

## TITLE 10 - FAMILY RESPONSIBILITY

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## Chapter 01. General Provisions

<b>Sec. 10.01.001</b>	<b>Short Title</b>
<b>Sec. 10.01.002</b>	<b>Statement of Policy</b>
<b>Sec. 10.01.003</b>	<b>Definitions</b>
<b>Sec. 10.01.004</b>	<b>Jurisdiction for Child Support Determination</b>
<b>Sec. 10.01.005</b>	<b>Sovereign Immunity of the CCTHITA</b>

### **Sec. 10.01.001 Short Title**

This statute shall be cited as the Central Council of the Tlingit and Haida Indian Tribes of Alaska (“CCTHITA”) Family Responsibility Act.

### **Sec. 10.01.002 Statement of Policy**

When interpreting the provisions of Title 10 the Tribe and the Tribal Court shall provide for the best welfare of the child, the ability of a parent to provide financial support, and respect and account for the traditional values and customs of the Tribe and its’ communities.

### **Sec. 10.01.003 Definitions**

For purposes of Title 10, the following apply:

- A. “Basic Visitation”** means a legal custody arrangement whereby one parent has primary physical custody and the other parent has visitation, or has maintained regular visitation, or the parents have agreed upon liberal visitation.
- B. “Child”** means any person under the age of 18; over the age of 18 for whom a court order for support exists; or a person who is 18, enrolled full time in school, and not otherwise emancipated, self-supporting, married, or an active member of the armed forces; or a person who is over the age of 18 and for whom equity demands continued child support as specified in this Title.
- C. “Child Support”** means the financial and emotional obligation a non-custodial and custodial parent owed toward children. The financial obligation of a non-custodial parent shall be met through the payment of monies and/or through the provision of other goods and/or services, as ordered by the court or as agreed by the parties.
- D. “Non-Cash Support”** means goods and services which may be used to meet a support obligation include, but are not limited to, sharing of fishing harvests, big game hunts, and provision of other necessary items that support the child or family such as wood for fuel and home repairs. Such non-monetary contributions may, with prior court approval, be deducted from child support amounts according to their fair market value.
- E. “Child Support Obligation”** means, any monies, in-kind or traditional support, recognized by the Tribe, or member Tribe, to be owed to or on

behalf of a child to satisfy a child support obligation. This includes satisfaction of arrears or delinquency on other related obligations.

- F.** “**Child Support Orders**” means any judgment or order of the CCTHITA Tribal Court, or orders that comply with the requirements of the federal Full Faith and Credit for Child Support Orders Act of another state or tribe.
- G.** “**Custodial Party**” means the person who holds legal custody of the child or who exercises primary physical custody of the child based on an order of a Court or an agreement between the parents. A legal guardian or long-term relative with primary physical custody of the child, who acts as a parent, shall have the same rights to child support as a custodial parent.
- H.** “**Custodian**” means any person having the care, physical custody and control of and who provides for the basic emotional support for and living expenses of a child.
- I.** “**Employer**” includes all tribal, state and private persons or entities who agree to compensate another for services performed.
- J.** “**Garnishment**” is the process whereby a court order is directed to an employer, bank, or agent holding monies or property of a non-custodial parent, to make payments or deliver money or property to satisfy a child support obligation in accordance with a child support order.
- K.** “**Gross Income**” includes income from any source and includes, but is not limited to income from salaries, wages, tips, commissions, bonuses, dividends, severance pay, pensions, annuities, capital gains, workers compensation benefits, unemployment insurance benefits, disability insurance benefits, prizes and alimony or maintenance received. Federal or tribal benefits due an individual tribal member may be considered. The gross income of a parent means only the income and earnings of that parent and not the income of subsequent spouses.
- L.** “**Guardian**” is a person who has legal custody or has been appointed by the court to protect the interests of a minor child or incapacitated person and who provides for the minor or incapacitated person’s care, welfare, education, maintenance and support.
- M.** “**Imputed Income**” is defined as an assumed or estimated income when no actual figure exists or is unknown.
- N.** “**Income Tax Refund Interception**” is a remedy whereby any income tax refund of a non-custodial parent may be intercepted directly from the United States, for those debts that are allowed by federal law.
- O.** “**Dissolution of Marriage**” means the temporary or legal separation or divorce of parents. Marriage shall be recognized by CCTHITA traditional

custom, by tribal or state license, or by any practice recognized under CCTHITA or the State of Alaska law.

- P.** “**Non-Custodial Parent**” means a parent of a child born during a marriage, or for whom paternity has been established by CCTHITA law or custom, who does not have primary physical custody of the child.
- Q.** “**Obligor**” means the person with an obligation to pay child support.
- R.** “**Obligee**” means the person or agency with the right to receive child support.
- S.** “**Parent**” means the biological or adoptive mother or father of a child.
- T.** “**Parentage**” means the legal determination of a biological or adoptive mother or father that is recognized by CCTHITA.
- U.** “**Assignment of Child Support Rights**” means the legal obligation, under federal law, to assign support collections to a state or tribe.
- V.** “**CCTHITA Guidelines**” means Title 10, Family Responsibility, Chapter 4 CCTHITA Child Support Guidelines.
- W.** “**Permanent Fund Dividend Interception**” is a remedy whereby any Permanent Fund Dividend payment of a non-custodial parent shall be intercepted directly from the State of Alaska for the payment of public and/or support debt.
- X.** “**Rebuttable Presumption**” is a presumption that may be rebutted by evidence to the contrary.
- Y.** “**CCTHITA Registry**” means the entity of the Tribe that receives, distributes, and maintains records of collections of child support payments and the distribution of those payments, as provided by Federal law.
- Z.** “**Schedule**” means those supporting policies, procedures and formulas that are used to calculate child support obligations.
- AA.** “**Tribal Court**” for the purposes of Title 10, Family Responsibility Act means the Tribal Court of the CCTHITA Tribe with the judicial authority to hear Title IV-D child support matters.
- BB.** “**Tribe**” means the Central Council of the Tlingit and Haida Indian Tribes of Alaska (CCTHITA).

#### **Sec. 10.01.004 Jurisdiction for Child Support Determination**

- A.** The CCTHITA Tribal Court shall have original jurisdiction in all civil proceedings over CCTHITA participating Tribes to the full extent that is allowed by federal and tribal law.
- B.** The CCTHITA Tribal Court shall exert civil jurisdiction, both subject matter and personal, as provided by this statute and as appropriate to this

Title. The Tribal Court has equitable jurisdiction in all civil matters as provided by federal and tribal law.

**Sec. 10.01.005            Sovereign Immunity of the CCTHITA**

Nothing in this Title shall diminish, impair, or be construed to waive the right of CCTHITA to assert the defense of sovereign immunity, and nothing contained herein shall impair the validity of this defense; and the right to assert that defense is and shall remain inviolable.

## Chapter 02. Paternity

Sec. 10.02.001	Short Title
Sec. 10.02.002	Statement of Policy
Sec. 10.02.003	Definitions
Sec. 10.02.004	Jurisdiction for Paternity Determination
Sec. 10.02.005	Paternity Determinations
Sec. 10.02.006	Who May Initiate an Action
Sec. 10.02.007	Civil Provisions of Application
Sec. 10.02.008	Voluntary Acknowledgment
Sec. 10.02.009	Paternity Established by Tradition
Sec. 10.02.010	Paternity Rights and Responsibilities
Sec. 10.02.011	Paternity Costs and Fees

### Sec. 10.02.001 Short Title

This statute shall be known as the CCTHITA Paternity Act.

### Sec. 10.02.002 Statement of Policy

When interpreting the provisions of this section, the Tribal Court shall construe all requirements to assist mothers and potential fathers in determining paternity of tribal children. The Court shall take into consideration tribal traditions and customs of paternity. The Court shall ensure that a child who is eligible for enrollment with CCTHITA can properly be enrolled.

### Sec. 10.02.003 Definitions

For purposes of this section of Title 10 (Paternity), the following shall apply:

- A. **“Best interest of the child”** means whatever protects a child from harm, promotes the well-being of a child, and the child’s family.
- B. **“Child”** means an individual under the age of majority, as defined by the Tribe, who is in need of financial and emotion support from their parents, except as otherwise provide in this Title and the CCTHITA Schedule.
- C. **“Court”** means the Tribal Court of CCTHITA.
- D. **“Genetic testing”** means a test performed by a certified buccal technician and that is processed by an accredited laboratory.
- E. **“Marital presumption of paternity”** means that it is presumed that a husband is the biological father of a child that is born of a marriage.
- F. **“Law”** includes decisional and tribal law, tribal customs and practices, and rules, policy, and regulations having the force of law.
- G. **“Petitioner”** means any of the following:
  - 1. The mother who gave birth to the child.
  - 2. An individual who has primary placement and physical custody of a child.

3. A man who has reason to believe he may be the father of a child.
  4. A tribe or state to which the right of a support obligation has been assigned based on the receipt of TANF may also be a party to child support action.
- H. “Paternity finding”** means a judgment, decree or order determining the parentage of the minor child.
- I. “Alleged father”** means a man for whom the possibility of requisite sexual contact has been alleged by either the mother or the alleged father, a man who has held himself out as the father, or who is identified pursuant to a properly witnessed paternity statement completed by an individual who has primary placement and physical custody of a child.
- J. “Presumption of paternity”** means any genetic test, which results in a statistical probability of parentage of 99% or more.
- K. “Respondent”** means any of the following:
1. The mother who gave birth to the child.
  2. An alleged father.
- L. “Foreign jurisdiction”** means a state, tribe, the District of Columbia, the Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of the United States, or a foreign country.
- M. “Tribal Child Support Unit”** means the CCTHITA Tribal Child Support Unit.
- N. “Tribe”** means the Central Council of Tlingit and Haida Indian Tribes of Alaska (CCTHITA).
- O. “Tribunal”** means a court, administrative agency or quasi-judicial entity authorized under applicable law to establish, enforce or modify support orders or to determine parentage.
- P. “Waiver”** means a tribally approved form that allows an alleged father the opportunity to voluntarily acknowledging paternity.

**Sec. 10.02.004 Jurisdiction for Paternity Determination**

- A.** The Tribal Court is vested with the authority to hear all cases pertaining to the determination of paternity.
- B.** The Tribal Court may exercise jurisdiction over any enrolled member of CCTHITA.
- C.** In a proceeding under this section, the Tribal Court may exercise personal jurisdiction over a non-member individual or the individual’s guardian or conservator, if any of the following applies:
  1. The individual is personally served with a summons or other notice pursuant to Tribal law.
  2. The individual submits to the jurisdiction of the Tribal court, by

consent, 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 and the child's parent is a member of CCTHITA.
  4. The individual provided prenatal expenses or support for the child prior to or immediately after the child's birth.
  5. The individual engaged in sexual intercourse with a CCTHITA member.
  6. Any other basis consistent with the Supreme Court and federal district court decisions of United States and Tribal law for the exercise of personal jurisdiction.
  7. Transacted business or performed an act with the CCTHITA that is based upon a civil cause of action.
  8. Alleged to be a parent of or have a parental obligation to a child that is enrolled or is eligible to be enrolled with CCTHITA.
- D.** The Tribal Court may exercise jurisdiction to establish paternity if a petition or comparable pleading is filed with the Tribal Court after a petition or comparable pleading has been filed in another court if any of the following apply:
1. If a request for services has been filed with the Tribal IV-D Program prior to the date that a comparable request has been filed with another state or tribal IV-D Program.
  2. A tribal member timely challenges the exercise of jurisdiction by another state or tribal court.
  3. It is in the best interest of the child and judicial efficiency for the Tribal Court to establish paternity.
- E.** Once the Court has entered a paternity finding, it maintains continuing, exclusive jurisdiction over the parties. The Court shall enter a temporary or permanent order of support.
- F.** Under no circumstance may the Court issue an *ex parte* order for paternity.
- G.** Nothing in this Title shall diminish, impair, or be construed to waive the right of CCTHITA to assert the defense of sovereign immunity, and nothing contained herein shall impair the validity of this defense; and the right to assert that defense is and shall remain inviolable.

**Sec. 10.02.005 Paternity Determinations**

- A. This statute provides for the determination of paternity as a legal finding in the following types of cases:
- B. The Tribe need not establish paternity:
  - 1. In the case of incest or rape.
  - 2. There exists a marital presumption of paternity.
  - 3. Paternity has been established by any other means allowed for under this section and the time for appealing the paternity determination has expired.
  - 4. For any reason that the Court determines that it would not be in the best interest of the child.
  - 5. The child was conceived by artificial insemination or was born to a surrogate mother and information about the father has been omitted from the birth certificate for that purpose.
- C. When a child may be eligible for enrollment with the Tribe, and is subject to an adoption proceeding, the CCTHITA will establish paternity prior to the finalization of the adoption.

**Sec. 10.02.006 Who May Initiate an Action**

- A. Any parent, alleged father, legal custodian, or an interested family member of the minor child who has custody of the child, or the Tribal IV-D Program may commence a proceeding authorized under this Title or this section.
- B. When a parent or alleged father is a minor, the minor's parent, a guardian, or other legal representative may commence an action on behalf of or for the benefit of the minor's child.
- C. In a proceeding to establish paternity, a party must bring an action for determination of parentage on or before the child reaches the age of eighteen (18).

**Sec. 10.02.007 Civil Provisions of Application**

- A. A child support action is a civil proceeding, subject to the rules and provisions of the CCTHITA Tribal Court rules of civil procedure. All paternity actions shall be commenced through a Summons and Petition. The Clerk of the Court shall include a waiver, which provides the alleged father with an opportunity to acknowledge paternity, with the Summons and Petition.
- B. The following process of service must occur prior to the entry of a default judgment of paternity:
  - 1. Personal service has been made upon the alleged father, and he has failed to respond within twenty (20) days after service of the

summons and petition, and a motion for default is made by the petitioner; or

- 2.** A copy of the Summons and Petition to establish paternity has been mailed to the alleged father's last known address, via certified mail, return receipt, and regular mail, and the alleged father's signature is on the return receipt; or
  - 3.** Service by Publication of the Notice and Summons is allowed only after service is attempted under (a) or (b), and upon the filing of an affidavit stating that the Respondent cannot be found. Publication shall be made for three (3) consecutive weeks in a newspaper that is located in the county or community of the alleged father's last known address and 30 days have lapsed since the date of the last publication.
- C.** There is a rebuttable presumption that the husband is the biological father in any case where the genetic test results indicate a statistical probability of parentage of 99% or more.
  - D.** There is a rebuttable presumption that the alleged father is the biological father in any case where the genetic test results indicate a statistical probability of parentage of 99% or more.
  - E.** The establishment of paternity under this statute has no effect on enrollment in the CCTHITA Tribe.
  - F.** The physical presence (which may be accomplished telephonically) of the mother is required for the determination of paternity unless paternity has been established by genetic testing which has resulted in a statistical probability of paternity 99 percent. The mother must be served as required under this section.
  - G.** A privilege against disclosure of communications between spouses does not apply in a proceeding under this section.
  - H.** The mother, potential father, or the Tribal IV-D Program may request genetic testing at any time.
  - I.** When a mother or alleged father is a minor, the Court may appoint a Guardian ad Litem for the minor parent's child at the Court's own expense if a source for repayment of this expense is identified and a repayment agreement received.
  - J.** A mother or potential father may employ private counsel, at their own expense, for representation in proceedings authorized by this Title and this section. Private counsel must be licensed to practice law in the Tribal Court.

**Sec. 10.02.008 Voluntary Acknowledgment**

- A.** The Tribe shall provide an alleged father an opportunity to voluntarily acknowledge paternity by providing the alleged father with a waiver.
  - 1.** The waiver must be signed and dated by the alleged father.
  - 2.** The Tribal IV-D Program shall be responsible for verify the identity and signature of the mother and alleged father.
- B.** If an alleged father has filed a voluntary acknowledgement with another tribe or a state, he may still be required to complete the CCTHITA Waiver and file it with the Court.
- C.** For any voluntary acknowledgment of paternity, whether through CCTHITA, another tribe, or a state, he may still be required to complete the CCTHITA Waiver and file it with the Court.

**Sec. 10.02.009 Paternity Established by Tradition**

- A.** The Court may take judicial notice of a paternity that has been established by traditional custom or practice if any of the following applies:
  - 1.** If there has been a traditional ceremony by a tribal elder or clan leader which acknowledges the child's father;
  - 2.** The alleged father subsequently completes a waiver or voluntarily acknowledges paternity and files the appropriate form with the Court; or
  - 3.** The mother and father complete an affidavit attesting to reasonable facts to support the prerequisite sexual contact.
- B.** The Court shall not have the authority to require a CCTHITA member to enroll the child with CCTHITA unless the child is only eligible for enrollment with CCTHITA.

**Sec. 10.02.010 Paternity Rights and Responsibilities**

- A.** Upon rendering a judgment of paternity, the Court shall inform the father of the following rights:
  - 1.** The right to petition for legal custody and for the ability to contribute to major decisions that impact the child;
  - 2.** The right to petition for periods of physical placement and visitation;
  - 3.** The potential right to claim the child for tax purposes; and
  - 4.** The right of the child to inherit.
- B.** Upon rendering a judgment of paternity, the Court shall inform the parents of the following responsibilities:
  - 1.** A duty to provide financial support for the child until the child reaches the age of majority;

2. A duty to provide emotional support for the child until the child reaches the age of majority; and
3. A duty to raise the child in the customs and traditions of the Tribe.

**Sec. 10.02.011 Paternity Costs and Fees**

- A. The Court may order one or both parents to reimburse costs, in compliance with the IV-D Program Schedule, for any of the following:
  1. The cost of genetic testing;
  2. The fee to file the appropriate forms with the State of Alaska's Bureau of Vital Statistics, or similar department of another state or tribe;
  3. The cost for expert witnesses;
  4. Attorney fees; or
  5. Any other cost allowed for under the CCTHITA Civil Procedures and deemed appropriate and necessary by the Court.
- B. The Tribal Court may order any parent to pay any fees or costs allowed by this Title, except that the court may not order a recipient of Title IV-A (TANF), Title IV-E (Foster Care) or Title XIX (Medicaid) to pay costs or fees associated with receiving services from the Tribal IV-D Program.
- C. Payment of support owed to the custodial parent or current TANF, custodial or TANF arrears, and any other tribal debts as identified by Tribal law, have priority over the payment of costs and fees associated with paternity establishment.

## Chapter 03. Child Support Procedures

Sec. 10.03.001	<b>Court Initiated Child Support Determination</b>
Sec. 10.03.002	<b>Child Support Determination Initiated by Custodial Parent or Other Interested Party</b>
Sec. 10.03.003	<b>Stipulated Agreement</b>
Sec. 10.03.004	<b>Hearing Procedures</b>
Sec. 10.03.005	<b>Content and Effect of Order</b>
Sec. 10.03.006	<b>Enforcement of Order</b>
Sec. 10.03.007	<b>Modification of Order</b>
Sec. 10.03.008	<b>Statute of Limitations</b>
Sec. 10.03.009	<b>Wage Assignment and Garnishment; Employers Must Honor; Retaliation Prohibited</b>
Sec. 10.03.010	<b>Cooperation with Tribal Child Support Unit</b>
Sec. 10.03.011	<b>Assignment of Support Rights</b>
Sec. 10.03.012	<b>Child Support Pass-Through Payment</b>

### Sec. 10.03.001 **Court Initiated Child Support Determination**

- A. In any proceeding before the Tribal Court in which there is at issue the support of a child, the Court may determine the support obligations of the parents and enter an order of child support according to this statute, including Divorce, Minor in Need of Care, ICWA, Paternity, and Guardianship that involve children.
- B. If the court fails to address child support when such a matter is before it, the person caring for the child may request back support from the time at which the Court heard the original matter or the custodial parent applied for services from the CCTHITA Child Support Unit.

### Sec. 10.03.002 **Child Support Determination Initiated by Custodial Parent or Other Interested Party**

- A. An action to determine child support or parentage may be initiated at any time before the child in question has his or her eighteenth (18<sup>th</sup>) birthday. Any custodial parent, alleged father, guardian, or the Tribal Child Support Unit may initiate an action for paternity or child support by filing a petition with the Clerk of the Tribal Court.
- B. The petition to establish child support shall include the following:
  - 1. The name, address and income of the custodial parent or guardian;
  - 2. The name, address and income of the non-custodial parent or guardian;
  - 3. The name and date of birth of the child(ren) for whom support is requested;
  - 4. The amount of time that the child spends with each parent on a regular basis.

5. Whether or not parentage has been established for the father or non-custodial parent; and
  6. If known, the social security number, employer, and any other sources of income of the non-custodial parent.
- C. Upon receipt of the petition for determination of support obligation, or modification of support, the Court shall schedule a hearing within 90 days from the date the petition is filed. A copy of the summons, petition and supporting affidavit shall be served upon the non-custodial parent along with notice of the date, time and subject matter of the hearing. The person requesting child support services shall be deemed properly served when he/she receives a copy of the summons, petition, and notice of hearing sent via U.S. mail.
1. If, after proper service, a custodial or non-custodial parent chooses not to appear at a hearing or does not enter a response to the petition, the hearing shall proceed based on the IV-D Program's evidence or the evidence on the record.
  2. Any third party that has evidence that is relevant to either parent for the establishment or modification of a support obligation may be subpoenaed to provide the Court with records or testimony.
  3. The responding party shall appear or respond to the petition within twenty (20) days after receipt of the Summons and Petition, excluding the day of receipt.
- D. Upon request of either party the Court shall issue subpoenas to the opposing party, or any other party in possession of relevant information to appear or produce documents in accordance with the CCTHITA Civil Procedures Statute.

**Sec. 10.03.003 Stipulated Agreement**

- A. At any time prior to the date of a hearing, the parties may enter into a stipulated agreement as to the establishment of parentage, or the appropriate level of support for the child.
- B. The signed voluntary stipulation shall be submitted to the CCTHITA Tribal Court for approval. After the Court approves the agreement, it shall be filed with the Clerk of the Tribal Court with a statement that it shall have the same force as an order issued by the Court. All stipulations will require that payments be made to the child support unit for distribution and tracking.

**Sec. 10.03.004 Hearing Procedures**

**A. Establishment of Support**

1. The Court shall establish support obligation for the non-custodial parent based upon the requirements of Title 10, and as mandated by the CCTHITA Child Support Schedule. The Court may depart from Title 10, or the CCTHITA Schedule, but only to avoid

injustice to the child or any of the parties and such findings must be placed on the record.

2. The standard of proof for establishment of the amount of the child support obligation shall be by a preponderance of the evidence. The respondent shall bear the burden of proof that the Schedule is unjust as applied.

**B. Default Orders**

If the respondent fails to appear at the hearing upon a showing of valid service and the IV-D Program or the petitioner presents evidence of a parentage order, or presumption, and an obligation by the non-custodial party, the Court shall enter an order of support pursuant to Title 10, the CCTHITA IV-D Program Schedule, and the evidence.

**Sec. 10.03.005 Content and Effect of Order**

- A. The TCSU program will receive, distribute, and track all child support payments received from the payer under the CCTHITA IV-D Program.
- B. Each order for child support payment shall include an order that the petitioner and respondent notify the CCTHITA Tribal Registry of any change of employer or change of address within 10 days of such change.
- C. Each order shall inform the custodial and non-custodial parent of their responsibilities and rights, and the timeframe under which a party can appeal an order.
- D. An order that contains a determination of a support obligation and payment shall provide for wage garnishment as a means for execution to pay support obligations as required by federal law. Wages shall not be subject to withholding only where:
  1. One of the parties demonstrates and the court finds that there is good cause not to require immediate income withholding; or
  2. The parties reach a written agreement that provides for an alternative arrangement.

**Sec. 10.03.006 Enforcement of Order**

**A. Notice of Delinquency**

In the event that a payer is at least one month in arrears in paying a child support obligation, the IV-D Program shall annually serve upon the payer, a notice of delinquency. Service of the notice shall be affected by sending the notice, addressed to the payer at his or her last known address, or by any other method provided by law. The notice shall inform the obligor of the following:

1. The total amount of arrears owed; and
2. That an Order to Withhold Property or Income shall be served on all entities owing income or property to the payer, including

garnishment of Native Dividends and Alaska Permanent Fund Dividends.

**B. Alaska Permanent Fund Dividend Garnishment**

All cases with an arrears balance of at least \$50 or higher, shall be subject to garnishment up to the full amount of the Alaska Permanent Fund Dividend. Cases with arrears balances below \$50 will not be subject to a permanent fund dividend garnishment.

**C. Orders to Withhold Income and/or Property**

1. The Court shall serve an order to withhold income on the payer's employer, or other payer of the obligor. Such order shall direct that the obligor's wages and other benefits be garnished in an amount equal to the monthly support payments.
2. An additional twenty- percent (20%) of the support payments, or such amount as the court may order after notice and hearing, shall be withheld each month to compensate for any accrued arrearage until the arrearage is satisfied.
3. An employer or other payer of the obligor, served with an order to withhold income, shall begin withholding not more than seven (7) days after service of the notice. An order to withhold income shall be binding against future payers upon actual notice of the order or service by personal delivery or certified mail upon the payer.

**D. Contested Order of Withhold**

1. Grounds for staying an income withholding order shall be limited to mistakes of fact, which means an error in the amount of current or overdue support or in the identity of the alleged NCP.
2. The Court may only waive the order to withhold income if it finds that the payer has met the burden of showing good cause why income should not be withheld and upon a written order of the reasons for such cause.

**E. Other Enforcement Sanctions**

The IV-D Program or a private party may recommend any of the following sanctions for failure to comply with an order of the Court. The Court shall take into consideration the CCTHITA IV-D Program Schedule when assessing the appropriate sanction.

1. Seek work, educational or vocational assistance or training;
2. Address social or physical barriers to employment through training, counseling, treatment or any other avenue deemed relevant by the Court;
3. Perform services for the child, the child's family or the community;

4. Participate in employment, educational, and social service based support groups;
5. Intercept federal/tribal/state benefits, winnings or insurance payments;
6. Assess fines for failure to pay;
7. Suspend licenses issued by the Tribe;
8. Criminal Sanctions, including incarceration; or
9. Seizure of real and personal property (Ceremonial or religious property are exempt from writs of execution).

**Sec. 10.03.007            Modification of Order**

- A. The future child support obligation of a non-custodial parent may be modified upon entry of an order by the CCTHITA Tribal Court pursuant to IV-D Program Schedule. A party may petition the Court for a modification order based upon a showing of facts that met one of the Guideline criteria's for a substantial change of circumstances. The requesting party must appear.
- B. The notice to appear together with a copy of the motion upon which the order shall be served by regular mail if the party has been previously served by certified or personal service, or by certified or personal service if the party has not yet been served.
- C. A hearing shall be set not less than 20 days from the date of service if the party has not previously been served or 20 days from the date of mailing by regular mail to last known address if the party has previously been served.
- D. The amounts of past due support may not be modified unless there is a showing of exceptional circumstances that prevented the payer from requesting a modification at the time of the modification (such as insanity, duress or coercion, lack of legal or constructive notice of the obligation amount).

**Sec. 10.03.008            Statute of Limitations**

No statute of limitations shall apply to any action to enforce a child support order.

**Sec. 10.03.009            Wage Assignment and Garnishment; Employers Must Honor; Retaliation Prohibited**

- A. No employer shall refuse to honor a wage assignment or garnishment executed in accordance with the Tribe's Civil Procedure Code. An assignment made pursuant to this section shall be binding upon the employer seven (7) days after service upon the employer of a true copy of the assignment.
- B. No employer may discharge or prejudice any employee because his or her wages have been subjected to an assignment or garnishment for child

support. If an employer does prejudice or discharge any employee because his wages have been subjected to an assignment or garnishment for child support, then that employer may be subject to a fine in the amount equal to three months of the withhold amount under the garnishment or wage assignment, payable to the Child Support Registry for the benefit of the child(ren).

**Sec. 10.03.010 Cooperation with Tribal Child Support Unit**

- A.** A Temporary Aid to Needy Families (TANF) recipient shall cooperate with the Tribal Child Support Unit in establishing paternity or establishing, modifying, or enforcing a child support order requiring the payment of support by the noncustodial parent for a dependent child for whom TANF cash assistance is received.
- B.** The Tribal Child Support Unit shall determine whether the participant is in good faith compliance with the requirements of this subsection and shall inform Tribal TANF of its determination when the participant is in noncompliance.

**Sec. 10.03.011 Assignment of Support Rights**

- A.** A TANF applicant is considered to have assigned to the Tribe, through the Tribal Child Support Unit, all rights to child support for the time periods TANF is received, from all sources, that is due for the support of any individuals in the family for whom support is sought.
- B.** The assignment takes effect upon a determination that the applicant's family is eligible for cash assistance under this chapter.
- C.** The assignment stops the last month TANF is received when the family's TANF case closes. When the recipient's TANF case closes, TANF arrears for TANF timeframes will continue to be collected until the debt is paid in full.
- D.** The assignment is reinstated each time a family reapplies and is determined to be eligible for TANF benefits.

**Sec. 10.03.012 Child Support Pass-Through Payment**

- A.** The Tribal Child Support Unit may distribute to a TANF recipient up to \$50 per month from a monthly support payment, or the amount of the child support payment if it is less than \$50, received by the Tribal Child Support Unit for whom TANF cash assistance is paid.

## Chapter 04. CCTHITA Child Support Guidelines

<b>Sec. 10.04.001</b>	<b>Purposes of the Child Support Guidelines</b>
<b>Sec. 10.04.002</b>	<b>Use of the Child Support Guidelines</b>
<b>Sec. 10.04.003</b>	<b>General Standards for the Application and Use of the Child Support Schedule; Determination of Child Support Amount</b>
<b>Sec. 10.04.004</b>	<b>Guidelines for Deviation from Support Obligation</b>
<b>Sec. 10.04.005</b>	<b>In-Kind Services and Resources</b>
<b>Sec. 10.04.006</b>	<b>Child Support Schedule and Calculation</b>
<b>Sec. 10.04.007</b>	<b>Due Process and Process of Service</b>

### **Sec. 10.04.001 Purposes of the Child Support Guidelines**

The purposes of the child support guidelines are to:

- A.** Establish an adequate standard of support for children, subject to the ability of parents to pay;
- B.** Make support payments equitable by ensuring consistent treatment of individuals in similar circumstances; and
- C.** Improve the efficiency of the court process by promoting settlements and providing guidance in establishing levels of child support.

### **Sec. 10.04.002 Use of the Child Support Guidelines**

In any action to establish or modify child support, the Child Support Guidelines as set forth in this subchapter, and the CCTHITA IV-D Program Support Schedule, shall be applied to determine the appropriate amount of support due. This Title and Schedule shall be used for temporary and permanent orders that address the financial obligation of parents in any proceeding that involves a child that is in need of support.

The basic child support obligations found in this Title are presumptive and may be increased or decreased when based on the factors set out in the CCTHITA IV-D Program Schedule or when supported by the evidence.

### **Sec. 10.04.003 General Standards for the Application and Use of the Child Support Schedule; Determination of Child Support Amount**

- A.** The parents' obligations for support shall be based on the factors and guidelines set forth in this Title. A specific amount of child support should always be ordered, no matter how minimal, to establish the principle that parents have an obligation to provide financial support to their child(ren).
- B.** Unemployment shall not excuse the parent from the obligation to contribute some degree of support, unless otherwise provided under this Title IV-D Program Schedule.
- C.** Both parents have an obligation to contribute equally, based upon his or her financial situation, to the health care of a child. Health care expenses shall be addressed in an order for support, including but not limited to

obtaining, providing and paying for health care expenses of the child pursuant to Title and the IV-D Program Schedule.

- D.** Both parents have a responsibility to contribute to work related day care and special child rearing expenses. These expenses shall be shared by the parents in the same proportion as his or her child support obligation. The Court may enter a child support order to include a duty to provide for day care expenses.
- E.** A payer's current support obligation shall not exceed thirty-five percent (35%) of their gross earnings unless good cause. Good cause shall be based upon the factors set out in the IV-D Program's Schedule. If a payer is in arrears, the Court shall establish arrears, and an additional percentage of the payer's gross earnings may be applied to custodial arrears that shall not exceed 10%.
- F.** All resources and income of the payer shall be disclosed to the Court or IV-D Program. Such disclosures, including but not limited to, worksheets, pay stubs, tax returns, bank statements, employer information, shall be confidential and available only to the parties, the CCTHITA Child Support Unit and the Court, and solely for the purpose of establishing child support obligations.
- G.** An order of child support may be modified by court order, consistent with the provisions of Title 10 and the Schedule.

#### **Sec. 10.04.004 Guidelines for Deviation from Support Obligation**

When deviating from the support obligation determined under this Title and the Schedule, the Court shall enter a written finding for the record that the application of this Title or the Schedule would be unjust or inappropriate. Such findings shall state the amount of support that would have been required under this Title or the Schedule, and include justification why the order varies from this Title or the Schedule.

#### **Sec. 10.04.005 In-Kind Services and Resources**

Consistent with CCTHITA culture, custom, and tradition, in-kind services or goods to support a child or the family are common. The quantity, quality, and value of in-kind services or goods shall be determined pursuant to this Title and the IV-D Program Schedule. The Court may utilize in-kind services or goods as a set-off against a support obligation when there is a finding of lack of ability to provide cash support, the parties both agree to in-kind, or as an enforcement tool. In its order, the Court shall assign a cash-value to the in-kind services or goods, as well as the terms and frequency for the delivery of such services or goods.

In-kind services and goods may not be used to satisfy assigned child support obligations.

#### **Sec. 10.04.006 Child Support Schedule and Calculation**

The Court shall impute a payer income at the current federal minimum wage at a minimum of thirty (30) hours a week unless the court finds that a payer is voluntarily unemployed or underemployed. If voluntarily unemployed or underemployed, the payer's income shall be imputed at the gross income the payer would be earning if he/she

were employed to full capacity at his or her potential gross income earnings. Potential income shall not be imputed unless a preponderance of evidence shows that the parent has a greater earning potential than his/her actual income.

**Sec. 10.04.007            Due Process and Process of Service**

Unless otherwise identified in this Title or the IV-D Program Schedule, Chapter 6, Titles 20 through 25, shall apply.

## Chapter 05. Recognition of Foreign Judgments

**Sec. 10.05.001 Full Faith and Credit for Foreign Child Support Orders**

**Sec. 10.05.002 Procedure for Recognition and Enforcement of Foreign Judgments**

**Sec. 10.05.001 Full Faith and Credit for Foreign Child Support Orders**

- A.** Properly issued court and administrative orders, judgments, or decrees of other Indian tribes, states, or federal agencies that relate to child support enforcement may be given full faith and credit or, if necessary and appropriate, reciprocal comity in compliance with the federal Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 USC 1738B, as amended. Such orders will be considered properly issued when a court that makes the order has complied with the FFCCSO provisions and the issuing court:
- 1.** Has subject matter jurisdiction to hear the matter and enter such an order; and
  - 2.** Has personal jurisdiction over the parties; and
  - 3.** Reasonable notice and opportunity to be heard was given to the parties.
- B.** The issuing jurisdiction shall provide the documentation required under Sec. 10.05.002 (A), for the Tribal Court to make a determination that a foreign order has been entered in compliance with FFCCSOA, as amended.
- C.** Where a foreign order is invalid by reason of a lack of personal jurisdiction in the agency or court of the issuing jurisdiction, the Court may adopt some or all of its provisions as an original order of the Court to the extent that they do not contravene CCTHITA Tribal Law or policy. The Court must enter an order providing for the support and under no circumstances may the Court release a parent from his or her responsibility to support a legally determined child.
- D.** When determining exclusive jurisdiction, the priority of multiple orders or modification of a foreign order, the Court shall comply with the provisions of FFCCSOA, as amended.

**Sec. 10.05.002 Procedure for Recognition and Enforcement of Foreign Judgments**

- A.** Proper filing of a foreign judgment with the Court shall be accomplished when the petitioner has delivered to the Court one (1) copy of the foreign

judgment, and any necessary supporting documents along with a petition requesting the Court recognize and enforce the foreign judgment.

- B.** Upon receipt of the request for registration, the registering tribunal shall file the order as a foreign judgment, together with one copy of the documents and information, regardless of their form.
- C.** Upon proper filing of a foreign judgment with the Court, the Clerk of Court shall notify the non-registering parties. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.
- D.** The notice must inform the non-registering party(s) that a hearing to contest the validity or enforcement of the registered order must be requested within 20 days from the filing date and 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. Such notice shall be served on the parties in a manner consistent with the laws of the Tribe.
- E.** If no party responds to the petition to recognize and enforce the foreign judgment within 20 days of the filing date of the motion, the Court may rule on the petition with no hearing.

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**F.** A party contesting enforcement of the order has the burden of showing the order is not valid. If the contesting party fails to show the order is not valid or a party fails to respond to the notice of the petition requesting full faith and credit, the court shall enforce the original order as a CCTHITA Tribal Court Order.

**Amended:** April 23, 2005  
April 22, 2006  
April 19, 2007  
November 17, 2007  
April 19, 2008  
April 22, 2016  
April 21, 2017

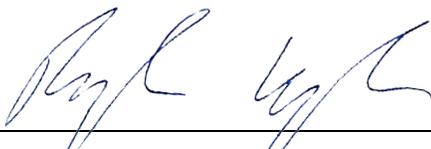
**ADOPTED** this 21<sup>st</sup> day of April 2017, by the Tribal Assembly of the Central Council of Tlingit and Haida Indian Tribes of Alaska, by a vote of 97 yeas, 0 nays, 2 abstentions and 0 absences.

**CERTIFY**



President Richard J. Peterson

**ATTEST**



Tribal Secretary Ralph Wolfe