

TITLE 13 FAMILY

CHAPTER 1

Marriage & Divorce

Section 1-01. Recording of Marriages and Divorces.

All marriages and divorces to which an Indian person is a party, whether consummated in accordance with the State law or in accordance with Tribal law, shall be recorded in writing executed by both parties thereto within three (3) months at the office of the Clerk of the Tribal District Court in the marriage record.

Section 1-02. Tribal Marriage and Divorce.

In any case wherein the marital status of an Indian person is at issue, the Court shall have full authority to determine the marital status of the parties and enter its declaratory judgment thereon.

Section 1-03. Tribal Custom Adoption.

Tribal Custom Adoptions shall continue to be recognized and shall be fully recognized by the Court, without the necessity of filing any document, when proven for the purpose of establishing extended family status in child custody actions, determining child custody, the obligation to support children, and other family matters. However, Tribal common law adoptions shall not be recognized for the purpose of probate of descendant's estates unless, prior to the death of the descendant, the common law adoption was formalized by action of the Tribal Court, or in the case of adults, by a writing acknowledging such adoption filed in the Tribal Court. A Tribal Common Law adoption as a child of another does not terminate parental rights of the parents, nor deprive the natural parents of their ultimate right to the custody of child who is adopted by another pursuant to the Tribal common law.

Section 1-04. Determination of Paternity and Support.

The Tribal District Court shall have the jurisdiction of all suits brought to determine the paternity of a child and to obtain a judgment for the support of the child. A judgment of the Court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance by the Department of the Interior or by the Tribal District Court.

**SUB-CHAPTER A
STATUTORY DIVORCE**

Section 1-101. Grounds for Divorce.

The District Court may grant a divorce for any of the following causes:

- (a) Abandonment for one (1) year.
- (b) Adultery.
- (c) Impotency.
- (d) When the wife at the time of her marriage, was pregnant by another other than her husband.
- (e) Extreme cruelty.
- (f) Fraudulent contract.
- (g) Incompatibility.
- (h) Habitual drunkenness.
- (i) Gross neglect of duty.
- (j) 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.
- (k) Insanity for a period of five years. The fact and duration of insanity being proved by the testimony of two physicians. Such divorce does not relieve the sane spouse from the obligation and support and shall not be granted unless a guardian has been appointed.

Section 1-102. Residence of Plaintiff or Defendant.

In an action for divorce:

- (a) either the plaintiff or the defendant must have been an actual resident, in good faith, of the Tribal jurisdiction for the three (3) months prior to the filing of the petition, or
- (b) both parties must consent to tribal jurisdiction and one is a member of the Tribe.

Section 1-103. Personal Jurisdiction.

The Court may exercise personal jurisdiction over a person, whether or not a resident of the Tribal jurisdiction who lived within the Tribal jurisdiction 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 the Tribal jurisdiction. When the person who is subject to the jurisdiction of the Court has departed from the Tribal jurisdiction he may be served outside of the Tribal jurisdiction by any method that is authorized by the statutes of the Tribe. In all other cases, the Court may grant a divorce but may not enter a personal judgment for alimony or child support unless both parties consent.

Section 1-104. Petition, Summons and Response

(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) 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.

(f) When new matter is set up in the Respondent’s answer, it shall be verified as to such new matter by the affidavit of the respondent.

Section 1-105. Paternity Determination.

In an action for a divorce, legal separation or annulment where there are children born to the parties, the Court may determine if the parties to the action are the parents of the children. If the parties to the action are the parents of the children, the Court may determine which party should have custody of said children, and it may award child support to the parent to whom it awards custody, and make an appropriate order for payment of costs and attorney's fees.

Section 1-105.1. Actions Where Minor Child Involved; Delayed Final Order

(a) 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 if there is no objection by either party. Within the ninety-day period the court may require the parties attend and complete an educational program specified by Section 107.2 of this title.

(b) This section shall not apply to divorces where there is:

(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) Conviction of any crime involving Child or Domestic Abuse upon a child of either party to the divorce by either party to the divorce; or

(6) A child of either party has been adjudicated deprived, pursuant to the Juvenile Procedure Code, 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 1115 of this Act, 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 parties voluntarily participate in marital or family counseling and the court finds reconciliation is unlikely.

Section 1-106. Actions Where Minor Child Involved; Court Ordered Educational Program

In all actions for divorce, separate maintenance, guardianship, paternity, custody or visitation, including modification or enforcement of a prior court order, where the interest of a child under eighteen (18) years of age is involved, the court may require all adult parties to attend an educational program concerning, as appropriate, the impact of separate parenting and co-parenting on children, the implications for visitation and conflict management, development

of children, separate financial responsibility for children and such other instruction as deemed necessary by the court. The program shall be educational in nature and not designed for individual therapy.

Section 1-107. Appointment of Guardian Ad Litem; False Accusations of Child Abuse or Neglect

(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,

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

(4) All guardians ad litem shall certify to the court that the Oklahoma Administrative Director of the Courts Standard Operating Manual for Guardians Ad Litem has been read and all provisions contained therein are understood. The Manual includes legal obligations and responsibilities, information concerning child abuse, child development, domestic abuse, sexual abuse, and parent and child behavioral health and management including best practices. The guardian ad litem shall also certify that he or she agrees to follow the best practices described within the standard operating manual.

(b) 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.

Section 1-108. Custody of Children, Disposition of Property.

That the parties appear to be in equal wrong shall not be a basis for refusing to grant a divorce. If a divorce is granted 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. In making a property settlement, the Court shall have due regard for the needs of the family and justice to the parties.

Section 1-109. Awarding Custody or Appointing Guardian; Best Interests of Child

(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, to the parents jointly, or if by clear and convincing evidence neither parent is an appropriate placement the court may place the child with a third party using the placement preferences of Title 20, Section 410.

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.

Section 1-110. Custody During Parents' Separation

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.

Section 1-111. Custody, Guardianship or Visitation Cases; Evidence of Domestic Abuse

(a) 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 strong 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.

(b) If custody, guardianship, or unsupervised visitation is granted to the perpetrator, the court must make particularized findings of why it has overcome the strong presumption against having custody, guardianship, or unsupervised visitation granted to the person against whom domestic abuse, stalking or harassing behavior has been established.

Section 1-112. Orders Concerning Property, Children, Support and Expenses.

After a petition has been filed in an action for divorce and alimony, or for alimony alone, the Court may make and enforce by attachment or otherwise, such order to restrain the disposition of the property of either of the parties, and for the use, management, and control thereof, or for the control of the children and support of the wife or husband during the pendency of the action, as may be right and proper; and may also make such order relative to the expenses of the suit as will insure an efficient preparation of the case; and, on granting a divorce the Court may require the husband or wife to pay such reasonable expenses of the other in the prosecution or defense of the action as may be just and proper considering the respective parties and the means and property of each.

The Court may in its discretion make additional orders relative to the expenses of any such subsequent actions, brought by the parties or their attorneys, for the enforcement or modification of any interlocutory or final orders in the divorce action made for the benefit of either party or their respective attorneys. Provided, no ex parte orders shall be issued until the opposing party is granted an opportunity to be heard, unless such ex parte order provides that instead of performing thereunder the opposing party may appear on a date certain, not more than twenty (20) days thereafter, and show good cause as to why he should not comply with said order.

Section 1-113. Shared Parenting

It is the policy of the Nation 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. To effectuate this policy, if requested by a parent, the court shall through a temporary or permanent order, provide substantially equal access to the minor children to both parents, unless the court finds that such shared parenting would be detrimental to the children. The burden of proof that such shared parenting would be detrimental to such children shall be upon the parent requesting sole custody and the reason for such determination shall be documented in the court record.

Section 1-114. Blood, Saliva, Urine or Any Other Tests

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.

Section 1-115. Indirect Contempt for Disobedience of Certain Orders Relating to Divorce or Separate Maintenance Actions

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.

Section 1-116. Minimum Visitation Between Noncustodial Parent and Child; Failure to Pay Child Support

(a) 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.

(b) Except for good cause shown and when in the best interests of the child, the visitation 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.

(c) 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 noncustodial parent's visitation rights.

(d) When a custodial parent refuses to honor a noncustodial parent's visitation rights, the non-custodial parent shall not fail to pay any ordered child support or alimony.

(e) Violation of an order providing for the payment of child support or providing for the visitation of a non-custodial 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.

(f) 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.

Section 1-117. Civil Action for Child Stealing

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 include, but are not limited to:

(a) Damages for loss of service, society, and companionship;

(b) Compensatory damages for reasonable expenses incurred in searching for the missing child or attending court hearings; and

(c) The prevailing party in such action being awarded reasonable attorney fees.

Section 1-118. Interference with Visitation Rights of Non-Custodial Parent

(a) When a noncustodial parent has been granted visitation rights and those rights are denied or otherwise interfered with by the custodial parent, the noncustodial parent may file with the court clerk a motion for enforcement of visitation rights. 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.

(b) 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.

(c) 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 such remedies as the Court reasonably believes appropriate to assure future

compliance with visitation rights, which may include attorney fees, costs, or modifying a prior order granting child custody.

(d) If the court finds that the motion for enforcement of visitation rights has been unreasonably filed or pursued by the noncustodial parent, the court may assess reasonable attorney fees, mediation costs, and court costs against the noncustodial parent.

(e) 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.

Section 1-119. Care and Custody of 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 a tribal or state agency or other entity, by agreement of the Tribe, State 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.

The social security numbers of both parents and the child shall be included on a child support order summary, which shall be submitted to the Court Registry as provided for in Section 112A of this Act with all child support or paternity orders.

(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 Title 20, Section 410, Placement Preferences 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 and grandparents 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 non-custodial parent and grandparents, and

(B) shall not prefer a parent as a custodian of the child because of the gender of that parent.

(4) When a custodial parent of a child is required to be separated from a child due to military service, a court shall not enter a final order modifying an existing custody order until such time as the custodial parent has completed the term of duty requiring separation. For purposes of this paragraph:

(5) In making an order for custody, the court shall require compliance with Section 112.3 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 of this Act, 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.

Section 1-120. Court Registry on Title IV-D Cases and Child Support Orders

(a) All orders entered after July 1st, 2009, which establish paternity or establish, modify or enforce a child support obligation shall state for all parties and custodians subject to the order:

(1) an address of record for service of process in support, visitation and custody actions, and

(2) the address of record may be different from the party's or custodian's physical address.

(b) The paternity or support orders shall direct that any changes in the address of record shall be provided in writing to the court clerk within twenty (20) 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. The Court Clerk may refuse to disclose address and location information if the Court Clerk has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to a party, custodian or child. In such case notice shall be made in compliance with the Domestic Abuse Act, Sections 9-203 and 9-218.

(c) All parties and custodians ordered to provide an address of record to the Court Clerk 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 Court Clerk.

(d) When proof of service is required, it shall be made by a certificate of mailing from a United States Post Office, or in child support cases where services are being provided under the tribal child support plan, by a certificate of mailing from the child support representative.

Section 1-121. Evidence of Ongoing Domestic Abuse or Child Abuse; Determinations Relating to Convicted Sex Offenders

(a) In every case involving the custody of, guardianship of or visitation with a child, the court shall determine if any person seeking or who has custody of, guardianship of or visitation with a child:

(1) Is or has been subject to, or residing with a person who is or has been subject to, the registration requirements of the Sac and Fox Sex Offenders Registration Act or any similar act in any other jurisdiction;

(2) Has been, or residing with a person who has been, convicted of a Child or Domestic 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;

(b) There shall be a strong presumption that it is not in the best interests of the child to have custody or guardianship granted to a person who has been determined to fall within subsections (a)(1)-(3).

(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.

Section 1-122. Notice of Proposed Relocation or Change of Residence

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

(b) 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.

(c) (1) Except as provided by this section, notice of a proposed relocation of the principal residence of a child or notice of an intended change of the primary residence address of an adult must be given by mail within 10 days of the decision to relocate to the last-known address of the person to be notified.

(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 non-relocating parent that an objection to the relocation, or non-parent with visitation rights seeking court ordered revised visitation rights, must be filed with the court within twenty (20) days of receipt of the notice 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, any custody or visitation orders issued by a court shall include notice of the requirements of this section.

(e) 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 notice either not be given or be given in the manner provided in the Domestic Abuse Act Section 9-218. The court may conduct an ex parte hearing pursuant to this subsection.

(f) The court may consider a failure to provide notice of a proposed relocation of a child as provided by this section as:

(1) a factor in making its determination regarding the relocation of a child,

(2) a factor in determining whether custody or visitation should be modified,

(3) a basis for ordering the return of the child if the relocation has taken place without notice, and

(4) 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.

(5) 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) 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 twenty (20) days after receipt of the notice.

(1) If relocation of the child is proposed, a non-parent 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.

(h) 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:

(1) 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,

(2) the child already has been relocated without notice, agreement of the parties, or court approval, or

(3) 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.

(i) A proposed relocation of a child may be a factor in considering a change of custody.

(j) In reaching its decision regarding a proposed relocation, the court shall consider the following factors:

(1) 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,

(2) 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,

(3) 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,

(4) the child's preference, taking into consideration the age and maturity of the child,

(5) 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,

(6) 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,

(7) the participation of the child in Sac and Fox activities and culture and the impact of relocation upon such participation.

(8) the reasons of each person for seeking or opposing the relocation, and

(9) any other factor affecting the best interest of the child.

(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 non-relocating person to show 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 or objecting to a proposed relocation of the child if it determines that the proposal was made or the objection was filed to harass, cause unnecessary delay, or based on frivolous argument.

(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 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) The provisions of this section apply to an order regarding custody of or visitation with a child issued:

(1) after the effective date of this act, and

(2) 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.

(o) 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.

Section 1-123. Preference of Child.

In any divorce action in which the Court must determine custody, the child may express a preference as to which of its parents the child wishes to have custody. The Court may determine whether the best interest of the child will be served by the expression of preference and if the Court so finds then the Court may consider the expression of preference by the child in determining custody. Provided, however, the Court shall not be bound by that choice and may take other facts into consideration in awarding custody.

Section 1-124. Interest on Delinquent Payments.

When ordered by the Court, court-ordered child support payments and court-ordered payments of suit monies shall draw interest at the rate of ten percent (10%) per year from the date they become delinquent, and the interest shall be collected in the same manner as the payments upon which the interest accrues.

Section 1-125. Per Capita Assignment

Every order providing for a tribal member's support of a minor child or a modification of such order shall contain an immediate gaming per capita assignment provision if the tribal member's child payments are in arrears.

Section 1-126. Security, Bond or Other Guarantee for 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.

Section 1-127. Modification, Suspension or Termination of Order for Income Assignment

The person obligated to pay support or the person entitled to the support may petition the court to:

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

(b) Modify the amount of income to be withheld to reflect payment in full of the delinquency by income assignment or otherwise; or

(c) 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.

Section 1-128. Child Support Guidelines

(a) The Sac and Fox Courts shall utilize the Oklahoma Child Support Guidelines found at 43 O.S. 119 in computing Child Support.

(b) 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 Oklahoma guidelines is the correct amount of child support to be awarded.

Section 1-129. Restoration of Wife's Maiden Name.

When a divorce is granted, the wife shall be restored to her maiden or former name if she so desires.

Section 1-130. Disposition of Property.

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 divorce. 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 make such division of the property in kind, or by setting the same apart to one of the parties, and requiring the other thereof to pay such sum as may be just and proper to effect a fair and just division thereof having due regard to the needs of the family. 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.

Section 1-131. Effect of Divorce.

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.

Section 1-133. Remarriage and Cohabitation.

It shall be unlawful for either party to an action for divorce whose former husband or wife is living to marry a person other than the divorced spouse within six (6) months from date of the decree of divorce and if an appeal be commenced from said decree, it shall be unlawful for either party to such cause to marry any other person until the expiration of thirty (30) days from the date on which final judgment shall be rendered pursuant to such appeal. Any person violating the provisions of this section by such marriage shall be deemed guilty of bigamy.

Section 1-134. Appeal from judgment.

An appeal from a judgment granting or denying a divorce shall be made in the same manner as in any other civil case.

Section 1-135. Punishment for Bigamous Remarriage.

Every person convicted of bigamy as such offense is defined in the foregoing section shall be punished by imprisonment in the Tribal jail for a term of not more than six months.

Section 1-136. Remarriage Within Six Months.

A marriage wherein one of the parties had not been divorced for six (6) months shall hereafter be ground for annulment of marriage by either party.

Section 1-137. Time When Judgment Final.

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 the 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 six (6) months 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.

Section 1-138. Avoidance of Marriage of Incompetents.

When either of the parties to a marriage shall be incapable, from want of age or understanding, or 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 conceived before the same is annulled, shall be legitimate. Cohabitation after such incapacity ceases, shall be a sufficient defense to any such action.

Section 1-139. 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.

Section 1-140. Evidence.

No divorce shall be granted without proof taken upon the record as in other cases.

Section 1-141. Parties May Testify.

In any action for divorce, the either of the parties shall be competent to testify respecting any fact necessary or proper to be proven.

Section 1-142. Setting Aside of Divorce Decrees.

When a decree of divorce has been issued by the District Court, the Court is hereby authorized to dissolve said decree at any future time, 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.

Section 1-143. Designation of Support and Property Payments; Termination of Support; Cohabitation by Former Spouse

(a) In any divorce 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 divorce 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) 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 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 application the court shall order payment of support terminated and the lien discharged after remarriage of the recipient, unless the recipient can make a showing that some amount of support is still needed and that circumstances have not rendered payments inequitable, provided the recipient commences an action for such determination within ninety (90) days of the date of remarriage.

(c) The voluntary cohabitation of a former spouse with another person 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 change of circumstances of either party to the divorce relating to need for support or ability to support. As used in this subsection, the term cohabitation means the dwelling together in a private conjugal relationship not solemnized as a marriage according to law, or not meeting all the standards of a common-law marriage. The petitioner shall make application for modification and shall follow notification procedures used in other divorce decree modification actions.

(d) Except as otherwise provided in subsection (c) above, the provisions of any divorce 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 order 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) 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 the court determines that the disposable retired or retainer pay of a military member is marital property, the court shall award an amount consistent with the rank, pay grade, and time of service of the member at the time of separation.

(f) There shall be a two-year statute of limitations, beginning on the date of the final divorce decree, for a party to apply for division of disposable retired or retainer pay.

Section 1-144. Mailing of Alimony and Support Payments; Evidence of Support Payments.

(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.

Section 1-145. Past Due Payments to Operate as Judgments

(a) Any payment or installment of child support ordered pursuant to any order, judgment, or decree of the district court 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 jurisdiction, 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 jurisdiction and any other tribe or state.

(b) A child support judgment shall not become dormant for any purpose, and, except as otherwise provided by court order, a judgment for past due child support shall be enforceable until paid in full.

(c) 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.

(d) 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.

Section 1-146. Legal Right to Child Support

The Nation 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 expenditures. It is therefore the Nation's intent to encourage payment of child support to decrease overall costs to the Nation while increasing the amount of financial support collected for children by authorizing the district court to order the revocation, suspension, non-issuance or non-renewal of an occupational, professional, business or other Tribally issued authorizations or certificates 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.

Section 1-147. Modification of Decree.

Notwithstanding that a decree of divorce has become final, the Court may modify its judgment relative to child support or alimony at any time in the interest of justice and equity, having due regard for the needs of the family or families of the parties, upon motion for modification filed in the original action and served with summons requiring an answer to said motion within twenty (20) days. Such motions shall be heard as if they were an independent proceeding and discovery may be had. The order of the Court determining the motion for modification shall be final appealable order.

Section 1-148. Effect on Common Law Divorce.

This sub-chapter shall not be interpreted in derogation of the Tribal common law of Divorce, but is intended for use by those who prefer the statutory method of divorce or who cannot agree as to child custody and support, spousal support, property division, or other similar matters upon which agreement is necessary to effectuate a Tribal common law divorce.