

CHAPTER X: GUIDELINES FOR ESTABLISHMENT, MODIFICATION AND ENFORCEMENT OF CHILD SUPPORT ORDERS (45 CFR 309.65(a)(10))

45 CFR 309.65(a)(10) Guidelines for the establishment and modification of child support obligations as specified under §309.105.

Note: Copies of all code and/or forms referred to in this chapter can be found in the appendix section at the end of the chapter.

A. FORT BELKNAP CHILD SUPPORT PROGRAM AUTHORITY AND DUTIES

The Fort Belknap Child Support Program shall have the following authority and duties:

1. The Fort Belknap Child Support Program shall recommend Tribal Child Support Program Guidelines and a Child Support Schedule to Tribal Council for approval.
2. The Fort Belknap Child Support Guidelines and Schedule shall be reviewed every four (4) years beginning June 2013.
3. The Fort Belknap Child Support Program may provide assistance to help parents/legal guardians reach a child support agreement before or after a petition for child support is filed or if they are referred to FBCSP by the Tribal Court.
4. The Fort Belknap Child Support Program shall submit child support recommendations to the Tribal Court and the parents/legal guardians when requested or required to under Fort Belknap Tribal Code Chapter 9.
5. The Fort Belknap Child Support Program shall represent the Fort Belknap Tribe in establishing child support for a child who is in the custody of the Fort Belknap Tribal Social Services Department, another tribe, a state or where the child or a parent receives public assistance and it may represent the Tribe on behalf of any child in a child support enforcement or other child support related proceeding.
6. The Fort Belknap Child Support Program shall collect and distribute child support payments as provided for in Fort Belknap Tribal Code Chapter 9 or as ordered by the Tribal Court.
7. The Fort Belknap Child Support Program may file any required pleadings to request that the Tribal Court order a person to comply with its valid request for information or to establish or enforce a child support order.
8. The Fort Belknap Child Support Program shall have such other duties, responsibilities and authority as provided for by other provisions of Fort Belknap Tribal Code/Tribal Resolutions or as required by 45 CFR Parts 286, 302, 309, 310 *Tribal Child Support Enforcement Programs* and Title IV-D of the Social Security Act relating to child support establishment and enforcement or as determined by the Fort Belknap Tribal Council.
9. The Fort Belknap Child Support Program shall adopt rules conforming to federal laws, rules and regulations that are required to maintain tribal program compliance with Title IV-D of the Social

Security Act. The adoption of these rules shall promote the cost-effective use of Fort Belknap Tribal and Fort Belknap Child Support Program resources in the performance of essential duties and functions.

B. CHILD SUPPORT PROGRAM STAFF AND LEGAL REPRESENTATION

Fort Belknap Child Support Program attorneys and staff do not have an attorney-client relationship with an applicant for or a recipient of child support services.

The fact that a recipient of services from the Fort Belknap Child Support Program might incidentally benefit from the actions of the Fort Belknap Child Support Program Attorney and/or program staff shall not be construed as legal representation to the recipient nor as having formed an attorney-client relationship.

Communications between Fort Belknap Child Support Program staff and the recipient, parents, obligees, obligors or any other party or witness to a child support action shall not be considered privileged or confidential unless specifically required by tribal, state or federal law or the Fort Belknap FBCSP Policies and Procedures.

C. CHILD SUPPORT ESTABLISHMENT POLICY

In the Fort Belknap Tribe, children are cared for by their parents, extended family and the tribal community. Child support establishment focuses on the duty of natural parents to provide financially for their children.

The purpose of this policy is to provide a process to ensure that the basic financial needs of children are met when their parents do not live together.

It is the Tribe's policy to promote cooperation and agreement by the child's parents regarding the fulfillment of their financial obligation to their child. A non-custodial parent is more likely to remain connected with his/her child if he/she has developed an agreement with the other parent regarding an appropriate child support obligation.

It is also the Tribe's policy not to interfere in child support agreements when those agreements serve the best interests of the child and are entered into *knowingly and voluntarily*. It is in the best interest of a child if his/her parents can agree on an appropriate child support obligation to adequately meet the needs of the child. However, in the absence of an agreement, it is in the best interests of the child that the Tribal Court order the non-custodial parent to pay an appropriate child support amount to ensure the financial well-being of the child.

1. Parental Duty of Care and Support

Parents have a duty of care and support for their children. The duty of care and support applies to all natural parents whose parental rights have not been terminated and to all adoptive parents. This duty includes providing love, guidance, education, a safe and healthy living environment and financial support for the child. Parents also have a duty to ensure that Fort Belknap children have an opportunity to learn their native culture, customs and traditions; to know their extended families; and to participate in tribal and cultural events.

Stepparents do not have a legal duty to financially support stepchildren once they are no longer living in the family home. However, stepparents may have a moral and/or traditional duty to contribute to the continued well being of the stepchild.

2. Best Interests Not to Establish a Child Support Obligation

The Fort Belknap Child Support Program is authorized to certify that there is good cause NOT to establish a child support obligation in cases in which it is not in the best interests of the child to do so.

Good cause may include, but is not limited to:

1. The child was conceived as the result of rape, incest, sexual abuse of a minor or sexual assault;
2. A legal proceeding for adoption is pending before a court of competent jurisdiction; or
3. The cooperation of the child's custodian in the establishment of a child support obligation is reasonably likely to result in physical or emotional harm to the child or to the child's custodian.

The Court may hold a closed, ex parte hearing to determine whether good cause exists to NOT establish a child support order.

3. Youth in Need of Care, Guardianship and Non-Parental Custody Cases

Fort Belknap Tribal Code Chapter 9 governs the establishment of child support in all child support cases including Youth in Need of Care, guardianship and non-parental custody actions in accordance with the laws and policies governing those proceedings. In those cases, the policies and procedures of Fort Belknap Tribal Code Chapter 7 supersede Fort Belknap Tribal Code Chapter 9 to the extent that the two chapters may conflict.

4. Fort Belknap Tribal Court Jurisdiction to Establish and Modify Child Support

a. Personal and Subject Matter Jurisdiction

The Fort Belknap Child Support Program will only handle child support matters where the Fort Belknap Tribal Court has personal and subject matter jurisdiction over the parties and the legal proceeding is for the establishment, modification and/or enforcement of child support.

b. Personal Jurisdiction

For purposes of establishing, modifying and/or enforcing child support orders, the Tribal Court has personal jurisdiction over the following:

1. Enrolled members of the Fort Belknap Tribe.
2. Persons who consent to the jurisdiction of the Tribal Court by one of the following:
 - a. Filing an action in Tribal Court;
 - b. Knowingly and voluntarily giving written consent to jurisdiction of the Tribal Court;
 - c. Entering a notice of appearance in an action without concurrently filing an express written reservation of issues concerning personal jurisdiction or filing a motion to dismiss for lack of jurisdiction within 30 days of entering the notice of appearance;
 - d. Appearing in an action without concurrently filing an express written reservation of issues concerning personal jurisdiction or filing, within 30 days of such appearance, a motion to dismiss for lack of jurisdiction.
3. Persons who are the parent or guardian of an enrolled Fort Belknap tribal member or the parent or guardian of a child eligible for enrollment within the Fort Belknap Tribe.
4. Persons who have legally enforceable rights in any jurisdiction to visitation or custody of a child that is in any way a subject of the proceeding and the child is an enrolled member of the Fort Belknap Tribe or is eligible for enrollment in the Fort Belknap Tribe.
5. Persons who are alleged to have engaged in an act of sexual intercourse on the Fort Belknap Indian Reservation with respect to which a child that is either an enrolled member of the Fort Belknap Tribe or eligible for enrollment with the Fort Belknap Tribe may have been conceived.

6. Applicants for and recipients of Temporary Assistance to Needy Families (TANF) benefits through the Fort Belknap Tribe whether the head of household, dependent, or other household member.

c. Continuing Jurisdiction

1. Once jurisdiction is established in the Fort Belknap Tribal Code for the establishment, modification and enforcement of child support, the Tribal Court shall retain continuing jurisdiction over the parties.
2. Consent cannot be withdrawn once given whether such consent was given expressly or impliedly.
3. Personal jurisdiction cannot be defeated by relocation after jurisdiction is established.
4. Personal jurisdiction cannot be defeated by voluntary relinquishment of enrollment and membership in the Fort Belknap Tribe.

d. Declination

The Fort Belknap Tribal Judge, at his/her discretion, may decline to assume jurisdiction over one or more parties in the best interest of the court or for the convenience of one or more of the parties involved. Any declination shall be made after a hearing on the pertinent facts and shall be supported by written findings of fact specifying the basis for declination. Upon entry of an order of declination of jurisdiction, the matter shall be dismissed in its entirety for lack of jurisdiction.

In the event that the Fort Belknap Tribal Court declines to assume jurisdiction over one or more parties in a child support establishment, modification and enforcement matter, the Fort Belknap Child Support Program will assist a client with referrals to the appropriate jurisdiction for child support enforcement services.

D. ESTABLISHMENT OF CHILD SUPPORT

1. Who Can File A Petition for Child Support

A petition for child support may be filed by a parent, legal guardian or the Fort Belknap Child Support Program. A petition for child support may be filed as a separate proceeding or with a petition for divorce, annulment, legal separation, child custody, paternity, guardianship or non-parental custody.

2. Petition Contents

A petition for child support shall be on forms approved by the Fort Belknap Tribal Court and at a minimum shall include:

- a. The following information for the child, the child's natural parents and/or the child's legal guardian if not the natural parent(s):
 1. Full name
 2. Mailing and physical address if different
 3. Telephone contact information
 4. Tribal affiliation and enrollment number
 5. Date and place of birth
 6. Social Security number.

- b. The child support obligation requested or agreed upon between the parties including the basis for that obligation with attached supporting documents as required under Fort Belknap Tribal Code Title V Part XVI

If applicable, the Fort Belknap Child Support Program may make a recommendation regarding child support and health/medical insurance coverage which will be attached to the petition as supporting documentation.

- c. The proposed provision for health/medical insurance for the child.
- d. Any proposed provision for out-of-pocket work-related day care costs for the child.
- e. Any proposed provision for extraordinary medical expenses for the child.
- f. The date the child support obligation is to begin and the date/conditions when the child support obligation is to end.
- g. The proposed frequency of child support payments.
- h. A statement whether or not child support payments should be made by mandatory wage withholding or direct payment; where the child support payments should be sent and to whom payments should be made if not to the Fort Belknap Child Support Program.
- i. The Petitioner/Custodial Parent's declaration that the named party is the child's natural parent or that the parties agree that the named party is the child's natural parent.

Or

The Petitioner/Guardian's declaration that the named parties are the child's natural parents or that the named parties acknowledge that they are the child's natural parents.

- j. A statement as to any other proceedings involving the child or the natural parents of the child.
 - 1. Other proceedings could include but are not limited to: Youth in Need of Care/Child Protective Services action, divorce, annulment, legal separation, child custody, paternity (establishment or disestablishment), guardianship, non-parental custody, child support, protective/restraining/no-contact order involving the child or a party, criminal action involving the child or a party.
 - 2. For any other proceedings involving the child or the natural parents of the child, the date of the proceedings, the name and address of the court or agency where the proceedings are filed, copies of any temporary or final orders entered in those proceedings.
- k. A statement whether or not either parent has received state or tribal public assistance and if so, the dates and name of the state or tribe that provided the assistance.

Financial information as required under Fort Belknap Tribal Code

- l. Authorization for the release of all financial records to the Fort Belknap Child Support Program and to the Fort Belknap Tribal Court for the sole purpose of child support determination.
- m. A statement identifying which parent should be:
 - 1. Designated as the primary custodial parent for any tribal/state/federal programs requiring such a designation.
 - 2. Designated as the primary custodial parent if necessary for distribution of Fort Belknap Tribal per capita payments for minors enrolled in the Fort Belknap Tribe.
 - 3. Allowed to claim the child as a dependent for income tax and/or unearned income credit purposes.
- n. If appropriate, a proposed parenting or custody/visitation plan or if custody is shared, the percentage of the year that each parent has physical custody of the child.

3. Child Support Summons

The child support summons, prepared on a form approved by the Tribal Court, shall notify the Respondent that if he/she does not appear or respond to the Petition for Child Support within thirty (30) days from the date of service or within sixty (60) days if served off the Fort Belknap Reservation or if service is by publication, the Tribal Court may proceed without the Respondent and a default judgment may be entered without his/her participation in the child support action.

4. Service of Child Support Petition and Summons

After a petition for child support is filed, the Petitioner shall cause the Respondent to be served with a copy of the petition and the summons.

- a. The petition and summons shall be served as provided for in Fort Belknap Tribal Code Section 9-6.06.05.

- b. The parties may sign a joint petition and waive the requirements of personal service and/or notice of any subsequent hearings in the child support matter.
- c. The person serving the summons and petition for child support shall file an affidavit with the Tribal Court Clerk's Office in accordance with Fort Belknap Tribal Code

5. Notice to Tribal Child Support Program

If the Fort Belknap Child Support Program does not file the petition, the Tribal Court shall provide the Tribal Child Support Program with a copy of the petition, response, financial information and all other documents filed in the child support or related case and notice of all hearings related to the issue of child support ONLY if the Tribal Court is requesting a FBCSP child support recommendation.

6. Initial Child Support Hearing and Hearing Notice

a. Initial Child Support Hearing

Upon receipt of proof of service of the summons and petition on the Respondent, the Tribal Court Clerk's Office shall schedule a hearing to determine child support. The hearing should be set no sooner than days after the Respondent receives notice of the child support action unless service is by publication.

If service is by publication, the initial hearing shall be set not less than sixty (60) days after publication in the tribal newspaper and/or a newspaper of circulation in the area where the Respondent is known or believed to reside.

If the child support petition is filed with a petition for divorce, annulment, legal separation, child custody or paternity (establishment or disestablishment), guardianship or non-parental custody, the child support action shall be consolidated with that action.

b. Notice of Hearing

1. Who Sends Notice of Hearing

If Petitioner is the Fort Belknap Child Support Program, FBCSP will be responsible for sending the Notice of Hearing to the custodial and non-custodial parents and to any other interested parties to the case.

If Petitioner is a spokesman/attorney for a party to the case, the spokesman/attorney will be responsible for sending the Notice of Hearing to the custodial and non-custodial parents and to any other interested parties to the case.

If Petitioner is a *Pro Se litigant*, the Tribal Court Clerk's Office will be responsible for sending the Notice of Hearing to the custodial and non-custodial parents and to any other interested parties to the case.

2. Contents of Notice of Hearing

The Notice of Hearing in a Child Support action shall inform the Respondent of the following:

- a. That if Respondent chooses not to appear at the hearing or to enter a defense to the petition challenging the authority of the Tribal Court to decide the matter by the date of the hearing, the hearing shall proceed on the basis of Petitioner's evidence only.
- b. That parentage may be established at the hearing if parentage has not yet been established pursuant to Fort Belknap Tribal Code.
- c. That an order of child support may obligate the Respondent to pay child support until the child reaches the age of eighteen (18) or until the child graduates from high school or turns nineteen (19) whichever is later or until the child graduates from high school or its equivalent up the age of twenty-one (21) if the child is developmentally disabled/delayed.
- d. That the Tribal Court may authorize publication of an obligor's name in a local newspaper in addition to other remedies for Respondent's failure to pay child support.
- e. The Respondent's employer or others with evidence of the parent's income may be subpoenaed to provide the Tribal Court with records of his/her earnings.
- f. That if the Respondent is unemployed, he/she is still able to provide some degree of child support and an order of support will be calculated according to the Fort Belknap Tribal Child Support Guidelines/Schedule unless the Tribal Court makes written findings to the contrary.
- g. That the Respondent may enter into a stipulated support agreement subject to the approval of the Tribal Court and/or the recommendation of the Tribal Child Support Program.
- h. That any answer to the petition must be filed with the Tribal Court within thirty (30) days from the date of service of the petition and summons and a copy of the response served on the petitioning party and all other interested parties in the case.

7. Response

Unless a joint petition is filed, the Respondent shall file a response to the petition for child support within thirty (30) calendar days after service if personally served or within days if served off the Fort Belknap Reservation or if served by publication.

The response:

- a. Shall be on forms approved by the Fort Belknap Tribal Court.
- b. Shall include financial information as required under Fort Belknap Tribal Code and shall authorize the release of all financial records to the Fort Belknap Child Support Program and/or to the Fort Belknap Tribal Court for the sole purpose of child support determination.
- c. May include a proposed parenting or custody/visitation plan or, if custody is shared, the percentage of the year that each parent has physical custody of the child.

8. Continuance to Establish Paternity

If the Respondent disagrees or is unsure that he is the father of the child, he shall state that fact in his response.

If the parties do not agree on the issue of paternity, either party may request that paternity be established under Fort Belknap Tribal Code

Upon the request of any party, the Tribal Court shall continue the child support proceedings pending establishment of paternity.

If the parties do not agree on paternity and there is no request to establish paternity, the Tribal Court shall dismiss the child support petition without prejudice.

9. Disclosure of Financial Information

Disclosure of party financial information for the sole purpose of child support determination will be in accordance with the following provisions:

- a. The parties in a child support action shall provide complete disclosure of financial information to the Tribal Court, the other party and, if applicable, to the Fort Belknap Child Support Program.
- b. Financial information shall be submitted on Tribal Court approved forms and filed with the petition and/or response at least days before the hearing unless the Court grants additional time.
- c. Financial information filed in child support actions shall be confidential and available only to the parties, the Tribal Court and, if applicable, to the Fort Belknap Child Support Program and used solely for the purpose of establishing, modifying, enforcing or distributing child support.
- d. A party is not required to provide financial information to the Tribal Court if the party has made full and complete financial disclosure to the Fort Belknap Child Support Program and FBCSP certifies that it has reviewed the financial information and its child support recommendation to the court is based upon that information.
- e. Failure to provide the required financial information or providing fraudulent financial information may be grounds for contempt of court as provided in Fort Belknap Tribal Code

10. Limited Waiver of Confidentiality

The following are authorized and required to provide information regarding a person's income, resources and contact information including but not limited to address (physical and mailing), telephone (home, work, cell, message) to the Tribal Court and the Fort Belknap Child Support Program upon request:

- a. All tribal accounting and governmental offices.
- b. All tribal enterprises including but not limited to: Fort Belknap Casino, Fort Belknap Wellness Center, Fort Belknap Infirmary, Fort Belknap Tribal Housing Authority, Fort Belknap Tribal Farm, Fort Belknap Tribal Police.

- c. Any person or entity doing business on the Fort Belknap Indian Reservation.
- d. The Fort Belknap Tribal TANF program shall also provide information about a party's TANF assistance including:
 - 1. Whether the person receives or has ever received TANF assistance.
 - 2. The names of the other people on the individual's TANF grant.
 - 3. The dates the individual received TANF assistance.
 - 4. The amount of assistance received.

11. Domestic Violence Protection

The Fort Belknap Child Support Program shall take any necessary steps to ensure that the contact information or physical location of a domestic violence victim is kept confidential.

Fort Belknap Child Support Program staff who violate this provision will be subject to all applicable employee disciplinary sanctions.

12. Proposed Agreed Child Support Orders

Proposed agreed child support orders shall be governed by the following provisions:

- a. The parties may agree to a proposed child support order regarding the establishment or modification of a child support obligation and may request FBCSP staff to assist with the necessary document preparation.
- b. If the parties do not seek assistance from the Fort Belknap Child Support Program, the Tribal Court may provide the Tribal Child Support Program with a copy of the proposed child support order and request a recommendation regarding some or all of the child support issues.
- c. If the Tribal Court finds that the proposed agreed order was NOT entered into *knowingly and voluntarily* or the Fort Belknap Child Support Program objects to the proposed order, the case shall be continued.

Additionally, the parties may be ordered to meet with Fort Belknap Child Support Program staff to attempt to reach an agreement and the court may entered a temporary child support order based on the Fort Belknap Child Support Guidelines and Schedule.

If the parties cannot reach an agreement regarding child support issues within the time set by the court, the Tribal Court shall set the matter for hearing/trial.

- d. If the Tribal Court finds that a proposed child support agreement was entered into *knowingly and voluntarily* by the parties, the Tribal Court may enter an appropriate child support order based on that agreement.

13. CHILD SUPPORT HEARINGS

a. Who May Attend Hearings

Only those persons the Tribal Court finds to have a legitimate interest in the proceedings may attend child support hearings.

b. Rules for Non-contested Child Support Hearings

The following rules apply to non-contested child support hearings:

1. Agreed Order all Issues – The Tribal Court shall approve an agreed child support order in accordance with Fort Belknap Tribal Code Sections 9-7.02.03, 9-7.02.16, 9-7.03.02 and 9-7.04 if the Fort Belknap Child Support Program does not object AND the court finds that the agreement was entered into *knowingly and voluntarily* by the parties and is in the best interests of the child(ren.)
2. Partial Agreed Order - The Tribal Court may approve an agreed order that addresses some but not all of the required child support issues and, if sufficient information is available, may consider making a decision on the unresolved issues.
 - a. If a complete order cannot be issued with the information available to the court, the case shall be continued.
 - b. If appropriate, the parties may be ordered to meet with FBCSP staff to attempt resolution of the remaining issues by mediation/negotiation.
 - c. The Tribal Court shall establish a timeline for the parties to resolve all remaining issues including the filing of any additional pleadings and/or a subsequent recommendation from the FBCSP.
 - d. The Tribal Court may enter a temporary child support order based on the Fort Belknap Child Support Guidelines/Schedule and/or the information before it.
 - e. The case will then proceed to a full hearing on the remaining issues.
 - f. The temporary child support order will remain in full force and effect until final orders are entered or the matter is dismissed.
3. In-Chamber Discussion - The Tribal Court may hold in-chamber/individual discussions with each party to ensure that each party understands the proposed agreed child support order provisions and to assure that each party's consent to the proposed agreement was not the result of coercion, threat, duress, fraud, over-reaching or improper promises on the part of any person.
 - a. If the Court finds that the agreement was not *voluntary*, the case shall be continued and the parties ordered to meet separately with the appropriate Fort Belknap Child Support Program staff.
 - b. The Tribal Court shall establish a timeline for each party and the FBCSP to file a child support proposal.
 - c. The Tribal Court may enter a temporary child support order based on the Fort Belknap Child Support Guidelines/Schedule and/or the information before it.

- d. The case will then proceed to a full hearing on the issues.
- e. The temporary child support order will remain in full force and effect until final orders are entered or the matters are dismissed.

14. Rules for Contested Child Support Hearings

The following rules apply to contested child support hearings:

- a. The Tribal Court shall review the documents filed in the case, hear testimony from all parties regarding the unresolved child support issues and consider any other relevant evidence that is presented.
- b. The Tribal Court shall give great weight to any written or oral recommendations of the Tribal Child Support Program.
- c. If a party believes the Fort Belknap Child Support Program recommendation and/or the Tribal Child Support Schedule/Guidelines are inappropriate as applied to him/her, that party has the burden of proof to show that the support obligation should be different from the recommendation or child support schedule.

15. Child Support Orders

The Tribal Court shall enter Findings of Fact and Conclusions of Law with a separate Child Support Order.

a. Findings of Fact and Conclusions of Law

At a minimum, the Findings of Fact and Conclusions of Law shall address the following:

- 1. Tribal Court's subject matter and personal jurisdiction over all the parties.
- 2. Paternity of the child.
- 3. The child support obligation of one or both parties as agreed to by the parties or, in the absence of an agreement, as determined by the Tribal Court.
- 4. The child support obligation may include provisions for: health/medical insurance, out-of-pocket worked-related day care costs and/or extraordinary medical costs.
- 5. If the child support obligation deviates from the child support schedule and/or the recommendations of the Tribal Child Support Program, the amount of support that would have been required and the reasons justifying the deviation.
- 6. The percentage of the year the child resides with each party if the child support obligation is based on shared physical custody.
- 7. The date the child support obligation begins, date and/or conditions under which the child support obligation ends, the frequency of payments and who will receive the child support payments.
- 8. Any recommendation of the Fort Belknap Child Support Program.

9. The amount of any previous child support order including any arrearages and to whom the arrearages are owed.
10. Designation of one of the parties as the primary custodial parent for any tribal/state/federal programs requiring such a designation.
11. Designation of one of the parties as the primary custodial parent if necessary for distribution of Fort Belknap Tribal per capita payments for a Fort Belknap Tribal minor.
12. Designation of which party is to be allowed to claim the child as a dependent for income tax and/or unearned income credit purposes.
13. In default cases, facts supporting service of process of the petition, summons and notice to Respondent.
14. How child support payments may be enforced if necessary and the following information:
 - a. Contact information of payor party's employer.
 - b. Assets which could be attached if necessary for enforcement.
 - c. If there is a spouse entitled to protection in case of a Federal Income Tax Refund Offset.

b. Child Support Order

At a minimum, the Child Support Order shall address the following:

1. A statement that the Tribal Court has subject matter and personal jurisdiction.
2. A statement that the Tribal Court retains continuing, exclusive jurisdiction over welfare of the child(ren) including child support and modification of the child support order.
3. Statement of paternity if paternity had not been previously established.
4. The child support obligation of the parties including:
 - a. The amount of cash or in-kind services or resources to be paid per period and the frequency of payment.
 - b. The additional amount for health/medical care insurance, if any.
 - c. The additional amount for out-of-pocket work-related child care expenses, if any.
 - d. The additional amount for extraordinary medical expenses, if any.
 - e. The date the child support obligation begins and the date and/or conditions under which the obligation ends.
 - f. Whether child support payments will be made by wage withholding or by direct payment to the Fort Belknap Child Support Program, to the other party or to another entity.

- g. The amount of any credit against the child support obligation for benefits paid directly to the minor child or for benefits paid directly to the custodial parent/legal guardian.
- h. If applicable, the amount of child support arrearages based on a previous child support order and to whom the arrearages are owed and provision for payment of the arrearages.
- i. If applicable, a requirement that each parent notify the Fort Belknap Child Support Program of any change of employer contact information or party contact information within ten (10) days of the change.
- j. Designation of one of the parties as the primary custodial parent for any tribal/state/federal programs requiring such a designation.
- k. Designation of one of the parties as the primary custodial parent if necessary for distribution of Fort Belknap tribal per capita payments for a minor enrolled in the Fort Belknap Tribe.
- l. Designation of which party is to be allowed to claim the child as a dependent for income tax and/or unearned income credit purposes.
- m. Statement that the child support order is final for purposes of appeal.

E. CHILD SUPPORT GUIDELINES AND SCHEDULE

1. Purpose and Underlying Assumptions of Child Support Guidelines and Schedule

The Fort Belknap Child Support Guidelines set forth the rules under which a child support obligation is established. The Guidelines set a standard of adequate financial support for children subject to the ability of their parents to pay. The child support is what is minimally sufficient to meet the basic needs of a child for housing, clothing, food, education, health/medical care, and recreation.

The Child Support Guidelines are intended to give specific guidance for evaluating evidence in child support proceedings.

The Fort Belknap Child Support Schedule is a table of levels of cash child support that corresponds to the joint income of both parties with some allowances for children of other relationships that also must be supported by either parent.

The Tribal Child Support Schedule is used according to the Guidelines and is intended to provide consistent treatment of individuals with similar income levels and/or circumstances.

The Guidelines are premised upon the following general assumptions about the cost of raising a child:

1. The costs of raising a child are reasonably related to family income and the proportion of family income allocated to child support remains relatively constant in relation to total household expenditures at all income levels.
2. The Guidelines child support amount is the appropriate average amount of support for a minor child at a given parental income and does not need to be adjusted for the age of the child.
3. The child support amount from application of the Child Support Guidelines is the amount of child support that should be awarded unless evidence establishes that amount is inappropriate. In which case, the Tribal Court would set forth on the record the Guidelines child support amount and the circumstances justifying deviation from the Guidelines.
4. Child support received and the custodial parent's share of support are spent on providing for the child's basic needs.

The Guidelines apply to determination of child support obligations between parents/legal guardians in all judicial proceedings where child support is an issue and the child is under the age of eighteen years or the child is pursuing a high school education or its equivalent up to nineteen years of age. *Support for post-secondary education after age eighteen is RESERVED and may be addressed by an interested party prior to the child turning eighteen years of age and/or completing high school whichever occurs first.*

The Guidelines are based on the following basic principles regarding the parent/child relationship:

1. Both parents share legal responsibility for supporting their child. That legal responsibility should be divided in proportion to the income of the parents under the Child Support Guidelines *independent* of the marital status of the natural parents.

2. Child support for the minor child should be given priority over the needs of the parents or creditors in allocating family resources. A parent's debt should not delay implementation of an appropriate child support obligation and payment.
3. Support shall be determined without regard to the gender of the custodial parent.
4. Rarely should child support obligations be set at zero.

If the monthly income of the payor parent is below poverty-level standards, the Tribal Court should carefully review the incomes and living expenses of the parties to determine the maximum amount of support that can reasonably be ordered without denying a parent the means for self-support at a minimum subsistence level.

There should be a rebuttable presumption that a minimum child support amount of \$25.00 per child per month should be ordered in all cases.

2. Definitions for Use with Child Support Issues

- (a) "Adjusted Gross Income" means gross income minus allowable deductions as specified in this chapter.
- (b) "Basic Child Support Obligation" means the monthly child support obligation of a parent calculated pursuant to the Child Support Guidelines, excluding amounts for day care, health/medical care, and extraordinary expenses.
- (c) "Child" means any child dependent on the financial support of at least one parent for their basic needs and for whom a support order has been established or for whom a duty of support is owed.
- (d) "Child Support Guidelines" means all child support guidelines, schedules, and worksheets approved by the Fort Belknap Tribal Council or its designee.
- (e) "Child Support Order" means any judgment or order of a court ordering payment of a specific or determinable amount of child support and other support including medical, dental, child care or educational support for a child.
- (f) "Child Support Program" means the Fort Belknap Child Support Program which has the authority to determine parentage/paternity; establish or modify child support orders; enforce child support orders for current and child support arrearages; locate obligors and/or their assets; and provide any other services as allowed by federal law and/or the Fort Belknap Tribal Code.
- (g) "Child Support Schedule" means the standards, economic table, worksheets and instructions as defined in the Fort Belknap Tribal Code.
- (h) "Court" means the Tribal Court of the Fort Belknap Tribe of the Fort Belknap Reservation, Harlem, MT.
- (i) "Custodial Parent" shall mean the parent who has been awarded legal custody of the child pursuant to a court order or who exercises physical custody of the child on the basis of an agreement between the parents or the absence of one parent. The term *custodial parent* shall also include a guardian appointed by a court of a competent jurisdiction.

- (j) "Deviation" means a child support amount that differs from the standard child support calculation as based on the Child Support Schedule/Guidelines.
- (k) "Duty of Support" means the duty to provide for the needs of a dependent child which may include necessary food, clothing, shelter, education and health/medical care. The duty includes any obligation to make monetary payments, to pay expenses including spousal maintenance in cases in which there is a dependent child or to reimburse another person or agency for the cost of necessary support furnished for a dependent child. The duty may be imposed by court order, by operation of law or otherwise.
- (l) "Employer" includes the United States government, a state or local unit of government and any person or entity who pays or owes earnings or remuneration for employment to the obligor.
- (m) "Earnings" means compensation paid or payable for personal services or remuneration for employment whether denominated as wages, salary, commission, bonus or otherwise and notwithstanding any other provision of law making the payments exempt from garnishment, attachment or other process to satisfy support or spousal maintenance obligations, specifically including periodic payments pursuant to pension or retirement programs or insurance policies of any type.
- (n) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of the applicable jurisdiction.
- (o) "Income Withholding Order" means an order or other legal process directed to an obligor's employer or other debtor to withhold support from the income of the obligor.
- (p) "Non-cash support" means support provided to a family in the nature of goods and/or services rather than cash, but which nonetheless has a certain and specific fair market dollar value.
- (q) "Obligee" means the person or agency with the right to receive child support payments or the person or agency to whom the right to receive or collect support has been assigned.
- (r) "Obligor" means the person with an obligation to pay child support.
- (s) "Parent" means biological or adoptive parent but does not include persons whose parental rights have been terminated. It also does not include an unwed father who has not acknowledged or established paternity in one of the following ways: being identified as the father on the child's birth certificate, by acknowledging paternity to a court or through a formal paternity proceeding under state or tribal law.
- (t) "Post-secondary education" for the purposes of this chapter means educational instruction sought after having obtained a high school diploma or G. E. D. and includes a four-year degree program, a two-year degree program or a vocational program leading to a degree or certificate of completion.
- (u) "Support order" means a judgment, decree, order or directive whether temporary, final or subject to modification issued by a tribunal for the benefit of a child, a spouse or a former spouse that provides for monetary support, health/medical care, arrearages or reimbursement and may include related costs and fees, interest, income withholding, attorneys' fees and other relief deemed appropriate by the tribunal.

- (v) "Total Child Support Obligation" means the total dollar amount of child support including payment of work-related day care expenses and the child's share of health/medical insurance that the paying party is obligated to pay to meet his/her current financial duty to support his/her child. It also includes and non-cash services or resources the party is required to provide.
- (w) "Tribe" means the Fort Belknap Tribe of Indians of the Fort Belknap Reservation.
- (x) "Tribunal" means a court, administrative agency or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

F. APPLICATION OF CHILD SUPPORT GUIDELINES AND SCHEDULE

The Fort Belknap Child Support Guidelines and Schedule are to be applied as follows:

1. Parties The parties may use the Child Support Guidelines and Schedule in reaching an agreement as to the appropriate amount of child support.
2. Fort Belknap Child Support Program The Fort Belknap Child Support Program shall be guided by the Child Support Guidelines and Schedule in assisting the parties to reach agreement and/or in making child support recommendations to the Tribal Court.
3. Tribal Court The Tribal Court will generally enter an agreed order as provided in Fort Belknap Tribal Code Title V Part XVI in fashioning an appropriate order based on the circumstances of the parties.

G. FORT BELKNAP TRIBAL COURT AND ESTABLISHMENT OF CHILD SUPPORT OBLIGATION

The Tribal Court shall establish the child support obligation including provisions for health/medical care insurance within the following framework:

1. If the parties have proposed a complete agreed child support order, the Fort Belknap Child Support Program has not objected to the proposed order and the Tribal Court finds that the agreement between the parties was entered into *knowingly and voluntarily* and is in the best interests of the child(ren), the Court shall enter the agreed child support order.
2. If the parties have proposed a partial agreed child support order, the Fort Belknap Child Support Program has not objected to the proposed partial order and the Tribal Court finds that the partial agreement between the parties was entered into *knowingly and voluntarily* and is in the best interests of the child, the Court may adopt the partial agreed child support order and
 - a. Adopt any Fort Belknap Child Support Program recommendations for the remaining issues;Or
 - b. Hear evidence on the remaining issues and establish the child support obligation by applying the Fort Belknap Child Support Guidelines/Schedule to the circumstances of the parties.
3. If the Tribal Court finds reason not to accept all or part of the recommendation of the parties or the FBCSP or there is no party agreement or Fort Belknap Child Support Program recommendation, the Tribal Court shall hear the evidence and establish the child support obligation by applying the Fort Belknap Child Support Guidelines/Schedule to the circumstances of the parties.
4. When a payor party owes past child support under a previous child support order, the Tribal Court shall order an additional amount of child support to be paid each month towards the child support arrearages.

If the total child support obligation of current plus arrears exceeds the statutory garnishment amount, any child support collected will be credited to current support.

5. The Tribal Court shall order the method of child support payment it determines appropriate based on the payor party's circumstances and likelihood of payment.

If the Tribal Court orders child support payments to be made directly between the parties, the Tribal Court may order the parties to appropriately record the payment/receipt of child support and to provide that documentation to the Fort Belknap Child Support Program or to the Clerk of the Court on a periodic basis.

H. CALCULATION OF CHILD SUPPORT

1. Determination of Income for Basis of Child Support Obligation

For purposes of the Fort Belknap Child Support Guidelines, income shall include the gross income of NCP and, if applicable, fringe benefits and/or potential income less certain adjustments to gross income.

1. Gross Income means income from any source and includes, but is not limited to:
 - a. Salaries, wages, tips, commissions and regular overtime.
 - b. Business income such as sales of goods, services and products whether legal or illegal.
 - c. Fringe benefits which are significant and reduce personal living expenses (i.e. company car, free housing, room, board, etc.)
 - d. Income from second jobs.
 - e. Predictable recurring income over \$500 annually.
 - f. Lease or rental income.
 - g. Compensation received under a contract.
 - h. Dividends.
 - i. Severance pay.
 - j. Pensions and other retirement benefits.
 - k. Interest, trust income, annuities and capital gains.
 - l. Workers compensation benefits and unemployment insurance benefits.
 - m. Alimony and/or maintenance benefits.

2. Allowable deductions from Gross Income include:
 - a. Tribal taxes of any type.
 - b. Federal and state income taxes.
 - c. Social Security (FICA) deductions.
 - d. Mandatory pension plan payments.
 - e. Mandatory union or professional dues.
 - f. State industrial insurance premiums.
 - g. Normal business expenses allowable under IRS rules and included in federal and state income tax filings.
 - h. Self-employment taxes for self-employed persons.
 - i. Voluntary contributions to 401k plan up to \$2000/year or 3 % of Gross Income whichever is the larger.
 - j. Actual child support, day care, medical expenses paid for other children.
 - k. Monthly rent with actual receipts.

3. Disclosure Required: The following must be disclosed and the Tribal Court will determine whether or not the monies are included in "income":
 - a. Disability insurance benefits.
 - b. Disability and/or retirement benefits to or on behalf of a child.
 - c. Social Security income of any type.
 - d. Income from a spouse or other adult in the household.
 - e. Public Assistance benefits including but not limited to TANF cash assistance, general assistance benefits, SSI, food stamps or other means-based benefits whether in the form of cash assistance or goods and services.
 - f. Child support received by a parent for support of other children in the household.

- g. Funds from gifts and prizes including gaming winnings.
 - h. Proceeds from property sales.
 - i. Severance pay.
 - j. Monetary judgments.
 - k. Trust income related to per capita and/or individual's share in BIA controlled trust assets.
 - l. Tribal per capita from any source.
 - m. Trust income related to per capita and/or an individual's share in Bureau of Indian Affairs controlled trust assets.
 - n. Educational grants, scholarships and other financial aid
 - o. Regular bonuses.
 - p. Veteran's benefits received.
4. Overtime and Second Job Income may be excluded from gross income providing the party demonstrates and the Tribal Court finds:
- a. The excess employment is voluntary and not a condition of employment.
 - b. The excess employment is in the nature of additional, part-time employment or is employment compensable as overtime pay for the hour/fraction of hour.
 - c. The party's compensation structure has not been changed for the purpose of affecting a child support obligation.
 - d. The party is otherwise paid for full-time employment at least 48 weeks per year.
 - e. Child support payments are calculated based upon current income.
5. Potential or Imputed Income may be attributed to a party in the absence of financial income or if a parent is voluntarily unemployed or underemployed. Potential income will not be attributed to a parent who is physically or mentally incapacitated. A parent shall not be deemed underemployed if gainfully employed on a full-time basis at the same or similar occupation in which he/she was employed for more than six (6) months prior to filing any child support related action. Ordinarily, a parent shall not be deemed underemployed if the parent is caring for a child under the age of six (6) months.

Potential or imputed income may be determined by any of the following methods:

- a. Parent's work history, occupational qualifications, prevailing job opportunities and earning levels in the community.
 - b. If the parent is a student, potential monthly income during the school term may be determined by considering student grants, loans and other financial aid in addition to any part-time employment.
 - c. Reasonable monetary income from assets which have voluntarily been transferred or placed in a condition or situation to reduce earnings.
6. Calculation of income in default cases: In the absence of financial information from the defaulting parent, his/her income will be based on prevailing community job opportunities defined as the exterior boundaries of the Fort Belknap Reservation and learning levels from someone of his/her known work history and/or occupational qualifications. At a minimum, the defaulting parent's income will be imputed at the state minimum wage working a forty (40) hour week.
7. Support of Other Children:

- a. A deduction shall be allowed from Net Income when a natural or adopted child of another relationship resides in the home of either parent. The deduction shall be the Guideline support amount calculated for that child using only that parent's income.
- b. A deduction shall be allowed from Net Income for child support payments actually paid with or without a court order for the support of a child from another relationship providing the parent has established a regular pattern of payment.
- c. In a proceeding to modify an existing order, children who are born or are from other relations or who are adopted after the entry of the existing order shall be considered in determining an appropriate child support order.

2. Non-Cash Services and Resources

The providing of non-cash services and resources to the minor child and/or custodial parent/legal guardian is consistent with Fort Belknap Tribal culture, customs and traditions. However, the providing of non-cash services and resources in lieu of monetary child support is difficult to monitor and guarantee.

The primary purposes for the use of non-cash services and resources in lieu of cash child support payments would be to strengthen the bond between the child and the non-custodial parent and/or if the payor parent had no other means to contribute to the financial well-being of the minor child.

Non-cash services and resources are NOT a substitute for meeting one's cash/financial obligation of child support and will only be allowed under the following circumstances/ guidelines:

1. The parties agree to the specific non-cash services and resources to be provided by the payor party.
2. When the non-custodial parent's income is below the minimum income level for ordering cash child support under the Fort Belknap Child Support Schedule.
3. When the non-custodial parent's income is insufficient to cover his/her obligations for the total number of children from all relationships.
4. When the non-custodial parent is a teenager enrolled in school and/or an educational program.
5. When the non-cash services and resources are regular, reliable and have a current fair market value.
6. The child support order specifies the quantity, quality, condition and frequency of non-cash services and resources in lieu of an actual cash child support payment.
7. Contributions to the support of the minor child from members of the non-custodial parent's extended family *may* be credited towards the non-custodial parent's obligation if the court-identified criteria are met.
8. Non-cash services and resources may include but are not limited to:
 - a. Children's clothes and diapers if pre-school age.

- b. School clothes and school supplies if school age.
- c. Car or home maintenance or repair.
- d. Burnable firewood, fish, shellfish, wild game or berries, but only upon agreement of the parties.
- e. Pow wow regalia.

Non-cash services and resources may not be ordered to pay support obligations permanently assigned to a tribal, state or federal government or to any other entity.

The court provides in the written order that the obligor may satisfy the set child support obligation with non-cash for a maximum of three consecutive months.

The Tribal Court shall assign a cash value to all non-cash services and resources using current market rates for similar goods and services in the local area defined as the exterior boundaries of the Fort Belknap Reservation. This cash value assignment and a method of payment receipt and recording shall be included in the child support order.

Cash values for all non-cash services and resources are subject to tribal fiscal year annual review/modification.

3. Work-Related Child Care Costs

A basic child support obligation does not cover reasonable work-related child care costs. The Tribal Court may order a sharing of reasonable work-related child care expenses incurred by either party in proportion to the parental Guidelines income.

Reasonable day care costs are defined as the cost of day care provided through the Fort Belknap Tribe's Early Childhood Learning Center unless the parties present a different day care cost figure to the court for consideration.

If work-related child care costs are ordered, this payment shall be paid directly between the parties unless other arrangements have been agreed to and approved by the court.

Court ordered work-related child care costs are due and payable in the month they are incurred. Work-related child care costs become a judgment if not paid within thirty (30) days of the month in which they are incurred and the judgment amount is added to the amount of child support arrearages owed by the obligor party.

The Tribal Court may consider whether the federal child care tax credit for work-related child care costs is available as a benefit to a parent.

4. Transportation Costs

If the parents/legal guardians live a significant distance from each other, the Tribal Court may order an allocation of transportation costs and responsibilities between the parents after considering all relevant factors which may include the following:

1. The financial resources of the child.
2. The financial resources, needs and obligations of both parents.
3. Costs and difficulties to both parents in exercising visitations with the child.
4. The reasons for the parent's relocation at a significant distance from the child.
5. Any other factors the court deems relevant.

5. Federal and State Tax Benefits

The actual federal and state income tax benefits realized by a party entitled to claim the child as a dependency exemption shall be considered by the Tribal Court in making a child support award.

The parties may agree to an allocation of the child as a dependency exemption.

Otherwise, the Tribal Court shall assign the dependency exemption to the parent who has the greater tax benefit based on the Child Support Guidelines, parental income and marital status at the time of the child support award calculation.

The Tribal Court shall issue a Federal/State Tax and/or Child Tax Credit Order separate from the Tribal Court Child Support Order.

6. Minor Child's Per Capita Payment Distribution

Unless otherwise ordered by the Tribal Court, the tribal per capitas of an enrolled Fort Belknap minor go to him/her in care of the custodial parent/legal guardian.

The Tribal Court shall issue a Minor Child's Per Capita Payment Distribution Order separate from the Tribal Court Child Support Order.

7. Health/Medical Insurance and Out-of-Pocket Medical Expenses

a. Health/Medical Insurance: The Tribal Court shall include a provision for health/medical insurance for the child in every child support order.

b. Insurance Available through Employment:

When health/medical insurance is available at reasonable cost through one or both parties employment or union, that party (or both parties) shall provide coverage for the child.

1. When child support is actually ordered, *Reasonable Costs* means that the child's portion of the health/medical insurance premium is less than or equal to twenty-five (25%) percent of the actual child support obligation of the payor parent.
2. When child support of \$0/or no child support is actually ordered, *Reasonable Costs* means that the child's portion of the health/medical insurance premium is less than or equal to twenty-five (25%) of the actual child support obligation of the payor parent if one had been ordered.
3. If health/medical insurance is not available to either party at reasonable costs, a \$0 health/medical insurance order shall be entered and either or both parents shall be responsible for seeing that the child receives health/medical services through a state Medicaid and/or Indian Health Services program.

c. Actual Out-of-Pocket Health/Medical Expenses:

The actual cost paid by either party for health/medical insurance or for health care expenses not covered or paid in full by insurance or Indian Health Services including, but not limited to medical, optical, dental, orthodontic, prescription drug, counseling, psychiatric, psychological,

special education, addiction treatment and/or counseling shall be prorated between the parents in proportion to their Child Support Guidelines income.

1. These payments shall be in addition to the basic child support obligation and will be paid directly between the parties unless otherwise agreed to or ordered by the court.
2. The pro rata share of the monthly insurance premium may be either a credit against or in addition to the basic child support obligation.

d. Extraordinary Out-of-pocket Health/Medical Expenses

Any claimed health/medical expenses identified in Section 9-8.03.07 (3) whether or not covered by insurance which would result in an actual out-of-pocket expense of over \$500 to the parent who did not incur or consent to the expenses must be approved in advance in writing by both parties or by prior court order.

1. Relief may be granted by the Tribal Court for failure to comply with this provision under extraordinary circumstances.
2. The Tribal Court may apportion the incurred expense in some percentage other than that in the existing child support order and in so doing may consider whether consent was unreasonably requested or withheld.

8. Income Verification

In all child support related cases (contested, uncontested or agreed), the Tribal Court's approved Affidavit Verifying Income and Child Support Worksheets shall be filed with the Tribal Court. See also Fort Belknap Tribal Code

The Fort Belknap Child Support Program and/or the Tribal Court may request specific income verification documents such as income tax returns with attachments, pay stubs, business payment and receipt documents.

The Affidavit Verifying Income and Child Support Worksheets shall be placed in the Tribal Court case file, will be confidential and used for the sole purpose of child support determination.

In any child support order the Tribal Court may require the periodic exchange of documented income information between the parties by any reasonable means.

9. Deviation from the Child Support Guidelines and Schedule

It is against the public policy of the Fort Belknap Tribe to establish or enforce a non-voluntary child support order outside the income level of the parties as calculated under the Fort Belknap Tribal Child Support Guidelines/Schedule.

The Fort Belknap Child Support Program may recommend, the parties may agree and/or the Tribal Court may order a child support obligation set outside the Child Support Guidelines/Schedule, but such a deviation must be supported by the Tribal Court with written findings stating the amount of support that would have been required under the Child Support Guidelines/Schedule and the basis for the court's deviation from that child support amount.

The Fort Belknap Tribal Court may order child support in an amount higher or lower than that provided in the Child Support Schedule/Guidelines if one or more of the following are met:

1. The party requesting a deviation shows by a *preponderance of the evidence* that application of the Child Support Schedule would cause substantial hardship to a parent or to the child.
2. Deviation is in the best interest of the child based on the child's specific needs.
3. A parent possesses wealth not factored into the determination of the parent's gross monthly income including but not limited to savings, investments, real estate holdings, business interests, vehicles, boats, pensions, bank accounts, insurance plans and/or other assets.
4. Another adult or spouse contributes to a parent's household expenses.
5. The total amount a parent is required to pay under the Child Support Guidelines/Schedule and/or under existing child support orders for children from other relationship, exceeds fifty (50) percent of the parent's net monthly income.

Unemployment or underemployment shall not constitute substantial hardship for purposes of deviation from the Child Support Guidelines/Schedule where the Court determines the person is voluntarily unemployed or has declined to accept or pursue reasonably available employment opportunities.

See also imputed income section above.

The Tribal Court may also consider whether a payor parent can provide in-kind resources and services with a monetary value equal to at least part of the recommended child support obligation before deviating from the Child Support Guidelines/Schedule.

I. ESTABLISHMENT AND TERMINATION OF A CHILD SUPPORT OBLIGATION

1. Establishment of a Child Support Obligation

Establishing a child support obligation for a period prior to the date of filing a petition for child support is contrary to Fort Belknap Tribal Code, policies and procedures.

In every case where child support is ordered for any period prior to the date of filing a petition for child support, the Tribal Court must issue written findings stating the time period for which child support is being ordered, the amount of child support that is being ordered and the basis for ordering child support for the period prior to filing a petition for child support.

2. Termination of Current Child Support Obligation

A parent's current financial obligation for a child terminates upon:

1. The death of the child.
2. The death of the parent obligated to pay support although the estate of the parent may continue to have an obligation to pay child support on behalf of the deceased obligor parent.
3. A child is eighteen years old or if the child is still enrolled in high school, until graduation or the child turns nineteen whichever occurs first, or the child is otherwise emancipated under the Fort Belknap Tribal Code or the laws of another jurisdiction.

The child support obligation terminates at the end of the month in which the financial duty terminates.

3. Child Support Arrearages

Child support arrearages includes past due child support and past due court-ordered work-related day care costs and out-of-pocket health/medical insurance costs. Court-ordered child support, work-related day care costs and out-of-pocket health/medical insurance costs become judgments added to child support arrearages if they are not paid within thirty (30) days of the month in which they are incurred.

- a. Child support arrearages owed to the custodial parent are collectable by that party until paid in full.
- b. Child Support arrearages owed to the Fort Belknap Tribe are collectable until the Fort Belknap Child Support Program determines that it is no longer cost effective to attempt collection on the child support arrearages. Attempts to collect child support arrearages owed to the Fort Belknap Tribe shall be for a period no less than ten (10) years beyond the date the child turned eighteen (18) years of age.
- c. Child support arrearages owed to another state or child support program are collectable under the applicable code of that jurisdiction. The Fort Belknap Child Support Program will attempt to comply with all intergovernmental child support agency requests for collection of child support arrearages.

J. DEFAULT ORDERS

1. Policy in Child Support Matters

Entering a default order of child support is against the public policy of the Fort Belknap Tribe.

However, if Respondent is properly served under Fort Belknap Tribal Code Title V, Part VIII and fails to appear at any time not waived by the court, the Tribal Court may, if no good cause to the contrary exists, enter a child support order which shall be served on Respondent personally or by certified mail/return receipt requested to Respondent's last known address.

2. Procedure for Entry of Child Support Orders by Default

If Respondent fails to file a response or otherwise fails to appear or defend in a child support action, a party may file a motion supported by an affidavit requesting a default order.

The Tribal Court may enter a default child support order if it finds:

- a. The Court has subject matter and personal jurisdiction over the parties.
- b. The Respondent was properly served under Fort Belknap Tribal Code Title II.
- c. The Petitioner has stated, under oath, why the Petitioner believes the Respondent is the natural parent of the child.
- d. The Fort Belknap Child Support Program recommendation or the financial information filled by Petitioner or the Fort Belknap Child Support guidelines/Schedule supports establishment of the support obligation ordered by the court.
- e. The default order shall be served on Respondent personally or by certified mail/return receipt requested to Respondent's last known address with an affidavit of service filed with the Tribal Court Clerk's Office.
- f. The default order shall take effect 5 days after service, unless, within that time, the Respondent presents to the Tribal Court evidence of good cause for his/her failure to appear.

3. Setting Aside of Default Child Support Order

The Tribal Court may set aside a default child support order upon a showing of good cause.

K. GARNISHMENT OF TRIBAL PER CAPITAS FOR PAYMENT OF CHILD SUPPORT OBLIGATION

It is the policy of the Fort Belknap Child Support Program to seek garnishment of Fort Belknap Tribal member per capita payments in accordance with Fort Belknap Tribal resolutions, adopted Law & Order Code and/or accepted tribal policies and procedures regarding tribal member per capita garnishments .

If the Fort Belknap Child Support Program seeks to garnish a tribal member's per capitas, it shall do so by initiating a legal court action with proof of proper service in accordance with Fort Belknap Tribal Code Title II.

The Fort Belknap Child Support Program may enter into a stipulated agreement with a Fort Belknap tribal member wherein the obligor party may voluntarily and knowingly agree to the garnishment of up to fifty (50) percent of his/her tribal per capita for the payment of child support arrearages.

Per capita garnishments for payment of current child support arrearages shall not exceed fifty (50) per cent of a tribal per capita payment *unless* a Fort Belknap Tribal resolution or the applicable Fort Belknap Tribal Law & Order code section allows for more than fifty (50) per cent of a tribal per capita payment, and such garnishments cannot be used to pay a future child support obligation.

Any stipulated agreement between the Fort Belknap Child Support Program and a tribal member regarding garnishment of Fort Belknap Tribal per capitas must be put on the record at a court hearing and the Tribal Court must make a finding that the obligor parent knowingly and voluntarily agreed to the garnishment of his/her tribal per capitas for payment of a child support obligation.

Such stipulated agreement shall be binding on the obligor parent until such time as the child support obligation terminates in accordance with Fort Belknap Tribal Code Title V Part V or the Tribal Court enters an order revoking the garnishment of the obligor parent's tribal per capitas for payment of a child support obligation.

L. RECOGNITION OF FOREIGN JUDGMENTS AND INTERGOVERNMENTAL CASE PROCESSING

1. POLICY

The Fort Belknap Child Support Program will extend the full range of services available in responding to all requests from and cooperate with other State and Tribal IV-D child support programs so far as allowed under the Fort Belknap Tribal Code, Policies and Procedures and so long as the requests do not violate Tribal public policy.

2. FULL FAITH AND CREDIT FOR FOREIGN CHILD SUPPORT ORDERS

- a. Properly issued court and administrative orders, judgments or decrees of other Indian tribes, states or federal agencies that relate to child support will be given full faith and credit pursuant to 28 U.S.C. 1738B.
- b. Such orders will be considered properly issued when the issuing court or administrative agency had:
 1. Personal jurisdiction over the person claimed to be bound by the foreign order;
 2. Subject matter jurisdiction over the matter;
 3. Proper service of process under the law of the issuing jurisdiction was made on such person;
 4. The order was issued according to the laws of that jurisdiction; AND
 5. The order does not violate the public policy of the Fort Belknap Tribe.
- c. A foreign order is authenticated by reasonable proof that the document tendered to the Clerk of the Court is a true copy of the foreign order as it is recorded in the agency or court of the issuing jurisdiction.
 1. A certified copy of the original order from the issuing court shall constitute sufficient evidence of authenticity.
 2. Unless defects in jurisdiction are apparent on the face of the foreign order, the person contesting enforcement of the order has the burden of proving that the order is not valid.
- d. At the request of any party, the Tribal Court shall adopt a court order from a foreign jurisdiction that establishes child support as a Fort Belknap Tribal Court order if the party requesting the Court adopt the order:
 1. Moves the Tribal Court for adoption of the order and properly serves the other party/parties with the motion;
 2. Attaches to the motion an authenticated copy of the order; and
 3. On its face, there are no defects in personal and/or subject matter jurisdiction.

- e. The Court shall enforce the foreign order unless the non-moving party responds to the notice for recognition of the order as a foreign judgment and timely contests it.
 1. The person contesting the foreign child support order has the burden of proving that the order should not be recognized for enforcement in the Fort Belknap Tribal Court.
 2. When a foreign order is invalid by reason of a lack of personal jurisdiction in the agency or court of the issuing jurisdiction, the Tribal Court may adopt some or all of the provisions of the order as an original order of the Court to the extent that it does not violate the public policy of the Fort Belknap Tribe.

3. Procedure for Recognition and Enforcement of Foreign Judgments

- a. Proper filing of a petition or motion for recognition of foreign judgment with the Fort Belknap Tribe shall be accomplished when the petitioner has paid all necessary court filing fees and delivered to the Tribal Court a petition or motion with a document, that on its face, is a true copy of the foreign order as it is recorded in the agency or court of the issuing jurisdiction.
- b. The other party shall be served with a copy of the petition with attachments and a summons indicating how he/she is to respond.
- c. Upon proof of service in accordance with Fort Belknap Tribal Code Section 9-6.06.05, the matter shall be set for hearing not less than thirty (30) days after the date of service if the other party is served on the Fort Belknap Reservation and not less than sixty (60) days after the date of service if the other party is served off the Fort Belknap Reservation.
- d. Failure to appear as directed by the summons or failure to respond to the petition requesting the Tribal Court to recognize **and enforce** the foreign judgment once personal jurisdiction over the defendant has been obtained shall not prevent the Tribal Court from addressing the issue of foreign order recognition.

4. Federal Income Tax Refund Offset

- a. The Fort Belknap Child Support Program has authority to:
 1. Receive funds certified by a state under the Federal Income Tax Refund Offset Program and owed on a Fort Belknap Child Support case;
 2. Request that a state certify a Fort Belknap Child Support case to the Federal Income Tax Refund Offset Program;
 3. Certify a Fort Belknap Child Support case to the Federal Income Tax Refund Program.
- b. The Fort Belknap Child Support Program may assist Fort Belknap tribal families with filing claims with the Federal Income Tax Refund Offset Program when appropriate.

5. Federal or State Benefits/Payments

The Fort Belknap Child Support Program has authority to take all necessary steps and to enter into all necessary agreements with states and the federal government to allow it, the Tribal Court or a Fort Belknap tribal family to intercept, attach or receive a payor party's federal or state unemployment compensation payments, labor and industry payments, and allowable Social Security benefits.

M. MODIFICATION OF CHILD SUPPORT ORDERS

1. Modification of Fort Belknap Tribal Court Child Support Orders

- a. Any party may petition the Tribal Court for modification of a child support order. A petition for modification shall be supported by an affidavit setting forth the facts showing a **significant/substantial** change of circumstances justifying a modification of the existing child support order.
- b. The petition for modification shall require the other parent/party to appear and show cause why the existing child support order should not be modified. The order to appear and show cause together with a copy of the petition and affidavit shall be served by the petitioning party on the other parent/party in accordance with Fort Belknap Tribal Code Title V Part V Section 9-6.06.05.
- c. Both parties Noncustodial Parent (NCP) shall file updated financial information forms with the CSP before a court at least ten (10) days before the modification will be considered. hearing unless:
 1. The modification is agreed to between the parties and no objection to the proposed modification is raised by the Fort Belknap Child Support Program.
 2. A party is not required to provide his/her financial information to the court if the party has made full and complete financial disclosure to the Fort Belknap Child Support Program and the Program certifies that it has reviewed the financial information and its recommendation, if any, is based upon that financial information.
- d. The modification hearing shall be set not less than twenty (20) days after the date of service if the other party is served on the Fort Belknap Reservation and not less than sixty (60) days after the date of service if the other party is served off the Fort Belknap Reservation.
- e. Child support orders may be modified for future support only.
 1. A child support order modified by the court may be effective retrospectively and calculated back to a date NO earlier that the date the paying party was served providing the hearing was held within a reasonable time after proper service was accomplished.
- f. The amounts of past due support may NOT be modified except as provided for in Fort Belknap Tribal Code Title V Part V.
- g. A finding of a *significant/substantial change of circumstances* justifying a modification of an existing child support order must be made by the Tribal Court before entering a modified child support order.
 1. The following is a non-inclusive list of circumstances that MAY justify the finding of a *significant/substantial change of circumstances* to modify an existing child support order:
 - a. There is a significant change in the income of the payor party resulting in a change of the child support obligation of no less than \$50.00/month.
 - b. The existing child support order was entered at least twelve (12) months ago.

- c. The existing child support order works a severe economic hardship on either party or the child.
 - d. There has been a significant change in the needs of the child.
 - e. There is a substantial change in the payor party's wealth or possession of wealth from any source.
 - f. The child for whom child support is ordered receives extraordinary income from any source.
 - g. There is a change in the residential/custodial schedule of the child.
 - h. The payor parent did not receive credit in the child support calculation for support actually paid for children from other relationships.
2. The following is a non-inclusive list of circumstances that in and of themselves do NOT justify a finding of a *significant/substantial change of* circumstances to modify an existing child support order:
- a. The payor party is voluntarily unemployed or voluntarily underemployed unless that employment status has existed for a minimum of twelve (12) months in which case the new employment status may be considered as a change in employment/occupation.
 - b. The receiving or custodial party receives a wage or salary increase.
 - c. The marriage or remarriage of either party.
 - d. Either party becomes responsible for a child or children born after entry of the child support order.

2. Modification of Foreign Court Child Support Orders

- a. The Tribal Court may modify a foreign court order that it has recognized as a foreign judgment if it would otherwise have jurisdiction to enter an original child support order AND
 - 1. The foreign court no longer has continuing, exclusive jurisdiction because none of the parties reside in that jurisdiction or in the case of a tribal court order, the child is no longer a member of the tribe issuing the order
 - Or
 - 2. Both parties consent to the Fort Belknap Tribal Court assuming jurisdiction.
- b. The Tribal Court may modify a foreign administrative child support order if it has jurisdiction and the court finds that modification of the child support order is in the best interests of the child for whom support is sought.
- c. A party may request modification of a foreign child support court or administrative order by filing the appropriate pleadings with the Tribal Court and attaching a copy of the foreign order.
- d. A modification order under this provision shall be for future support only.

- e. The amounts of past due support may NOT be modified except as provided for in Fort Belknap Tribal Code Title V Part V

3. Modification of Past Child Support Owed to Custodial Party

- a. Past child support owed to a custodial party/parent may only be reduced by agreement of the parties.
- b. When the parties agree to a reduction or forgiveness of past child support owed to a custodial party/parent, they shall file a formal notarized statement with the Tribal Court stating the terms of the agreement and submit a proposed order.
- c. The Tribal Court shall enter the proposed order if it finds that the agreement is not the result of coercion, threat or undue influence and the Fort Belknap Child Support Program does not object on the basis that the agreement includes monies and/or time periods where the custodial party/parent was receiving tribal or state assistance.

4. Modification of Past Child Support Owed to a Government

- a. The Tribal Court may grant a reduction or forgiveness of past child support owed to any tribe or state government for reimbursement of monies the custodial party/parent received while on tribal or state assistance ONLY IF the reimbursement payment of the past debt would create a substantial hardship AND the governmental entity to whom the money is owed agrees.
- b. Substantial hardship includes but is not limited to the following non-inclusive list:
 - 1. The child on whose behalf the debt accumulated is now living and is supported by both parents who have reunited; or
 - 2. The child on whose behalf the debt accumulated is now living with and is supported by the parent owing the child support debt; or
 - 3. The parent owing past support debt is complying with the current child support obligation for the child on whose behalf the past debt accumulated and he/she has insufficient resources to pay both the current and past support; or
 - 4. The child on whose behalf the past debt accumulated is over 18 years of age, is not currently enrolled in school and the payment of the debt would significantly burden the payor party's ability to support the payor or his/her family.
- c. Attempting to modify past child support owed to a government under Fort Belknap Tribal Code Chapter 9 does not preclude the payor party from availing him/herself of other governmental remedies to reduce past child support owed which may be available under that government's statutes, regulations, and/or administrative procedures.

5. Petition for Reduction of Past Child Support

- a. A Petition for Reduction of Past Child Support Debt shall be filed on a form approved by the Tribal Court which shall contain the following information:

1. The name, address, tribal affiliation, date/place of birth and Social Security number of the payor parent; the child for whose benefit child support was ordered and the party to whom child support is owed;
 2. If the debt is owed to a government for reimbursement for public assistance, the name and address of the appropriate government entity is to be included;
 3. A copy of the child support order under which the debt accumulated;
 4. The total amount of the past child support debt for this as well as all other parties to whom past child support is owed;
 5. The amount of the proposed reduction of the past child support debt;
 6. The reason(s) why the past child support debt should be reduced or eliminated;
 7. The Petitioner's financial declaration; AND
 8. The recommendation of the Fort Belknap Child Support Program if the debt is owed to the Tribe OR the recommendation of the government entity if the debt is owed to another tribe or state OR the recommendation of the other party/parent if the debt is owed to the custodial party.
- b. The petition and summons shall be served on the appropriate government agency. The person who assigned the child support rights to the government need not be made a party if the entire child support debt is owed to a tribal or state government.
- c. A copy of the petition and summons shall also be served on the Fort Belknap Child Support Program which shall provide its recommendation to the Tribal Court if appropriate.

6. Order on Petition for Reduction of Past Child Support

- a. After a hearing on the petition, the Tribal Court shall enter findings of Fact/Conclusions of Law and a separate order.
- b. The Findings of Fact/Conclusions of Law shall address the following:
 1. Personal and subject matter jurisdiction;
 2. The total amount of past child support owed to all parties/entities;
 3. The basis for the court's decision;
 4. The amount of the reduction, if any; and
 5. The conditions for reducing the past child support owed which can include timely payments of current support as well as timely payments on the child support arrears not forgiven.
- c. The order shall include:
 1. The authority for the Court's jurisdiction;

2. The total amount of the child support debt owed to all parties/entities;
3. The amount of reduction of the child support debt if any; and
4. The conditions, if any, upon which the reduction of the past child support debt is contingent.

N. CIVIL CONTEMPT FOR FAILURE TO PAY CHILD SUPPORT

1. Civil Contempt Authorized

The Fort Belknap Tribal Court is authorized to hold civil contempt proceedings to encourage non-compliant payor parties to comply with child support orders.

2. Civil Contempt Procedures

Civil contempt for willful non-compliance with a child support order shall be initiated by the filing of a motion for an order to show cause with the Fort Belknap Tribal Court. The motion for an order to show cause shall be a supplementary proceeding in an underlying child support case in Tribal Court.

Both the motion for an order to show cause and an order to show cause must contain specific allegations sufficient to allow the payor party to prepare a defense at the show cause hearing.

The motion for an order to show cause must be supported by an affidavit by a non-payor party alleging the specific provisions of the child support order that have been violated and set forth the payor party's payment history during the applicable time period at issue.

The payor party must be served with a copy of the motion for an order to show cause, the supporting affidavit and the order to show cause with notice of the date and time of the show cause hearing.

Service on the payor party shall be by personal service or by certified mail/return receipt requested with delivery restricted to addressee. The Tribal Court must have proof of actual notice to the payor party in order to issue a bench warrant for failure to appear at the show cause hearing.

The Tribal Court is authorized to issue a bench warrant directing the Fort Belknap Tribal Police to arrest a payor party who has been properly served with an order to show cause and who fails to appear at the show cause hearing. Bail shall not be ordered in an amount exceeding the amount of child support alleged to be due and owing.

3. Civil Contempt – Show Cause Hearing

When a non-payor party makes a prima facie case of contempt due to non-compliance of a child support order, the burden of proof shifts to the payor party. The payor party must show by clear and convincing evidence an inability to pay or present some other defense.

Civil contempt occurs when the failure to comply with a child support order is willful and contemptuous. Contempt cannot be ordered as a result of an inability to pay.

In order to find someone in civil contempt for failure to comply with a child support order, the Tribal Court must find:

- a. The Tribal Court had personal and subject matter jurisdiction;
- b. The child support order underlying the civil contempt proceeding is valid;
- c. The payor party had actual knowledge of the child support order;
- d. The payor party had the ability to comply with the child support order; AND

- e. The payor party was willful in his/her non-compliance of the child support order.

4. Civil Contempt – Remedies

- a. The Tribal Court shall be authorized to impose the following civil contempt remedies upon a finding of civil contempt under this Chapter:
 - 1. Incarceration;
 - 2. Fines up to the amount of child support arrearages, but not to exceed \$500.00 per child.
- b. A finding of civil contempt may lead to the imposition of remedial and/or coercive remedies which the Tribal Court is authorized to impose by setting conditions that allow individuals found to be in contempt to purge themselves of the contempt ruling. Purge conditions ordered by the court shall:
 - 1. Serve a remedial purpose;
 - 2. Be clearly specified;
 - 3. Be reasonably related to the cause and nature of the contempt; and
 - 4. The person found in contempt should be able to fulfill the condition(s).
 - a. Fines and/or incarceration shall continue until the payor party complies with the purge conditions or if the Tribal Court finds that confinement has lost its coercive intent. The payor party has the burden of proving that there is no a substantial likelihood that continued confinement will accomplish its coercive intent.
- c. The Tribal Court shall not use the remedy of incarceration if the child(ren) that are the subject of the child support order are no longer minors.

5. Bail Forfeiture

- a. The Tribal Court shall have authority to apply a payor party's bail money to current and/or child support arrearages when the payor party has posted the bail to obtain release on a bench warrant for failure to appear at the order to show cause hearing.
- b. The request for bail forfeiture shall be by motion with a supporting affidavit. The payor party is entitled to a hearing on the issue of bail forfeiture which may be held at the same date/time as the show cause hearing for non-compliance with a child support order.
- d. The obligor has the burden of showing by clear and convincing evidence why the posted bail should not be forfeited and applied to current and/or child support arrears.

6. Show Cause Requirements

A show cause order requiring the personal attendance of a party to be examined in open court and in orders to show cause for civil contempt shall include the following words in capital letters:

YOUR FAILURE TO APPEAR AS SET FORTH AT THE TIME, DATE AND PLACE THEREOF MAY CAUSE THE TRIBAL COURT TO ISSUE A BENCH WARRANT FOR YOUR APPREHENSION AND CONFINEMENT IN JAIL UNTIL SUCH TIME AS THE MATTER CAN BE HEARD, UNLESS BAIL IS FURNISHED AS PROVIDED IN SUCH BENCH WARRANT.

7. Bench Warrant

- a. In the event the payor party fails to appear for examination in response to a Motion to Show Cause for Failure to Pay Child Support, the Tribal Court may issue a Bench Warrant for the payor party's arrest upon petitioner's motion PROVIDED that proof of service on the payor party's of the order to appear at the show cause hearing has been filed.
- b. Such Bench Warrant shall provide bail in the amount of \$500.00 unless the total judgment, including costs and fees is less than \$500.00 in which case bail shall be set at the lesser amount.
- c. Upon arrest on a Civil Bench Warrant, the defendant shall be released by the jail upon posting the bail amount in cash. The jail shall require the defendant to sign a release form to appear in the Fort Belknap Tribal Court the next day the Tribal Court is open to set a court date. The Clerk of the Court shall set a new date and time for the Motion to Show Cause/Motion for Civil Contempt for Failure to Pay Child Support and notify all parties.
- d. At the show cause/contempt hearing, the Tribal Court shall exonerate or otherwise order the disposition of the bail.

O. SUPPLEMENTAL PROCEDURES – FORT BELKNAP CHILD SUPPORT OFFICE FOR ESTABLISHMENT AND/OR MODIFICATION OF CHILD SUPPORT ORDERS

a. Client Application for Child Support Order Services

1. The Fort Belknap Child Support Program will follow its standard application for services process as outlined in Chapter IV of its policy and procedures manual for all requests for the establishment of an initial child support order, for the recognition/enforcement of a foreign child support order and for the modification of an existing child support order in accordance with Fort Belknap Tribal Code and FBCSP Policies and Procedures as outlined above.
2. All applications for establishment of initial child support, recognition/enforcement of a foreign child support order and for the modification of an existing child support order are to include appropriate financial information in order for FBCSP staff to evaluate the client request and to appropriately apply the Fort Belknap Child Support Guidelines/Schedule.
3. Failure of any party to provide the FBCSP Office with requested financial information/documents in a timely manner may result in that party's income being imputed for purposes of determining an appropriate child support obligation for the parties.
4. The assigned Child Support Case Specialist will review all party financial information/documents and do an initial child support calculation in accordance with the Fort Belknap Tribal Code and Child Support Guidelines/Schedule and present to director for signature.
5. Calculations and recommendations will be provided to the FBCSP
6. The Fort Belknap Child Support Program child support recommendations will be presented either orally and/or in writing to the Fort Belknap Tribal Court at the time of the child support hearing. Fort Belknap Child Support Program recommendations will include the actual child support schedule/guidelines calculations and other relevant information so that the Tribal Court can make an informed decision.

b. Reviews of the Child Support Guidelines/Schedule

Policy

The Fort Belknap Child Support Guidelines will be reviewed at least once every four (4) years beginning June 2013 and will be revised if appropriate.

Procedure

1. The FBCSP Director will notify the Chief Judge of the Fort Belknap Tribal Court of the need to review the child support guidelines/schedule at least six (6) months prior to when a review is required by the Fort Belknap Tribal Code.
2. The FBCSP Director with approval from the Chief Judge will organize a guidelines review workgroup. Recommended workgroup members include: FBCSP representation, tribal court staff/judge, TANF representation, Tribal Social Services representation, community representation.
3. FBCSP Director will be the workgroup chairperson with the responsibility to ensure that the child support guidelines/schedule is reviewed, that appropriate revisions are circulated to interested stakeholders for review and input and that the proposed revisions are ratified by the Fort Belknap Tribal Council in accordance with their approval process.
4. The FBCSP Director and/or his/her designee is also responsible for making any and all necessary changes to the FBCSP Policy and Procedures Manual to bring it in compliance with Tribal Council approved code changes and to provide updated instructions to FBCSP staff regarding the code, policy and procedure changes.