

# CHAPTER I

## GENERAL PROVISIONS

### **Section 1-1. Title**

This Code shall be known as the “Kiowa Family Code.”

### **Section 1-2. Authority**

This Code is enacted pursuant to the inherent sovereign authority of the Kiowa Tribe and pursuant to the 2017 Constitution of the Kiowa Tribe, which empowers the Kiowa Legislature to “makes laws and resolutions in accordance with the requirements of the Constitution” (Article VI, §6(a)); and to “monitor the actions of the government, access the needs of the People, and make laws toward better government to address the needs of the People” (Article VI, § 1).

### **Section 1-3. Purpose.**

This Code is enacted to safeguard family relationships, provide for legal recognition of marriages, promote the peaceful and fair settlement of disputes between parties to a marriage, minimize the potential harm to spouses and their children caused by the dissolution of marriages, strengthen parental responsibility for family and child support, and provide procedures for establishing the legal relationship existing between a child and his or her parents in accordance with Kiowa culture, tradition, and values.

### **Section 1-4. Effective Date**

The provisions of this code shall be effective after ratification by the Kiowa Legislature, and upon the date signed by the Chairman of the Kiowa Tribe.

### **Section 1-5. Interpretation**

The provisions of this Code shall be interpreted to be in accordance with tribal customary law. Whenever there is uncertainty or a question as to the interpretation of certain provisions of this Code, tribal law and custom shall be controlling, and where appropriate, may be based on the written or oral testimony of a qualified tribal elder, tribal historian, or tribal representative. If the traditions and customs of the Tribe are inconclusive in any matter, the Court shall construe it consistently with applicable textual tribal law. In the absence of applicable tribal customary law or textual tribal law, the Court shall construe it consistently with applicable federal law.

### **Section 1-6. Severability and Non-Liability**

If any section, provision, or portion of this Code is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Code shall not be affected thereby.

## Section 1-7. Definitions

Any term not defined in this Section shall be given its ordinary meaning. The following terms, wherever used in this Code, shall be construed to apply as follows, except where the context indicates otherwise:

- (a) **“Child”** means a child under the age of eighteen (18) who has not been judicially emancipated.
- (b) **“Citizen”** means an enrolled member of the Kiowa Tribe.
- (c) **“Foreign spousal support or child support order”** means any judgment, decree or order for spousal support or child support of any Tribal or state court or agency other than the Kiowa Trial Court or the Kiowa child support services program.
- (d) **“Harmful Parental Conflict”** means conflict, both verbal and non-verbal, between parents that is detrimental to the child’s welfare. This may include, but is not limited to, unfair criticism of the other parent and expressions of contempt for the other parent.
- (e) **“Kiowa family law guardianship”** is a court proceeding in which a legal guardian is appointed by the Kiowa Trial Court to protect an individual.
- (f) **“Law enforcement agency”** means a law enforcement agency of the Kiowa Tribe, the Bureau of Indian Affairs, a municipality, a county sheriff or a state agency.
- (g) **“Marital Misconduct”** refers to conduct within the marital relationship that undermines or erodes the marital relationship, including without limitation physical or emotional abuse or infidelity. “Marital Misconduct” does not include gross fiscal improvidence, the squandering of marital assets, or the deliberate and unnecessary incurring of tax liabilities.
- (h) **“Parent and Child Relationship”** means the legal relationship existing between a child and his or her natural parent, a child and a person who has formed a parental-like relationship with the child, a child and a person who have formed a parental relationship as defined by Kiowa culture and tradition, a child and a person who have formed a parental-like relationship as may be defined by the child’s experience, and/or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother-and-child relationship and the father-and-child relationship.
- (i) **“State”** means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (j) **“Trial Court”** means the Trial Court of the Kiowa Tribe.

## CHAPTER II

### JURISDICTION

**Section 2-1. Scope.** The Kiowa Trial Court has jurisdiction over actions governed by this Code in accordance with Section 2-3 through 2-5. The Court may hear any action brought pursuant to this Code where both personal and subject-matter jurisdiction exist. Actions for the establishment of parentage, custody, and support may be joined with actions for divorce, dissolution, declaration of invalidity, or legal separation.

**Section 2-2. Construction.** The Court shall construe this Code liberally to exercise maximum jurisdiction consistent with applicable Tribal, state, and federal law.

**Section 2-3. Personal Jurisdiction.**

- (a) Residents. In a proceeding under this Code to establish, enforce or modify a support order, or to determine parentage or child custody, the Kiowa Trial Court may exercise personal jurisdiction over a resident individual, or the individual's guardian or conservator.
- (b) Nonresidents. In any proceeding described in subsection (a) of this Section, the Trial Court may exercise personal jurisdiction over a nonresident individual, or the individual's guardian or conservator, if any of the following applies:
  - (1) The individual is personally served with notice within the territorial jurisdiction of the Kiowa Tribe;
  - (2) The individual submits to the jurisdiction of the Kiowa Trial Court by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any objection to personal jurisdiction;
  - (3) The individual resided with the child within the territorial jurisdiction of the Kiowa Tribe;
  - (4) The individual resided within the territorial jurisdiction of the Kiowa Tribe and provided prenatal expenses or support for the child;
  - (5) The child resides within the territorial jurisdiction of the Kiowa Tribe as a result of the acts or directives of the individual;
  - (6) The individual engaged in sexual intercourse within the territorial jurisdiction of the Kiowa Tribe and the child may have been conceived by that act of intercourse; or
  - (7) There is any other basis consistent with the Constitution of the United States and the law of the Kiowa Tribe for the exercise of personal jurisdiction.

**Section 2-4. Simultaneous proceedings in another jurisdiction.** The Trial Court may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another court only if all of the following apply:

- (a) The petition in Trial Court is filed before the expiration of the time allowed in the other court for filing a responsive pleading challenging the exercise of jurisdiction by the other state or tribe.
- (b) The contesting party timely challenges the exercise of jurisdiction in the other court.
- (c) The contesting parties agree to a voluntary transfer.

**Section 2-5. Continuing, exclusive jurisdiction.**

- (a) The Trial Court has continuing, exclusive jurisdiction over a child support order it has issued for as long as the child is an enrolled member of the Tribe, or for as long the jurisdiction of the Kiowa Tribe remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, or until each individual party has filed written consent with the Trial Court for a court of another state or tribe to modify the order and assume continuing, exclusive jurisdiction.
- (b) The Trial Court shall recognize the continuing, exclusive jurisdiction of a court of another state or tribe that has issued a child support order consistent with Section 8-1 and 8-2 of this Code.
- (c) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.
- (d) Contempt.
  - (1) The Trial Court has continuing, exclusive jurisdiction over any order issued under this Code in order to ensure compliance with said order, including through punishment for contempt of court.
  - (2) The Trial Court may initial contempt proceedings either upon the request of a party to the action in which the order being violated was issued, or sua sponte.
  - (3) As used in this subsection (d), **“Purge Conditions”** means the punishments employed by the Trial Court for non-compliance with a court order. Purge conditions may be imposed individually or in combination. Purge conditions should be limited to the least possible action to be reasonably expected to bring the party in contempt into compliance with the breached order or decree. Purge conditions include, but are not limited to:
    - (A) Public Reprimand;

- (B) Report to any state professional body;
  - (C) Fine; and
    - (i.) A fine may be payable to the court, a party prejudiced by the contempt as compensation, or some other recipient for the purpose of promoting compliance.
    - (ii.) A fine must be calculated according to the character and magnitude of the harm or prejudice threatened by continued breach of the court's order or decree.
  - (D) Imprisonment.
- (4) Contempt Outside the Court's Presence. In allegations of contempt involving actions outside the presence of the court, the Trial Court shall:
- (A) Schedule a deadline for the filing of a response to the contempt allegations, but no less than seven (7) days after the responding party is served with notice of the alleged contempt.
  - (B) Schedule a hearing on the alleged contempt, no less than seven (7) days after the filing of the response identified in subsection (A) of this subsection.
  - (C) State the purge conditions requested, if any, including fine and period of imprisonment.
- (5) In considering allegations of contempt, the Trial Court must determine if the following elements are established by clear and convincing evidence:
- (A) A valid order or decree of this court was in effect;
  - (B) The party alleged to be in contempt knew of that order or decree; and
  - (C) The party alleged to be in contempt breached that order or decree.
- (6) If the Trial Court determines that a party is guilty of contempt, the Trial Court shall issue an order that:
- (A) Provides a short and concise explanation of its decision;
  - (B) Lists the purge conditions imposed to enforce compliance with the breached order or decree; and

- (C) States the precise manner in which the purge conditions must be satisfied.

## CHAPTER III

### MARRIAGE

**Section 3-1. Persons who may marry.** Marriage is a personal relationship between two individuals arising out of a civil contract to which the consent of the parties is essential, and typically any two persons may marry. However, no marriage license shall be issued, or marriage performed, unless the persons to be married meet the following criteria:

- (a) Both persons to be married are at least 18 years old;
- (b) At least one of the persons to be married has been a citizen of the Kiowa Tribe for at least ninety (90) days prior to the license application; and
- (c) If under the age of 18, but 14 years or older, that the party(s) have the consent of their parents/guardian or the Court; and/or
- (d) If under the age of 18, but 16 years or older, that the person who is underage be emancipated by a recognized order of the Trial Court or a court of competent jurisdiction. Emancipation procedures will be established by the Court upon the petition of an underage person if there is no applicable Tribal law.

**Section 3-2. Prohibited Marriages.** Marriages in the following cases are prohibited:

- (a) When either party thereto has another spouse living at the time of marriage;
- (b) When the parties are near of kin to each other than second cousins;
- (c) It shall be unlawful for any person to marry one of his or her parents, parents' siblings, children, or grandchildren.

**Section 3-3. Who may perform marriage ceremonies.**

- (a) A marriage may be solemnized and performed in the Kiowa Tribe by the followings:
  - (1) A recognized member of the clergy or person recognized by their religion as have authority to perform marriages;
  - (2) A judge of the judicial courts of the Kiowa Tribe;
  - (3) A person with the authority to perform marriage ceremonies according to Kiowa custom and tradition who has sought the certification of the Trial Court of the Kiowa Tribe for the purpose of marrying others pursuant to this Code. A certification process shall be established by the Trial Court of the

Kiowa Tribe upon petition of an individual seeking to perform a marriage ceremony if there is no applicable Tribal law.

- (b) No marriage solemnized or performed before any person professing to have authority to marry shall be invalid for lack of such authority, if consummated in the belief of the parties to the marriage, or either of them, that they have been lawfully joined in marriage.

**Section 3-4. Marriage Ceremony.** No particular form of marriage ceremony is required; provided, that the persons to be married shall declare in the presence of the person performing the marriage ceremony their intention to be married to one another and that such declaration is made in the presence of at least two attending witnesses.

**Section 3-5. Marriage Licenses and Certificates.**

- (a) No marriage ceremony shall be performed unless the parties have first obtained a marriage license from the Clerk of the Trial Court.
- (b) In addition to payment of a fee to be set by the Trial Court, the Clerk shall require each party to make and file an affidavit upon forms provided by the Trial Court showing that the applicants are eighteen (18) years of age or older, and that one of the parties has been a citizen of the Kiowa Tribe for at least ninety (90) days and/or they have the necessary consents or can show emancipation.
- (c) The Clerk shall keep a public record of all marriage licenses and certificates issued.
- (d) The marriage license, properly endorsed by the authorized person performing the marriage and two attending witnesses, shall within thirty (30) days of the ceremony be returned to the Clerk, who shall issue a marriage certificate to the parties.
- (e) The Trial Court is authorized to develop a marriage license, an affidavit form, and other documents and records necessary to implement this Chapter.

**Section 3-6. Voidable Marriages.** When either party to a marriage is incapable of consenting thereto, for want of legal age or sufficient understanding, or when the consent of either party is obtained by force or fraud, such marriage is voidable, but only by the party laboring under the disability or upon whom the force or fraud is imposed, or their parent or family responsible for care, legal guardian or conservator.

**Section 3-7. Existing Marriages.** All marriages performed, other than as provided under this Code, that are valid under the laws of the jurisdiction where and when performed are valid within the jurisdiction of the Tribe.

## **CHAPTER IV**

### **DISSOLUTION, LEGAL SEPARATION AND DECLARATION OF INVALIDITY**

#### **Section 4-1. Petition for Dissolution, Separation or Invalidity.**

- (a) The petition in a proceeding for dissolution of marriage, legal separation or declaration of invalidity shall allege that the marriage is irretrievably broken or was never legally valid and shall set forth:
  - (1) The name, last known address, length of Tribal enrollment, if any, of each party;
  - (2) The date of the marriage and the place where the marriage ceremony was performed;
  - (3) If the parties are separated, the date on which the separation occurred;
  - (4) The names, ages and addresses of all living children, natural or adopted, common to the parties and whether the wife is pregnant;
  - (5) The details of any agreements between the parties as to the parenting and support of the children and maintenance of a spouse;
  - (6) A statement specifying whether the Trial Court needs to divide property between the parties and listing any such property; and
  - (7) The relief sought.
- (b) Either or both parties to the marriage may initiate the proceeding.
- (c) The only defense to a petition for declaration of invalidity of marriage is that the marriage is legally valid.
- (d) The Trial Court may join additional parties necessary for the exercise of its authority. Any child of parents who are parties to a proceeding for dissolution, legal separation, or a declaration of invalidity is also a party to such an action, and the Court may appoint a guardian ad litem to represent the child's best interests in the matter.

#### **Section 4-2. Informal dispute resolution.**

- (a) In any proceeding under this Chapter, an informal resolution of the contested issues may be arranged with the Trial Court's permission at or before the time the matter is set for a hearing.
- (b) The informal resolution process may include counseling, mediation, transfer to a Peacemaker Court, or another process that is acceptable according to Kiowa community standards. The parties may seek the assistance of the Court to establish such a process or seek the approval of the Court for an agreed-upon process.



- (c) The purpose of the informal dispute resolution process is to encourage cooperation, reduce acrimony and develop an agreement that to the extent possible meets the needs and best interests of all the parties involved. In the course of such an informal dispute resolution process, the Court may apply the customs and traditions of the Kiowa Tribe.
- (d) Informal dispute resolution proceedings shall be held in private and shall be confidential. By agreement the parties may have extended family members or supporting parties present, if the parties cannot agree as to who should be present the Court after consultation may make the decision and formulate the rules for such participation. No one shall testify in Trial Court as to any aspect of the proceedings. However, if an agreement is reached by the parties it shall be reduced to writing, signed by the parties and filed with the Trial Court.

#### **Section 4-3. Temporary order or preliminary injunction.**

- (a) Effect of Filing Petition. Immediately upon the filing of a petition for dissolution of marriage, the Court shall enter an injunction enjoining the parties from:
  - (1) 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 or her to notify the other party of any proposed extraordinary expenditures made after the injunction is entered;
  - (2) Harassing another party or any child; and
  - (3) Removing a child from the jurisdiction of the Trial Court without approval of the Trial Court.
- (b) Request for Temporary Order. In a proceeding for dissolution of marriage, legal separation, or declaration of invalidity, either party may move for temporary custody, child support, and spousal support. The motion shall be accompanied by a statement setting forth the factual basis for the motion and the relief requested.
- (c) Preliminary Injunction. As a part of a motion for temporary spousal or child support or by independent motion accompanied by a party's statement, and in addition to the items listed in subsection (a) of this Section, either party may request that the Trial Court issue a preliminary injunction granting any of the following relief:
  - (1) Enjoining a party from harassing any person who, though not a party, may be directly involved with the disputing spouses. A request for such relief must be accompanied by a statement setting out the facts of this involvement and the basis for the request;

- (2) Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm may otherwise result; and/or
- (3) Providing other injunctive relief proper under the circumstances.
- (d) Temporary Restraining Order. The Trial Court may issue a temporary restraining order without requiring prior notice to the other party only if it finds on the basis of the moving party's statement or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.
- (e) Order for Temporary Support. On the basis of the showing made, and in conformity with the Schedule and guidelines for support under this Code, the Trial Court may issue an order for temporary support in amounts and on terms just and proper under the circumstances.

#### **Section 4-4. Separation Agreement.**

- (a) Provisions of Separation Agreement. To promote amicable settlement of disputes between parties to a marriage or parental relationship upon their separation or upon the filing of a petition for dissolution of marriage, legal separation or declaration of invalidity, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance and support of either of them, and the custody and support of their children.
- (b) Effect of Terms. The terms of the separation agreement shall be binding upon the Trial Court unless it finds, after considering all of the relevant evidence produced by the parties, that the agreement is unfair. Child support may be included in the separation agreement and shall be reviewed in any subsequent proceeding as to its reasonableness consistent with Chapter VII of this Code.
- (c) Fairness. If the Trial Court finds the separation agreement unfair as to disposition of property, support, or custody, it may request that the parties submit a revised separation agreement or may make orders for the disposition of property, support, or custody.
- (d) Incorporation by Reference. If the Trial Court finds that the terms of the separation agreement are fair, the agreement shall be set forth or incorporated by reference in the decree of dissolution, legal separation, or declaration of invalidity and the parties shall be ordered to comply with its terms.
- (e) Enforcement. Terms of the agreement set forth or incorporated by reference in an order of the Court shall be enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

#### **Section 4-5. Decree of Legal Separation.**

- (a) Necessary Findings. The Trial Court may enter a decree of legal separation if it finds each of the following:
  - (1) That the marriage was performed in the Kiowa Tribe, that the marriage certificate was issued by the Kiowa Tribe, that the parties agreed to have the matter heard in the Trial Court, or that one of the parties is an enrolled citizen of the Kiowa Tribe, or is otherwise subject to the jurisdiction of the Kiowa Tribe;
  - (2) That the marriage is irretrievably broken in accordance with Section 4-8; and
  - (3) That the other party does not object to a decree of legal separation. If the other party objects to a decree of legal separation, the Trial Court shall direct one of the parties to amend the pleadings to seek dissolution of the marriage.
- (b) Support. If the issue of child support and/or the support of either spouse is before the Court at the time it issues a decree of legal separation under this Chapter, the Court may concurrently issue an order for child support in accordance with Chapter VII of this Code, and/or for spousal support in accordance with Section 4-10.
- (c) Division of Property. At the time the Court issues a decree of legal separation under this Chapter, the Court may concurrently divide the property and liabilities of the parties in accordance with Section 4-9.
- (d) Custody. If the issue of child custody is before the Court at the time it issues a decree of legal separation under this Chapter, the Court may concurrently issue a parenting plan in accordance with Chapter V of this Code.

#### **Section 4-6. Dissolution of Marriage – Findings Necessary.**

- (a) Necessary Findings. The Trial Court may enter a decree of dissolution if it finds each of the following:
  - (1) That the marriage was performed in the Kiowa Tribe, that the marriage certificate was issued by the Kiowa Tribe, that the parties agreed to have the matter heard in the Trial Court, or that one of the parties is an enrolled citizen of the Kiowa Tribe, or is otherwise subject to the jurisdiction of the Kiowa Tribe; and
  - (2) That the marriage is irretrievably broken in accordance with Section 4-8.
- (b) Support. If the issue of child support and/or the support of either spouse is before the Court at the time it issues a decree of dissolution under this Chapter, the

Court may concurrently issue an order for child support in accordance with Chapter VII, and/or for spousal support in accordance with Section 4-10.

- (c) Division of Property. At the time the Court issues a decree of dissolution under this Chapter, the Court may concurrently divide the property and liabilities of the parties in accordance with Section 4-9.
- (d) Custody. If the issue of child custody is before the Court at the time it issues a decree of dissolution under this Chapter, the Court may concurrently issue a parenting plan in accordance with Chapter V.

#### **Section 4-7. Declaration of invalidity of marriage.**

- (a) Necessary Findings. The Trial Court may enter a declaration of invalidity of marriage if the Trial Court finds each of the following:
  - (1) That the marriage was performed in the Kiowa Tribe, that the marriage certificate was issued by the Kiowa Tribe, that the parties agreed to have the matter heard in the Trial Court, or that one of the parties is an enrolled citizen of the Kiowa Tribe, or is otherwise subject to the jurisdiction of the Kiowa Tribe; and
  - (2) The marriage should not have been contracted because of the age of one or both of the parties, a prior undissolved marriage of one or both of the parties, reasons of consanguinity, or because a party lacked capacity to consent to the marriage, either because of mental incapacity or the influence of alcohol or other incapacitating substances, or because a party was induced to enter into the marriage by force, duress, or fraud involving the essentials of marriage; and
  - (3) The parties have not ratified their marriage by voluntarily cohabiting after attaining the age of consent, after attaining capacity to consent, or after cessation of the force or duress or discovery of the fraud.
- (b) Prior Undissolved Marriage. Notwithstanding subsection (a)(2) of this section, if a party reasonably thought a prior marriage was dissolved although it was not, the subsequent dissolution of that marriage will cure or waive its effect of invalidating a later marriage.
- (c) Support. If the issue of child support and/or the maintenance of either spouse is before the Court at the time it issues a declaration of invalidity of marriage under this Chapter, the Court may concurrently issue an order for child support in accordance with Chapter VII of this Code, and/or for spousal support in accordance with Section 4-10.

- (d) Division of Property. At the time the Court issues a declaration of invalidity of marriage under this Chapter, the Court may concurrently divide the property and liabilities of the parties in accordance with Section 4-9.
- (e) Custody. If the issue of child custody is before the Court at the time it issues a declaration of invalidity of marriage under this Chapter, the Court may concurrently issue a parenting plan in accordance with Chapter V of this Code.
- (f) Invalidity in Other Jurisdictions. If the Court finds that a marriage contracted in another jurisdiction was void or voidable under the laws of the place where the marriage was contracted and in the absence of proof that the marriage was subsequently validated by the laws of the place of contract, or of a subsequent domicile of the parties, it may declare the marriage invalid.

**Section 4-8. Irretrievable breakdown of marriage – Finding.**

- (a) Statement Under Oath or Affirmation. If both of the parties by petition 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 Trial Court shall make a finding that the marriage is irretrievably broken.
- (b) When Hearing Held. If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the Court may hold a hearing to consider all relevant factors as to the prospect of reconciliation, and may either:
  - (1) Make a finding that the marriage is irretrievably broken and enter a decree of dissolution or legal separation; or
  - (2) Continue the matter for further hearing, not more than sixty (60) days later, and order a reconciliation conference. If either party refuses to participate in a reconciliation conference, a finding will be made pursuant to subsection (b)(1) of this section. At the rescheduled hearing the Court shall:
    - (A) Find that the parties have agreed to reconciliation and dismiss the petition; or
    - (B) Find that the parties have not reconciled. If either party continues to allege that the marriage is irretrievably broken, the Court shall make a finding pursuant to subsection (b)(1) of this section.

**Section 4-9. Disposition of Property.** In a proceeding for dissolution of marriage, legal separation, or a declaration of invalidity, the Trial Court may, without regard to marital misconduct, divide the property and liabilities of the parties, either community or separate, as is just and equitable after considering all relevant factors including:

- (a) The nature and extent of the community and separate property;

- (b) The nature and extent of any trust or restricted property;
- (c) The duration of the marriage;
- (d) The economic circumstances of each party at the time the division of property is to become effective including:
  - (1) The desirability of awarding the family home or the right to live therein for reasonable periods to a party with whom the children reside the majority of the time; and
  - (2) The desirability of ensuring that both parties' ability to continue working in their chosen field or livelihood is not unreasonably jeopardized;
- (e) The direct or indirect contribution of each party to the education or career development of the other party; and
- (f) Any interruption in education or career opportunities to benefit the other's career, the marriage, or any children.

#### **Section 4-10. Spousal Support.**

- (a) Necessary Findings. In a proceeding for dissolution of marriage, legal separation, or a declaration of invalidity, the Trial Court may grant a maintenance order for either party only if it finds that the party seeking support:
  - (1) Lacks sufficient property, including property apportioned to him or her, to provide for his or her reasonable needs; or
  - (2) Is unable to support himself or herself through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home.
- (b) Determination of Amount. The support 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:
  - (1) The financial resources of the party seeking support, including marital property apportioned to him or her and their ability to meet their reasonable needs independently;
  - (2) The time necessary to acquire sufficient education or training to enable the party seeking support to find appropriate employment;
  - (3) The standard of living established during the marriage;
  - (4) The education of one party during the marriage;

- (5) The duration of the marriage;
  - (6) The age and physical and emotional condition of the party seeking support;
  - (7) The ability of the party from whom support is sought to meet his or her needs while meeting those of the spouse seeking support; and
  - (8) Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.
- (c) Modification or Termination. The provisions of any decree respecting spousal support may be modified only as to installments accruing subsequent to the motion for modification, unless the obligee failed to honestly disclose their actual unmet needs, and only upon a showing of changed circumstances that are substantial and continuing. Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future spousal support is terminated upon the death of either party or the remarriage of the party receiving support.
- (d) Waiver. Either party may agree, in writing or orally, to waive spousal support consistent with the provisions of Section 4-4. Once the Court accepts such a waiver of spousal support by a party, that decision is irrevocable and cannot be reopened by the Court or the parties.

**Section 4-11. 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 comply with a parenting plan is not automatically suspended, but he or she may move the Court to grant an appropriate order.

## **CHAPTER V**

### **CHILD CUSTODY, PARENTING PLANS AND VISITATION**

#### **Section 5-1. Policy – Best Interest of the Child.**

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this Chapter, the best interests of the child shall be the standard by which the Trial Court determines and allocates parental responsibilities. The Tribe recognizes the fundamental importance of the parent-child relationship and that the relationship between the child and each parent should be fostered unless inconsistent with the best interests of the child. The interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, Tribal and cultural ties, health and stability, educational needs, and physical care. The best interests of the child are ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, educational, mental or emotional harm.



A determination of the best interests of the child should include consideration of the rights of the child as a Kiowa and the interest of the Kiowa community and Tribe in retaining its children in its society; political membership in the Tribe and the attendant benefits such as hunting and fishing rights; the child's cultural heritage; and the opportunity to participate in the ongoing customary life of the Tribe and maintain the connection that each Kiowa has with the Kiowa territory and their extended family.

**Section 5-2. Petition.** Either parent or an extended family member may petition the Trial Court for resolution of a child custody dispute. If the issue of child custody is before the Court at the time it issues a decree of legal separation, dissolution of marriage, or declaration of invalidity of marriage under this Code, the Trial Court shall concurrently issue a parenting plan under this Chapter.

**Section 5-3. Guardian ad litem.** Any child whose custody is in dispute is a party to an action under this Chapter, and the Court may appoint a guardian ad litem to represent the child's best interests in the matter.

**Section 5-4. Resolution of child custody dispute.** The Court shall resolve child custody disputes by issuing a parenting plan allocating decision-making and custodial responsibility between the parents and any intervening family members on the basis of the best interests of the child with due consideration of Tribal custom. In determining the best interests of the child, the Trial Court shall consider all relevant factors including, but not limited to, those factors enumerated in Section 5-1.

**Section 5-5. Policy of equal access to minor children.** It is the policy of the Kiowa Tribe to assure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interests of their children and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or dissolved their marriage. To effectuate this policy, the Court shall if requested by a parent provide substantially equal access to minor children to both parents unless the Court finds that shared parenting would be detrimental to the children. A parent requesting sole custody shall have the burden to prove that shared parenting would be detrimental to the children, and if the Court makes such a determination it shall be documented in the court record.

**Section 5-6. Objectives.** The objectives of any parenting plan shall be:

- (a) To provide for the child's education and physical care and to maintain the child's emotional stability;
- (b) To provide for the child's changing needs as the child grows;
- (c) To promote and preserve the child's Kiowa heritage and to provide for the maintenance of the child's Tribal affiliation;
- (d) To set forth the rights and responsibilities of each parent consistent with the restrictions noted in Section 5-8;



- (e) To minimize the child's exposure to harmful parental conflict;
- (f) To encourage the placement of siblings together where appropriate; and
- (g) To otherwise protect the best interests of the child consistent with the policy expressed in Section 5-1.

**Section 5-7. Contents of Parenting Plan.** A parenting plan shall include:

- (a) Process for Dispute Resolution. A process for resolving disputes, other than Trial Court action, shall be provided unless it is beyond the financial means of the parties, or precluded or limited by the Trial Court as provided herein. The dispute resolution process may include counseling, mediation, arbitration or another method agreed upon by the parties. In the dispute resolution process:
  - (1) Preference shall be given to carrying out the parenting plan;
  - (2) The parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to child support, unless there is an emergency;
  - (3) If the Trial Court finds that a parent has frustrated the dispute resolution process without good reason, the Trial Court may impose financial sanctions against that parent; and
  - (4) Both parents have the right to court review of the dispute resolution process.
- (b) Decision-Making Authority. The parenting plan shall allocate decision-making authority to one or both parents regarding the children's education, health care, and religious or spiritual upbringing. The plan shall state that:
  - (1) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent, including emergency decisions affecting the health and safety of the child; and
  - (2) When mutual decision-making is designated but cannot be achieved, the parents shall make a good faith effort to resolve the issue through the dispute resolution process.
- (c) Residential Provisions. The plan shall contain a residential schedule designating in which parent's home each child shall reside on given days of the year, including provisions for holidays, birthdays, vacations, dances or ceremonies, and other special occasions. The plan shall also include provisions for the visitation of the parents and extended family members.
  - (1) Holidays. Each parent should be entitled to an equal division of major religious holidays celebrated by the parents, and the parent who celebrates

a religious holiday that the other parent does not celebrate shall have the right to be together with the child on that religious holiday.

(A) With the exception of Christmas, and unless the parents agree to the contrary, holidays shall begin at midnight of the beginning of the first day of the holiday and end at midnight of the end of the last day of the holiday.

(B) Unless the parents agree to the contrary, Christmas shall begin at 5 p.m. on the day before Christmas and end at 5 p.m. on the day of Christmas.

(2) Grandparent Visitation. Pursuant to the provisions of this Chapter, any grandparent of an unmarried minor child shall have reasonable rights of visitation to the child if the Trial Court deems it to be in the best interests of the child. The right of visitation to any grandparent of an unmarried minor child shall be granted only so far as that right is authorized and provided by order of the Trial Court. Visitation may be subject to supervision as directed by the Trial Court.

**Section 5-8. Restrictions in Parenting Plans.** The Trial Court may restrict or limit any provision of a parenting plan based on factors or conduct that the Court finds by a preponderance of the evidence is adverse to the best interests of the child, including:

- (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions;
- (b) Physical, sexual or emotional abuse of a child;
- (c) A history of acts of domestic violence;
- (d) An assault or sexual assault that causes grievous bodily harm or the reasonable fear of such harm to a parent;
- (e) Neglect or substantial nonperformance of parenting functions;
- (f) Long-term emotional or physical impairment that interferes with the parent's performance of parenting functions;
- (g) Long-term impairment resulting from drug, alcohol or other substance abuse that interferes with the performance of parenting functions;
- (h) Abusive use of conflict by the parent that creates the danger of serious damage to the child's psychological development;
- (i) Withholding from the other parent or other parent's extended family access to the child for a protracted period without actual good cause; or

- (j) Such other factors as the Trial Court expressly finds adverse to the best interests of the child.

**Section 5-9. When evidence of abuse, neglect or domestic violence offered.** If a party offers evidence of abuse, neglect or domestic violence, the Court may hold a hearing to consider such evidence. Prior to the hearing, the Court shall provide notice to the parties that accusations of abuse, neglect, or domestic violence have been raised. At the hearing, the accused party may offer evidence of rehabilitation or other circumstances to rebut the presumption that placement with that party is not in the best interests of the child, or offer a safety plan to allow for continued contact with the child. If the accused party fails to appear or does not offer evidence, the Court may only make a finding of abuse, neglect, or domestic violence by clear and convincing evidence.

**Section 5-10. Domestic Violence.** If the Trial Court finds by clear and convincing evidence that a parent is a victim of domestic violence, or the child is an indirect victim of domestic violence, it may ensure the safety of the victim by making an order providing any of the following:

- (a) That the address and telephone number of the parent or child be kept confidential in the proceedings;
- (b) That any exchanges of a child occur in a protected setting;
- (c) That visitation be supervised by another person or agency or be subject to any other reasonable conditions. The perpetrator may be ordered to pay a fee to defray the costs of supervised visitation;
- (d) That the perpetrator(s) of domestic violence attend and complete a domestic violence batterer's program and/or counseling;
- (e) That overnight visitation is prohibited;
- (f) That the perpetrator(s) of domestic violence post a bond for the return and safety of the minor child;
- (g) That the perpetrator(s) stay away from certain locations or events, or other safeguards including monitoring and supervision;
- (h) That the perpetrator(s) not be involved in any decision making regarding the child; and/or
- (i) Such other safeguards that the Trial Court may deem reasonably necessary and substantially likely to ensure the safety of a victim, including monitoring and supervision.

**Section 5-11. When additional information needed.** If the parents are unable to reach agreement on the terms of the parenting plan and the Trial Court determines that it needs additional information before ordering a parenting plan, the Court may order one or more of the following:

- (a) Convene a family meeting with the parties and/or extended family members and interested parties for the purpose of reaching an agreed-upon parenting plan.
- (b) Refer the dispute to the Kiowa Tribe's Peacemaker Court.
- (c) Seek an evaluation by appointing an agreed-upon evaluator who will make recommendations to the Court. Payment obligations for such an evaluation will be determined by the Court pursuant to any and all resources available.
- (d) Order additional reports and/or documents to be secured by the parties and lodged with the Court.

**Section 5-12. Effect of failure to comply.** If a parent fails to comply with a provision of the parenting plan, the other parent's obligations under the parenting plan are not affected.

**Section 5-13. Uniform parenting plan form.** The Trial Court may authorize and approve the utilization of a uniform parenting plan form for all proceedings under this Chapter.

**Section 5-14. Interim Parenting Plan.** Unless it is shown to be detrimental to the welfare of the child, the child shall have, to the greatest degree practical, equal access to both parents during the time prior to the issuance of a parenting plan under this Chapter.

**Section 5-15. Person other than natural or adoptive parent.**

- (a) The Trial Court may grant visitation rights or the care, custody, and control of a child to a stepparent and/or any extended family member when consistent with Kiowa community standards and is in the best interests of the child. Sole physical/legal custody of a child shall not be granted to an extended family member to the exclusion of a natural or adoptive parent absent a determination that continuation in the home of the parent would be contrary to the best interest of the child.
- (b) A person other than a natural or adoptive parent may petition the Trial Court for visitation rights or intervene in a proceeding under this Chapter at any time.
- (c) The Court may modify an order granting or denying visitation rights or custody in accordance with Section 5-16.

**Section 5-16. Modification of parenting plan or visitation.**

- (a) A parenting plan or visitation with the child may be modified if the Trial Court determines that a change in circumstances requires the modification of the award and the modification is in the best interests of the child. If a parent opposes the modification of the parenting plan or visitation with the child and the modification is granted, the Trial Court shall enter on the record the reasons for the modification.

- (b) In a proceeding involving the modification of a parenting plan or visitation with a child, a finding by clear and convincing evidence that a crime involving domestic violence has occurred since the last parenting plan or visitation determination is a finding of change of circumstances under subsection (a) of this section.
- (c) The parties having joint custody of the child may agree to modify the terms of the plan for joint care, custody, and control. The written modification to the plan shall be presented to the Trial Court by the parties, and if the Court determines the modifications are in the best interests of the child, the Court shall approve the modifications and direct the same to be filed.

## **CHAPTER VI**

### **PARENT AND CHILD RELATIONSHIP**

**Section 6-1. Means of establishing relationship.** The parent-and-child relationship between a child and:

- (a) The natural mother may be established by proof of her having given birth to the child, or under this Chapter;
- (b) The natural father may be established under this Chapter;
- (c) An adoptive or permanent parent may be established by proof of adoption or other relationship evidencing a permanent parental relationship under the laws of the Kiowa Tribe; and/or
- (d) A person including those detailed in this section or a person other than those noted above, who otherwise seeks to establish a parental relationship with a child may present the factual basis for such a claim.

**Section 6-2. Presumption of paternity.**

- (a) A man is presumed to be the natural father of a child if:
  - (1) He and the child's natural mother are or have been married to each other and the child was born during the marriage, or within three hundred (300) days after the marriage was terminated by death, annulment, declaration of invalidity, divorce, or dissolution, or after a decree of separation is entered by a court;
  - (2) Before the child's birth, he and the child's natural mother attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born within three hundred (300) days after the termination of cohabitation;

- (3) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his own;
  - (4) Both parents have acknowledged the man's paternity of the child in a writing filed with the Office of Vital Records of the state of Oklahoma, or the Kiowa Tribe Enrollment Office;
  - (5) 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 apparent compliance with law, although the attempted marriage is or could be declared invalid; and
    - (A) With his consent, he is named as the child's father on the child's birth certificate; or
    - (B) He is obligated to support the child under a written promise or by court order.
  - (6) Statistical probability of paternity is established at ninety-eight percent (98%) or more by scientifically reliable blood, genetic or DNA tests. The Court can condition orders or proceedings on the requirements that the parties involved test pursuant to this provision; or
  - (7) He signed the child's birth certificate.
- (b) A presumption under this Chapter may be rebutted only by clear and convincing evidence.

**Section 6-3. Good cause not to establish paternity.** A woman may be excused from submitting to genetic testing or from identifying or locating the father of her child when there is good cause not to reveal his identity or location. "Good cause" may include, but is not limited to:

- (a) Cases involving domestic violence;
- (b) Cases involving incest or rape; or
- (c) Cases where identification of the father is not in the best interest of the child.

**Section 6-4. Artificial insemination.**

- (a) Husband and Child Relationship. If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her spouse, the spouse is treated in law as if he or she were the natural father of the child thereby conceived. The spouse's consent must be in writing and signed by he or she and the natural mother.

- (b) Donor-and-Child Relationship. The donor of semen provided to a licensed physician or a licensed sperm bank for use in artificial insemination or in vitro fertilization of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived, unless the donor and the woman agree in writing that said donor shall be the father. Any such agreement must be in writing and signed by the donor and the woman.

**Section 6-5. Stipulated agreement/voluntary acknowledgement of paternity.**

- (a) At any time, the parties may enter into a stipulated agreement as to the establishment of parentage or the level of child support obligation. If the respondent contends that the Kiowa Tribe's child support guidelines are unjust as applied to his or her situation, he or she must establish this in a hearing before the Kiowa Trial Court.
- (b) The signed voluntary agreement shall be submitted to the Kiowa Trial Court for approval and enforcement. After the Court approves the agreement, it shall be filed with the Clerk of the Trial Court and it shall have the same force as an order issued by the Court. The obligation of the noncustodial parent to pay child support shall commence on the date that the stipulated agreement is filed.
- (c) The signed voluntary agreement as to the establishment of parentage may be rescinded within sixty (60) days from the date the voluntary agreement was signed by both parents by filing a statement of rescission with Kiowa Child Support Services.

**Section 6-6. Action to determine father-and-child relationship.**

- (a) Who May Bring Action.
  - (1) A child's natural mother, a man alleged or alleging himself to be the father, a child's guardian or personal representative, the Kiowa Tribe, a prospective adoptive parent, or another interested party may bring an action at any time for the purpose of declaring the existence or nonexistence of the father/parent and child relationship for any child up to and including eighteen (18) years of age.
  - (2) A child may bring an action under subsection (a)(1) of this section at any time, including as an adult. An action for paternity taken by an adult child shall not be for the purposes of establishing child support under the Title IV-D program except as provided in Section 7-27 of this Code.
  - (3) A man presumed to be a child's father under Section 6-2 may bring an action for the purpose of declaring the nonexistence of the father-and-child relationship only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been



rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

- (4) As a matter of policy, the Kiowa Tribe discourages the disestablishment of paternity that has earlier been established. The Court shall require the party seeking to disestablish paternity to show that it is in the best interests of the child to disestablish paternity, prior to other proceedings on the petition, including genetic testing or discovery.
- (b) Contents of Petition. The petition to establish parentage must include, so far as known, the following:
- (1) The name, address, date of birth, income, Social Security number, gender, and Tribal affiliation, if any, of the child or children whose parentage is at issue, the custodial parent or guardian, and the person who is claimed to be the parent. The petition may include any other information that may assist in locating or identifying the father, unless the father is the filing party.
  - (2) The relief sought.
  - (3) Evidence of parentage including, but not limited to, birth certificates, marriage licenses, decrees of separation or divorce, Kiowa custom or practice acknowledging paternity, and genetic tests performed.
  - (4) A certified copy of any order pertaining to parentage that is in effect.
- (c) Hearing. Upon receipt of the petition, the Court shall schedule a hearing to determine parentage within fifty (50) days from the date the petition is filed. The Clerk of the Court shall issue a summons providing notice of the date and subject matter of the hearing with a copy of the petition to the petitioner for service on the respondent.
- (1) Findings. The factual determinations made at the hearing shall be limited to the parentage of the child or children and the income and expense information necessary to determine the appropriate level of support under Chapter VII of this Code.
  - (2) Use of Custom and Tradition. The Kiowa Trial Court shall consider Kiowa customs and traditions relevant to parentage or child support, in making any determination under this Chapter.
- (d) Summons. The summons described in subsection (c) of this section shall inform the respondent of the following:
- (1) That if he or she chooses not to appear at the hearing or enter a defense to the petition challenging the authority of the Court to hear the matter by the



date of the hearing, the hearing shall proceed on the basis of the petitioner's evidence;

- (2) That parentage will be established at the hearing and that genetic tests may be ordered if parentage is disputed;
  - (3) That respondent's employer or others with evidence of the parent's income may be subpoenaed to provide the Court with records of his or her earnings;
  - (4) That he or she may enter into a stipulated support agreement/voluntary acknowledgment of paternity;
  - (5) That any answer to the petition must be served on the petitioning party and filed with the Court within twenty (20) days of the date of service of the petition.
- (e) Service. The petition shall be served in person, unless service in person is not feasible. If personal service is not feasible, the petition may be served by certified mail at the last known address of the respondent or by another method approved by the Court.
- (f) Default. If the respondent fails to appear at the hearing, the Court may enter an order of parentage and/or child support upon a showing of valid service and the presentation of evidence of parentage and/or a support obligation. The Court has the discretion to not enter the default order of parentage to further the policies of the Kiowa Tribe Enrollment Office.

**Section 6-7. Action to determine mother-and-child relationship.** Any interested party may bring an action to determine the existence or nonexistence of a mother/parent-and-child relationship. Insofar as practicable, the provisions of this Chapter applicable to the father-and-child relationship apply.

**Section 6-8. Parties.**

- (a) The child shall be made a party to any action brought under this Chapter. If the child is a minor, the child may be represented by the child's general guardian or a guardian ad litem appointed by the Trial Court. A minor who is the parent of a child who is the subject of parentage, dependency or guardianship proceedings, or any other proceeding concerning child custody, visitation or support, may appear in court in those proceedings without a guardian ad litem. Upon a finding that the minor parent is unable to understand the nature of the proceedings or assist counsel in preparing the case, the Court may appoint a guardian ad litem on its own motion or motion by the minor parent or his or her counsel.

- (b) The natural mother, each man presumed to be the father, and each man alleged to be the natural father shall be made parties or, if not subject to the jurisdiction of the Trial Court, shall be given notice of the action and an opportunity to be heard.

**Section 6-9. Genetic Testing.**

- (a) Disputed Parentage. If parentage is disputed, the Trial Court may require the child, mother, or any alleged father who has been made a party to submit to blood, genetic or DNA testing. If an alleged father objects to a proposed order requiring him to submit to paternity testing, the Trial Court shall require the party alleging or denying paternity to provide a sworn statement setting forth facts establishing a reasonable possibility of the existence or nonexistence of the requisite sexual contact between the parties.
- (b) Accredited Laboratory. The Trial Court shall identify and use accredited laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests to identify the father or exclude the alleged father. The Kiowa child support services program may seek reimbursement of costs of the genetic testing. If such test confirms parentage, the respondent parent shall pay the costs of testing. If the test disproves parentage, the petitioner or Kiowa child support services shall pay the costs of testing. Parties that have testing done by non-Tribal agencies shall bear all associated costs.
- (c) Admission into Evidence. Unless a party objects to the results of the genetic tests in writing at least five days before the hearing, the tests shall be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity.
- (d) Affidavit of Genetic Expert. The results of genetic tests must be accompanied by an affidavit from the expert describing the expert's qualifications and analyzing and interpreting the results as well as documentation of the chain of custody of the genetic samples.
- (e) Contempt of Court. Failure to submit to genetic tests when required by the Court may constitute contempt of Court.

**Section 6-10. Evidence relating to paternity.** Evidence relating to paternity may include:

- (a) Testimony by the parties or other evidence of sexual intercourse between the mother and alleged father at any possible time of conception;
- (b) An opinion concerning the statistical probability of the alleged father's paternity based upon the timing and duration of the mother's pregnancy;
- (c) Genetic test results, weighted in accordance with evidence of the statistical probability of the alleged father's paternity;

- (d) Other medical evidence relating to the alleged father's paternity of the child based on tests performed by experts; and
- (e) All other evidence relevant to the issue of paternity of the child.

**Section 6-11. Judgment and order determining parentage.**

- (a) The judgment and order of the Trial Court determining the existence or nonexistence of parentage shall be determinative for all purposes.
- (b) If the judgment and order of the Court is at variance with the child's birth certificate, the Court shall order that an amended birth certificate be issued. The Kiowa child support services program shall send the order to the Department of Vital Statistics or equivalent agency of the state in which the child was born.
- (c) The judgment and order shall contain other appropriate provisions directed to the appropriate parties to the proceeding concerning the duty of current and future support; the extent of any liability for past support furnished to the child if that issue is before the Trial Court; 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 and order may also direct the father to pay the reasonable expenses of the mother's pregnancy.
- (d) After considering all relevant factors, the Court may order either or both parents to pay an amount of child support determined pursuant to Chapter VII of this Code.
- (e) On the same basis as provided in Chapter V of this Code, the Court shall make residential provisions with regard to minor children of the parties, except that a parenting plan shall not be required unless requested by a party.
- (f) In any dispute between the natural parents of a child and a person or persons who:
  - (1) have commenced adoption proceedings or who have been granted an order of adoption; and
  - (2) pursuant to a Court order, or placement by the Tribe's social services agency or by a licensed agency, have had actual custody of the child for a period of one year or more before court action is commenced by the natural parent or parents, the Trial Court shall consider the best interest and welfare of the child, including the child's need for situational stability, and need for cultural and family support, for the purposes of long-term adjustment and stability, in determining the matter of custody.

**Section 6-12. Hearings or trials to be in closed court.**

- (a) Any hearing or trial held under this Chapter shall be held in closed Trial Court without admittance of any person other than those necessary to the action or proceeding or for the orderly administration of justice.
- (b) All papers and records, other than the final judgment and matters related to the enforcement of the final judgment, pertaining to the action or proceeding are subject to inspection by a nonparty only upon an order of the Trial Court for good cause shown following reasonable notice to all parties of the hearing where such order is sought.

**Section 6-13. Paternity established by other jurisdiction.** Properly issued court and administrative orders, judgments, or decrees of other Tribes, states, or federal agencies establishing paternity will be given comity. Such orders will be considered properly issued when the issuing court or administrative agency has personal jurisdiction over the person claimed to be bound by the foreign order, subject-matter jurisdiction over the matter, proper service of process under the law of the issuing jurisdiction was made on such person, and the order was issued according of the laws of that jurisdiction and does not violate the public policy of the Kiowa Tribe. The Court shall not, however, recognize any paternity judgments entered by default that offend the policies of the Kiowa Tribe Enrollment Office.

## CHAPTER VII

### CHILD SUPPORT

**Section 7-1. Purpose.**

- (a) Children are the most vital resource to the continued existence and integrity of the Kiowa Tribe, and the Tribe has a compelling interest in promoting and maintaining the health and wellbeing of all Kiowa children. Provision for child support is in the best interests of Kiowa families and children who have a right and need to receive parental support. Both parents have an obligation towards their children that includes much more than financial support; it includes time and attention as well as guidance and the teaching of Kiowa values.
- (b) By adopting these child support guidelines, the Tribe affirms and recognizes both parents' obligation to provide support for their children as their respective income, resources and abilities allow. Child support orders shall reflect the understanding that in order for children to prosper, their parents must also prosper. Therefore, child support awards should not be so burdensome that the parents obligated to provide them are left with insufficient resources necessary for their own livelihood.
- (c) In adopting this Chapter, it is the intention of the Kiowa Tribe to ensure that it is in compliance with federal regulations for child support guidelines.

**Section 7-2. When action may be brought.** An action to establish or modify a support order in a proceeding under this Code may be initiated at any time before the child in question has

reached the age of eighteen (18), or thereafter under circumstances specified in Section 7-23 or Section 7-25(e).

**Section 7-3. Who may bring action.**

- (a) Any custodial parent or guardian, or any Tribal, state or federal agency authorized to enforce child support obligations, may initiate an action for child support by filing a petition for establishment of child support with the Clerk of the Kiowa Trial Court.
- (b) Proceeding by Minor Parent. A minor parent, or guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

**Section 7-4. Contents of Petition.** The petition to establish child support must include, so far as known, the following:

- (a) The name, address, date of birth, income, gender, and Tribal affiliation, if any, of the custodial parent or guardian, the child or children for whom support is requested, and the noncustodial parent from whom support is requested. The petition may include any other information that may assist in locating or identifying the respondent;
- (b) The relief sought;
- (c) A certified copy of any support order that is in effect;
- (d) An itemized list of any of the following, if actually paid by the custodial parent: the cost of the children's health care and dental insurance premiums, the cost of child care necessary to permit the parent to work, and any extraordinary costs associated with caring for the child, such as necessary medical or educational costs, including costs related to athletic or academic pursuits;
- (e) If custody is split between the parents, the percentage of the days of the year during which petitioner has physical custody of the child. If a child voluntarily chooses to reside with one parent as opposed to another parent who is equally fit the Court may consider this in the calculation of support.

**Section 7-5. Response.** The obligor shall respond to the petition no later than 20 days after service by filing a statement with the Trial Court, and shall appear for a hearing on the date set by the Court. The filing deadline may be extended to provide respondents who are deployed on active duty in the armed forces or are seasonally employed outside Oklahoma with an adequate opportunity to respond.

**Section 7-6. Nondisclosure of information in exceptional circumstances.** Upon a finding, which may be made ex parte, that the health, safety or liberty of a party or child would be

unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, the Trial Court shall order that the address of the child or party, or other identifying information, not be disclosed in a pleading or other document filed in a proceeding under this Code.

**Section 7-7. Case transfer.** The Kiowa child support services program shall attempt to obtain the transfer of appropriate child support cases involving Tribal members from other jurisdictions. The Program shall be responsible for identifying Tribal members who are noncustodial parents or potential fathers in state child support cases, and may initiate a case transfer procedure for the identified cases. Upon receiving from a state or Tribal child support agency a written request to verify Tribal membership for a noncustodial parent or potential parent, the Tribe shall verify Tribal enrollment and may request the child support agency to transfer or refer the case to the Tribe.

**Section 7-8. Establishment of guidelines.** The Kiowa child support schedule, Appendix A of this Chapter, establishes guidelines that the Trial Court shall follow when setting child support. The Trial Court may order either or both parents owing a duty of support to a child to pay an amount reasonable and necessary for support in any proceeding under this Code for dissolution of marriage, legal separation, declaration of invalidity, custody or visitation, or support.

**Section 7-9. Periodic review.** The Kiowa Tribe child support services program may amend the Schedule, and shall review it at least once every four (4) years to ensure that it results in appropriate child support award amounts designed to meet the needs of Kiowa children. This review shall consider economic data on the cost of raising children and analyze case data relating to application of and deviations from the guidelines.

**Section 7-10. Forms.** The Trial Court is authorized to adopt supplemental forms, such as worksheets and explanatory materials, as are found necessary for the effective implementation of this Chapter.

**Section 7-11. Basic child support obligation.** A child support obligation shall be set at the basic support amount listed in the attached Kiowa child support schedule based on the combined net income of both parents and the number of children receiving support, and shall be apportioned between the parents in accordance with Sections 7-12 and 7-13. For combined monthly net income amounts falling between amounts shown in the Schedule, basic child support obligation amounts shall be extrapolated.

**Section 7-12. Share of net income.** The basic child support obligation derived from the child support schedule shall be divided between the parents in the same proportion as each parent's monthly net income bears to their combined monthly net income. The monthly obligation of each parent shall be computed by multiplying each parent's percentage of the parents' monthly combined net income by the total monthly child support obligation. It is presumed that a parent with sole or primary physical custody of a child is contributing his or her portion of the child support obligation to meet the daily needs of the child.

**Section 7-13. Shared parenting time.** When the parents share physical custody of the child or children by order of the Court or stipulation, the base monthly child support obligation owed after apportionment pursuant to Section 7-12 shall be adjusted as follows:

- (a) The amount of support the obligor parent would otherwise be obliged to pay the custodial parent shall be reduced by the percentage of time the child spends with the obligor parent.
- (b) The percentage of time a child spends with each parent shall be calculated by determining the number of full days the child is in the physical custody of each parent over the course of a year and dividing that number by 365.

**Section 7-14. Gross income.**

- (a) Gross income shall be calculated by adding income received from all sources, whether or not it is reported or taxed under federal law, including:
  - (1) Salaries;
  - (2) Wages;
  - (3) Commissions;
  - (4) Revenue from sales of goods and services;
  - (5) Deferred compensation;
  - (6) Overtime;
  - (7) Contract-related benefits;
  - (8) Income from second jobs;
  - (9) Dividends;
  - (10) Tribal per capita benefits;
  - (11) Interest;
  - (12) Trust income;
  - (13) Annuities;
  - (14) Capital gains;
  - (15) Pension/retirement benefits;
  - (16) Workers' compensation;

- (17) Unemployment benefits;
  - (18) Bonuses;
  - (19) Social security benefits (SSA);
  - (20) Disability insurance benefits; and
  - (21) Tips.
- (b) For seasonal or fluctuating income, gross monthly income shall be calculated by taking the annual income of the preceding year and dividing by 12, unless the Court finds that another method is more reasonable under the circumstances.

**Section 7-15. Net income.**

- (a) Monthly net income shall be calculated by deducting the following expenses from monthly gross income:
- (1) Federal, state and any applicable Tribal tax;
  - (2) Federal Insurance Contributions Act (FICA) deductions;
  - (3) Mandatory pension plan payments;
  - (4) Mandatory union or professional dues;
  - (5) State industrial insurance premiums;
  - (6) Court-ordered spousal or child support to the extent actually being paid;
  - (7) Up to \$2,000.00 per year in voluntary pension payments actually made;
  - (8) Medicare withholding;
  - (9) Medical insurance premiums paid for the benefit of the children;
  - (10) Normal business expenses and self-employment taxes for self-employed persons;
  - (11) Extraordinary health expenses and uninsured catastrophic losses; and
  - (12) Minimum living expenses of natural or adopted children in the home.
- (b) Justification shall be required for any business expense deduction about which there is disagreement.



**Section 7-16. Monthly net income above \$5,000.00.** When combined monthly net income exceeds \$5,000.00, support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net incomes of \$5,000.00 unless good cause is found to deviate below that amount, but the Trial Court may exceed the presumptive amount of support set for combined monthly net income of \$5,000 upon written findings of fact establishing such increase as both necessary and in the best interests of the child(ren).

**Section 7-17. Monthly net income below \$600.00.** When combined monthly net income is less than \$600.00, a support order for not less than \$10.00 per month per child may be ordered.

**Section 7-18. Health care expenses.** Ordinary health care expenses are included in the child support schedule, and shall be provided for by the parents through health insurance coverage and/or cash medical support. Health insurance premiums paid on behalf of the child by the obligor are deducted from the obligor's gross income (see Section 7-15). Extraordinary health care expenses not covered by private health insurance or Indian Health Services (i.e., those expenses that exceed five percent of the basic support obligation) shall be shared by the parents in the same proportion as the basic child support obligation.

**Section 7-19. Day care expenses.** Work or education-related day care expenses are included in the child support schedule, and shall be treated as an offset against the obligation of the parent paying them.

**Section 7-20. Limit on child support obligation.** Neither parent's total child support obligation shall exceed forty percent (40%) of his or her net earnings unless good cause is shown, in which case the support obligation shall not exceed fifty percent (50%) of his or her net earnings.

**Section 7-21. Confidentiality.** All income and resources of each parent's household shall be disclosed and considered by the Trial Court. All such disclosures, including worksheets, pay stubs, and tax returns, shall be confidential and available only to the parties and the Trial Court, and solely for the purpose of determining child support obligations.

**Section 7-22. Disability benefits.** Before including a parent's receipt of disability benefits in gross income calculations, the Trial Court shall consider the actual needs of the disabled party and the effect of the inclusion of such benefit on the disabled party, as well as the needs of the child(ren).

**Section 7-23. Age of child.** Parents are usually only required to support their child until that child reaches the age of eighteen (18). However, the parents are required to support an unmarried child who turns eighteen (18) while the child is still attending high school or a General Equivalency Degree program full time. Parents are no longer required to support a child who becomes emancipated by marriage, active military service, or court order of emancipation.

**Section 7-24. Findings.** The amount of child support calculated from the Schedule in Appendix A of this Chapter is presumptively correct, but that presumption may be rebutted and the obligation increased or decreased if the Trial Court makes a written finding or states on the record the following:

- (a) That application of the guidelines is inappropriate or unjust in the particular case;
- (b) The reasons the amount of support ordered differs from the guidelines Schedule amount;
- (c) The reasons the amount of support ordered is consistent with the best interests of the children; and
- (d) The amount of support that would have been ordered under the guidelines Schedule.

**Section 7-25. Factors.** The amount that would be ordered under the Schedule may be found to be inappropriate or unjust if one or more of the following factors applies:

- (a) Stipulation. The parties have stipulated to a different child support arrangement and the Court makes a finding for deviating from the guidelines.
- (b) Substantial Hardship. Application of the guidelines may be inappropriate or unjust if it would cause substantial hardship to the noncustodial parent, the custodial parent, or the subject children under the circumstances.
  - (1) Whenever application of the child support guidelines requires a person to pay more than forty percent (40%) of his net income for current, nondelinquent support, there shall be a presumption of substantial hardship.
  - (2) There shall be a presumption of substantial hardship if the obligor's income falls below the federal poverty line and the guidelines child support amount would require the obligor to pay more than ten percent (10%) of net monthly income.
- (c) Seasonal or Nonrecurring Income. If the income of either parent is seasonal or nonrecurring, the obligation may be set at a different amount than it otherwise would be, or it may be set on a schedule that varies the amount at different times of the year.
- (d) Services Provided by Tribe or Other Agency. Whenever the Tribe or another agency provides health care, housing, or other basic needs for the child(ren) at no cost or reduced cost, such services may be considered as a basis for setting a lower amount of support than would otherwise be determined.
- (e) Mental or Physical Disability. In the case of a child with a serious mental or physical disability which prolongs his or her dependence on his or her parental income, the Trial Court may when appropriate order that support continue past the age of eighteen (18) and be paid to the parent or guardian with whom the child resides, or to the child. A child's special medical or other needs may be considered as a basis for setting a higher amount of support.

- (f) Substantial Wealth. In the case of a parent with substantial wealth, the Trial Court may set a higher amount of support than would otherwise be determined.
- (g) Voluntary Unemployment and Underemployment. When a parent has declined to pursue employment opportunities reasonably open to them based on their ability and local employment opportunities, the Court may impute to them that amount of income that they are reasonably capable of earning and calculate a child support award based on the imputed income. The amount of income imputed shall be the amount a person with comparable education, training and experience could reasonably expect to earn in the locality.
- (h) Education. The Court may order that the costs of educating a child be added to a child support obligation.
- (i) Use of Residence. If a noncustodial parent gives up the right to live in the parents' former marital or jointly owned residence, the value of the use of the residence may be treated as an offset against the support obligation of that parent. If a parent offers their residence to be used for visitation purposes, they may receive a credit against their support obligation reflecting the value of the use.

**Section 7-26. In-kind, traditional or customary support.** Consistent with Kiowa community standards, the Trial Court shall utilize in-kind, traditional or customary support as a setoff against a child support obligation whenever practicable. The provision and terms of such support shall be agreed to by the parties, and the Trial Court shall incorporate clear written standards relating to issues of quantity, quality, and value in its order.

- (a) Whenever a parent is able to provide appropriate and acceptable in-kind services or resources for the support of the child(ren), including but not limited to food, clothing, items of cultural significance where appropriate, firewood, child care, diapers, home or auto repair, or items meeting other basic needs, such services or resources may be applied as a setoff against the support obligation if authorized by court order.
- (b) Whenever extended family or community members are able to provide the support described in subsection (a) of this section, such services or resources may be applied as a set-off against the support obligation if authorized by court order.
- (c) Support orders allowing noncash payments shall:
  - (1) State the specific dollar amount of the support obligation; and
  - (2) Describe the type(s) of noncash support that will be permitted to satisfy the underlying specific dollar amount of the support order. Said noncash support will be itemized and valued at fair market value for the purpose of establishing the setoff value. If the parties cannot agree as to the valuation the Court may set the value at fair market value.

- (d) Noncash payments are not permitted to satisfy support obligations when the rights to such support have been assigned to a government entity.

**Section 7-27. Duration of support order.** Every child support order shall remain in effect until the eighteenth (18th) birthday of the child for whose benefit it is entered, absent modification or legal termination of parental responsibilities, such as through emancipation or adoption of the child. If the child has not yet graduated from high school at the time of his or her eighteenth (18th) birthday, the order shall remain in effect so long as he or she is a full-time student in high school or a General Equivalency Diploma (GED) program. Unless a child is mentally or physically disabled, the support obligation terminates when the child reaches the age of eighteen (18) and graduates from high school or receives a GED, as long as the parties have not agreed to a different arrangement in writing.

**Section 7-28. Change of circumstances.** Either parent may petition the Court for a modification of a child support order based upon a showing of a change of circumstances that are substantial and continuing. A substantial and continuing change of circumstances will be presumed if, at the time of application for the modification, support as calculated under this Chapter would be more than fifteen percent (15%) greater or less than the amount provided for in the existing support order. Such petition shall require the other parent to appear and show cause why the decision previously entered should not be prospectively modified. A hearing shall be set for not more than fifty (50) days from the date of service of the motion for modification and order to appear and show cause.

**Section 7-29. Without change of circumstances.** An order of child support may be modified one year or more after it has been entered without a showing of changed circumstances that are substantial and continuing if:

- (a) The order works a severe economic hardship on either party or the child;
- (b) A child is still in high school, upon a finding that there is a need to extend support beyond the eighteenth (18th) birthday to complete high school; or
- (c) There has been a change to the child support schedule.

**Section 7-30. Past due support.** The amounts of past due support may not be modified unless there is a showing of circumstances warranting an equitable defense (laches or equitable estoppel) or a lack of due process afforded the judgment debtor.

**Section 7-31. Collection of Past Due Support – Petition.** To collect the payment due, the custodian of a child shall file the following with the Trial Court:

- (a) A petition requesting establishment of a judgment for past due support;
- (b) A statement that one or more payments of support are thirty (30) or more days past due and that specifies the amounts past due and the dates they became past due, as well as any other terms of the child support order sought to be enforced; and

- (c) Proof of service of the petition, affidavit, and notice on the obligor.

**Section 7-32. Collection of Past Due Support – Response.** The obligor shall respond no later than twenty (20) days after service by filing a statement with the Trial Court. If the obligor's statement claims that any of the amounts alleged to be delinquent have been paid, describes in detail the method of payment or offers any other defense to the petition, then the obligor is entitled to a hearing. The filing deadline may be extended to provide respondents who are deployed on active duty in the armed forces or are seasonally employed in employment (e.g., fire fighting) that requires deployment from home with an adequate opportunity to respond.

**Section 7-33. Collection of Past Due Support – Entry of judgment.** After the hearing, the Trial Court shall enter a judgment for the amount of money owed. If the obligor does not file a statement under this Chapter, the Trial Court may enter a default judgment against the obligor.

**Section 7-34. Income withholding.** When the Trial Court orders a party to pay an amount for support, including support past due, it shall include an income withholding provision that orders the employer of the obligor to pay to the obligee that portion of the obligor's earnings due or to become due in the future as will be sufficient to satisfy the child support order.

- (a) For each noncustodial parent against whom a support order is or has been issued or modified, so much of his or her income must be withheld as is necessary to comply with the order, except that per capita, trust, or Individual Indian Money (IIM) payments need not be subject to withholding.
- (b) In addition to amounts withheld to pay the current month's obligation, the amount withheld must include an amount to be applied toward liquidation of any overdue support.
- (c) Notwithstanding any other provision of this Code, the total amount to be withheld may not exceed fifty percent (50%) of the individual's net income for any subject pay period, but may be set at a lower amount.
- (d) Income withholding must comply with the procedural due process requirements established by Tribal law.
- (e) Income withholding shall promptly be terminated in cases where there is no longer a current order for support and all arrearages have been satisfied. Any amounts that have been improperly withheld must be promptly refunded.
- (f) If the employer fails to withhold income in accordance with the provisions of the income withholding order, the employer will be liable for the accumulated amount the employer should have withheld from the noncustodial parent's income.
- (g) Income shall not be subject to withholding in any case where:

- (1) Either the custodial or noncustodial parent demonstrates, and the tribunal enters a finding, that there is good cause not to require income withholding; or
  - (2) A signed, written agreement is reached between the noncustodial and custodial parent which provides for an alternative arrangement, and it is reviewed and entered into the record by the court.
- (h) Where immediate income withholding is not in place, the income of the noncustodial parent shall become subject to withholding, at the earliest, on the date on which payments which the noncustodial parent has failed to make under a Trial Court support order are at least equal to the support payable for one month.
  - (i) Withholding may be contested based on a mistake of fact, which for the purposes of this subsection means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.
  - (j) To initiate income withholding, the Trial Court or the Kiowa Tribe child support services program shall send the noncustodial parent's employer a notice using the standard federal income withholding form.
  - (k) The Trial Court or the Kiowa Tribe child support services program must allocate withheld amounts across multiple withholding orders to ensure that allocation in no case results in a withholding for one child not being implemented.
  - (l) The Trial Court or the Kiowa Tribe child support services program shall receive and process income withholding orders from states, Tribes, and other entities, and ensure that such orders are properly and promptly served on employers within the Tribe's jurisdiction.
  - (m) The Kiowa Tribe may enter into a reciprocal child support enforcement agreement with the state of Oklahoma, or its political subdivisions, for the purpose of enforcing support obligations and distributing collected support on the Kiowa Reservation.
  - (n) An employer is subject to a fine of at least \$100.00 per incident and may be subject to a greater amount based on the Trial Court's discretion for discharging, refusing to employ, or taking disciplinary action against any noncustodial parent because of the withholding.
  - (o) An employer may deduct the actual costs of complying with an order for income withholding, not to exceed \$5.00, from the amount withheld. The employer must justify such deductions in a written itemization presented to the child support services program and forwarded to the parties.



- (p) The total amount to be withheld shall not exceed the maximum amount permitted under Section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b)), but may be set at a lower amount as described in subsection (c) of this section.

**Section 7-35. Income tax refund interception.** When the Trial Court orders a party to pay an amount for support, it may provide for income tax refund interception, whereby all or a portion of the income tax refund of an obligor noncustodial parent may be intercepted directly from the United States or any state or tribe, if permissible under the laws of such state or tribe, for the payment of a support obligation. Any collections received based on income tax refund offset must be applied to satisfy child support arrearages.

**Section 7-36. Security or bond.** The Court may order a person obligated to support a minor child to post a security, bond, or other guarantee in a form and amount satisfactory to the Court to ensure the payment.

**Section 7-37. Stay or waiver of order to withhold income.** If the noncustodial parent wants to prevent an order to withhold income from being served, he or she must file a petition to stay service with the Clerk of the Kiowa Trial Court within twenty (20) days after service of the custodial parent's petition requesting past due support. Grounds for the petition to stay service shall be limited to:

- (a) A dispute concerning the existence or amount of the delinquency;
- (b) Noncompliance with this Code;
- (c) Evidence that the delinquency has been cured since the custodial parent filed the petition requesting past due support; and
- (d) Evidence of a Court-approved agreement between the noncustodial parent and the custodial parent for an alternative method of payment.

**Section 7-38. Enforcement of orders for provision of in-kind goods and services.** Failure to comply with an order to provide traditional and customary support to meet a child support obligation may be enforced in the same manner as orders for financial support, except that the Court may not compel persons to perform services. Income may be withheld to provide the custodial parent with the financial value of the traditional goods or services that were not provided; if the goods or services not provided were not given a specific valuation in the original order, a hearing may be held to value such goods or services.

**Section 7-39. Interest on past due support (arrearages).** Arrearages stemming from a support order do not incur any interest charges.

**Section 7-40. Support payments – to whom paid.**

- (a) The Trial Court may, upon its own motion or upon motion of either party, order support payments be made to Kiowa Tribe Child Support Services Program for remittance to the person or agency entitled to receive the payments.
- (b) Kiowa Tribe Child Support Services Program shall accomplish the following for payments received:
  - (1) Kiowa Tribe Child Support Services Program shall maintain records listing the amount of payments, the date payments are made, and the names and addresses of the parties affected by the order;
  - (2) Kiowa Tribe Child Support Services Program shall promptly disburse any amounts received as directed by the order; and
  - (3) The parties affected by the order shall inform Kiowa Tribe Child Support Services Program of any changes of address.
- (c) Delivery of in-kind, traditional or customary support shall be made to the home of the child or elsewhere as the Court orders or the parties arrange.

**Section 7-41. Location of parents.** The Trial Court or the Kiowa Tribe child support services program must use all sources of information and records reasonably available – including the federal parent locator service and registry and those of other states and Tribes when possible – to attempt to locate custodial or noncustodial parents or sources of income and/or assets when location is required to take necessary action brought under this Code. The child support services program is authorized to establish agreements with appropriate state and Tribal agencies to provide locator services.



## APPENDIX A.

### CHILD SUPPORT SCHEDULE

<b>Combined Monthly Net Income</b>	<b>One Child (25%)</b>	<b>Two Children (30%)</b>	<b>Three Children (35%)</b>	<b>Four Children (40%)</b>	<b>Five Children (45%)</b>
\$600	\$150	\$180	\$210	\$240	\$270
700	175	210	245	280	315
800	200	240	280	320	360
900	225	270	315	360	405
1000	250	300	350	400	450
1100	275	330	385	440	495
1200	300	360	420	480	540
1300	325	390	455	520	585
1400	350	420	490	560	630
1500	375	450	525	600	675
1600	400	480	560	640	720
1700	425	510	595	680	765
1800	450	540	630	720	810
1900	475	570	665	760	855
2000	500	600	700	800	900
2100	525	630	735	840	945
2200	550	660	770	880	990
2300	575	690	805	920	1015
2400	600	720	840	960	1080
2500	625	750	875	1000	1125
2600	650	780	910	1040	1170
2700	675	810	945	1080	1215
2800	700	840	980	1120	1260
2900	725	870	1015	1160	1305
3000	750	900	1050	1200	1350
3100	775	930	1085	1240	1395
3200	800	960	1120	1280	1440
3300	825	990	1155	1320	1485
3400	850	1020	1190	1360	1530

3500	875	1050	1225	1400	1575
3600	900	1080	1260	1440	1620
3700	925	1110	1285	1480	1665
3800	950	1140	1320	1520	1710
3900	975	1170	1355	1560	1755
4000	1000	1200	1400	1600	1800
4100	1025	1230	1435	1640	1845
4200	1050	1260	1470	1680	1890
4300	1075	1290	1505	1720	1935
4400	1100	1320	1540	1760	1980
4500	1125	1350	1575	1800	2025
4600	1150	1380	1610	1840	2070
4700	1175	1410	1645	1880	2115
4800	1200	1440	1680	1920	1965
4900	1225	1470	1715	1960	2010
5000	1250	1500	1750	2000	2055

## CHAPTER VIII

### RECOGNITION OF FOREIGN SPOUSAL SUPPORT, CHILD SUPPORT AND CHILD CUSTODY ORDERS

**Section 8-1. Foreign Child Support Orders – Full Faith and Credit.** Pursuant to the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B, the Trial Court shall recognize and afford full faith and credit to any child support order of a state or tribe according to its terms if:

- (a) The proponent of the foreign order complies with the procedure set forth in this Chapter;
- (b) The rendering court, pursuant to the laws of the state or tribe in which the court is located:
  - (1) Has subject-matter jurisdiction to hear the matter and enter such an order; and
  - (2) Has personal jurisdiction over the contestants; and
- (c) Reasonable notice and opportunity to be heard was given to the contestants by the rendering court.

**Section 8-2. Foreign Child Support Orders – Continuing Jurisdiction.**

- (a) A state or tribe has continuing, exclusive jurisdiction over an order issued by a court of that state or tribe if the state or tribe is the child's residence or the residence of any individual contestant unless the court of another state or tribe, acting in accordance with Section 8-3, has modified the order.
- (b) If one or more child support orders have been issued with regard to an obligor and a child, the Trial Court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:
  - (1) If only one court has issued a child support order, the order of that court must be recognized.
  - (2) If two or more courts have issued child support orders for the same obligor and child, and only one of the courts would have continuing, exclusive jurisdiction under this Chapter, the order of that court must be recognized.
  - (3) If two or more courts have issued child support orders for the same obligor and child, and more than one of the courts would have continuing, exclusive jurisdiction under this Chapter, an order issued by a court in the current home state or tribe of the child must be recognized, but if an order has not

been issued in the current home state of the child, the order most recently issued must be recognized.

- (4) If two or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this chapter, the Trial Court, if it has jurisdiction over the parties, shall issue a child support order.

**Section 8-3. Foreign Child Support Orders – Modification of Child Support Orders.** The Trial Court may modify its own order as long as it has continuing jurisdiction, and may modify a foreign child support order if:

- (a) The Trial Court has jurisdiction over the nonmovant, and the party or support enforcement agency seeking modification registers the order with the Trial Court; and
- (b) The issuing jurisdiction no longer has continuing, exclusive jurisdiction of the child support order because it is no longer the residence of the child or any individual contestant; or
- (c) Each contestant has filed written consent with the state or tribe having continuing, exclusive jurisdiction for a court of another state or tribe to modify the order and assume continuing, exclusive jurisdiction over the order.

**Section 8-4. Foreign Spousal Support Orders – Principles of Comity.** The Trial Court may use principles of comity to determine whether it is appropriate to recognize a foreign spousal support order.

**Section 8-5. Foreign Spousal Support Orders – Enforcement Requirements.** The Trial Court may recognize and enforce a foreign spousal support order if the rendering court meets the requirements of Section 8-1(a)-(c), and in addition:

- (a) The proponent of the foreign order complies with the procedure set forth in this Chapter;
- (b) The order does not contravene the public policy of the Kiowa Tribe and is not otherwise prejudicial to the interests or general welfare of the Kiowa Tribe or its citizens;
- (c) The issuing jurisdiction gives or would likely give reciprocal treatment to an order of the Kiowa Trial Court;
- (d) The order was not obtained by fraud;
- (e) The order does not violate any federal law or Tribal law, custom, or tradition; and

- (f) The order does not violate the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301 through 1341, the U.S. Constitution, or rights contained in the relevant state or Tribal constitution.

**Section 8-6. Recognition and Enforcement – Required Documents and Information.** A support order or income withholding order of another state or tribe may be registered in the Trial Court by sending all of the following documents and information to the Trial Court:

- (a) A letter of transmittal requesting registration and enforcement;
- (b) A certified copy of all orders to be registered, including any modification of an order;
- (c) A sworn statement by the party seeking registration, or a certified statement by the custodian of records, showing the amount of any arrearage;
- (d) The name of the obligor and any of the following that are known:
  - (1) The obligor’s address and Social Security number;
  - (2) The name and address of the obligor’s employer and any other source of income of the obligor;
  - (3) A description of property of the obligor within the territorial jurisdiction of the Kiowa Tribe, including its location, that is not exempt from execution;
- (e) Except as provided in Section 7-6 of this Code, regarding nondisclosure of information in exceptional circumstances, the name and address of the obligee and, if applicable, the agency or other person to whom support payments are to be remitted.

**Section 8-7. Recognition and Enforcement – Notice.** Upon proper filing of a foreign support order with the Trial Court, the Trial Court shall issue a summons directing the defendant to appear and respond to the motion requesting the Trial Court to recognize and enforce the foreign support order. Such summons shall be served on the defendant in a manner consistent with rules of the Kiowa Trial Court. The notice must inform the nonregistering party of all of the following:

- (a) That a registered order is enforceable as of the date of registration in the same manner as an order issued by the Trial Court;
- (b) That a hearing to contest the validity or enforcement of the registered order must be requested within twenty (20) days after the date of mailing or personal service of the notice;
- (c) That failure to appear as directed by the summons or failure to contest the enforcement of the foreign order in a timely manner will result in confirmation and

enforcement of the order precluding further contest of that order with respect to any matter that could have been asserted; and

- (d) The amount of any alleged arrearages.

**Section 8-8. Contesting Validity or Enforcement – Request for Hearing.** A nonregistering party seeking to contest the validity or enforcement of an order that is registered in the Trial Court shall request a hearing within twenty (20) days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages.

**Section 8-9. Contesting Validity or Enforcement – Scheduling and Notice.** If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the Trial Court shall schedule the matter for hearing and give notice to the parties of the date, time and place of the hearing.

**Section 8-10. Contesting Validity or Enforcement – Defenses.** A party contesting the validity or enforcement of a registered order, or seeking to vacate the registration, has the burden of proving one or more of the following defenses:

- (a) That the issuing tribunal lacked personal jurisdiction over the contesting party.
- (b) That the order was obtained by fraud.
- (c) That the order has been vacated, suspended or modified by a later order.
- (d) That the issuing tribunal has stayed the order pending appeal.
- (e) That there is a defense under Tribal law to the remedy sought.
- (f) That full or partial payment has been made.

**Section 8-11. Contesting Validity or Enforcement – When defense is established.** If a party presents evidence establishing a full or partial defense under Section 8-10, the Trial Court may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, or issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under Tribal law.

**Section 8-12. Contesting Validity or Enforcement – Choice of Law.** When interpreting the obligations created by a foreign support order, the Trial Court shall apply the law of the state or tribe that issued the order.

**Section 8-13. Foreign Child Custody Orders – Purpose and Scope.** In accordance with the goals of the Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A, and the Uniform Child Custody Jurisdiction and Enforcement Act, the Kiowa Legislature intends to ensure that parents and children are able to move across state and Tribal boundaries without losing the ability to

enforce custody orders they have previously obtained. As a matter of comity, the Trial Court will recognize and enforce a foreign custody order that meets all requirements of this Chapter.

**Section 8-14. Foreign Child Custody Orders – Required Documents and Information.** A child custody determination issued by a court of another state or tribe may be registered with the Trial Court, with or without a simultaneous request for enforcement, by sending to the Clerk of the Trial Court:

- (a) A letter or other documentation requesting registration and the appropriate filing fee;
- (b) A certified copy of the determination sought to be registered and statement that, to the best of the knowledge and belief of the person seeking registration, the determination has not been vacated, stayed or modified;
- (c) A statement that, to the best of the knowledge and belief of the person seeking registration, the issuing court had personal jurisdiction over the parties and/or the child and had subject-matter jurisdiction over the cause of action;
- (d) A statement that, to the best of the knowledge and belief of the person seeking registration, the custody order was rendered under a system that provides impartial tribunals and procedures compatible with the requirements of due process of law;
- (e) A statement that, to the best of the knowledge and belief of the person seeking registration, the issuing jurisdiction would give reciprocity to a Kiowa Tribe order; and
- (f) The name and address of the person seeking registration and any parent or person acting as parent who has been awarded custody or visitation in the child custody determination sought to be registered.

**Section 8-15. Foreign Child Custody Orders – Notice.** On receipt of the documents required under Section 8-14, the Trial Court shall cause notice to be served upon the persons named pursuant to Section 8-14(f) and provide them with an opportunity to contest the registration.

**Section 8-16. Foreign Child Custody Orders – Defenses.** A person seeking to contest the validity of a registered determination must request a hearing within twenty (20) days after service of the notice. At that hearing, the Trial Court shall confirm the registered determination unless the person contesting registration establishes that:

- (a) The issuing state or Tribal Court did not have jurisdiction over the parties and child under the laws of the issuing jurisdiction;
- (b) In the case of jurisdiction over a party based on personal service, the issuing court was an unusually inconvenient forum for the trial of the action;



- (c) The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so;
- (d) The person contesting registration was entitled to notice, but notice was not given in the proceeding before the court that issued the determination for which registration is sought;
- (e) The cause of action on which the custody order is based is repugnant to the public policy of the Kiowa Tribe or would be contrary to the general welfare of the Kiowa Tribe or its citizens; or
- (f) The foreign custody determination would serve to violate any federal law or Tribal law, custom or tradition, or the laws of the issuing jurisdiction violate Kiowa custom, tradition, or sense of justice.

**Section 8-17. Foreign Child Custody Orders – Default.** If a request for a hearing to contest the validity of the registration is not made within twenty (20) days, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation. The deadline for requesting a hearing may be extended to provide respondents who are deployed on active duty in the armed forces or are seasonally employed outside Oklahoma with an adequate opportunity to respond.

## **CHAPTER IX**

### **ESTABLISHMENT OF CHILD SUPPORT SERVICES PROGRAM**

**Section 9-1. Establishment of Kiowa Child Support Services.** The Kiowa Legislature hereby establishes the Kiowa Child Support Services Program (“KCSS”) within the Kiowa Trial Court in order to meet the objectives of this Code. The child support services program is authorized to enter into contracts within and without the Kiowa Tribe for the purposes of enforcement of child support orders. In collaboration with the Kiowa Trial Court, KCSS is authorized to seek the following:

- (a) Enforcement of support orders or laws relating to the duty of support;
- (b) Establishment or modification of child support;
- (c) Determination of parentage; and
- (d) Location of absent parents and their assets.

**Section 9-2. Determination of Parentage and Collection of Child Support.**

- (a) In any action for a determination of parentage or the establishment, modification, or enforcement of child support brought under this Code, the Court may order that parentage be determined or that child support be computed and/or collected by KCSS.

- (1) When the Court orders that child support shall be computed and/or collected by KCSS, the parties shall be ordered to provide proof of income to YCSS within ten (10) days of the Court order. If a party does not comply with such order, then all income alleged by the opposing party may be accepted as true.
  - (2) When so ordered, KCSS shall act as a referee of the Court, compute the amount(s) to be paid as child support, designate method(s) of payment, and make all other necessary determinations within twenty (20) days of the court order. KCSS shall provide such determinations to the parties and to the Court for placement in the case file. The determinations of KCSS shall have the effect of a child support order upon receipt and approval by the Court.
  - (3) If a party contests a determination of KCSS, the party may apply to the Court for a hearing on the matter. If an application for a hearing is granted, the matter shall be heard within thirty (30) days of the date of application.
- (b) In any action brought under this Code, including actions for the establishment of paternity and the establishment, modification, and enforcement of child support orders, the due process rights of all individuals involved will be protected under the laws of the Kiowa Tribe. Such rights will be protected regardless of whether the arbiter is the child support services program or the Trial Court.

**Section 9-3. Application for Child Support Services.** The KCSS will review all applications for child support services and provide those services as required by law and regulation.

**Section 9-4. Delegating Child Support Services.** The Chief Judge of the Trial Court may appoint and hire the Child Support Services Program of another Tribe to fulfill the responsibilities of the KCSS under this Code if doing so would be in the best interests of the Kiowa Tribe.

## **CHAPTER X**

### **CONFIDENTIALITY**

**Section 10-1. Indication of domestic violence.** In all actions under this Code in which the KCSS provides services to a party or parties to the action, notwithstanding statutory or other authorization for the child support services program to release private data on the location of a party to the action, information on the location of one party may not be released by the KCSS to the other party if KCSS has:

- (a) Knowledge that a protective order with respect to the other party or child has been entered; or

- (b) Reason to believe that the release of the information may result in physical or emotional harm to the other party or child.

## **Section 10-2. Authorized release of case records and other information.**

- (a) The use or disclosure of personal information received or maintained by the KCSS and the Kiowa Trial Court shall be limited to purposes directly connected with the KCSS and the Kiowa Trial Court or Social Security Titles IV-A, IV-E, and XIX, and for the purposes prescribed by the Secretary in federal regulations.
- (b) All proceedings under this Code are confidential unless otherwise provided. The Trial Court and KCSS shall ensure that disclosure of confidential personal information received or maintained in the course of actions brought under this Code, including actions to establish paternity or to establish, modify or enforce child support, is limited to purposes directly connected with the administration of such actions.

**Section 10-3. Sanctions.** Appropriate sanctions imposed under this Chapter for the unauthorized use or disclosure of information may include a civil fine not to exceed \$500.00 in addition to any disciplinary actions authorized under the Tribal personnel policies and procedures.

## **CHAPTER XI**

### **NAME CHANGE PETITIONS**

**Section 11-1. Jurisdiction – Grounds.** Any Kiowa Tribal citizen may apply to the Kiowa Trial Court for a change of name. Application for the change of the name of a person will be heard and determined by the Kiowa Trial Court. The change of name shall be granted by the Court unless the Court finds that the change is not consistent with the public interest. The request for name change may be filed within a proceeding where a name change would be appropriate, such as divorce or adoption, or may be requested by a petition for name change.

**Section 11-2. Notice of Application and Decree.** Unless the requested name change is contained in a separate petition for a separate proceeding (e.g., divorce or adoption), the Court shall require publication in a newspaper of general circulation in the Kiowa Tribe before ordering a name change to give all interested persons an opportunity to show why the name change should not be granted. The Court shall also require publication in a newspaper of general circulation in the Kiowa Tribe after a name change order is signed.

**Section 11-3. Petition and Contents of Petition.** The petition for name change shall include the following: present name, address, date and place of birth, proposed new name; reason for the change of name.

**Section 11-4. Application by Emancipated Minor – Court Conference.** When an emancipated minor applies for a name change the Court may, on its own motion, confer with the

minor and may exclude from the conference the parents and other persons if the Court finds such action would be in the best interests of the child.

**Section 11-5. Application by Unemancipated Minor Child.** The Court will not grant name changes to unemancipated minor children unless such name change is contained in a separate proceeding for which a name change is appropriate, such as adoption or divorce. If the application for name change of a minor is agreed to by both living parents, the petition for name change must be properly noticed pursuant to Section 11-2 before the new name is ordered. If the application for name change of a minor is opposed by one of the parents, the petitioning parent must have the petition (personally) served on the nonconsenting parent at least thirty (30) days before the hearing in addition to proper notice pursuant to Section 11-2. A hearing on the petition for name change will be held in Kiowa Trial Court.

## **CHAPTER XII**

### **FAMILY LAW GUARDIANSHIPS**

#### **Section 12-1. Purpose and Applicability.**

- (a) A Kiowa family law guardianship may be granted by the Kiowa Trial Court if the Court finds that it is necessary or convenient and in the best interest of the child. A Kiowa family law guardianship is established because a child is living with an adult who is not the child's parent, and the adult needs a court order to make decisions on behalf of the child. A Kiowa family law guardianship suspends, but does not terminate, parental legal rights.
- (b) Situations where the Kiowa Trial Court may find a Kiowa family law guardianship appropriate include, but are not limited to, cases where one or more parent:
  - (1) Has a serious physical or mental illness that has rendered them unable to provide care to the child;
  - (2) Is in the military and is being deployed away from their home area and/or has to leave the area for work and/or school;
  - (3) Has decided to go to a rehab program for what may be an undetermined period of time;
  - (4) Is going to jail and/or prison for a period of time;
  - (5) Has a drug or alcohol abuse problem that has rendered them unable to provide care for the child;
  - (6) Has a history of being abusive to this child or a sibling of this child; or
  - (7) Cannot take care of their child for some other reason.

- (c) When determining whether or not to grant a Kiowa family law guardianship, the Kiowa Trial Court will look at what is in the best interest of the child to make sure the child is raised in a safe, stable, and loving environment.

## **Section 12-2. Procedure.**

- (a) To initiate a Kiowa family law guardianship, a petitioner must file with Kiowa Trial Court. A petition for a Kiowa family law guardianship may be brought by a relative or other person on behalf of the child. A Kiowa family law guardianship shall not be initiated by the Tribe, or any subdivision thereof. Additionally:
  - (1) The child must be residing with the petitioner at the time the petitioner files for a Kiowa family law guardianship and/or the parent/Indian custodian/legal guardian must be prepared to place said child with the petitioner upon the granting of the petition.
  - (2) Kiowa family law guardianships are generally for children under the age of eighteen (18) but may be extended to adult dependents in the Court's discretion, if warranted by the facts.
  - (3) If the Kiowa family law guardianship petition involves allegations of parental neglect or abuse or incapacities based on behavior that could result in said allegations the Kiowa Trial Court must refer the case to the Kiowa Tribe's social services agency for assessment. All Kiowa family law guardianship proceedings shall be suspended until the agency investigates and reports back to the Court. If the agency determines not to act, the Kiowa family law guardianship proceedings may then continue.
  - (4) If the parents voluntarily agree to a Kiowa family law guardianship, whatever the allegations against them, the Kiowa Trial Court may grant a Kiowa family law guardianship and the parents forfeit any right to challenge the guardianship order on the basis that the Kiowa Trial Court failed to make a social services referral.
- (b) If a parent contests the Kiowa family law guardianship, the Court may order the Kiowa Tribe's social services agency to conduct a full investigation of all parties. The Court may also order the Kiowa Tribe's social services agency to conduct an investigation into the appropriateness of a parent having custody of the child. Reports of these investigations are confidential and are provided to the Court for the judicial officer's consideration.
- (c) Petitioner is responsible for satisfying the notice requirements of this Chapter.
  - (1) Notice shall be provided to all necessary parties at least ten (10) business days prior to hearing. Necessary parties shall include: parent, if any, Indian custodian, if any, legal guardian, if any, all known previous adult

supervisors, and any person who has requested and been granted special notice by the Trial Court. The parent or Indian custodian can request up to twenty (20) additional days to prepare for the proceeding upon written request to the Trial Court.

- (A) If the party to be served is an enrolled member of the Kiowa Tribe, petitioner may notice the party through the address on file at the Kiowa Tribe Enrollment Office. If the petitioner does not have the party's address or it is known by the petitioner that the address is outdated or incorrect, the petitioner must request a notice by publication in a newspaper of general circulation in the Kiowa Tribe. Notice must be posted in one edition of said newspaper. The notice date is the date of publication date of said newspaper.
  - (B) If the party to be served is not an enrolled member of the Kiowa Tribe, petitioner may notice the party through the last known address. If the petitioner does not have the party's address or it is known by the petitioner that the address is outdated or incorrect, the petitioner must request a notice by publication in a paper of general circulation in the county of last known residence for at least two consecutive Sundays.
  - (C) If the birth father is listed as blank or unknown, the Court shall hold an evidentiary hearing to determine what type of notice is proper in the case.
- (2) Notice shall include name of child, birthdate of child, copy of enrollment status of child from the Kiowa Tribe Enrollment Office, copy of the petition, location, mailing address, and telephone number of the Trial Court, and date and time of the hearing.
  - (3) Petitioner shall mail a notice of the hearing and a copy of the petition at least ten (10) days prior to the hearing to the Tribal agency designated to investigate guardianships to the Court.
- (d) Unless waived by Kiowa Trial Court, a court investigator or Tribal agency designated to investigate potential dependency shall make an investigation and file with the Kiowa Trial Court a report and recommendation concerning each of the proposed guardians. Prior to ruling on the petition for guardianship, the Court shall read and consider all reports submitted pursuant to this Chapter. All reports authorized by this Chapter are confidential and shall only be made available to persons who have been served in the proceedings or their attorneys. The court investigator or Tribal agency designated to investigate potential dependency shall serve all parties a copy of the confidential report as expeditiously as possible. For purpose of writing a report authorized by this Chapter, the person making the

investigation and report shall have access to the child's school records, probation records, and public and private social services records, and to an oral or written summary of the child's medical records and psychological records prepared by any physician, psychologist, or psychiatrist who made or who is maintaining those records. The report for Kiowa family law guardianship shall include, but not be limited to, an investigation and discussion of all of the following:

- (1) Social history of guardian;
  - (2) Social history of the child, including, to the extent feasible, an assessment of any identified developmental, emotional, or psychological needs of the child and the capability of the petitioner to meet those needs;
  - (3) The relationship of the child to the guardian, including duration and character of relationship;
  - (4) The anticipated duration of the guardianship and the plans of both natural parents and the proposed guardian for the stable and permanent home for the child.
- (e) The Court shall make findings consistent with this Chapter and grant a Kiowa family law guardianship where petitioner has proven that it is necessary or convenient and in the best interest of the child to appoint petitioner as guardian of the child.
- (f) Upon granting a Kiowa family law guardianship, the Trial Court will hold review hearings, at minimum, every six (6) months. The guardian shall provide to the Court a status report. The Court shall develop a form for the status report.
- (g) At any time, a parent may file a petition to terminate the family law guardianship. The Court shall order an investigation at that time. The guardian and the parents may agree to mutually terminate the guardianship, but the Court must legally make the order for termination. The guardian may seek to terminate their responsibility for the minor but there must be an appropriate adult to take over the care and custody of the minor or the minor may be placed in protective custody. The Court may grant termination upon a showing that the family law guardianship is no longer necessary or convenient and/or that termination of the guardianship is in the best interest of the child.
- (h) The guardianship shall automatically terminate when the minor reaches the age of eighteen (18), is adopted, marries, is emancipated by Court order, enters military service, or dies. If the child is adopted through a Tribal customary adoption, the family law guardianship shall terminate effective the date of the Trial Court Order.

**Section 12-3. Guardianship Responsibilities.** Under a Kiowa family law guardianship, the guardian has the same responsibilities to care for the child as a parent would. The guardian has full



legal and physical custody of the child and can make all the decisions about the physical care of the child that a parent would make.

- (a) The guardian is responsible for the child's care, including the child's:
  - (1) Food, clothing and shelter;
  - (2) Safety and protection;
  - (3) Physical and emotional growth;
  - (4) Medical and dental care;
  - (5) Education and any special needs.
- (b) The guardian is also responsible for supervision of the child and may be liable for any intentional damage the child may cause in like manner to a parent.

**Section 12-4. Financial Support.** The parent continues to be financially responsible for the support of a child in a Kiowa family law guardianship. Support can be an informal arrangement between parent and legal guardian or through the child support services program, as described in this Code. Where parental support is lacking, there may be financial aid. Applications may be submitted to the Kiowa Tribe's social services agency's eligibility office. The child's eligibility for Supplemental Security Income disability benefits or Social Security Act death or disability benefits on the account of a parent shall be investigated and application for such shall be made if warranted. Prospective Kiowa family law guardianship guardians should be aware that the benefits available to Kiowa family law guardianship guardians are not at the same level offered to caregivers who become guardians of children who were in foster care.

**Section 12-5. Guardianship of the Estate.** A guardianship of the estate is designed to manage a child's income, money, or other property until the child turns eighteen (18). Guardianships of the estate may be ordered by the Kiowa Trial Court pursuant to rules and procedures developed by the Court.

**Section 12-6. Previous Trial Court Orders.** All previous Kiowa Trial Court orders related to a Kiowa family law guardianship remain valid unless otherwise terminated.

## CHAPTER XIII

### ADULT GUARDIANSHIP

**Section 13-1. Purpose.** The Kiowa Legislature, in accordance with the Constitution of the Kiowa Tribe and in the exercise of the Kiowa Tribe's sovereign power to safeguard and provide for the health, safety and welfare of the members of the Kiowa Tribe, hereby enacts this Code in furtherance of our values and cultural mandates to care for elders and vulnerable adults in our community. With the enactment of this Code, the Kiowa Legislature is expressing the Kiowa Tribe's sovereign intent to create a system that honors and respects its duties and responsibilities

to its elders, vulnerable adults, and other adults with estate planning needs. These duties and responsibilities include provision for their basic needs and ensuring their continued participation in the Kiowa community, including creation of adult guardianships for individuals in need of assistance with their property, finances, care and/or other personal needs.

**Section 13-2. Scope.** This Code provides the legal process of establishing an adult guardianship. The careful selection process of appointing a guardian and the ongoing oversight of the adult guardianship by the Kiowa Trial Court will ensure adults within jurisdiction of this Code will be able to thrive and avoid becoming victims of financial, psychological, physical abuse and/or neglect. Any conflicts of law shall be settled by the Kiowa Trial Court according to the best interests of the elder or vulnerable adult.

### **Section 13-3. Jurisdiction.**

The Courts of the Kiowa Tribe shall have jurisdiction over all cases arising under the provisions of this Code and all cases arising under similar provisions of any state or country that arise under that jurisdiction's codes as related to any conservatorship, adult guardianship, or similar civil law matter that may concern a Kiowa adult.

The jurisdiction of the Kiowa Trial Court shall include, but not necessarily be limited to: (1) all Kiowa citizens, both present and future; (2) any elder or vulnerable adult related to a Kiowa citizen; and (3) all property within the territorial jurisdiction of the Kiowa Tribe, including, but not limited to: all real property, including fee patents, allotments, and assignments; and all roads, waters, and bridges used or maintained for Tribal purposes.

All adult guardianship cases, conservatorship cases, and elder or adult protection cases involving any citizen of the Kiowa Tribe that may arise outside the jurisdiction of the Kiowa Tribe are subject to the assertion of concurrent jurisdiction by the Kiowa Tribe and shall be subject to the provisions of this Code which hereby allows for transfer of such cases to the Kiowa Trial Court.

The Court shall construe this section liberally to exercise maximum jurisdiction consistent with applicable Tribal law and custom.

**Section 13-4. Definitions.** This Chapter will be governed by the following definitions, and all other terms shall be taken at their plain meaning:

- (a) **“Accounting”** means the entire document that must be filed with the Court, including a narrative report of the ward's current financial circumstances and the schedules of income and expenses and property on hand that show the financial condition of the ward's estate.
- (b) **“Adult”** means a person aged eighteen (18) years or older.
- (c) **“Adult guardianship”** means a type of court proceeding that may create different kinds of guardianships or conservatorships for the benefit of an adult.

- (d) **“Advisor to the Court”** means a person, not party to the case, with specialized expertise or knowledge selected by the Court for their assistance in, or recommendations for, resolving some aspect of the case.
- (e) **“Certified copy”** means a copy of a document filed with a court to which the Court Clerk has attached a certificate which includes a statement that the original of the document has been filed with the Court, and that the copy is a true and correct copy of the original. A certified copy of a document filed with a Court is often required by government agencies and others as proof that the original document exists and has been filed with the Court.
- (f) **“Court investigator”** means an investigator employed or appointed by the Court to assist judges in adult guardianship cases. A Court investigator visits and speaks with people involved in a guardianship, including the proposed ward and the proposed guardian, and reports their findings back to the Court. Once a guardianship has been created, the Court investigator may visit the ward periodically to see how things are going.
- (g) **“Duty of care”** means the requirement that a person act toward others and the public with the watchfulness, attention, caution, and prudence that a reasonable person in the circumstances would. If a person’s actions do not meet this standard of care, then the acts are considered negligent, and any damages resulting may be claimed in a lawsuit for negligence.
- (h) **“Elder”** means:
  - (1) A citizen of the Kiowa Tribe who is 55 years of age or older; or
  - (2) A person who resides within the territorial jurisdiction of the Kiowa Tribe who is 55 years of age or older to whom a Kiowa citizen owes a duty of care because of traditional or familial ties.
- (i) **“Good faith”** means an honest and reasonable belief or purpose and the lack of intent to harm, defraud or injure.
- (j) **“Guardian of the estate”** means a person appointed by a court to manage another adult person’s financial resources to prevent and resist fraud or undue influence. A guardian of the estate manages a ward’s income, money, real property, or other property.
- (k) **“Guardian of legal affairs”** means a person that has “power of attorney” for another adult person.
- (l) **“Guardian of the person”** means a person appointed by a court to provide for another adult person’s personal needs such as medical, dental, the provision of food, clothing, and shelter.
- (m) **“Guardianship of the estate”** means removal of control over a person’s assets and financial affairs, and gives it to a third-party guardian.

- (n) **“Guardianship of the person”** means removal of decision-making authority and responsibility for personal decisions, including, but not limited to, choosing a residence, consenting to medical treatment, and making end-of-life decisions, and gives such authority to a third-party guardian.
- (o) **“Immediate family”** means any of the following: spouse, domestic partner, child, step-child, parent, sibling, grandparent, grandchild, parent’s sibling, and other persons considered immediate family as otherwise determined by law, including, but not necessarily limited to, Kiowa Tribal law, custom, or traditions.
- (p) **“Least restrictive alternative”** means the least restrictive method of intervention consistent with protecting their freedom and independence of a ward, while ensuring they are protected from harm.
- (q) **“Letters of guardianship/conservatorship”** means an order of the Court that identifies an appointed guardian, states that the guardian is authorized to act on the ward’s behalf, and indicates that the guardian has qualified for the position.
- (r) **“Limited guardian”** means a person that has guardianship responsibilities that are smaller in scope than a guardian of the person or guardian of the estate, typically an insular area(s) of responsibility. The scope of a limited guardian’s responsibilities will be on a case-by-case basis as ordered by the Kiowa Trial Court. For example, a limited guardian may be appointed to handle medical treatment but other duties under “guardianship of the person,” such as choosing a residence, may be assigned to another guardian or remain with the ward.
- (s) **“Limited guardianship”** means a guardianship created when a tailored solution is needed to fit the limited nature of the incapacity of the ward, limited capacity of the guardian, or division of responsibilities across multiple guardians. For example, a limited guardianship is appropriate if the proposed ward’s incapacities are limited in scope and the ability to function is only partially diminished. Because of the importance of self-autonomy and the fact that limited self-autonomy may be attained in these instances, the goal of a limited guardianship is to assist the incapacitated person in developing and attaining maximum self-reliance and independence. Limited guardianships can also be used to help divide responsibilities across multiple guardians.
- (t) **“Power of attorney”** means when an adult person is granted the power to act as an official agent for another adult person. This power may be expansive or limited in scope; for example, the power of attorney can be limited to the sale of a home or as expansive as power over all business and financial affairs. Power of attorney may also be limited in duration; for example, only while a person is medically incapacitated. Finally, power of attorney may take effect immediately or upon the occurrence of a future event.
- (u) **“Proposed ward”** means an adult person that is alleged to be incapacitated in a guardianship or conservatorship proceeding or an adult person that is seeking to use this Chapter for estate planning in case of future incapacitation.

- (v) **“Representative payee”** and **“financial guardian”** means a representative that may receive financial benefits (such as elder payments, per capita payments, and Social Security benefits) for anyone who cannot manage or direct the management of their benefits. A representative payee’s main duties are to use the benefits to pay for the current and future needs of the beneficiary and properly manage any benefits not needed to meet current needs. A representative payee must also keep records of expenses and must provide an accounting of how the benefits were used or managed to Trial Court upon request and/or as required by the Court. A representative payee may be a natural person or an entity or organization. “Representative payee” and “financial guardian” are interchangeable terms as used in this Chapter.
- (w) **“Retaliation”** means intimidation/harassment or a threat to cause bodily harm or causing bodily harm to a reporter or family of a person reporting elder abuse; causing or attempting to cause the reporter or reporter’s family to be terminated, suspended, or reprimanded by an employer; or causing property damage to real or personal property belonging to a reporter’s family.
- (x) **“Status review hearing”** means a regular reoccurring/scheduled hearing to check on the status of the ward and guardianship, including the need to continue the wardship/guardianship status. It is used to determine whether Court orders are being followed, address any issues that have occurred, and plan for future changes to Court orders.
- (y) **“Temporary guardian”** means an adult person appointed by a court to manage some aspect of another adult person’s medical, legal, business, financial, or other affairs on a temporary basis.
- (z) **“Temporary guardianship”** means a guardianship that can encompass some or all aspects of a guardianship of the estate and/or guardianship of the person. However, a temporary guardianship may only be created for emergency situations or in situations of temporary incapacity and may last no longer than three months.
- (aa) **“Vulnerable adult”** means an adult who exceeds the age of eighteen (18) and is unable to protect themselves from abuse, neglect, or exploitation. This includes, but is not limited to, a person who is unable to make responsible decisions for themselves because of mental illness or deficiency, physical disability or illness, age-related capacity issues, or the effects of chronic use of alcohol and/or drugs.
- (bb) **“Ward”** means an adult person that has had a guardian appointed to them, or is subject to a type of guardianship or conservatorship by a court.

**Section 13-5. Rights of proposed ward, ward, and impacted family.** The Kiowa Tribe’s Constitution was adopted in part to ensure peace, harmony, and protection of individual human rights among our members and among others who may come within the jurisdiction of the Kiowa Tribe. In that spirit, this Code recognizes the following rights on matters within the scope of this Chapter:

- (a) Proposed wards may refuse to accept services provided, including a guardianship, if there is good cause to believe that they can care for themselves and the elder or vulnerable adult knows of the services offered.
- (b) Immediate family may refuse services for themselves but cannot refuse services for the ward or proposed ward.
- (c) Proposed wards and immediate family may refuse to allow investigators into their home without a Court order and must be informed of the right of an investigator to seek a warrant should entry be denied.
- (d) Personal service of notice to the proposed ward, ward, and immediate family is required when a petition is filed pursuant to this Code.
- (e) The proposed ward and immediate family have the right to attend all proceedings. If the Court determines the proposed ward is at risk in attending such proceedings, the Court shall, if feasible, make accommodations as the Court sees fit to facilitate the proposed ward's participation.
- (f) The proposed ward, ward, immediate family, and guardian have the right to independent medical, psychological, or psychiatric evaluations at their own expense, but must submit to any Court-ordered evaluation or suffer a possible adverse inference from the failure to cooperate.
- (g) Any party to an action pursuant to this Code may nominate a member of their family or of another person known to them to act as an advisor to the Court, or the Court may nominate a person to serve in this role for the proposed ward, ward, or immediate family. The advisor's role is not designated to replace a party's advocate but is to help the Court reach a disposition in each case that is consistent with the purposes of this Code to protect elders' and vulnerable adults' rights to basic needs and community participation that are consistent with Kiowa cultural imperatives. For that purpose, the advisor is allowed to address the Court with a nonbinding recommendation or, with the permission of the parties, address the Court in chambers in an unreported hearing for the purpose of making nonbinding recommendations.
- (h) The proposed ward, ward, and immediate family have the right to present evidence at any hearing.
- (i) The proposed ward, ward, and immediate family retain all other rights under Kiowa law not in conflict with this Chapter.
- (j) The proposed ward, ward, and immediate family have the right to retain and be represented by legal counsel.



**Section 13-6. Petitions.** The petition to create an adult guardianship may be filed with the Kiowa Trial Court by a proposed ward, immediate family member of a proposed ward, Kiowa Tribe social worker or similarly situated Kiowa Tribe staff, or the Kiowa Tribe. The petition must include all of the following information:

- (a) The name, date of birth, residence and address of the proposed ward, and confirmation of Kiowa citizenship, confirmation of membership of another tribe, or confirmation of status as a non-Indian;
- (b) The type of guardianship sought: guardian of the estate, guardian of the person, guardian of legal affairs, limited guardian, or any combination of the preceding;
- (c) Documentation, if available, or other information regarding the approximate value and inventory of the proposed ward's property and assets;
- (d) The proposed ward's income and source(s) of the income;
- (e) Any other income, compensation, pension, insurance or allowance to which the proposed ward may be entitled;
- (f) The name and address of the person(s) nominated as guardian by the proposed ward, including whether they are selected to be guardian of the estate, guardian of the person, legal guardian, limited guardian, or any combination of the preceding;
- (g) The names and addresses of the proposed ward's immediate family members known to the petitioner or that can with reasonable diligence be ascertained;
- (h) The name and address of the person or institution currently having the care and custody of proposed ward, if applicable;
- (i) If applicable, why the proposed ward is unable to attend the requested hearing(s) and attached proof of inability to attend;
- (j) If applicable, why the proposed ward is unable to participate in the requested hearing(s) and attached proof of incapacitation;
- (k) Timing: Whether the guardianship is to begin immediately or upon the occurrence of some event(s);
  - (1) Duration of adult guardianship;
  - (2) Whether the adult guardianship sought is voluntary or involuntary; and
  - (3) Whether the petitioner is requesting an expedited timeline, and if so, a statement explaining the urgency.

**Section 13-7. Hearings.**



- (a) Notice Requirements. The following parties must be provided with notice of the filed petition and/or subsequent motion(s): proposed ward, immediate family members of the proposed ward, Kiowa Tribe Health and Human Services, Kiowa Tribe's General Counsel, and any other department, agency, staff, or individual designated to generally receive notice by the Kiowa Trial Court or ordinance.
- (b) Required Parties. The proposed ward named in the petition shall be present at all hearings, even when the proposed ward has legal representation, unless the person is incapacitated and unable to appear or the Court has otherwise waived the proposed ward's appearance based upon declaration of proposed ward's counsel. Proof of incapacitation must be filed with the petition for adult guardianship and be documented by a physician and/or medical records stating a factual basis explaining why the proposed ward is incapable of participating in the hearing. The Kiowa Trial Court may request additional supporting evidence of incapacitation.
- (c) Absence of Proposed Ward. If the proposed ward cannot participate in the hearing(s), the Court may waive the appearance of the person if an attorney, advocate, or guardian ad litem will be present at every hearing on the merits of the petition on behalf of the proposed ward.
- (d) Evidence. Any evidence offered must comport with the evidentiary rules of the Kiowa Trial Court except as otherwise provided herein. All material and relevant evidence that is reliable and trustworthy may be admitted and relied upon by the Court to the extent of its probative value, including hearsay contained in a written investigative report, provided that the preparer of the report is present and available to provide testimony. Further, the parties, including the elder and/or vulnerable adult, shall be afforded an opportunity to examine and controvert written reports and cross-examine any individual testimony presented. The Court may rely on conference telephone or other electronic devices that permit all those appearing or participating to hear and speak to each other.
- (e) Hearing Process. At the hearing(s), the Kiowa Trial Court shall evaluate the merits of the petition and determine whether a guardianship is appropriate by taking such testimony and evidence any interested party wishes to present and any evidence requested by the Court. As part of this evaluation, the Kiowa Trial Court must order an investigation by the Kiowa Health and Human Services Department, Court investigator, or other appropriate agency designated by Kiowa law or the Court to evaluate the claims in the petition, evaluate the proposed ward, and gather any evidence needed for the hearing(s), as determined by the Court, including, but not necessarily limited to, the following:
  - (1) The Kiowa Health and Human Services Department, Court investigator, or other appropriate Tribal agency designated by Kiowa law or the Court to investigate the abuse of elders and vulnerable adults shall conduct an investigation and file a report with the Kiowa Trial Court detailing their

findings and recommendations concerning the claims in the petition and the suitability of each proposed guardian(s). Prior to ruling on the petition for adult guardianship, the Court shall read and consider all reports submitted pursuant to this Chapter.

- (2) All reports authorized by this Chapter are confidential and shall only be made available to persons who have been served in the proceedings or their attorneys and/or proposed service providers or service partners.
- (3) The Court investigator or Tribal agency designated to investigate the potential guardianship shall serve all parties a copy of the confidential report as expeditiously as possible. For purpose of writing a report authorized by this Chapter, the person making the investigation and report shall have access to the proposed ward's school records, probation records, public and private social services records, oral or written summary of medical records, and psychological records prepared by any physician, psychologist, or psychiatrist who made or who is maintaining those records.
- (4) The report shall include, but not be limited to, an investigation and discussion of all of the following:
  - (A) Social history, including education and employment, general financial status, history of criminal law proceedings, and history of any Kiowa Trial Court proceedings of the proposed guardian(s);
  - (B) If the proposed ward is to live with proposed guardian(s), a criminal background check for each adult living in the home;
  - (C) Social history of the proposed ward, including, to the extent feasible, an assessment of any relevant identified needs of the proposed ward and the capability of the proposed guardian(s) to meet those needs through the proposed guardianship;
  - (D) The relationship of the proposed guardian(s) and proposed ward, including duration and character of relationship;
- (f) Establishing the Guardianship. The Kiowa Trial Court may establish a guardianship at the conclusion of the hearing process if the petitioner proves by a preponderance of the evidence that:
  - (1) The proposed ward is unable to manage their own affairs at issue in the petition due to:
    - (A) Incapacitation;
    - (B) Impairing mental illness;

- (C) Acute alcoholism, misuse of drugs, and/or abuse of drugs;
  - (D) Other impairing medical condition; and
  - (E) Abuse and/or neglect according to Kiowa law.
- (2) The proposed ward lacks the ability to manage their own affairs at issue in the petition to such a degree that the person's health, welfare, security, education, legal affairs, or financial security are threatened beyond that which is acceptable to a similarly situated member of the community;
  - (3) There are no less restrictive alternatives available to remedy the issue(s) identified in the evidence presented; and
  - (4) The type(s) of guardianship sought is narrowly tailored to the issue(s) identified.

**Section 13-8. Findings.** The Kiowa Trial Court shall make specific findings establishing the Guardianship, including findings specific to the particular type of guardianship ordered, where applicable.

**Section 13-9. Judgment and Court orders.** The Court shall issue a decision at the conclusion of the hearing(s) and make orders, including ordering a specific party to draft the temporary or permanent orders for the Court's review and signature. The Court may enter further orders for evaluation, assessment, or other orders to protect the proposed ward. Any Court order establishing a guardianship must include orders that address the following:

- (a) Whether an adult guardianship is established;
- (b) Identity of the ward and the ward's address and contact information;
- (c) Identity of the guardian(s) and the address and contact information of the guardian(s);
- (d) Type(s) of adult guardianship established;
- (e) Duration of guardianship(s);
- (f) Event(s) that will trigger the beginning or end of the guardianship being established, where applicable;
- (g) Responsibilities of the guardian, which at a minimum include those duties and responsibilities listed in this Chapter. The Court may make specific orders to better tailor the guardian(s)' responsibilities to the practical realities of the guardian(s) and ward, in accordance with the best interests of the ward;
- (h) Status review hearings, including:

- (1) When status review hearings begin;
  - (2) How frequently status review hearings will occur, which must at a minimum occur at the beginning of the guardianship and once per year thereafter, but the Court may order more frequent hearings at its discretion; and
  - (3) Parties required to participate in status review hearings; and
- (i) How often the guardian must provide an accounting to the Court for review. At a minimum, the Court must order the guardian to provide an accounting within one year of their appointment and at least every two years thereafter.

### **Section 13-10. Status Review Hearings.**

- (a) The status of all wards shall be reviewed by the Trial Court at least every 365 days.
- (b) A ward shall remain subject to the guardianship(s) unless the Trial Court finds a reason for terminating the guardianship(s) or assigning a new guardian(s). The Court will use the status review hearing to receive updates and accountings from the guardian and relevant interested parties. The Court may order services and supervision, as appropriate.
  - (1) If appropriate, the Court may refer issues identified to the Kiowa Tribe's peacemaker mediation forum or for family unity conferencing.
  - (2) At the status review hearing, the Court will:
    - (A) Evaluate the safety of the ward and the continued appropriateness of the guardianship(s);
    - (B) Review the extent of legal compliance by all relevant parties;
    - (C) Consider whether the actions taken on the ward's behalf have been appropriate and provided in a timely manner;
    - (D) Determine whether additional services are needed for the ward and/or guardian(s), and order such services;
    - (E) Review the accounting report and any other agency reports ordered;
    - (F) Provide a forum for the concerns of any interested party, including, but not necessarily limited to, the immediate family of the ward, the ward, the guardian(s), the Kiowa Tribe and its designated agencies or officials; and
    - (G) Determine when the next status review hearing will occur.

**Section 13-11. Guardian(s) duties and responsibilities.** Any guardian appointed pursuant to this Chapter has the following duties and responsibilities:

- (a) To sign an oath or affirmation that the guardian acknowledges and understands that responsibilities and duties will be performed according to the law.
- (b) Duty of Care. Requirement that a person act toward others and the public with the watchfulness, attention, caution, and prudence that a reasonable person in the circumstances would. The fiduciary duty to act with diligence and to exercise any and all special skills possessed by the guardian to the extent that a reasonably prudent person in the same circumstances would in the furtherance of the best interests of the ward.
- (c) Duty of Good Faith. The fiduciary duty to act with the utmost good faith and with the honest and reasonable belief that each act is in furtherance of the best interests of the ward, and without any intent to defraud, injure, or otherwise act adversely to the ward's best interests.
- (d) Evaluate the ward's needs and create a plan for meeting those needs.
- (e) Preserve and promote the ward's relationship with Kiowa culture, language, religion and practices, where applicable.
- (f) Provide for the health, education, economic, and social wellbeing of the ward, where applicable.
- (g) Any duty or responsibility, as ordered by the Kiowa Trial Court.

**Section 13-12. Duties of guardian of the estate.** The guardian of the estate's duties include, but are not necessarily limited to, the following:

- (a) Notice Responsibility. Obtaining letters of guardianship from the Court and use certified copies of the letters to notify relevant parties of the adult guardianship. For example, depending on the scope of the adult guardianship, a guardian may need to notify the ward's banks, creditors, service providers, and benefits providers (such as the Kiowa Tribe, Social Security Administration, Department of Veterans Affairs, etc.) of the guardian's authorization to act on the ward's behalf.
- (b) Accounting Responsibility. Making an accounting of the ward's assets, locate the assets, and take immediate steps to protect the assets. The guardian may work with the Kiowa Tribe to identify any urgent steps that may be necessary to prevent loss, including freezing assets and changing mailing addresses.
- (c) Preparing an inventory and appraisal of the ward's assets and file it with the Court within ninety (90) days after being appointed guardian. The Trial Court may order

a Kiowa department or agency to provide assistance with this duty, where feasible and appropriate.

- (d) Evaluating the ward's needs and create a plan for meeting those needs.
- (e) Creating a simple, accurate system for keeping records of the ward's income and expenditures and file that accounting with the Court annually.
- (f) Protecting and managing the ward's finances by:
  - (1) Controlling the ward's assets;
  - (2) Collecting income due to the ward;
  - (3) Making a budget for the ward;
  - (4) Paying the ward's bills with the ward's money;
  - (5) Investing the ward's money, where appropriate and upon approval of the Court;
  - (6) Protecting the ward's assets; and
  - (7) Keeping the ward's assets in a separate account that is solely used to benefit the ward.
- (g) Maintaining all duties and responsibilities as listed in this Chapter and ordered by the Kiowa Trial Court until the Court discharges the guardianship and a final accounting has been filed with the Court.

**Section 13-13. Duties of guardian of the person.** The guardian of the person duties include, but are not necessarily limited to, the following:

- (a) Providing for the ward's personal needs such as medical, dental, the provision of food, clothing, and shelter.
- (b) Maintain all duties and responsibilities as listed in this Chapter and ordered by the Kiowa Trial Court until the Court discharges the guardianship and a final accounting has been filed with the Court.

**Section 13-14. Terminating a guardianship.** At any time, a proposed ward, immediate family member, guardian, or the Court may make a motion to terminate the guardianship(s). At such time, the Court shall order an investigation and commence a hearing to evaluate the petition and any evidence offered. The Court may grant termination of the guardianship(s) upon a showing that the guardianship(s) is no longer necessary or convenient, or that the conditions underlying the necessity of the guardianship(s) have ceased to exist, and/or that termination of the guardianship(s) is in the best interest of the ward. The best interest consideration must include the wishes and estate planning efforts of the ward. The guardian(s) may wish to terminate their responsibility of the

ward due to a change of capacity or circumstances. In such circumstances, the guardian(s) may petition the Court for relief, but there must be an appropriate adult to take over the care and custody of the ward, and the ward may be placed in protective custody of the Kiowa Tribe until such an adult is identified.

**Section 13-15. Transferring cases to Kiowa Trial Court.** The Trial Court may petition tribal, state, and federal courts, as appropriate, to bring its adult guardianship case before those courts for any reason. The Trial Court may accept transfer of any case filed in a non-Kiowa court that would be governed by the provisions of this Chapter, had it originally been filed in Trial Court; any such transfer will be subject to all provisions of this Chapter and amended filings will be allowed to the extent necessary to comply with this Chapter.

## CHAPTER XIV

### PROTECTION FROM DOMESTIC VIOLENCE

**Section 14-1. Definitions.** As used in this Chapter:

- (a) **“Dating relationship”** means intimate association, primarily characterized by affectionate or sexual involvement. For purposes of this act, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship;
- (b) **“Domestic abuse”** means any act of physical harm or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor child thirteen (13) years of age or older against another adult, emancipated minor or minor child who is currently or was previously an intimate partner or family or household member;
- (c) **“Family or household members”** means:
  - (1) parents, including grandparents, stepparents, adoptive parents and foster parents,
  - (2) children, including grandchildren, stepchildren, adopted children and foster children,
  - (3) persons otherwise related by blood or marriage living in the same household, and
  - (4) persons otherwise related by blood or marriage;
- (d) **“Foreign protective order”** means any valid order of protection issued by a court of another tribe or state;
- (e) **“Harassment”** means a knowing and willful course or pattern of conduct by a family or household member or an individual who is or has been involved in a



dating relationship with the person, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress and must actually cause substantial distress to the person. “Harassment” shall include, but not be limited to, harassing or obscene telephone calls and fear of death or bodily injury;

(f) **“Intimate partner”** means:

- (1) current or former spouses,
- (2) persons who are or were in a dating relationship,
- (3) persons who are the biological parents of the same child, regardless of their marital status or whether they have lived together at any time, and
- (4) persons who currently or formerly lived together in an intimate way, primarily characterized by affectionate or sexual involvement. A sexual relationship may be an indicator that a person is an intimate partner, but is never a necessary condition;

(g) **“Mutual protective order”** means a final protective order or orders issued to both a plaintiff who has filed a petition for a protective order and a defendant included as the defendant in the plaintiff's petition restraining the parties from committing domestic violence, stalking, harassment or rape against each other. If both parties allege domestic abuse, violence, stalking, harassment or rape against each other, the parties shall do so by separate petition pursuant to Section 14-5;

(h) **“Rape”** means rape and rape by instrumentation in violation of Kiowa, Oklahoma, or Federal Law;

(i) **“Stalking”** means the willful, malicious, and repeated following or harassment of a person by an adult, emancipated minor, or minor thirteen (13) years of age or older, in a manner that would cause a reasonable person to feel frightened, intimidated, threatened, harassed, or molested and actually causes the person being followed or harassed to feel terrorized, frightened, intimidated, threatened, harassed or molested. Stalking also means a course of conduct composed of a series of two or more separate acts over a period of time, however short, evidencing a continuity of purpose or unconsented contact with a person that is initiated or continued without the consent of the individual or in disregard of the expressed desire of the individual that the contact be avoided or discontinued. Unconsented contact or course of conduct includes, but is not limited to:

- (1) maintaining a visual or physical proximity to the individual,

- (2) approaching or confronting that individual in a public place or on private property,
- (3) appearing at the workplace of the individual or contacting the employer or coworkers of the individual,
- (4) appearing at the residence of the individual or contacting the neighbors of the individual,
- (5) entering onto or remaining on property owned, leased or occupied by the individual,
- (6) contacting the individual by telephone, text message, electronic message, electronic mail, or other means of electronic communication or causing the telephone or electronic device of the individual or the telephone or electronic device of any other person to ring or generate notifications repeatedly or continuously, regardless of whether a conversation ensues,
- (7) photographing, videotaping, audiotaping, or, through any other electronic means, monitoring or recording the activities of the individual. This subparagraph applies regardless of where the act occurs,
- (8) sending any physical or electronic material or contacting the individual by any means, including any message, comment, or other content posted on any Internet site or web application,
- (9) sending to a family member or member of the household of the individual, or any current or former employer of the individual, or any current or former coworker of the individual, or any friend of the individual, any physical or electronic material or contacting such person by any means, including any message, comment, or other content posted on any Internet site or web application, for the purpose of obtaining information about, disseminating information about, or communicating with the individual,
- (10) placing an object on, or delivering an object to, property owned, leased or occupied by the individual,
- (11) delivering an object to a family member or member of the household of the individual, or an employer, coworker, or friend of the individual, or placing an object on, or delivering an object to, property owned, leased, or occupied by such a person with the intent that the object be delivered to the individual, or
- (12) causing a person to engage in any of the acts described in subparagraphs (1) through (11) of this paragraph; and

- (j) **“Victim support person”** means a person affiliated with a domestic violence, sexual assault or adult human sex trafficking program, who provides support and assistance for a person who files a petition under this Chapter.

**Section 14-2. Protective Order – Petition – Form – Filing Fee – Preparation – Protection of Animal.**

- (a) A victim of domestic abuse, a victim of stalking, a victim of harassment, a victim of rape, any adult or emancipated minor household member on behalf of any other family or household member who is a minor or incompetent, any minor age sixteen (16) or seventeen (17) years, or any adult victim of a crime may seek relief under the provisions of this Chapter.
- (1) The person seeking relief may file a petition for a protective order with the Trial Court. If the person seeking relief is not a family or household member or an individual who is or has been in a dating relationship with the defendant, the person seeking relief must file a complaint against the defendant with the appropriate law enforcement agency before filing a petition for a protective order with the Trial Court. The person seeking relief shall provide a copy of the complaint that was filed with the law enforcement agency at the full hearing if the complaint is not available from the law enforcement agency. Failure to provide a copy of the complaint filed with the law enforcement agency shall constitute a frivolous filing and the court may assess attorney fees and court costs against the plaintiff pursuant to paragraph (2) of subsection (c) of this section.
- (2) When the abuse occurs when the Trial Court is not open for business, such person may request an emergency temporary order of protection as authorized by Section 14-3.
- (b) The petition forms shall be provided by the Court Clerk. The Trial Court shall develop a standard form for the petition.
- (c) Fees.
- (1) Except as otherwise provided by this section, no filing fee, service of process fee, attorney fees or any other fee or costs shall be charged the plaintiff or victim at any time for filing a petition for a protective order whether a protective order is granted or not granted. The court may assess court costs, service of process fees, attorney fees, other fees and filing fees against the defendant at the hearing on the petition, if a protective order is granted against the defendant; provided, the court shall have authority to waive the costs and fees if the court finds that the party does not have the ability to pay the costs and fees.

- (2) If the court makes specific findings that a petition for a protective order has been filed frivolously and no victim exists, the court may assess attorney fees and court costs against the plaintiff.
- (d) The person seeking relief shall prepare the petition or, at the request of the plaintiff, the Court Clerk or the victim support person shall prepare or assist the plaintiff in preparing the petition.
- (e) The person seeking a protective order may further request the exclusive care, possession, or control of any animal owned, possessed, leased, kept, or held by either the petitioner, defendant or minor child residing in the residence of the petitioner or defendant. The Trial Court may order the defendant to make no contact with the animal and forbid the defendant from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal.
- (f) The Trial Court may not require the victim to seek legal sanctions against the defendant including, but not limited to, divorce, separation, paternity or criminal proceedings prior to hearing a petition for protective order.
- (g) A victim of rape, forcible sodomy, a sex offense, kidnapping, assault and battery with a deadly weapon, child abuse, or member of the immediate family of a victim of first-degree murder, may petition, or have a petition filed on the victim's behalf if the victim is a minor, for an emergency temporary order or emergency ex parte order regardless of any relationship or scenario pursuant to the provisions of this section. The Trial Court shall modify the petition forms as necessary to effectuate the provisions of this Section.

#### **Section 14-3. Emergency Temporary Order of Protection – Preliminary Investigation.**

- (a) When the Trial Court is not open for business, the victim of domestic violence, stalking, harassment, rape, forcible sodomy, a sex offense, kidnapping or assault and battery with a deadly weapon or member of the immediate family of a victim of first-degree murder may request a petition for an emergency temporary order of protection from an appropriate law enforcement agency. The law enforcement officer making the preliminary investigation shall:
  - (1) Provide the victim or member of the immediate family of a victim of first-degree murder with a petition for an emergency temporary order of protection and, if necessary, assist the victim or member of the immediate family of a victim of first-degree murder in completing the petition form. The petition shall be in substantially the same form as provided by Section 14-2 for a petition for protective order;
  - (2) Immediately notify, by telephone or otherwise, a judge of the Trial Court of the request for an emergency temporary order of protection and describe the

circumstances. The judge shall inform the law enforcement officer of the decision to approve or disapprove the emergency temporary order;

- (3) Inform the victim or member of the immediate family of a victim of first-degree murder whether the judge has approved or disapproved the emergency temporary order. If an emergency temporary order has been approved, the officer shall provide the victim, or a responsible adult if the victim is a minor child or an incompetent person or member of the immediate family of a victim of first-degree murder, with a copy of the petition and a written statement signed by the officer attesting that the judge has approved the emergency temporary order of protection; and
- (4) Notify the person subject to the emergency temporary protection order of the issuance and conditions of the order, if known. Notification pursuant to this paragraph may be made personally by the officer upon arrest or, upon identification of the assailant, notice shall be given by any law enforcement officer. A copy of the petition and the statement of the officer attesting to the order of the judge shall be made available to the person.

- (b) The forms utilized by law enforcement agencies in carrying out the provisions of this section may be substantially similar to those used under Section 14-2.

#### **Section 14-4. Emergency Ex Parte Order – Hearing.**

- (a) If a plaintiff requests an emergency ex parte order pursuant to Section 14-2, the court shall hold an ex parte hearing on the same day the petition is filed, if the court finds sufficient grounds within the scope of this Chapter stated in the petition to hold such a hearing. The court may, for good cause shown at the hearing, issue any emergency ex parte order that it finds necessary to protect the victim from immediate and present danger of domestic abuse, stalking, or harassment. The emergency ex parte order shall be in effect until after the full hearing is conducted. Provided, if the defendant, after having been served, does not appear at the hearing, the emergency ex parte order shall remain in effect until the defendant is served with the permanent order. If the terms of the permanent order are the same as those in the emergency order, or are less restrictive, then it is not necessary to serve the defendant with the permanent order. The Trial Court shall develop a standard form for emergency ex parte protective orders.
- (b) An emergency ex parte protective order authorized by this section shall include the name, sex, race, date of birth of the defendant, and the dates of issue and expiration of the protective order.
- (c) If a plaintiff requests an emergency temporary ex parte order of protection as provided by Section 14-3, the judge who is notified of the request by a law enforcement officer may issue such order verbally to the officer or in writing when there is reasonable cause to believe that the order is necessary to protect the victim

from immediate and present danger of domestic abuse. When the order is issued verbally the judge shall direct the officer to complete and sign a statement attesting to the order. The emergency temporary ex parte order shall be in effect until the court date that was assigned by the court during the approval of the order. Emergency temporary ex parte orders shall be heard within fourteen (14) days after issuance. The Trial Court shall provide a list of available court dates for hearings.

**Section 14-5. Hearing – Service of Process – Emergency/Protective Orders – Period of Relief – Title to Real Property.**

(a) Service of Process.

- (1) A copy of a petition for a protective order, any notice of hearing and a copy of any emergency temporary order or emergency ex parte order issued by the court shall be served upon the defendant in the same manner as a bench warrant. Any fee for service of a petition for protective order, notice of hearing, and emergency ex parte order shall only be charged pursuant to subsection (c) of Section 14-2 and, if charged, shall be the same as the service fee plus mileage expenses.
- (2) Emergency temporary orders, emergency ex parte orders and notice of hearings shall be given priority for service and can be served twenty-four (24) hours a day when the location of the defendant is known.
- (3) An emergency temporary order, emergency ex parte order, a petition for protective order, and a notice of hearing may be transferred to any law enforcement jurisdiction to effect service upon the defendant.
- (4) The return of service shall be submitted to the Court Clerk.
- (5) When the defendant is a minor child who is ordered removed from the residence of the victim, in addition to those documents served upon the defendant, a copy of the petition, notice of hearing and a copy of any temporary order or ex parte order issued by the court shall be delivered with the child to the caretaker of the place where such child is taken.

(b) Scheduling of Hearing.

- (1) Within fourteen (14) days of the filing of the petition for a protective order, the Trial Court shall schedule a full hearing on the petition, if the court finds sufficient grounds within the scope of this Chapter stated in the petition to hold such a hearing, regardless of whether an emergency temporary order or ex parte order has been previously issued, requested or denied. Provided, however, when the defendant is a minor child who has been removed from the residence, the Trial Court shall schedule a full hearing on the petition within seventy-two (72) hours, regardless of whether an emergency

temporary order or ex parte order has been previously issued, requested or denied.

- (2) The Trial Court may schedule a full hearing on the petition for a protective order within seventy-two (72) hours when the court issues an emergency temporary order or ex parte order suspending child visitation rights due to physical violence or threat of abuse.
- (3) If service has not been made on the defendant at the time of the hearing, the court shall, at the request of the petitioner, issue a new emergency order reflecting a new hearing date and direct service to issue.
- (4) A petition for a protective order shall, upon the request of the petitioner, renew every fourteen (14) days with a new hearing date assigned until the defendant is served. A petition for a protective order shall not expire unless the petitioner fails to appear at the hearing or fails to request a new order. A petitioner may move to dismiss the petition and emergency or final order at any time; however, a protective order must be dismissed by court order.
- (5) Failure to serve the defendant shall not be grounds for dismissal of a petition or an ex parte order unless the victim requests dismissal or fails to appear for the hearing thereon.
- (6) A final protective order shall be granted or denied within six (6) months of service on the defendant unless all parties agree that a temporary protective order remain in effect; provided, a victim shall have the right to request a final protective order hearing at any time after the passage of six (6) months.

(c) Granting of Protective Order.

- (1) At the hearing, the Trial Court may impose any terms and conditions in the protective order that the court reasonably believes are necessary to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim or the immediate family of the victim but shall not impose any term and condition that may compromise the safety of the victim including, but not limited to, mediation, couples counseling, family counseling, parenting classes or joint victim-offender counseling sessions. The court may order the defendant to complete domestic abuse counseling or treatment.
- (2) If the Trial Court grants a protective order and the defendant is a minor child, the court shall order a preliminary inquiry in a juvenile proceeding to determine whether further court action pursuant to the Kiowa Juvenile Code should be taken against a juvenile defendant.
- (3) Any protective order issued pursuant to this subsection shall be:



- (A) for a fixed period not to exceed a period of five (5) years unless extended, modified, vacated or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant; provided, if the defendant is incarcerated, the protective order shall remain in full force and effect during the period of incarceration. The period of incarceration, in any jurisdiction, shall not be included in the calculation of the five-year time limitation, or
- (B) continuous upon a specific finding by the court of one of the following:
  - (i.) the person has a history of violating the orders of any court or governmental entity,
  - (ii.) the person has previously been convicted of a violent felony offense,
  - (iii.) the person has a previous felony conviction for stalking,
  - (iv.) a court order for a final protective order has previously been issued against the person in the Kiowa Tribe, another tribe, or a state, or
  - (v.) the victim provides proof that a continuous protective order is necessary for his or her protection.

Further, the Trial Court may take into consideration whether the person has a history of domestic violence or a history of other violent acts. The protective order shall remain in effect until modified, vacated or rescinded upon motion by either party or if the Trial Court approves any consent agreement entered into by the plaintiff and defendant. If the defendant is incarcerated, the protective order shall remain in full force and effect during the period of incarceration.

- (4) The Trial Court shall notify the parties at the time of the issuance of the protective order of the duration of the protective order.
- (5) Upon the filing of a motion by either party to modify, extend, or vacate a protective order, a hearing shall be scheduled and notice given to the parties. At the hearing, the Trial Court may take such action as is necessary under the circumstances.
- (6) If a child has been removed from the residence of a parent or custodial adult because of domestic abuse committed by the child, the parent or custodial adult may refuse the return of such child to the residence unless, upon

further consideration by the Trial Court in a juvenile proceeding, it is determined that the child is no longer a threat and should be allowed to return to the residence.

- (d) Final protective orders authorized by this section shall be on a standard form developed by the Trial Court.
- (e) When necessary to protect the victim and when authorized by the Trial Court, protective orders granted pursuant to the provisions of this Section may be served upon the defendant by a law enforcement officer.
- (f) Improper Purpose.
  - (1) It shall be unlawful for any person to knowingly and willfully seek a protective order against a spouse or ex-spouse pursuant to the Section for purposes of harassment, undue advantage, intimidation, or limitation of child visitation rights in any divorce proceeding or separation action without justifiable cause.
  - (2) The violator shall, upon conviction thereof, be guilty of a misdemeanor punishable by imprisonment for a period not exceeding one (1) year or by a fine not to exceed Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.
  - (3) A second or subsequent conviction under this subsection shall be a felony punishable by imprisonment for a period not to exceed two (2) years, or by a fine not to exceed Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.
- (g) Limitations on Effect.
  - (1) A protective order issued under this Chapter shall not, in any manner, affect title to real property, purport to grant to the parties a divorce or otherwise purport to determine the issues between the parties as to child custody, visitation or visitation schedules, or child support or division of property, except child visitation orders may be temporarily suspended or modified to protect from threats of abuse or physical violence by the defendant or a threat to violate a custody order. Orders not affecting title may be entered for good cause found to protect an animal owned by either of the parties or any child living in the household.
  - (2) When granting any protective order for the protection of a minor child from violence or threats of abuse, the Trial Court shall allow visitation only under conditions that provide adequate supervision and protection to the child while maintaining the integrity of a divorce decree or temporary order.

(h) Utilities.

- (1) In order to ensure that a petitioner can maintain an existing wireless telephone number or household utility account, the Trial Court, after providing notice and a hearing, may issue an order directing a wireless service provider or public utility provider to transfer the billing responsibility for and rights to the wireless telephone number or numbers of any minor children in the care of the petitioning party or household utility account to the petitioner if the petitioner is not the wireless service or public utility account holder.
- (2) The order transferring billing responsibility for and rights to the wireless telephone number or numbers or household utility account to the petitioner shall list the name and billing telephone number of the account holder, the name and contact information of the person to whom the telephone number or numbers or household utility account will be transferred and each telephone number or household utility to be transferred to that person. The court shall ensure that the contact information of the petitioner is not provided to the account holder in proceedings held under this subsection.
- (3) Upon issuance, a copy of the final order of protection shall be transmitted, either electronically or by certified mail, to the registered agent of the wireless service provider or public utility provider listed with the Kiowa Tribe, the Oklahoma Secretary of State or Oklahoma Corporation Commission of Oklahoma or any similar agency of a state or tribe, or electronically to the email address provided by the wireless service provider or public utility provider. Such transmittal shall constitute adequate notice for the wireless service provider or public utility provider.
- (4) If the wireless service provider or public utility provider cannot operationally or technically effectuate the order due to certain circumstances, the wireless service provider or public utility provider shall notify the petitioner. Such circumstances shall include, but not be limited to, the following:
  - (A) the account holder has already terminated the account,
  - (B) the differences in network technology prevent the functionality of a mobile device on the network, or
  - (C) there are geographic or other limitations on network or service availability.
- (5) Upon transfer of billing responsibility for and rights to a wireless telephone number or numbers or household utility account to the petitioner under the provisions of this subsection by a wireless service provider or public utility

provider, the petitioner shall assume all financial responsibility for the transferred wireless telephone number or numbers or household utility account, monthly service and utility billing costs and costs for any mobile device associated with the wireless telephone number or numbers. The wireless service provider or public utility provider shall have the right to pursue the original account holder for purposes of collecting any past due amounts owed to the wireless service provider or public utility provider.

- (6) The provisions of this subsection shall not preclude a wireless service provider or public utility provider from applying any routine and customary requirements for account establishment to the petitioner as part of this transfer of billing responsibility for a household utility account or for a wireless telephone number or numbers and any mobile devices attached to that number including, but not limited to, identification, financial information and customer preferences.
- (7) The provisions of this subsection shall not affect the ability of the court to apportion the assets and debts of the parties as provided for in law or the ability to determine the temporary use, possession and control of personal property.
- (8) No cause of action shall lie against any wireless service provider or public utility provider, its officers, employees or agents for actions taken in accordance with the terms of a court order issued under the provisions of this subsection.
- (9) As used in this subsection:
  - (A) **“wireless service provider”** means a provider of commercial mobile service under Section 332(d) of the federal Telecommunications Act of 1996,
  - (B) **“public utility provider”** means every corporation organized or doing business that owns, operates or manages any plant or equipment for the manufacture, production, transmission, transportation, delivery or furnishing of water, heat or light with gas or electric current for heat, light or power, for public use in this state, and
  - (C) **“household utility account”** shall include utility services for water, heat, light, power or gas that are provided by a public utility provider.

(i) Mutual Domestic Abuse Allegations.

- (1) A court shall not issue any mutual protective orders.

- (2) If both parties allege domestic abuse by the other party, the parties shall do so by separate petitions. The Trial Court shall review each petition separately in an individual or a consolidated hearing and grant or deny each petition on its individual merits. If the Trial Court finds cause to grant both motions, the court shall do so by separate orders and with specific findings justifying the issuance of each order.
- (3) The Trial Court may only consolidate a hearing if:
  - (A) the Trial Court makes specific findings that:
    - (i.) sufficient evidence exists of domestic abuse, stalking, harassment or rape against each party, and
    - (ii.) each party acted primarily as aggressors,
  - (B) the defendant filed a petition with the court for a protective order no less than three (3) days, not including weekends or holidays, prior to the first scheduled full hearing on the petition filed by the plaintiff, and
  - (C) the defendant had no less than forty-eight (48) hours of notice prior to the full hearing on the petition filed by the plaintiff.
- (j) The Trial Court may allow a plaintiff or victim to be accompanied by a victim support person at court proceedings. A victim support person shall not make legal arguments; however, a victim support person who is not a licensed attorney may offer the plaintiff or victim comfort or support and may remain in close proximity to the plaintiff or victim.

**Section 14-6. Service of Protective Order on Law Enforcement Agency.** Within twenty-four (24) hours of the return of service of any emergency temporary, ex parte or final protective order, the Court Clerk shall send certified copies thereof to all appropriate law enforcement agencies designated by the plaintiff. A certified copy of any extension, modification, vacation, cancellation or consent agreement concerning a final protective order shall be sent within twenty-four (24) hours by the Court Clerk to those law enforcement agencies receiving the original orders pursuant to this section and to any law enforcement agencies designated by the Trial Court. The Court Clerk shall inform the protected party that they may need to register the emergency temporary, ex parte or final protective order with Oklahoma Secretary of State to be accepted by law enforcement officers of the State of Oklahoma.

**Section 14-7. Violation of Protective Order – Penalty.**

- (a) Except as otherwise provided by this Section, any person who:

- (1) Has been served with an emergency temporary, ex parte or final protective order or foreign protective order and is in violation of such protective order, upon conviction, shall be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or by a term of imprisonment of not more than one (1) year, or by both such fine and imprisonment; and
  - (2) After a previous conviction of a violation of a protective order, is convicted of a second or subsequent offense pursuant to the provisions of this section shall, upon conviction, be guilty of a felony and shall be punished by a term of imprisonment for not less than one (1) year nor more than three (3) years, or by a fine of not less than Two Thousand Dollars (\$2,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.
- (b) Physical Injury or Impairment of Protected Party.
- (1) Any person who has been served with an emergency temporary, ex parte or final protective order or foreign protective order who violates the protective order and causes physical injury or physical impairment to the plaintiff or to any other person named in said protective order shall, upon conviction, be guilty of a misdemeanor and shall be punished by a term of imprisonment for not less than twenty (20) days nor more than one (1) year. In addition to the term of imprisonment, the person may be punished by a fine not to exceed Five Thousand Dollars (\$5,000.00).
  - (2) Any person who is convicted of a second or subsequent violation of a protective order which causes physical injury or physical impairment to a plaintiff or to any other person named in the protective order shall be guilty of a felony and shall be punished by a term of imprisonment of not less than one (1) year nor more than five (5) years, or by a fine of not less than Three Thousand Dollars (\$3,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by both such fine and imprisonment.
  - (3) In determining the term of imprisonment required by this section, the jury or sentencing judge shall consider the degree of physical injury or physical impairment to the victim.
- (c) The minimum sentence of imprisonment issued pursuant to the provisions of paragraph (2) of subsection (a) and paragraph (2) of subsection (b) of this Section shall not be subject to statutory provisions for suspended sentences, deferred sentences or probation, provided the court may subject any remaining penalty under the jurisdiction of the Trial Court to the statutory provisions for suspended sentences, deferred sentences or probation.

- (d) In addition to any other penalty specified by this Section, the Trial Court shall require a defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim or to bring about the cessation of stalking or harassment of the victim. For every conviction of violation of a protective order:
- (1) The court shall specifically order as a condition of a suspended sentence or probation that a defendant participate in counseling or undergo treatment to bring about the cessation of domestic abuse as specified in paragraph (2) of this subsection;
- (2) Treatment.
- (A) The Trial Court shall require the defendant to participate in counseling or undergo treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program. If the defendant is ordered to participate in a domestic abuse counseling or treatment program, the order shall require the defendant to attend the program for a minimum of fifty-two (52) weeks, complete the program, and be evaluated before and after attendance of the program by a program counselor or a private counselor.
- (B) A program for anger management, couples counseling, or family and marital counseling shall not solely qualify for the counseling or treatment requirement for domestic abuse pursuant to this subsection. The counseling may be ordered in addition to counseling specifically for the treatment of domestic abuse or per evaluation as set forth below. If, after sufficient evaluation and attendance at required counseling sessions, the domestic violence treatment program or licensed professional determines that the defendant does not evaluate as a perpetrator of domestic violence or does evaluate as a perpetrator of domestic violence and should complete other programs of treatment simultaneously or prior to domestic violence treatment, including but not limited to programs related to the mental health, apparent substance or alcohol abuse or inability or refusal to manage anger, the defendant shall be ordered to complete the counseling as per the recommendations of the domestic violence treatment program or licensed professional;
- (3) Review Hearings.
- (A) The Trial Court shall set a review hearing no more than one hundred twenty (120) days after the defendant is ordered to participate in a domestic abuse counseling program or undergo treatment for domestic abuse to assure the attendance and compliance of the



defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements.

- (B) The Trial Court shall set a second review hearing after the completion of the counseling or treatment to assure the attendance and compliance of the defendant with the provisions of this subsection and the domestic abuse counseling or treatment requirements. The Trial Court may suspend sentencing of the defendant until the defendant has presented proof to the court of enrollment in a program of treatment for domestic abuse by an individual licensed practitioner or a domestic abuse treatment program and attendance at weekly sessions of such program. Such proof shall be presented to the court by the defendant no later than one hundred twenty (120) days after the defendant is ordered to such counseling or treatment. At such time, the Trial Court may complete sentencing, beginning the period of the sentence from the date that proof of enrollment is presented to the court, and schedule reviews as required by subparagraphs (A) and (B) of this paragraph and paragraphs (4) and (5) of this subsection. The court shall retain continuing jurisdiction over the defendant during the course of ordered counseling through the final review hearing;
- (4) The Trial Court may set subsequent or other review hearings as the Trial Court determines necessary to assure the defendant attends and fully complies with the provisions of this subsection and the domestic abuse counseling or treatment requirements;
- (5) At any review hearing, if the defendant is not satisfactorily attending individual counseling or a domestic abuse counseling or treatment program or is not in compliance with any domestic abuse counseling or treatment requirements, the Trial Court may order the defendant to further or continue counseling, treatment, or other necessary services. The Trial Court may revoke all or any part of a suspended sentence, deferred sentence, or probation and subject the defendant to any or all remaining portions of the original sentence; and
- (6) At the first review hearing, the Trial Court shall require the defendant to appear in court. Thereafter, for any subsequent review hearings, the Trial Court may accept a report on the progress of the defendant from individual counseling, domestic abuse counseling, or the treatment program. There shall be no requirement for the victim to attend review hearings.
- (e) Emergency temporary, ex parte and final protective orders shall include notice of these penalties.

- (f) When a minor child violates the provisions of any protective order, the violation shall be heard in a juvenile proceeding and the Trial Court may order the child and the parent or parents of the child to participate in family counseling services necessary to bring about the cessation of domestic abuse against the victim and may order community service hours to be performed in lieu of any fine or imprisonment authorized by this section.
- (g) The Trial Court and any judge thereof shall be immune from any liability or prosecution for issuing an order that requires a defendant to:
  - (1) Attend a treatment program for domestic abusers;
  - (2) Attend counseling or treatment services ordered as part of any final protective order or for any violation of a protective order; and
  - (3) Attend, complete, and be evaluated before and after attendance by a treatment program for domestic abusers.
- (h) At no time, under any proceeding, may a person protected by a protective order be held to be in violation of that protective order. Only a defendant against whom a protective order has been issued may be held to have violated the order.
- (i) In addition to any other penalty specified by this section, the court may order a defendant to use an active, real-time, twenty-four-hour Global Positioning System (GPS) monitoring device as a condition of a sentence. The court may further order the defendant to pay costs and expenses related to the GPS device and monitoring.

**Section 14-8.** All orders issued pursuant to the provisions of this Chapter shall have validity anywhere in the United States of America unless specifically modified or terminated by a judge of the Trial Court.

**Section 14-9. Seizure and Forfeiture of Weapons and Instruments.**

- (a) A law enforcement officer shall seize any weapon or instrument when such officer has probable cause to believe such weapon or instrument has been used to commit an act of domestic abuse as defined by Section 14-1, provided an arrest is made, if possible, at the same time.
- (b) After any such seizure, a notice of seizure and forfeiture shall be filed as provided in this Section within ten (10) days of such seizure, or any weapon or instrument seized pursuant to this section shall be returned to the owner.
- (c) The seizure and forfeiture provisions of the Kiowa Tribe shall be followed for any seizure and forfeiture of property pursuant to this Section. In no such provisions exists that are appropriate, the Trial Court may look to the provisions of other tribes located in the State of Oklahoma, or the State of Oklahoma itself. No weapon or

instrument seized pursuant to this Section or monies from the sale of any such seized weapon or instrument shall be turned over to the person from whom such property was seized if a forfeiture action has been filed within the time required by subsection (b) of this section, unless authorized by this Section. Provided further, the owner may prove at the forfeiture hearing that the conduct giving rise to the seizure was justified, and if the owner proves justification, the seized property shall be returned to the owner.

#### **Section 14-10. Warrantless Arrest – Proceedings.**

- (a) Protective Orders Issued by Trial Court. A law enforcement officer, without a warrant, shall arrest and take into custody a person if the peace officer has reasonable cause to believe that:
  - (1) An emergency ex parte or final protective order has been issued and served upon the person, pursuant to this Chapter;
  - (2) A true copy and proof of service of the order has been filed with the law enforcement agency having jurisdiction of the area in which the plaintiff or any family or household member named in the order resides or a certified copy of the order and proof of service is presented to the law enforcement officer as provided in subsection (d) of this Section;
  - (3) The person named in the order has received notice of the order and has had a reasonable time to comply with such order; and
  - (4) The person named in the order has violated the order or is then acting in violation of the order.
- (b) Foreign Protective Orders. A law enforcement officer, without a warrant, shall arrest and take into custody a person if the following conditions have been met:
  - (1) The officer has reasonable cause to believe that a foreign protective order has been issued, pursuant to the law of the tribal or state court where the foreign protective order was issued;
  - (2) A certified copy of the foreign protective order has been presented to the law enforcement officer that appears valid on its face; and
  - (3) The law enforcement officer has reasonable cause to believe the person named in the order has violated the order or is then acting in violation of the order.
- (c) A person arrested pursuant to this section shall be brought before the Trial Court within twenty-four (24) hours after arrest to answer to a charge for violation of the

order pursuant to Section 14-9, at which time the Trial Court shall do each of the following:

- (1) Set a time certain for a hearing on the alleged violation of the order within seventy-two (72) hours after arrest, unless extended by the Trial Court on the motion of the arrested person;
- (2) Set a reasonable bond pending a hearing of the alleged violation of the order; and
- (3) Notify the party who has procured the order and direct the party to appear at the hearing and give evidence on the charge.

The Trial Court may also consider the safety of any and all alleged victims that are subject to the protection of the order prior to the Trial Court setting a reasonable bond pending a hearing of the alleged violation of the order.

- (d) A copy of a protective order shall be prima facie evidence that such order is valid within the territorial jurisdiction of the Kiowa Tribe when such documentation is presented to a law enforcement officer by the plaintiff, defendant, or another person on behalf of a person named in the order. Any law enforcement officer may rely on such evidence to make an arrest for a violation of such order, if there is reason to believe the defendant has violated or is then acting in violation of the order without justifiable excuse. When a law enforcement officer relies upon the evidence specified in this subsection, such officer and the employing agency shall be immune from liability for the arrest of the defendant if it is later proved that the evidence was false.
- (e) Any person who knowingly and willfully presents any false or materially altered protective order to any law enforcement officer to effect an arrest of any person shall, upon conviction, be guilty of a felony punishable by imprisonment for a period not to exceed two (2) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00) and shall, in addition, be liable for any civil damages to the defendant.

**Section 14-11. Statement Required on All Ex Parte or Final Protective Order.** In addition to any other provisions required by this Chapter, or otherwise required by law, each ex parte or final protective order issued pursuant to this Chapter shall have a statement printed in bold-faced type or in capital letters containing the following information:

- (a) The filing or nonfiling of criminal charges and the prosecution of the case shall not be determined by a person who is protected by the protective order, but shall be determined by the prosecutor;
- (b) No person, including a person who is protected by the order, may give permission to anyone to ignore or violate any provision of the order. During the time in which

the order is valid, every provision of the order shall be in full force and effect unless a court changes the order;

- (c) The order shall be in effect for a fixed period of five (5) years unless extended, modified, vacated or rescinded by the court or shall be continuous upon a specific finding by the court as provided in subparagraph b of paragraph (1) of subsection (g) of Section 14-5 of this Code unless modified, vacated or rescinded by the court;
- (d) The order shall be entered into the National Crime Information Center (NCIC) database;
- (e) A violation of the order is punishable by a fine of up to One Thousand Dollars (\$1,000.00) or imprisonment for up to one (1) year, or by both such fine and imprisonment. A violation of the order which causes injury is punishable by imprisonment for twenty (20) days to one (1) year or a fine of up to Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment;
- (f) Possession of a firearm or ammunition by a defendant while an order is in effect may subject the defendant to prosecution for a violation of federal law even if the order does not specifically prohibit the defendant from possession of a firearm or ammunition;
- (g) The defendant must avoid the residence of the petitioner or any premises temporarily occupied by the petitioner;
- (h) The defendant must avoid contact that harasses or intimidates the petitioner. Contact includes, but is not limited to, contact at the home, work, or school of the petitioner, public places, in person, by phone, in writing, by electronic communication or device, or in any other manner;
- (i) The defendant shall not impersonate or adopt the personification of the petitioner by pretending to be the petitioner, ordering items, posting information or making inquiries, or publishing photographs of the petitioner, by use of social media, or by use of computer, telephone, texting, emailing, or by use of any electronic means;
- (j) The defendant must refrain from removing, hiding, damaging, harming, mistreating, or disposing of a household pet;
- (k) The defendant must allow the petitioner or a family member or household member of the petitioner acting on his or her behalf to retrieve a household pet;
- (l) The defendant must avoid contacting the petitioner or causing any person other than an attorney for the petitioner or law enforcement officer to contact the petitioner unless the petitioner consents in writing; and

- (m) A law enforcement officer will accompany the petitioner and assist in placing the petitioner in physical possession of his or her residence, if requested.

#### **Section 14-12.Foreign Protective Orders.**

- (a) It is the intent of the Kiowa Legislature that all foreign protective orders shall have the rebuttable presumption of validity, even if the foreign protective order contains provisions which could not be contained in a protective order issued by the Kiowa Trial Court. The validity of a foreign protective order shall only be determined by a court of competent jurisdiction. Until a foreign protective order is declared invalid by a court of competent jurisdiction it shall be given full faith and credit by all Kiowa law enforcement officers and the Kiowa Trial Court.
- (b) A law enforcement officer of this state shall be immune from liability for enforcing provisions of a foreign protective order.

#### **Section 14-13.Address Confidentiality Program – Victims of Domestic Abuse, Sexual Assault, Stalking, Human Trafficking, Child Abduction.**

- (a) The Kiowa Legislature finds that persons attempting to escape from actual or threatened domestic violence, sexual assault, stalking, human trafficking, or child abduction, frequently establish new addresses in order to prevent their assailants or probable assailants from finding them.
- (b) As used in this section:
  - (1) **“Address”** means a residential street address, school address, or work address of an individual, as specified on the application of an individual to be a program participant under this Section;
  - (2) **“Confidentiality Officer”** means the employee designated by the Trial Court pursuant to subsection (c) of this Section.
  - (3) **“Program participant”** means a person certified as a program participant under this Section;
  - (4) **“Domestic abuse”** means an act as defined in Section 14-1 and includes a threat of such acts committed against an individual in a domestic situation, regardless of whether these acts or threats have been reported to law enforcement officers;
  - (5) **“Stalking”** means an act as defined in Section 14-1 regardless of whether the acts have been reported to law enforcement; and
  - (6) **“Human trafficking”** means human trafficking, human trafficking for labor, and human trafficking for commercial sex.

- (c) The Trial Court shall designate an employee who shall be responsible for maintaining the confidentiality of certain information for victims who have applied for or granted a protective order pursuant to this Chapter. Said employee shall be an unclassified employee, who has been subjected to a criminal history records search.
- (d) Application.
  - (1) An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, may apply to the Confidentiality Officer to have an address designated as the address of the person or the address of the minor or incapacitated person. The Confidentiality Office shall approve an application if it is filed in the manner and on the form prescribed by the Trial Court and if it contains:
    - (A) a sworn statement by the applicant that the applicant has good reason to believe:
      - (i.) that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic abuse, sexual assault, stalking, human trafficking, or child abduction, and
      - (ii.) that the applicant fears for the safety of self or children, or the safety of the minor or incapacitated person on whose behalf the application is made,
    - (B) a designation of the Confidentiality Officer as agent for purposes of service of process and for the purpose of receipt of mail,
    - (C) the mailing address where the applicant can be contacted by the Confidentiality Officer, and the phone number or numbers where the applicant can be called by the Confidentiality Officer,
    - (D) the new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic abuse, sexual assault, stalking, human trafficking, or child abduction, and
    - (E) the signature of the applicant and application assistant who assisted in the preparation of the application, and the date on which the applicant signed the application.
  - (2) An adult or minor child who resides with the applicant who also needs to be a program participant in order to ensure the safety of the applicant may



apply. Each adult living in the household must complete a separate application. An adult may apply on behalf of a minor.

- (3) Applications shall be filed confidentially with the Trial Court.
- (4) Upon filing a properly completed application, the Confidentiality Officer shall certify the applicant as a program participant. Applicants shall be certified for four (4) years following the date of filing unless the certification is withdrawn or invalidated before that date. The Trial Court shall by rule establish a renewal procedure.
- (5) A person who falsely attests in an application that disclosure of the address of the applicant would endanger the safety of the applicant or the safety of the children of the applicant or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, may be found guilty of perjury.

(e) Cancellation.

- (1) The Confidentiality Officer may cancel the certification of a program participant if there is a change in the residential address, unless the program participant provides the Confidentiality Officer notice no later than fourteen (14) days after the change occurs.
  - (2) The Confidentiality Officer may cancel certification of a program participant if mail forwarded by the Confidentiality Officer to the address of the program participant is returned as nondeliverable and the Confidentiality Officer has been unable to reach the program participant after three (3) telephone calls and seven (7) days following the first phone call.
  - (3) The Confidentiality Officer shall cancel certification of a program participant who applies using false information.
- (f) The Confidentiality Officer shall forward all first class, certified and registered mail to the appropriate program participants for no charge. The Confidentiality Officer shall not be required to track or otherwise maintain records of any mail received on behalf of a participant unless the mail is certified or registered mail.
- (g) The Confidentiality Officer may not make any records in a file of a program participant available for inspection or copying, except under the following circumstances:
- (1) If directed by a court order, to a person identified in the order; or

- (2) To verify the participation of a specific program participant to an agency of any governmental entity, whether of the Kiowa Tribe, another tribe, or a state, in which case the Confidentiality Officer may only confirm information supplied by the requester.

#### **Section 14-14. Expungement of Victim Protective Orders.**

- (a) Persons authorized to file a motion for expungement of victim protective orders (VPOs) issued pursuant to this Chapter must be within one of the following categories:
  - (1) An ex parte order was issued to the plaintiff but later terminated due to dismissal of the petition before the full hearing, or denial of the petition upon full hearing, or failure of the plaintiff to appear for full hearing, and at least ninety (90) days have passed since the date set for full hearing;
  - (2) The plaintiff filed an application for a victim protective order and failed to appear for the full hearing and at least ninety (90) days have passed since the date last set by the court for the full hearing, including the last date set for any continuance, postponement or rescheduling of the hearing;
  - (3) The plaintiff or defendant has had the order vacated and three (3) years have passed since the order to vacate was entered; or
  - (4) The plaintiff or defendant is deceased.
- (b) For purposes of this section:
  - (1) **“Expungement”** means the sealing of victim protective order (VPO) court records from public inspection, but not from law enforcement agencies, prosecutors of the Kiowa Tribe or Bureau of Indian Affairs, and the judicial branch of the Kiowa Tribe;
  - (2) **“Plaintiff”** means the person or persons who sought the original victim protective order (VPO) for cause; and
  - (3) **“Defendant”** means the person or persons to whom the victim protective order (VPO) was directed.
- (c) Procedure and Factors to Consider.
  - (1) Any person qualified under subsection (a) of this Section may petition the Trial Court for the expungement and sealing of the court records from public inspection. The face of the petition shall state whether the defendant in the protective order has been convicted of any violation of the protective order and whether any prosecution or complaint is pending in this state or any other state for a violation or alleged violation of the protective order that is

sought to be expunged. The petition shall further state the authority pursuant to subsection (a) of this section for eligibility for requesting the expungement. The other party to the protective order shall be mailed a copy of the petition by certified mail within ten (10) days of filing the petition. A written answer or objection may be filed within thirty (30) days of receiving the notice and petition.

- (2) Upon the filing of a petition, the Trial Court shall set a date for a hearing and shall provide at least a thirty (30) day notice of the hearing to all parties to the protective order, and any other person or agency whom the court has reason to believe may have relevant information related to the sealing of the victim protective order (VPO) court record.
- (3) Without objection from the other party to the victim protective order (VPO) or upon a finding that the harm to the privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public and safety interests of the parties to the protective order in retaining the records, the Trial Court may order the court record, or any part thereof, to be sealed from public inspection. Any order entered pursuant to this section shall not limit or restrict any law enforcement agency, prosecutors of the Kiowa Tribe or Bureau of Indian Affairs, or the court from accessing said records without the necessity of a court order. Any order entered pursuant to this subsection may be appealed by any party to the protective order.
- (4) Upon the entry of an order to expunge and seal from public inspection a victim protective order (VPO) court record, or any part thereof, the subject official actions shall be deemed never to have occurred, and the persons in interest and the public may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to the persons.
- (5) Inspection of the protective order court records included in the expungement order issued pursuant to this section may thereafter be permitted only upon petition by the persons in interest who are the subjects of the records, or without petition by prosecutors of the Kiowa Tribe or Bureau of Indian Affairs or a law enforcement agency in the due course of investigation of a crime.
- (6) Nothing in this section shall be construed to authorize the physical destruction of any court records, except as otherwise provided by law for records no longer required to be maintained by the court.
- (7) For the purposes of this Section, sealed materials which are recorded in the same document as unsealed material may be recorded in a separate document, and sealed, then obliterated in the original document.

## **Section 14-15. Emergency Protective Orders in Deprived Child Proceedings – Confidentiality.**

In proceedings before the Trial Court in which a child is alleged to be deprived, the Trial Court, after consideration and to ensure the safety of any child brought into the custody of social services, may issue against the alleged perpetrator of abuse an emergency protective order pursuant to this Chapter at the emergency custody hearing or after a petition has been filed alleging that a child has been physically or sexually abused. The protective order shall remain in effect until the case has been dismissed or until further order of the court. All emergency protective orders issued by the court pursuant to this section shall remain confidential and shall not be open to the general public; provided, however, copies of the emergency protective order shall be provided to any law enforcement agency designated by the Trial Court to effect service upon the defendant.

## **Section 14-16. Registration of Foreign Protective Orders.**

- (a) Any individual may register a foreign protection order with the Trial Court. To register a foreign protection order, an individual shall:
  - (1) Present a certified copy of the order to the Court Clerk; or
  - (2) Present a certified copy of the order to a law enforcement officer and request that the order be registered with the Court Clerk.
- (b) Upon receipt of a foreign protection order, the Court Clerk shall register the order in accordance with this Section. After the order is registered, the Court Clerk shall furnish to the individual registering the order a certified copy of the registered order.
- (c) An individual registering a foreign protection order shall file an affidavit by the protected individual stating that, to the best of the protected individual's knowledge, the order is currently in effect.
- (d) A fee may not be charged for the registration of a foreign protection order.
- (e) A law enforcement officer, prosecuting attorney, clerk of court, or any governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission was done in good faith in an effort to comply with this Chapter.