visitation until the abusive, stalking, or harassing parent has successfully completed a specialized program for abusers and the parent has neither threatened nor exhibited violence for a substantial period of time,

g. order the abusive, stalking, or harassing parent to abstain from the possession or consumption of alcohol or controlled substances during the visitation and for twenty-four (24) hours preceding visitation,

h. order the abusive, stalking, or harassing parent to complete a danger/lethality assessment by a qualified mental health professional, and

i. impose any other condition that is deemed necessary to provide for the safety of the child, the victim of domestic violence, stalking, or harassing behavior, or another household member.

5. The court shall not order a victim of domestic violence, stalking, or harassment to be present during child visitation exchange if the victim of domestic violence, stalking, or harassment objects to being present.

6. Visitation shall be terminated if:

a. the abusive, stalking, or harassing parent repeatedly violates the terms and conditions of visitation,

b. the child becomes severely distressed in response to visitation, including the determination by a mental health professional or certified domestic violence specialist that visitation with the abusive, stalking, or harassing parent is causing the child severe distress which is not in the best interest of the child, or

c. there are clear indications that the abusive, stalking, or harassing parent has threatened to either harm or flee with the child, or has threatened to harm the custodial parent.

7. Whether or not visitation is allowed, the court shall order the address of the child and the victim of domestic violence, stalking, or harassing behavior to be kept confidential if requested.

a. The court may order that the victim of domestic violence, stalking, or harassing behavior maintain a confidential address from the other party.

b. The abusive, stalking, or harassing parent may be denied access to the medical and educational records of the child if those records may be used to determine the location of the child.

B. 1. Except for good cause shown, when a noncustodial parent who is ordered to pay child support and who is awarded visitation rights fails to pay child support, the custodial parent shall not refuse to honor the visitation rights of the noncustodial parent.

2. When a custodial parent refuses to honor the visitation rights of the noncustodial parent, the noncustodial parent shall not fail to pay any ordered child support or alimony.

C. 1. Violation of an order providing for the payment of child support or providing for the visitation of a noncustodial parent with any of the children of such noncustodial parent may be prosecuted as indirect civil contempt or as otherwise deemed appropriate by the court.

2. Any person complying in good faith by refusing to allow his or her child to be transported by an intoxicated driver, shall have an affirmative defense to a contempt of court proceeding in a divorce or custody action.

3. Unless good cause is shown for the noncompliance, the prevailing party shall be entitled to recover court costs and attorney fees expended in enforcing the order and any other reasonable costs and expenses incurred in connection with the denied child support or denied visitation as authorized by the court.

§ 111.1A - Development and Periodic Review of Standard Visitation Schedule and Advisory Guidelines

A. By January 1, 2022, the presiding district court judge shall have developed a standard visitation schedule and advisory guidelines which may be used by the district courts of the Cherokee Nation as deemed necessary.

B. The standard visitation schedule should include a minimum graduated visitation schedule for children under the age of five (5) years and a minimum graduated visitation schedule for children five (5) years of age through seventeen (17) years of age. In addition, the standard visitation schedule should address:

1. Midweek and weekend time-sharing;

2. Differing geographical residences of the custodian and noncustodian of the child requesting visitation;

3. Holidays, including Friday and Monday holidays;

4. Summer vacation break;

5. Midterm school breaks;

6. Notice requirements and authorized reasons for cancellations of visitation;

7. Transportation and transportation costs, including pick up and return of the child;

8. Religious, school, and extracurricular activities;

9. Grandparent and relative contact;

10. The birthday of the child;

11. Sibling visitation schedules;

12. Special circumstances, including, but not limited to, emergencies; and or

13. Any other standards deemed necessary by the presiding district court judge.

C. 1. The presiding district court judge. shall develop advisory guidelines for use by the district courts when parties to any action concerning the custody of a child are unable to mutually agree upon a visitation schedule.

2. The advisory guidelines should include the following considerations at a minimum:

a. a preference for visitation schedules that are mutually agreed upon by both parents over a court-imposed solution,

b. a visitation schedule which should maximize the continuity and stability of the life of the child,

c. special considerations should be given to each parent to make the child available to attend family functions, including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or in the life of either parent which may inadvertently conflict with the visitation schedule,

d. a visitation schedule which will not interrupt the regular school hours of the child,

e. a visitation schedule should reasonably accommodate the work schedule of both parents and may increase the visitation time allowed to the noncustodial parent but should not diminish the standardized visitation schedule,

f. a visitation schedule should reasonably accommodate the distance between the parties and the expense of exercising visitation,

g. each parent should permit and encourage liberal electronic contact during reasonable hours and uncensored

mail privileges with the child, and

h. each parent should be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates a religious holiday that the other parent does not celebrate shall have the right to be together with the child on the religious holiday.

D. The presiding district court judge. shall:

1. Make the standard visitation schedule and advisory guidelines available to the district courts of this state; and

2. Periodically review and update the guidelines as deemed necessary.

§ 111.2 - Liability and Remedies Available Where Person Not a Party to a Custody Proceeding Denies Another of Right to Custody or Visitation

Any person who is not a party to a child custody proceeding, and who intentionally removes, causes the removal of, assists in the removal of, or detains any child under eighteen (18) years of age with intent to deny another person's right to custody of the child or visitation under an existing court order shall be liable in an action at law. Remedies available pursuant to this section are in addition to any other remedies available by law or equity and may include, but shall not be limited to, the following:

1. Damages for loss of service, society, and companionship;

2. Compensatory damages for reasonable expenses incurred in searching for the missing child or attending court hearings; and

3. The prevailing party in such action shall be awarded reasonable attorney fees.

§ 111.3 - Duty to Facilitate Visitation Rights of Noncustodial Parent - Motion for Enforcement - Order

A. Any order of the court providing for visitation shall contain a provision stating that the custodial parent has a duty to facilitate visitation of a minor child with the noncustodial parent.

B. When a noncustodial parent has been granted visitation rights and those rights are denied or otherwise interfered with by the custodial parent, in addition to the remedy provided in subsection B of Section 111.1 of this title, the noncustodial parent may file with the court clerk a motion for enforcement of visitation rights. The motion shall be filed on a form provided by the court clerk. Upon filing of the motion, the court shall immediately set a hearing on the motion, which shall be not more than twenty-one (21) days after the filing of the motion.

C. Notice of a hearing pursuant to subsection A of this section shall be given to all interested parties by certified mail, return receipt requested, or as ordered by the court.

D. If the court finds that visitation rights of the noncustodial parent have been unreasonably denied or otherwise interfered with by the custodial parent, the court shall enter an order providing for one or more of the following:

1. A specific visitation schedule;

2. Compensating visitation time for the visitation denied or otherwise interfered with, which time shall be of the same type (e.g. holiday, weekday, weekend, summer) as the visitation denied or otherwise interfered with, and shall be at the convenience of the noncustodial parent;

3. Posting of a bond, either cash or with sufficient sureties, conditioned upon compliance with the order granting visitation rights;

4.Attendance of one or both parents at counseling or educational sessions which focus on the impact of visitation disputes

on children;

5. Supervised visitation; or

6. Any other remedy the court considers appropriate, which may include an order which modifies a prior order granting child custody.

E. The prevailing party shall be granted reasonable attorney fees, mediation costs, and court costs.

F. Final disposition of a motion filed pursuant to this section shall take place no later than forty-five (45) days after filing of the motion.

G. The Court shall provide the form required by subsection A of this section to be used for a motion to enforce visitation rights which shall be in substantially the following form:

IN THE DISTRICT COURT CHEROKEE NATION

________________, Petitioner/Plaintiff,

v.

________________, Respondent/Defendant.

Case No. ________________

Assigned Judge _____________________________

MOTION FOR ENFORCEMENT OF

NON-CUSTODIAL PARENT VISITATION RIGHTS

The undersigned Non-Custodial Parent in the above case moves the Court, pursuant to the provisions of Section 111.3 of Title 43 of the Cherokee Nation Statutes, to enforce visitation rights which have been unreasonably denied or interfered with by the Custodial Parent.

The Name(s) and Age(s) of the Child(ren) to which my visitation rights have been unreasonably denied are:

____

Date of Birth: ______________________________

____

Date of Birth: ______________________________

____

Date of Birth: ______________________________

The approximate date of my last visit with the Child(ren) was:

____.

Within the past 12 months, I have visited with the Child(ren) approximately _________ of times of visitation times.

Within the past 12 months, I have been denied requested visitation approximately _________ of times of denied visitation times.

On the attached page, I have stated THE SPECIFIC DETAILS as to how and when my visitation with the Child(ren) was denied.

Signed under penalties of perjury this ________ day of _________________________, 20______.

My Signature: ____

My Full Name: ____

My Mailing Address: ____

My Telephone Numbers: ____

____

____

Subscribed and sworn to before me this _____ day of __________, 20__.

____

Notary Public (or Clerk or Judge)

My Commission Expires:

____

ORDER

The people of the Cherokee Nation, to the within-named defendant:

You are hereby directed to appear and answer the foregoing claim and to have with you all books, papers, and witnesses needed by you to establish your defense to the claim.

This matter shall be heard at ____________________ (name or address of building), in _______________, County of _______________, Cherokee Nation,, at the hour of _____ o'clock of the _____ day of __________, 20__. And you are further notified that in case you do not so appear judgment will be given against you as follows:

For the enforcement or modification of custody as requested by the movant.

And, in addition, for costs of the action (including attorney fees where provided by law), including costs of service of the order.

Dated this _____ day of __________, 20__.

____

Clerk of the Court (or Judge)

A copy of this order must be mailed by certified mail, return receipt requested to the non-moving party and return of service brought to the hearing.

§ 111.4 - Refusal of Visitation Based on Reasonable Belief of Abuse or Neglect - Suspension of Visitation Upon Evidence of Abuse or Neglect

A. A parent who, in good faith and with a reasonable belief supported by fact, determines that the child of that parent is the victim of child abuse or neglect, or suffers from effects of domestic violence, may take necessary actions to protect the child, including refusing to permit visitation.

B. In cases in which there is evidence to substantiate suspected or confirmed child abuse or neglect, visitation shall be suspended.

§ 112 - Care, Custody, and Support of Minor Children

A. A petition or cross-petition for a divorce, legal separation, or annulment must state whether or not the parties have minor

children of the marriage. If there are minor children of the marriage, the court:

1. Shall make provision for guardianship, custody, medical care, support and education of the children;

2. Unless not in the best interests of the children, may provide for the visitation of the noncustodial parent with any of the children of the noncustodial parent; and

3. May modify or change any order whenever circumstances render the change proper either before or after final judgment in the action; provided, that the amount of the periodic child support payment shall not be modified retroactively or payment of all or a portion of the past due amount waived, except by mutual agreement of the obligor and obligee, or if the obligee has assigned child support rights to the Child Support Department or other entity, by agreement of the Department or other entity. Unless the parties agree to the contrary, a completed child support computation form shall be required to be filed with the child support order.

B. In any action in which there are minor unmarried children in awarding or modifying the custody of the child or in appointing a general guardian for the child, the court shall be guided by the provisions of Section 112.5 <https://www.oscn.net/applications/oscn/DeliverDocument.asp?citeid=455331> of this title and shall consider what appears to be in the best interests of the child.

C. 1. When it is in the best interests of a minor unmarried child, the court shall:

a. assure children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and

b. encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

2. There shall be neither a legal preference nor a presumption for or against joint legal custody, joint physical custody, or sole custody.

3. When in the best interests of the child, custody shall be awarded in a way which assures the frequent and continuing contact of the child with both parents. When awarding custody to either parent, the court:

a. shall consider, among other facts, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and

b. shall not prefer a parent as a custodian of the child because of the gender of that parent.

4. In any action, there shall be neither a legal preference or a presumption for or against private or public school or home-schooling in awarding the custody of a child, or in appointing a general guardian for the child.

5. Notwithstanding any custody determination made pursuant to the Cherokee Nation Children’s Code, when a parent of a child is required to be separated from a child due to military service, the court shall not enter a final order modifying an existing custody order until such time as the parent has completed the term of duty requiring separation. For purposes of this paragraph:

a. in the case of a parent who is a member of the Army, Navy, Air Force, Marine Corps or Coast Guard, the term "military service" means a combat deployment, contingency operation, or natural disaster requiring the use of orders that do not permit any family member to accompany the member,

b. in the case of a parent who is a member of the National Guard, the term "military service" means service under a call to active service authorized by the President of the United States or the Secretary of Defense for a period of more than thirty (30) consecutive days under 32 U.S.C. 502(f) for purposes of responding to a national emergency declared by the President and supported by federal funds. "Military service" shall include any period during which a member is absent from duty on account of sickness, wounds, leave or other lawful cause. “Military service” shall also include training that service members are required to attend, and

c. the court may enter a temporary custody or visitation order pursuant to the requirements of the Deployed Parents Custody and Visitation Act.

6. In making an order for custody, the court shall require compliance with Section 112.3 <https://www.oscn.net/applications/oscn/DeliverDocument.asp?citeid=388969> of this title.

D. 1. Except for good cause shown, a pattern of failure to allow court-ordered visitation may be determined to be contrary to the best interests of the child and as such may be grounds for modification of the child custody order.

2. For any action brought pursuant to the provisions of this section which the court determines to be contrary to the best interests of the child, the prevailing party shall be entitled to recover court costs, attorney fees and any other reasonable costs and expenses incurred with the action.

E. Except as otherwise provided by Section 112.1A <https://www.oscn.net/applications/oscn/DeliverDocument.asp?citeid=274981> of this title, any child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a child is regularly enrolled in and attending high school, other means of high school education, or an alternative high school education program as a full-time student, the child shall be entitled to support by the parents until the child graduates from high school or until the age of twenty (20) years, whichever occurs first. Full-time attendance shall include regularly scheduled breaks from the school year. No hearing or further order is required to extend support pursuant to this subsection after the child reaches the age of eighteen (18) years.

F. In any case in which a child support order or custody order or both is entered, enforced or modified, the court may make a determination of the arrearages of child support.

§ 112.1 - Parental Support of Children with Disabilities

A. In this section:

1. "Adult child" means a child eighteen (18) years of age or older.

2. "Child" means a son or daughter of any age.

B. 1. The court may order either or both parents to provide for the support of a child for an indefinite period and may determine the rights and duties of the parents if the court finds that:

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

b. the disability exists, or the cause of the disability is known to exist, on or before the

eighteenth birthday of the child.

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

C. 1. A suit provided by this section may be filed only by:

a. a parent of the child or another person having physical custody or guardianship of the child under a court order, or

b. the child if the child:

(1) is eighteen (18) years of age or older,

(2) does not have a mental disability, and

(3) is determined by the court to be capable of managing the child's financial affairs.

2. The parent, the child, if the child is eighteen (18) years of age or older, or other person may not transfer or assign the cause of action to any person, including a governmental or private entity or agency, except for an assignment made to the Title IV-D agency.

D. 1. A suit under this section may be filed:

a. regardless of the age of the child, and

b. as an independent cause of action or joined with any other claim or remedy provided by this title.

2. If no court has continuing, exclusive jurisdiction of the child, an action under this section may be filed as an original suit.

3. If there is a court of continuing, exclusive jurisdiction, an action under this section may be filed as a suit for modification.

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

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

2. Whether the parent pays for or will pay for the care or supervision of the adult child or provides or will provide substantial care or personal supervision of the adult child;

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

4. Any other financial resources or other resources or programs available for the support, care, and

supervision of the adult child.

F. An order provided by this section may contain provisions governing the rights and duties of both parents with respect to the support of the child and may be modified or enforced in the same manner as any other order provided by this title.

§ 112.2 - Custody, Guardianship, Visitation - Mandatory Considerations

A. In every case involving the custody of, guardianship of or visitation with a child, the court shall consider for determining the custody of, guardianship of or the visitation with a child whether any person seeking custody or who has custody of, guardianship of or visitation with a child:

1. Is or has been subject to the registration requirements of any tribal, state, or federal sex offenders registration act;

2. Has been convicted of a crime of Child Abuse;

3. Is an alcohol-dependent person or a drug-dependent person as established by clear and convincing evidence and who can be expected in the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person as a result of such dependency;

4. Has been convicted of domestic abuse within the past five (5) years;

5. Is residing with an individual who is or has been subject to the registration requirements of any tribal, state, or federal sex offenders registration act;

6. Is residing with a person who has been convicted of a crime of Child Abuse; or

7. Is residing with a person who has been convicted of domestic abuse within the past five (5) years.

B. There shall be a rebuttable presumption that it is not in the best interests of the child to have custody or guardianship granted to a person who:

1. Is subject to or has been subject to the registration requirements of any tribal, state, or federal sex offenders registration act;

2. Has been convicted of a crime of Child Abuse;

3. Is an alcohol-dependent person or a drug-dependent person as established by clear and convincing evidence and who can be expected in the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person as a result of such dependency;

4. Has been convicted of domestic abuse within the past five (5) years;

5. Is residing with a person who is or has been subject to the registration requirements of any tribal, state, or federal sex offenders registration act;

6. Is residing with a person who has been convicted of a crime of Child Abuse; or

7. Is residing with a person convicted of domestic abuse within the past five (5) years.

C. Custody of, guardianship of, or visitation with a child shall not be granted to any person if it is established that the custody, guardianship or visitation will likely expose the child to a foreseeable risk of material harm.

D. Supervised Visitation Program shall be set up as the court deems in the best interest of the child(ren).

§ 112.2A - Parent's Right to Change Child's Residence

A parent entitled to the custody of a child has a right to change his residence, subject to the power of the district court to restrain a removal which would prejudice the rights or welfare of the child.

§ 112.3 - Relocation Notification of Children

A. As used in this section:

1. "Change of residence address" means a change in the primary residence of an adult;

2. "Child" means a child under the age of eighteen (18) who has not been judicially emancipated;

3. "Person entitled to custody of or visitation with a child" means a person so entitled by virtue of a court order or by an express agreement that is subject to court enforcement;

4. "Principal residence of a child" means:

a. the location designated by a court to be the primary residence of the child,

b. in the absence of a court order, the location at which the parties have expressly agreed that the child will primarily reside, or

c. in the absence of a court order or an express agreement, the location, if any, at which the child, preceding the time involved, lived with the child’s parents, a parent, or a person acting as parent for at least six (6) consecutive months and, in the case of a child less than six (6) months old, the location at which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period; and

5. "Relocation" means a change in the principal residence of a child over seventy-five (75) miles from the child's principal residence for a period of sixty (60) days or more, but does not include a temporary absence from the principal residence.

B. 1. Except as otherwise provided by this section, a person who has the right to establish the principal residence of the child shall notify every other person entitled to visitation with the child of a proposed relocation of the child’s principal residence as required by this section.

2. Except as otherwise provided by this section, an adult entitled to visitation with a child shall notify every other person entitled to custody of or visitation with the child of an intended change in the primary residence address of the adult as required by this section.

C. 1. Except as provided by this section, notice of a proposed relocation of the principal residence of a

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child or notice of an intended change of the primary residence address of an adult must be given:

a. by mail to the last-known address of the person to be notified, and

b. no later than:

(1) the sixtieth day before the date of the intended move or proposed relocation, or

(2) the tenth day after the date that the person knows the information required to be furnished pursuant to this subsection, if the person did not know and could not reasonably have known the information in sufficient time to comply with the sixty-day notice, and it is not reasonably possible to extend the time for relocation of the child.

2. Except as provided by this section, the following information, if available, must be included with the notice of intended relocation of the child or change of primary residence of an adult:

a. the intended new residence, including the specific address, if known,

b. the mailing address, if not the same,

c. the home telephone number, if known,

d. the date of the intended move or proposed relocation,

e. a brief statement of the specific reasons for the proposed relocation of a child, if applicable,

f. a proposal for a revised schedule of visitation with the child, if any, and

g. a warning to the nonrelocating parent that an objection to the relocation must be made within thirty (30) days or the relocation will be permitted.

3. A person required to give notice of a proposed relocation or change of residence address under this subsection has a continuing duty to provide a change in or addition to the information required by this subsection as that information becomes known.

D. After the effective date of this act, an order issued by a court directed to a person entitled to custody of or visitation with a child shall include the following or substantially similar terms:

"You, as a party in this action, are ordered to notify every other party to this action in writing of a proposed relocation of the child, change of your primary residence address, and the following information:

1. The intended new residence, including the specific address, if known;

2. The mailing address, if not the same;

3. The home telephone number, if known;

4. The date of the intended move or proposed relocation;

5. A brief statement of the specific reasons for the proposed relocation of a child, if applicable; and

6. A proposal for a revised schedule of visitation with the child, if any.

You are further ordered to give written notice of the proposed relocation or change of residence address on or before the sixtieth day before a proposed change. If you do not know and could not have reasonably known of the change in sufficient time to provide a sixty-day notice, you are ordered to give written notice of the change on or before the tenth day after the date that you know of the change.

Your obligation to furnish this information to every other party continues as long as you, or any other person, by virtue of this order, are entitled to custody of or visitation with a child covered by this order.

Your failure to obey the order of this court to provide every other party with notice of information regarding the proposed relocation or change of residence address may result in further litigation to enforce the order, including contempt of court.

In addition, your failure to notify of a relocation of the child may be taken into account in a modification of custody of, visitation with, possession of or access to the child. Reasonable costs and attorney fees also may be assessed against you if you fail to give the required notice.

If you, as the nonrelocating parent, do not file a proceeding seeking a temporary or permanent order to prevent the relocation within thirty (30) days after receipt of notice of the intent of the other party to relocate the residence of the child, relocation is authorized."

E. 1. On a finding by the court that the health, safety, or liberty of a person or a child would be unreasonably put at risk by the disclosure of the required identifying information in conjunction with a proposed relocation of the child or change of residence of an adult, the court may order that:

a. the specific residence address and telephone number of the child or of the adult and other identifying information shall not be disclosed in the pleadings, other documents filed in the proceeding, or the final order, except for an in camera disclosure,

b. the notice requirements provided by this article be waived to the extent necessary to protect confidentiality and the health, safety or liberty of a person or child, and

c. any other remedial action that the court considers necessary to facilitate the legitimate needs of the parties and the best interest of the child.

2. If appropriate, the court may conduct an ex parte hearing pursuant to this subsection.

F. 1. The court may consider a failure to provide notice of a proposed relocation of a child as provided by this section as:

a. a factor in making its determination regarding the relocation of a child,

b. a factor in determining whether custody or visitation should be modified,

c. a basis for ordering the return of the child if the relocation has taken place without notice, and

d. sufficient cause to order the person seeking to relocate the child to pay reasonable expenses and attorney fees incurred by the person objecting to the relocation.

2. In addition to the sanctions provided by this subsection, the court may make a finding of contempt if

a party violates the notice requirement required by this section and may impose the sanctions authorized for contempt of a court order.

G. 1. The person entitled to custody of a child may relocate the principal residence of a child after providing notice as provided by this section unless a parent entitled to notice files a proceeding seeking a temporary or permanent order to prevent the relocation within thirty (30) days after receipt of the notice.

2. A parent entitled by court order or written agreement to visitation with a child may file a proceeding objecting to a proposed relocation of the principal residence of a child and seek a temporary or permanent order to prevent the relocation.

3. If relocation of the child is proposed, a nonparent entitled by court order or written agreement to visitation with a child may file a proceeding to obtain a revised schedule of visitation, but may not object to the proposed relocation or seek a temporary or permanent order to prevent the relocation.

4. A proceeding filed pursuant to this subsection must be filed within thirty (30) days of receipt of notice of a proposed relocation.

H. 1. The court may grant a temporary order restraining the relocation of a child, or ordering return of the child if a relocation has previously taken place, if the court finds:

a. the required notice of a proposed relocation of a child as provided by this section was not provided in a timely manner and the parties have not presented an agreed-upon revised schedule for visitation with the child for the court’s approval,

b. the child already has been relocated without notice, agreement of the parties, or court approval, or

c. from an examination of the evidence presented at the temporary hearing there is a likelihood that on final hearing the court will not approve the relocation of the primary residence of the child.

2. The court may grant a temporary order permitting the relocation of the child pending final hearing if the court:

a. finds that the required notice of a proposed relocation of a child as provided by this section was provided in a timely manner and issues an order for a revised schedule for temporary visitation with the child, and

b. finds from an examination of the evidence presented at the temporary hearing there is a likelihood that on final hearing the court will approve the relocation of the primary residence of the child.

I. A proposed relocation of a child may be a factor in considering a change of custody.

J. 1. In reaching its decision regarding a proposed relocation, the court shall consider the following factors:

a. the nature, quality, extent of involvement, and duration of the child’s relationship with the

person proposing to relocate and with the nonrelocating person, siblings, and other significant persons in the child's life,

b. the age, developmental stage, needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child,

c. the feasibility of preserving the relationship between the nonrelocating person and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties,

d. the child's preference, taking into consideration the age and maturity of the child,

e. whether there is an established pattern of conduct of the person seeking the relocation, either to promote or thwart the relationship of the child and the nonrelocating person,

f. whether the relocation of the child will enhance the general quality of life for both the custodial party seeking the relocation and the child, including but not limited to financial or emotional benefit or educational opportunity,

g. the reasons of each person for seeking or opposing the relocation, and

h. any other factor affecting the best interest of the child.

2. The court may not:

a. give undue weight to the temporary relocation as a factor in reaching its final decision, if the court has issued a temporary order authorizing a party seeking to relocate a child to move before final judgment is issued, or

b. consider whether the person seeking relocation of the child has declared that he or she will not relocate if relocation of the child is denied.

K. The relocating person has the burden of proof that the proposed relocation is made in good faith. If that burden of proof is met, the burden shifts to the nonrelocating person to show that the proposed relocation is not in the best interest of the child.

L. 1. After notice and a reasonable opportunity to respond, the court may impose a sanction on a person proposing a relocation of the child or objecting to a proposed relocation of a child if it determines that the proposal was made or the objection was filed:

a. to harass a person or to cause unnecessary delay or needless increase in the cost of litigation,

b. without being warranted by existing law or was based on frivolous argument, or

c. based on allegations and other factual contentions which had no evidentiary support or, if specifically so identified, could not have been reasonably believed to be likely to have evidentiary support after further investigation.

2. A sanction imposed under this subsection shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. The sanction may include directives

of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the other party of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation.

M. If the issue of relocation is presented at the initial hearing to determine custody of and visitation with a child, the court shall apply the factors set forth in this section in making its initial determination.

N. 1. The provisions of this section apply to an order regarding custody of or visitation with a child issued:

a. after the effective date of this act, and

b. before the effective date of this act, if the existing custody order or enforceable agreement does not expressly govern the relocation of the child or there is a change in the primary residence address of an adult affected by the order.

2. To the extent that a provision of this section conflicts with an existing custody order or enforceable agreement, this section does not apply to the terms of that order or agreement that govern relocation of the child or a change in the primary residence address of an adult.

§ 112.4 - Stepparent's Support of Spouse's Children From Prior Relationship

A stepparent is not required to maintain his or her spouse's children from a prior relationship.

§ 112.5 - Custody or Guardianship - Order of Preference - Death or Judicial Removal of Parent - Preference of Child - Presumptions Regarding Best Interests of Child

A. Custody or guardianship of a child may be awarded to:

1. A parent or to both parents jointly;

2. A grandparent;

3. A person who was indicated by the wishes of a deceased parent;

4. A relative of either parent;

5. The person in whose home the child has been living in a wholesome and stable environment including but not limited to a foster parent; or

6. Any other person deemed by the court to be suitable and able to provide adequate and proper care and guidance for the child.

B. In applying subsection A of this section, a court shall award custody or guardianship of a child to a parent, unless a nonparent proves by clear and convincing evidence that:

1. For a period of at least twelve (12) months out of the last fourteen (14) months immediately preceding the commencement of the custody or guardianship proceeding, the parent has willfully failed, refused, or neglected to contribute to the support of the child:

a. in substantial compliance with a support provision or an order entered by a court of competent jurisdiction adjudicating the duty, amount, and manner of support, or

b. according to the financial ability of the parent to contribute to the support of the child if no provision for support is entered by a court of competent jurisdiction, or an order of modification subsequent thereto.

For purposes of this paragraph, incidental or token financial contributions shall not be considered in establishing whether a parent has satisfied his or her obligation under subparagraphs a and b of this paragraph; or

2. a. the child has been left in the physical custody of a nonparent by a parent or parents of the child for one (1) year or more, excluding parents on active duty in the military, and

b. the parent or parents have not maintained regular visitation or communication with the child.

For purposes of this paragraph, incidental or token visits or communications shall not be considered in determining whether a parent or parents have regularly maintained visitation or communication.

C. In applying subsection A of this section, a court shall award custody or guardianship of a child to a parent, unless the court finds that the parent is affirmatively unfit. There shall be a rebuttable presumption that a parent is affirmatively unfit if the parent:

1. Is or has been subject to the registration requirements of any tribal, state, or federal sex offenders registration act, except as provided in subsection D of this section;

2. Has been convicted of a crime listed in Title 57 of the Cherokee Nation Statutes;

3. Is an alcohol-dependent person or a drug-dependent person as established by clear and convincing evidence and who can be expected in the near future to inflict or attempt to inflict serious bodily harm to himself or herself or another person as a result of such dependency;

4. Has been convicted of domestic abuse within the past five (5) years;

5. Is residing with a person who is or has been subject to the registration requirements of any tribal, state, or federal sex offenders registration act;

6. Is residing with a person who has been convicted of a crime listed in Section 843.5 of Title 21 or in Section 582 of Title 57 of the Cherokee Nation Statutes; or

7. Is residing with a person who has been convicted of domestic abuse within the past five (5) years.

D. In applying subsection A of this section, a court shall not award custody or guardianship of a child to any person who has been convicted, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, or received a suspended sentence or any probationary term, or is currently serving a sentence or any form of probation or parole in a court in any state of any of the following crimes:

1. Sexual abuse or sexual exploitation of a child;

2. Child endangerment, if the offense involved sexual abuse of a child;

3. Kidnapping, if the offense involved sexual abuse or sexual exploitation of a child

4. Incest;

5. Forcible sodomy of a child;

6. Child stealing, if the offense involved sexual abuse or sexual exploitation;

7. Procuring minors for participation in child pornography;

8. Consent to participation of minors in child pornography;

9. Facilitating, encouraging, offering or soliciting sexual conduct with a minor by use of technology;

10. Distributing child pornography;

11. Possession, purchase or procurement of child pornography;

12. Aggravated possession of child pornography;

13. Procuring a child under eighteen (18) years of age for prostitution

14. Inducing, keeping, detaining or restraining a child under eighteen (18) years of age for prostitution;

15. First degree rape;

16. Lewd or indecent proposals or acts to a child under sixteen (16) years of age; or

17. Solicitation of minors in any crime.

E. Subject to subsection F of this section, a custody determination made in accordance with subsections B and C of this section shall not be modified unless the person seeking the modification proves that:

1. Since the making of the order sought to be modified, there has been a permanent, material, and substantial change of conditions that directly affects the best interests of the child; and

2. That as a result of such change of circumstances, the child would be substantially better off with regard to its temporal, mental, and moral welfare if custody were modified.

F. If the custody determination made in accordance with subsections B and C of this section indicates that custody is temporary, the determination may be modified upon a showing that the conditions which led to the custody or guardianship determination no longer exist.

§ 112.6 - Order Requiring Abuser to Pay Attorney Fees and Costs of Party Who is Domestic Violence or Stalking Victim

In a dissolution of marriage or separate maintenance or custody proceeding, a victim of domestic violence or stalking shall be entitled to reasonable attorney fees and costs after the filing of a petition, upon application and a showing by a preponderance of evidence that the party is currently being stalked or has been stalked or is the victim of domestic abuse. The court shall order that the attorney fees and costs of the victimized party

for the proceeding be substantially paid for by the abusing party prior to and after the entry of a final order.

§ 112.7 - Military Deployment as Evidence of Change of Circumstances

A military deployment shall not be used as evidence of a substantial, material and permanent change of circumstances to warrant a permanent modification of custody.

§ 113 - Preference of Child Considered in Custody or Visitation Actions

A. In any action or proceeding in which a court must determine custody or limits to or periods of visitation, the child may express a preference as to which of the parents the child wishes to have custody or limits to or periods of visitation.

B. The court shall first determine whether the best interest of the child will be served by allowing the child to express a preference as to which parent should have custody or limits to or periods of visitation with either parent. If the court so finds, then the child may express such preference or give other testimony.

C. There shall be a rebuttable presumption that a child who is twelve (12) years of age or older is of a sufficient age to form an intelligent preference.

D. If the child is of a sufficient age to form an intelligent preference, the court shall consider the expression of preference or other testimony of the child in determining custody or limits to or periods of visitation. Interviewing the child does not diminish the discretion of the court in determining the best interest of the child. The court shall not be bound by the child's choice or wishes and shall take all factors into consideration in awarding custody or limits of or period of visitation.

E. If the child is allowed to express a preference or give testimony, the court may conduct a private interview with the child in chambers without the parents, attorneys or other parties present. However, if the court has appointed a guardian ad litem for the child, the guardian ad litem shall be present with the child in chambers. The parents, attorneys or other parties may provide the court with questions or topics for the court to consider in its interview of the child; however, the court shall not be bound to ask any question presented or explore any topic requested by a parent, attorney or other party.

F. At the request of either party, a record shall be made of any child interview conducted in chambers. If the proceeding is transcribed, the parties shall be entitled to access to the transcript only if a parent or the parents appeal the custody or visitation determination.

§ 116 - Security or Bond for Payment of Child Support

The district or administrative court may order a person obligated to support a minor child to post a security, bond, or other guarantee in a form and amount satisfactory to the court to ensure the payment of child support.

§ 117 - Modification, Suspension or Termination of Income Assignment Order

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A. Except as otherwise provided by subsection B of this section, the person obligated to pay support or the person entitled to the support may petition the district or administrative court to:

1. Modify, suspend, or terminate the order for income assignment because of a modification, suspension, or termination of the underlying order for support; or

2. Modify the amount of income to be withheld to reflect payment in full of the delinquency by income assignment or otherwise; or

3. Suspend the order for income assignment because of inability to deliver income withheld to the person entitled to support payments due to the failure of the person entitled to support to provide a mailing address or other means of delivery.

B. If the income assignment has been initiated by Child Support Services, the district court shall notify Child Support Services prior to the termination, modification, or suspension of the income assignment order.

Parenting Coordinator Act

§ 120.1 - Short Title

Sections 120.1 through 120.5 of this title shall be known and may be cited as the "Parenting Coordinator Act".

§ 120.2 - Definitions

As used in the Parenting Coordinator Act:

1. "Parenting coordinator" means an impartial third party qualified pursuant to subsection A of Section 120.6 of this title appointed by the court to assist parties in resolving issues and deciding disputed issues pursuant to the provisions of the Parenting Coordinator Act relating to parenting and other family issues in any action for dissolution of marriage, legal separation, paternity, or guardianship where a minor child is involved; and

2. "High-conflict case" means any action for dissolution of marriage, legal separation, paternity, or guardianship where minor children are involved and the parties demonstrate a pattern of ongoing:

a. litigation,

b. anger and distrust,

c. verbal abuse,

d. physical aggression or threats of physical aggression,

e. difficulty in communicating about and cooperating in the care of their children, or

f. conditions that in the discretion of the court warrant the appointment of a parenting

coordinator.

§ 120.3 - Court May Upon Its Own Motion Appoint a Parenting Coordinator

A. In any action for dissolution of marriage, legal separation, paternity, or guardianship where minor children are involved, the court may, upon its own motion, or by motion or agreement of the parties, appoint a parenting coordinator to assist the parties in resolving issues and decide disputed issues pursuant to the provisions of the Parenting Coordinator Act related to parenting or other family issues in the case except as provided in subsection B of this section, and subsection A of Section 120.5 of this title.

B. The court shall not appoint a parenting coordinator if any party objects, unless:

1. The court makes specific findings that the case is a high-conflict case; and

2. The court makes specific findings that the appointment of a parenting coordinator is in the best interest of any minor child in the case.

C. 1. The authority of a parenting coordinator shall be specified in the order appointing the parenting coordinator and limited to matters that will aid the parties in:

a. identifying disputed issues,

b. reducing misunderstandings,

c. clarifying priorities,

d. exploring possibilities for compromise,

e. developing methods of collaboration in parenting, and

f. complying with the court's order of custody, visitation, or guardianship.

2. The appointment of a parenting coordinator shall not divest the court of its exclusive jurisdiction to determine fundamental issues of custody, visitation, and support, and the authority to exercise management and control of the case.

3. The parenting coordinator shall not make any modification to any order, judgment or decree; however, the parenting coordinator may allow the parties to make minor temporary departures from a parenting plan if authorized by the court to do so. The appointment order should specify those matters which the parenting coordinator is authorized to determine. The order shall specify which determinations will be immediately effective and which will require an opportunity for court review prior to taking effect.

D. The parties may limit the decision-making authority of the parenting coordinator to specific issues or areas if the parenting coordinator is being appointed pursuant to agreement of the parties.

E. Meetings between the parenting coordinator and the parties need not follow any specific procedures and the meetings may be informal. All communication between the parties and the parenting coordinator shall not be confidential.

F. Nothing in the Parenting Coordinator Act shall abrogate the custodial or noncustodial parent's rights or any court-ordered visitation given to grandparents or other persons except as specifically addressed in the order appointing the parenting coordinator.

G. 1. Except as otherwise provided by this subsection, the court shall reserve the right to remove the parenting coordinator in its own discretion.

2. The court may remove the parenting coordinator upon the request and agreement of both parties. Upon the motion of either party and good cause shown, the court may remove the parenting coordinator.

§ 120.4 - Parenting Coordinator Decisions Binding

A. A report of the decisions and recommendations made by the parenting coordinator shall be filed with the court within twenty (20) days, with copies of the report provided to the parties or their counsel. There shall be no ex parte communication with the court.

B. Any decisions made by the parenting coordinator authorized by the court order and issued pursuant to the provisions of the Parenting Coordinator Act shall be binding on the parties until further order of the court.

C. 1. Any party may file with the court and serve on the parenting coordinator and all other parties an objection to the parenting coordinator's report within ten (10) days after the parenting coordinator provides the report to the parties, or within another time as the court may direct.

2. Responses to the objections shall be filed with the court and served on the parenting coordinator and all other parties within ten (10) days after the objection is served.

D. The court shall review any objections to the report and any responses submitted to those objections to the report and shall thereafter enter appropriate orders.

§ 120.5 - Cherokee Nation Assumes No Financial Responsibility for Paying Parenting Coordinator

A. 1. No parenting coordinator shall be appointed unless the court finds that the parties have the means to pay the fees of the parenting coordinator.

2. The Cherokee Nation shall assume no financial responsibility for payment of fees to the parenting coordinator; except that, in cases of hardship, the court, if feasible, may appoint a parenting coordinator to serve on a volunteer basis.

B. 1. The fees of the parenting coordinator shall be allocated between the parties with the relative percentages determined pursuant to the child support guidelines.

2. The court may allocate the fees between the parties differently upon a finding of good cause by the court or good cause set forth in the parenting coordinator's report

§ 120.6 - Rules Governing Parenting Coordinator

A. Each judicial district shall adopt local rules governing the qualifications of a parenting coordinator; provided, however, the qualifications adopted shall not exceed the qualifications established in subsection B of this section.

B. To be qualified as a parenting coordinator, a person shall:

1. Have a master's degree in a mental health or behavioral health field, shall have training and experience in family mediation and shall be a certified mediator under the laws of this state; or

2. Be a licensed mental health professional or licensed attorney practicing in an area related to families.

C. Parenting coordinators who are not licensed attorneys shall not be considered as engaging in the unauthorized practice of law while performing actions within the scope of his or her duties as a parenting coordinator.

§ 120.7 - Appointment of Court Expert - Disclosures - Objections - Domestic Violence Training

A. As used in this section, "court expert" means a parenting coordinator, guardian ad litem, custody evaluator or any other person appointed by the court in a custody or visitation proceeding involving children.

B. Before the court appoints an individual as a court expert, the following disclosures shall be made by the candidate to the parties:

1. A disclosure of any prior relationships with any party, attorney or judge in the pending action;

2. A complete resume disclosing all personal and professional qualifications to serve as a court expert;

3. Any suspensions from practice, reprimands, or other formal punishments resulting from an adjudication of complaints filed against the person with the professional licensing board or other organization authorized to receive complaints regarding the performance of the individual in question; and

4. Any criminal convictions within the past ten (10) years and inclusion on any sexual offender list.

C. A party may file an objection to the appointment of a proposed court expert within fifteen (15) days after the receipt of the disclosures required by subsection B of this section. Upon filing an objection to the proposed court expert, the court shall set the matter for hearing. If requested, the party objecting to the appointment of the proposed court expert shall be entitled to discovery related to the qualifications and appropriateness of the proposed court expert prior to hearing.

D. In any case involving domestic violence, stalking or harassment as defined by paragraph 2 of subsection I of Section 109 of this title, the court expert shall have completed sixteen (16) hours of domestic violence training that includes, but is not limited to, information regarding the danger and lethality of domestic violence, the causes and dynamics of domestic violence, the impact of domestic violence upon victims and children, and the characteristics of a batterer as a parent.

§ 121 - Restoration of Maiden or Former Name - Alimony - Property Division

A. When a dissolution of marriage is granted, the decree shall restore:

1. Any party to their former name, if the name was changed as a result of the marriage and if said party so desires;

B. The court shall enter its decree confirming in each spouse the property owned by him or her before marriage and the undisposed-of property acquired after marriage by him or her in his or her own right. Either spouse may be allowed such alimony out of real and personal property of the other as the court shall think reasonable, having due regard to the value of such property at the time of the dissolution of marriage. Alimony may be allowed from real or personal property, or both, or in the form of money judgment, payable either in gross or in installments, as the court may deem just and equitable. As to such property, whether real or personal, which has been acquired by the parties jointly during their marriage, whether the title thereto be in either or both of said parties, the court shall, subject to a valid antenuptial contract in writing, make such division between the parties as may appear just and reasonable, by a division of the property in kind, or by setting the same apart to one of the parties, and requiring the other thereof to be paid such sum as may be just and proper to effect a fair and just division thereof. The court may set apart a portion of the separate estate of a spouse to the other spouse for the support of the children of the marriage where custody resides with that spouse.

C. A servicemember’s portion of Special Monthly Compensation (SMC) awarded by or from the United States Department of Veterans Affairs for service-connected loss or loss of use of specific organs or extremities shall be separate property, not divisible as a marital asset nor as community property. For purposes of identifying SMC, it is the sole responsibility of the servicemember to prove with competent evidence what amount of his or her disability compensation is SMC.

D. A servicemember's portion of Combat-Related Special Compensation (CRSC) shall be separate property, not divisible as a marital asset nor as community property, if a specific dollar amount of CRSC can be proved by the servicemember as compensation for combat-related loss of limb or loss of bodily function and the CRSC award was applied for and established prior to the date of the filing of the dissolution of marriage action.

E. Pursuant to the federal Uniformed Services Former Spouses' Protection Act, 10 U.S.C., Section 1408, a court may treat disposable retired or retainer pay payable to a military member either as property solely of the member or as property of the member and the spouse of the member. If a state court determines that the disposable retired or retainer pay of a military member is the sole and separate property of the military member, the court shall submit clear and concise written findings of such determination to be included in the decree or final order. If a state court determines that the disposable retired or retainer pay of a military member is marital property, the court shall submit clear and concise written findings of such determination to be included in the decree or final order and shall award an amount consistent with the rank, pay grade, and time of service of the member at the date of the filing of the petition, unless the court finds a more equitable date due to the economic separation of the parties.

F. Unless otherwise agreed to by the parties, any division of an active duty military member's retirement or

retainer pay shall use the following language:

"The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying fifty percent (50%) times a fraction, the numerator of which is ____x____ months of marriage during the member's creditable military service, divided by the member's total number of months of creditable military service."

G. In the case of a member's retiring from reserve duty, unless otherwise agreed by the parties, any division of a reservist's retirement or retainer pay shall use the following language:

"The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying fifty percent (50%) times a fraction, the numerator of which is __X____reserve retirement points earned during the period of the marriage, divided by the member's total number of reserve retirement points earned."

§ 122 - Divorce Dissolves Marriage Contract and Bars Property Claims-Exception for Actual Fraud

A divorce granted at the instance of one party shall operate as a dissolution of the marriage contract as to both, and shall be a bar to any claim of either party in or to the property of the other, except in cases where actual fraud shall have been committed by or on behalf of the successful party.

§ 123 - Unlawful to Marry Within 30 days from Date of Divorce Decree - Penalty for Remarriage and Cohabitation-Appeal

It shall be unlawful for either party to an action for divorce whose former husband or wife is living to marry in Cherokee Nation a person other than the divorced spouse within thirty (30) days from date of decree of divorce granted in Cherokee Nation, or to cohabit with such other person in Cherokee Nation during said period if the marriage took place in another state; and if an appeal be commenced from said decree, it shall be unlawful for either party to such cause to marry any other person and cohabit with such person in Cherokee Nation until the expiration of thirty (30) days from the date on which final judgment shall be rendered pursuant to such appeal.

§ 125 - Validation of Judgment Annulling Marriage or Granting Divorce

A judgment or decree, heretofore rendered by a court having jurisdiction of the parties, annulling a marriage and/or granting a divorce, on the grounds that one of the parties had been previously married and divorced and said divorce decree had not become final, is hereby validated.

§ 126 - Remarriage As Ground for Annulment

A marriage wherein one of the parties had not been divorced for thirty (30) days shall hereafter in Cherokee Nation be ground for annulment of marriage by either party.

§ 127 - Time When Judgment is Final in Divorce - Appeal

Every decree of divorce shall recite the day and date when the judgment was rendered. If an appeal be taken from a judgment granting or denying a divorce, that part of the judgment does not become final and take effect until the appeal is determined. If an appeal be taken from any part of a judgment in a divorce action except the granting of the divorce, the divorce shall be final and take effect from the date the decree of divorce is rendered, provided neither party thereto may marry another person until thirty (30) days after the date the decree of divorce is rendered; that part of the judgment appealed shall not become final and take effect until the appeal be determined.

§ 128 - Action to Void Marriage Due to Incapacity

When either of the parties to a marriage shall be incapable, from want of age or understanding, of contracting such marriage, the same may be declared void by the district court, in an action brought by the incapable party or by the parent or guardian of such party; but the children of such marriage begotten before the same is annulled, shall be legitimate. Cohabitation after such incapacity ceases, shall be a sufficient defense to any such action.

§ 129 - Alimony Without Divorce

The wife or husband may obtain alimony from the other without a divorce, in an action brought for that purpose in the district court, for any of the causes for which a divorce may be granted. Either may make the same defense to such action as he might to an action for divorce, and may, for sufficient cause, obtain a divorce from the other in such action.

§ 130 - Evidence in Divorce or Alimony Actions

Upon the trial of an action for a divorce, or for alimony the court may admit proof of the admissions of the parties to be received in evidence, carefully excluding such as shall appear to have been obtained by connivance, fraud, coercion or other improper means. Proof of cohabitation, and reputation of the marriage of the parties, may be received as evidence of the marriage. But no divorce shall be granted without proof.

§ 131 - Residency in Divorce Action

A married person who is a resident of Cherokee Nation may seek a divorce in Cherokee Nation, though the other spouse resides elsewhere.

§ 132 - Parties Competent to Testify in Divorce Action

In any action for divorce hereafter tried, the parties thereto, or either of them, shall be competent to testify in like manner, respecting any fact necessary or proper to be proven, as parties to other civil actions are allowed to testify.

§ 133 - Dissolution of Divorce Decree

When a decree of divorce has been issued by a district or superior court, said court is hereby authorized to dissolve said decree at any future time, in or out of the term wherein the decree was granted, provided that both parties to the divorce action file a petition, signed by both parties, asking that said decree be set aside and held for naught. And further provided that both parties seeking to have the decree set aside shall make proof to the court that neither one has married a third party during the time since the issuance of the decree of divorce.

§ 134 - Alimony Payments - Designation of Support and Property Payments - Termination of Support - Cohabitation by Former Spouse - Modification of Support - Disposable Retired or Retainer Military Pay

A. In any dissolution of marriage decree which provides for periodic alimony payments, the court shall plainly state, at the time of entering the original decree, the dollar amount of all or a portion of each payment which is designated as support and the dollar amount of all or a portion of the payment which is a payment pertaining to a division of property. The court shall specify in the decree that the payments pertaining to a division of property shall continue until completed. Payments pertaining to a division of property are irrevocable and not subject to subsequent modification by the court making the award. An order for the payment of money pursuant to a dissolution of marriage decree, whether designated as support or designated as pertaining to a division of property shall not be a lien against the real property of the person ordered to make such payments unless the court order specifically provides for a lien on real property. An arrearage in payments of support reduced to a judgment may be a lien against the real property of the person ordered to make such payments.

B. The court shall also provide in the dissolution of marriage decree that upon the death or remarriage of the recipient, the payments for support, if not already accrued, shall terminate. The court shall order the judgment for the payment of support to be terminated, and the lien released upon the presentation of proper proof of death of the recipient unless a proper claim is made for any amount of past-due support payments by an executor, administrator, or heir within ninety (90) days from the date of death of the recipient. Upon proper application the court shall order payment of support terminated and the lien discharged after remarriage of the recipient, unless the recipient can make a proper showing that some amount of support is still needed and that circumstances have not rendered payment of the same inequitable, provided the recipient commences an action for such determination, within ninety (90) days of the date of such remarriage. Any modification of alimony payments shall be effective upon the date of the filing of the requested modification.

C. The voluntary cohabitation of a former spouse with a member of the opposite sex shall be a ground to modify provisions of a final judgment or order for alimony as support. If voluntary cohabitation is alleged in a motion to modify the payment of support, the court shall have jurisdiction to reduce or terminate future support payments upon proof of substantial change of circumstances of either party to the dissolution of

marriage relating to need for support or ability to support. As used in this subsection, the term cohabitation means the dwelling together continuously and habitually of a man and a woman who are in a private conjugal relationship not solemnized as a marriage according to law, or not necessarily meeting all the standards of a common-law marriage. The petitioner shall make application for modification and shall follow notification procedures used in other dissolution of marriage decree modification actions. The court that entered the dissolution of marriage decree shall have jurisdiction over the modification application.

D. Except as otherwise provided in subsection C of this section, the provisions of any dissolution of marriage decree pertaining to the payment of alimony as support may be modified upon proof of changed circumstances relating to the need for support or ability to support which are substantial and continuing so as to make the terms of the decree unreasonable to either party. Modification by the court of any dissolution of marriage decree pertaining to the payment of alimony as support, pursuant to the provisions of this subsection, may extend to the terms of the payments and to the total amount awarded; provided however, such modification shall only have prospective application.

E. In no event shall an award of alimony, whether designated for support or for property division, be based on the servicemember's portion of any Special Monthly Compensation (SMC) award from the United States Department of Veterans Affairs.

F. Pursuant to the federal Uniformed Services Former Spouses' Protection Act, 10 U.S.C., Section 1408, a court may treat disposable retired or retainer pay payable to a military member either as property solely of the member or as property of the member and the spouse of the member. If a state court determines that the disposable retired or retainer pay of a military member is the sole and separate property of the military member, the court shall submit clear and concise written findings of such determination to be included in the decree or final order. If a state court determines that the disposable retired or retainer pay of a military member is marital property, the court shall submit clear and concise written findings of such determination to be included in the decree or final order and shall award an amount consistent with the rank, pay grade, and time of service of the member at the date of the filing of the petition, unless the court finds a more equitable date due to the economic separation of the parties.

G. Unless otherwise agreed to by the parties, any division of an active duty military member's retirement or retainer pay shall use the following language:

"The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying fifty percent (50%) times a fraction, the numerator of which is _____x_____ months of marriage during the member's creditable military service, divided by the member's total number of months of creditable military service."

H. In the case of a member's retiring from reserve duty, unless otherwise agreed by the parties, any division of a reservist's retirement or retainer pay shall use the following language:

"The former spouse is awarded a percentage of the member's disposable military retired pay, to be computed by multiplying fifty percent (50%) times a fraction, the numerator of which is __X_____reserve retirement points earned during the period of the marriage, divided by the member's total number of reserve retirement points earned."

I. The provisions of subsection D of this section shall have retrospective and prospective application with

regards to modifications for the purpose of obtaining support or payments pertaining to a division of property on dissolution of marriage decrees which become final after June 26, 1981. There shall be a two-year statute of limitations, beginning on the date of the final dissolution of marriage decree, for a party to apply for division of disposable retired or retainer pay.

J. The provisions of subsections C and D of this section shall have retrospective and prospective application with regards to modifications of the provisions of a final judgment or order for alimony as support, or of a dissolution of marriage decree pertaining to the payment of alimony as support, regardless of the date that the order, judgment, or decree was entered.

K. Notwithstanding any other provision of this section, a court shall not consider disability compensation received by a party from the United States Department of Veterans Affairs for service-related injuries for any purpose. Additionally, the court shall not offset any service-related disability income with other assets of the military member. However, if there is an increase in service-related disability income as a result of the veteran having dependents, that increase may be included in divorce calculations.

§ 135 - Lien for Child Support Arrearages - Notice and Hearing

A. An arrearage in payment of child support reduced to an order of the court or administrative order of the Department of Human Services or any past due payment or installment of child support that is a judgment and lien by operation of law may be a lien against the real and personal property of the person ordered to make the support payments.

B. Past due amounts of child support shall become a lien by operation of law upon the real and personal property of the person ordered to make the payments at the time they become past due.

C. 1. A judgment or order providing for the payment of current support or an arrearage of child support shall be a lien upon real property owned by the person obligated to pay support or upon any real property which may be acquired by the person prior to the release of the lien. Notice of the lien on real property shall be given by the filing of a statement of judgment with the county clerk of the county where the property is located.

2. If child support services are being provided under the state child support plan as provided under Cherokee Nation Statutes, through Cherokee Nation Child Support Services, the amount reflected in the official records of the Centralized Support Registry or the records of Cherokee Nation Child Support Services shall constitute the amount of the lien on the obligor's real property, regardless of the amount reflected in the statement of judgment.

3. The judgment or order shall not become a lien for any sums prior to the date they severally become due and payable. A child support judgment shall become dormant as a lien upon real property five (5) years from the date the statement of judgment is filed of record with the county clerk unless the judgment lien is extended in accordance with Cherokee Nation Statutes.

D. A judgment providing for the payment of an arrearage of child support or pursuant to which a past due amount has accrued shall become a lien upon benefits payable as a lump sum received from a personal injury, wrongful death or workers' compensation claim of the person ordered to pay the support and shall not be

subject to the exemptions from attachment, or as otherwise provided by law. The lien shall be effective upon the filing a notice of lien with the court in which a proceeding for personal injury, wrongful death or workers' compensation has been initiated by or on behalf of the obligor. If a proceeding has not been initiated, a notice of lien shall be served by mail upon the entity responsible for paying monies to the person ordered to pay support. A court or the entity responsible for satisfying the lien may request a certified copy of the judgment or order be attached to the lien.

E. The provisions of this section shall be available to an agency of another tribe or state responsible for implementing the child support enforcement program set forth in Title IV-D, of the Social Security Act seeking to enforce a judgment for child support.

F. The provisions of this section shall not authorize a forced sale of any real property to enforce a lien which is otherwise exempted by state law.

G. A lien shall be released upon the full payment of the amount of the arrearage.

H. The person entitled to support or the Cherokee Nation Child Support Services on behalf of its clients and recipients is authorized to enforce the liens created pursuant to this section and to execute releases or partial releases of the liens.

§ 136 - Payment of Support and Alimony by Mail - Report of Payments as Evidence - Application Fee for Income Assignment

A. If a judicial order, judgment or decree directs that the payment of child support, alimony, temporary support or any similar type of payment be made through the office of the court clerk, then it shall be the duty of the court to transmit such payments to the payee by first class United States mail, if requested to do so by the payee. Such payments shall be mailed to the payee at the address specified in writing by the payee. In the event of a change in address of the payee it shall be the duty of the payee to furnish to the court clerk in writing the new address of the payee.

B. A report of child support payments with a certificate of authenticity executed by the court clerk is admissible into evidence in court or in an administrative proceeding as self-authenticated.

C. A fee not to exceed Twenty-five Dollars ($25.00) shall be charged and collected for any post decree application to initiate an income assignment in addition to any other fees authorized by law. The fee shall not be charged or collected for income assignments requested at the time of the filing of the original petition or entered at the time of a divorce decree. The person entitled to support is entitled to collect said fees paid pursuant to this subsection from the person obligated to pay support through civil proceedings.

§ 137 - Past Due Support Payments as Judgment - Arrearage Payment Schedule

A. Any payment or installment of child support ordered pursuant to any order, judgment, or decree of the district court or administrative order is, on and after the date it becomes past due, a judgment by operation of law. Judgments for past due support shall:

1. Have the full force and effect of any other judgment of this state, including the ability to be enforced by any method available under the laws of this Nation to enforce and collect money judgments; and

2. Be entitled to full faith and credit as a judgment in this Nation and any other tribe or state.

B. A child support judgment shall not become dormant for any purpose, except that it shall cease to be a lien upon real property five (5) years from the date it is filed of record with the county clerk in the county where the property is located, unless the judgment lien is extended in accordance with Cherokee Nation Statutes.

1. Except as otherwise provided by court order, a judgment for past due child support shall be enforceable until paid in full.

2. An order that provides for payment of child support, if willfully disobeyed, may be enforced by indirect civil contempt proceedings, notwithstanding that the support payment is a judgment on and after the date it becomes past due. Any amounts determined to be past due by the Cherokee Nation Child Support Services may subsequently be enforced by indirect civil contempt proceedings.

C. An arrearage payment schedule set by a court or administrative order shall not exceed three (3) years, unless imposition of a payment schedule would be unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of the child or children involved. When making this determination, reasonable support obligations of either parent for other children in the custody of the parent may be considered. If an arrearage payment schedule that exceeds three (3) years is set, specific findings of fact supporting the action shall be made.

§ 138 - Costs in Child Support Enforcement Cases

Costs incurred in a child support enforcement case in which a party is represented by an office operated by or for the benefit of Cherokee Nation Child Support Services shall be recorded by the court clerk. The reasonable costs may be assessed by the court against the nonprevailing party at the conclusion of the proceedings.

§ 139 - Child Support as Legal Right - Authority to Revoke or Suspend Licenses for Noncomplicance with Child Support Order

The Tribal Council finds and declares that child support is a basic legal right of the Nation's parents and children, that mothers and fathers have a legal obligation to provide financial support for their children and that child support payments can have a substantial impact on child poverty and the Nation’s welfare expenditures. It is therefore the Tribal Council's intent to encourage payment of child support to decrease overall costs to the Nation while increasing the amount of financial support collected for the Nation's children by authorizing the district courts of this Nation to order the revocation, suspension, nonissuance or nonrenewal of any recreational license or permit, or permit including, but not limited to, a hunting and fishing license or other authorization issued pursuant to the Cherokee Nation Wildlife Conservation Code or the Oklahoma Wildlife Conservation Code, Section 1-101 et seq. of Title 29 of the Cherokee Nation Wildlife Conservation Code or the Oklahoma Statutes, and certificates of title for vessels and motors and other licenses of registration issued pursuant to the Cherokee Nation or Oklahoma Vessel and Motor Registration

Act, Section 4001 et seq. of Title 63 of the Oklahoma Statutes or Cherokee Nation statutes, and or any similar or same Cherokee Nation statute and or act, or to order probation for a parent who is in noncompliance with an order for support for at least ninety (90) days or failing, after receiving appropriate notice to comply with subpoenas or warrants relating to paternity or child support proceedings.

§ 139.1 - Revocation, Suspension, Nonissuance or Nonrenewal of License for Noncompliance With Support Order

A. As used in this section, and as defined in other statutes:

1. "Licensing board" means any bureau, department, division, board, agency or commission of this state or of a municipality in this state that issues a license;

2. "Noncompliance with an order for support" means that the obligor has failed to make child support payments required by a child support order in an amount equal to the child support payable for at least ninety (90) days or has failed to make full payments pursuant to a court-ordered payment plan for at least ninety (90) days or has failed to obtain or maintain health insurance coverage as required by an order for support for at least ninety (90) days or has failed, after receiving appropriate notice to comply with subpoenas or orders relating to paternity or child support proceedings or has failed to comply with an order to submit to genetic testing to determine paternity;

3. "Order for support" means any judgment or order for the support of dependent children or an order to submit to genetic testing to determine paternity issued by any court of this state or other state or any judgment or order issued in accordance with an administrative procedure established by state law that affords substantial due process and is subject to judicial review;

4. "License" means any recreational license or permit including, but not limited to, a hunting and fishing license or other authorization issued pursuant to the Cherokee Nation Wildlife Conservation Code or the Oklahoma Wildlife Conservation Code, or certificates of title for vessels and motors and other licenses or registrations issued pursuant to the Cherokee Nation or the Oklahoma Vessel and Motor Registration Act;

5. "Obligor" means the person who is required to make payments or comply with other provisions of an order for support;

6. "Oklahoma Child Support Services (OCSS)" means the state agency designated to administer a statewide plan for child support pursuant to Section 237 of Title 56 of the Oklahoma Statutes;

6(a). "Cherokee Nation Child Support Services (CNCSS)" means the agency designated to administer a reservation wide plan for child support pursuant to Cherokee Nation law;

7. "Person entitled" means:

a. a person to whom a support debt or support obligation is owed,

b. the OCSS/CNCSSor a public agency of another state that has the right to receive current or accrued support payments or that is providing support enforcement services, or

c. a person designated in a support order or as otherwise specified by the court; and

8. "Payment plan" includes, but is not limited to, a plan approved by the court that provides sufficient security to ensure compliance with a support order and/or that incorporates voluntary or involuntary income assignment or a similar plan for periodic payment on an arrearage and, if applicable, current and future support.

B. 1. Except as otherwise provided by this subsection, the district courts of this state are hereby authorized to order the revocation, suspension, nonissuance or nonrenewal of a license or the placement of the obligor on probation who is in noncompliance with an order for support.

2. The remedy under this section is in addition to any other enforcement remedy available to the court.

C. 1. At any hearing involving the support of a child, if the district court finds evidence presented at the hearing that an obligor is in noncompliance with an order for support and the obligor is licensed by any licensing board, the court, in addition to any other enforcement action available, may suspend or revoke the license of the obligor who is in noncompliance with the order of support or place the obligor on probation pursuant to paragraph 2 of this subsection.

2. a. To be placed on probation, the obligor shall agree to a payment plan to:

(1) make all future child support payments as required by the current order during the period of probation, and

(2) pay the full amount of the arrearage:

(a) by lump sum by a date certain, if the court determines the obligor has the ability, or

(b) by making monthly payments in addition to the monthly child support amount pursuant to Section 137 of this title.

b. The payments required to be made pursuant to this section shall continue until the child support arrearage and interest which was the subject of the license revocation action have been paid in full.

3. If the court orders probation, the appropriate licensing board shall not be notified and no action is required of that board.

4. Probation shall be conditioned upon full compliance with the order. If the court grants probation, the probationary period shall not exceed three (3) years.

5. If the obligor is placed on probation, the obligee or OCSS/CNCSS may request a hearing at any time to review the status of the obligor's compliance with the payment plan and to request immediate suspension or revocation of the obligor's license. The obligor shall be served with notice of the hearing by regular mail to the obligor's address of record pursuant to Section 112A of this title.

6. If, by the completion of time allotted for the probationary period, the obligor has failed to fully comply with the terms of probation, the licenses of the obligor shall be automatically suspended or

revoked without further hearing. If the licenses of the obligor are suspended or revoked, the obligor may thereafter apply for reinstatement in compliance with subsection D or E of this section.

D. When all support due is paid in full and the obligor has complied with all other provisions of the order for support, the obligor, the obligee or OCSS/CNCSS may file a motion with the court for reinstatement of the obligor's licenses or termination of probation and the motion shall be set for hearing. If the court finds the obligor has paid all support due in full and has complied with all other provisions of the order for support, the court shall reinstate the obligor's licenses or terminate the probation.

E. 1. An obligor whose licenses have been suspended or revoked may file a motion with the court for reinstatement of the licenses of the obligor prior to payment in full of all support due and the motion shall be set for hearing.

2. The court may reinstate the licenses of the obligor if the obligor has:

a. paid the current child support and the monthly arrearage payments each month for the current month and two (2) months immediately preceding, or paid an amount equivalent to three (3) months of child support and arrearage payments which satisfies the current child support and monthly arrearage payments for the current month and two (2) months immediately preceding,

b. disclosed all information regarding health insurance availability and obtained and maintained health insurance coverage required by an order for support,

c. complied with all subpoenas and orders relating to paternity or child support proceedings,

d. complied with all orders to submit to genetic testing to determine paternity, and

e. disclosed all employment and address information.

3. If the court terminates the order of suspension, revocation, nonissuance or nonrenewal, it shall place the obligor on probation, conditioned upon compliance with any payment plan and the provisions of the order for support.

4. If the obligor fails to comply with the terms of probation, the court may refuse to reinstate the licenses of the obligor unless the obligor makes additional payments in an amount determined by the court to be sufficient to ensure future compliance, and the obligor complies with the other terms set by the court.

F. The obligor shall serve on the custodian or the state a copy of the motion for reinstatement of the licenses of the obligor and notice of hearing, or if there is an address of record, by regular mail to the address of record on file with the central case registry pursuant to Section 112A of this title. The obligor shall serve a copy of the motion for reinstatement of the licenses of the obligor on OCSS/CNCSS.

G. If the court orders termination of the order of suspension or revocation, the obligor shall send a copy of the order reinstating the licenses of the obligor to the licensing board, the custodian and OCSS/CNCSS. .

H. Entry of this order does not limit the ability of the court to issue a new order requiring the licensing board to revoke or suspend the license of the same obligor in the event of another delinquency or failure to comply.

I. Upon receipt of a court order to suspend or revoke the license of an obligor, the licensing board shall comply with the order by:

1. Determining if the licensing board has issued a license to the individual whose name appears on the order for support;

2. Notifying the obligor of the suspension or revocation;

3. Demanding surrender of the license, if required;

4. Entering the suspension or revocation of the license on the appropriate records; and

5. Reporting the suspension or revocation of the license as appropriate.

J. Upon receipt of a court order to not issue or not renew the license of an obligor, the licensing board shall implement by:

1. Determining if the licensing board has received an application for issuance or renewal of a license from the individual whose name appears on the order of support;

2. Notifying the obligor of the nonissuance or nonrenewal; and

3. Entering the nonissuance or nonrenewal of the license as appropriate.

K. An order, issued by the court, directing the licensing board to suspend, revoke, not issue or not renew the license of the obligor shall be processed and implemented by the licensing board without any additional review or hearing and shall continue until the court or appellate court advises the licensing board by order that the suspension, revocation, nonissuance or nonrenewal is terminated.

L. The licensing board has no jurisdiction to modify, remand, reverse, vacate, or stay the order of the court for the suspension, revocation, nonissuance or nonrenewal of a license.

M. In the event of suspension, revocation, nonissuance or nonrenewal of a license, any funds paid by the obligor to the licensing board for costs related to issuance, renewal, or maintenance of a license shall not be refunded to the obligor.

N. A licensing board may charge the obligor a fee to cover the administrative costs incurred by the licensing board to administer the provisions of this section. Fees collected pursuant to this section by a licensing board which has an agency revolving fund shall be deposited in the agency revolving fund for the use by the licensing board to pay the costs of administering this section. Otherwise, the administrative costs shall be deposited in the General Revenue Fund of the state.

O. Each licensing board shall promulgate rules necessary for the implementation and administration of this section.

P. The licensing board is exempt from liability to the obligor for activities conducted in compliance with Section 139 et seq. of this title.

Q. A final order entered pursuant to this section may be appealed to the Supreme Court of Cherokee Nation.

§ Section 140 - Reserved

Deployed Parents Custody and Visitation Act

§ 150 - Short Title

Sections <https://www.oscn.net/applications/oscn/DeliverDocument.asp?citeid=463030> through 13 <https://www.oscn.net/applications/oscn/DeliverDocument.asp?citeid=463074> of this act shall be known and may be cited as the "Deployed Parents Custody and Visitation Act".

§ 150.1 - Definitions

As used in the Deployed Parents Custody and Visitation Act:

1. "Civilian personnel" means direct-hire, permanent civilian employees of the Department of Defense;

2. "Close and substantial relationship" means a relationship in which a bond has been forged between the child and the other person by regular contact or communication;

3. "Custodial responsibility" refers to legal custody, physical custody or visitation rights with respect to a child;

4. "Deploying parent" means a legal parent of a minor child or the legal guardian of a child, who is a member of the United States Armed Forces, civilian personnel or contractor serving in designated combat zones and who is deployed or has been notified of an impending deployment;

5. "Deployment" means the temporary transfer of a servicemember, civilian personnel or contractor serving in designated combat zones in compliance with official orders to another location in support of combat, contingency operation, or natural disaster requiring the use of orders for a period of more than thirty (30) consecutive days, during which family members are not authorized to accompany the servicemember at government expense. Deployment shall include any period during which a servicemember, civilian personnel or contractor serving in designated combat zones is absent from duty on account of sickness, wounds, leave or other lawful cause;

6. "Guardian" means a person who has been appointed as a guardian of a minor or incapacitated adult pursuant to the requirements of Title 30 of the Cherokee Nation Statutes. The term shall include a limited guardian, but shall not include a guardian ad litem;

7. "Nondeploying parent" means a legal parent or guardian who is not deployed and who has a child or ward in common with a deploying parent;

8. "Servicemember" means a member of either:

   a. the active or reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard, or

   b. the active or reserve components of the National Guard; and

9. "Visitation" means the right to take a child for a limited period of time to a place other than the habitual residence of the child.

§ 150.2 - Jurisdiction to Enter Order Regarding Custodial Responsibility

A court of this state may enter an order regarding custodial responsibility pursuant to the Deployed Parents Custody and Visitation Act only where the court has jurisdiction. If a court of this Nation has rendered a temporary order regarding custodial responsibility pursuant to the Deployed Parents Custody and Visitation Act, the deploying parent shall be deemed to reside in this Nation during the duration of the deployment. If a court of another tribe or state has rendered a temporary order regarding custodial responsibility pursuant to deployment, this court shall deem the deploying parent to reside in the rendering tribe or state during the duration of the deployment. This section does not prohibit the exercise of temporary emergency jurisdiction by a court of this Nation pursuant to other statutes.

§ 150.3 - Designation of Family Member or Other Person to Exercise Deployed Parent's Visitation Rights

A. In order to ensure an on going relationship with the child while deployed, pursuant to the Deployed Parents Custody and Visitation Act, upon application to the court by the deploying parent, the court shall designate a family member or another person with a close and substantial relationship to the child to exercise his or her visitation rights, unless the court determines it is not in the best interests of the child.

B. Visitation awarded pursuant to this section derives from the deploying parent’s own right to custodial responsibility. Neither this section nor a court order permitting designation shall be deemed to create any separate or permanent rights to visitation.

§ 150.4 - Notice of Deployment Provided to Nondeploying Parent

A. A deploying parent shall provide a copy of the deployment orders to the other parent within ten (10) days of receipt. When the deployment date is less than ten (10) days after receipt of the orders, a copy shall immediately be provided to the other parent.

B. If a valid court order requires that the address or contact information of the nondeploying parent be kept confidential, the notification shall be made to the court only. The court shall notify the nondeploying parent, or counsel for the nondeploying parent, if the deploying parent is prohibited from directly contacting the nondeploying parent.

§ 150.5 - Expedited Hearing

Following a deploying parent’s receiving notice of deployment, either a deploying parent or nondeploying parent may request an expedited hearing to be heard within ten (10) days or prior to deployment, whichever occurs first, on any matter pertaining to custodial or visitation responsibility. The application shall include the date on which the deployment began or begins. If the date of deployment is uncertain, the approximate date shall be included. The court shall grant a request for an expedited hearing if the deploying parent’s ability, or anticipated ability, to appear in person at a regularly scheduled hearing would be prevented by the deployment or preparation for the deployment. If the deployed or deploying parent is seeking the right to designate a family member to determine visitation, then the name of the family member or another person

with a close and substantial relationship to the child shall be stated in the application.

§ 150.6 - Temporary Custody Orders - Election to Proceed by Electronic Communications - Privilege of Deploying Parent

A. Upon proper motion made pursuant to Section 8 of this act <https://www.oscn.net/applications/oscn/DeliverDocument.asp?citeid=463067>, the court shall enter temporary orders regarding custody, visitation and child support.
B. A deploying parent who is entitled to a stay in civil proceedings pursuant to the Servicemembers Civil Relief Act, 50 U.S.C. App., Sections 501 through 596, may elect to proceed while the deploying parent is unavailable to appear in the geographical location in which the litigation is pursued and may seek relief and provide evidence through video conferencing, Internet camera, e-mail, telephone, or other reasonable electronic means.
C. Except for the privilege offered to the deployed servicemember in subsection B of this section, the court shall factor the same consideration and conduct the temporary order hearing as provided in Section 112 of Title 43 <https://www.oscn.net/applications/oscn/DeliverDocument.asp?citeid=71829>. Hearings conducted pursuant to this section shall be considered nonevidentiary hearings and the standard rules of evidence shall not apply.

D. 1. If a prior judicial custody or visitation order contains provisions for custodial responsibility of the child in the event of deployment, those provisions shall not be modified by the court unless:

a. a subsequent substantial change of circumstances has occurred after the prior judicial custody or visitation order was issued, or

b. a showing that enforcement of the provisions of the prior judicial custody or visitation order would result in substantial harm to the child.

2. If the deploying parent and the nondeploying parent have previously agreed in writing to provisions for the custodial responsibility of the child in the event of deployment, there shall be a rebuttable presumption that the agreement is in the best interest of the child. The presumption may be overcome only if the court makes specific findings of fact establishing that the agreement is not in the best interest of the child.

E. When entering a temporary order for custodial responsibility prior to or during a deployment, the court shall:

1. Identify the nature of the deployment that is the basis for the order;

2. Specify that the order is temporary;

3. Specify the contact between the deploying parent and the child during deployment, including the means by which the deploying parent may remain in communication with the child, such as electronic communication by Internet camera, telephone, e-mail and other available means; and

4. Order liberal contact between the deploying parent and child when the deploying parent is on leave or is otherwise available, consistent with the best interest of the child.

F. In an order granting designation of a family member or another person with a close and substantial relationship to the child to exercise visitation rights pursuant to Section 11 of this act, the court shall:

1. Set out a process to resolve any disputes that may arise between the person receiving visitation and

the nondeploying parent;

2. Identify the nature of the deployment that is the basis for the order; and

3. Specify that the order is a temporary order and shall terminate ten (10) days after notice has been provided to the nondeploying parent of the end of the deployment.

G. If the matter before the court concerns a postdissolution modification of custody or visitation, the court shall not modify the previously ordered custody or visitation arrangement until the expiration of the servicemember's deployment, unless the child is at risk of serious irreparable harm.

H. If the court has rendered a temporary order regarding custodial responsibility pursuant to the Deployed Parents Custody and Visitation Act, any nondeploying parent or any third party to whom the court has assigned primary custodial responsibility, visitation or limited contact shall notify the court of any change of address until the termination of the temporary order.

§ 150.7 - Court Authority to Make Certain Orders

A. A court that renders an order on custodial responsibility under the Deployed Parents Custody and Visitation Act may, on motion of either party and with appropriate:

1. Enter a temporary order for child support consistent with Cherokee Nation Child Support Guidelines; and

2. Require the deploying parent to enroll the child to receive military dependent benefits.

B. Any order entered on child support pursuant to this section shall state that such order shall terminate following the child's return to the deploying parent upon conclusion of deployment.

§ 150.8 - Family Member Visitation - Designation by Deployed Parent - Unusual Travel Costs - Appearance at Hearing - Rebuttable Presumptions - Enforcement of Temporary Order

A. If the deploying parent moves to designate a family member or another person with a close and substantial relationship with the child to exercise visitation rights, the court shall grant reasonable visitation to a member of the family of the child, including a stepparent or step sibling, with whom the child has a close and substantial relationship as defined in the Deployed Parents Custody and Visitation Act.

B. Any visitation ordered by the court pursuant to this section shall be temporary in nature and shall not exceed or be less than the amount of custodial time granted to the deploying parent under any existing permanent order or agreement between the parents, with the exception that the court may take into account unusual travel time required to transport the child between the nondeploying parent and the family members allowed visitation.

C. The person designated by the deploying parent to exercise visitation shall appear at the temporary order hearing.

D. Rebuttable presumptions for proceedings under the Deployed Parents Custody and Visitation Act:

1. In post dissolution proceedings, there shall be a rebuttable presumption that it is in the best interests of the child for a stepparent to exercise the deployed parent's parental duties;

2. There shall be a rebuttable presumption that if the person designated by the deployed or deploying party meets the requirements of subsection A of this section, then it shall be in the best interest of the child that the person receive visitation; and

3. There shall be a rebuttable presumption that visitation by a family member who has perpetrated domestic violence against a spouse, a child, a domestic living partner, or is otherwise subject to registration requirements of a Sex Offenders Registration Act is not in the best interest of the child.

E. Any temporary order issued under the Deployed Parents Custody and Visitation Act shall be enforced as any other orders relating to the care, custody and control of the child.

§ 150.9 - Completion of Deployment - Notice - Termination of Temporary Order

A. The deploying parent shall notify the nondeploying parent of the completion of the deployment. If the deploying parent is unable to locate the nondeploying parent, the deploying parent shall notify the court of the return.

B. A temporary modification order granted in accordance with the Deployed Parents Custody and Visitation Act shall terminate by operation of law ten (10) days after notice has been provided to the nondeploying parent of the completion of deployment and the original terms of the prior custody or visitation order shall be automatically reinstated.

§ 150.10 - Penalties and Sanctions for Bad Faith or Failure to Comply with Act or Court Order

If the court finds that a party to a proceeding under the Deployed Parents Custody and Visitation Act has acted in bad faith or otherwise deliberately failed to comply with the terms of the Deployed Parents Custody and Visitation Act or a court order issued under the Deployed Parents Custody and Visitation Act, the court may assess attorney fees and costs against the opposing party and order any other appropriate sanctions.

Spouse and Spouse

§ 201 - Mutual Obligations of Respect, Fidelity and Support

Souses contract towards each other obligations of mutual respect, fidelity and support.

§ 202 - Duty to Support - Spouses

The each spouse must support the other out of the community property or out of their own separate property

or by their own labor. Each spouse must support the other when the other has not deserted them out of the community property or out of their separate property when the other has no community or separate property and the other is unable from infirmity to support their self.

§ 203 - Separate Property - Exclusion from Dwelling Prohibited

Except as mentioned in the preceding section neither spouse has any interest in the separate property of the other, but neither can be excluded from the other's dwelling, unless by court order.

§ 204 - Contracts or Transactions by Husband or Wife

Either spouse may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might, if unmarried, subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other as defined by the title on trusts.

§ 205 - Contracts Altering Legal Relations Not Allowed - Exceptions

A spouse cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree in writing to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

§ 206 - Mutual Consent as Consideration

The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

§ 207 - Spouses - Joint Tenants, Tenants in Common or Community Property - Separate Property - Inventory and Filing

A spouse and spouse may hold property as joint tenants, tenants in common, or as community property.

A full and complete inventory of the separate personal property of either spouse may be made out and signed by such spouse, acknowledged or proved in the manner provided by law for the acknowledgment or proof of a grant of real property; and recorded in the office of the county clerk of the county in which the parties reside. The filing of the inventory in the county clerk's office is notice and prima facie evidence of the title of the party filing such inventory.

§ 208 - Liability for Acts and Debts of the Other Spouse - Curtesy and Dower Not Allowed at Death

A. Neither husband nor wife, as such, is answerable for the acts of the other.

B. The separate property of the husband is liable for the debts of the husband contracted before or after marriage, but is not liable for the debts of the wife contracted before the marriage.

C. The separate property of the wife is liable for the debts of the wife contracted before or after marriage, but is not liable for the debts of the husband contracted before the marriage.

D. No estate is allowed the husband as tenant by curtesy, upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.

§ 209 - Reserved

§ 209.1 - Necessaries Furnished to Either Spouse

Husband and wife shall be jointly and severally liable for debts incurred on account of necessaries furnished to either spouse unless otherwise provided by law or court order.

§ 209.2 - Parent's Failure to Supply Necessary Articles for Child

If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessaries and recover the reasonable value thereof from the parent.

§ 210 - Spouse Abandoned by the other spouse Not Liable for Her Support - Exceptions - Separation by Agreement

A spouse abandoned by the other spouse is not liable for the other’s support until they offer to return, unless they were justified by the misconduct, in abandoning; nor are they liable for support when the other is living separate, by agreement, unless such support is stipulated in the agreement.

§ 211 - Reserved

§ 212 - Reserved

§ 213 - Reserved

§ 214 - Reserved

Community Property

§ 215 - Reserved

Cherokee Nation Centralized Support Registry Act

§ 410 - Short Title

This act shall be known as the "Cherokee Nation Centralized Support Registry Act".

§ 413 - Payments Made Through Registry - Procedure - Change of Address - Service of Process

A. The Department of Child Support Services shall maintain a Centralized Support Registry to receive, allocate and distribute support payments. All child support, spousal support, and related support payments shall be paid through the Registry as follows:

1. In all cases in which child support services are being provided under the Nation child support plan as provided under Statute; and

2. In all other cases in which support is being paid by income withholding.

B. When child support enforcement services are being provided by the Nation, all monies owed for child support shall continue to be paid through the Registry until child support is no longer owed.

C. Any party desiring child support, spousal support, or related support payments to be paid through the Registry may request the court to order the payments to be made through the Registry. Upon such request the court shall order payments to be made through the Registry.

D. The Registry shall maintain the following information on all cases in which support is paid through the Registry. This information shall include, but not be limited to:

1. Names, social security numbers and dates of birth for both parents and the children for whom support is ordered;

2. The amount of periodic support owed under the order;

3. Case identification numbers; and

4. Payment address.

E. In all cases, except those being enforced under the Nation child support plan as provided under Statute, employers shall provide the Registry with a copy of the notice of income assignment. Employers, parties, and obligees to an order, upon request, shall provide additional information necessary for the Registry to identify and properly allocate and distribute payments.

F. An obligee, pursuant to a judgment, decree, or order in which payment of support is required by this section to be paid through the Registry or whose support is being paid through the Registry, shall provide information as directed by the Department of Human Services necessary to properly allocate and distribute the payments.

G. All payments made through the Registry shall be allocated and distributed in accordance with Department of Child Support Services' policy and federal regulations.

H. The Department of Child Support Services shall promulgate rules as necessary to implement the provisions of this section.

Cherokee Nation Child Visitation Registry Act

§ 420 - Short Title

This act shall be known as the "Cherokee Nation Child Visitation Registry Act".

§ 421 - Agencies to Provide Child Visitation Registry Program - Eligible Agencies - Fees

The presiding district judge may authorize one or more public or private agencies to provide a child visitation registry program. Eligible governmental agencies shall include, but not be limited to, Cherokee Nation Marshal Service, county sheriffs' offices, Cherokee Nation Health and or Behavioral Health, Indian Child Welfare, social service agencies, and police departments. A participating agency may charge a fee not to exceed Five Dollars ($5.00) per parent, per visit.

§ 422 - Case Log - Copies of Log and Record - Entries as Proof of Compliance

A. The child visitation registry program shall include a log for each case participating in the program which must be signed by each parent at the time of arrival and departure. The agency must have an employee assigned to verify identification of each parent or guardian, initial each signature, and record the time of each person's arrival and departure.

B. Copies of a participant's log shall be available for purchase by the participant at the agency's reproduction cost. Copies of the records may be certified by stamp. Each agency shall maintain participants' records for a minimum of three (3) years.

C. Entries in child visitation registry records shall be rebuttable presumptive proof of compliance or noncompliance with court-ordered visitation.

§ 423 - Participation in Child Visitation Registry Program by Court Order or Motion

The court may order parents to participate in the child visitation registry program either before or after divorce or custody proceedings have become final. The court may order parents to participate in the program on its own motion or upon the motion of either parent.

§ 424 - Office of the Court Administrator to Develop Forms - Contents - Power to Reduce or Cancel Visitation for Habitual Lateness

A. The Office of the Court Administrator shall develop:

1. A form for use in petitioning the court for inclusion in the child visitation registry which shall be distributed to all court clerk offices; and

2. A form for the court's order requiring participation in the registry. This form shall provide for the following:

a. a requirement that a copy of the order be given to each parent, the child visitation registry agency, and court file,

b. a determination of who is authorized to pick up or deliver a child to the child visitation registry agency. The list may include, but is not limited to, parents, stepparents, and grandparents,

c. a determination of when the participants shall meet to pick up or deliver a child to the child visitation registry agency. This decision shall include specific days of the week and time periods,

d. the date when participation in the program shall begin or end, and

e. a requirement that the participant delivering the child to the registry must wait at the agency and sign out after the participant picking up the child has departed from the agency.

B. If a parent, or other person with custody, is habitually late to pick up or deliver the child or children, the court may, upon proper notice, consider reducing or canceling visitation temporarily or permanently.

§ 425 - Time for Hearing

The court shall hear applications for inclusion in the child visitation registry within thirty (30) days after service upon the nonapplicant.

Chapter 5

Office of Child Support Services

§ 500. Office of Child Support Enforcement recognized-Duties

Cherokee Nation hereby recognizes the Office of Child Support Services ("CSS" or "Office") of the Human Services Department. The Legislature further recognizes that CSS may enter into contracts within and without Cherokee Nation for purposes of enforcement of child support orders. In all cases involving unmarried children under the age of eighteen (18) years or through the age of twenty (20) if regularly attending high school, the Court may order that child support be computed and/or collected by CSS.

1. When the Court orders that child support shall be computed and/or collected by CSS, the parties shall be ordered to provide proof of income to CSS within ten (10) business days of the court order. If a

party does not comply with such order, then all income alleged by the opposing party shall be accepted as true.

2. When so ordered, CSS shall act as a referee of the Court, compute the amount(s) to be paid as child support, method(s) of payment, and all other necessary determinations within twenty (20) days of the court order. CSS shall provide such determinations to the parties and to the Court for placement in the case file. The Court shall accept the determinations of CSS as a child support order upon receipt.

3. If a party takes issue with a determination of CSS, the party may apply to the Court for a hearing on the matter. If an application for hearing is granted, the matter shall be heard within thirty (30) days.

§ 500A. Definitions

A. "Address of record" means an address for a party or a custodial person in a child support case that is used for service of process in child support actions. An address of record is a public record and may be different from the party's or custodial person's physical address.

B. "Child" means:

1. a person under eighteen (18) years of age; and

2. a person eighteen (18) or more years of age with respect to whom a child support order has been issued pursuant to the laws of a state.

C. "Child support" means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

D. "Child support order":

1. means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and

2. includes:

a. a permanent or temporary order; and

b. an initial order or a modification of an order.

E. "Court" means a court or administrative agency of a state or tribe that is authorized by state or tribal law to establish the amount of child support payable by a contestant or make a modification of a child support order.

F. "Custodial parent" means a parent who has physical custody of a child.

G. "Custodial party" means a court-appointed caretaker who has physical custody of a child.

H. "IV-D case" means a case in which child support services are being provided under Cherokee Nation's child support plan as approved by the Federal Administration for Children and Families.

I. "Modification" means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

J. "Non-custodial parent" means a parent who does not have physical custody of a child.

§ 501. Costs in child support services cases

Costs incurred in a child support enforcement case through the Office of Child Support Services shall be recorded by the Court Clerk. Reasonable costs may be assessed by the Court against the noncustodial parent at the conclusion of the proceedings.

§ 502. Agreements to obtain certain necessary information

A. 1. The Office of Child Support Services shall maintain a central case registry on all Title IV-D (42 U.S.C. § 651 et seq.) cases and all child support orders established or modified in Cherokee Nation after the date of the enactment of this subsection.

2. In Title IV-D cases, the case registry shall include, but not be limited to, information required to be transmitted to the federal case registry pursuant to 42 U.S.C. § 654A.

B. 1. All orders entered after the date of the enactment of this subsection, which establish paternity or establish, modify or enforce a child support obligation shall state for all parties and custodians subject to the order:

a. an address of record for service of process in support, visitation and custody actions, and

b. the address of record may be different from the party's or custodian's physical address.

2. The address shall be maintained by the central case registry. The order shall direct that any changes in the address of record shall be provided in writing to the Office of Child Support Services within thirty (30) days of the change. The address of record is subject to disclosure to a party or custodian upon request pursuant to the provisions of this section and rules promulgated by the Office of Child Support Services. The Office of Child Support Services may refuse to disclose address and location information if the Office has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to a party, custodian or child.

C. 1. All parties and custodians ordered to provide an address of record to the Office of child Support Services as specified in this section may, in subsequent child support actions, be served with process by regular mail to the last address of record provided to the Office of Child Support Services.

2. Proof of service shall be made by a certificate of mailing from a United States Post Office.

D. The Office of Child Support Services shall promulgate rules as necessary to implement the provisions of this section.

§ 503. Establishment-Enforcement and modification of orders for support-Confidential records

A. When a party has filed an application with the Child Support Services Office, the Office may petition the District Court for an order:

1. Requiring health insurance for the dependent children whenever it is available through employment at a reasonable cost;

2. Establishing paternity;

3. Requiring child support or other support;

4. Enforcing orders for paternity, child support, or other support;

5. Requiring that the obligor keep the Office informed of the name and address of the current employer of the obligor and of any health insurance information of the obligor within thirty (30) days of any change;

6. Providing for collection and distribution of child support monies; and

7. Assisting in the location of absent parents and their assets, in cooperation with federal agencies, other agencies of the various states, territories, and foreign nations requesting assistance with the enforcement of support orders entered in the United States and elsewhere.

B. The Office of Child Support Services may petition to modify an order of support, on request of the payor or payee, if the income of either party increases or decreases by fifteen percent (15%) or more or if the combined incomes of the parties increase or decrease such that the difference in the combined monthly incomes of the parties is fifteen percent (15%) more or less than the combined monthly income in the most recent support order or if there is a material change of circumstances for any of the parties.

C. Except as otherwise authorized by law, all files and records concerning the assistance and services provided under this section or concerning a putative father of a child born out of wedlock are confidential. Release of information from the files and records shall be restricted to purposes directly connected with the administration of the child support collection/enforcement, paternity determination, or parent location.

§ 504. CSS attorneys represent Cherokee Nation

A. The attorneys for CSS represent Cherokee Nation and not the interests of any other party. Providing services under 43 CNCA § 500 et seq. does not create an attorney-client relationship with any other party.

B. No attorney providing services under 43 CNCA § 500 et seq. shall be authorized to accept service for any party other than the Office of Child Support Services or Cherokee Nation.

§ 505. Office of Child Support Services to follow Cherokee Nation child support guidelines

The amount of child support and other support shall be ordered and reviewed in accordance with the child support guidelines provided in 43 CNCA § 508.

§ 506. Child support

A. In all cases involving minor children, child support shall be determined or redetermined or as the case may be upon hearing an application of either parent for any affirmative relief.

1. A person under the age of twenty (20) and not graduated from a high school shall be considered a minor child provided the child is regularly attending public or private school.

2. A person under the age of eighteen (18) shall be considered a minor child.

B. The Court shall determine child support by referring the parties to the Cherokee Nation Office of Child Support Services (CSS) to act as referee to determine child support pursuant to guidelines established by 43

CNCA § 508 et seq.

C. Should either the payor or payee of child support take issue with the ruling of CSS, said party may appeal the child support order within ten (10) days of CSS's filing of the determination with the Court. Hearing on such appeal shall be a de novo review, however, either party may request the CSS appear before the Court to explain the determination made on the basis that CSS maintains expertise in child support determination.

D. Absent specific direction of the Court, all child support shall be due on the first day of each month.

E. The CSS may institute child support collection cases in the name of the Cherokee Nation on behalf of any payee for whom CSS is collecting support; nothing herein shall prevent any payee of child support from retaining independent counsel and collecting child support directly in the name of the payee.

F. Any attorney retained to collect child support for a payee shall provide notice to CSS of being so retained. Said attorney shall report all child support legal action and collection to CSS within ten (10) days of such action or collection.

CHAPTER 6

CHILD SUPPORT GUIDELINES

§ 507. Purpose

The purpose is to provide child support guidelines for Cherokee Nation. The child support guidelines as provided herein shall be used by the courts of Cherokee Nation in any proceeding which involves the care, custody and control of minor children and/or incompetents and the Court determines a need for child support to be provided by one or more parties.

§ 508. Child Support Guidelines

A. There shall be a rebuttable presumption in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the following guidelines is the correct amount of child support to be awarded.

B. The Schedule of Basic Child Support Obligations, 43 O.S. § 119, as amended, assumes that all families incur certain child-rearing expenses and includes in the basic child support obligation an average amount to cover these expenses for various levels of the parents' combined income and number of children, comprised of housing, food, transportation, basic educational expenses, clothing, and entertainment.

C. The District Court shall have the authority to deviate from the guidelines, up or down, if the Court finds that doing so is in the best interest of the child or application would be unjust or inappropriate. The standard of proof shall be preponderance of the evidence.

§ 508A. Definitions

A. "Child" means:

1. a person under eighteen (18) years of age: and
2. a person eighteen (18) or more years of age with respect to whom a child support order has been

issued pursuant to the laws of a state.

B. "Child support" means a payment of money, continuing support or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

C. "Child support order":

1. means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum: and

2. includes:

a. a permanent or temporary order, and

b. an initial order or a modification of an order.

D. "Court" means a court or administrative agency of a state or tribe that is authorized by state or tribal law to establish the amount of child support payable by a contestant or make a modification of a child support order.

E. "Custodial parent" means a parent who has physical custody of a child.

F. "Custodial party" means a court-appointed caretaker who has physical custody of a child.

G. "Non-custodial parent" means a parent who does not have physical custody of a child.

H. "Obligee" means the person or entity to whom a support obligation is owed.

I. "Obligor" means the person who is required to make payments under an order for support.

J. "Overnight" means the child is in the physical custody and control of a parent for an overnight period of at least twelve (12) hours, and that parent has made a reasonable expenditure of resources for the care of the child. The twelve- (12) hour period could be during the day if the child is under school age.

§ 508B. Computation of gross income-Imputed income-Self employment income-Fringe benefits-Social Security Title II benefits

A. As used in this act:

1. "Earned income" is defined as income received from labor or the sale of goods or services and includes, but is not limited to, income from:

a. salaries;

b. wages;

c. tips;

d. commissions;

e. bonuses; and

f. military pay.

2. "Gross income" includes earned and passive income from any source, except as excluded in this

section.

3. "Passive income" is defined as all other income and includes, but is not limited to, income from:

a. dividends;

b. pensions;

c. rent;

d. interest income;

e. trust income;

f. support alimony being received from someone other than the other parent in this case;

g. annuities;

h. social security benefits;

i. workers' compensation benefits;

j. unemployment insurance benefits;

k. disability insurance benefits;

l. gifts;

m. prizes;

n. gambling winnings;

o. lottery winnings; and

p. royalties.

B. Income specifically excluded is:

1. Actual child support received for children not before the Court;

2. Adoption assistance subsidy paid by the Department of Human Services;

3. Benefits received from means-tested public assistance programs including, but not limited to:

a. Temporary Assistance for Needy Families (TANF),

b. Supplemental Security Income (SSI),

c. food stamps, and

d. General Assistance and State Supplemental Payments for Aged, Blind and the Disabled;

4. The income of the child from any source, including, but not limited to, trust income and social security benefits drawn on the disability of the child;

5. Payments received by the parent for the care of foster children.

C. 1. For purposes of computing gross income of the parents, gross income shall include for each parent whichever is the most equitable of:

a. all actual monthly income described in this section, plus such overtime and supplemental income as the Court deems equitable, or

b. the average of the gross monthly income for the time actually employed during the previous three (3) years, or

c. the minimum wage paid for a forty- (40) hour week, or

d. gross monthly income imputed as set forth in subsection (D) of this section.

2. If a parent is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income.

D. Imputed income.

1. Instead of using the actual or average income of a parent, the Court may impute gross income to a parent under the provisions of this section if equitable.

2. The following factors may be considered by the court when making a determination of willful and voluntary underemployment or unemployment:

a. whether a parent has been determined by the Court to be willfully or voluntarily underemployed or unemployed, including whether unemployment or underemployment for the purpose of pursuing additional training or education is reasonable in light of the obligation of the parent to support his or her children and, to this end, whether the training or education will ultimately benefit the child in the case immediately under consideration by increasing the parent's level of support for that child in the future,

b. when there is no reliable evidence of income,

c. the past and present employment of the parent,

d. the education, training, and ability to work of the parent,

e. the lifestyle of the parent, including ownership of valuable assets and resources, whether in the name of the parent or the current spouse of the parent, that appears inappropriate or unreasonable for the income claimed by the parent,

f. the role of the parent as caretaker of a handicapped or seriously ill child of that parent, or any other handicapped or seriously ill relative for whom that parent has assumed the role of caretaker which eliminates or substantially reduces the ability of the parent to work outside the home, and the need of that parent to continue in that role in the future, or

g. any other factors deemed relevant to the particular circumstances of the case.

E. Self-employment income.

1. Income from self-employment includes income from, but not limited to. business operations, work

as an independent contractor or consultant, sales of goods or services, and rental properties, less ordinary and reasonable expenses necessary to produce such income.

2. A determination of business income for tax purposes shall not control for purposes of determining a child support obligation. Amounts allowed by the Internal Revenue Service for accelerated depreciation or investment tax credits shall not be considered reasonable expenses.

3. The District or Administrative Court shall deduct from self-employment gross income an amount equal to the employer contribution for F.I.C.A. tax which an employer would withhold from an employee's earnings on an equivalent gross income amount.

F. Fringe benefits.

1. Fringe benefits for inclusion as income or in-kind remuneration received by a parent in the course of employment, or operation of a trade or business, may be counted as income if they significantly reduce personal living expenses.

2. Such fringe benefits might include, but are not limited to: company car, housing, or room and board.

3. Basic Allowance for Housing, Basic Allowance for Subsistence, and Variable Housing Allowances for service members are considered income for the purposes of determining child support.

4. Fringe benefits do not include employee benefits that are typically added to the salary, wage, or other compensation that a parent may receive as a standard added benefit such as employer contributions to portions of health insurance premiums or employer contributions to a retirement or pension plan.

G. Social Security Title II benefits.

1. Social Security Title II benefits received by a child shall be included as income to the parent on whose account the benefit of the child is drawn and applied against the support obligation ordered to be paid by that parent. If the benefit of the child is drawn from the disability of the child, the benefit of the child is not added to the income of either parent and not deducted from the obligation of either parent.

2. Child support greater than social security benefit. If the child support award due after calculating the child support guidelines is greater than the social security benefit received on behalf of the child, the obligor shall be required to pay the amount exceeding the social security benefit as part of the child support award in the case.

3. Child support equal to or less than social security benefits.

a. If the child support award due after calculating the child support guidelines is less than or equal to the social security benefit received on behalf of the child, the child support obligation of that parent is met and no additional child support amount must be paid by that parent.

b. Any social security benefit amounts which are greater than the support ordered by the Court shall be retained by the caretaker for the benefit of the child and shall not be used as a reason for decreasing the child support order or reducing arrearages.

c. The child support computation form shall include a notation regarding the use of social security benefits as offset.

4. a. Calculation of child support as provided in subsection (F) of this section shall be effective no earlier than the date on which the motion to modify was filed.

b. The Court may determine if under the circumstances of the case, it is appropriate to credit social security benefits paid to the custodial person prior to a modification of child support against the past-due child support obligation of the noncustodial parent.

c. Any credit granted by the Court pursuant to subparagraph b of this paragraph shall be limited to the time period during which the social security benefit was paid, or the time period covered by a lump sum for past social security benefits.

§ 508C. Deductions from gross income for qualified other children

A. Deductions for other children of either parent who are qualified under this section may be considered by the Court for the purpose of reducing the gross income of the parent. Adjustments are available for a child:

1. Who is the biological, legal, or adopted child of the parent;

2. Who was born prior to the child in the case under consideration;

3. Whom the parent is actually supporting; and

4. Who is not before the Court to set, modify, or enforce support in the case immediately under consideration.

B. Children for whom support is being determined in the case under consideration, stepchildren, and other minors in the home that the parent has no legal obligation to support shall not be considered in the calculation of this deduction.

C. If the Court finds a parent has a parent-child relationship with a child not before the Court, the Court may grant a deduction for that child as set forth in subsection (D) of this section.

D. Calculation of deduction for qualified other children.

1. Out-of-home children.

a. To receive a deduction against gross income for child support provided pursuant to a court order for qualified other children whose primary residence is not in the home of the parent seeking deduction, the parent shall establish the existence of a support order and provide documented proof of support paid for the other child consistently over a reasonable and extended period of time prior to the initiation of the proceeding that is immediately under consideration by the tribunal, but in any event, such time period shall not be less than twelve (12) months.

b. Documented proof of support includes:

i. physical evidence of monetary payments to the caretaker of the child, such as canceled checks or money orders, and

ii evidence of payment of child support under another child support order, such as a payment history from a tribunal clerk or child support office.

c. The available deduction against gross income for either parent's qualified children not in the home of the parent is the actual documented court-ordered current monthly child support obligation of the qualified other children, averaged to a monthly amount of support paid over the most recent twelve-month period.

2. In-home children.

a. To receive a deduction against gross income for qualified prior-born other children whose primary residence is with the parent seeking deduction, but who are not part of the case being determined, the parent must establish a legal duty of support and that the child resides with the parent more than fifty percent (50%) of the time. Documents that may be used to establish that the parent and child share the same residence include the school or medical records showing the address of the child and the utility bills of the parents mailed to the same address, court orders reflecting the parent is the primary residential parent or that the parent shares the parenting time of the child fifty percent (50%) of the time.

b. The deduction for other qualified children shall be computed as a hypothetical child support order calculated using the deduction worksheet the gross income of the parents, the total number of qualified other children living in the home of the parent, and the Child Support Guideline Schedule.

c. The available deduction against gross income for the qualified in-home children of either parent is seventy-five percent (75%) of a hypothetical support order calculated according to these Guidelines, using the Deduction Worksheet, the gross income of the parent less any self-employment taxes paid, the total number of qualified other children living in the home of the parents, and the Child Support Guideline Schedule in 43 O.S. § 119, as amended.

§ 508D. Computation of child support as percentage of parents' combined gross income-Prospective adjustment-Transportation expenses-Support order summary form

A. All child support shall be computed as a percentage of the combined gross income of both parents. The Child Support Guideline Schedule as provided in 43 O.S. § 119, as amended, shall be used for such computation. The child support obligation of each parent shall be computed. The share of the obligor shall be paid monthly to the obligee and shall be due on a specific date.

B. In cases in which one parent has sole physical custody, the adjusted monthly gross income of both parents shall be added together and the Child Support Guideline Schedule consulted for the total combined base monthly obligation for child support.

C. After the total combined child support is determined, the percentage share of each parent shall be allocated by computing the percentage contribution of each parent to the combined adjusted gross income and allocating that same percentage to the child support obligation to determine the base child support

obligation of each parent.

D. 1. In cases of split physical custody, where each parent is awarded physical custody of at least one (1) of the children for whom the parents are responsible, the child support obligation for each parent shall be calculated by application of the Child Support Guidelines for each custodial arrangement.

2. The parent with the larger child support obligation shall pay the difference between the two amounts to the parent with the smaller child support obligation.

E. Child support shall be computed as set forth in subsections (A) through (D) of this section in every case, regardless of whether the custodial arrangement is designated as sole custody or joint custody.

F. The Court, to the extent reasonably possible, shall make provision in an order for prospective adjustment of support to address any foreseen changes including, but not limited to: changes in medical insurance, child care expenses, medical expenses, extraordinary costs, and the satisfaction of jointly acquired debt of the parents used as a deduction from the gross income of a parent.

§ 508E. Parenting time adjustment-Reduction in child support obligation

A. Parenting time adjustment.

1. The adjustment may be granted based upon a court order or agreement that the noncustodial parent is granted at least one hundred twenty-one (121) overnights of parenting time per twelve- (12) month period with the children in the case under consideration.

2. Average parenting time. If there are multiple children for whom support is being calculated, and the parent seeking the parenting time adjustment is spending a different amount of time with each child, then an annual average of parenting time with all of the children shall be calculated.

B. In cases of split physical custody, either parent may be eligible for a parenting time adjustment.

C. Parenting time adjustments are not mandatory, but presumptive. The presumption may be rebutted in a case where the circumstances indicate the adjustment is not in the best interest of the child or that the increased parenting time by the noncustodial parent does not result in greater expenditures which would justify a reduction in the support obligation.

D. Reduction in child support obligation for additional parenting time.

1. If the parent receiving the parenting time adjustment is granted one hundred twenty-one (121) or more overnights of parenting time per twelve- (12) month period with a child, or an average of one hundred twenty-one (121) overnights with all applicable children, a reduction to the child support obligation of the parent may be made as set forth in this section.

2. A parenting time adjustment shall be made to the base monthly child support obligation by the following formula: The total combined base monthly child support obligation shall be multiplied by a factor determined by the number of overnights granted to the noncustodial parent. The result shall be designated the adjusted ombined child support obligation. In a case where the noncustodial parent is granted:

a. one hundred twenty-one (121) overnights to one hundred thirty-one (131) overnights, the

factor shall be two (2);

b. one hundred thirty-two (132) overnights to one hundred forty-three (143) overnights, the factor shall be one and three-quarters (1.75); or

c. one hundred forty-four (144) or more overnights, the factor shall be one and one-half (1.5).

3. To determine the adjusted child support obligation of each parent, the adjusted combined child support obligation shall be divided between the parents in proportion to their respective adjusted gross incomes.

4. a. The percentage of time a child spends with each parent shall be calculated by determining the number of overnights for each parent and dividing that number by three hundred sixty-five (365).

b. The share of the adjusted combined child support obligation for each parent shall then be multiplied by the percentage of time the child spends with the other parent to determine the base child support obligation owed to the other parent.

c. The respective adjusted base child support obligations for each parent are then offset, with the parent owing more base child support paving the difference between the two amounts to the other parent. The base child support obligation of the parent owing the lesser amount is then set at zero dollars ($0.00).

5. The parent owing the greater amount of base child support shall pay the difference between the two amounts as a child support order. In no event shall the provisions of this paragraph be construed to authorize or allow the payment of child support by a parent having more than two hundred five (205) overnights.

E. 1. Failure to exercise or exercising more than the number of overnights upon which the parenting time adjustment is based, is a material change of circumstances.

2. If the Court finds that the obligor has failed to exercise a significant number of the overnights provided in the court order necessary to receive the parenting time adjustment in a proceeding to modify the child support order, the Court may establish the amount that the obligor has underpaid due to the application of the parenting time adjustment as a child support judgment that may be enforced in the same manner as any other child support judgment.

3. The Court may rule that the obligor will not receive the parenting time adjustment for the next twelve- (12) month period. After a twelve- (12) month period during which the obligor did not receive the parenting time adjustment the obligor may petition the Court to modify the child support order. The obligor may be granted a prospective parenting time adjustment upon a showing that the obligor has actually exercised the threshold number of overnights in the preceding twelve (12) months. No retroactive modification or credit from the child support guidelines amount shall be granted based on this section.

§ 509. Child support orders to include provision for income assignment-Voluntary income assignment-In-kind payment

A. In all child support cases arising out of an action for divorce, paternity or other proceeding, the Court shall order the wage of the obligor subject to immediate income assignment, regardless of whether support payments by such parent are in arrears, unless:

1. one (1) of the parties demonstrates and the Court finds there is good cause not to require immediate income withholding; or

2. a signed, written agreement is reached between the parties which provides for an alternative arrangement and approved by the Court.

B. The obligated party may execute a voluntary income assignment at any time. The voluntary assignment shall be filed with the Court and shall take effect after service on the payor.

C. With the consent of the custodial parent and under the supervision of the Office, the payor may make payments of in-kind goods or services. In-kind payments cannot be used to pay arrearages.

§ 510. Child support orders to include provision for health insurance and day care expenses

In all cases where child support is ordered, such order may include provisions for providing or sharing the expenses of health insurance and/or other out-of-pocket medical costs of the minor child(ren), and for employment-related day care expenses.

§ 511. Security or bond for payment of child support

The Court may order a person obligated to support a minor child to post a security, bond, or other guarantee in a form and amount satisfactory to the Court to ensure the payment of child support.

§ 512. Past due support payments as judgment-Arrearage payment schedule

A. Any payment or installment of child support ordered pursuant to any order, judgment, or decree of the Court or administrative order of Cherokee Nation, another tribal government, or a state department of human services, or an equivalent state/tribal organization, is, on and after the date it becomes past due, a judgment by operation of law. Judgments for past due support shall:

1. have the full force and effect of any other judgment of Cherokee Nation, including the ability to be enforced by any method available under the laws of Cherokee Nation and the State of Oklahoma to enforce and collect money judgments; and

2. be entitled to full faith and credit as a judgment in Cherokee Nation and any state or tribal government.

3. An order that provides for payment of child support, if willfully disobeyed, may be enforced by indirect civil contempt proceedings, notwithstanding that the support payment is a judgment on and after the date it becomes past due. Any amounts determined to be past due by the Court may subsequently be enforced by indirect civil contempt proceedings.

B. An arrearage payment schedule set by the Court or administrative order of Cherokee Nation shall not exceed three (3) years, unless imposition of a payment schedule would be unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of the child or children involved. When making this determination, reasonable support obligations of either parent for other children in the custody of

the parent may be considered. If an arrearage payment schedule that exceeds three (3) years is set, specific findings of fact supporting the action shall be made.

C. The Office of Child Support Services shall have the authority to negotiate a lump sum payment to settle a child support arrearage and interest due thereon. Consent of the payee shall be required.

§ 513. Modification, suspension or termination of income assignment order

A person obligated to pay support or the person entitled to the support may petition the Court to:

1. modify, suspend, or terminate the order for income assignment because of a modification, suspension, or termination of the underlying order for support; or

2. modify the amount of income to be withheld to reflect payment in full of the delinquency by income assignment or otherwise.

§ 514. Interest on delinquent child support and judgments

If the order is established under Cherokee Nation law, delinquent court-ordered child support payments and child support judgments (whether accrual or arrearage) may draw interest at the rate of five percent (5%) per year, and the interest shall be collected in the same manner as the payments upon which the interest accrues. If the order is established under another jurisdiction's laws, interest shall accrue based on the law of the jurisdiction from which the order originated. Private interest may be waived by the custodial parent/party and/or by the Court if the non-custodial parent makes regular, consistent payments and no arrearage exists.

§ 515. Child support computation form

A. A child support computation form shall be signed by the Judge and incorporated as a part of all orders which establish or modify a child support obligation.

B. When services are not being provided by the Office of Child Support Services, a support order summary form shall be prepared by the attorney of record or the pro se litigant and presented to the Judge with all orders which establish paternity or establish, modify or enforce a child support obligation. No paternity or child support order shall be signed by the Judge without presentation of the support order summary form. After the order is signed by the Judge, the summary of support order form may be submitted to the to the Office of Child Support Services for collection and enforcement.

§ 516. Children not otherwise considered

A. Any parent that has child support calculated may submit a child support calculation for any child not otherwise considered in the calculation of child support, provided such parent is, in fact, the legal parent of such child and such parent actually supports the child to the extent identified in the child support calculation form.

B. The Court may consider any and all support provided to such child in determining the child support calculation and in its discretion may deduct the child support attributed to such parent in the same manner as for approved child support deductions.

§ 517. Full faith and credit for child support orders validly issued by foreign jurisdictions

A. General rule. The Office of Child Support Services:

1. shall enforce according to its terms a child support order made consistently with this section by a court of another state; and

2. shall not seek or make a modification of such an order except in accordance with subsections (E), (F), and (I).

B. Definitions. In this section:

1. "Child" means:

a. a person under eighteen (18) years of age; and

b. a person eighteen (18) or more years of age with respect to whom a child support order has been issued pursuant to the laws of a state.

2. "Child's home state" means the state in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.

3. "Child's state" means the state in which a child resides.

4. "child support" means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

5. "Child support order":

a. means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and

b. includes:

i. a permanent or temporary order; and

ii. an initial order or a modification of an order.

6. "Contestant" means:

a. a person (including a parent) who:

i. claims a right to receive child support;

ii. is a party to a proceeding that may result in the issuance of a child support order; or

iii. is under a child support order; or

b. a state or political subdivision of a state to which the right to obtain child support has been

assigned.

7. "Court" means a court or administrative agency of a state or tribe that is authorized by state or tribal law to establish the amount of child support payable by a contestant or make a modification of a child support order.

8. "Modification" means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

9. "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and a federally-recognized Indian tribe.

C. Requirements of child support order. A child support order made by a court of a state is made consistently with this section if a court that makes the order, pursuant to the laws of the state in which the court is located and subsections (E), (F) and (G) and:

1. has subject matter jurisdiction to hear the matter and enter such an order; and

2. has personal jurisdiction over the contestants; and

3. gives reasonable notice and opportunity to be heard to the contestants.

D. Continuing jurisdiction. A court of a state that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the state is the child's state or the residence of any individual contestant unless the court of another state, acting in accordance with subsections (E) and (F), has made a modification of the order.

E. Authority to modify orders. A court of a state may modify a child support order issued by a court of another state if:

1. the court has jurisdiction to make such a child support order pursuant to subsection (I), and

2. a. the court of the other state no longer has continuing, exclusive jurisdiction of the child support order because that state no longer is the child's state or the residence of any individual contestant;

or

b. each individual contestant has filed written consent with the state of continuing, exclusive jurisdiction for a court of another state to modify the order and assume continuing, exclusive jurisdiction over the order.

F. Recognition of child support orders. If one or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

1. If only one (1) court has issued a child support order, the order of that court must be recognized.

2. If two or more courts have issued child support orders for the same obligor and child, and only one (1) of the courts would have continuing, exclusive jurisdiction under this section, the order of that

court must be recognized.

3. If two or more courts have issued child support orders for the same obligor and child, and more than one of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.

4. If two or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.

5. The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection (D).

G. Enforcement of modified orders. A court of a state that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections (E) and (F).

H. Choice of law.

1. In general. In a proceeding to establish, modify, or enforce a child support order, the forum state's law shall apply except as provided in paragraphs 2 and 3.

2. Law of state of issuance of order. In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the law of the state of the court that issued the order.

3. Period of limitation. In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum state or the state of the court that issued the order, whichever statute provides the longer period of limitation.

I. Registration for modification. If there is no individual contestant or child residing in the issuing state, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in a state with jurisdiction over the nonmovant for the purpose of modification.

§ 518. Cooperation with other IV-D programs

The Cherokee Nation Office of Child Support Services shall extend the full range of services available under its IV-D program to respond to all requests from, and cooperate with, state, tribe, and other IV-D agencies.

Uniform Child Custody Jurisdiction and Enforcement Act

Article 1 - General Provisions

§ 551-101 - Short Title

This act may be cited as the "Uniform Child Custody Jurisdiction and Enforcement Act".

§ 551-102 - Definitions

In this act:

1. "Abandoned" means left without provision for reasonable and necessary care or supervision;

2. "Child" means an individual who has not attained eighteen (18) years of age;

3. "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual;

4. "Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Article 3 of this act;

5. "Commencement" means the filing of the first pleading in a proceeding;

6. "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination;

7. "Home state" means the reservation or state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six (6) months of age, the term means the state in which the child lived from birth with the parent or person acting as a parent. A period of temporary absence of the parent or person acting as a parent is part of the period;

8. "Initial determination" means the first child custody determination concerning a particular child;

9. "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this act;

10. "Issuing state" means the tribe or state in which a child custody determination is made;

11. "Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination;

12. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, including any governmental subdivision, agency, instrumentality, or public corporation, or any other legal or commercial entity;

13. "Person acting as a parent" means a person, other than a parent, who:

a. has physical custody of the child or has had physical custody for a period of six (6) consecutive months, including any temporary absence, within one (1) year immediately before the commencement of a child custody proceeding, and

b. has been awarded legal custody by a court or claims a right to legal custody under the law of this tribe or state;

14. "Physical custody" means the physical care and supervision of a child;

15. "State" means a tribe, state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;

16. "Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law; and

17. "Warrant" means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

§ 551-103 - Proceedings Governed by Other Law

This act does not apply to an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

§ 551-104 - Application to Indian Tribes

A. A child custody proceeding that pertains to an Indian child as defined in the Cherokee Nation Indian Child Welfare Act, is not subject to this act to the extent that it is governed by the Cherokee Nation Child Welfare Act.

B. A court of this state shall treat a tribe as if it were a state of the United States for purposes of applying Articles 1 and 2 of this act.

C. A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this act must be recognized and enforced under Article 3 of this act.

§ 551-105 - International Application of Act

A. A court of this state shall treat a foreign country as if it were another state of the United States for purposes of applying Articles 1 and 2 of this act.

B. Except as otherwise provided in subsection C of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this act must be recognized and enforced under Article 3 of this act.

C. A court of this state need not apply this act if the child custody law of a foreign country violates fundamental principles of human rights.

§ 551-106 - Effect of Child Custody Determination

A child custody determination made by a court of this state that had jurisdiction under this act binds all persons who have been served in accordance with the laws of this state or notified in accordance with Section 8 of this act or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.

§ 551-107 - Priority

If a question of existence or exercise of jurisdiction under this act is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the court's calendar and handled expeditiously.

§ 551-108 - Notice to Persons Outside Nation/State

A. Notice required for the exercise of jurisdiction when a person is outside this state may be given in the manner provided in Cherokee Nation civil statutes or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

B. Proof of service may be made in the manner provided Cherokee Nation Statutes or by the law of the state in which the service is made.

C. Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

§ 551-109 - Appearance and Limited Immunity

A. A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or having been physically present for the purpose of participating, in the proceeding.

B. A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

C. The immunity granted by subsection A of this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this act committed by an individual while present in this state.

§ 551-110 - Communication Between Courts

A. A court of this state may communicate with a court in another state concerning a proceeding arising under this act.

B. The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and, legal arguments before a decision on jurisdiction is made.

C. Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

D. Except as otherwise provided in subsection C of this section, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

E. For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§ 551-111 - Taking Testimony in Another State

A. In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

B. A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

C. Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

§ 551-112 - Cooperation Between Courts - Preservation of Records

A. A court of this state may request the appropriate court of another state to:

1. Hold an evidentiary hearing;

2. Order a person to produce or give evidence pursuant to procedures of that state;

3. Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

4. Forward to the court of this state a certified copy of the transcript of the record of the hearing, the

evidence otherwise presented, and any evaluation prepared in compliance with the request; and

5. Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

B. Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection A of this section.

C. Travel and other necessary and reasonable expenses incurred under subsections A and B of this section may be assessed against the parties according to the laws of this state.

D. A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains eighteen (18) years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

Article 2 - Jurisdiction

§ 551-201 - Initial Child Custody Jurisdiction

A. Except as otherwise provided in Section 16 of this act, a court of this state has jurisdiction to make an initial child custody determination only if.

1. This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six (6) months before the commencement of the proceeding and the child is absent from this state, but a parent or person acting as a parent continues to live in this state;

2. A court of another state does not have jurisdiction under paragraph 1 of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 19 or 20 of this act, and:

   a. the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence, and

   b. substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

3. All courts having jurisdiction under paragraph 1 or 2 of this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 19 or 20 of this act; or

4. No court of any other state would have jurisdiction under the criteria specified in paragraph 1, 2, or 3 of this subsection.

B. Subsection A of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

C. Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

D. Nothing in this section shall expand the Court's jurisdiction over non-natives farther than allowed by Federal law.

§ 551-202 - Exclusive, Continuing Jurisdiction

A. Except as otherwise provided in Section 16 of this act, a court of this state which has made a child custody determination consistent with Section 13 or 15 of this act has exclusive, continuing jurisdiction over the determination until:

1. A court of this state determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

2. A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state.

B. A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 13 of this act.

§ 551-203 - Jurisdiction to Modify Determination

Except as otherwise provided in Section 16 of this act, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under paragraph 1 or 2 of subsection A of Section 13 of this act and:

1. The court of the other state determines it no longer has exclusive, continuing jurisdiction under Section 14 of this act or that a court of this state would be a more convenient forum under Section 19 of this act ; or

2. A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

§ 551-204 - Temporary Emergency Jurisdiction

A. A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

B . If there is no previous child custody determination that is entitled to be enforced under this act and child custody proceeding has not been commenced in court of a state having jurisdiction under Sections 13 through 15 of this act, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 13 through 15 of this act. If a child custody

proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 13 through 15 of this act, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

C. If there is a previous child custody determination that is entitled to be enforced under this act, or a child custody proceeding has been commenced in a court of a state having jurisdiction under Sections 13 through 15 of this act, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under Sections 13 through 15 of this act. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

D. A court of this state which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under Sections 13 through 15 of this act, shall immediately communicate with the other court. A court of this state which is exercising jurisdiction pursuant to Sections 13 through 15 of this act, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

§ 551-205 - Notice - Opportunity to be Heard - Joinder

A. Before a child custody determination is made under this act, notice and an opportunity to be heard in accordance with the standards of Section 8 of this act must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

B. This act does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

C. The obligation to join a party and, the right to intervene as a party in a child custody proceeding under this act are governed by the law of this state as in child custody proceedings between residents of this state.

§ 551-206 - Simultaneous Proceedings

A. Except as otherwise provided in Section 16 of this act, a court of this state may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under Section 19 of this act.

B. Except as otherwise provided in Section 16 of this act, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to Section 21 of this act. If the court determines that a child custody proceeding has been commenced in a court

in another state having jurisdiction substantially in accordance with this act, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this act does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

C. In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

1. Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

2. Enjoin the parties from continuing with the proceeding for enforcement; or

3. Proceed with the modification under conditions it considers appropriate.

§ 551-207 - Inconvenient Forum

A. A court of this state which has jurisdiction under this act to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon the motion of a party, the court's own motion, or request of another court.

B. Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

1. Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

2. The length of time the child has resided outside this state;

3. The distance between the court in this state and the court in the state that would assume jurisdiction;

4. The relative financial circumstances of the parties;

5. Any agreement of the parties as to which state should assume jurisdiction;

6. The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

7. The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

8. The familiarity of the court of each state with the facts and issues in the pending litigation.

C. If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be

promptly commenced in another designated state and may impose any other condition the court considers just and proper.

D. A court of this state may decline to exercise its jurisdiction under this act if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

§ 551-208 - Jurisdiction Declined by Reason of Conduct

A. Except as otherwise provided in Section 16 of this act or by another law of this state, if a court of this state has jurisdiction under this act because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

1. The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

2. A court of the state otherwise having jurisdiction under Sections 13 through 15 of this act determines that this state is a more appropriate forum under Section 19 of this act; or

3. No court of any other state would have jurisdiction under the criteria specified in Sections 13 through 15 of this act.

B. If a court of this state declines to exercise its jurisdiction pursuant to subsection A of this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under Sections 13 through 15 of this act.

C. If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection A of this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state unless authorized by law other than this act.

§ 551-209 - Information to be Submitted to Court

A. In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

1. Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date

of the child custody determination, if any;

2. Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions, and, if so, identify the court, the case number, and the nature of the proceeding; and

3. Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with the child and, if so, the names and addresses of those persons.

B. If the information required by subsection A of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

C. If the declaration as to any of the items described in paragraphs 1 through 3 of subsection A of this section is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

D. Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

E. If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

§ 551-210 - Appearance of Parties and Child

A. In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

B. If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to Section 8 of this act include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

C. The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

D. If a party to a child custody proceeding who is outside this state is directed to appear under subsection B of this section or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

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Article 3 - Enforcement

§ 551-301 - Definitions

In this article:

1. "Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

2. "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

§ 551-302 - Enforcement under Hague Convention

Under this article a court of this state may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

§ 551-303 - Duty to Enforce

A. A court of this state shall recognize and enforce child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this act or the determination was made under factual circumstances meeting the jurisdictional standards of this act and the determination as not been modified in accordance with this act.

B. A court of this state may utilize any remedy available under other laws of this state to enforce a child custody determination made by a court of another state. The remedies provided in this article are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

§ 551-304 - Temporary Visitation

A. A court of this state which does not have jurisdiction to modify a child custody determination, may issue a temporary order enforcing:

1. A visitation schedule made by a court of another state; or

2. The visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

B. If a court of this state makes an order under paragraph 2 of subsection A of this section, it shall specify in the order a period of time that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Article 2 of this act. The order remains in effect until an order is obtained from the other court or the time period expires.

§ 551-305 - Registration of Child Custody Determination

A. A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate court in this state:

1. A letter or other document requesting registration;

2. Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

3. Except as otherwise provided in Section 21 of this act, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

B. On receipt of the documents required by subsection A of this section, the registering court shall:

1. Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

2. Serve notice upon the persons named pursuant to paragraph 3 subsection A of this section and provide them with an opportunity to contest the registration in accordance with this section.

C. The notice required by paragraph 2 of subsection B of this section must state that:

1. A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of, this state;

2. A hearing to contest the validity of the registered determination must be requested within twenty (20) days after service of notice; and

3. Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

D. A person seeking to contest the validity of a registered order must request a hearing within twenty (20) days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

1. The issuing court did not have jurisdiction under Article 2 of this act;

2. The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under Article 2 of this act; or

3. The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of Section 8 of this act, in the proceedings before the court that issued the order for which registration is sought.

E. If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of

the confirmation.

F. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

§ 551-306 - Enforcement of Registered Determination

A. A court of this state may grant any relief normally available under the laws of this state to enforce a registered child custody determination made by a court of another state.

B. A court of this state shall recognize and enforce, but may not modify, except in accordance with Article 2 of this act, a registered child custody determination of a court of another state.

§ 551-307 - Simultaneous Proceedings

If a proceeding for enforcement under this article is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Article 2 of this act, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

§ 551-308 - Expedited Enforcement of Child Custody Determination

A. A petition under this article must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

B. A petition for enforcement of a child custody determination must state:

1. Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

2. Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this act and, if so, identify the court, the case number, and the nature of the proceeding;

3. Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

4. The present physical address of the child and the respondent, if known;

5. Whether relief in addition to the immediate physical custody of the child and attorney's fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought;

and

6. If the child custody determination has been registered and confirmed under Section 27 of this act, the date and place of registration

C. Upon the filing of a petition the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

D. An order issued under subsection C of this section must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under Section 34 of this act, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

1. The child custody determination has not been registered and confirmed under Section 27 of this act and that:

    a. the issuing court did not have jurisdiction under Article 2 of this act,

    b. the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Article 2 of this act, or

    c. the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 8 of this act, in the proceedings before the court that issued the order for which enforcement is sought; or

2. The child custody determination for which enforcement is sought was registered and confirmed under Section 27 of this act, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Article 2 of this act.

§ 551-309 - Service of Petition and Order

Except as otherwise provided in Section 33 of this act, the petition and order shall be served upon the respondent and any person who has physical custody of the child in the manner provided in Cherokee Nation civil statutes.

§ 551-310 - Hearing and Order

A. Unless the court issues a temporary emergency order pursuant to Section 16 of this act, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

1. The child custody determination has not been registered and confirmed under Section 27 of this act

and that:

a. the issuing court did not have jurisdiction under Article 2 of this act,

b. the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Article 2 of this act, or

c. the respondent was entitled to notice, but notice was not given in accordance with the standards of Section 8 of this act, in the proceedings before the court that issued the order for which enforcement is sought; or

2. The child custody determination for which enforcement is sought was registered and confirmed under Section 27 of this act, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Article 2 of this act.

B. The court shall award the fees, costs, and expenses authorized under Section 34 of this act and may grant additional relief, including a request for the assistance of law enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

C. If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

D. A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this article.

§ 551-311 - Warrant to Take Physical Custody of Child

A. Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is imminently likely to suffer serious physical harm or be removed from this state.

B. If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by subsection B of Section 30 of this act.

C. A warrant to take physical custody of a child must:

1. Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

2. Direct law enforcement officers to take physical custody of the child immediately; and

3. Provide for the placement of the child pending final relief.

D. The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

E. A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

F. The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

§ 551-312 - Costs, Fees, and Expenses

A. The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate

B. The court may not assess fees, costs, or expenses against a state unless authorized by laws other than this act.

§ 551-313 - Recognition and Enforcement

A court of this state shall accord full faith and credit to an order issued by another state and consistent with this act which enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under Article 2 of this act.

§ 551-314 - Appeals

An appeal may be taken from a final order in a proceeding under this article 1 in accordance with appellate procedures in other civil cases. Unless the court enters a temporary emergency order under Section 16 of this act,' the enforcing court may not stay an order enforcing a child custody determination pending appeal.

§ 551-315 - Role of Attorney General

A. In a case arising under this act or involving the Hague Convention on the Civil Aspects of International Child Abduction, the district attorney may take any lawful action, including resorting to a proceeding under this article or any other available civil proceeding, to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

1. An existing child custody determination;
2. A request to do so from a court in a pending child custody proceeding;
3. A reasonable belief that a criminal statute has been violated; or
4. A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

B. The Attorney General acting under this section acts on behalf of the court and may not represent any party.

§ 551-316 - Role of Law Enforcement

At the request of the Attorney General acting under Section 37 of this act, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist the Attorney General with responsibilities under Section 378 of this act.

§ 551-317 - Costs and Expenses

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the Attorney General and law enforcement officer under Section 37 or 38 of this act.

Article 4 - Miscellaneous Provisions

§ 551-401 - Application and Construction

In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 551-402 - Transitional Provision

A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination which was commenced before the effective date of this act is governed by the law in effect at the time the motion or other request was made.

Uniform Interstate Family Support Act

Article 1 - General Provisions

§ 601-100 - Repealed

§ 601-101 - Short Title

This act may be cited as the "Uniform Interstate Family Support Act".

§ 601-102 - Definitions

In this act:

1. "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent;

2. "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country;

3. "Convention" means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007;

4. "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse or former spouse, including an unsatisfied obligation to provide support;

5. "Foreign country" means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

   a. which has been declared under the law of the United States to be a foreign reciprocating country,

   b. which has established a reciprocal arrangement for child support with this state as provided in Section 601-308 of this title,

   c. which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this act, or

   d. in which the Convention is in force with respect to the United States;

6. "Foreign support order" means a support order of a foreign tribunal;

7. "Foreign tribunal" means a court, administrative agency or quasi-judicial entity of a foreign country which is authorized to establish, enforce or modify support orders or to determine parentage of a child. The term includes a competent authority under the Convention;

8. "Home state" means the tribe, state or foreign country in which a child lived with a parent or a person acting as parent for at least six (6) consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six (6) months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period;

9. "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state;

10. "Income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor, as defined by the income-withholding law of this state, to withhold support from the income of

the obligor;

11. "Initiating tribunal" means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country;

12. "Issuing foreign country" means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child;

13. "Issuing state" means the tribe or state in which a tribunal issues a support order or a judgment determining parentage of a child;

14. "Issuing tribunal" means the tribunal that issues a support order or a judgment determining parentage of a child;

15. "Law" includes decisional and statutory law and rules and regulations having the force of law;

16. "Obligee" means:

a. an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order or a judgment determining parentage of a child has been issued,

b. a foreign country, tribe, state or political subdivision of a state to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee in place of child support,

c. an individual seeking a judgment determining parentage of the individual's child, or

d. a person that is a creditor in a proceeding under Article 7;

17. "Obligor" means an individual or the estate of a decedent that:

a. owes or is alleged to owe a duty of support,

b. is alleged but has not been adjudicated to be a parent of a child,

c. is liable under a support order, or

d. is a debtor in a proceeding under Article 7;

18. "Outside this state" means a location in another tribe, state or a country other than the United States, whether or not the country is a foreign country;

19. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity;

20. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

21. "Register" means to record or file in a tribunal of this tribe a support order or judgment determining parentage of a child issued in another tribe, state or a foreign country;

22. "Registering tribunal" means a tribunal in which a support order or judgment determining parentage of a child is registered;

23. "Responding state" means a tribe or state in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or a foreign country;

24. "Responding tribunal" means the authorized tribunal in a responding tribe, state or foreign country;

25. "Spousal support order" means a support order for a spouse or former spouse of the obligor;

26. "State" means a tribe, 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 nation or tribe that is federally recognized;

27. "Support enforcement agency" means a public official, governmental entity, or private agency authorized to:

a. seek enforcement of support orders or laws relating to the duty of support,

b. seek establishment or modification of child support,

c. request determination of parentage of a child,

d. attempt to locate obligors or their assets, or

e. request determination of the controlling child support order;

28. "Support order" means a judgment, decree, order, decision, or directive, whether temporary, final or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse or a former spouse, which provides for monetary support, health care, arrearages, retroactive support or reimbursement for financial assistance provided to an individual obligee in place of child support. The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney fees, and other relief; and

29. "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage of a child.

§ 601-103 - Tribunals - Support Enforcement Agency

A. The district court and the Department of Human Services are the tribunals of this state.

B. The Department of Human Services, Child Support Services, is the support enforcement agency of this state.

§ 601-104 - Cumulative Remedies - Nonexclusivity of Act - Jurisdiction Over Child Custody or Visitation

A. Remedies provided by this act are cumulative and do not affect the availability of remedies under other law

or the recognition of a foreign support order on the basis of comity.

B. This act does not:

1. Provide the exclusive method of establishing or enforcing a support order under the laws of this state; or

2. Grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this act.

§ 601-105 - Applicability of Provisions of Act

A. A tribunal of this state shall apply Articles 1 through 6 of this title and, as applicable, Article 7 of this title, to a support proceeding involving:

1. A foreign support order;

2. A foreign tribunal; or

3. An obligee, obligor or child residing in a foreign country.

B. A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of Articles 1 through 6 of this title.

C. Article 7 of this title applies only to a support proceeding under the Convention. In such a proceeding, if a provision of Article 7 is inconsistent with Articles 1 through 6, Article 7 controls.

Article 2 - Jurisdiction

§ 601-201 - Grounds for Personal Jurisdiction Over Nonresident

A. In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

1. The individual is personally served with summons within this state;

2. The individual submits to the jurisdiction of this state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

3. The individual resided with the child in this state;

4. The individual resided in this state and provided prenatal expenses or support for the child;

5. The child resides in this state as a result of the acts or directives of the individual;

6. The individual engaged in sexual intercourse in this state and the child may have been conceived by

that act of intercourse;

7. The individual asserted parentage of a child in the putative father registry maintained in this state by the Oklahoma Department of Human Services or the Cherokee Nation Office of Child Support Services; or

8. There is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

B. The bases of personal jurisdiction set forth in subsection A of this section or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of Section 601-611 of this title are met, or, in the case of a foreign support order, unless the requirements of Section 601-615 are met.

§ 601-202 - Duration of Jurisdiction

Personal jurisdiction acquired by a tribunal of this state in a proceeding under this act or other law of this state relating to a support order continues as long as a tribunal of this state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by Sections 601-205, 601-206, and 601-211 of this title.

§ 601-203 - Initiating and Responding Tribunal

Under this act, a tribunal of this state may serve as an initiating tribunal to forward proceedings to a tribunal of another state and as a responding tribunal for proceedings initiated in another state or foreign country.

§ 601-204 - Simultaneous Proceedings in Another State or Foreign Country

A. A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a pleading is filed in another state or a foreign country only if:

1. The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;

2. The contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and

3. If relevant, this state is the home state of the child.

B. A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or foreign country if:

1. The petition or comparable pleading in the other state or a foreign country is filed before the

expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

2. The contesting party timely challenges the exercise of jurisdiction in this state; and

3. If relevant, the other state or a foreign country is the home state of the child.

§ 601-205 - Continuing, Exclusive Jurisdiction - Controlling Order

A. A tribunal of this state that has issued a child support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order and:

1. At the time of the filing of a request for modification, this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

2. Even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

B. A tribunal of this state that has issued a child support order consistent with the law of this state may not exercise continuing, exclusive jurisdiction to modify the order if:

1. All of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

2. Its order is not the controlling order.

C. If a tribunal of another state has issued a child support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to the Act which modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

D. A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

E. A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

§ 601-206 - Request for Enforcement of Order by Tribunal of Other State

A. A tribunal of this state that has issued a child support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

1. The order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or

2. A money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

B. A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

§ 601-207 - Determination of Controlling Order

A. If a proceeding is brought pursuant to the Uniform Interstate Family Support Act and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

B. If a proceeding is brought pursuant to the Uniform Interstate Family Support Act, and two or more child support orders have been issued by tribunals of this state or another state or a foreign country with regard to the same obligor and same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be recognized:

1. If only one of the tribunals would have continuing, exclusive jurisdiction pursuant to the Uniform Interstate Family Support Act, the order of that tribunal controls;

2. If more than one of the tribunals would have continuing, exclusive jurisdiction under this act:

a. an order issued by a tribunal in the current home state of the child controls, or

b. if an order has not been issued in the current home state of the child, the order most recently issued controls; and

3. If none of the tribunals would have continuing, exclusive jurisdiction pursuant to the Uniform Interstate Family Support Act, the tribunal of this state shall issue a child support order, which controls.

C. If two or more child support orders have been issued for the same obligor and same child, upon request of a party who is an individual or that is a support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under subsection B of this section. The request may be filed with a registration for enforcement or registration for modification pursuant to Article 6 of this title, or may be filed as a separate proceeding.

D. A request to determine which is the controlling order must be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

E. The tribunal that issued the controlling order under subsection A, B, or C of this section has continuing jurisdiction to the extent provided in Section 601-205 or 601-206 of this title.

F. A tribunal of this state that determines by order which is the controlling order under paragraph 1 or 2 of subsection B or subsection C of this section, or that issues a new controlling order under paragraph 3 of subsection B of this section, shall state in that order:

1. The basis upon which the tribunal made its determination;

2. The amount of prospective support, if any; and

3. The total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by Section 601-209 of this title.

G. Within thirty (30) days after issuance of an order determining which is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

H. An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this act.

§ 601-208 - Child Support Orders for Two or More Obligees

In responding to registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state or a foreign country, a tribunal of this state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state.

§ 601-209 - Credit for Payments

A tribunal of this state shall credit amounts collected for a particular period pursuant to any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this state, another state or a foreign country.

§ 601-210 - Receipt of Evidence From Outside This State - Applicable Law

A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under the Uniform Interstate Family Support Act, under other law of this state relating to a support order or recognizing a foreign support order may receive evidence from outside this state pursuant to Section 601-316 of this title, communicate with a tribunal outside this state pursuant to Section 601-317 of this title, and obtain discovery through a tribunal outside this state pursuant to Section 601-318 of this title. In all other respects, Articles 3 through 6 of this title do not apply and the tribunal shall apply the procedural and substantive law of this state.

§ 601-211 - Modification of Spousal Support Order - Request for Enforcement to Tribunal of Another State or Foreign Country

A. A tribunal of this state issuing a spousal support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.

B. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state or a

foreign country having continuing, exclusive jurisdiction over that order under the law of that state or a foreign country.

C. A tribunal of this state that has continuing, exclusive jurisdiction over a spousal support order may serve as:

1. An initiating tribunal to request a tribunal of another state to enforce the spousal support order issued in this state; or

2. A responding tribunal to enforce or modify its own spousal support order.

Article 3 - General Civil Provisions

§ 601-301 - Proceedings Under This Act

A. Except as otherwise provided in this act, this article applies to all proceedings under this act.

B. An individual petitioner or a support enforcement agency may initiate a proceeding authorized under this act by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or a foreign country which has or can obtain personal jurisdiction over the respondent.

§ 601-302 - Action by Minor Parent

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

§ 601-303 - Application of Law of This State

Except as otherwise provided in this act, a responding tribunal of this state shall:

1. Apply the procedural and substantive law generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

2. Determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

§ 601-304 - Duties of Initiating Tribunal

A. Upon the filing of a petition authorized under this act, an initiating tribunal of this state shall forward the petition and its accompanying documents:

1. To the responding tribunal or appropriate support enforcement agency in the responding state; or

2. If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

B. If requested by the responding tribunal, a tribunal of this state shall issue a certificate or other document

and make findings required by the law of the responding state. If the responding tribunal is in a foreign country, upon request the tribunal of this state shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding foreign tribunal.

§ 601-305 - Powers and Duties of Responding Tribunal

A. When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to subsection B of Section 601-301 of this title, it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

B. A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:

1. Establish or enforce a support order, modify a child support order, determine the controlling child support order or determine parentage of a child;

2. Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

3. Order income withholding;

4. Determine the amount of any arrearages, and specify a method of payment;

5. Enforce orders by civil or criminal contempt, or both;

6. Set aside property for satisfaction of the support order;

7. Place liens and order execution on the obligor's property;

8. Order an obligor to keep the tribunal informed of the obligor's current residential address, electronic mail address, telephone number, employer, address of employment, and telephone number at the place of employment;

9. Issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

10. Order the obligor to seek appropriate employment by specified methods;

11. Award reasonable attorney's fees and other fees and costs; and

12. Grant any other available remedy.

C. A responding tribunal of this state shall include in a support order issued pursuant to the Uniform Interstate Family Support Act, or in the documents accompanying the order, the calculations on which the support order is based.

D. A responding tribunal of this state may not condition the payment of a support order issued under this act upon compliance by a party with provisions for visitation.

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E. If a responding tribunal of this state issues an order under this act, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

F. If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

§ 601-306 - Inappropriate Tribunal

If a petition or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner where and when the pleading was sent.

§ 601-307 - Duties of Support Enforcement Agency

A. A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under the Uniform Interstate Family Support Act.

B. A support enforcement agency of this state that is providing services to the petitioner shall:

1. Take all steps necessary to enable an appropriate tribunal of this state, another state or a foreign country to obtain jurisdiction over the respondent;

2. Request an appropriate tribunal to set a date, time, and place for a hearing;

3. Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

4. Within two (2) days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

5. Within two (2) days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

6. Notify the petitioner if jurisdiction over the respondent cannot be obtained.

C. A support enforcement agency of this state that requests registration of a child support order in this state for enforcement or for modification shall make reasonable efforts:

1. To ensure that the order to be registered is the controlling order; or

2. If two or more child support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

D. A support enforcement agency of this state that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into

the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

E. A support enforcement agency of this state shall issue or request a tribunal of this state to issue a child support order and an income-withholding order that redirect payment of current support, arrears, and interest if requested to do so by a support enforcement agency of another state pursuant to Section 601-319 of this title.

F. The Uniform Interstate Family Support Act does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

§ 601-308 - Powers of Attorney General

A. If the Attorney General determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the Attorney General may order the agency to perform its duties under this act or may provide those services directly to the individual.

B. The Attorney General may determine that a foreign country has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

§ 601-309 - Private Counsel

An individual may employ private counsel to represent the individual in proceedings authorized by this act.

§ 601-310 - Designation and Duties of State Information Agency

A. The Child Support Enforcement Division of the Department of Human Services is the state information agency under this act.

B. The state information agency shall:

1. Compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under this act and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

2. Maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

3. Forward to the appropriate tribunal in the county in this state in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this act received from another state or a foreign country; and

4. Obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those

relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

§ 601-311 - Petition - Contents and Accompanying Documents

A. In a proceeding under the Uniform Interstate Family Support Act, a petitioner seeking to establish a support order, to determine parentage of a child, or to register and modify a support order of a tribunal of another state or a foreign country must file a petition. Unless otherwise ordered under Section 601-312 of this title, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition must be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

B. The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

§ 601-312 - Sealing of Information

If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by the disclosure of specific identifying information, that information must be sealed and may not be disclosed to the other party or the public. After a hearing in which a tribunal takes into consideration the health, safety, or liberty of the party or child, the tribunal may order disclosure of information that the tribunal determines to be in the interest of justice.

§ 601-313 - Fees and Costs

A. The petitioner may not be required to pay a filing fee or other costs.

B. If an obligee prevails, a responding tribunal of this state may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state or foreign country, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

C. The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under Article 6 of this title, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

§ 601-314 - Immunity of Petitioner

A. Participation by a petitioner in a proceeding under the Uniform Interstate Family Support Act before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

B. A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under the Uniform Interstate Family Support Act.

C. The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under the Uniform Interstate Family Support Act committed by a party while physically present in this state to participate in the proceeding.

§ 601-315 - Nonparentage as Defense

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this act.

§ 601-316 - Special Rules of Evidence and Procedure

A. The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage of a child.

B. An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them, which would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing outside this state.

C. A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

D. Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten (10) days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

E. Documentary evidence transmitted from outside this state to a tribunal of this state by telephone, telecopier, or other electronic means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

F. In a proceeding under this act, a tribunal of this state shall permit a party or witness residing outside this state to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location. A tribunal of this state shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

G. If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

H. A privilege against disclosure of communications between spouses does not apply in a proceeding under this act.

I. The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this act.

J. A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the

child.

§ 601-317 - Communications Between Tribunals

A tribunal of this state may communicate with a tribunal outside this state in a record or by telephone, electronic mail or other means, to obtain information concerning the laws, the legal effect of a judgment, decree or order of that tribunal and the status of a proceeding. A tribunal of this state may furnish similar information by similar means to a tribunal outside this state.

§ 601-318 - Assistance with Discovery

A tribunal of this state may:

1. Request a tribunal outside this state to assist in obtaining discovery; and

2. Upon request, compel a person over which it has jurisdiction to respond to a discovery order issued by a tribunal outside this state.

§ 601-319 - Receipt and Disbursement of Payments - Payment to Enforcement Agency of Another State - Certified Statement

A. A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state or a foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.

B. If neither the obligor, nor the obligee who is an individual, nor the child resides in this state, upon request from the support enforcement agency of this state or another state, the support enforcement agency of this state or a tribunal of this state shall:

1. Direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

2. Issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.

C. The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to subsection B of this section shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

Article 4 - Establishment of Support Order

§ 601-401 - Petition to Establish Support Order - Issuance of Support Order

A. If a support order entitled to recognition under this act has not been issued, a responding tribunal of this state, with personal jurisdiction over the parties, may issue a support order if:

1. The individual seeking the order resides outside this state; or

2. The support enforcement agency seeking the order is located outside this state.

B. The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

1. A presumed father of the child;

2. Petitioning to have his paternity adjudicated;

3. Identified as the father of the child through genetic testing;

4. An alleged father who has declined to submit to genetic testing;

5. Shown by clear and convincing evidence to be the father of the child;

6. An acknowledged father as provided by Statutes;

7. The mother of the child; or

8. An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

C. Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to Section 601-305 of this title.

§ 601-402 - Authority to Serve as Responding Tribunal

A tribunal of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage of a child brought under this act or a law or procedure substantially similar to this act.

Article 5 - Enforcement of Another State's Order Without Registration

§ 601-501 - Recognition of Income-Withholding Orders Issued in Another State

An income-withholding order issued in another state may be sent by or on behalf of the obligee, or by the support enforcement agency, to the person defined as the obligor's employer under the income-withholding law of this state without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

§ 601-502 - Employer Obligations

A. Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

B. The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.

C. Except as otherwise provided in subsection D of this section and Section 601-503 of this title, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order which specify:

1. The duration and amount of periodic payments of current child support, stated as a sum certain;

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2. The person designated to receive payments and the address to which the payments are to be forwarded;

3. Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

4. The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sum certain; and

5. The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

D. An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

1. The employer's fee for processing an income-withholding order;

2. The maximum amount permitted to be withheld from the obligor's income; and

3. The times within which the employer must implement the withholding order and forward the child support payment.

§ 601-503 - Two or More Income-Withholding Orders

If an obligor's employer receives two or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for two or more child support obligees.

§ 601-504 - Limitation on Employer's Civil Liability

An employer that complies with an income-withholding order issued in another state in accordance with this article is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income.

§ 601-505 - Willful Noncompliance

An employer that willfully fails to comply with an income-withholding order issued in another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

§ 601-506 - Contesting Validity or Enforcement of Income-Withholding Order

A. An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in Article 6 of this title, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.

B. The obligor shall give notice of the contest to:

1. A support enforcement agency providing services to the obligee;

2. Each employer that has directly received an income-withholding order relating to the obligor; and

3. The person designated to receive payments in the income-withholding order or if no person is designated, to the obligee.

§ 601-507 - Administrative Enforcement of Orders

A. A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued in another state or a foreign support order may send the documents required for registering the order to a support enforcement agency of this state.

B. Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this act.

Article 6 - Registration, Enforcement and Modification of Support Orders

§ 601-601 - Registration of Order for Enforcement

A support order or an income-withholding order issued in another state or a foreign support order may be registered in this state for enforcement.

§ 601-602 - Procedure for Registration of Order from Another State or Foreign Support Order

A. Except as otherwise provided in Section 601-706 of this title, a support order or income-withholding order of another state or a foreign support order may be registered in this state by sending the following records to the appropriate tribunal in this state:

1. A letter of transmittal to the tribunal requesting registration and enforcement;

2. Two copies, including one certified copy, of the order to be registered, including any modification of the order;

3. A sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

4. The name of the obligor and, if known:

a. the obligor's address and social security number,

b. the name and address of the obligor's employer and any other source of income of the obligor, and

c. a description and the location of property of the obligor in this state not exempt from execution; and

5. Except as otherwise provided in Section 601-312 of this title, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

B. On receipt of a request for registration, the registering tribunal shall cause the order to be filed as an order of a tribunal of another state or a foreign support order, together with one copy of the documents and information, regardless of their form.

C. A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

D. If two or more orders are in effect, the person requesting registration shall:

1. Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;

2. Specify the order alleged to be the controlling order, if any; and

3. Specify the amount of consolidated arrears, if any.

E. A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

§ 601-603 - Effect of Registration of Order for Enforcement

A. A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this state.

B. A registered support order issued in another state or foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

C. Except as otherwise provided in this act, a tribunal of this state shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction.

§ 601-604 - Law, Procedures, and Remedies to be Applied

A. Except as otherwise provided in subsection D of this section, the law of the issuing state or a foreign country governs:

1. The nature, extent, amount, and duration of current payments under a registered support order;

2. The computation and payment of arrearages and accrual of interest on the arrearages under the support order; and

3. The existence and satisfaction of other obligations under the support order.

B. In a proceeding for arrears under a registered support order, the statute of limitation of this state or of the issuing state or foreign country, whichever is longer, applies.

C. A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state or foreign country registered in this state.

D. After a tribunal of this state or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

§ 601-605 - Notice of Registration of Order

A. When a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of this state shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

B. A notice must inform the nonregistering party:

1. That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

2. That a hearing to contest the validity or enforcement of the registered order must be requested within twenty (20) days after notice unless the registered order is under Section 601-707 of this title;

3. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

4. Of the amount of any alleged arrearages.

C. If the registering party asserts that two or more orders are in effect, a notice shall also:

1. Identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any;

2. Notify the nonregistering party of the right to a determination of which is the controlling order;

3. State that the procedures provided in subsection B of this section apply to the determination of which is the controlling order; and

4. State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

D. Upon registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer pursuant to the income-withholding law of this state.

§ 601-606 - Contesting Validity or Enforcement of Registered Order - Failure to Contest in Timely Manner - Hearing

A. A nonregistering party seeking to contest the validity or enforcement of a registered support order in this

state shall request a hearing within the time required by Section 601-605 of this title. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered support order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to Section 601-607 of this title.

B. If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

C. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered support order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

§ 601-607 - Available Defenses When Contesting Registered Support Order

A. A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

1. The issuing tribunal lacked personal jurisdiction over the contesting party;

2. The order was obtained by fraud;

3. The order has been vacated, suspended, or modified by a later order;

4. The issuing tribunal has stayed the order pending appeal;

5. There is a defense under the law of this state to the remedy sought;

6. Full or partial payment has been made;

7. The statute of limitation under Section 601-604 of this title precludes enforcement of some or all of the alleged arrearages; or

8. The alleged controlling order is not the controlling order.

B. If a party presents evidence establishing a full or partial defense under subsection A of this section, a tribunal may stay enforcement of a registered support order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered support order may be enforced by all remedies available under the law of this state.

C. If the contesting party does not establish a defense under subsection A of this section to the validity or enforcement of a registered support order, the registering tribunal shall issue an order confirming the order.

§ 601-608 - Effect of Confirmation of Registered Support Order

Confirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

§ 601-609 - Procedure for Registration of Child Support Order of Another State

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in Sections 601-601

through 601-608 of this article if the order has not been registered. A petition for modification may be filed at the same time as a request for registration or later. The pleading must specify the grounds for modification.

§ 601-610 - Effect of Registration for Modification

A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered support order may be modified only if the requirements of Section 601-611 or 601-613 have been met.

§ 601-611 - Modification of Registered Child Support Order of Another State

A. If Section 601-613 of this title does not apply, upon petition a tribunal of this state may modify a child support order issued in another state which is registered in this state if, after notice and hearing, the tribunal finds that:

1. The following requirements are met:

   a. neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state,

   b. a petitioner who is a nonresident of this state seeks modification, and

   c. the respondent is subject to the personal jurisdiction of the tribunal of this state; or

2. This state is the residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

B. Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

C. A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and same child, the order that controls and must be so recognized under Section 601-207 of this title establishes the aspects of the support order which are nonmodifiable.

D. In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by such order precludes imposition of a further obligation of support by a tribunal of this state.

E. On issuance of an order by a tribunal of this state modifying a child support order issued in another state, the tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.

F. Notwithstanding subsections (a) through (e) and subsection B of Section 601- 201 of this title, a tribunal of

this state retains jurisdiction to modify an order issued by a tribunal of this state if:

1. One party resides in another state; and

2. The other party resides outside the United States.

§ 601-612 - Recognition of Order Modified by Tribunal of Another State

If a child support order issued by a tribunal of this state is modified by a tribunal of another state which assumed jurisdiction pursuant to the Uniform Interstate Family Support Act, a tribunal of this state:

1. May enforce its order that was modified only as to arrears and interest accruing before the modification;

2. May provide appropriate relief for violations of its order which occurred before the effective date of the modification; and

3. Shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

§ 601-613 - Jurisdiction - Applicability of Provisions

A. If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

B. A tribunal of this state exercising jurisdiction under this section shall apply the provisions of Articles 1 and 2, this article and the procedural and substantive law of this state to the proceeding for enforcement or modification. Articles 3, 4, 5, 7, and 8 do not apply.

§ 601-614 - Filing of Modified Child Support Order

Within thirty (30) days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

§ 601-615 - Modification of Order Made by Foreign Country or Political Subdivision that is a State

A. Except as otherwise provided in Section 601-711 of this title, if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether the consent to modification of a child support order otherwise required of the individual pursuant to Section 601-611 of this title has been given or whether the individual seeking modification is a

resident of this state or of the foreign country.

B. An order issued by a tribunal of this state modifying a foreign child support order pursuant to this section is the controlling order.

§ 601-616 - Procedure for Modification of Foreign Child Support Order

A party or support enforcement agency seeking to modify or to modify and enforce a foreign child support order not under the Convention may register that order in this state under Sections 601-601 through 601-608 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration or at another time. The petition must specify the grounds for modification.

Article 7 - Proceeding to Determine Parentage

§ 601-701 - Article 7 Definitions

In this article:

1. "Application" means a request under the Convention by an obligee or obligor or on behalf of a child made through a central authority for assistance from another central authority;

2. "Central authority" means the entity designated by the United States or a foreign country described in paragraph d of subsection 5 of Section 601-102 of this title to perform the functions specified in the Convention;

3. "Convention support order" means a support order of a tribunal of a foreign country described in paragraph d of subsection 5 of Section 601-102 of this title;

4. "Direct request" means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor, or child residing outside the United States;

5. "Foreign central authority" means the entity designated by a foreign country described in paragraph d of subsection 5 of Section 601-102 of this title to perform the functions specified in the Convention;

6. "Foreign support agreement":

a. means an agreement for support in a record that:

(1) is enforceable as a support order in the country of origin,

(2) has been:

(a) formally drawn up or registered as an authentic instrument by a foreign tribunal, or

(b) authenticated by or concluded, registered or filed with a foreign tribunal,

(3) may be reviewed and modified by a foreign tribunal, and

b. includes a maintenance arrangement or authentic instrument under the convention; and

7. "United States central authority" means the Secretary of the United States Department of Health and Human Services.

§ 601-702 - Application of Article - Conflicts With Other Articles of the Act

This article applies only to a support proceeding under the convention. In such a proceeding, if a provision of this article is inconsistent with Articles 1 through 6, this article controls.

§ 601-703 - Designation of Agency with Authority to Perform Functions under Convention

The Department of Human Services of this state is recognized as the agency designated by the United States central authority to perform specific functions under the convention.

§ 601-704 - Duties of Department of Human Services - Support Proceedings that are Available - No Security or Bond Required for Costs

A. In a support proceeding under this article, the Office of Child Support Services of this state shall:

1. Transmit and receive applications; and

2. Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

B. The following support proceedings are available to an obligee under the Convention:

1. Recognition or recognition and enforcement of a foreign support order;

2. Enforcement of a support order issued or recognized in this state;

3. Establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;

4. Establishment of a support order if recognition of a foreign support order is refused under paragraphs 2, 4 or 9 of subsection B of Section 601-708 of this title;

5. Modification of a support order of a tribunal of this state; and

6. Modification of a support order of a tribunal of another state or a foreign country.

C. The following support proceedings are available under the convention to an obligor against which there is an existing support order:

1. Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;

2. Modification of a support order of a tribunal of this state; and

3. Modification of a support order of a tribunal of another state or a foreign country.

D. A tribunal of this state may not require security, bond or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the convention.

§ 601-705 - Laws Applicable to Direct Requests - Security or Bond Requirements - Legal and Governmental Assistance

A. A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this state applies.

B. A petitioner may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, Sections 601-706 through 601-713 of this title apply.

C. In a direct request for recognition and enforcement of a Convention support order or foreign support agreement:

1. A security, bond or deposit is not required to guarantee the payment of costs and expenses; and

2. An obligee or obligor that in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.

D. A petitioner filing a direct request is not entitled to assistance from the Cherokee Nation Office f Child Support Services or Oklahoma Department of Human Services.

E. This article does not prevent the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement.

§ 601-706 - Registration of a Convention Support Order - Authority to Vacate Registration - Notice

A. Except as otherwise provided in this article, a party who is an individual or a support enforcement agency seeking recognition of a convention support order shall register the order in this state as provided in Article 6.

B. Notwithstanding Sections 601-311 and subparagraph a of Section 601-602 of Title 43 of the Cherokee Nation Statutes, a request for registration of a Convention support order must be accompanied by:

1. A complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague Conference on Private International Law;

2. A record stating that the support order is enforceable in the issuing country;

3. If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

4. A record showing the amount of arrears, if any, and the date the amount was calculated;

5. A record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and

6. If necessary, a record showing the extent to which the applicant received free legal assistance in the

issuing country.

C. A request for registration of a convention support order may seek recognition and partial enforcement of the order.

D. A tribunal of this state may vacate the registration of a Convention support order without the filing of a contest under Section 601-707 of Title 43 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

E. The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a convention support order.

§ 601-707 - Contest of Registered Convention Support Order - Time Limitation - Grounds - Burden of Proof - Scope of Review - Notice of Decision - Effect of Appeal

A. Except as otherwise provided in this article, Sections 601-605 through 601-608 of Title 43 apply to a contest of a registered convention support order.

B. A party contesting a registered convention support order shall file a contest not later than thirty (30) days after notice of the registration, but if the contesting party does not reside in the United States, the contest must be filed not later than sixty (60) days after notice of the registration.

C. If the nonregistering party fails to contest the registered convention support order by the time specified in subsection B of this section, the order is enforceable.

D. A contest of a registered convention support order may be based only on grounds set forth in Section 601-708 of Title 43 of the Cherokee Nation Statutes. The contesting party bears the burden of proof.

E. In a contest of a registered convention support order, a tribunal of this state:

1. Is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

2. May not review the merits of the order.

F. A tribunal of this state deciding a contest of a registered convention support order shall promptly notify the parties of its decision.

G. A challenge or appeal, if any, does not stay the enforcement of a convention support order unless there are exceptional circumstances.

§ 601-708 - Refusal to Recognize and Enforce Registered Convention Support Order

A. Except as otherwise provided in subsection B of this section, a tribunal of this state shall recognize and enforce a registered convention support order.

B. The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered convention support order:

1. Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice

and an opportunity to be heard;

2. The issuing tribunal lacked personal jurisdiction consistent with Section 601-201 of this title;

3. The order is not enforceable in the issuing country;

4. The order was obtained by fraud in connection with a matter of procedure;

5. A record transmitted in accordance with Section 601-706 of this title lacks authenticity or integrity;

6. A proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

7. The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under the Uniform Interstate Family Support Act in this state;

8. Payment, to the extent alleged arrears have been paid in whole or in part;

9. In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

a. if the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard, or

b. if the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal, or

10. The order was made in violation of Section 601-711 of this title.

C. If a tribunal of this state does not recognize a convention support order under paragraphs 2, 4 or 9 of subsection B of this section:

1. The tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new convention support order; and

2. The Office of Child Support Services shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under Section 601-704 of this title.

§ 601-709 - Partial Enforcement of Covention Support Order

If a tribunal of this state does not recognize and enforce a convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a convention support order.

§ 601-710 - Foreign Support Agreements - Recognition and Enforcement - Application - Limits on Power to Vacate or Refuse Recognition and Enforcement - Stay of Proceedings

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A. Except as otherwise provided in subsections C and D of this section, a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.

B. An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

1. A complete text of the foreign support agreement; and

2. A record stating that the foreign support agreement is enforceable as an order of support in the issuing country.

C. A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

D. In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:

1. Recognition and enforcement of the agreement is manifestly incompatible with public policy;

2. The agreement was obtained by fraud or falsification;

3. The agreement is incompatible with a support order involving the same parties and having the same purpose in this state, another state or a foreign country if the support order is entitled to recognition and enforcement under this act in this state; or

4. The record submitted under subsection B of this section lacks authenticity or integrity.

E. A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

§ 601-711 - Limits on Power to Modify Convention Child Support Order

A. A tribunal of this state may not modify a convention child support order if the obligee remains a resident of the foreign country where the support order was issued unless:

1. The obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

2. The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

B. If a tribunal of this state does not modify a convention child support order because the order is not recognized in this state, subsection C of Section 601-708 of Title 43 of the Cherokee Nation Statutes applies.

§ 601-712 - Use of Personal Information

Personal information gathered or transmitted under this article may be used only for the purposes for which it was gathered or transmitted.

§ 601-713 - Language of Records - Translations

A record filed with a tribunal of this state under this article must be in the original language and, if not in English, must be accompanied by an English translation.

Article 8 - Interstate Rendition

§ 601-801 - Grounds for Rendition - Extradition

A. For purposes of this article, "governor" includes an individual performing the functions of Principal Chief, governor or the executive authority of a state covered by this act.

B. The Governor of this state may:

1. Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

2. On the demand by the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

C. A provision for extradition of individuals not inconsistent with this act applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

§ 601-802 - Conditions for Rendition

A. Before making a demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the Governor of this state may require a prosecutor of this state to demonstrate that at least sixty (60) days previously the obligee had initiated proceedings for support pursuant to this act or that the proceeding would be of no avail.

B. If, under this act or a law substantially similar to this act, the governor of another state makes a demand that the Governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the Governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the Governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

C. If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the Governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the Governor may decline to honor the demand if the individual is complying with the support order.

Article 9 - Miscellaneous Provisions

§ 601-901 - Uniform Application and Construction of Act

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 601-902 - Applicability of Act - Proceedings Begun prior to enactment

This act applies to proceedings begun on or after the time of official enactment of this act, to establish a support order or determine parentage of a child or to register, recognize, enforce or modify a prior support order, determination or agreement whenever issued or entered.

§ 601-903 - Severability of Provisions

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

Section 6. Provisions as Cumulative

The provisions of this act shall be cumulative to existing law.

Section 7. Severability

The provisions of this act are severable and if any part or provision hereof shall be held void the decision of the Court so holding shall not affect or impair any of the remaining parts or provisions of this act.

Section 8. Effective Date/Emergency Declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.

Section 9. Self-Help Contributions

To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.