

**TITLE 9**  
**DOMESTIC RELATIONS & CHILD SUPPORT ENFORCEMENT**  
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**TITLE 9  
DOMESTIC RELATIONS**

**CHAPTER 9.01  
Husband and Wife**

- 9.0101**     **Mutual obligations; Contracts between husband and wife.**  
Husband and wife contract toward each other obligations of mutual respect, fidelity, and support. Either husband or wife may enter into any transaction with the other, or with any other person.  
A husband and wife cannot by a contract with each other, alter their legal relations, except as to property, and except that they may agree in writing to an immediate separation and may make provisions for the support of either of them and of their children during such separation. The mutual consent of the parties is sufficient consideration for such separation agreement.
- 9.0102**     **Separate property; Definitions, rights, and privileges.**  
All property, real and personal, of either spouse, owned or claimed by him or her before marriage, and that acquired afterwards by gift, devise or descent, and also the increase, rents, issues and profits thereof, is the separate property of that spouse.  
Neither husband nor wife has any interest in the separate property of the other, excepting their respective rights for support as specifically provided by law, and except that neither can be excluded from the other's dwelling.
- 9.0103**     **Titles to property.**  
A husband and wife may hold real or personal property together as joint tenants or tenants in common.  
The husband or wife may, without the consent of the other, convey his or her separate property.  
Either the husband or wife may make a complete inventory of his or her separate property and file a signed and acknowledged copy with the Clerk of the Tribal Court. The filing of inventory is notice and prima facie evidence of the ownership of the property.
- 9.0104**     **Transfer of property; Benefit of the other spouse; Other spouse may transfer.**  
If a husband or wife abandons his or her spouse for one (1) year or more, is imprisoned for one (1) year or more, or is declared physically or mentally incompetent leaving the other spouse without means of support, the Tribal Court upon application of the other spouse, duly verified and supported by such evidence as the Court deems necessary, may order that the applicant or some other person take charge of, manage, control, sell, or encumber the property of such imprisoned, incompetent or offending person in order to make suitable provisions for the support and maintenance of his or her husband or wife and children during the period of abandonment, imprisonment, or incompetency.
- 9.0105**     **Rights and liabilities as to third persons; Neither liable for the other; Property of one immune from liability of the other.**  
Neither husband nor wife is answerable for the acts of the other. The earnings and accumulations of either spouse and the children in his or her custody while they live separate and apart from the other spouse are the separate property of that spouse unless otherwise provided by agreement between the husband and wife.  
The separate property of the husband or wife is not liable for the debts of the other contracted before marriage. The separate property of each is liable for his or her own debts contracted before or after marriage

Every husband and wife shall be jointly and severally liable for the purchase price, if agreed upon at the time of purchase, or for the reasonable value of all the necessaries by either husband or wife for their family while they are living together as husband and wife.

**9.0106 Rights of married women; Same as single.**

Married women have the sole and exclusive control of their separate property and retain after marriage all the civil and property rights of a single woman. She may buy and sell, receive and convey, or dispose of by will, or otherwise dispose of any real or personal property belonging to her or in which she may have an interest, without joining the name of her husband, For any injury to her reputation, person or property, she may sue in her own name without joining her husband as party plaintiff and in like manner actions founded upon her separate contracts or torts or relating to her individual property may be brought against her without joining the husband as party defendant.

**9.0107 Capacity of married persons under age of majority.**

Lawfully married men and women eighteen (18) years of age or over shall not be under legal disability by reason of their minority with regard to any transaction affecting their joint or separate property.

A dissolution of marriage shall not deprive either party who is eighteen (18) year of age or over of authority to enter into transactions affecting the joining property acquired during marriage and which may be vested in either or both of them as the result of dissolution of marriage.

**9.0108 Husband as head of family; Right to select residence.**

The husband is the head of the family. He may choose any reasonable place or mode of living and the wife must conform thereto.

**9.0109 Mutual duties of support.**

The husband must support himself and his wife out of his property or by his labor. When the husband has no separate property and he is unable from infirmity or incompetency to support himself and his wife, the wife must support the husband out of her separate property or by her labor unless the husband has deserted her.

**9.0110 Necessaries; Husband's liability; Exception.**

If the husband neglects to make adequate provision for the support of his wife, any other person may in good faith supply her with reasonable necessaries.

**CHAPTER 9.02  
Parent Grandparent and Child**

**9.0201 Presumption of legitimacy; Legitimation by marriage of parents.**

All children born in wedlock are resumed to be legitimate. All children of a woman who has been married, born within ten (10) months after the dissolution of the marriage are presumed to be legitimate of that marriage. A child born before wedlock becomes legitimate by the subsequent marriage of its parents. The children of all marriage null in law or dissolved by divorce, are legitimate.

**9.0202 Dispute legitimacy proof.**

Presumption of legitimacy can be disputed only by the husband or wife, or the descendant of one or both of them. Illegitimacy in such cases may be proved like any other fact.

- 9.0203 Custody of legitimate children; Rights of parents.**  
The father and mother of a legitimate unmarried child are equally entitled to its custody, service, and earnings. If either the father or mother be dead or refuse to take the custody or has abandoned his or her family, the other is entitled to its custody, service, and earnings.
- 9.0204 Custody of an illegitimate child.**  
The mother of an illegitimate unmarried child is entitled to its custody, services, and earnings.
- 9.0205 Custody of child when parents living separately.**  
Neither husband nor wife has superior rights in regard to the care, custody, education and control of the children of the marriage when living separate and apart from each other without being divorced. The Tribal Court, upon application of either, may inquire into the custody of any unmarried child of the marriage, and may award the custody of such child to either for such time and under such regulations as the case may require. The Court must be guided by the rules provided by law for awarding custody of a child or appointing guardians.
- 9.0206 Residence of a child; Determination by parents; Restrictions.**  
A parent entitled to the custody of a child has a right to change the child's residence, subject to the power of the Tribal Court to restrain a removal which would prejudice the rights or welfare of the child.
- 9.0207 Parental authority; Abuse; Remedy.**  
The abuse of parental authority is the subject of a civil action in the Tribal Court, brought by the child or by anyone on the child's behalf; and when the abuse is established, the child may be freed from the custody of the parent and the duty of support and education enforced.
- 9.0208 Termination of parental authority.**  
The authority of a parent ceases:  
1. Upon the appointment by the Tribal Court of a guardian of the person of the child;  
2. Upon the marriage of the child; or  
3. Upon its attaining majority.
- 9.0209 Imputing minor's liability to parents; Limited.**  
Any person suffering damages to real, personal, or mixed property, through the malicious and willful act or acts of a minor child or children under the ages of eighteen (18) years while residing with their parents, shall have therefore a cause of action against and recover of the parents of such child or children. In each case the amount of recover against one or both of the parents shall be limited to actual damages.
- 9.0210 Liability of parent imputed to child.**  
A child is not liable for the damages caused by the acts of his parent or parents to the property of a third person.
- 9.0211 Support of child; Education.**  
The parent entitled to the custody of a child must give it support and education suitable to his circumstances. If the support and education which the father of the child is able to give are inadequate, the mother must assist him to the extent of her ability.  
If a husband or wife receives into his or her family and supports the children of their spouse by a former husband or wife, it is presumed he or she does so as a parent and where such is the case the children are not

liable to the parent for their support, nor the parent to them for their services.

**9.0212 Child supported by other parent, relative, or a third person; Parent liability.**

If a parent neglects to provide articles necessary for his child who is under his charge, according to the parent's ability, a third person may in good faith supply such necessities and recover the reasonable value thereof from the parent, but a parent is not bound to compensate the other parent or a relative for the voluntary support of his child without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without a just cause.

**9.0213 Support of child from its estate or estate of its parent; Allowance to parent or tribe.**

The Tribal Court may direct an allowance to be made to a parent of a child out of the child's property for the child's past or future and education, on such conditions as may be proper.

If a parent dies leaving the support of its child chargeable upon the Tribe, but leaving an estate sufficient for the child's support, the Tribe may claim provision for the child's support from his parents' estate by civil action, and for this purpose may have the same remedies as creditors against the estate and against the heirs, devisees, and next of kin of the parent.

**9.0214 Support of adult child; Compensation.**

Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefore.

**9.0215 Property and earnings of a child; Relinquishment by parents.**

The parent, as such, has no control over the property of the child. The wages of a child employed in service may be paid to him or her until the parent or guardian entitled thereto gives the employer notice that he claims such wages.

**9.0216 Grandparental rights of visitation to unmarried minor child; Mediation or arbitration.**

The grandparents and great-grandparents of an unmarried minor child may be granted reasonable and balanced visitation rights to the child by the tribal court upon a finding that visitation would be in the best interests of the child and would not adversely interfere with the parent-child relationship.

The tribal court shall consider the amount of the personal contact that has occurred between the grandparents or great-grandparents and the child and the child's parents.

The burden to show that it is in the best interest of the child(ren) to have some visitation and some quality time with their grandparents lies with the grandparents by clear and convincing evidence and the grandparents also must show by clear and convincing evidence that such grandparent visitation would not adversely interfere with the parent-child relationship.

Grandparent visitation is a matter of how much and how the visitation is going to be structured; and, that the Tribal Court(s) may not award visitation unless a parent has denied (or unreasonably denied) visitation to the concerned third party (i.e. grandparents) and parties involved have first gone to mediation or arbitration.

The subordinate right of the grandparents under Turtle Mountain traditional law to have visitation with their grandchildren, regardless of which parent has custody of the child(ren), and regardless of whether the parents are together or not is hereby recognized and affirmed.

**Domestic Relations.**

The Turtle Mountain Tribal Code does not currently address the issue of the subordinate right of grandparents to visit their grandchild(ren) and the Tribe takes into consideration that if too many third parties are allowed to dilute the superior right of the parent(s) to care, custody, and control of their children, then such tribal interference would be contrary to the federal constitution; and therefore, third parties (i.e. grandparents) cannot be allowed to rely solely on the best interests of the child(ren) analysis to dilute and compete with fundamental, paramount, and superior parental rights. Should a parent or other custodian of a child wish to disallow a child's grandparents from exercising the subordinate right recognized in Section 9.0216 above, the grandparents must first argue their subordinate right to visitation through mediation and show, by clear and convincing evidence, that the grandparents are not a threat to the physical and/or moral health and welfare of the child and that such grandparent visitation would not adversely interfere with the parent-child relationship.

This section does not apply to agency adoptions or when the child has been adopted by a person other than a stepparent or grandparent. Any visitation rights granted under this section before the adoption of the child may be terminated upon the adoption if termination of the rights is in the best interest of the child.

An application for visitation rights under this section may be considered by the tribal court in conjunction with a divorce proceeding involving the parent of the minor child. If any tribal court retains jurisdiction over the residential placement of the minor child or children by virtue of any prior proceeding, the rights conferred by this section may be enforced by the grandparents or the great-grandparents through motion under the prior proceeding. If no tribal court otherwise has jurisdiction, a proceeding to enforce grandparental visitation rights may be brought against the parent having primary residential responsibility as a civil action and venued in the county of residence of the minor child.

**CHAPTER 9.03****Termination of Parental Rights of a Child****Relinquishment of Parental Rights.**

Relinquishment of parental rights with respect to a child; voluntary judicial termination of parental rights with respect to a child.

1. Effect of relinquishment. A voluntary relinquishment to an agency shall be effective to terminate the parental rights of the person executing it and shall transfer from the parent to the agency all powers of such parent, including the right to place a child for adoption and to consent to the adoption of the child. Relinquishment of a child by one parent does not diminish the parental rights of the other parent of the child, nor does it relieve either parent of a duty otherwise provided by law to support the child until such child has been adopted or such parent's parental rights have been terminated by judicial decree.
2. Relinquishment by American Indian parent. A voluntary relinquishment by an American Indian parent who is a member of a federally-recognized tribe shall conform to requirements of federal law.
3. Counseling of parent prior to relinquishment. Prior to taking a relinquishment, the agency shall counsel the parent of a child regarding relinquishment, adoption, and the alternatives to relinquishment, and shall assist him in understanding and exploring the assistance and services, which may be available to his child if he chooses to relinquish the child.
4. Court termination required when parents fail to understand process. If the agency doubts the comprehension by the parent of the meaning or consequences of relinquishment, or if the parent so requests, the agency

- shall not proceed to take a relinquishment, but shall assist the parent in petitioning the Court for voluntary termination of parental rights.
5. Procedures of voluntary judicial termination of parental rights. Except as provided in the following subsection (6), procedures for voluntary judicial termination of parental rights with respect to a child shall be the same as for voluntary terminations generally.
  6. Confirmation of counseling. At the hearing on a petition for voluntary termination of parental rights, the Court shall ascertain that the petitioner has been counseled by the agency regarding termination and adoption and regarding the assistance and services which may be available to his child if he chooses not to terminate his rights as to the child, and that the petitioner voluntarily chooses to terminate his rights.
  7. Disposition upon denial of petition. Where the Court denies a petition for voluntary termination of parental rights; the Court shall order an agency to assess the needs of the child, the care the child is receiving, and the plan of the unsuccessful petitioner for the child. The agency shall submit a report on its investigation to the Court within thirty days of such order.

**9.0302**

**Restoration of parental rights relinquished or voluntarily terminated with respect to a child.**

1. Petition for restoration of parental rights. Any time after one year after the execution of a relinquishment or issuance of a decree of voluntary termination of parental rights, if the child as to whom parental rights were relinquished or terminated has neither been adopted nor is in an adoptive placement, the parent whose rights were relinquished or terminated may petition the Tribal Court for restoration of parental rights. However, upon fifteen days notice to the petitioners and the Court having jurisdiction of the petition, and unless otherwise ordered by the Court, an agency may place a child for adoption during the pendency of the petition and such placement will have the effect of terminating the petition. In the case of an adoptive placement made during the pendency of such a petition, the prospective adoptive parent(s) with whom the child is placed shall be notified by the agency of the petition prior to placement.
2. Appearance by guardian or agency. Any guardian of the child's person and the agency to which the child was relinquished shall have the right to receive notice and appear at the hearing to show cause why such restoration or rights should not occur. If the Court finds upon clear and convincing evidence that restoration of parental rights would be in the best interest of the child, it shall order restoration.

**9.0303**

**Assessment of child and report.**

1. Assessment required in contested actions. A Court with jurisdiction of a contested suit for involuntary termination shall order an assessment of needs of the child who is the subject of the suit. Such assessment shall be conducted by a non-party agency selected by the Court.
2. Time for completion of assessment; Court's use of report. A report of the assessment shall be submitted within thirty days after the Court directive, unless the Court grants a request for an extension. The report may be introduced into evidence in accordance with the rules of evidence. In the absence of an objection, the report may be used by the Court whether or not introduced into evidence, in deciding whether the petition for involuntary termination of parental rights shall be granted.
3. Contents of Assessments. The assessment shall include but not be limited to the physical, mental, and emotional conditions of the child and parents, history of intra-family relationships, services offered in an attempt to reunify the family, the proposed plan to meet the special needs of the child, and the wishes of the child according to his maturity of judgment.

**Grounds for involuntary termination of parental rights with respect to a child.**

1. Grounds for involuntary termination of parental rights. An order of the Court for involuntary termination of the legal parent-child relationship shall be rendered if the Court finds that the termination is in the best interest of the child, and that one or more of the following circumstances or grounds for involuntary termination exist:

a. The identity or location of the parent is unknown and the parent has not claimed the child for a period of sixty days after the child is found; despite diligent efforts to ascertain the parent's identity and location.

b. As a ground for an order of involuntary termination against the father or putative father, the child was conceived as the result of an act of forcible rape; or as ground for an order of involuntary termination against the father, putative father, or mother, the child was conceived as the result of an act of incest.

c. The child has been adjudicated to have been abused or neglected or dependent in a prior proceeding. In determining whether termination of parental rights would be in the best interest of the child in such case, the Court shall consider and make written findings regarding the factors contained in Subsection 2 of this Section 9.0304 and the following conditions or acts of the parent:

(1) Emotional illness, mental illness, mental deficiency, or use of alcohol or controlled substances rendering the parent unable to care for the immediate and on-going physical or psychological needs of the child; or

(2) Any proven act or acts of abuse or neglect toward any child in the family subsequent to the adjudication of abuse or neglect; or

(3) Repeated or continuous failure by the parents, although physically and financially able, to provide the child with adequate food, clothing, shelter, or education as defined by law or other care and control necessary for his physical, mental, or emotional health and development, but a parent who, legitimately practicing his religious belief, does not provide specified medical treatment or education for a child, is not for that reason alone a negligent parent.

(4) The child has been out of the physical custody of the parent for one year; or the parent, including the father whose paternity has been adjudicated, has failed to take physical custody of the child within sixty days of the birth or adjudication; and:

(a) The conditions, which led to the separation still persist, or similar conditions of a potentially harmful nature continues to exist.

(b) There is little likelihood that those conditions will be remedied at an early date so that the child can be returned to the parent in the near future; and

(c) The continuation of the legal parent-child relationship greatly diminishes the child's prospects for early integration into a stable and permanent family.

In determining whether termination of parental rights would be in the best interest of the child under this Subsection (d) the Court shall consider and make written findings regarding the factors contained in Subsection (2) of this Section 9.0304.

d. The child has been out of the physical custody the parent for a period of eighteen months and:

(1) The child has developed an emotionally stable relationship with his de facto parent.

(2) The de facto parent has expressed an intent to adopt the child; and

- to adopt the child;
- (3) The child wishes to be adopted by the facto parent.
2. Factors to be considered in certain instances. In determining whether to terminate parental rights under subsections (1)(c) or (1)(d) of this section, the Court shall consider and make written findings regarding:
- a. The timeliness, nature, and extent of services offered or provided to the parent and the child to facilitate reunion of the child with the parent.
  - b. The terms of any social service contract agreed to by an authorized agency and the parent, and the extent to which all parties have fulfilled their obligations under such contract.
  - c. The feelings and emotional ties of the child with respect to his parents; and
  - d. The effort the parent has made to adjust his circumstances, conduct, or conditions to make it in the best interest of the child to return him to his home, including:
    - (1) The extent to which the parent has maintained regular visitation or other contact with the child as part of a plan to reunite the child with the parent.
    - (2) The payment of a reasonable portion of substitute physical care and portion of substitute physical care and maintenance if financially able to do so.
    - (3) The maintenance of regular contact or communication with the custodian of the child.
    - (4) Whether available additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within a reasonable period of time.
3. Factors to be considered in all instances. Where any of the circumstances in subsections (1) (a) through (1)(e) of this Section 9.0304 exist, the Court shall consider:
- a. The contents of the assessment and report, if any, submitted pursuant to Section 9.0303 of this Code.
  - b. The specific benefits to the child of continuing the legal parent-child relationship.
  - c. The wishes of the child regarding termination of the legal parent-child relationship.
4. Rehabilitation of parent. The maintenance of a legal parent-child relationship for the purpose of rehabilitation of a parent shall not be sufficient grounds for continuation of such relationship.
5. Deprivation of custody through divorce, separation, act of other parent. Notwithstanding any other provisions of this Section 9.0304, no legal parent-child relationship may be terminated solely because a parent has been deprived of the legal custody of a child by reason of a divorce or a legal separation, or of the physical custody of a child by the act of conduct of the other parent of the child.

**9.0305 Hearing and Service of Notice Thereon.**

Such transfer of the permanent care, control, and custody of a child and the termination of the rights of the parents with reference to the child shall be made only after a special hearing before the Court and the Court shall cause notice of the time, place, and purpose of such hearing to be served within or without the jurisdiction of the Turtle Mountain Jurisdiction on the parents or surviving parent or the father of an illegitimate child against whom paternity has been duly adjudged, upon the general guardian of any such child, upon a general guardian of the mother of an illegitimate child, the general guardian of the father of an illegitimate child against whom paternity has been duly adjudged for at least ten (10) days prior to the date of the hearing. When it appears to the satisfaction of the Court that personal service cannot be obtained, then by publication thereof in a

newspaper of general area circulation once a week for three (3) consecutive weeks prior to the date of the hearing.

**9.0306**

**Disposition of petition for involuntary termination of parental rights with respect to a child.**

1. Disposition upon granting petition. If, after considering all the evidence at the adjudicatory hearing, the Court finds that sufficient grounds exist for involuntary termination of the legal parent-child relationship, it shall:
  - a. Enter an order terminating the legal parent-child relationship; and
  - b. If such order has the effect of terminating the parent-child relationship with respect to both parents or to the last surviving parent, appoint an individual or agency guardian of the child's person. The guardian of the child's person shall report to the Court within ninety days on a permanent placement plan for the child. At least every six months thereafter, a report shall be made to the Court on the implementation of such plan. The Court shall review the plan for the child no less than once a year.
2. Denial of petition.
  - a. If the Court finds that sufficient grounds for involuntary termination of the legal parent-child relationship do not exist, it shall make an appropriate order with respect to the custody and protection of the child, and may either continue its jurisdiction or dismiss the petition as may be appropriate in the circumstances.
  - b. If the Court finds that the services or social service contract as described in Section 9.0304 (2a) and (2b) of this Act were insufficient or inadequate, the Court may order an agency to develop a plan of service for the child and his parents.
  - c. Any order the Court makes under Subsection 2(a) of this Section 9.0306 shall specify what residual rights and responsibilities remain with each living parent, and shall designate the period of time the order shall remain in effect, with mandatory review by the Court no later than six months thereafter and at subsequent intervals of not more than one year.
3. Court Review of Permanent Placement Plan. In conducting reviews pursuant to Subsections 1(b) and 2(c) of the Section 9.0306, the Court or a hearing officer designated by the Court shall hold a hearing and require that the presence of the guardian of the child's person or any other person the Court or the hearing officer deems necessary to conduct the review.

**9.0307**

**Court order granting termination of parental rights of a child.**

1. Form and content of orders. Every order the Court makes pursuant to Section 9.0306 of this Act shall be in writing and shall recite the findings upon which the order is based, including findings pertaining to the jurisdiction of the Court. Every order must fix responsibility for the support of the child.
2. Finality of Orders. Except as otherwise provided for an interlocutory order, all orders are final, effective, and binding on all persons after the date of entry unless stayed pending an appeal.

**9.0308**

**Effect of termination decree of relinquishment of a child.**

1. Effect of termination. Upon relinquishment of a child or termination of parental rights with respect to a child through a court decree, the parent ceases to be the legal parent of the child as to whom rights have been terminated. No such parent has a right to notice of proceedings for adoption of the child by another or to object to the adoption or otherwise to participate in the proceedings.
2. Parental Rights Independently Terminable. The legal parent-child relationship may be terminated with respect to one parent without

- affecting the legal relationship between the child and the other parent.
3. Agency to provide notice if termination challenged.
    - a. If the validity of a relinquishment or court order terminating parental rights with respect to a child is challenged in a Court of this Tribe, the Court in which such challenge is filed shall:
      - (1) Notify any agency to which the child was relinquished which is presently responsible for the child, which placed the child for adoption, or which provided post-placement services; and
      - (2) Hold a hearing to determine if any notice shall be provided the child and if so, the nature and the notice. At such hearing, the Court may appoint an Attorney Ad Litem to represent the child. An agency which is notified under Section (3-1) of this Section shall notify the adoptive parents of a child who has been adopted or, if the child has not been adopted, the prospective adoptive parents, if any. Such notice shall inform the parties of the pendency of the challenge and of their right to be heard regarding such challenge. The agency issuing such notice shall certify to the Court in which the attached was filed that the requirements of this subsection have been met.
      - (3) If the validity of a relinquishment or court order terminating parental rights with respect to a child is challenged in a Court of any other jurisdiction, any agency of this Tribe which learns of such challenge by any means shall notify the agency responsible for the child prior to his placement or adoption, which in turn shall notify the adoptive or proposed adoptive parents, if any, of the pendency of a proceeding which may affect their status with respect to the child.

**CHAPTER 9.04**  
**Adoption**

**9.0401**

**Definitions.**

As used in this Act, unless the context otherwise required:

1. "ADOPTEE" means a person of any age who has been legally adopted.
2. "ADOPTION" means the judicial act of creating the legal relationship of parent and child where it did not exist previously.
3. "ADOPTIVE PARENT" means an adult who has become the mother or father of a child through the legal process of adoption.
4. "ADULT" means a person 18 or more years of age.
5. "AGENCY" means any entity authorized pursuant to the laws of any jurisdiction within the United States to place children preliminary to adoption, and has the approval of the Tribal Council to act on the reservation.
6. "BIRTH PARENT" means the mother or father of genetic origin of a child, but does not include a putative father of a child.
7. "CHILD" means a son or daughter by birth or by adoption.
8. "COURT" means the Tribal Court.
9. "DE FACTO PARENT" means a person, other than a parent, who has exercised physical care, custody, or control of a child for at least eighteen months, has developed a parental relationship with the child based upon significant emotional and psychological ties between them, and wishes to assume the status of de facto parent.
10. "FAMILY ASSESSMENT" means a comprehensive study of prospective adoptive parents, or in the case of a single parent adoption, or a prospective adoptive parent by an agency for the purpose of determining whether the prospective adoptive parent can provide a suitable adoptive home for a specific child with special needs or a category of children having certain special needs.
11. "GENETIC AND SOCIAL HISTORY" means a comprehensive report, when

obtainable, on the birth parents, which shall contain the following information:

- a. Medical history,
  - b. Health status,
  - c. Cause of and age at death,
  - d. Height, weight, eye and hair color,
  - e. Ethnic origins; and
  - f. where appropriate, levels of educational and professional achievement.
12. "GUARDIAN AD LITEM" means an attorney or other person appointed by the Court to represent the interest of a child.
  13. "HEALTH HISTORY" means a comprehensive report of the child's current health status and medical history, including neo-natal, psychological, physiological, and medical care history.
  14. "MINOR" means a person under eighteen years of age who has not been emancipated according to the laws of this State.
  15. "PARENT" means the birth or adoptive mother or the birth or adoptive father whose parental rights have not been terminated.
  16. "PARENT-CHILD RELATIONSHIP" means the biological, emotional, and psychological ties, along with the rights, powers, privileges, immunities, duties, and obligations existing between parent and child as defined by Tribal and/or State Law.
  17. "PUTATIVE FATHER" means any man not deemed or adjudicated under the laws of a jurisdiction of the United States to be the father of genetic origins of a child and who claims or is alleged to be the father of genetic origin of such child.
  18. "SOCIAL SERVICE BOARD" means Bureau of Indian Affairs Social Services or any equivalent Tribal Agency so designated by the Tribal Council.

**9.0402 Who may be adopted.**

Any individual may be adopted.

**9.0403 Who may adopt.**

The following individuals may adopt:

1. A husband and wife together although one or both are minors.
2. An unmarried adult.
3. The unmarried father or mother of the individual to be adopted.
4. A married individual without the other spouse joining as a petitioner, if the individual to be adopted is not his spouse, and if:
  - a. The other spouse is a parent of the individual to be adopted and consents to the adoption.
  - b. The petitioner and the other spouse are legally separated; or
  - c. The failure of the other spouse to join in the petition or consent to the adoption is excused by the Court by reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

**9.0404 Venue; Inconvenient forum; Caption.**

1. Proceedings for adoption must be brought in the Tribal Court if at the time of filing petitioner, or the individual to be adopted, or the agency having care, custody or control, are located within the Tribal Court's jurisdiction, or the case has been transferred to the Tribal Court's jurisdiction.
2. If the Court finds in the interest of substantial justice that the matter should be heard in another forum, the Court may transfer, stay, or dismiss the proceeding in whole or in part on any conditions that are just.
3. The caption of a petition for adoption shall be styled substantially "In the Matter, of the Adoption of \_\_\_\_\_". The person to be adopted shall be designated in the caption under the name by which he is to be

known if the petition is granted. If the child is placed for adoption by an agency, any name by which the child was previously known shall not be disclosed in the petition, the notice of hearing, or in the decree of adoption.

**9.0405**

**Persons required to consent to adoption.**

1. Unless consent is not required under Section 9.0406, a petition to adopt a minor may be granted only if written consent to a particular adoption has been executed by:
  - a. The mother of the minor whether by birth or adoption.
  - b. The father of the minor, if:
    - (1) The minor is his child by adoption, or he has otherwise legitimated the minor according to the laws of the place in which the adoption proceeding is brought: or
    - (2) He is presumed to be the natural father of the minor, under Section 9.0426, provided he nonexistence of the father and child relationship between them has not been judicially determined.
  - c. Any person lawfully entitled to custody of the minor or empowered to consent.
  - d. The Court having jurisdiction to determine custody of the minor is not empowered to consent to the adoption.
  - e. The minor, if more than fourteen (14) years of age, unless the Court in the best interest of the minor dispenses with the minor's consent; and
  - f. The spouse of the minor to be adopted.
  - g. An illegitimate adoption requires only the mother's consent.
2. A petition to adopt an adult may be granted only if written consent to adoption has been executed by the adult and the adult's spouse.

**9.0406**

**Persons as to whom consent and notice not required.**

1. Consent to adoption is not required of:
  - a. A parent who has deserted a child without affording means of identification, or who has abandoned a child.
  - b. A parent of a child in the custody of another, if the parent for a period of at least one year has failed significantly without justifiable cause:
    - (1) To communicate with the child: or
    - (2) To provide for the care and support of the child as required by law or judicial decree
  - c. The father of a minor if the father's consent is not required by Subdivision (b) of Subsection (1) of Section 9.0405.
  - d. A parent who has relinquished his right to consent under Section 9.0301.
  - e. A parent whose parental rights have been terminated by order of Court under Section 9.0301.
  - f. A parent judicially declared incompetent or mentally defective if the Court dispenses with the parent's consent.
  - g. Any parent of the individual to be adopted, if the individual is an adult.
  - h. Any legal guardian or lawful custodian of the individual to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of sixty (60) days or who, after examination of his written reasons for withholding consent, is found by the Court to be withholding his consent unreasonably.
  - i. The spouse of the individual to be adopted, if the failure of the spouse to consent to the adoption is excused by the Court by reason of prolonged unexplained absence, unavailability, incapacity or circumstances constituting an unreasonable withholding of consent.
  - j. A parent of the minor, if the failure of the parent to consent is excused by the Court in the, best interest of the child by reason of

the parent's prolonged unexplained absence, unavailability, incapacity, or significant failure, without justifiable cause, to establish a substantial relationship with the minor or to manifest a significant parental interest in the minor, or by reason of inability of the Court to identify the parent.

2. Except as provided in Section 9.0411, notice of a hearing on a petition for adoption need not be given to a person whose consent is not required or to a person whose consent or relinquishment has been filed with the petition.

#### 9.0407

##### How consent is executed.

1. The required consent to adoption shall be executed at any time after the birth of the child and in the manner following:
  - a. If by the individual to be adopted, in the presence of the Court.
  - b. If by an agency, by the executive head or other authorized representative, in the presence of a person authorized to take acknowledgments.
  - c. If by any other person, in the presence of the Court or in the presence of a person authorized to take acknowledgments.
  - d. If by a Court, by appropriate order or certificate.
2. A consent, which does not name or otherwise identify the adopting parent is valid if the consent contains a statement by the person whose consent it is that the person consenting voluntarily executed the consent irrespective of disclosure of the name or other identification of the adopting parent.

#### 9.0408

##### Withdrawal of consent.

1. A consent to adoption cannot be withdrawn after the entry of a decree of adoption.
2. A consent to adoption may be withdrawn prior to the entry of a decree of adoption if the Court finds, after notice and opportunity to be heard is afforded to petitioner, the person seeking the withdrawal, and the agency placing a child for adoption, that the withdrawal is in the best interest of the individual to be adopted and the Court orders the withdrawal.

#### 9.0409

##### Petition for adoption.

1. A petition for adoption shall be signed and verified by the petitioner, filed with the clerk of the Court, naming the Bureau of Indian Affairs Social Services or a county social service board as respondent and state:
  - a. The date and place of birth of the individual to be adopted, if known.
  - b. The name to be used for the individual to be adopted.
  - c. The date petitioner acquired custody or date of placement of the minor and the name of the person placing the minor.
  - d. The full name, age, place, and duration of residence of the petitioner.
  - e. The marital status of the petitioner, including the date and place of marriage, if married.
  - f. That the petitioner has facilities and resources, including those available under a subsidy agreement, suitable to provide for the nurturance and care of the minor to be adopted, and that it is the desire of the petitioner to establish the relationship of parent and child with the individual to be adopted.
  - g. A description and estimate of value of any property of the individual to be adopted.
  - h. The name of any person whose consent to the adoption is required, but who has not consented, and facts or circumstances which excuse the lack of his consent normally required to the adoption.
  - i. The Bureau of Indian Affairs Social Services or county social service board as respondent.
  - j. A certified copy of the birth certificate or verification of birth

record of the individual to be adopted, if available, and the required consents and relinquishments shall be filed with the clerk.

- k. Any person filing a petition shall pay to the Clerk of Court a proper filing fee.

**9.0410**

**Report of petitioner's expenditures.**

1. Except as specified in Subsection 2, the petition in any proceeding for the adoption of a minor shall file, before the petition is heard, a full accounting report in a manner acceptable to the Court of all disbursements of anything of value made or agreed to be made by or on behalf of the petitioner in connection with the adoption. The report shall show any expenses incurred in connection with:
  - a. The birth of the minor.
  - b. Placement of the minor with petitioner.
  - c. Medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement; and
  - d. Services relating to the adoption or to the placement of the minor for adoption which were received by or on behalf of the petitioner, either natural parent of the minor, or any other person.
2. This section does not apply to an adoption by a stepparent whose spouse is a natural or adoptive parent of the child.
3. Any report made under this section must be signed and verified by the petitioner.

**9.0411**

**Notice of petition; Investigation and hearing.**

1. After the filing of a petition to adopt a minor, the Court shall fix a time and place for hearing the petition. At least twenty days before the date of hearing, notice of the filing of the petition and of the time and place of hearing shall be given by the petitioner to:
  - a. Turtle Mountain Tribal Council or designated agency.
  - b. Any agency or person whose consent to the adoption is required by this chapter but who has not consented.
  - c. A person whose consent is dispensed with upon any ground mentioned in Subdivisions: (a), (b), (f), (h), (i), and (j) of Subsection (1) of Section 9.0406 but who has not consented; and
  - d. Any person identified by the Court as a natural parent or a possible natural parent of the minor, upon making inquiry to the extent necessary and appropriate, unless the person has relinquished parental rights or his parental rights have been previously terminated by a Court. The notices shall be accompanied by a copy of the petition.
2. An investigation shall be made by the Bureau of Indian Affairs Social Services, a county social service board, a licensed child placing agency, or any other qualified agency or person designated by the Court to inquire into the pre and existing conditions of a minor sought to be adopted, and of the petition for the purpose of ascertaining whether the adoptive home is a suitable home for the minor and whether the proposed adoption is in the best interest of the minor.

At the discretion of the court, such investigation shall not be required if a similar investigation has been made by a licensed child placing agency within six months of the filing of the petition.
3. A written report of the investigation shall be filed with the Court by the investigator before the petition is heard.
4. The report of the investigation shall contain an evaluation of the placement with a recommendation as to the granting of the petition for adoption and any other information the Court requires regarding the petitioner or the minor.
5. An investigation and report is not required in cases in which a stepparent is the petitioner or the person to be adopted is an adult. The Bureau of Indian Affairs Social Services when required to consent to the adoption

- may give consent without making the investigation.
6. The Bureau of Indian Affairs Social Services or the \_\_\_\_\_ agency or persons designated by the Court to make \_\_\_\_\_ the required investigation may request other departments or agencies within this state to make investigations of designated portions of the inquiry as may be appropriate and to make a written report thereof as a supplemental report to the Court and shall make similar investigations and reports on behalf of other agencies or persons designated by the Courts of this state or another place.
  7. After the filing of a petition to adopt an adult, the Court by order, shall direct that a copy of the petition and a notice of the time and place of the hearing be given to any person whose consent to the adoption is required but who has not consented. The Court may order an appropriate investigation to assist it in determining whether the adoption is in the best interest of the persons involved.
  8. Notice shall be given in the manner appropriate \_\_\_\_\_ under Rules of Civil Procedure for the service of \_\_\_\_\_ process in a civil action or in any manner the \_\_\_\_\_ Court by order directs. Proof of the giving of the \_\_\_\_\_ notice shall be filed with the Court before the \_\_\_\_\_ petition is heard.

**9.0412 Required residence of minor.**

A final decree of adoption shall not be issued and an interlocutory decree of adoption does not become final, until the minor to be adopted, other than a stepchild of the petitioner, has lived in the adoptive home for at least six months after placement by an agency, or for at least six months after the Court has been informed of the custody of the minor by the petitioner, and the Court has had an opportunity to observe or investigate the adoptive home, unless this residency requirement is waived in writing by the Court.

**9.0413 Appearance; Continuance; Disposition of petition.**

1. The petition and the individual to be adopted shall appear at the hearing on the petition, unless the presence of either is excused by the Court for good cause shown.
2. The Court may continue the hearing from time to time to permit further observation, investigation, or consideration of any facts or circumstances affecting the granting of the petition.
3. If at the conclusion of the hearing, the Court determines that the required consents have been obtained or excused and that the adoption is in the best interest of the individual to be adopted, it may:
  - a. Issue a final decree of adoption.
  - b. Issue an interlocutory decree of adoption which by its own terms automatically becomes a final decree of adoption on a day therein specified, which day shall not be less than six (6) months nor more than one year after the date of issuance of the decree, unless sooner vacated by the Court for good cause shown.
  - c. If the requirements for a decree under Subsection 3 have not been met, the Court shall dismiss the petition and determine the person to have custody of the minor, including the petitioners if in the best interest of the minor. In an interlocutory decree of adoption, the Court may provide for observation, investigation, and further report on the adoptive home during the interlocutory period.

**9.0414 Effect of petition and decree of adoption.**

1. A final decree of adoption and an interlocutory decree of adoption, which has become final, whether issued by a Court of this Tribe or any other place, has the following effect;
  - a. To relieve the natural parents of the adopted individual of all parental rights and responsibilities and to terminate all legal relationships between the adopted individual and his relatives, including his natural parents, so that the adopted individual

thereafter is a stranger to his former relatives for all purposes including inheritance and the interpretation or construction of documents, statutes, and instruments, whether executed before or after the adoption is decreed, which do not expressly include the individual by name or by some designation not based on a parent and child or blood relationship; and

- b. To create the relationship of parent and child between petitioner and the adopted individual, as if the adopted individual were a legitimate blood descendent of the petitioner, for all purposes including inheritance and applicability of statutes, documents, and instruments, whether executed before or after the adoption is decreed; which do not expressly exclude an adopted individual from their operation or effect.
2. Notwithstanding the provisions of Subsection 1, if a parent of a child dies without the relationship of parent and child having been previously terminated and a spouse of the living parent thereafter adopts the child, the child's right of inheritance from or through the deceased parent is unaffected by the adoption.
3. An interlocutory decree of adoption, while it is in force, has the same legal effect as a final decree of adoption. If an interlocutory decree of adoption is vacated, it shall be as though void from its issuance.
4. An adopted child's right to tribal enrollment membership shall remain unaffected by the decree of adoption.

**9.0415 Appeal and validation of adoption decree.**

1. An appeal from any final order or decree rendered under this chapter may be taken in the manner and time provided for appeal from a judgment in civil action, which is thirty (30) days.
2. Subject to the disposition of an appeal, upon the expiration of thirty (30) days after an adoption decree is issued, the decree cannot be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless, in the case of the adoption of a minor the petitioner has not taken custody of the minor; or, in the case of the adoption of an adult, the adult had no knowledge of the decree within the thirty (30) day period.

**9.0416 Hearings and records in adoption proceedings; Confidential nature; Disclosure of identifying and non-identifying information; When applicable.**

The Tribal Court, at any stage of any proceeding under this Chapter may order that this section shall apply in the case, but in no event shall the Court order this section to apply in any placement of a child with an extended family member. Notwithstanding any other law concerning public hearings and records:

1. All hearings held in proceedings under this Chapter shall be held in closed court without admittance of any person other than essential officers of the Court, the parties, their witnesses, counsel, persons who have not previously consented to the adoption but are required to consent, and representatives of the agencies present to perform their official duties.
2. All papers, records, and information pertaining to the adoption whether part of the permanent record of the Court or a file in the BIA Social Service Office or in an agency are confidential and may be disclosed only in accordance with this Section.
3. Non-identifying information, if known, concerning undisclosed genetic parents shall be furnished to:
  - a. The adoptive parents at the time of adoptive placement or upon their request.
  - b. The adult adopted person upon written request thereof.

- c. In addition, the clerk, upon request and payment of the proper fee shall furnish a certified copy of the decree of adoption to the adoptive parents, the guardian of an adopted minor child, or an adopted adult, provided the decree does not disclose the identity of the genetic parents.
4. An adopted person who is twenty-one (21) years of age or over may request the BIA Social Service office to secure and disclose information identifying the adopted child's genetic parents or to secure and disclose non-identifying information they have on file. The BIA Social Service office shall, within fourteen working days of receipt of request, notify in writing the child-placing agency having access to the information requested by the adopted child.
  5. Within three (3) months after receiving notice of the request of the adopted person, the child-placing agency shall make complete and reasonable efforts to notify the genetic parents of the adopted child. The child-placing agency may charge a reasonable fee to the adopted child for the cost of making a search pursuant to this subsection. All communications under this Subsection are confidential. For purposes of this subsection, "notify" means a personal and confidential contact with the genetic parents of the adopted child; the personal and confidential contact shall not be by mail and shall be by an employee or agent of the licensed child placing agency which processed the pertinent adoption, or some other licensed child-placing agency designated by the child-placing agency; the personal and confidential contact shall be evidenced by filing with the BIA Social Service office an affidavit of notification executed by the person who notified each genetic parent and certifying that each genetic parent was given the following information:
    - a. The nature of the identifying information to which the agency has access.
    - b. The nature of any non-identifying information requested.
    - c. The date of the request of the adopted child.
    - d. The right of the genetic parent to file, within sixty (60) days of receipt of the notice, an affidavit with the BIA Social Service office stating that the identifying information should not be disclosed.
    - e. The right of the genetic parent to file a consent to disclosure with the BIA Social Service office at any time.
    - f. An explanation of the result when a genetic parent fails to file either a consent to disclosure or an affidavit stating that the identifying information should not be disclosed.
  6. If the child-placing agency certifies to the BIA Social Service office that it has been unable to notify the genetic parent within three months, the identifying information shall not be disclosed to the adopted child. If either genetic parent has at any time filed with the BIA Social Service office an unrevoked affidavit stating that the identifying information should not be disclosed, the BIA Social Service office shall not disclose the information to the adopted child until the affidavit is revoked by the filing of a consent to disclosure by that parent.
  7. If, within three (3) months, the child-placing agency certifies to the BIA Social Service office that it has notified the genetic parents pursuant to Subsection 5, the BIA Social Service office shall receive the identifying information from the child-placing agency and disclose the information sixty-one days after the date of the latest notice to either genetic parent. This disclosure will occur if, at any time during the sixty-one (61) days, the genetic parent has filed an affidavit with the BIA Social Service office stating that the information shall be disclosed and the affidavit has not been revoked by the subsequent filing by the genetic parent of an affidavit that the information shall not be disclosed.
  8. If the genetic parent has died and has not filed an unrevoked affidavit with the BIA Social Service office stating that identifying information

shall not be disclosed, the information shall be forwarded to and released by the BIA Social Service office to the adopted child. If the genetic parent has died, and at any time prior to his death, the genetic parent has filed an unrevoked affidavit with the BIA Social Service office stating the identifying information shall not be disclosed, the adopted child may petition the Court of original jurisdiction of the adoption proceeding for an order for release of the identifying information. The Court shall grant the petition if, after consideration of the interests of all known persons involved, the Court determines that disclosure of the information would be of greater benefit than nondisclosure.

9. Any adopted person twenty-one (21) years of age or over whose adoption was finalized in this jurisdiction or whose genetic parents had their parental rights' terminated in this jurisdiction may request the BIA Social Service office to secure and disclose identifying information concerning an adult sibling in the same manner as provided for in Subsection 4. Identifying information pertaining exclusively to the adult sibling, whether part of the permanent record of a file in the BIA Social Service office or in an agency shall be released only upon consent of that adult sibling.
10. No person may be required to disclose the name or identification of either, an adoptive parent or an adopted child except:
  - a. In accordance with this section.
  - b. As authorized in writing by the adoptive parent or the adopted child.
  - c. Upon order of the Court for good cause shown in exceptional cases.
11. The provisions of this section governing the release of identifying and non-identifying adoptive information apply to adoptions completed before and after the adoption of this act as ordered by the Tribal Court.
12. Any child-placing agency discharging in good faith its responsibilities under this section is immune from any liability, civil, or criminal that otherwise might result.
13. Upon application to the Bureau of Indian Affairs, Department of Social Services by an adult adopted person or the parent or guardian of a minor adopted child, social services may investigate, or cause to be investigated, facts necessary to determine the adopted person's eligibility for enrollment as a member of the Turtle Mountain Band of Chippewa.
  - a. The Department of Social Services may inquire of any person or agency, including a licensed child-placing agency in the State of North Dakota to assist in the investigation.
  - b. All identifying information obtained by the Department of Social Services shall remain confidential.
  - c. The procedure used in contacting the genetic parents of the adopted child shall be a personal and confidential contact. Any necessary contact shall be made by a Bureau of Indian Affairs Social Services employee or an agent of a licensed child-placing agency. The information necessary to make a determination of the adopted person's eligibility for enrollment in the tribe.
  - d. The Department of Social Services may charge a reasonable investigation fee.
  - e. No person may be required to disclose the name or identity of either an adoptive parent or an adopted child except:
    - (1) In accordance with this section;
    - (2) As authorized in writing by the adoptive parents or the adopted child;
    - (3) Upon order of the court for good cause shown in exceptional cases.
14. The BIA Social Service office shall make such reasonable rules and regulations as are necessary to carry out the purposes of this section.

**9.0417 Application for new birth record.**

Within thirty days after an adoption decree becomes final, the clerk of the

court shall prepare an application for a birth record in the new name of the adopted individual and forward the application to the appropriate vital statistics office of the place, if known, where the adopted individual was born and forward a copy of the decree to the social service board of this state or other designated state agency for statistical purposes. In the case of the adoption of a person born outside of the United States, the Court may make findings, based on evidence from the petitioner and other reliable state or federal sources, on the date of place of birth and parentage of the adopted person. These findings shall be certified by the Court and included with the report of adoption filed with the state registrar of vital statistics pursuant to Section 23-02.1-17 of N.D.C.C.

**9.0418 Adoption and legitimation by conduct.**

Notwithstanding the other provisions of this Chapter, the father of an illegitimate minor adopts and legitimates a minor by publicly acknowledging the minor as his child, receiving the minor into his home, with the consent of his wife, if he is married, and otherwise treating the minor as if the minor were legitimate. Thereafter, the minor is deemed the legitimate child of the father for all purposes from the time of birth of the minor, the same as if the adoption has been finally decreed pursuant to this chapter.

**9.0419 Character and effect of termination of parental rights and of adoption of a child.**

1. Effect of relinquishment and termination of parental rights. A relinquishment to an agency or a judicial order terminating the relationship between a parent and a child divests the parent and the child of all legal rights, powers, privileges, immunities, duties and obligations with respect to each other, except that:
  - a. No relinquishment or termination order entered pursuant to this act shall deprive a child of any benefit due him from any third person, agency, state, or the United States; nor shall any action under this act affect any rights and benefits that such child derives as a member of an American Indian Tribe.
  - b. The right of the child to inherit from and through the parent whose rights have been terminated shall be eliminated only by a final order of adoption.
  - c. Any debt incurred by the parent on behalf of a son or daughter prior to the termination of parental rights shall be enforceable against the parent; and
  - d. No relinquishment to an agency shall deprive a child of any right to support due him under any other law.
2. Relinquishment and Termination of Parent and Child Relationship.
  - a. The rights of a parent with reference to a child, including parental right to control the child or to withhold consent to an adoption, may be relinquished and the relationship of parent and child terminated in or prior to an adoption proceeding as provided in this Section.
  - b. All rights of a parent with reference to a child, including the right to receive notice of a hearing on a petition for adoption, may be relinquished and the relationship of parent and child terminated by a writing signed by the parent, regardless of the age of the parent:
    - (1) When the writing is in the presence of a representative of an agency taking custody of the child, whether the agency is within or without this state, but voluntary relinquishment of parental rights may be withdrawn within ten (10) days after it is signed or ten (10) days after the child is born, whichever is later; and the relinquishment invalid unless it states that the parent has the right of withdrawal; or
    - (2) In any other situation if the petitioner has custody of the minor for two (2) years, and only if notice of adoption proceeding has

been given to the natural parents and the court finds, after considering the circumstances the relinquishment and the long continued custody by the petitioner, that the best interest of the child requires the granting of the adoption.

- c. In addition to any other proceeding provided by law, the relationship of parent and child may be terminated by a court order issued in connection with an adoption proceeding under this Section on any ground provided by law and in any event on the ground:
    - (1) that the minor has been abandoned by the parent;
    - (2) that by reason of the misconduct, faults, or habits of the parent or the repeated and continuous neglect or refusal of the parent, the minor is without proper parental care and control, or subsistence, education, or other care or control necessary for his physical, mental, or emotional health or morals, or by reason of physical or mental incapacity, the parent is unable to provide necessary parental care for the minor, and the court finds that the conditions and causes of the behavior, neglect, or incapacity are irremediable or will not be remedied by the parent, and that by reason thereof, the minor is suffering or probably will suffer serious physical, mental, moral, or emotional harm; or
    - (3) that in the case of a parent not having custody of a minor, his consent is unreasonably withheld contrary to the best interests of the minor.
  - d. A petition for termination of the relationship of parent and child made in connection with an adoption proceeding may be made by:
    - (1) Either parent if termination of the relationship is sought with respect to the other parent.
    - (2) The petitioner for adoption, the guardian of the person, the legal custodian of the child, or the individual standing in parental relationship to the child;
    - (3) An agency; or
    - (4) Any other person having a legitimate interest in the matter.
  - e. Before the petition is heard, notice of the hearing and opportunity to be heard shall be given to the natural parents of the child, to the guardian of the child, the person having legal custody of the child, and in the discretion of the court, a person appointed to represent any party.
  - f. Notwithstanding the provisions of Subsection 2, a relinquishment of parental rights of a child executed under this section may be withdrawn by the natural parent, and a decree of a court terminating the parent-child relationship may be vacated by the court upon motion of the parent, if the child is not on placement for adoption and the person having custody of the child consents in writing to the withdrawal or vacation of the decree.
3. Effect of Adoption. Adoption creates the legal relationship of parent and child. There is no legal distinction between an adoptee and a person not adopted except that adoption of a child shall not affect any right to benefits conferred by the federal government, or any legal rights created by law for an American Indian child.

**9.0420**      **Jurisdiction of courts.**

Exclusive and continuing jurisdiction. The Tribal Court shall have exclusive original jurisdiction over all proceedings arising under this section. The Court may make other necessary or appropriate decisions relating to the placement and care of children, and shall review at least annually the case of every child over whom it has retained jurisdiction, until the child is adopted or attains majority.

**9.0421**      **Governing law.**

1. Full faith and credit. Full faith and credit shall be given to the public acts, records, and judicial proceedings of an American Indian Tribe or state jurisdiction of the United States. The Courts and agencies of this Tribe shall extend recognition, in accordance with applicable principles of comity, to the public acts, records, and judicial proceedings of a jurisdiction outside the United States whenever the interest of the child or the adopted person will be served thereby.
2. Law governing American Indian children. The validly enacted laws of the United States relating to termination of parental rights and adoption of American Indian children shall be given effect in any case to where they apply.

**9.0422**

**Fees.**

1. Charging of fees prohibited. No agency, public or voluntary, excluding the Tribal Court, shall charge fees to any persons if such fees can be collected from any state adoption administration.
  - a. For adoption services to children who are the responsibility of an agency, or to the birth or prospective adoptive parents of such children.
  - b. For post-adoption services to the adoptive family of any child who, immediately prior to adoption, was the responsibility of an agency.
2. Reimbursement of Expenses. The state adoption administration shall reimburse voluntary agencies pursuant to any state law, which provide adoption or post-adoption services to persons to whom fees may not be charged pursuant to subsection (a) hereto. Such reimbursement shall not exceed the actual cost of services provided, and shall be in accordance with purchase of service rates established by the state adoption administration.
3. Penalty for illegal fees. Any person, agency, association or corporation who gives, requests, receives, or accepts payment of cash or other consideration in violation of this Section 9.0422 shall be guilty of an offense, punishable by a fine of up to \$365.00.

**9.0423**

**Priority of proceedings; Judicial review.**

1. Priority on Court calendar. Judicial proceedings for emergency protection of children, termination of parental rights, and adoption of children, and objections thereto, shall be considered to have the highest priority and shall be advanced on the dockets of trial and reviewing courts so as to provide for their earliest practicable disposition. An adjournment or continuance of a proceeding under this act shall not be granted without a showing of good cause.
2. Judicial Review. Any party aggrieved by an order, judgment, or decree of the Court in suit for emergency protection of children termination of parental rights, or adoption may, within thirty days after notice of its entry, file notice of an appeal to the appeal court. Procedures for an appeal are governed by the rules applicable to appeals from the Tribal Court in civil cases. A petition for the child's adoption may not be heard pending the appeal of a decree terminating a parent-child relationship.
3. Priority of appeals. Appeals from orders under this act shall be given priority in the reviewing Court and shall take precedence over all other matters, except for already docketed appeals from orders in other termination or adoption proceedings and other matters which are given priority by specific statutory provision. No postponements, continuances, recesses, or adjournments for longer than three days shall be granted except with the consent of all the parties, and none shall be granted after the appeal has been docketed for sixty days.

**9.0424**

**Severability.**

If any provision of this act or the applicability thereof is held invalid,

the remaining provisions of this act shall not be affected thereby.

**9.0425 Authority and Duties of Guardian of Child's Person.**

1. Authority of consent. The guardian of the child's person has the authority without limitation to consent to marriage and enlistment in the military service of the United States, to consent to any medical, psychiatric, or surgical treatment, and to consent to the adoption of the child unless the child has a living parent whose rights have not been terminated.
2. Right to custody of child. The guardian of the child's person have the right to physical custody of the child or to determine an appropriate placement for the child, subject to the review of the Court. When he does not have physical custody of the child, the guardian of the child's person or his designee has the duty of reasonable visitation with the child.
3. Responsibilities. The guardian of the child's person has the responsibility to ensure that the child receives adequate support, care, nurturances, and education and to ensure that the child has legal representation in legal actions.
4. Reports to court. An individual or agency appointed as guardian of the child's person shall report to the Court within ninety days on a permanent plan for the child. At least every six (6) months thereafter, a report shall be made to the Court on the implementation of such plan.

**9.0426 Parent and child.**

"Parent and child relationship" defined. As used in this Section "parent and child relationship" means the legal relationship existing between a child and his natural or adopted parents, which confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

**9.0427 Relationship not dependent on marriage.**

The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parent.

**9.0428 How parent and child relationship established.**

The parent and child relationship between a child and:

1. The natural mother may be established by proof of her having given birth to the child.
2. The natural father may be established under this Section.
3. The adoptive parent by proof of adoption.

**9.0429 Presumption of paternity.**

1. A man is presumed to be the natural father of a child if:
  - a. He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three-hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by the court;
  - b. Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in a parent compliance with tribal or state law, although the attempted marriage, is or could be declared invalid;
  - c. After the child's birth, he and the child's natural mother have married, or attempted to marry each other by a marriage solemnized in a parent compliance with tribal or state law although the attempted marriage is or could be declared invalid, and:
    - (1) He has acknowledged paternity of the child in writing filed with the Division of Vital Statistics of the State Department of Health;
    - (2) With his consent, he is named as the child's father on the child's birth certificate; or

- (3) He is obligated to support the child under a written voluntary promise or was court ordered.
  - d. While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or
  - e. He acknowledges his paternity of the child in a writing filed with the Division of Vital Statistics with the State Department of Health which shall properly inform the mother of the filing of the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the Division of Vital Statistics of the State Department of Health. If another man is presumed under this section to be the child's father, acknowledgment may be affected only with the written consent of the presumed father or after the presumed father has been rebutted.
2. A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption on which the facts are founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.
  3. The presumption of legitimacy of a child born to a married woman can only be disputed by the husband or wife of the descendant of one or both of them.

9.0430

**Determination of father and child relationship; Who may bring an action and when action may be brought.**

1. A child, his natural mother, or a man presumed to be his father under subsection (a), (b), or (c) of Subsection (1) of Section 9.0426.3, may bring an action:
  - a. At any time for the purpose of declaring the existence of the father and child relationship or;
  - b. For the purpose of declaring the nonexistence of the father and child relationship.
2. An action may be brought to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 9.0426.3. The action may be brought by the child, the mother or personal representative of the child, the authorities charged with the support of the child, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.
3. Regardless of its terms, an agreement, other than an agreement approved by the court between an alleged or presumed father and the mother or child, does not bar an action under this Section.

9.0431

**Statute of limitations.**

An action to determine the existence of the father and child relationship may be brought by or on behalf of a child whose paternity has not been determined and is not barred until three (3) years after the child reaches the age of majority (which is twenty-one (21) years of age).

9.0432

**Jurisdiction.**

The Tribal Court has jurisdiction of an action brought under this Section. The action may be joined with an action for divorce, annulment, separate maintenance, or support.

1. A person who has sexual intercourse within the jurisdiction of the Turtle Mountain Reservation or within this state, thereby submits to the jurisdiction of the Tribal Court or the courts of this state as to an action brought under this section or the laws of this state with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by resolution or Codal Section,

- personal jurisdiction may be acquired by personal service of summons within the boundaries of the Turtle Mountain reservation or within or without this state or by registered mail with proof of actual receipt.
2. The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or can be commenced.

**9.0433 Parties.**

The child shall be made a party to the action. If he is a minor, he shall be represented by his general guardian or a Guardian Ad Litem appointed by the court. The natural mother, each man presumed to be the father under Section 9.0426.3 and each man alleged to be the natural father, shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard.

**9.0434 Blood test.**

1. The court may, and upon request, of a party shall, require the child, mother, or alleged father to submit to a blood test. The test shall be performed by an expert qualified as an examiner of blood types.

**9.0435 Evidence relating to paternity.**

Evidence relating to paternity may include:

1. Evidence of sexual intercourse between the mother and alleged father at any possible time of conception.
2. An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy.
3. Blood test results, weighed in accordance with evidence, if available, of the statistical probability of the alleged father's paternity.
4. Medical or anthropological evidence relating the alleged father's paternity to the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party, shall require the child, the mother, and the man to submit to appropriate tests.
5. All other evidence relevant to the issue of paternity of the child.

**9.0436 Civil action; Trial.**

1. An action under this section is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are deemed to be competent to testify and may be compelled to testify.
2. Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at the time other than the probable time of conception of the child is admissible in evidence, unless offered by the mother.
3. In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if he has undergone and made available to the court blood tests, the results of which, do not exclude the possibility of his' paternity of the child. A man who is identified and is subject to the jurisdiction of the court shall be made a defendant in the action.
4. The trial shall be made by the court without a jury unless either party demands trial by jury.

**9.0437 Judgment or Order.**

1. The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

2. If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that an amended registration be made under Section 9.0426.18.
3. The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.
4. Support judgments or orders ordinarily shall be for periodic payments, which may vary in amount. In the best interests of the child, a lump sum payment or the establishment of a trust fund may be ordered in lieu of periodic payments of support.
5. In determining the amount to be paid by a parent for support of a child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:
  - a. The needs of the child.
  - b. The standards of living and circumstances of the parents.
  - c. The relative financial means of the parents.
  - d. The earning abilities of the parents.
  - e. The need and capacity of the child for education, including higher education.
  - f. The age of the child.
  - g. The financial resources and the earning ability of the child.
  - h. The responsibility of the parents for the support of others.
  - i. The value of services contributed by the custodial parent.

**9.0438**      **Costs.**

The court may order reasonable fees of counsel, experts and cost of the action including blood tests.

**9.0439**      **Enforcement of judgment or order.**

1. If existence of the father and child relationship is declared or paternity or a duty of support has been acknowledged or adjudicated under this section or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses for pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.
2. The court may order support payments to be made to the mother, the clerk of court, or a person, or agency designated to administer them for the benefit of the child under the supervision of the court.
3. Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

**9.0440**      **Modification of judgment or order.**

The court has continuing jurisdiction to modify or revoke a judgment or order:

1. For future education and support; and
2. With respect to matters listed in Subsections (3) and (4) of Section 9.0426.11, except that a court entering a judgment or order for the payment of a lump sum or the establishment of a trust fund under Subsection 4 of Section 9.0426.11 may specify that the judgment or order may not be modified or revoked.

**9.0441**      **Bearings and records; Confidentiality.**

Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this section shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or a file in any state agency or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases, only upon an order of court for good cause shown.

**9.0442 Action to declare mother and child relationship.**

Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this section apply to the father and child relationship also.

**9.0443 Promise to render support.**

1. Any promise in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not require consideration and is enforceable according to its terms.
2. In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disperse, on behalf of the child, all amounts paid in performance of the promise.

**9.0444 Birth Records.**

1. Upon order of a court of this state or upon request of a court of another state, the state registrar of vital statistics shall prepare an amended birth registration consistent with the findings of the court.
2. The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the amended birth registration but the actual place and date of birth.
3. The evidence upon which the amended birth registration was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the court and all interested persons, or in exceptional cases, only upon an order of court for good cause.

**9.0445 When Notice of Adoption Proceeding Required.**

If a mother relinquishes or proposes to relinquish for adoption a child who has;

1. A presumed father under Subsection (1) of Section 9.0426.3;
2. A father whose relationship to the child has been determined by the court; or
3. A father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding, unless the father's relationship to the child has been previously terminated or determined by the court not to exist.

**CHAPTER 9.05**

**Bastardy; Illegitimacy Law**

**9.0501 Obligation of parents.**

The parents of a child born out of wedlock and not legitimated owe the child necessary maintenance, education, and support. They are also liable for the child's medical expenses.

The father is also liable to pay the expenses of the mother's pregnancy and confinement.

**9.0502 Recovery by mother from father.**

The mother may recover from the father a reasonable share of the necessary support of the child.

In the absence of a previous demand in writing to the father at his last known residence, not more than two (2) years support furnished prior to the bringing of the action may be recovered from the father.

**9.0503 Recovery by other than the mother.**

Where the paternity of a child has been decided by the Tribal Court, or by acknowledgment in writing by the father, and the support of the child is provided by a person or persons other than the mother, the father shall be primarily liable to such persons for the support of the child, and the mother shall be secondarily liable.

**9.0504 Discharge of father's obligation.**

The father's obligation to the child is discharged when any of the following occur:

1. Legal adoption of the child into another family;
2. The child reaches the age of eighteen (18) years;
3. The father complying with a judicial decree for support of the terms of a judicially approved settlement.

**9.0505 Liability of father's estate.**

Where the father's paternity has, in his lifetime, been judicially established or he has acknowledged it in writing or by part performance of his obligations, (the father's estate shall be liable for such amount as the Tribal Judge sees fit) taking into consideration the age of the child, the mother's ability to support it, the amount of property left by the father, the number, age and financial condition of his lawful sons or daughters, if any, and the rights of the widow, if any.

The Court may direct the discharge of the obligation by periodical payments or by payment of a lump sum.

**9.0506 Complainants.**

The proceeding to compel support by the father may be brought by the mother of it the child is or is likely to be a public charge, by the Tribal authorities charged with its support. After the death of the mother or in the case of her disability, it may also be brought by the child acting through its guardian.

If the proceeding is brought by Tribal authorities, the mother, if living, shall be made a party defendant.

**9.0507 Time of bringing complaint.**

The proceeding may be instituted during the pregnancy of the mother or after the birth of the child, but except with the consent of the person charged with being the father, the trial shall not be had until after the birth of the child.

**9.0508 Complaint made to judge.**

The complaint shall be made to any Tribal Judge having power to try the case.

**9.0509 Form of complaint.**

The complaint shall be in writing or oral and reduced to writing by the Judge or Clerk of the Tribal Court in the presence of the complainant. It shall be verified by oath or affirmation of the complainant.

**9.0510 Substance of the complaint.**

The complainant shall charge the person named as defendant with being the father of the child and demand that he be brought before the Tribal Court to answer the charge.

9.0511

**Process.**

The Tribal Judge shall issue a warrant for the apprehension of the defendant, directed to execute warrants. With consent of the complainant, a summons may be issued instead of a warrant which shall be personally served on the defendant.

9.0512

**Preliminary hearing.**

Upon return of the warrant, or upon return of the summons showing service on the defendant, a Tribal Judge having power to commit shall proceed to examine the complainant and any other witnesses and receive any other evidence that may be produced touching the charge. The defendant shall have the right to be present at the examination and refute such charge, if he so desires. A written record of the proceedings will be kept.

9.0513

**Result of preliminary hearing.**

If the examination fails to show probable cause, the defendant shall be discharged without prejudice to further proceedings.

If the examination shows probable cause, the judge shall bond the defendant in bond or recognizance, with sufficient security, to appear in Court at a date set by the judge. On failure or refusal to furnish such security, the judge shall commit the defendant to jail to be held to answer the complaint. The warrant, the examination reduced to writing, and the security shall be kept by the Court.

9.0514

**Birth of child.**

If the child is not born by the time set for trial, the case will be continued until the child is born, unless the defendant consents to an earlier trial.

9.0515

**Trial.**

The trial shall be by jury, if either party demands a jury, otherwise by the Court, and shall be conducted as in other civil cases.

Both the mother and the alleged father shall be permitted to give evidence but are not required to do so. If either gives evidence, he or she shall be subject to cross-examination.

9.0516

**Failure of defendant to appear.**

If the defendant fails to appear at the trial, his security for his appearance shall be forfeited and the trial shall proceed against him as if he were present, and the Court shall, upon findings of the Judge or the jury, make such orders as if the defendant were in Court.

9.0517

**Effect of death or absence or insanity of the mother.**

If after the complaint the mother dies or becomes insane or cannot be found on the reservation, the child will be substituted as complainant. The testimony of the mother given at the preliminary hearing may be read as evidence if demanded by the defendant.

9.0518

**Death of defendant.**

In case of death of the defendant after the preliminary hearing, the action may be prosecuted against the personal representatives of the deceased with like effect as if he were living, subject to the measure of support as provided in Section 9.0505 of this Code, except that no arrest of such personal representatives shall take place or bond be required of him.

9.0519

**Finding against defendant.**

If the finding or verdict be against the defendant, the Court shall give judgment against him declaring paternity and for support of the child.

The judgment shall be for annual amounts, equal or varying, having regard to the obligation of the father under Section 9.0501 of this Code, as the Court directs, until the child reaches eighteen (18) years of age. The payments may be required to be made at such periods or intervals as the Court directs. In addition to providing for support, the judgment may also provide for the payment of the necessary expenses incurred by or for the mother in connection with the birth of the child.

**9.0520 Payment to trustee.**

The Court may require the payments to be made to the mother, or to some person to be designated by the Court as trustee.

The payment shall be directed to be made to a trustee if the mother does not reside on the reservation. The trustee shall report annually to the Court, or more often if so directed by the Court.

**9.0521 Sentencing defendant.**

The Court may require the father to give security to the Court by bond or surety for the payment of the judgment. In the event of default of such security the father may be committed to jail for a term not exceeding six (6) months.

Instead of committing the father to jail, he may be put on probation with the Tribal probation officer. The Court may direct the terms of the probation regarding payments and personal reports.

**9.0522 Enforcement on default.**

Where security is given and default is made in payment, the Court shall ask the parties giving such security to show cause why judgment should not be given against them. If no good cause is shown to the Court, then the Court shall render judgment against them and it shall be enforceable as other judgments.

**9.0523 Agreement or compromise.**

An agreement or compromise made by the mother, or child, or by some authorized person on their behalf, with the father concerning the support of the child, shall be binding upon the mother and child only when adequate provision is fully secured and has been approved by the Court.

The performance of the agreement or compromise, when so approved, shall bar any other remedies of the mother of the child for the support of the child.

**9.0524 Limitations of action.**

Proceedings to enforce the obligation of the father shall not be brought after the lapse of more than two (2) years from the birth of the child, unless paternity has been previously established by the Court or has been acknowledged by the father in writing or by his furnishing of support. The statute of limitations does not run as to persons absent from the reservation for the purpose of avoiding process or against a person serving in the armed forces of the United States.

**CHAPTER 9.06  
Guardian and Ward**

**9.0601 Definitions; Guardian; Ward.**

A guardian is a person appointed to take care of the person or property of another. The person over whom, or over whose property a guardian is appointed, is called a ward

**9.0602 Jurisdiction.**

The Tribal Court shall have exclusive jurisdiction over a guardian appointed by the Court. A guardian of a person or property or both shall be appointed whenever it appears necessary to protect:

1. A child who has no court-appointed guardian;
2. A person who has been adjudged by the Competency Board to be of unsound mind, or who is physically incompetent to manage his own affairs or property;
3. A habitual drunkard who is incompetent to manage his own property;
4. A spendthrift.

**9.0603 Appointment by will or deed.**

A guardian of a person or estate, or both, a child born, or likely to be born, may be appointed by will or deed to take effect upon the death of the parent appointing:

1. If the child be legitimate, by the father, with the written consent of the mother, or by either parent, if the other be dead or incapable of consent;
2. If the child be illegitimate, by the mother.

**9.0604 Procedure for appointment of guardians; Petitions; Hearing; Order.**

Appointment of a guardian may be made on the petition of a relative or other person on behalf of the person for whom the guardianship is sought, or on the petition of a child if twelve (12) years old.

The petition for appointment shall contain:

1. The name of the person or persons for whom the guardianship is sought, and property identifying information;
2. The circumstances and grounds making the appointment of a guardian necessary;
3. The names, ages, relationships, and post office addresses of the immediate relatives and next of kin, and of the person having care of the person, or persons, for whom guardianship is sought;
4. The facts concerning the condition of the person and the estate; description, nature and probable value of the property owned by the child, incompetent, habitual drunkard, or spendthrift, if any; and the probable income therefrom.

The petition shall be verified by the petitioner and filed with the Clerk of the Tribal Court as a permanent record.

Upon the filing of a petition the Court shall give notice, by first class mail, at least fifteen (15) days prior to the hearing, to all persons specified in Subsection 3 and shall fix a time and place for hearing. Any person interested may appear at the hearing in person or by counsel and be heard upon any of the matters involved.

At the time and place fixed by the hearing, the Court shall hear the parties and make such order as the Court may deem necessary and direct letters of guardianship to issue upon the filing of a bond in such amount as the Court shall direct. The Court may specify directions for the care of the person or persons, or management of the estate, of the said ward or wards, in such order either in general terms or by specific directions.

**9.0605 Guardian for a child.**

If a minor is under the age of twelve (12) years, the Court may nominate and appoint his guardian. If he is twelve (12) years of age, or over, he may nominate his own guardian, who, if approved in the discretion of the Court, shall be appointed accordingly.

**9.0606 Oath and bond.**

The guardian shall subscribe and file an oath that he will perform the duties of his office according to law.

The Tribal Court may require the guardian to furnish a bond to be approved by the Tribal Judge and in such sum as the Court shall order for the faithful

performance of his duties, and the following conditions shall form and constitute a part of every such bond with or without being written therein:

1. To make an inventory of all the property of the estate, real and personal, of his ward that comes to his possession or knowledge, and to return the same within such time as the judge may order;
2. To dispose of and manage the estate according to law and for the best interest of the ward, and faithfully to discharge his trust in relation to the care, custody, and education of the ward;
3. To render an account, oath, of the property of the estate of the ward in his hands, and all proceeds or interests derived therefrom, and of the management and disposition of the same, within three (3) months after his appointment and at such other time as the Court directs. At the expiration of his trust he shall settle his accounts with the Tribal Court, or with the ward, if he be of full age or his legal representatives, and pay over and deliver all property of the estate, moneys, and effects remaining in his hands, or due from him on such settlement, to the person who is lawfully entitled thereto.

**9.0607 Rules for appointing.**

In awarding the custody of a child or in appointing a guardian, the Tribal Court is to be guided by the following considerations:

1. By what appears to be for the best interest of the child in respect to its mental and moral welfare; and if the child be of sufficient age to form an intelligent preference, the Court may consider that preference in determining the guardian;
2. Between the parents adversely claiming the custody of guardianship, neither parent is entitled to it as of right, but other things being equal, the Court shall decide the matter by giving the child to the parent who will best serve the interests of the child;
3. When two (2) persons are equally entitled to the custody of a child in other respects, preference is to be given in the following order:
  - a. To a parent;
  - b. To one who was indicated by the wishes of the deceased parent;
  - c. To one who already stands in the position of a trustee of a fund to be applied to the child's support;
  - d. To a relative.

**9.0608 Powers of guardians; Property of ward.**

A guardian appointed by the Tribal Court has power over the person and property of the ward unless otherwise ordered. He is charged with the custody of the ward, and must look to his support, health, and education. He may fix the residence of the ward at any place within the reservation, but not elsewhere without permission of the Court.

A guardian of the property must keep safely the property of his ward. He must not permit any unnecessary waste or destruction of the real or personal property nor make any sale of such property without the order of the Tribal Court, but must, so far as it is in his power, maintain the same with its buildings and appurtenances out of the income of other property of the estate, and deliver it to the ward at the close of his guardianship in as good condition as he received it.

**9.0609 Qualifications of guardian.**

A person appointed a guardian by the Tribal Court must be:

1. At least twenty-one (21) years of age;
2. Capable by law of making a contract;
3. Qualified to administer the financial and personal affairs of his ward in a satisfactory manner, and
4. Of good moral character

**9.0610 Removal or resignation of guardian.**

A guardian may be removed by the Tribal Court for any of the following causes:

1. Abuse of his trust;
2. Continued failure to perform his duties;
3. Incapacity to perform his duties;
4. Gross immorality;
5. Having an interest adverse to the faithful performance of his duties;
6. Removal from the jurisdiction of the Court;
7. In the case of guardian of the property, for insolvency; or
8. When it is no longer proper that the ward should be under guardianship.

Upon removal of a guardian, the Court shall give timely notice to the guardian and allow such time as may be necessary for him to surrender the ward or ward's property to the Court.

Every guardian may resign when it appears proper to allow it.

Upon resignation or removal of a guardian, the Tribal Court may appoint another in the place of the guardian who has resigned or been removed.

**9.0611 Parental appointment; How terminated.**

The power of a guardian appointed by a parent is terminated:

1. By his removal by the Court for cause;
2. By the solemnized marriage of the ward; or
3. By the ward attaining majority.

**9.0612 Termination of powers of guardians appointed by Court.**

The power of a guardian appointed by a Court is terminated only:

1. By an order of the Tribal Court;
2. By the ward attaining majority if appointment was solely because of minority; or
3. By the marriage of the ward, where the guardianship was solely over the person of the ward; marriage of the ward shall not terminate guardianship over the property.

**9.0613 Release by ward.**

After a ward has come to his majority, he may settle accounts with his guardian and give him a release which is valid if obtained fairly and without undue influence, all being subject to the approval of the Court.

A guardian appointed by a court is not entitled to his discharge until one (1) year after the ward's majority.

**9.0614 Restoration of incompetent person; Procedure.**

Any person who has been declared mentally incompetent under Chapter 2.12 of this Code, or the guardian, or any relative of such mentally incompetent person, or a friend, may apply by petition to the Tribal Court to have the fact of his restoration to capacity judicially determined. The petition shall be verified and shall state that such person is mentally competent. Upon receiving such a petition, the Court shall order a hearing of the Competency Board. Notice of the hearing shall be given to the guardian of the petitioner, if there be a guardian, and to his or her father or mother, if living on the reservation.

If it be found that the petitioner be of sound mind and capable of the taking care of himself and his property, his restoration to capacity shall be adjudged, and the guardianship of such person, if such person is not a child, shall cease.

**CHAPTER 9.07**

**Marriage**

**9.0701 Validity of marriage.**

A marriage between a man and woman licensed, solemnized, and registered as proved in this Act is valid within the Turtle Mountain jurisdiction as defined by Section 1.0502 of this Code.

**9.0702**      **Who shall prescribe.**

The Turtle Mountain Tribal Court shall prescribe the form for an application for a marriage license, which shall include the following information:

1. Name, sex, occupation, address, social security number, date and place of birth of each party to the proposed marriage;
2. If either party was previously married, his name, and the date, place and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;
3. Name and address of the parents or guardian of each party; and
4. Whether the parties are related to each other and, if so, their relationship.

The Turtle Mountain Tribal Court shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

**9.0703**      **License to marry.**

When a marriage application has been completed and signed by both parties to a prospective marriage and at least one (1) party has appeared before the Turtle Mountain Tribal Court Clerk and paid the marriage license fee of five dollars (\$5), the Turtle Mountain Tribal Court Clerk shall issue a license to marry and a marriage certificate form upon being furnished:

1. Satisfactory proof that each party to the marriage will have attained the age of eighteen (18) years at the time the marriage license is effective, or will have attained the age of sixteen (16) years and has either the consent to the marriage of both parents or his guardian, or judicial approval; and
2. Satisfactory proof that the marriage is not prohibited; and
3. A certificate of the results of any medical examination required by the laws of the State of North Dakota.

**9.0704**      **License, effective date.**

A license to marry becomes effective throughout the Turtle Mountain Tribal Jurisdiction three (3) days after the date of issuance, unless the Turtle Mountain Tribal Court orders that the license is effective when issued and expires on hundred eighty (180) days after it becomes effective.

**9.0705**      **Judicial approval.**

1. The Turtle Mountain Tribal Court, after a reasonable effort has been made to notify the parents or guardian of each underaged party, may order the Tribal Court clerk to issue a marriage license and a marriage certificate form:
  - a. To a party aged sixteen (16) or seventeen (17) years who has no parent capable of consenting to his marriage, or whose parent or guardian has not consented to his marriage; or
  - b. To a party under the age of sixteen (16) years who has the consent of both parents to his marriage, if capable of giving consent, or his guardian.
2. A marriage license and a marriage certificate form may be issued under this section only if the Court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve his best interests. Pregnancy alone does not establish that the best interest of the party will be served.
3. The Turtle Mountain Tribal Court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

**9.0706**      **Solemnization and registration.**

1. A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, or in accordance with any mode of solemnization recognized by any religious denomination, Indian Nation or Tribe. Either the person solemnizing the marriage, or, if no individual acting alone solemnized the marriage, a party to the marriage, shall complete the marriage certificate form and forward it to the Tribal Court Clerk.
2. If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the Tribal Court for an order permitting the marriage to be solemnized by proxy.
3. Upon receipt of the marriage certificate, the Tribal Court Clerk shall register the marriage.
4. The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believes him to be so qualified.

**9.0707**

**Prohibited marriages.**

The following marriages are prohibited:

1. A marriage entered into prior to the dissolution of an earlier marriage of one (1) of the parties;
2. A marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or whole blood, or by adoption;
3. A marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood, except as to marriages permitted by the established customs of aboriginal cultures.
  - a. Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.
  - b. Children born of a prohibited marriage are legitimate.

**9.0708**

**Declaration of invalidity.**

1. The turtle Mountain Tribal Court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:
  - a. A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage;
  - b. A party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time the marriage was solemnized the other party did not know of the incapacity;
  - c. A party was under the age of sixteen (16) years and did not have the consent of his parents or guardian and judicial approval; or
  - d. The marriage is prohibited.
2. A declaration of invalidity under Subsection (a)(1) through (3) may be sought by any of the following persons and must be commenced within the times specified but in no event may a declaration of invalidity be sought after the death of either party to the marriage:
  - a. For the reason set forth in Subsection (a)(1), by either party or by the legal representative of the party who lacked capacity to consent, no later than ninety (90) days after the petitioner obtained knowledge of the described condition;

- b. For the reason set forth in Subsection (a)(2), by either party, no later than one (1) year after the petitioner obtained knowledge of the described condition;
  - c. For the reasons set forth in Subsection (a)(3), by the underaged party, his parent or guardian, prior to the time the underaged party reaches the age at which he could have married without satisfying the omitted requirement.
3. A declaration of invalidity for the reason set forth in Subsection (a)(4) may be sought by either party, the legal spouse in case of a bigamous marriage, the Turtle Mountain Tribal Council or Tribal Police, or a child of either party, at any time, not to exceed five (5) years following the death of either party.
  4. Children born of a marriage declared invalid are legitimate.
  5. Unless the Court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of this Act relating to property rights of the spouses, maintenance, support, and custody of children on dissolution of marriage are applicable to non-retroactive decrees of invalidity.

**9.0709 Putative spouse.**

Any person who has cohabited with another to whom he is not legally married in the good faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminates his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, include the right to maintenance following termination of his status, whether or not the marriage is prohibited (Section 9.0707 of this Code) or declared invalid (Section 9.0708 of this Code). If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the Court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

**9.0710 Application.**

All marriages contracted within the Turtle Mountain jurisdiction prior to the effective date of this Act, or outside of the Turtle Mountain jurisdiction, that were valid at the time of the contract or subsequently validated by the laws of the place they were contracted or by the domicile of the parties, are valid in this jurisdiction.

**9.0711 Invalidity of common law marriage.**

Common law marriages contracted within the Turtle Mountain jurisdiction after the effective date of this Act are invalid.

**CHAPTER 9.08  
Dissolution**

**9.0801 Application of rules of Judicial Civil Procedure, Title 2 to proceedings under this Act.**

1. The Rules of Judicial Civil Procedure, Title 2, apply to all proceedings under this act, except as otherwise provided in this Act.
2. A proceeding for dissolution of marriage, legal separation or declaration of invalidity of marriage shall be entitled "In re the Marriage of \_\_\_\_\_ and \_\_\_\_\_." A custody or support proceeding shall be entitled "In re the (Custody) (Support) of \_\_\_\_\_."

3. The initial pleading in all proceedings under this Act shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this Act, shall be denominated as provided in the Rules of Judicial Civil Procedure, Title 2.
4. In this Act, "decree" includes "judgment".
5. A decree of dissolution or of legal separation, if made, but shall provide that it affects the status previously existing between the parties in the manner decreed.

**9.0802**

**Dissolution of marriage; Legal separation.**

1. The Turtle Mountain Tribal Court shall enter a decree of dissolution of marriage if:
  - a. The Court finds that one of the parties at the time the action was commenced was domiciled within the Turtle Mountain Jurisdiction or was stationed within this jurisdiction while a member of the armed services, or the BIA and that the domicile or military presence has been maintained for ninety (90) days next preceding the making of the findings;
  - b. The Court finds that the conciliation provisions of Section 9.0805 of this Code, either do not apply or have been met;
  - c. The Court finds that the marriage is irretrievably broken; and
  - d. To the extent it has jurisdiction to do so, the Court has considered, approved, or made provision for child custody, the support of any child of the marriage entitled to support, the maintenance of either spouse, and the disposition of personal property.
2. If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the Court shall grant the decree in that form unless the other party objects.

**9.0803**

**Procedure, commencement; pleadings; abolition of existing defenses.**

1. All proceedings under this Act are commenced in the manner provided by the Rules of Judicial Civil Procedure, Title 2.
2. The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:
  - a. The age, occupation, and residence of each party and his length of residence in this State;
  - b. The date of the marriage and the place at which it was registered;
  - c. The date on which the parties are separated;
  - d. The names, ages, and addresses of all living children of the marriage, and whether the wife is pregnant;
  - e. Any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and
  - f. The relief is sought.
3. Either or both parties to the marriage may initiate the proceeding.
4. If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Rules of Judicial Civil Procedure, Title 2, and may within thirty (30) days after the date of service file a certified response.
5. Defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.
6. The Court may join additional parties proper for the exercise of its authority to implement this Act.

**9.0804**

**Temporary order or temporary injunction.**

1. In a proceeding for dissolution of marriage or for legal separation, or in a proceeding for disposition of property or for maintenance or support

- following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitle to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.
2. As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the Court to issue a temporary injunction for any of the following relief:
    - a. Restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party of any proposed extra-ordinary expenditures made after the order is issued;
    - b. Enjoining a party from molesting or disturbing the peace of the other party or of any child;
    - c. Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;
    - d. Enjoining a party from removing a child from the jurisdiction of the Court; and
    - e. Providing other injunctive relief proper in the circumstances.
  3. The Court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.
  4. A response may be filed within twenty (20) days after service of notice of motion or at the time specified in the temporary restraining order.
  5. On the basis of the showing made and in conformity with Sections 9.0808 and 9.0809 of this Code, the Court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstances.
  6. A temporary order or temporary injunction:
    - a. Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;
    - b. May be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under Section 9.0816 of this Code; and
    - c. Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

#### 9.0805

##### Irretrievable breakdown.

1. If both of the parties or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the Court, after hearing, shall make a finding whether the marriage is irretrievably broken.
2. If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the Court shall consider all relevant factors, including the circumstances that give rise to filing the petition and the prospect of reconciliation, and shall:
  - a. Make a finding whether the marriage is irretrievably broken; or
  - b. Continue the matter for further hearing not fewer than thirty (30) nor more than sixty (60) days later, or as soon thereafter as the matter may be reached on the Court's calendar, and may suggest to the parties that they seek counseling. The Court, at the request of either party shall, or on its own motion may, order a conciliation conference. At the adjourned hearing the Court shall make a finding whether the marriage is irretrievably broken.
3. A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

9.0806

**Separation agreement.**

1. To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody, and visitation of their children.
2. In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the Court, that the separation agreement is unconscionable.
3. If the Court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, maintenance, and support.
4. If the Court finds that the separation agreement is not unconscionable as to the disposition of property or maintenance, and not unsatisfactory as to support:
  - a. Unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or
  - b. If the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and state that the Court has found the terms not unconscionable.
5. Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.
6. Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree.

9.0807

**Disposition of personal property.**

1. In a proceeding for dissolution of the marriage, or for legal separation, or in a proceeding for disposition of personal property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the Court shall assign each spouse's personal property to him. It also shall divide the marital personal property without regard to marital misconduct in just proportions considering all relevant factors including:
  - a. Contribution of each spouse to acquisition of the marital, personal property, including contribution of a spouse as homemaker;
  - b. Value of the personal property set apart to each spouse;
  - c. Duration of the marriage; and
  - d. Economic circumstances of each spouse when the division of personal property is to become effective, including the desirability of awarding the family home which is non-trust property or the right to live therein for reasonable periods to the spouse having custody of any children.
2. For purposes of this Act, "marital property" means all personal property, not held in trust by the U.S. government acquired by either spouse subsequent to the marriage except:
  - a. Personal property acquired by gift, bequest, devise, or descent;
  - b. Personal property acquired in exchange for personal property acquired before the marriage or in exchange for personal property acquired by gift, bequest, devise, or descent;

- c. Personal property acquired by a spouse after a decree of legal separation;
  - d. Personal property excluded by valid agreement of the parties; and
  - e. The increase in value of personal property acquired before the marriage;
  - f. All property held in trust for an Indian person by the United States government.
3. All personal property acquired by either spouse after the marriage and before a decree of legal separation is presumed to be marital personal property, regardless of whether title is hold individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital personal property is overcome by a showing that the personal property was acquired by a method listed in Subsection (b).

**9.0808**

**Maintenance.**

1. In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the Court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:
- a. Lacks sufficient personal property, including marital personal property apportioned to him, to provide for his reasonable needs; and
  - b. Is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.
2. The maintenance order shall be in such amounts and for such periods of time as the Court deems just, without regard to marital misconduct, and after considering all relevant factors including:
- a. The financial resources of the party seeking maintenance, including marital personal property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;
  - b. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;
  - c. The standard of living established during the marriage;
  - d. The duration of the marriage;
  - e. The age, and the physical and emotional condition of the spouse seeking maintenance; and
  - f. The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

**9.0809**

**Child support.**

Preamble. It is the policy of the Judicial Branch of Government of the Turtle Mountain Band of Chippewa to pronounce that every parent owes a duty to his/her child to provide support. Every child has a right to support from their parent whether or not the parent is present or absent. This right to support cannot be abrogated by agreement of the parents by contract, settlement or stipulation in any court decree. Furthermore, as a matter of law, it is proclaimed to be in the best interest of children to be supported by their parents. Support payments established by the Judicial Branch of Government under this policy are deemed minimums. Payments for the support of children may exceed these standards based upon the parent's ability to pay but may not be less than those payment levels established under this policy. Actual cash payments are based upon the parent's ability to pay as determined by their net income with allowances for authorized adjustments and special consideration that the court may find appropriate. Furthermore, it is

expressly understood that support payments may be further reduced by the provision of clothing, food or other item necessary for the maintenance of the child by the parent required to pay child support as provided in these under this policy.

1. Definitions.

- a. Income: Income includes all sources available to the parent including but not limited to employment wages and salaries, commissions, fees, social security benefits, pension benefits, veterans benefits, cash value of benefits received such as free housing, free meals, unemployment benefits, insurance benefits, disability payments, life insurance benefits, income from trust funds, endowments and investments, self employment income (minus the cost of making the income), income from property such as rent (minus costs of generating the income), income tax refunds. Income of a remarried parents spouse is not income for the purpose of this section. Furthermore, the income of the custodial spouse will not be considered in any manner to reduce the obligation of support of the non-custodial parent.
  - b. Adjustments: Allowable adjustments to income include the following; federal income tax withheld, social security tax, state income tax, mandatory withholdings such as unemployment insurance tax, disability insurance taxes, union dues when mandatory, taxes on equipment or property when and only when that equipment or property has been directly included in the generation of income, health insurance premiums only if the policy includes the child or children who are the subject of the support payments. All other adjustments to income such as savings or loan payments, garnishments for bad debt etc. are not allowed to reduce income.
  - c. Extraordinary adjustments: Catastrophic medical expenses, major casualty loss, and costs not covered by the employer for items necessary for work. An example is the cost of tools for a mechanic in a garage.
  - d. Assets: Includes all forms of property owned in whole or in part by the parent except for the parents principle residence, the residences furnishings and one vehicle if the vehicle is used to produce income. This includes property whether chattels or real. Examples include money in savings or checking accounts, trust land, tax land, vehicles, farm equipment, jewelry, business interests, loan value of insurance policies, stocks, bonds and other securities, and money or things owed by others to the parent.
2. The child support obligation shall be derived from first determining the income of the parent minus any adjustments and Extraordinary adjustments allowable under this section. After this computation, the NET INCOME of the parent will be determined.
  3. Should income be insufficient to meet the minimum support standards of this policy, the court may look to the assets of the parent to satisfy the support obligation.
  4. Child support obligation shall be 15% of the parent's net income if support is sought for one child, nineteen percent (19%) if supporting two children, and three percent (3%) additional for each additional child. Examples include a absent parent supporting one child will be required to pay 15% of their income to support that child A parent supporting two children, 19% of their net income, three children, 22% of their net income, four children 25% of their net income, five children 28% of their net income, six children 31% of their net income, seven children 34% of their net income, eight children 35% of their net income, nine children 35% of their net income, etc. These percentages shall not be diminished due to remarriage or the parenting of other children. The above percentage may be reduced in any month in which the parent to whom child support is ordered furnishes things necessary for the child such as clothing, food or

other item. This reduction, however, shall not exceed 20% of the total cash obligation of the parent. When all of the children to which support is being sought are from the same family, the maximum net income subject to child support shall be 35%. When support is sought for children from more than one family, the maximum net income subject to child support shall be 50% with all first children of each family being financially supported equally. The first child in each family will be supported at 10% of net income. This example will result in 20% of net income assessed for two children in separate families with each child supported at 10%, three children in separate families, 30% of net income with each child supported at 10% etc. For each additional child in the same family, an additional 4% of net income will be assessed for child support for that family.

9.0810

**Introduction.**

1. This Act shall be known as the Turtle Mountain child Support Enforcement Act. It is designed to regulate the establishment of paternity, the setting of child support obligations and the enforcement of those obligations in the tribal court. This Act reflects the sovereign right of the Turtle Mountain Chippewa Tribe to determine its own internal relations, as well as the rights of those non-members who enter into consensual relations with tribal members or others located on the Turtle Mountain reservation. It also reflects the Tribe's intent to operate its own child support enforcement program under Title IV-D of the Social Security Act.
2. Statement of Policy. It is the public policy of the Turtle Mountain Tribe (hereafter, "the Tribe") to ensure that the children of the Tribe receive adequate love, support and care. It is the purpose of this Act to provide a manner in which paternity can be established, thus allowing children the opportunity to identify with their natural parents and enjoy the benefits associated with enrollment into the. It also reflects the intent of the Turtle Mountain Tribe to provide for adequate child support for all children who are members or eligible for membership with the Tribe, or those children found upon the Turtle Mountain reservation, while recognizing the severe economic conditions facing many absent parents who strive to support their children.
3. Definitions. For purposes of this Act:
  - a. "Paternity" is the fact or condition of being a father.
  - b. "Genetic Testing" is a standard blood or tissue examination, which is accepted by the scientific community for the purpose of determining paternity.
  - c. "Custodian" or "Guardian" is the person who is legally responsible for the care and well being of the child.
  - d. "Putative Father" is the supposed father of the child.
  - e. "Age of Majority" is 18 years of age.
  - f. "Tribe" is the Turtle Mountain Tribe.

9.0811

**Paternity; Establishment of.**

1. Statute of Limitations. Paternity may be established in an action brought in the Turtle Mountain Tribal Court by the natural mother, putative father, or custodian or guardian until the child reaches the age of 18 years. Any action previously barred by tribal statute of limitations less than 18 years may also be maintained under this section provided the cause of action accrued less than 18 years from the time of filing. A child may bring an action to establish paternity at any time within the child's life for the limited purpose of establishing enrollment with the Tribe. This action may be brought against the putative father or the estate of the putative father if deceased, but any finding of the Court with regard to paternity shall only impact the child's eligibility for enrollment and will not support the reopening of any concluded probate proceedings or any

- action for back child support. Plaintiff shall establish by clear and convincing evidence that the person is the father.
2. Jurisdiction. The Turtle Mountain Tribal Court shall have jurisdiction over any paternity action where:
    - a. A party to the action has resided on the reservation for 90 days prior to commencement of the action; or
    - b. A party to the action is an enrolled member of the Tribe or an enrolled member of any other federally Recognized Indian tribe; or
    - c. The conception of the child for whom establishment of paternity is sought occurred within the exterior boundaries of the reservation; or
    - d. The child for whom establishment of paternity is sought was born within the exterior boundaries of the reservation, on trust land held by any tribal member wherever located or on tribal land whether currently or subsequently acquired;
  3. Genetic Testing
    - a. Any party, which requests a genetic test, must file the request with a supporting sworn statement either alleging or denying paternity. The Tribal Court may order a genetic test based upon a motion by any party which either alleges paternity and sets forth facts which establish a reasonable possibility of the requisite sexual contact between the parties or denies paternity and sets forth a reasonable possibility of no sexual contact between the parties.
    - b. The Tribal child support enforcement agency created herein must pay for all court ordered tests in those cases where the custodial parent is receiving TANF and allow for additional testing only upon request by a party and advance payment for the costs. The Tribe is entitled to recover the costs of these tests from the father if paternity is established. The Tribe is entitled to recover the costs of these tests from the mother if the court determines that the claim of paternity was not based on good faith in cases where paternity was not established. This section does not apply to those cases brought to establish paternity for purposes of enrollment only.
    - c. The Tribal Court must admit accredited genetic test results into evidence without foundation and must limit objections to test results to fourteen (14) days before the paternity hearing or 14 days after receipt of the test results.
    - d. A rebuttable presumption of paternity is established where the genetic tests indicate a 96% threshold probability of paternity.
    - e. Pregnancy and childbirth expenses, as well as genetic testing bills are admissible without foundation testimony and constitute prima facie evidence of costs.
  4. Acknowledgment In General. The relationship of father and child may be established by voluntary acknowledgment of paternity, signed by both parents, given before a witness if both A and B are met:
    - a. The acknowledgment is made on a form in substantial conformance with this subsection, which provides:
      - (1) Instructions for filing the acknowledgment with the North Dakota Department of Health;
      - (2) Places for entry of the parents' names, addresses, and social security numbers; parents signatures; and witnesses' signatures; and
    - b. The witness, or any agent of a child support agency, verifies that the parents have been provided, before the acknowledgment of paternity is signed:
      - (1) Written materials about paternity establishment, including the manner in which the relationship of father and child established under this Act, may be vacated on the basis of fraud, duress; or mistake of fact; and
      - (2) A written and oral description of the rights, responsibilities, and

- legal consequences of acknowledging paternity, including the legal rights of the child
- c. Acknowledgment becomes a legal finding of paternity in 60 days, thereafter subject to court challenge only on the basis of fraud, duress or mistake of fact.
  - d. The father's name can be on the birth certificate only if both parents sign an acknowledgement or pursuant to an order of the Court.
  - e. Judicial or administrative proceedings are neither required nor permitted to ratify an uncontested acknowledgment.
  - f. The Tribe shall grant full faith and credit to the paternity affidavits and orders of other tribes and States, in compliance with 28 U.S.C. 1738B.
5. Hospital Based Acknowledgment. During the period immediately preceding or following the birth of a child to an unmarried woman in a birthing hospital, the hospital at a minimum, shall:
- a. Provide to the mother and the alleged father, if he is present in the hospital:
    - (1) Written materials about paternity establishment;
    - (2) The forms necessary to voluntarily acknowledge paternity;
    - (3) A written and oral description of the rights, responsibilities, and legal consequences of acknowledging paternity; and
    - (4) The opportunity to speak, either by telephone or in person, with staff who are trained to clarify information and answer questions about paternity establishment;
  - b. Provide the mother and the alleged father, if he is present, the opportunity to voluntarily acknowledge paternity in the hospital;
  - c. Afford due process safeguards by informing, in writing, the mother and alleged father, if he is present, of the manner in which a relationship of father and child established under this Act may be vacated or rescinded; and
  - d. Forward completed acknowledgments to the North Dakota Department of Health.
6. Adjudication Procedure
- a. In any paternity adjudication there is no right to a jury trial.
  - b. Pending an adjudication of paternity, temporary support orders must be entered based on clear and convincing evidence, upon a party's motion.
  - c. A putative father may initiate a paternity action within 18 years of the birth of a child.
  - d. Acknowledgments and adjudication of paternity shall be filed with the Bureau of Indian Affairs, for enrollment purposes and the North Dakota Department of Health.
  - e. The Tribal Court shall enter default orders in paternity cases upon a showing of service to the defaulting party and upon any other showing as required by the Turtle Mountain Tribal Code.
  - f. In all paternity actions filed in the tribal court, the social security number of the alleged father shall be part of the record and caption of the proceeding.
  - g. Each party to a paternity proceeding shall have the right to file the finding of paternity with the state-maintained central registry of support orders and may petition the court to update information about the other party such as Social Security numbers; driver's identification numbers and employer information.
  - h. Paternity actions shall be open hearings unless requested closed by any party to the paternity proceeding.

**9.0812**

**Setting of support obligations.**

1. Purpose. The Tribe, in order to assure uniformity for child support orders entered by the Tribal Court, and to provide certain guidelines to tribal court judges when setting child support orders, does hereby enact this

section laying out the considerations for the tribal court when establishing support obligations and authorizing the Tribe's Judicial Board, with consultation of the judges of the Tribal Court, to establish judicial guidelines for child support.

2. Definitions. For purposes of this Title,
  - a. "Absent Parent" means a parent of a child or children either during the course of marriage or outside marriage who is not providing the custodial parent with child support for the benefit of the child or children, or whom is not residing with the child or children and thus not providing parental control and supervision, and who is bound by an administrative or court order to pay child support;
  - b. "Child Support" means the financial obligation an absent parent has towards his or her children whether such action is established through judicial or administrative process, by stipulation, or by any other process recognized by tribal law. The financial obligation of an absent parent shall be met through the payment of monies or through the provision of other goods and services as ordered by the tribal court;
  - c. Court means a court of the Turtle Mountain Tribe;
  - d. Court order means any order for support established by a court of competent jurisdiction;
  - e. Custodial parent means the parent or other guardian who has legal custody of a child or children pursuant to a court order or who exercises physical custody over a child on the basis of an agreement between the parents or because one parent has absented himself from the child's home.
  - f. Gross Income is income from any source, including but not limited to salaries, wages, commissions, bonuses, dividends, severance or retirement pay, pensions, interest trust income, annuities, capital gains, unemployment compensation, worker's compensation, disability insurance benefits, tips, gifts, prizes, alimony, general assistance payments and any per capita payments. It also includes in-kind contributions calculated at reasonable market value.
  - g. In-Kind Contributions are those contributions to the support of a minor child other than cash contributions. Examples include food or sustenance provided to the child and his family in the form of game or fish, necessities provided to the family such as heating wood or fuel, or necessary day care services.
3. Setting of Child Support Obligation. In any case where the tribal court is determining the paternity of a child, decreeing a divorce between parties or establishing child support for a custodial parent when the absent parent is away from the home for more than thirty (30) days, the tribal court shall set an amount of support to be paid by an absent parent to the custodial parent using the standards set out herein. Upon request by either parent, the Court may review any order of child support every three years to determine if more or less support is called upon under the child support guidelines. If there is a substantial and material change of circumstances, any party may petition the tribal court for a modification of child support at any time.
4. Presumptive Child Support. The presumptive child support established by guidelines adopted by the Tribal Judicial Board and Court shall be rebuttably presumed to be the correct amount of support to be awarded in any child support proceeding to establish or modify an order of support. Every order or decree setting or modifying a child support order shall state the presumptive amount of support and justify either an upward or downward deviation based upon the deviations prescribed by the Tribal Judicial Board and court.
5. Establishing Child Support Guidelines. The Turtle Mountain Judicial Board, in consultation with the Tribal Court, shall establish child support guidelines which must, at a minimum:

- a. Take into consideration all gross income of the absent parent;
  - b. Be based on specific and descriptive criteria and result in a computation of an amount of child support which is sufficient to meet the basic needs of the child or children for housing, clothing, food, education, health care, and goods and services required by physical and mental disability;
  - c. Provide for the children's health care needs either through assuring Indian Health Service coverage or benefits that supplement those benefits and providing for each parent to pay his/her share of uninsured medical expenses;
  - d. Consider the economic condition of the absent parent and his ability or inability to obtain gainful employment within the reservation;
  - e. Provide for review and revision, where appropriate, of the child support guidelines at least once every four years to ensure that the amounts provided for in the guidelines are periodically adjusted for increases or decreases associated with the cost of caring for children on the Turtle Mountain reservation;
  - f. Allow for deviation from the guidelines based upon factors such as: the amount of visitation exercised by the absent parent, including provisions for abatement of support, when the absent parent exercises visitation for a consecutive period of more than 29 days; whether the absent parent provides the transportation for visitation; income contributed to the child by third persons including extended family members of the absent parent; income contributed to the absent parent by a third party including spouse; special medical needs of the child; day care expenses; age of the child; the responsibility of the absent parent to support other children, either in his care or children he is paying support for; and any other ground cited by the Board or court. In any case where deviation is granted the Court shall expressly state the ground for deviation.
  - g. Consider the in-kind contributions of the absent parent as child support and develop guidelines that take into consideration the in-kind contributions of the absent parent and his family.
6. Public Assignment of Child Support Rights. Establishment and Amount of Obligation
- a. Assignment
    - (1) Any person who receives Temporary Assistance for Needy Families either from the State of North Dakota or the Tribe shall, upon applying for such benefits, assign all accrued child support rights and the right to future support to the Tribe through the execution of an assignment of support rights. Said assignment shall authorize the Tribe to bring an action in the Tribal Court, or other appropriate court of competent jurisdiction, to both establish a support order and to collect on that order from the absent parent.
    - (2) Any other person, not receiving TANF benefits, may apply to the Tribe for services and execute an assignment of support rights to the Tribe for the establishment and collection of support. In those non-TANF cases, the Tribe shall be entitled to collect a fee from the custodial parent for the collection of support in accordance with a fee schedule to be set by the Tribal Judicial Committee in consultation with the Tribal Court.
    - (3) Any person, required to execute an assignment of support rights to the Tribe, but whom refuses to do so without good cause, or who fails to cooperate with the Tribe or State Office of Child Support Enforcement in the collection of support shall be subject to a sanction in the amount of \$50 from the TANF grant for the first refusal, \$100 for the second refusal and exclusion from the TANF program for a third refusal. Good cause to refuse cooperation shall include the following situations:

- (a) When the custodial parent has a well-founded fear of violence from the non-custodial parent as evidenced by the existence of a order of protection in which the custodial parent is protected from the absent parent;
  - (b) When the child was the product of rape or incest which was reported to appropriate law enforcement officials within a reasonable time after the commission of such an act;
7. Child Support Agreements. Agreements regarding child support may be submitted to the Court. All such agreements shall be accompanied by financial affidavits, including pay stubs and an expense report if a person is self-employed, submitted by each party disclosing the financial condition of each party as required to determine a presumptive child support order. If the agreed amount of support deviates from the presumptive amount of support the parties shall furnish statements explaining why they have agreed to a lesser amount than that presumed. The Court may reject an agreed-upon support amount if the parties do not demonstrate good grounds for deviating from the presumptive amount.
  8. Modifications. After passage of guidelines by the Tribal Judicial Board and Court, current child support orders may be modified to conform to the guidelines, unless the amount of support previously entered was the result of an agreement which the Court finds to be equitable in light of the guidelines.
  9. Voluntary Unemployment or Underemployment. Where either parent is voluntarily unemployed or underemployed, the Court shall compute the amount of support based upon the potential earning capacity of the unemployed or underemployed person. In making that determination the Court shall consider:
    - a. Prior employment and educational background and history;
    - b. Availability of employment in the area which- the parent is qualified for;
    - c. Prevailing wage rates and unemployment rate in the area;
    - d. In no circumstance shall a parent who is a member of the Tribe be subject to a determination that he/she voluntarily became unemployed or underemployed because he returned to the reservation for purposes of being closer to his family.

**9.0813**

**Collection of child support.**

1. Purpose. It is the intent of this Title of the Child Support Code to allow for the prompt collection and enforcement of child support from absent parents in a manner that is consistent with due process of law under the Tribe's constitution and the Indian Civil Rights Act, while permitting the tribal court and tribal child support agency to use all lawful methods to collect support for children.
2. Wage Withholding.
  - a. In any case where the Tribal Court has set a child support order, or has honored an order of support from a foreign jurisdiction under 28 U.S.C.1738B, the Court shall enter an order directed to the employer of the absent parent, requiring that employer to withhold and pay the amount of present support, plus any amount to be paid on arrearages, to the tribal court as payee for the custodial parent, Tribe (if the child is receiving TANF benefits or foster care benefits from the Tribe), or State (if the child is receiving TANF or foster care benefits from the State). The Tribal Judicial Board, in consultation with the Tribal Court, shall establish procedures for the disbursement of amounts collected under this section, either to the Tribal or state agency due the amounts collected. Income withholding under this section is mandatory even if the absent parent is not delinquent in paying his support.
  - b. If the employer of the absent parent is the Tribe or a tribal entity,

the Tribe or that entity shall be required to withhold the amount of support and pay to the Tribal Court just as any other employer is required to do, provided the income withholding order comes from the Turtle Mountain Tribal Court. The Tribe and its entities are not required to honor any wage withholding order from a foreign jurisdiction unless said order has been filed with the Tribal Court and the Tribal Court has honored that order. In no way shall this section be construed as a waiver of the Tribe's sovereign immunity from suit.

- c. The failure of any employer to comply with an order from the tribal court directing an income withholding shall subject the employer to a penalty in the amount of \$100.00 for the first violation and \$500.00 for every subsequent violation, except that said penalty shall not be applicable to any Tribal employer.
  - d. The Tribal Judicial Board, in consultation with the Court, shall establish a uniform income withholding order which shall be utilized in any case of income withholding. That form, at a minimum, must:
    - (1) Be served upon both the employer and child support obligor by first class mail, at the time of the commencement of the income withholding;
    - (2) Notify the child support obligor of his right to request a hearing, within 1.0 days of the notice, in the tribal court if the income withholding order is in violation of tribal law, or is creating a severe hardship upon him or his existent family, If a request for hearing is filed, the Court may stay the income withholding order at its discretion pending the hearing;
    - (3) Notify the employer that it has seven days from the date the monies were due and payable to the obligor to pay the amount over to the Tribal Court;
    - (4) Permit the employer to charge a nominal amount, not to exceed \$5.00 for the compliance with the income withholding order;
    - (5) Notify the employer and the child support obligor of the priorities for payment should the obligor be paying support for other children pursuant to a previous income withholding order from the Court;
    - (6) Notify the employer that it shall be subject to a fine in the amount of \$500 for any employee it discharges or disciplines because of the receipt of an income withholding order from the tribal court, or for a fine in the amount of \$100.00 for a first violation and \$500.00 for any subsequent violation for refusal to comply with an income withholding order from the tribal court. This penalty shall not be applicable for an employee's refusal to comply with a wage withholding order from a foreign jurisdiction unless said order has been filed with the tribal court and honored by the tribal court;
    - (7) Notify the employer that any income withholding order for support takes precedence over any other lawful debt owed by the child support obligor, except those debts lawfully owed to the employer itself which were incurred before the income withholding order was generated.
3. Collection of Support from Other Sources.
- a. In any case where "the Tribal Court has entered a judgment for child support arrearages against a child support obligor, the Court shall forward the judgment to the appropriate state IV-D agency (State Child Support Enforcement) with a request that that receiving agency:
    - (1) Apply for an intercept of the child support obligor's federal or state tax refund, if applicable, in the amount identified by the tribal court as the appropriate arrearages. Said amounts intercepted shall be applied to any amounts owed the Tribal or State agency for past support of the child, and then to the amount owed the custodial parent;

- (2) Apply for the intercept of any worker's compensation or unemployment compensation benefits owed the obligor in the amount identified by the tribal court. Said amounts intercepted shall be applied first to any amounts owed the Tribal or State agency for past support of the child, and then to the amount owed the custodial parent;
  - (3) Apply for any other collection efforts available to the receiving agency including liens against real or personal property under the jurisdiction of the receiving agency, and/or suspension of driver's or other licenses issued by the state jurisdiction;
  - (4) Apply for any parental locator services that can assist the custodial parent in the location of the absent parent to assure collection of child support;
  - (5) Apply for any financial institution data match programs that the State IV-D agency operates which would permit the development of information about any tribal child support obligor who maintains a financial institution account, including a request that the State agency impose liens upon any accounts held by the obligor and pay said amounts first to any Tribal or State agency owed monies for supporting said child and then to the custodial parent;
  - (6) Apply for any credit bureau reporting that the State IV-D agency operates with regard to state orders for support.
- b. In any case where the Tribal Court establishes that a child support obligor owes more than \$1,000 in back child support to either the custodial parent or a tribal or state agency and after a show cause hearing establishes that the obligor has the ability to pay said support obligation and has wrongfully refused to do so, the Tribal Court may order the suspension of any license issued by the Tribe or privilege including the privilege to drive on the reservation public highways. Said license may be suspended under the following conditions:
- (1) The Court shall allow the obligor to retire the child support arrearages by paying periodic payments to the Court and if the obligor complies with said order by making the first payment, he shall regain his license or licenses, subject to a further suspension if the obligor fails to make future periodic payments for no substantial reason;
  - (2) The obligor shall be permitted to demonstrate that the suspension of the license will cause a severe hardship upon himself or his existent family;
  - (3) The obligor shall be permitted to appeal any suspension of his license or licenses to the appropriate tribal appellate court during which time his license will not be suspended.

**9.0814**

**Creation of Tribal Child Support Enforcement Unit.**

1. Purpose. There shall be created an entity called the Turtle Mountain Child Support Enforcement Unit, which shall have the authority to operate a child support enforcement program in compliance with the Turtle Mountain Child Support Enforcement Act. Said entity shall have the following authority:
  - a. To apply to any state child support enforcement program for a cooperative agreement or to any federal agency for direct funding to operate a tribal child support enforcement program in compliance with the Turtle Mountain Child Support Enforcement Act. Any agreement reached shall be subject to final approval by the Tribal Council;
  - b. To accept an assignment of child support from any custodial parent or other guardian, including a tribal child protection or foster care program, of any child receiving TANF or foster care assistance either from a tribal or state agency, or from any other custodial parent wishing to receive assistance from the tribal child support enforcement

- unit;
- c. To file actions in the Tribal Court on behalf of any custodial parent or child owed child support from a non-custodial parent located either on or off the reservation;
  - d. To charge a nominal fee, not to exceed \$10.00, from any custodial parent not receiving TANF or any other form of state or tribal assistance who applies for services from the Unit;
  - e. To work cooperatively with the Tribal Court and Judicial Board in developing appropriate procedures for the filing of paternity actions and support actions in the tribal court, including complying with any federal regulations regarding timelines for the filing of actions and the disbursement of monies received, for the referral of tribal court judgments for child support to other state and federal agencies for collection efforts, and for the expenditure of any monies received by the Tribe for the collection of child support either from a state through a cooperative agreement or directly from the federal government.
2. Location of Said Unit. The Tribal Child Support Collection Unit shall be housed in the office of the Tribal Prosecutor at the Tribal Court or at the Tribe's Department of Child Protection Services.

**9.0815**      **Representation of child.**

The Court may appoint an attorney to represent the interests of a minor or dependent child with respect to his support, custody, and visitation. The Court shall enter an order for costs, fees, and disbursements in favor of the child's attorney. The order shall be made against either parents, except that, if the responsible party is indigent, the costs, fees, and disbursements shall be borne by the Turtle Mountain Band of Chippewa Indians Tribe.

**9.0816**      **Payment of maintenance or support to Court.**

1. Upon its own motion or upon motion of either party, the Court may order at any time that maintenance or support payments be made to the Tribal Court Clerk as trustee for remittance to the person entitled to receive the payments.
2. The Tribal Court Clerk shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order.
3. The parties affected by the order shall inform the Tribal Court Clerk of any change of address or of other condition that may affect the administration of the order.
4. If a party fails to make a required payment, the Tribal Court Clerk shall send by registered or certified mail notice of the arrearage to the obligator. If payment of the sum due is not made to the Tribal Court Clerk within ten (10) days after sending notice, the Tribal Court Clerk shall certify the amount due and promptly initiate contempt proceedings against the obligator.
5. If the person obligated to pay support has left or is beyond the jurisdiction of the Court, the Tribal Court Clerk may institute any other proceeding available under the laws of the jurisdiction for enforcement of the duties of support and maintenance.

**9.0817**      **Assignments.**

The Court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payer of the funds two (2) weeks after service upon him of notice that it has been made; however, this order for payment from Individual Indian Money (IIM) accounts under the control of the Agency

Superintendent, is not binding on said Superintendent. The payer shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the specified in the assignment and shall transmit the payments to the person specified in the order. The payer may deduct from each payment a sum not exceeding five dollars (\$5) as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this Section.

**9.0818 Attorney's fees.**

The Court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this Act and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The Court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

**9.0819 Decree.**

1. A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from the provision, and either of the parties may remarry pending appeal.
2. No earlier than six (6) months after entry of a decree of legal separation, the Court on motion of either party shall convert the decree to a decree of dissolution of marriage.
3. The Tribal Court Clerk shall give notice of the entry of a decree of dissolution or legal separation if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that the enter the fact of dissolution in the appropriate record.
4. Upon request by a wife whose marriage is dissolved or declared invalid, the Court may, and if there are no children of the parties shall, order her maiden name or a former name restored.

**9.0820 Independence of provisions of decree or temporary order.**

If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended; but he may move the Court to grant an appropriate order.

**9.0821 Modification and termination of provisions for maintenance, support and property disposition.**

1. Except as otherwise provided in Subsection (f) of Section 9.0806 of this Code, the provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and only upon showing of changed circumstances so substantial and continuing as to make the terms unconscionable. The provisions as to personal property disposition may be revoked or modified, unless the Court finds the existence of conditions that justify the reopening of a judgment under the laws of this tribe.
2. Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.
3. Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be

modified, revoked, or commuted to a lump sum payment, to the extent just and appropriate in the circumstances.

**CHAPTER 9.09**  
**Custody**

**9.0901**     **Jurisdiction; Commencement of proceeding.**

1. The Tribal Court is competent to decide child custody if:
  - a. This reservation
    - (1) is the home reservation of the child at the time of commencement of the proceeding, or
    - (2) had been the child's home reservation within six (6) months before commencement of the proceeding and the child is absent from this reservation because of his removal or retention by a person claiming his custody or for other reason, and a parent or person acting as parent continues to live on this reservation; or
  - b. It is in the best interest of the child that a court of the Turtle Mountain Jurisdiction assume jurisdiction because
    - (1) the child and his parents, or the child and at least one (1) contestant, have a significant connection with this jurisdiction, and
    - (2) there is available in this jurisdiction substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or
  - c. The child is physically present in this jurisdiction and
    - (1) has been abandoned or
    - (2) it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or
    - (3) No other jurisdiction has jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2) or (3), or another jurisdiction has declined to exercise jurisdiction on the ground that this jurisdiction is the more appropriate forum to determine custody of the child, and
    - (4) It is in his best interest that the Court assume jurisdiction.
2. Except under paragraphs (3) and (4) of Subsection (a), physical presence on this jurisdiction of the child, or of the child and one (1) of the contestants, is not alone sufficient to confer jurisdiction on a court of this jurisdiction to make a child custody determination.
3. Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.
4. A child custody proceeding is commenced in Turtle Mountain Tribal Court;
  - a. By a parent, by filing a petition
    - (1) For dissolution or legal separation; or
    - (2) For custody of the child in the jurisdiction in which he is permanently resident or found; or
  - b. By a person other than a parent, by filing a petition for custody of the child in the jurisdiction in which he is permanently resident or found, but only if he is not in the physical custody one (1) of his parents.
5. Notice of a child custody proceeding shall be given to the child's parent, guardian, and custodian, who may appear, be heard, and file a responsive pleading. The Court upon a showing of good cause, may permit intervention of other interested parties.

**9.0902**     **Best interest of child.**

1. The Court shall determine custody in accordance with the best interest of the child. The Court shall consider all relevant factors including:
  - a. the wishes of the child's parent or parents as to his custody;

- b. The wishes of the child as to his custodian;
  - c. The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;
  - d. The child's adjustment to his home, school, and community; and
  - e. The mental and physical health of all individuals involved.
2. The Court shall not consider conduct of a proposed custodian that does not affect his relationship to the child.

#### **9.0903**

##### **Temporary orders.**

1. The party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in Section 9.0910 of this Code. The Court may award temporary custody under the standards of Section 9.0902 of this Code, after a hearing, or, if there is no objection, solely on the basis of the affidavits.
2. If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the Court finds, after a hearing, that the circumstances of the parents and the best interest of the child requires that a custody decree be issued.
3. If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation under Subsection (1) (ii) or (2) of Section 9.0901 of this Code, is dismissed, any temporary custody order is vacated.

#### **9.0904**

##### **Interviews.**

1. The Court may if deemed necessary, interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. The Court may if deemed necessary, permit counsel to be present at the interview. The Court shall cause a record of the interview to be made and to be part of the record in the case.
2. The Court may if deemed necessary, seek the advice of professionals, whether or not employed by the Court on a regular basis. The advice given shall be in writing and made available by the Court to counsel upon request. Counsel may if deemed necessary, examine as a witness any professional personnel consulted by the Court.

#### **9.0905**

##### **Investigations and reports.**

1. In contested custody proceedings, and in other custody proceedings, if a parent or the child's custodian so requests, the Court may if deemed necessary, order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by a child welfare worker or a social worker of the Bureau of Indian Affairs.
2. In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the Court, the investigator shall refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's if he has reached the age of sixteen (16), unless the Court finds that he lacks mental capacity to consent. If the requirements of Subsection (c) are fulfilled, the investigator's report may be received in evidence at the hearing.
3. The Court shall mail the investigator's report to counsel and to any party not represented by counsel at least ten (10) days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel and investigator's file of underlying data, and reports, complete texts of diagnostic reports made to the investigator

pursuant to the provisions of Subsection (b), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

9.0906

**Hearings.**

1. Custody proceedings shall receive priority in being set for hearing.
2. The Court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the Court deems necessary to determine the best interest of the child.
3. The Court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the Court may if deemed necessary, exclude the public from a custody hearing, but may if deem appropriate admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the Court.
4. If the Court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the Court shall make an appropriate order sealing the record.

9.0907

**Visitation.**

1. A parent not granted custody of the child is entitle to reasonable visitation rights unless the Court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.
2. The Court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the Court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.

9.0908

**Judicial supervision.**

1. Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the Court after hearing, finds upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.
2. If both parents or all contestants agree to the order or if the Court finds that in the absence of the order the child's physical health would be endangered or his emotional development signifantly impaired, the Court may order the Child Welfare Worker or Social Worker of the Bureau of Indian Affairs, to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

9.0909

**Modification.**

1. No motion to modify a custody decree may be made earlier than two (2) years after its date, unless the Court permits it to be made on the belief the child's present environment may endanger seriously his physical, mental, moral, or emotional health.
2. If a court of this jurisdiction has jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act of the State of North Dakota, the Court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the Court at the time of entry of the prior decree, that a change has occurred in the circumstances of the circumstances of the child or his custodian,

and that the modification is necessary to serve the best interest of the child. In applying these standards the Court shall retain the custodian appointed pursuant to the prior decree unless:

- a. The custodian agrees to the modification;
  - b. the child has been integrated into the family of the petitioner with consent of the custodian; or
  - c. The child's present environment endangers seriously his physical, mental, moral or emotional health, and the harm likely to be caused by a change of environment is outweighed by its advantages to him.
3. Attorney fees and costs shall be assessed against a party seeking modification if the Court finds the modification action is vexatious and constitutes harassment.

**9.0910**

**Affidavit practice.**

A party seeking a temporary custody order or modification of a custody decree shall submit together with his moving papers an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to the other parties to the proceeding, who may file opposing affidavits. The Court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested or modification should not be granted.

**9.0911**

**Severability.**

If any provision of this Title or application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or application of this Title which can be given effect without the invalid provision or application, and to this end the provisions of this Title are severable.