



# **Title VII – Child Support Enforcement Code**

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## **Alabama-Coushatta Tribe of Texas Comprehensive Codes of Justice**

### **“Child Support Enforcement Code”**

**Adopted and Codified as Title VII of the A-C, C.C.J.  
on May 6, 2013, by Tribal Resolution#2013-30**

**Revised on November 7<sup>th</sup>, 2013, by Tribal Resolution #2013-77**

*Title VII – Child Support Enforcement Code is comprised of Tribal procedural and substantive statutes relevant to the establishment of a Tribal Child Support Program as authorized under section 455(f) of the Social Security Act; designation of the A-C Tribal Child Support Enforcement (ACTCSE) in accordance with Title IV-D of the Social Security Act, 42 U.S.C. 651 §651 et. seq. and Issuance and Enforcement of Tribal Child Support Orders.*



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## **Title VII – Child Support Enforcement Code/C.C.J.**

### **CHAPTER 1 GENERAL PROVISIONS**

#### **Sec. 101 Title**

This chapter may be referred to as the “Alabama-Coushatta Tribal Child Support Enforcement Code” or “Child Support Code.”

#### **Sec. 102 Authority**

Article VI of the Alabama-Coushatta Tribe of Texas Constitution and By-laws enumerates the responsibility and duties of the Tribal Council to exercise lawmaking powers. Among other powers, the Tribal Council shall have the duty “to promote and protect the health, peace, morals, education, sovereignty, jurisdiction community, children, lands, resources, and general welfare of the tribe and its members; to enact and enforce civil and criminal laws governing the conduct of all persons who enter the Tribe’s territory, subject to any limitations imposed by Federal law; and to provide for the maintenance of law, order and the administration of justice.”

#### **Sec. 103 Purpose**

The purpose of this chapter is to:

**(A)** Establish a tribal child support enforcement program as authorized under section 455 (f) of the Social Security Act;

**(B)** Designate the Alabama-Coushatta Tribal Child Support Enforcement (ACTCSE) as the tribal child support enforcement agency for the Alabama-Coushatta Tribe of Texas with the authority granted to it in accordance with Title IV-D of the Social Security Act, 42 U.S.C. 651§651 et. seq., as amended, and Title IV-D rules and regulations;

**(C)** Provide for the establishment of paternity;

**(D)** Provide for the establishment, modification, and termination of child support orders;

**(E)** Provide for the enforcement of child support orders;

**(F)** Provide for the collection and distribution of child support payments;

**(G)** Provide for the location of parents and assets; and

**(H)** Provide for the administrative and judicial procedures for the establishment, modification, termination, and enforcement of child support.

#### **Sec. 104 Construction, Uniformity and Interpretation; Severability**

**(A) Interpretation.** This chapter shall be liberally construed to provide child support for minor children under the jurisdiction of the Alabama-Coushatta Tribe of Texas.

**(B) Consistency with Other Laws.** This Chapter of this Code establishes Alabama-Coushatta Tribal child support laws as mandated under Title IV-D of the Social Security Act and in a form generally consistent with Texas statutes concerning child



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support in order to provide uniformity in the child support laws applied by the Nation, other tribes and the State of Texas, unless otherwise expressly provided.

**(C) Other Laws.** If there is a child support issue that this chapter does not address, the Alabama-Coushatta Tribal Court shall apply any other applicable law of the Alabama-Coushatta Tribe of Texas and any federal law concerning such child support issue to the extent mandated by Title IV-D of the Social Security Act. If a child support issue is still not addressed by the Nation’s law or federal law, the Tribal Court may consider any state law concerning such child support issue as a guideline to make a determination in a child support action.

**(D) Severability.** If any provision of this chapter is determined by a Court of competent jurisdiction to be invalid for any reason, the remainder of the provisions shall remain in full force and effect and shall not be affected.

### Sec. 105 Definitions

**(A) “IV-D Alabama-Coushatta Tribal Child Support Enforcement”** means the federal, state and tribal child support programs established under Title IV-D, 42 USC §651 et seq., as amended, and Title IV-D rules and regulations, 45 CFR 302.00 et seq.

**(B) “IV-D Services”** means the services that are authorized or required for: the establishment of paternity; establishment, modification, and enforcement of support orders; and, location of non-custodial parents under Title IV-D, 42 USC §651 et seq., as amended, and Title IV-D rules and regulations, 45 CFR 302.00 et seq.

**(C) “Acknowledged Father”** means a man who has established a father-child relationship.

**(D) “Adjudicated Father”** means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child.

**(E) “Alleged Father”** means a man who alleged himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. The term does not include:

- (1)** a presumed father,
- (2)** a man whose parental rights have been terminated or declared not to exist, or
- (3)** a male donor.

**(F) “Administrative Procedure”** means a method by which support orders are made and enforced by an executive agency rather than by courts and judges.

**(G) “Arrearage”** means the total amount of an unpaid child support obligation by a parent who is obligated to pay.

**(H) “Assignment”** means any transfer of rights to child support by a custodial parent to the Alabama-Coushatta Tribe or other state or federal agency.



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**(I)** *“Assignment of Support Rights”* means the legal procedure by which a person receiving public assistance agrees to turn over to the tribe or state any right to child support, including arrearages, paid by the obligated parent in exchange for receipt of a cash assistance grant and other benefits. The money is used to defray the public assistance costs.

**(J)** *“Child”* means an individual of any age whose parentage may be determined under this Act.

**(K)** *“Child Support”* means the financial obligation a non-custodial parent has towards his or her child(ren) whether entered into voluntarily or ordered by a court or administrative agency.

**(L)** *“Child Support Order and Child Support Obligation”* means a judgment, decree or order, whether temporary, final or subject to modification, issued by a court of competent jurisdiction, tribunal or an administrative agency for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing jurisdiction, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorney’s fees and other relief.

**(M)** *“Alabama-Coushatta Tribal Child Support Enforcement (ACTCSE) Agency”* means an agency that exists under Title IV-D of the Social Security Act that locates non-custodial parents or putative fathers, establishes, enforces and modifies child support, and collects and distributes child support money. A Child Support Enforcement (CSE) Agency is operated by state, local or tribal governments according to the child support enforcement guidelines as set forth in Title IV-D of the Social Security Act.

**(N)** *“Consumer Credit Protection Act (CCPA)”* means the federal law that limits the amount that may be withheld from earnings to satisfy child support obligations under §303(b) of the CCPA, 15 USC §1673(b).

**(O)** *“Consumer Reporting Agency”* means any person which for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports under 15 USC §1681a (f).

**(P)** *“Custodial Parent (CP)”* means the person with legal custody of the child(ren) or who exercises physical custody of the child(ren), may be a parent, relative, legal guardian, or custodian appointed by a court.

**(Q)** *“Default”* means failure of a defendant to appear, or file an answer or response in a civil case, after having been properly served with a summons and complaint.



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(R) ***“Default Judgment”*** means a decision made by the tribunal when the defendant fails to respond.

(S) ***“Disestablishment”*** means a procedure by which a tribunal can nullify an order or a determination of paternity generally.

(T) ***“Delinquency”*** means any payment under an order for support which becomes due and remains unpaid. See arrearage.

(U) ***“Department”*** means, unless otherwise indicated, the Tribal Child Support Enforcement.

(V) ***“Determination of Parentage”*** means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity or adjudication by the Court.

(W) ***“Enforcement”*** means the application of remedies to obtain payment of a child support or medical support obligation contained in a child and/or spousal support order.

(X) ***“Establishment”*** means the process of determining paternity and/or obtaining a court or administrative order for child support.

(Y) ***“Genetic Testing”*** means an analysis of genetic markers to exclude or identify a man as a father or a woman as the mother of the child. The term includes an analysis of one or a combination of the following:

(1) deoxyribonucleic acid, and

(2) blood - group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.

(Z) ***“Income Assignment”*** means an assignment by operation of law or by court or administrative order of a portion of the monies, income or periodic earning due and owing to the non-custodial parent to the person entitled to the support or to another person designated by the support order or assignment. An income assignment may be for payment of current support, arrearages, or both.

(AA) ***“Income Withholding”*** means the automatic deductions made from wages or income to pay a debt such as child support. Income withholding usually is incorporated into the child support order and may be voluntary or involuntary. An employer must withhold support from a non-custodial parent’s wages and transfer that withholding to the appropriate agency.

(BB) ***“Indian Country”*** as defined in 18 USC §1151.

(CC) ***“Indian Tribe”*** means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of federally recognized Indian Tribal governments as published in the Federal Register pursuant to 25 U.S.C. 479a-1.

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**(DD) “Intercept”** means a method of securing child support by taking a portion of non-wage payments made to a non-custodial parent. Non-wage payments subject to interception include federal tax refunds, state tax refunds, unemployment benefits, and disability benefits.

**(EE) “Location”** means information concerning the physical whereabouts of the non-custodial parent, or the non-custodial parent’s employer(s), other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case.

**(FF) “Lien”** means a claim upon property to prevent sale or transfer of that property until a debt is satisfied.

**(GG) “Medical Support”** means health or dental insurance coverage or health benefits ordered to be paid by a parent(s) for the benefit of a minor child(ren).

**(HH) “Non-Custodial Parent”** means a parent who does not have legal or physical custody of the child(ren) and has an obligation to pay child support. Also referred to as the obligor.

**(II) “Non-Cash Support”** means support provided to a family in the nature of goods and/or services, rather than in cash and has a certain and specific dollar value.

**(JJ) “Obligee”** means a person or entity to which child support is owed. Also referred to as the custodial parent or CP.

**(KK) “Obligor”** means the person who is obligated to pay child support. Also referred to as the non-custodial parent or NCP.

**(LL) “Offset”** means an amount of money intercepted from a non-custodial parent’s state or federal tax refund or from an administrative payment such as federal retirement benefits to satisfy a child support debt.

**(MM) “Past Support”** means past-due support or support for a prior period. See Arrearage.

**(NN) “Paternity Judgment”** means legal determination of fatherhood.

**(OO) “Payment Plan”** means, but is not limited to, a plan approved by a judicial or administrative court or Child Support Enforcement agency to make periodic payments of past due support to reduce the obligor’s arrearage. A payment plan usually consists of a monthly payment plan that includes current support and past due support. The plan may provide for an income assignment or similar plan to insure the past due support will be paid.

**(PP) “Presumed Father”** means a man who, by operation of law, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.

**(QQ) “Public Assistance”** means benefits granted from tribal, federal or state programs to aid eligible recipients (eligibility requirements vary between particular programs). Applicants for certain types of public assistance (e.g. TANF) are automatically



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referred to their tribal or state IV-D agency for Alabama-Coushatta Tribal Child Support Enforcement.

**(RR)** *“Signatory”* means an individual who authenticates a record and is bound by its terms.

**(SS)** *“State”* means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

**(TT)** *“Temporary Assistance for Needy Families”* means the Temporary Assistance for Needy Families program as found at section 401 et seq. of the Social Security Act (42 U.S.C. 601 et seq.).

**(UU)** *“Tribal Court Judge”* means the presiding Judge of the Alabama-Coushatta Tribe of Texas Tribal Court.

**(VV)** *“Tribunal”* means a court or administrative agency authorized to establish, enforce or modify support orders, or determines parentage.

### **Sec. 106 Designation of the Alabama-Coushatta Tribal Child Support Enforcement as a Title IV-D Program**

The Alabama-Coushatta Tribal Child Support Enforcement shall be the designated Title IV-D agency for the Alabama-Coushatta Tribe of Texas with all the authority granted to it in accordance with Title IV-D of the Social Security Act, 42 USC §651 et seq., Title IV-D rules and regulations, and applicable laws of the Alabama-Coushatta Tribe of Texas, including these Codes.

### **Sec. 107 Powers and Duties of the Alabama-Coushatta Tribal Child Support Enforcement**

The child support enforcement shall be authorized to provide Title IV-D Alabama-Coushatta Tribal Child Support Enforcement that include, but are not limited to:

- (A)** Administer and manage the plan and services of its tribal IV-D program;
- (B)** Establish administrative procedures for paternity establishment and establishment, modification, termination and enforcement of child support orders consistent with these Codes and the rules and regulations set forth by Title IV-D of the Social Security Act, 42 USC §651 et seq.;
- (C)** Establish paternity in accordance with the Alabama-Coushatta Comprehensive Codes of Justice;
- (D)** Establish, modify, and terminate child support orders through Court or administrative action;
- (E)** Enforce child support orders through Court or administrative actions;
- (F)** Initiate legal action to provide Alabama-Coushatta Tribal Child Support Enforcement, including appeals;

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(G) Adopt policies and procedures for the Alabama-Coushatta Tribal Child Support Enforcement;

(H) Adopt rules and regulations for Alabama-Coushatta Tribal Child Support Enforcement, subject to the approval of the Alabama-Coushatta Tribal Council;

(I) Negotiate agreements and or contracts as necessary for Alabama-Coushatta Tribal Child Support Enforcement under tribal and federal law, subject to the approval of the Alabama-Coushatta Tribal Council;

(J) Establish and maintain child support records, files and accounting;

(K) Provide location services for parents and assets; and

(L) Collect and distribute child support payments.

**Sec. 108 Services**

(A) Services provided by the Alabama-Coushatta Tribal Child Support Enforcement. ACTCSE may provide the following Title IV-D services that include, but are not limited to:

(1) The location of the parents and their assets through local, state and federal agencies and private sources;

(2) The establishment of paternity through Court or administrative action in accordance with these Codes and the rules and regulations of Title IV-D of the Social Security Act, 42 USC §651 et seq.;

(3) The establishment and modification of child support obligations through Court or administrative action;

(4) The enforcement of child support orders through Court or administrative action;

(5) A review of child support orders for modification; and

(6) The collection and distribution of child support payments.

(B) **Services Not Provided by ACTCSE.** The Alabama-Coushatta Tribal Child Support Enforcement shall not provide services for the following:

(1) The establishment or modification of visitation rights or custody;

(2) The establishment or modification of spousal support;

(3) The dissolution of a marriage;

(4) Enforce marital property settlements, or

(5) Provide legal advice to custodial and non-custodial parties.

(C) **Termination of Service.** The Alabama-Coushatta Tribal Child Support Enforcement may terminate child support services under the following circumstances:

(1) When the Alabama-Coushatta Tribal Child Support Enforcement receives a written request for termination of services from the applicant, provided that there are no arrears;



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(2) When the minor child is no longer eligible for child support or entitled to child support, or

(3) When an applicant receiving services has violated any term or condition set forth by the Alabama-Coushatta Tribal Child Support Enforcement.<sup>1</sup>

### **Sec. 109 Eligibility, Assignment**

(A) **Eligibility and Application.** Alabama-Coushatta Tribal Child Support Enforcement is available to an applicant who qualifies under Title IV-D laws and regulations.

(B) **Assignment.** An application for the Alabama-Coushatta Tribal Child Support Enforcement shall assign his/her child support rights to the Alabama-Coushatta Tribal Child Support Enforcement, which shall distribute the payment to the appropriate agency or individual.

(C) **Alabama-Coushatta Tribe of Texas Priority.** An assignment of child support to the Alabama-Coushatta Tribe of Texas shall have first priority over any prior or subsequent assignments.

### **Sec. 110 Application Fee**

The Alabama-Coushatta may charge an application fee not to exceed twenty-five (\$25.00) dollars to an applicant whose family does not receive public assistance from any tribal, state or federal agency. An application fee shall not be charged to an individual who receives public assistance from any tribe, state or federal agency. A fee may not be charged in an intergovernmental case referred to the Alabama-Coushatta Tribe for services.

### **Sec. 111 Intergovernmental Procedures, Full Faith and Credit**

(A) **Intergovernmental Procedure.** Alabama-Coushatta Tribal Child Support Enforcement shall extend the full range of services available under its Tribal IV-D plan to respond to all requests from and cooperate with other tribal and state IV-D agencies.

(B) **Full Faith and Credit.** The Alabama-Coushatta Tribe shall recognize child support orders issued by other tribes and tribal organizations and by states, in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738(B).

### **Sec. 112 Confidentiality of Records**

(A) All applications, information and records received or obtained by the Alabama-Coushatta Tribal Child Support Enforcement are confidential and shall only be

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<sup>1</sup> Sec. 108(C)(1) Revised on November 7<sup>th</sup>, 2013 by Resolution #2013-77



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opened under authorized tribal or federal laws in accordance with Title IV-D rules and regulations.

**(B)** The use or disclosure of personal information received or maintained by the Alabama-Coushatta Tribal Child Support Enforcement is limited to purposes directly connected with the administration of the program, or Titles IV-A and XIX with the administration of other programs or purposes prescribed by the Secretary in regulations.

**(C)** No employee or agent of the Alabama-Coushatta Tribal Child Support Enforcement shall provide any information referred to in this Act, except as provided, to any public or private agency or individual. Information may be disclosed and shared between a state, tribal or federal agency as necessary in the collection of child support in accordance with Title IV-D rules and regulations.

**(D)** Information shall not be released on the whereabouts of one party or the child to another party against whom a protective order with respect to the former party or the child has been entered.

**(E)** Information shall not be released on the whereabouts of one party of the child to another person if there is reason to believe that the release of the information to that party could result in physical or emotional harm to the party or the child.

**(F)** Unauthorized disclosure of any such information may subject the disclosing party to criminal and/or civil liability. Criminal prosecution may result in the conviction of a misdemeanor, punishable by a fine of up to \$5,000.00 per offense.

### **Sec. 113 Attorneys**

**(A) Alabama-Coushatta Attorneys.** An attorney employed by or under contract with the Tribe shall represent and act on behalf of the Alabama-Coushatta Tribe of Texas when providing Alabama-Coushatta Tribal Child Support Enforcement. An attorney-client relationship shall not exist between the attorney and any other party other than the Tribe, regardless of the name in which the action is brought.

**(B) No Representation of Parties by Alabama-Coushatta Attorneys.** An attorney employed to represent the Alabama-Coushatta Tribe in child support and related proceedings shall not provide any form of legal representation to any person who is a party, an interested party, or a beneficiary in a matter in which the Alabama-Coushatta Tribe is providing services. Such attorney shall not represent any party, an interested party, or a beneficiary in any other legal matters or proceedings.

**(C) Information to be Provided to Applicants and Recipients Regarding Legal Representation.** The Alabama-Coushatta Tribe shall inform each applicant or recipient of services for Alabama-Coushatta Tribal Child Support Enforcement that no attorney-client relationship exists between the attorney and the applicant or recipient and that the attorney does not provide legal representation to the applicant.



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### **Sec. 114      Locating Parents**

**(A) Parent Locator Service.** The Alabama-Coushatta Tribal Child Support Enforcement parent locator service may be used to obtain information for paternity establishment and for other child support related proceedings.

**(B) Attempts to Locate.** Attempts to locate custodial or non-custodial parents and/or sources of income and assets shall be made when location is required to take necessary action in a case. Reasonably available sources of information and records shall be used to locate custodial or non-custodial parents and their sources of income and assets.

### **Sec. 115      Financial Disclosure**

The parents shall provide a complete disclosure of assets on a financial affidavit for purposes of child support and related proceedings, except as otherwise provided.

### **Sec. 116      Applicant Cooperation**

An applicant shall cooperate with the Alabama-Coushatta Tribe in child support and related proceedings. Non-cooperation may result in the closure of the applicant's case for failure to cooperate. If notification is required for non-cooperation by other state, tribal or federal agencies, the Alabama-Coushatta Tribal Child Support Enforcement shall notify the appropriate agency of the non-cooperation of the applicant.

### **Sec. 117      Reasonable Costs**

The Alabama-Coushatta Tribal Child Support Enforcement may seek reasonable costs against a party in child support and related proceedings. These costs include, but are not limited to: court filing fees, process server fees, mailing fees, and genetic testing fees performed in accordance with this Title of the Comprehensive Codes of Justice.

### **Sec. 118      Overpayment**

When an obligor has overpaid a child support obligation and there are no arrearages, the Alabama-Coushatta Tribal Child Support Enforcement shall refund the amount from the obligee.

## **CHAPTER 2 JURISDICTION, CIVIL PROCEDURE, FULL FAITH AND CREDIT, SOVEREIGN IMMUNITY**

### **Sec. 201      Jurisdiction**

**(A) General.** The Alabama-Coushatta Tribal Court shall have jurisdiction over child support and related proceedings involving an individual who is the subject of such proceedings if one or more of the following prescribed conditions are fulfilled:

- (1)** The individual is an Indian, or eligible for membership of a federally recognized tribe who resides within the nation's territorial jurisdiction;



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- (2) A child(ren) who is a member or is eligible for membership of a federally recognized tribe who resides within the nation's territorial jurisdiction;
- (3) The individual resided with the child in the Alabama-Coushatta Tribe of Texas' jurisdiction;
- (4) The individual resided within the Tribe's jurisdiction and provided pre-natal expenses and/or other support for the child;
- (5) The child resides within the territorial jurisdiction as a result of the acts or directives of the individual;
- (6) The individual engaged in sexual intercourse in such Indian country and the child may have been conceived by that act of intercourse;
- (7) The individual asserted parentage in a putative father registry maintained by any state or tribal registry agency;
- (8) The individual is a member of the Alabama-Coushatta Tribe of Texas or the child is a member or eligible for membership in the Alabama-Coushatta Tribe;
- (9) The individual submits to the jurisdiction of the Tribe's Court by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction; or
- (10) There is any basis consistent with the Comprehensive Codes of Justice of the Alabama-Coushatta Tribe or the Constitution of the Alabama-Coushatta Tribe, the United States, or the State of Texas for the exercise of personal jurisdiction.

**(B) Personal Jurisdiction Over All Interested Parties Not Required.** Lack of personal jurisdiction over a child and the custodial parent does not preclude the Court from making a child support order binding on the non-custodial parent who is subject to the child support order.

### **Sec. 202      Transfer**

The Alabama-Coushatta Tribal Child Support Enforcement may accept transfer cases from other state and tribal IV-D agencies, and may transfer cases to other state and tribal IV-D agencies, if appropriate.

### **Sec. 203      Venue**

Venue for all child support actions initiated by the Alabama-Coushatta Tribal Child Support Enforcement shall be the Alabama-Coushatta Tribal Court.





## **Title VII – Child Support Enforcement Code/C.C.J.**

### **Sec. 204     Civil Procedure**

The civil procedure to be followed shall be those set forth in the Alabama-Coushatta Comprehensive Codes of Justice, unless otherwise specified herein.

### **Sec. 205     Filing Fees**

The Clerk of the Court shall not charge filing fees for pleadings made by and for the Alabama-Coushatta Tribal Child Support Enforcement.

### **Sec. 206     Full Faith and Credit**

The Alabama-Coushatta Tribe shall give full faith and credit to a valid court order from other tribal and state administrative bodies and courts in accordance with the federal Full Faith and Credit for Child Support Orders, 28 USC §1738B.

### **Sec. 207     Sovereign Immunity**

Nothing in these Codes shall be deemed a waiver of the sovereign immunity of the Alabama-Coushatta Tribe of Texas.

## **CHAPTER 3           PATERNITY AND GENETIC TESTING**

### **Sec. 301     General**

(A) **Applicability.** This article governs the establishment of parentage for a minor child as defined herein.

(B) **Authority.** The adjudicating court is authorized to adjudicate parentage under this Act.

(C) **Adjudication of parent-child relationship.** The adjudicating court shall apply the laws of this Tribe to adjudicate the parent-child relationship. The applicable laws do not depend on:

- (1) The place of birth of the child, or
- (2) The past or present residence of the child.

### **Sec. 302     No Effect on Tribal Enrollment**

Determination of paternity under this Title has no effect on tribal enrollment or membership.

### **Sec. 303     Parent-Child Relationship**

(A) The mother-child relationship is established between a woman and a child by:

- (1) The woman's having given birth to the child;
- (2) Adoption of the child by the woman; or
- (3) As otherwise provided by law.



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- (B) The father-child relationship is established between a man and a child by:
- (1) An un-rebutted presumption of the man’s paternity of the child under Sec. 305 herein;
  - (2) An effective acknowledgment of paternity by the man in accordance with these codes, unless the acknowledgment has been rescinded or successfully challenged;
  - (3) An adjudication of the man’s paternity;
  - (4) Adoption of the child by the man; or
  - (5) As otherwise provided by law.

### **Sec. 304 Rights Valid Until Terminated**

Unless parental rights are terminated, a parent-child relationship established under this Title applies for all purposes, except as otherwise specifically provided by other laws of the Alabama-Coushatta Tribe.

### **Sec. 305 Presumption of Paternity - Marriage**

- (A) A man is presumed to be the father of a child if:
- (1) He and the mother of the child are married to each other and the child is born during this marriage;
  - (2) He and the mother of the child were married to each other and the child is born within three hundred (300) days after the termination of the marriage by death, annulment, declaration of invalidity, divorce or dissolution of marriage, or decree of separation is entered by the Court;
  - (3) Before the birth of the child, he and the mother of the child married each other in apparent compliance with the law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within three hundred (300) days after its termination by death, annulment, declaration of invalidity, divorce or dissolution of marriage, or decree of separation is entered by the Court;
  - (4) After the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child, and:
    - (a) The assertion is on record filed with the state agency maintaining birth records;
    - (b) He agreed to be and is named as the child’s father on the child’s birth certificate; or
    - (c) He admitted paternity of the child under oath or by sworn testimony.



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**(B)** A presumption of paternity established under these Codes may be rebutted only by adjudication.

### **Sec. 306 No Discrimination Based on Marital Status**

A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married.

### **Sec. 307 Voluntary Acknowledgment of Paternity**

**(A)** The mother of a child and a man claiming to be the genetic father of the child may sign an acknowledgment of paternity with the intent to establish the man's paternity.

**(B)** An acknowledgment of paternity must:

- (1)** Be in a record;
- (2)** Be signed, or otherwise authenticated, under penalty of perjury by the mother and by the man seeking to establish paternity;
- (3)** State that the child whose paternity is being acknowledged:
  - (a)** Does not have a presumed, or has a presumed father whose full name is stated; and
  - (b)** Does not have another acknowledged or adjudicated father;
- (4)** State whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and
- (5)** State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after two (2) years.

**(C)** An acknowledgment of paternity is void if it:

- (1)** States that another man is a presumed father, unless a denial of paternity signed or otherwise authenticated by the presumed father is filed with the state agency maintaining birth records;
- (2)** States that another man is an acknowledged or adjudicated father; or
- (3)** Falsely denies the existence of presumed, acknowledged or adjudicated father of the child.

**(D)** A presumed father may sign or otherwise authenticate an acknowledgment of paternity.

**(E)** Except as otherwise provided in this Title, a valid acknowledgment of paternity filed with the state agency maintaining birth records is equivalent to an adjudication of paternity of a child and confers upon the acknowledged father all of the rights and duties of a parent.



## **Title VII – Child Support Enforcement Code/C.C.J.**

### **Sec. 308     Denial of Paternity**

**(A)** A presumed father may sign a denial of his paternity. The denial is valid only if:

- (1)** An acknowledgment of paternity signed, or otherwise authenticated, by another man is filed pursuant to these Codes;
- (2)** The denial is in a record, and is signed, or otherwise authenticated, under penalty of perjury; and
- (3)** The presumed father has not previously:
  - (a)** Acknowledged his paternity, unless the previous acknowledgment has been rescinded, or successfully challenged pursuant to these Codes; or
  - (b)** Been adjudicated to be the father of the child.
- (4)** The denial is signed not later than two (2) years after the birth of the child.

**(B)** Except as otherwise provided in these codes, a valid denial of paternity by a presumed father filed with the state agency maintaining birth records in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of the non-paternity of the presumed father and discharges the presumed father from all rights and duties of a parent.

### **Sec. 309     Rules for Acknowledgment and Denial of Paternity**

**(A)** An acknowledgment of paternity and a denial of paternity may be filed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are filed

**(B)** An acknowledgment of paternity or denial of paternity may be signed before the birth of the child.

**(C)** Subject to subsection A of this section, an acknowledgment of paternity or denial of paternity takes effect on the birth of the child or the filing of the document with the state agency maintaining birth records, whichever occurs later.

**(D)** An acknowledgment of paternity or denial of paternity signed by a minor is valid if it is otherwise in compliance with this Act.

### **Sec. 310     Proceedings for Rescission, Rescission by Minor**

**(A)** A signatory may rescind an acknowledgment of paternity or denial of paternity by commencing a proceeding to rescind before the earlier of:

- (1)** Sixty (60) days after the effective date of the acknowledgment or denial; or



## **Title VII – Child Support Enforcement Code/C.C.J.**

(2) The date of the first hearing, in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

(B) A signatory who was a minor at the time of execution of the acknowledgment may rescind an acknowledgment of paternity within sixty (60) days of reaching the age of eighteen.

### **Sec. 311 Challenges After Expiration of Period for Rescission**

(A) After the period for rescission under Sec. 310, of these codes has expired, a signatory of an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only:

(1) On the basis of fraud, duress, or material mistake of fact; and

(2) Within two (2) years after the acknowledgment or denial is filed with the state agency maintaining the birth records.

(B) A party challenging an acknowledgment of paternity or denial of paternity has the burden of proof.

### **Sec. 312 Procedures for Rescission or Challenge**

(A) Every signatory to an acknowledgment of paternity and any related denial of paternity must be made a party to a proceeding to rescind or challenge the acknowledgment or denial.

(B) For the purpose of rescission of, or challenge to, an acknowledgment of paternity or denial of paternity, a signatory submits to personal jurisdiction of the adjudicating court by signing the acknowledgment or denial effective upon the filing of the document with the state agency maintaining birth records.

(C) Except for good cause, during the pendency of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the Court may not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

(D) A proceeding to rescind or to challenge an acknowledgment of paternity or denial of paternity must be conducted in the same manner as a proceeding to adjudicate parentage under this chapter.

(E) At the conclusion of a proceeding to challenge an acknowledgment of paternity or denial of paternity, the Court shall order the state agency maintaining birth records to amend the birth record of the child, if appropriate.

### **Sec. 313 Ratification Barred**

A court or administrative agency conducting a judicial or administrative proceeding is not required or permitted to ratify an unchallenged acknowledgment of paternity.



## **Title VII – Child Support Enforcement Code/C.C.J.**

### **Sec. 314      Full Faith and Credit**

Full faith and credit shall be given to an acknowledgment of paternity or denial of paternity effective in another tribe or state if the acknowledgment or denial has been signed and is otherwise in compliance with the law of the other tribe or state.

### **Sec. 315      Exceptions to the Establishment of Paternity**

The Alabama-Coushatta Tribe is not required to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, it would not be in the best interest of the child to establish paternity.

### **Subchapter Genetic Testing**

#### **Sec. 316      General**

(A) This subchapter governs genetic testing of an individual to determine parentage, whether the individual is:

- (1) Voluntarily submitting to testing, or
- (2) Is tested pursuant to an order of the Court.

(B) Traditional and customary objections to blood testing and/or DNA testing shall not be a basis for refusal to undergo such testing.

#### **Sec. 317      Order for Testing**

(A) Except as otherwise provided, the Court shall order the child and other designated individuals to submit to genetic testing if the request for testing is supported by a sworn statement by the party to the proceeding:

- (1) Alleging paternity, and stating facts establishing a reasonable possibility of the requisite sexual contact between the parties; or
- (2) Denying paternity and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.

(B) The Alabama-Coushatta Tribal Child Support Enforcement may require genetic testing only if there is no presumed, acknowledged, or adjudicated father, unless for good cause shown, the Tribe believes genetic testing is in the best interests of the minor child.

(C) If two or more men are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

(D) If a request for genetic testing of a child is made before the birth of the child, the Court shall not order in utero testing, nor shall The Alabama-Coushatta Tribal Child Support Enforcement require in utero testing.

**Title VII – Child Support Enforcement Code/C.C.J.****Sec. 318     Requirements for Genetic Testing**

**(A)** Genetic testing shall be of a type relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:

- (1)** The American Association of Blood Banks or a successor to its functions;
- (2)** The American Society for Histocompatibility and Immunogenetics, or a successor to its functions; or
- (3)** An accrediting body designated by the federal Secretary of Health and Human Services.

**(B)** A specimen used in genetic testing may consist of one or more samples, or a combination of samples of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.

**(C)** Based on the ethnic or racial group of an individual, the testing laboratory shall determine the databases from which to select frequencies for use in calculation of the probability of paternity. If there is disagreement as to the testing laboratory's choice, the following rules apply:

- (1)** The individual objecting may require the testing laboratory, within thirty (30) days after receipt of the report of the test, to recalculate the probability of paternity using an ethnic or racial group different from that used by the laboratory;
- (2)** The individual objecting to the testing laboratory's initial choice shall:
  - (a)** If the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or
  - (b)** Engage another testing laboratory to perform the calculations.
- (3)** The testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate. If available, the testing laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.

**(D)** If, after recalculation using a different ethnic or racial group, genetic testing does not conclusively identify a man as the father of a child, an individual who has been tested may be required to submit to additional genetic testing.



## **Title VII – Child Support Enforcement Code/C.C.J.**

### **Sec. 319 Report of Genetic Testing, Chain of Custody**

**(A)** A report of genetic testing shall be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of this section is self-authenticating.

**(B)** Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:

- (1)** The names and photographs of the individuals whose specimens have been taken;
- (2)** The names of the individuals who collected the specimen;
- (3)** The places and dates the specimens were collected;
- (4)** The names of the individuals who received the specimens in the testing laboratory, and
- (5)** The dates the specimens were received.

### **Sec. 320 Genetic Testing Results, Rebuttal**

**(A)** A man is reputedly identified as the father of a child if the genetic testing complies with this chapter and the results disclose that the man has:

- (1)** At least a ninety-nine (99%) percent probability of paternity, using a prior probability of 0.50, as calculated by using the combined paternity index obtained in the testing; and
- (2)** A combined paternity index of at least 100 to 1.

**(B)** A man identified under subsection A of this section as the father of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this chapter which:

- (1)** Excludes the man as a genetic father of the child; or
- (2)** Identifies another man as the possible father of the child.

**(C)** Except as otherwise provided herein, if more than one man is identified by genetic testing as the possible father of the child, the Court shall order them to submit to further genetic testing to identify the genetic father.

### **Sec. 321 Costs of Genetic Testing**

**(A)** The costs of the initial genetic testing must be advanced:

- (1)** By the Alabama-Coushatta Tribal Child Support Enforcement when the agency is providing services;
- (2)** By the individual who made the request;
- (3)** As agreed by the parties, or
- (4)** As ordered by the Court.





## **Title VII – Child Support Enforcement Code/C.C.J.**

(B) In cases in which the cost is advanced by the Alabama-Coushatta Tribal Child Support Enforcement, the program may seek reimbursement from the man who is reputedly identified as the father.

### **Sec. 322 Additional Genetic Testing**

(A) The Court may order, or the Alabama-Coushatta Tribal Child Support Enforcement may request additional genetic testing upon the request of the party who contests the result of the original testing. If the previous genetic testing identified a man as the father of the child, the Court may not order additional testing unless the party challenging the test provides advance payment for the testing.

### **Sec. 323 Genetic Testing When Specimen Is Not Available**

(A) Subject to subsection B of this section, if a genetic-testing specimen is not available from a man who may be the father of a child, for good cause and under circumstances the Court considers to be just, the Court may order the following individuals to submit specimens for genetic testing:

- (1) The parents of the man;
- (2) Brothers and sisters of the man;
- (3) Other children of the man and their mothers;
- (4) Other relatives of the man necessary to complete genetic testing; and
- (5) Any other custodians of genetic material.

(B) Issuance of an order under this section requires a finding that a need for genetic testing outweighs the legitimate interests of the individual sought to be tested.

### **Sec. 324 Identical Brothers, Non-genetic Evidence to Determine Father**

(A) The Court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.

(B) If each brother satisfies the requirements as the identified father of the child under §26-3-24, without consideration of another identical brother being identified as the father of the child, the Court may rely on non-genetic evidence to adjudicate which brother is the father of the child.

### **Sec. 325 Release of Report of Genetic Testing**

Release of the report of genetic testing for parentage is controlled by applicable tribal law and the Alabama-Coushatta Tribal Child Support Enforcement Policies and Procedures.

### **Subchapter Proceedings to Adjudicate Parentage**



## **Title VII – Child Support Enforcement Code/C.C.J.**

### **Sec. 326      Civil Proceeding to Adjudicate Parentage**

A civil procedure may be maintained to adjudicate parentage of a child. The proceeding is governed by the civil procedures set forth in the Comprehensive Codes of Justice, unless otherwise specified herein.

### **Sec. 327      Standing to Maintain Proceeding**

Except as otherwise stated herein, a proceeding to adjudicate parentage may be maintained by:

- (A) The child;
- (B) The mother of the child;
- (C) A man whose paternity of the child is to be adjudicated;
- (D) The ACTCSE agency; or
- (E) A representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor.

### **Sec. 328      Parties to Proceeding**

The following individuals must be joined as parties in a proceeding to adjudicate parentage:

- (A) The mother of the child; and
- (B) A man whose paternity of the child is to be adjudicated.

### **Sec. 329      No Limitation: Child Having No Presumed, Acknowledged or Adjudicated Father**

A proceeding to adjudicate the parentage of a child having no presumed, acknowledged, or adjudicated father may be commenced at any time, even after:

- (A) The child becomes an adult, but only if the child initiates the proceeding; or
- (B) An earlier proceeding to adjudicate paternity has been dismissed based upon the application of a statute of limitation then in effect

### **Sec. 330      Limitation: Child Having Presumed Father**

(A) Except as otherwise provided in subsection B of this section, a proceeding brought by a presumed father, the mother or another individual to adjudicate the parentage of a child having a presumed father must be commenced not later than two (2) years after the birth of the child.

(B) A proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained at any time if the Court determines that:



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(1) The presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and

(2) The presumed father never openly held out the child as his own.

(C) A proceeding seeking to disprove the father-child relationship between a child and the child's presumed or acknowledged father may be maintained at any time if the Court determines the biological father, presumed or acknowledged father, and the mother agree to adjudicate the biological father's parentage. If the presumed or acknowledged father or mother is unavailable, the Court may proceed if it is determined that diligent efforts have been made to locate the unavailable party and it would not be prejudicial to the best interest of the child to proceed without that party. In a proceeding under this section, the Court shall enter an order either confirming the existing father-child relationship or adjudicating the biological father as the parent of the child. A final order under this section shall not leave the child without an acknowledged or adjudicated father.

### **Sec. 331 Authority to Deny Motion for Genetic Testing, Factors to Consider**

(A) In a proceeding to adjudicate the parentage of a child having a presumed father or to challenge the paternity of a child having an acknowledged father, the Court may deny a motion seeking an order for genetic testing of the mother, the child and the presumed or acknowledged father if the Court determines that:

(1) The conduct of the mother or the presumed or acknowledged father stops that party from denying parentage; and

(2) It would be inequitable to disprove the father-child relationship between the child and the presumed or acknowledged father or otherwise against the best interests of the minor child.

(B) In determining whether to deny a motion seeking an order for genetic testing under this section, the Court shall consider the best interest of the child, including the following factors:

(1) The length of time between the proceeding to adjudicate parentage and the time that the presumed or acknowledged father was placed on notice that he might not be the genetic father;

(2) The length of time during which the presumed or acknowledged father has assumed the role of father of the child;

(3) The facts surrounding the presumed or acknowledged father's discovery of his possible non-paternity;

(4) The nature of the relationship between the child and the presumed or acknowledged father;

(5) The age of the child;



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(6) The harm that may result to the child if presumed or acknowledged paternity is successfully disproved;

(7) The nature of the relationship between the child and any alleged father;

(8) The extent to which the passage of time reduces the chances of establishing the paternity of another man and a child-support obligation in favor of the child; and

(9) Other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the presumed or acknowledged father or the chance of other harm to the child.

(C) In a proceeding involving the application of this section, a minor or incapacitated child must be represented by a guardian ad litem.

(D) If the Court denies a motion seeking an order for genetic testing, it shall issue an order adjudicating the presumed or acknowledged father to be the father of the child.

### **Sec. 332 Limitation: Child Having Acknowledged or Adjudicated Father**

(A) If a child has an acknowledged father, a signatory to the acknowledgment of paternity or denial of paternity may commence a proceeding seeking to rescind the acknowledgment or denial or challenge the paternity of the child only within the time allowed under Sec. 310 or Sec. 311 of this act.

(B) If a child has an acknowledged father or an adjudicated father, an individual, other than the child, who is neither a signatory to the acknowledgment of paternity nor a party to the adjudication and who seeks an adjudication of paternity of the child must commence a proceeding not later than two (2) years after the effective date of the acknowledgment or adjudication.

### **Sec. 333 Joinder of Proceedings**

Except as otherwise provided, a proceeding to adjudicate parentage may be joined with a proceeding for adoption, termination of parental rights, child custody or visitation, child support, divorce, annulment, legal separation or separate maintenance, probate or administration of an estate or other appropriate proceedings.

### **Sec. 334 Commencement of Proceeding**

A proceeding to determine parentage may be commenced after the birth of the child.

### **Sec. 335 Child as Party: Representation**

(A) A minor child is a permissible party, but is not a necessary party to a proceeding under this Chapter.



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(B) The Court shall appoint a guardian ad litem to represent a minor or incapacitated child if the child is a party or the Court finds that the interests of the child are not adequately represented.

### **Sec. 336 Admissibility of Results of Genetic Testing**

(A) Except as otherwise provided in subsection C of this section, a record of a genetic testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within fourteen (14) days after its receipt by the objecting party and cites specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:

(1) Voluntarily or pursuant to an order of the Court or as requested by the Alabama-Coushatta Tribal Child Support Enforcement agency; or

(2) Before or after the commencement of the proceeding.

(B) A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, videoconference, deposition or another method approved by the Court. Unless otherwise ordered by the Court, the party offering the testimony bears the expense for the expert testifying.

(C) If a child has a presumed, acknowledged or adjudicated father; the results of genetic testing are inadmissible to adjudicate parentage unless performed pursuant to an order of a Court of competent jurisdiction.

### **Sec. 337 Consequences of Declining Genetic Testing**

(A) An order for genetic testing is enforceable by contempt.

(B) If an individual whose paternity is being determined declines to submit to genetic testing ordered by the Court, the Court for that reason may adjudicate parentage contrary to the position of that individual, but may do so only if the following conditions are met:

(1) The Court finds, by clear and convincing evidence, the individual is more likely than not to be the parent of the child; and

(2) The adjudication is not contrary to the best interests of the child.

(C) Genetic testing of the mother of a child is not a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the Court may order the testing of the child and every man whose paternity is being adjudicated.

### **Sec. 338 Admission of Paternity Authorized**

A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury in an affidavit filed in the case, or by sworn testimony before the presiding court.



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If the Court finds that the admission of paternity satisfies the requirements of this section and finds that there is no reason to question the admission, the Court shall issue an order adjudicating the child to be the child of the man admitting paternity.

### **Subchapter Special Rules for Proceeding to Adjudicate Parentage**

#### **Sec. 339      Rules for Adjudication of Paternity**

**(A)** The Court shall apply the following rules to adjudicate the paternity of a child:

**(1)** The paternity of a child having a presumed, acknowledged or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man as the father of the child.

**(2)** Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man identified as the father of a child under Sec. 321 of this Chapter must be the adjudicated father of the child.

**(3)** If the Court finds that genetic testing under Sec. 321 neither identifies nor excludes a man as the father of a child, the Court may not dismiss the proceeding. In that event, the results of genetic testing, and other evidence, are admissible to adjudicate the issue of paternity.

**(4)** Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing shall not be adjudicated to be the father of the child.

#### **Sec. 340      Court Shall Adjudicate**

The Court, without a jury, shall adjudicate paternity of a child.

#### **Sec. 341      Hearings, Records, Reports**

**(A)** Upon the request of a party and for good cause shown, the Court may close a proceeding under this chapter.

**(B)** A final order in a proceeding under this chapter is available for public inspection. Other records, reports and papers are available only with the consent of the parties or an order of the Court for good cause.

#### **Sec. 342      Default Order**

**(A)** The Court may issue an order adjudicating the paternity of a man who:

**(1)** After service of process, is in default; and

**(2)** Is found by the Court to be the father of a child by clear and convincing evidence.



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(B) All orders issued under this section shall be in writing and shall include the following provision: "Paternity in this matter was adjudicated by default. This order shall not be used when determining eligibility for tribal membership."

### **Sec. 343 Dismissal Only Without Prejudice**

The Court may issue an order dismissing a proceeding commenced under this chapter for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

### **Sec. 344 Order Adjudicating Parentage**

(A) The Court shall issue an order adjudicating whether a man alleged or claiming to be the father, is the parent of the child.

(B) An order adjudicating parentage must identify the child by name and date of birth.

(C) Except as otherwise provided in subsection D of this section, the Court may assess filing fees, reasonable attorney's fees, fees for genetic testing, other costs, including necessary travel and other reasonable expenses incurred in a proceeding under this subchapter.

(D) The Court may not assess fees, costs or expenses against any Title IV-D support-enforcement agency of this tribe or another tribe or state, except as provided by other law.

(E) On request of a party and for good cause shown, the Court may order that the name of the child be changed.

(F) If the order of the Court is at variance with the child's birth certificate, the Court shall order the state agency maintaining birth records to issue an amended birth registration.

## **CHAPTER 4 CHILD SUPPORT ESTABLISHMENT**

### **Sec. 401 General**

(A) **Applicability.** This article governs the establishment of child support for a minor child as defined herein.

(B) **Orders.** In all child support cases, the Alabama-Coushatta Tribal Court shall order the payment of child support pursuant to the child support guidelines established in this Title of the Comprehensive Codes of Justice.

(C) **Initiation of Action.** The Alabama-Coushatta Tribe, mother, father, guardian, custodian, child, or other agency responsible for the support of the child may initiate an action for child support.



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(D) **Age Requirement.** An action to establish child support shall be initiated before the minor child reaches the age of eighteen (18) years of age.

(E) **Parent Requirement.** Child support shall only be established for a biological or legally adopted child of the parents.

(F) **No Support of Stepchildren Required.** A parent shall not be responsible or liable for the support of a step-child(ren).

(G) **Adopted Children.** Parents have the same legal duty of support for an adopted child as for a biological child.

(H) **Obligors and Obligees.** In the payment and receipt of child support, the non-custodial parent or the person responsible for the payment of child support shall be designated the “obligor” and the custodial parent or the person who receives the child support shall be designated the “obligee.”

### **Sec. 402 Child Support, Age of Majority, Minor Parents, Emancipation**

(A) **Age Limitation.** A child shall be entitled to support by his/her parents until such child reaches eighteen (18) years of age or is emancipated. If a child is regularly enrolled and attending high school 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, is emancipated, or reaches 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 shall be required to extend support pursuant to this subsection after the child reaches the age of eighteen (18).

(B) **Minor Parents.** Minor parents are responsible for the financial support of their child. The Court may deviate from the child support guidelines if the minor parents are attending high school, or the Court may make a finding that the parents of the minor parents are responsible for the financial support of the minor child. Once the minor parent emancipates, the Court may modify the order in accordance with the child support guidelines.

(C) **Emancipation.** A child shall be considered emancipated when said child either reaches the age of eighteen (18) or is regularly enrolled and attending high school until the age of twenty (20) whichever occurs first pursuant to subsection (A) of this section; or when the child enlists in the military, or marries, or is emancipated by an order from the Court.

### **Sec. 403 Child Support Obligations and Guidelines**

(A) **Purpose.** The purposes of the child support guidelines are to:

(1) Establish as policy an adequate standard of support for minor children, subject to the ability of parents to pay;





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(2) Make support payments more equitable by ensuring more consistent treatment of persons in similar circumstances; and

(3) Improve the efficiency of the court process by promoting settlements and giving guidance in establishing levels of child support to the Court, The Alabama-Coushatta Tribal Child Support Enforcement and the parties.

**(B) Child Support Computation.** The computation should contain the actual calculation of the child support based on Child Support Income, Work-Related Child Care Costs, Health, Dental, Orthodontic, and Optometric Insurance Premiums, and any Child Support Adjustments.

**(C) Use of Child Support Schedules.** In any action to establish or modify child support, the child support instructions as set forth herein shall be applied to determine the child support due and shall be a rebuttable presumption for the amount of such child support. The child support schedule shall be used for temporary and permanent orders, separations, dissolutions, and support decrees arising despite non-marriage of the parties. The child support schedule shall be used as the basis for reviewing the adequacy of child support levels in non-contested cases as well as contested hearings. A specific amount of child support should always be ordered, no matter how minimal, to establish the principle of that parent's obligation to provide monetary support to the child.

**(D) Base Monthly Child Support Amount.** A child support obligation shall provide for a base monthly child support amount, which shall be calculated using the child support computation schedule, the computation formula, and income guidelines for employed and self-employed parents. The computation formula computes the base monthly child support amount based on the monthly net income of the obligor(s), which shall be calculated in accordance with this section.

**(E) Computing Net Monthly Income.** The obligor's net income shall be computed in the following manner:

(1) Whenever feasible, gross income should first be computed on an annual basis then should be recalculated to determine average monthly gross income.

(2) The Alabama-Coushatta Tribal Child Support Enforcement shall annually promulgate tax charts to compute net monthly income, subtracting from gross income social security taxes and federal income tax withholding for a single person claiming one exemption and the standard deduction.

**(F) Resources for Determination of Gross Income Amounts.** Gross income shall be derived, but shall not be limited to the following sources: salaries, wages, tips, commissions, bonuses, severance pay, dividends, pensions, interest income, trust income, annuities, capital gains, alimony or maintenance received, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits,



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gifts, prizes, Individual Indian Money accounts, and per capita payments. For income from self-employment, rent, royalties, proprietorship of a business or joint ownership of a partnership or closely held corporation, “gross income” means gross receipts minus ordinary and necessary expenses required to produce such income; provided that ordinary and necessary expenses do not include expenses determined by the Court to be inappropriate for purposes of calculating child support. If the parent is unemployed, the minimum wage rate shall be used to compute the income of that parent, if the parent is physically capable of working, unless otherwise provided under these guidelines.

**(G) Resources to be Excluded from the Determination of Net Income Amounts.** The following resources shall be excluded from the determination of net income: return of principal or capital; accounts receivable; Supplemental Security Income (SSI); benefits paid in accordance with the Temporary Assistance for Needy Families program or another tribal, federal or state assistance program; and payments for foster care of a child.

**(H) Resources to be Deducted for Determination of Net Income Amounts.** The Court shall deduct the following items from resources to determine the net income amount for purposes of computing child support obligations: social security taxes; federal income tax based on the tax rate for a single person claiming one personal exemption and the standard deduction; state income tax; union dues; expenses for the cost of health insurance or cash medical support for the obligor’s child ordered by the Court; or non-discretionary retirement plan contributions (if the obligor does not pay social security taxes); a previously ordered child support obligation, if actually being paid; previously ordered marital support or maintenance; or previously ordered joint debt service.

**(I) Computation of Net Income.** The obligor’s net income to be used for the purpose of determining the base monthly child support amount described in subsection (B) of this section shall be calculated as follows: In computing net income for a child support obligation from sources such as those described in subsection (F) of this section, one of the following types of income may be used, whichever is most equitable:

- (1)** all earned and passive income;
- (2)** all passible income and earned income equivalent to a forty-hour week plus such overtime and supplemental income as the Court deems equitable;
- (3)** the average of the net monthly income for the time actually employed during the previous three years; or
- (4)** the minimum wage paid for a forty-hour work week. If a party is unemployed or underemployed, the Court may impute a minimum wage for income. If a parent is permanently, physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly net income.



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(J) **Application of Guidelines to Net Resources.** The guidelines for the support of a child in this section are specifically designed to apply to situations in which the obligor’s monthly net resources are not greater than \$7,500.00.

### CHILD SUPPORT GUIDELINES BASED ON THE MONTHLY NET RESOURCES OF THE OBLIGOR

1 Child	20% of Obligor’s Net Resources
2 Children	25% of Obligor’s Net Resources
3 Children	30 % of Obligor’s Net Resources
4 Children	35% of Obligor’s Net Resources
5 or more Children	40 % of Obligor’s Net Resources

(K) **Application of Guidelines to Additional Net Resources.** If an obligor’s net resources exceed the amount provided in the guidelines above, the Court shall presumptively apply the percentage guidelines to the portion of the obligor’s net resources that does not exceed that amount. Without further reference to the percentage recommended by these guidelines, the Court may order additional amounts of child support as appropriate, depending on the income of the parties and the proven needs of the child(ren). When awarding additional amounts of child support, the Court shall make a specific finding that the additional child support amount is in the best interests of the child(ren).

(L) **Other Expenses Not Covered by Basic Child Support Obligations.**

(1) A child support order may provide for additional expenses, such as employment or education related child care expenses, uninsured medical expenses, travel expenditures related to visitation, or extraordinary education related expenses. The additional expenses shall be proportionately awarded between the parties and shall be paid monthly. However, in no event shall the child support obligor’s combined child support, and additional expenses exceed 40% of the obligor’s total net income, unless the Court makes specific findings that the additional award is

- (a) reasonable,
- (b) in the best interests of the minor child(ren), and
- (c) will not cause undue hardship on the obligor.

Upon reasonable request by the other, the party incurring the expense shall provide the timely documentation of the expense, not to exceed 60 days from the incurrence of the expense, and the obligor shall be required to pay the amount within 30 days.

(M) **Computing Support for Children in More Than One Household.** In applying the child support guidelines for an obligor who has children in more than one

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household, the Court shall apply the percentage guidelines in this subchapter by making the following computation:

- (1)** determine the amount of child support that would be ordered if all children whom the obligor has the legal duty to support, including children residing with the obligor, lived in one household by applying the schedule in this subchapter;
- (2)** compute a child support credit for the obligor's children who are not before the court by dividing the amount determined under Subdivision (1) above by the total number of children whom the obligor is obligated to support and multiplying that number by the number of the obligor's children who are not before the Court;
- (3)** determine the adjusted net resources of the obligor by subtracting the child support credit computed under Subdivision (2) above from the net resources of the obligor; and
- (4)** determine the child support amount for the children before the Court by applying the percentage of guidelines for one household for the number of children of the obligor before the Court to the obligor's adjusted net resources.

**(N) Deviations.** The Court may order child support in an amount different from that which is provided in these guidelines, if:

- (1)**
  - (a)** There is a presumption of hardship because application of the child support guidelines would require the non-custodial parent to pay the custodial parent more than forty percent (40%) of his/her net income for a single child support obligation for current support;
  - (b)** a minor custodial and non-custodial parent are regularly attending high school;
  - (c)** the Court makes a finding that the parents of the minor parents are responsible for the financial support of the child; or
  - (d)** application of the guidelines would be inappropriate or unjust in the particular case due to other circumstances; and
- (2)** Deviation is in the best interest of the children for whom the child support obligation is being established; and
- (3)** The award order states the amount the award would be if it were calculated by application of the guidelines; and
- (4)** The award order state the amount of child support which is actually awarded after the deviation; and



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(5) The award order contains written findings regarding items (1) through (4) above.

### **Sec. 404 Address Requirement Service**

(A) **Address Information.** All child support orders shall require the parties to keep the Alabama-Coushatta Tribal Child Support Enforcement office informed of their current addresses and an address of record for service. An address of record for service may be different from a party's physical address.

(B) **Change of Address.** Any change of address shall be provided to The Alabama-Coushatta Tribal Child Support Enforcement within thirty (30) days of the change. The address of a party shall be protected from disclosure if evidence of domestic violence or child abuse is found or it is determined that disclosure could be harmful to a party or child.

(C) **Service.** The address of record may be used for service of notices and orders in accordance with these Codes.

### **Sec. 405 Child Support Order**

(A) **Contents of Child Support Order.** A child support order shall provide the following:

- (1) the names of the obligor and obligee;
- (2) the name or names of the child(ren) before the Court;
- (3) a provision for the monthly child support amount;
- (4) a provision for the amount of any past due support and a payment plan for the past due support, if applicable;
- (5) a provision for a judgment for past due support and a payment plan for the past due support, if applicable;
- (6) a provision for medical and dental insurance;
- (7) a provision for unreimbursed medical expenses, if applicable;
- (8) a provision for immediate income withholding;
- (9) a provision for child care costs, if applicable;
- (10) a provision for a current address and an address for service; and
- (11) such other information or requirements as determined appropriate and reasonable by the Court or The Alabama-Coushatta Tribal Child Support Enforcement.

(B) **Commencement of Obligation.** The obligations shall commence, unless otherwise ordered, on the first day of the month immediately following the month in which the child support order was issued.

(C) **Statement of Amount.** The amount of a child support order shall not be construed to be an amount per child unless specified by the Court. If there is more than one



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child in the child support order and one of the children has attained the age of majority or is no longer entitled to support, the child support order may be modified.

**(D) Support of the Child.** The child support order may include a provision, if the Court deems it appropriate, to assure that the child support payment shall be used for the support of the child.

### **Sec. 406 Arrearage**

A judgment for arrearage may be included in each child support order if there is past due child support owed as well as a payment schedule for the judgment. Failure to state a past due amount in the order does not bar collection of the amount.

### **Sec. 407 Payments**

Child support payments shall be made payable to the Alabama-Coushatta Tribal Child Support Enforcement, except as otherwise provided. When payments are made, the Alabama-Coushatta Tribal Child Support Enforcement shall distribute the payment to the appropriate agency or individual.

### **Sec. 408 Judge's Signature**

The Judge shall sign the child support order and the child support computation form which establishes or modifies child support.

### **Sec. 409 Voluntary Agreement**

Parents may establish child support through a voluntary agreement in accordance with the child support guidelines. In the event of such agreement, the parties shall sign and date the child support order, the child support computation form, and a waiver of right to service of process before submission to the Court. Once signed, the agreed order, computation form, and waiver shall be submitted to the Court for approval and signature, including any evidence, for approval without the parties being present at a court hearing.

### **Sec. 410 Rebuttable Presumption**

There shall be a rebuttable presumption in any proceeding for child support that the amount of the award is the correct amount of child support to be awarded.

### **Sec. 411 Liability for Past Support**

In an establishment case for child support, the Court may order retroactive child support back to the date of the separation of the child's parents, or the birth of the child, whichever shall be the latter.

### **Sec. 412 Termination of Parental Rights, Adoption**

**(A) Termination of Parental Rights.** When a parent terminates his or her parental rights, the termination does not end the duty of either parent to support his or her



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child. The duty ends when a court terminates the parent’s duty to support his or her child, or if there is a signed written agreement between the parties to terminate the duty to support and approved by a court. If there is a child support arrearage, the arrearage shall be due until paid in full unless waived by the Court or by a signed written agreement between the parties that waive the past arrearage and that is approved by a court.

**(B) Adoption.** If an adoption of a child is pending, a child support order shall remain in effect until notice is received that the final decree of adoption has been entered by the applicable court. If there is a child support arrearage, the arrearage shall be due until paid in full, unless waived by the Court or by a signed written agreement between the parties that waives the arrearage and approved by the Court.

### **Sec. 413      Modification**

**(A) Petition to Modify.** A child support order may be modified upon petition of an obligor, obligee or the Alabama-Coushatta Tribal Child Support Enforcement program.

**(B) Modification Upon Material Change in Circumstances.** Child support orders may be modified upon a material change in circumstances that includes, but is not limited to:

- (1)** An increase or decrease in income; or
- (2)** When a child reaches the age of majority; or
- (3)** When a child ceases to be entitled to support pursuant to the support order, or
- (4)** A change in child care costs or medical support.

**(C) Effective Date of Modification.** An order of modification shall be effective upon the date the motion to modify was filed, unless the parties agree to another commencement date, or the Court finds that the material change of circumstances did not occur until a later date.

**(D) Voluntary Modification.** If the parties agree to a modification, the Court shall review the modification to insure that it complies with the child support guidelines.

### **Sec. 414      No Retroactive Modification**

A child support order shall not be modified retroactively.

### **Sec. 415      Temporary Orders**

**(A)** The Court may upon proper application establish a temporary order for child support in accordance with the child support guidelines.

**(B)** A temporary order may be vacated or modified prior to or in conjunction with a final order or decree.

**(C)** A temporary order terminates when the final judgment on all issues, except attorney fees and costs, is rendered or when the action is dismissed.



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### **Sec. 416 Prior Born Children**

If an obligor has a child support order and later has additional children born or adopted, the obligor may not be permitted to modify the order for the prior born child to support a child born or adopted later.

### **Sec. 417 Past Due Support**

A final order for modification shall state whether past due support is owed and set a payment schedule. The failure to state a past due amount does not bar an action to collect the past due amount.

### **Sec. 418 Review of Child Support Orders, Review of Guidelines**

(A) The Alabama-Coushatta Tribal Child Support Enforcement shall conduct a review of a child support order at least once every four years to ensure that the child support order is in accordance with the support guidelines and Title IV-D rules and regulations.

(B) If the Alabama-Coushatta Tribal Child Support Enforcement determines that the child support order is not in accordance with the child support guidelines, an action shall be initiated to modify the child support order.

(C) An order of modification shall be effective upon the date the motion to modify the child support order was filed.

(D) Either a non-custodial or custodial party may request a review of the child support order.

(E) The Alabama-Coushatta Tribal Child Support Enforcement shall conduct a review at least once every four years to insure the child support guidelines are appropriate child support award amounts and in accordance with Title IV-D rules and regulations.

### **Sec. 419 Redirection of Child Support Upon Change in Physical Custody**

Whenever physical custody of the child is changed, the child support payments shall be redirected to the new custodian, except for the amount of unpaid support still owed to the previous custodian or to the tribal, or state child support agency.

### **Sec. 420 No Statute of Limitations**

Court ordered child support shall be owed until paid in full and it shall not be subject to a statute of limitation.

### **Sec. 421 TANF Money Owed to a State or Tribe**

When a state or tribe expends TANF money for the benefit of a dependent child, the payment of the TANF money creates a support debt owed to a state or tribe by the





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person(s) responsible for the support of the dependent child. The amount of support debt shall be equal to the amount of TANF money expended for the benefit of the dependent child, unless otherwise provided through a court or administrative order.

### **Sec. 422 Income Assignment**

**(A)** Every child support order or a modification of such order shall provide for an immediate income assignment provision, regardless of whether support payments are in arrears.

**(B)** The income assignment shall withhold the necessary amount to comply with the child support order for the monthly obligation. If there is overdue child support, the income assignment must withhold an amount to be applied toward liquidation of any overdue support.

**(C)** The total amount to be withheld from an individual's income for current and past due support shall not exceed the maximum amount permitted under the Consumer Credit Protection Act, 15 USC §1673(b).

**(D)** Income shall not be subject to withholding in any case where:

**(1)** Either the custodial or non-custodial parent demonstrates, and the Court finds there is good cause not to require immediate income withholding; or

**(2)** A signed written agreement is reached between the custodial and non-custodial parent, which provides for an alternative arrangement, and is reviewed, approved and entered into the record by the Court.

**(E)** If the obligor has multiple withholding orders, the Alabama-Coushatta Tribal Child Support Enforcement must allocate withheld amounts across those multiple orders to ensure that all orders are implemented. In no case shall an allocation result in a support obligation not being implemented.

**(F)** Where immediate income withholding is not in place, the income of the obligor shall become subject to withholding on the date on which the payments the obligor has failed to make, are at least equal to the support payable for one month.

**(G)** The only basis for contesting a withholding order is a mistake of fact, which means:

**(1)** An error in the amount of current or overdue support, or

**(2)** In the identity of the alleged obligor.

**(H)** The Alabama-Coushatta Tribal Child Support Enforcement program shall terminate income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

**(I)** The Alabama-Coushatta Tribal Child Support Enforcement shall refund amounts that have been improperly withheld.



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(J) The Alabama-Coushatta Tribal Child Support Enforcement shall be responsible for receiving and processing income withholding orders from states, tribes, and other entities, and ensuring orders are properly and promptly served on employers within the Tribe’s jurisdiction.

(K) The income assignment issued pursuant to this section shall remain in effect as long as any support monies are owed. Payment of any support monies shall not prevent the income assignment from taking effect.

(L) Nothing in this section shall limit the authority of the Alabama-Coushatta Tribal Child Support Enforcement to use its administrative powers conferred by law to collect delinquent support without the necessity of a court order.

### **Sec. 423 Voluntary Income Assignment**

An obligor may execute a voluntary income assignment at any time. The voluntary assignment shall be filed with the Court and take effect after service on the employer.

### **Sec. 424 Employer, Notice of Income Assignment, Requirements**

(A) The Alabama-Coushatta Tribal Child Support Enforcement shall send the employer notice of the income assignment using the standard federal form prescribed by United States Secretary of Department of Health and Human Services.

(B) The income withholding shall take effect on the next pay period of the obligor after the employer receives notice. The employer shall withhold each pay period the amounts specified in the notice. The amounts withheld shall be sent to the Alabama-Coushatta Tribal Child Support Enforcement office within seven (7) business days after the date upon the obligor is paid. The employer shall include with each payment a report that states the date the amount was withheld from the obligor’s income.

(C) The amount withheld, including any fee under this section, by the employer shall not exceed the limits permitted under the Consumer Credit Protection Act, 15 U.S.C. 1673 (b).

(D) If the amount of child support due in the notice exceeds the maximum authorized under subsection C of this section, the employer shall pay the amount due up to the statutory limit and send written notice to the Alabama-Coushatta Tribal Child Support Enforcement or person designated to receive payments that the amount due exceeds the amount subject to withholding.

(E) The employer shall notify the Alabama-Coushatta Tribal Child Support Enforcement within ten (10) days of the date when the obligor terminates employment and provide the obligor’s last known address and the name and address of the obligor’s new employer, if known.



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**(F)** If the employer fails to withhold in accordance with the provisions of the income assignment order, the employer will be liable for the accumulated amount the employer should have withheld and paid from the obligor's income.

**(G)** The employer may not discipline, suspend, discharge an obligor or refuse to employ because of an income assignment. Any employer who violates this section shall be subject to a civil fine of \$500 for the unlawful discipline, suspension, discharge, or refusal to employ.

**(H)** The employer may combine withheld amounts from two or more obligors' income in a single payment to each appropriate agency requesting withholding and separately identify the portion of the single payment which is attributable to each individual obligor.

**(I)** The income assignment is binding on the employer until further notice by the Alabama-Coushatta Tribal Child Support Enforcement.

**(J)** Any payment made pursuant to the provisions of this section by the employer shall be made payable to the Alabama-Coushatta Tribal Child Support Enforcement.

**(K)** An income assignment issued pursuant to this section shall have priority over any other subsequent garnishments against the same income.

**(L)** The employer may deduct from an income of the obligor a sum not exceeding Five Dollars (\$5.00) per pay period but not to exceed Ten Dollars (\$10.00) per month as reimbursements for costs incurred by the employer in complying with the income assignment.

**(M)** The income assignment applies to any current or subsequent employer. If the obligor changes employment where an income assignment is in place, the Alabama-Coushatta Tribal Child Support Enforcement must notify the new employer in accordance with this section that the income assignment is binding on the new employer.

**(N)** Two or more income assignments may be levied concurrently. Any current support due shall be paid before the payment of any arrearages or support debt payment.

**(O)** The employer shall verify the obligor's address, employment, earnings, income, benefits, and dependent health insurance information upon request of the Alabama-Coushatta Tribal Child Support Enforcement program.

### **Sec. 425 Registration of Foreign Income Withholding Order**

**(A)** Any other state or tribal income withholding order shall be registered with the Court for the purpose of obtaining jurisdiction for enforcement of the withholding.

**(B)** For purposes of registering a state or tribal income withholding order, the notice must contain all information necessary to carry out the withholding, including the amount to be withheld, a certified copy of the support order, and a statement of any arrearage, if appropriate.



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### **CHAPTER 5 CHILD SUPPORT ENFORCEMENT**

#### **Sec. 501 General**

**(A)** The Alabama-Coushatta Tribal Child Support Enforcement may initiate enforcement proceedings that include, but is not limited to:

- (1)** Enforcement of current child support payments;
- (2)** Establishment and enforcement of a child support judgment, and
- (3)** Review and modification of child support orders.

**(B)** The Alabama-Coushatta Tribal Child Support Enforcement may use applicable child support enforcement remedies in accordance with Title IV-D rules and regulations that includes, but are not limited to: income withholding; revocation of a driver’s license, hunting and fishing licenses, and professional licenses; consumer credit reporting; passport denial; use of state and federal income tax refund intercept programs; use of lien and levy; contempt proceedings; and, any other civil remedy available for the enforcement of a child support order or judgment.

**(C)** An action to enforce child support may be brought by the Alabama-Coushatta Tribal Child Support Enforcement program, parent, guardian, child, or other public agency responsible for the support of the child.

**(D)** The Alabama-Coushatta Tribal Child Support Enforcement is authorized to initiate legal action and appeal orders as necessary to implement the provisions of this section.

#### **Sec. 502 Judgment For Arrearage**

**(A)** When an obligor fails to pay current child support and an arrearage accumulates, said arrearage becomes a judgment by operation of law, and becomes effective on and after the scheduled payment date in the child support order.

**(B)** A party or the Alabama-Coushatta Tribal Child Support Enforcement may initiate an action to obtain a formal order of judgment from the Court; however a judgment by operation of law shall have the full force and effect of a judgment of the Court and shall be enforced under the laws of the Alabama-Coushatta Tribe and/or in accordance to the laws of the adjudicating Court.

**(C)** A judgment shall be accorded full faith and credit with other tribes and states.

**(D)** A child support judgment is not subject to retroactive modification by the tribe or by any other tribe or state except that the Court may permit a modification with respect to any period during which there is pending a petition for modification, but only



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from the date that notice of such petition has been given to the obligee or (where the obligee is the petitioner) to the obligor.

**(E)** A child support judgment shall not become dormant for any purpose. The Alabama-Coushatta Tribal Child Support Enforcement shall follow applicable tribal/state laws regarding judgments and liens.

**(F)** Except as otherwise provided, a judgment for past due child support shall be enforceable until paid in full.

### **Sec. 503     Arrearage**

**(A)** The Court shall determine the amount of arrearage of any child support obligation and set a payment schedule.

**(B)** The parties may voluntarily agree on an arrearage payment schedule, subject to approval by the Court.

**(C)** Any amounts determined to be past due by the Court may be subsequently enforced by indirect civil contempt proceedings.

### **Sec. 504     Liens, Workers Compensation, Release**

**(A)** Liens arise by operation of law against real and personal property for amounts of overdue support owed by an obligor who resides or owns property within a state.

**(B)** Past due child support shall become a lien by operation of law upon the real and personal property of the obligor at the time they become past due.

**(C)** A judgment or order for current support or an arrearage of child support shall be a lien upon real property owned by the obligor or upon any real property which may be acquired by the obligor prior to the release of the lien.

**(D)** The Alabama-Coushatta Tribal Child Support Enforcement shall comply with the rules and procedures regarding the recording and service of a lien or extension of a lien on personal and real property within a state or tribe in accordance with the applicable state, tribal or federal statutes.

**(E)** The judgment or order shall not become a lien for any sums prior to the date they severally become due and payable.

**(F)** A judgment for an arrearage of child support or a past due amount that has accrued shall become a lien upon benefits payable as a lump sum received from a worker's compensation claim of the obligor. The filing and service for a workers compensation claim for child support shall follow applicable state workers compensation statutes.

**(G)** The provisions of this section shall not authorize a sale of any property to enforce a lien which is otherwise exempted by tribal, state or federal law.

**(H)** A lien shall be released upon the full payment of the amount of the arrearage.

**(I)** All liens shall be given full faith and credit.



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### **Sec. 505 Tribal and Individual Exempted Property**

Tribal religious and/or ceremonial property, individual tribal trust property, individual religious and/or ceremonial property, and Individual Indian Money (IIM) accounts are exempted from liens.

### **Sec. 506 Initiated Income Assignment, Notice, Hearing**

**(A)** If an income assignment has not been ordered for the collection of child support, the Alabama-Coushatta Tribal Child Support Enforcement shall initiate an income assignment when the obligor has failed to make a child support payment at least equal to the support payable for one month, regardless of whether support payments are in arrears.

**(B)** The only basis for contesting a withholding under this section is a mistake of fact which means an error in the amount of current or overdue support or in the identity of the alleged obligor.

**(C)** In cases where the Alabama-Coushatta Tribal Child Support Enforcement program initiates an income assignment, notice to the obligor shall be given and served according to law. The notice shall inform the obligor at a minimum that:

- (1)** The withholding has commenced;
- (2)** The amount of overdue support that is owed, if any, and the amount of wages that will be withheld;
- (3)** The provisions for withholding apply to any current or subsequent employer or period of employment;
- (4)** The procedures available for contesting the withholding and the only basis for contest of such withholding are a mistake of fact;
- (5)** The assignment shall remain as long as the support order is in effect;
- (6)** The payment of any support monies will not prevent an income assignment from taking effect; and,
- (7)** The obligor shall be required to keep the Alabama-Coushatta Tribal Child Support Enforcement informed of the name and address of the current employer and health information.

**(D)** If the obligor challenges the income assignment, the obligor may request a hearing by giving written notice to the Alabama-Coushatta Tribal Child Support Enforcement program. The obligor has fifteen (15) days from the date of service of the notice to request a hearing. On receipt of the request for a hearing, the Alabama-Coushatta Tribal Child Support Enforcement shall schedule the request on the next available court date.



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(E) The Court shall hear the matter and unless the obligor successfully shows there is a mistake of fact, the Court shall enter an order that grants an income assignment and a judgment for arrearage, if any, and a payment schedule for the arrearage.

(F) The order shall be a final judgment for purposes of appeal.

(G) If within fifteen (15) days of date of service of the notice, the obligor fails to request a hearing, pursuant to this section, or after having requested a hearing fails to appear at the hearing, the Court shall enter an order that grants an income assignment and a judgment for arrearage, if any, and a payment schedule for the arrearage.

(H) A copy of the order shall be served upon the obligor certified mail return receipt restricted delivery or if the Alabama-Coushatta Tribal Child Support Enforcement has an address of record through regular mail.

(I) The obligor may voluntarily request an income assignment be initiated for the next due date, or earlier if so requested.

### **Sec. 507 Spousal Support**

The Alabama-Coushatta Tribal Child Support Enforcement is authorized to enforce an established spousal support obligation as long as a child support obligation is being enforced by the Alabama-Coushatta Tribal Child Support Enforcement program and the minor child lives with the spouse or former spouse.

### **Sec. 508 Revocation or Suspension of Licenses**

(A) The Alabama-Coushatta Tribal Child Support Enforcement may initiate enforcement proceedings for the suspension or revocation of a professional license, hunting and fishing license, or driver's license of an obligor who is in noncompliance of a child support order.

(B) Before the Alabama-Coushatta Tribal Child Support Enforcement initiates proceedings for the suspension or revocation of a license(s), a notice shall issue to the obligor that states his/her license(s) will be suspended within twenty (20) days after service, unless the obligor notifies the Alabama-Coushatta Tribal Child Support Enforcement within those twenty (20) days and:

(1) Pays the entire past-due support or enters into a payment plan approved by the Alabama-Coushatta Tribal Child Support Enforcement; and/or

(2) Complies with all orders and subpoenas regarding paternity or child support.

(C) The notice to the obligor shall be served according to law.

(D) The obligor may submit a written request for a hearing to the Alabama-Coushatta Tribal Child Support Enforcement within twenty (20) days after the date of



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service of the notice. Upon receipt of the request for hearing, the Alabama-Coushatta Tribal Child Support Enforcement shall schedule a hearing on the next available court date.

**(E)** The Court shall determine whether the obligor is in noncompliance with an order for support and whether suspension or revocation of a license is appropriate or whether probation is appropriate.

**(F)** If an obligor fails to respond to the notice issued under this section, fails to request a timely hearing, or fails to appear at a scheduled hearing, the Court shall enter an order of suspension, revocation, non-issuance, or non-renewal of a license to the licensing board and to the obligor.

**(G)** The order for suspension or termination of a license for noncompliance of a child support order shall be sent to the appropriate state or tribal licensing board.

**(H)** For licenses issued by the state, the Alabama-Coushatta Tribal Child Support Enforcement shall follow applicable state statutes.

### **Sec. 509 Probation**

The Court may grant probation if the obligor enters into a court ordered payment plan to repay past due support and provides proof that the obligor is complying with all other orders for support. Probation shall be conditioned upon full compliance with the order(s). If the Court grants probation, the probationary period shall not exceed three years and the terms of the probation shall provide for automatic suspension or revocation of the license if the obligor does not fully comply with the order.

### **Sec. 510 Reinstatement, Termination of Orders**

**(A)** An obligor whose license(s) have been revoked or suspended may request in writing to the Alabama-Coushatta Tribal Child Support Enforcement that the license(s) be reinstated.

**(B)** The Court may reinstate the obligor's license, if the obligor has paid either:

**(1)** The current child support and monthly arrearage payments for the current month and two months immediately preceding, or

**(2)** Paid an amount equivalent to three months of child support and arrearage payments, and

**(3)** Is in full compliance with other provisions of the support order.

**(C)** If the Alabama-Coushatta Tribal Child Support Enforcement proceeds to terminate an order for revocation or suspension of a license, the motion for reinstatement of the obligor's licenses and notice of hearing shall be served on the obligee. The motion and notice may be sent by regular mail if there is an address of record on file with the Alabama-Coushatta Tribal Child Support Enforcement or served according to law.

**(D)** If the license is reinstated, a copy of the order reinstating a license shall be sent to the obligee and obligor and appropriate state or tribal licensing board.





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**(E)** If the obligor’s license is reinstated and he/she fails to make child support payments, the obligor’s license(s) may again be suspended or revoked.

**(F)** The Alabama-Coushatta Tribal Child Support Enforcement shall proceed to terminate an order for suspension or revocation when the obligor has paid his child support debt in full, without the necessity of a hearing. The order to reinstate a license shall be sent to the obligor and obligee and appropriate state or tribal licensing board.

**(G)** For licenses issued by the state or another tribe, the Alabama-Coushatta Tribal Child Support Enforcement shall follow applicable state or tribal statutes.

### **Sec. 511 Employment, Find-job Order**

**(A)** Employment Requirement. By law a person who is ordered to pay child support through either court or administrative action shall be required to maintain employment to meet his or her child support obligation.

**(B)** Action for Order for Employment. If an obligor is in arrears for child support in an amount greater than three (3) times the obligor’s total monthly support payments and is not in compliance with a written payment plan, and the obligor claims inability to pay court-ordered child support because of unemployment or underemployment, the Alabama-Coushatta Tribal Child Support Enforcement may initiate an action to obtain an order to require an unemployed or underemployed obligor to find employment through job search programs or job-training programs. To initiate such action, the Alabama-Coushatta Tribal Child Support Enforcement must schedule a court hearing to determine if the obligor is in noncompliance because of unemployment or underemployment.

**(C)** Notice to Obligor. Notice of the hearing shall be sent to the obligor in noncompliance with a child support order because of unemployment or underemployment through one of the following methods:

- (1)** first-class mail to the obligor’s last known address with a certificate of mailing;
- (2)** certified mail, return receipt restricted delivery; or
- (3)** personal service with proof of service certificate. The notice shall include the following information:
  - (a)** The name of the obligor;
  - (b)** The name of the obligee and the child or children for who support is owed;
  - (c)** The telephone number and contact number for the Alabama-Coushatta Tribal Child Support Enforcement program.
  - (d)** Statements that the obligor is in noncompliance with a court or administrative support order and the amount of the past due support; the time, date and place of a hearing set in said matter, the consequences of the obligor’s failure to appear at



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the said hearing, the obligor's burden of proof at the hearing, and a description of the order that may be issued following the hearing, all as set forth in sub-sections (D) and (E) of this section;

**(D) Hearing; Order.** The obligor shall be responsible for providing documentation for good cause not to participate in an employment search or job training program. If the obligor fails to appear at the hearing or appears and is determined to be unemployed or underemployed, the Court shall enter a find-job order setting forth such findings and directing the obligor to participate in job-finding or job-training programs and accept available employment. Such order may require the obligor to register with a state and/or tribal employment agency for employment or job training. The order shall require the obligor to file a weekly report with the Alabama-Coushatta Tribal Child Support Enforcement program showing at least five (5) attempts to find employment, including the name, address and phone number of a contact person with whom the obligor sought employment. A copy of the order will be mailed to the obligor by first-class mail with a certificate of mailing.

**(E) Failure to Comply.** If an obligor fails to report or otherwise comply with a find-job order without good cause, enforcement proceedings may be initiated against the obligor. The obligor shall be responsible for the verification of any reason for noncompliance with a find-job order.

**(F) Order Duration.** The duration of the order shall not exceed three (3) months. At the end of the three (3) month period, if the obligor has not successfully secured appropriate employment or training, the Alabama-Coushatta Tribal Child Support Enforcement shall commence a contempt action.

### **Sec. 512 Passport Denial**

The Alabama-Coushatta Tribal Child Support Enforcement may refer a judgment for child support to the Secretary of Health and Human Services for passport denial, revocation or restriction pursuant to Title IV-D rules and regulations.

### **Sec. 513 Reporting to Consumer Reporting Agency**

**(A)** The Alabama-Coushatta Tribal Child Support Enforcement may report to a consumer reporting agency of the name of an obligor who is delinquent in the payment of support and the amount of overdue support owed by the obligor.

**(B)** The obligor shall be notified before the release of the information to the consumer reporting agency and given a reasonable opportunity to contest the accuracy of such information.



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(C) Information shall be given only to an entity that has furnished evidence satisfactory to the Alabama-Coushatta Tribal Child Support Enforcement that it is a consumer reporting agency as so defined in 15 USC §1681a(f).

### **Sec. 514 State and Federal Tax Offset Programs, Administrative Offset**

(A) The Alabama-Coushatta Tribal Child Support Enforcement may use a state tax intercept program or services to collect child support debts.

(B) The Alabama-Coushatta Tribal Child Support Enforcement may use the federal tax intercept program or services to collect child support debts.

(C) The Alabama-Coushatta Tribal Child Support Enforcement may use administrative offsets to collect child support debts.

### **Sec. 515 Indirect Civil Contempt**

(A) The Alabama-Coushatta Tribal Child Support Enforcement may initiate indirect civil contempt proceedings or any other proceeding to secure compliance with a child support order.

(B) In a proceeding for indirect contempt, the pleading must be verified through affidavit of the party initiating the proceeding. The obligor shall be served by personal service or certified mail, return receipt.

(C) In a proceeding for contempt, prima facie evidence of an indirect civil contempt of court shall be held when:

(1) Proof that:

(a) The child support order was made, filed and served on the obligor; or

(b) The obligor had actual knowledge of the existence of the order; or

(c) The order was granted by default after prior due process notice to the parent; or

(d) The parent was present in court at the time the order was announced, and

(2) The obligor is in noncompliance with the order.

(D) Unless otherwise provided by law, punishment for direct or indirect contempt shall be the imposition of a fine in a sum not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in jail not exceeding six (6) months, or by both, at the discretion of the Court.

(E) If a contemnor is committed to the custody of the sheriff to serve the sentence imposed by the court, the contemnor may thereafter only be discharged from the custody of the sheriff:

(1) Upon payment in full of the adjudicated arrearage;



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- (2) Upon serving the full sentence; or
- (3) Upon an agreement by the parties as to payment of the arrearages, s subject to any conditions and approval by the Court.
- (4) Upon payment of a lump sum amount to be determined by the Court. The Court shall determine the amount by:
  - (a) The circumstances giving rise to the contempt;
  - (b) The total amount of the adjudicated arrearage; and
  - (c) Evidence of the obligor's attempts to reduce the arrearage prior to the contempt proceeding.

(F) Contemnors incarcerated pursuant to this section shall not be given credit for good time, trustee time, or any other credit for time served. Contemnors incarcerated pursuant to the provisions of this section shall serve flat time.

### **Sec. 516 Purge Fee, Referral**

(A) When an obligor is found guilty of indirect contempt of court for failure to pay child support or other court ordered provisions for child support, the obligor may purge the contempt through a payment plan that requires:

- (1) The obligor to make current child support payments as well as paying the arrearage or some portion thereof by either paying the full amount of the arrearage or if the full amount of the arrearage is not paid in a lump sum, then by making additional monthly payments.
- (2) The arrearage payments made under this section shall be applied to reduce the amount of child support arrearage.

(B) The arrearage payments made under this section shall continue until the child support arrearage has been paid in full, at which time the contempt shall be deemed purged.

(C) If an obligor is found guilty of indirect contempt, the Court may refer the contemnor to a state or tribal employment program, in accordance with Section 511 for employment services or training as a condition of probation. If the obligor fails to comply with the state or tribal employment program requirements, the obligor shall be sentenced accordingly.

### **Sec. 517 Waivers or Credits, Payments to Children**

- (A) The obligee may waive or give credit for past due child support.
- (B) No waiver or credit is allowed for tribal, federal or state owed money, unless waived by the tribal, state or federal agency that issued the money.
- (C) Payments to child(ren) are considered gifts to the child(ren).



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### **Sec. 518      Exceptions to Enforcement Proceedings**

Exceptions to enforcement proceedings are available only by court order. An exception to enforcement proceedings may be allowed only upon a specific finding of the Court that said exception is in the best interest of the child(ren) and that without invoking the exception the application of the Tribe's support guidelines would be unjust or inappropriate. The Court's order shall include specific findings that rebut the use of the guidelines as well as the amount of support that would be due if the guidelines were strictly adhered to, and the amount of support that is due upon application of the exception. The following provisions are applicable to exceptions from enforcement;

**(A)** An obligor who currently receives TANF payments may request the Court temporarily suspend child support enforcement actions while they are currently receiving TANF payments or any other state or tribal public assistance benefits.

**(B)** An obligor may request the Court temporarily suspend child support enforcement actions if he/she claims unemployment because of a physical and/or mental health problem, provided said obligor shall provide documentation of such claim by a licensed physician or licensed mental health professional. The obligor shall be responsible for providing documentation of the physical or mental health treatment plan with the time it may take to complete the plan. Upon completion of the treatment plan, the terms regarding unemployment in subsection (D) of this section shall be in force.

**(C)** An obligor who claims unemployment because of a physical or mental disability shall provide documentation that he or she has been approved for disability benefits from the Social Security administration. The obligor shall provide to the Court documentation that he or she has applied to a state department of rehabilitation services for assistance in becoming employable. If the obligor is determined to be employable by the state department of rehabilitation services, the obligor shall provide documentation that such parent has made every effort to cooperate in obtaining employment pursuant to subsection (D) of this section.

**(D)** An obligor who claims unemployment in subsection (B) and (C) shall be required to register with the state employment security commission or a state and/or tribal employment agency for employment. The obligor is responsible for making a good faith effort to obtain employment either through the employment services and personal initiative, providing documentation of employment registration to the Court, and providing documentation of an employment application. The obligor must demonstrate he or she is actively seeking employment and/or training as provided by the employment agency and is willing to work.



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**(E)** These provisions shall not apply to an only parent caring for the child or children in the home, when daycare services are not available or when it is unreasonable to place the child or children in day care services.<sup>2</sup>

### **Sec. 519 Interest**

The Alabama-Coushatta Tribal Child Support Enforcement may charge interest on past due support obligations stemming from tribal court orders but is not required to charge interest; however, the Alabama-Coushatta Tribal Child Support Enforcement shall charge the statutory rate of interest on state-owed, or other tribal-owed judgments.

### **Sec. 520 Expedited Procedures**

**(A)** The Alabama-Coushatta Tribal Child Support Enforcement has the authority to proceed in the following actions without the necessity of obtaining an order from any other judicial or administrative court:

- (1)** To require both parents to appear for genetic testing in cases where paternity has not been established or admitted.
- (2)** To subpoena any financial or other information needed to establish, modify or enforce a support order, provided that the subpoena complies with applicable tribal, federal or state statutes.
- (3)** In cases where there is support arrearages, to secure assets by:
  - (a)** Intercepting or seizing periodic or lump-sum payments from:
    - (i)** A state or local agency, including unemployment compensation, workers' compensation, and other benefits; and
    - (ii)** Judgments, settlements, and lotteries.
  - (b)** Attaching and seizing assets of the obligor held in financial institutions.
  - (c)** Attaching public and private retirement funds; and
  - (d)** Imposing liens in accordance with this Code.
- (4)** To increase the amount of monthly support payments to include amounts for the purpose of securing overdue support.
- (5)** If an income assignment is not ordered or in place by operation of law, to implement income withholding.
- (6)** To obtain access, subject to safeguards on privacy and information security, and subject to the non-liability of entities that afford such access under this subparagraph, to information contained in the following records:

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<sup>2</sup> Sec. 518 Revised on November 7<sup>th</sup>, 2013, by Resolution # 2013-77.

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- (a) Records of other state and local government agencies, including:
- (i) Vital statistics;
  - (ii) State and local tax and revenue records;
  - (iii) Records concerning real and titled personal property;
  - (iv) Records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnership and other business entities;
  - (v) Employment security records;
  - (vi) Records of agencies administering public assistance programs;
  - (vii) Records of the motor vehicle department; and
  - (viii) Corrections records.
- (b) Certain records held by private entities with respect to individuals who owe or are owed support, consisting:
- (i) The names of addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities and cable television companies, pursuant to an administrative subpoena; and
  - (ii) Information on such individuals held by financial institutions.

(B) Such procedures listed in subsection (A) of this section shall follow due process safeguards, including (as appropriate) notice to the obligor, opportunity for obligor to contest the action and opportunity for appeal.

**Sec. 521     Reimbursement of Costs**

The Alabama-Coushatta Tribal Child Support Enforcement shall seek reasonable costs against the obligor in the enforcement of child support cases. These costs include, but are not limited to: court filing fees, process server fees, mailing fees, and paternity tests.

**Sec. 522     Bankruptcy**

Current and past due child support owed on behalf of a child is not dischargeable by bankruptcy.