DOMESTIC RELATIONS CODE OF THE HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION
HOOPA, CALIFORNIA
TITLE 14A

ORDINANCE NO: 05-01
DATE APPROVED: March 3, 2005

SUBJECT: ORDINANCE ESTABLISHING TRIBAL COURT JURISDICTION OVER MARRIAGE, DIVORCE, DIVISION OF PROPERTY UPON DIVORCE, CHILD CUSTODY BETWEEN PARENTS, AND DETERMINATION AND ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

WHEREAS: The Hoopa Valley Tribal Council is governing body of the Hoopa Valley Indian Tribe in California, by the authority of Article V, Section 1 of the Constitution and Bylaws of the Tribe as approved on August 18, 1972 by the Commissioner of Indian Affairs, and on October 31, 1988 by Congress; and

WHEREAS: The Tribal Council is empowered by Article IX, sections (k), (l) and (n), to promulgate ordinances governing the conduct of Hoopa Valley Tribal members and other residents of the Hoopa Valley Indian Reservation, to safeguard and promote the peace, safety, morals, and general welfare of the Hoopa Valley Indians, and to establish a tribal court through necessary ordinances; and

WHEREAS: It has become necessary to enact a Domestic Relations Code to provide guidance to citizens within the exterior boundaries of the Hoopa Valley Indian Reservation and in surrounding areas who wish to avail themselves of the Hoopa Valley Tribal Court for legal recognition of marriages, for resolution of certain disputes within families, including dissolution of marriage, and for the proper care and support of children within the Tribal Court's jurisdiction; and

WHEREAS: Domestic relations cases are private civil actions that will be governed by Title 2 of the Hoopa Valley Tribal Code, including provisions for the application of traditional law and custom; and

WHEREAS: The Hoopa Valley Tribal Court is the appropriate venue for hearing all domestic relations matters involving persons domiciled within the exterior boundaries of the Hoopa Valley Indian Reservation, and other persons who have legally sufficient contacts with the Hoopa Valley Indian Reservation or with members of the Hoopa Valley Indian Tribe; and

WHEREAS: This Domestic Relations Code is the first step in a comprehensive Family Law Code process that should include a revision of the Tribe's Indian Child Welfare Code, including updated foster care provisions, and the enactment of other laws protecting families, elders and vulnerable adults, including civil domestic violence provisions.

NOW BE RESOLVED THAT: The Hoopa Valley Tribal Council hereby enacts the Domestic Relations Code to be codified as Title 14A of the Hoopa Valley Tribal Code, and that this Act shall be in full force and effect as of the date of its enactment and shall supercede all previous laws and policies to the extent that they are inconsistent with this Code; and

BE IT FURTHER RESOLVED THAT: All pending actions and existing Tribal Court orders, including modifications thereof, that fall within the subject matter of this Ordinance shall be governed by the provisions of Title 14A.

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Chapter 1 - General Provisions

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14A.1.10 Title.

This Title shall be referred to as the "Domestic Relations Code."

14A.1.20 Authority.

This Title is enacted pursuant to Article IX, Sections (k) and (l) of the Hoopa Valley Tribe's Constitution.

14A.1.30 Purpose and Scope.

The purpose of Chapters 1 through 7 includes the following:

(A) To provide adequate procedures for the ceremony and registration of marriage;

(B) To strengthen and preserve the institution of marriage and safeguard family relationships;

(C) To promote the peaceful and fair settlement of disputes between parties to a marriage;

(D) To minimize the potential harm to spouses and their children caused by the process of legal dissolution of marriage (divorce);

(E) To make reasonable provisions for spouse and minor children during and after Tribal Court intervention; and

(F) To provide adequate procedures for establishing the legal relationship existing between a child and his or her natural or adoptive parents.

14A.1.40 Construction.

Chapter 1 through Chapter 7 shall be exempted from the rules of strict construction and shall be liberally construed to give full effect to the objectives and purposes for which they were enacted. The terms and provisions of Chapter 1 through Chapter 7 shall be construed according to the fair import of their terms, but when the language is susceptible to differing construction, it shall be interpreted to further the general purposes stated in this Chapter. Where a term is not defined herein, it shall be given its ordinary meaning. Any reference to "he," "him" or other masculine terms shall include male and female persons. Any reference to a singular term includes the plural.

14A.1.50 Definitions.

For purposes of Chapter 1 through Chapter 7 of this Title, unless otherwise expressly provided, the following definitions shall apply:

(A) **"Child Support Schedule"** means the formula for calculating in a fair and consistent manner the amount of child support payments equitable in any given situation approved under Section 14A.6.20 and found at Chapter 14A.6, Appendix I. The Tribal Court shall use the Child Support Schedule as a guideline for its child support orders.

(B) **"Community Property"** generally means property acquired during marriage, except by gift, inheritance or devise to either spouse individually. All property acquired during marriage is presumed to be community property.

(C) **"Conciliation Conference"** means a conference conducted by an impartial third party to assist the married parties in determining the prospects of preserving the marital relationship as opposed to instituting or continuing with dissolution proceedings.

(D) **"Dissolution"** means the act of terminating a marriage (i.e., divorce).

(E) **"Domestic Violence"** means acts or threats of physical harm that occur among members of the same family, intimate friends, or residents of the same household.

(F) **"Irretrievably Broken"** means that there is no reasonable prospect for reconciliation.

(G) **"Permanent Parenting Plan"** means a plan for parenting the child, including allocation of parenting functions, which plan is incorporated in any final decree or decree of modification in an action for dissolution of marriage, declaration of invalidity, legal separation, or child custody.

(H) **"Reservation"** means the Hoopa Valley Indian Reservation, and other lands subject to the jurisdiction of the Hoopa Valley Indian Tribe.

(I) **"Tribal Council"** means the Hoopa Valley Tribal Council.

(J) **"Separate Property"** generally means property acquired before marriage or acquired during marriage by either spouse individually as a result of a gift, inheritance or devise. Property acquired after a legal separation is also separate property provided community property did not generate the funds for the acquisition (e.g., money from a community business).

(K) **"Temporary Parenting Plan"** means a plan for parenting of the child pending final resolution of any action for dissolution of marriage, declaration of invalidity, legal separation, or child custody.

(L) **"Tribe"** means the Hoopa Valley Indian Tribe.

14A.1.60 Sovereign Immunity Preserved.

Nothing in Chapter 1 through Chapter 7 shall be deemed to constitute a waiver by the Hoopa Valley Indian Tribe of its sovereign immunity, rights, powers or privileges.

14A.1.70 Inconsistent Provisions of Other Law

It is the intent of the Tribal Council to enact this Title to supplement the jurisdiction of the Tribal Court as authorized by Title 14 (Indian Child Welfare) of the Hoopa Valley Tribal Code, and other provisions of tribal law. If any provision of Title 14 is found to be inconsistent with this Title, the provisions of this Title shall govern in domestic relations proceedings, unless there is good cause shown that application of this Title would not be in the best interests of the child(ren), as described in Section 14A.4.10 below. Title 14 remains in full force and effect for dependency proceedings initiated by the Tribe for the welfare of Indian children.

14A.1.80 Severability.

If any provision of Chapter 1 through Chapter 7 or its application to any person or circumstance is held invalid, the remainder of the Title, or the application of the provision to other persons or circumstances, remains in effect.

Chapter 2 - Marriage

Sec.

14A.2.10 Persons Who May Marry
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14A.2.50 Marriage Licenses, Affidavits and Certificates
14A.2.60 Voidable Marriages
14A.2.70 Existing Marriages

14A.2.10 Persons Who May Marry.

(A) Marriage is a personal relationship between two (2) persons arising out of a civil contract to which the consent of the parties is essential.

(B) No marriage license shall be issued or marriage performed unless the persons to be married meet the following qualifications:

(1) Both persons to be married are at least eighteen (18) years old; and

(2) At least one of the persons to be married has been domiciled within the exterior boundaries of the Hoopa Valley Reservation for at least ninety (90) days prior to the license application.

14A.2.20 Prohibited Marriages.

Marriages in the following cases are prohibited:

(A) When either party thereto has a wife or husband living at the time of marriage;

(B) When the parties thereto are nearer of kin to each other than second cousins;

(C) It shall be unlawful for any man to marry his father's sister, mother's sister, daughter, sister, son's daughter, daughter's daughter, brother's daughter, or sister's daughter; and

(D) It shall be unlawful for any woman to marry her father's brother, mother's brother, son, brother, son's son, daughter's son, brother's son, or sister's son.

14A.2.30 Who May Perform Marriage Ceremonies.

(A) A marriage may be solemnized and performed on the Hoopa Valley Indian Reservation by the following:

(1) A recognized member of the clergy or person recognized by their religion as having authority to perform marriages; or

(2) A judge of the Tribal Court.

(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 or either of them that they have been lawfully joined in marriage.

14A.2.40 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 that they take each other to be husband and wife and that such declaration is made in the presence of at least two (2) attending witnesses.

14A.2.50 Marriage Licenses, Affidavits and Certificates.

(A) No marriage ceremony shall be performed unless the parties have first obtained a marriage license from the clerk of the Tribal Court.

(B) In addition to payment of a fee to be set by the Tribal Court, the clerk shall require each party to make and file an affidavit upon forms provided by the Tribal Court showing that the applicants are eighteen (18) years of age or older, and that one of the parties has been domiciled on the Hoopa Valley Reservation for at least ninety (90) days. Anyone who knowingly swears falsely to any of the statements contained in the affidavits shall be deemed guilty of perjury and punished as provided by the laws of the Hoopa Valley Indian Tribe.

(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 be returned to the clerk within thirty (30) days of the ceremony, who shall issue a marriage certificate to the parties.

(E) The Tribal Court is authorized to develop a marriage license, an affidavit form, and other documents and records that are necessary to implement this Section.

14A.2.60 Voidable Marriages.

When either party to a marriage shall be incapable of consenting thereto, for want of legal age or a sufficient understanding, or when the consent of either party shall be 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.

14A.2.70 Existing Marriages.

All marriages performed, other than as provided under this Chapter, that are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Tribe.

Chapter 3 - Dissolution of Marriage, Legal Separation and Declaration of Invalidity of Marriage

Sec.

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14A.3.150 Costs and Expenses
14A.3.160 Decree - Finality - Restoration of Maiden Name
14A.3.170 Independence of Provisions of Decree or Temporary Order

14A.3.10 Civil Procedure to Govern - Designation of Proceedings.

(A) Except as otherwise specified herein, Title 2 (Civil Actions) of the Hoopa Valley Tribal Code, shall govern all proceedings under this Title.

(B) A proceeding for dissolution of marriage, legal separation or a declaration concerning the validity of a marriage shall be entitled "In re the marriage of _____ and _____."

(C) The initial pleading in all proceedings under this Title shall be designated a petition. A responsive pleading shall be designated a response.

(D) A decree of dissolution or legal separation or a declaration concerning the validity of a marriage shall not be awarded to one of the parties, but shall provide

that it affects the status previously existing between the parties in the manner decreed.

14A.3.20 Pleadings - Contents - Defense - Joinder of Parties.

(A) The petition in a proceeding for dissolution of marriage, legal separation or a 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 and tribal enrollment, if any, of each party and the length of domicile in this community;

(2) The date of the marriage and the place at which 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 Tribal Court needs to divide property between the parties; 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 shall be that the marriage is legally valid.

(D) The Tribal Court may join additional parties necessary for the exercise of its authority.

14A.3.30 Informal Dispute Resolution.

(A) In any proceeding under this Chapter, an informal resolution of the contested issues may be arranged with the Tribal Court's permission at or before the time the matter is set for a hearing.

(B) The informal resolution process may include counseling, mediation or another process that is acceptable by Hoopa Valley community standards.

(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 consistent with the provisions of this Title. If stipulated to by the parties, the Court may apply the customs and traditions of the Hoopa Valley Indian Tribe pursuant to Title 2, Sections 2.1.03 and 2.1.04.

(D) Informal dispute resolution proceedings shall be held in private and shall be confidential. No one shall testify in Tribal 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 Tribal Court.

14A.3.40 Temporary Order or Preliminary Injunction - Effect.

(A) Request for temporary orders. In a proceeding for dissolution of marriage, legal separation, declaration of invalidity or parenting and support hearing, either party may move for temporary maintenance or support of a child, or a parenting plan. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the relief requested.

(B) Preliminary injunction. As a part of a motion for temporary spousal maintenance or child support or by independent motion accompanied by affidavit, either party may request that the Tribal Court issue a preliminary injunction for any of the following relief:

(1) Restraining any person from transferring, encumbering, concealing or otherwise disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(2) Enjoining a party from molesting or disturbing the peace of the other party or of any child;

(3) 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;

(4) Enjoining a party from removing a child from the jurisdiction of the Tribal Court; and

(5) Providing other injunctive relief proper under the circumstances.

(C) Temporary restraining order. The Tribal Court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving party's affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for

responding has elapsed. No bond shall be required unless the Tribal Court deems it appropriate.

(D) On the basis of the showing made, and in conformity with the computation factors for maintenance and support under this Title, the Tribal Court may issue a preliminary injunction and issue an order for temporary maintenance or support in amounts and on terms just and proper under the circumstances.

(E) A temporary order or preliminary injunction:

(1) Does not prejudice the rights of the parties or any child that are to be adjudicated at the subsequent hearings in the proceedings;

(2) May be revoked or modified, before a final decree is issued, on a showing by affidavits of the facts necessary for revocation or modification of a final decree; or

(3) Terminates when the final decree is entered or when the petition for dissolution of marriage, legal separation, or declaration of invalidity is dismissed.

14A.3.50 Separation Agreement - Effect.

(A) To promote amicable settlement of disputes between parties to a marriage or parental relationship attendant 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 of either of them, and the parenting plan and support for their children.

(B) In a proceeding for dissolution of marriage, legal separation, or declaration of invalidity, the terms of the separation agreement, except for those terms providing for a parenting plan for the children, shall be binding upon the Tribal Court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the Tribal Court, that the separation 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 14A.6.

(C) If the Tribal Court finds the separation agreement unfair as to disposition of property or maintenance, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property or maintenance.

(D) If the Tribal Court finds that the separation agreement is not unfair as to disposition of property or maintenance, and that it is reasonable as to the parenting plan and child support, the separation 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 the terms. If the separation agreement provides that its terms shall not be set forth in the decree or declaration, the decree or declaration shall identify the separation agreement as incorporated by reference and state that the Tribal Court has found the terms as to property disposition and maintenance not unfair and the parenting plan and child support reasonable.

(E) Terms of the agreement set forth or incorporated by reference in the decree or declaration shall be enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(F) Except for terms concerning the maintenance of either party or the parenting plan and support for their children, entry of the decree or declaration shall thereafter preclude the modification of the terms of the decree or declaration, and the property settlement, if any, set forth or incorporated by reference therein.

14A.3.60 Decree of Legal Separation - Findings Necessary.

(A) The Tribal Court shall enter a decree of legal separation if it finds each of the following:

(1) That one of the parties is an enrolled member of the Hoopa Valley Indian Tribe and at the time the action was commenced was domiciled within the Reservation for at least ninety (90) days;

(2) That the marriage is irretrievably broken in accordance with Section 14A.3.90; 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 Tribal Court shall direct one of the parties to amend the pleadings to seek a dissolution of the marriage.

(B) If the issue of child support or the maintenance of either spouse is before the Tribal Court at the time it issues a decree of legal separation under this Section, the Tribal Court shall concurrently issue an order for support, in accordance with Chapter 14A.6, or for maintenance in accordance with Section 14A.3.120.

(C) At the time the Tribal Court issues a decree of legal separation under this Section, the Tribal Court shall concurrently divide the property and liabilities of the parties in accordance with Section 14A.3.100.

(D) If the issue of child custody is before the Tribal Court at the time it issues a decree of legal separation under this Section, the Tribal Court shall concurrently issue a parenting plan in accordance with Chapter 14A.4 and Chapter 14A.8.

14A.3.70 Dissolution of Marriage - Findings Necessary.

(A) The Tribal Court shall enter a decree of dissolution if it finds each of the following:

(1) That one of the parties is an enrolled member of the Hoopa Valley Indian Tribe and at the time the action was commenced was domiciled within the Reservation for at least ninety (90) days; and

(2) That the marriage is irretrievably broken in accordance with Section 14A.3.90.

(B) If the issue of child support or the maintenance of either spouse is before the Tribal Court at the time it issues a decree of dissolution under this Section, the Tribal Court shall concurrently issue an order for support, in accordance with Chapter 14A.6, or for maintenance in accordance with Section 14A.3.120.

(C) At the time the Tribal Court issues a decree of dissolution under this Section, the Tribal Court shall concurrently divide the property and liabilities of the parties in accordance with Section 14A.3.100.

(D) If the issue of child custody is before the Tribal Court at the time it issues a decree of dissolution under this Section, the Tribal Court shall concurrently issue a parenting plan in accordance with Chapter 14A.4 and Chapter 14A.8.

14A.3.80 Declaration of Invalidity of Marriage - Findings Necessary.

(A) The Tribal Court shall enter a declaration of invalidity of marriage if the Tribal Court finds each of the following:

(1) That one of the parties is an enrolled member of the Hoopa Valley Indian Tribe and, at the time the action was commenced, was domiciled within the Reservation for at least ninety (90) days; and

(2) The marriage should not have been contracted because of the age of one or both of the parties, lack of required parental or Tribal Court approval, 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 because of the influence of alcohol or other incapacitating substances, or because a party was induced to enter into the marriage by force or duress, or by fraud involving the essentials of marriage and that the parties have not ratified their marriage by voluntarily cohabitating after attaining the age of consent, or after attaining capacity to consent, or after cessation of the force or duress or discovery of the fraud.

(B) If the issue of child support or the maintenance of either spouse is before the Tribal Court at the time it issues a declaration of invalidity of marriage under this Section, the Tribal Court shall concurrently issue an order for support, in accordance with Chapter 14A.6, or for maintenance in accordance with Section 14A.3.120.

(C) At the time the Tribal Court issues a declaration of invalidity of marriage under this Section, the Tribal Court shall concurrently divide the property and liabilities of the parties in accordance with Section 14A.3.100.

(D) If the issue of child custody is before the Tribal Court at the time it issues a declaration of invalidity of marriage under this Section, the Tribal Court shall concurrently issue a parenting plan in accordance with Chapter 14A.4 and Chapter 14A.8.

(E) If the Tribal Court finds that a marriage contracted in a jurisdiction other than this Tribe was void or voidable under the law of the place where the marriage was contracted and in the absence of proof that such marriage was subsequently validated by the laws of the place of contract, or of a subsequent domicile of the parties, it shall declare the marriage invalid as of the date of the marriage.

14A.3.90 Irretrievable Breakdown of the Marriage - Finding.

(A) 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 Tribal Court, shall make a finding that the marriage is irretrievably broken and enter a decree of dissolution.

(B) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the Tribal Court shall, upon hearing, consider all relevant factors as to the prospect of reconciliation, and shall either:

(1) Make a finding that the marriage is irretrievably broken and enter a decree of dissolution; or

(2) Continue the matter for further hearing, not more than ninety (90) days later. The Tribal Court, at the request of either party, or on its own motion, may order a reconciliation conference. At the rescheduled hearing the Tribal Court shall:

(a) Find that the parties have agreed to reconciliation and dismiss the petition; or

(b) Find that the parties have not reconciled and that either party continues to allege that the marriage is irretrievably broken. When such facts are found, the Tribal Court shall enter a decree of dissolution of the marriage.

14A.3.100 Disposition of Property.

In a proceeding for dissolution of marriage, legal separation, or a declaration of invalidity, the Tribal Court shall, without regard to marital misconduct, divide the property and liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including:

(A) The nature and extent of the community property;

(B) The nature and extent of the separate property;

(C) The nature and extent of any trust or restricted property, which is subject to the jurisdiction of the United States;

(D) The duration of the marriage;

(E) The economic circumstances of each spouse 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 spouse with whom the children reside the majority of the time; and (2) the desirability of ensuring that both spouses' ability to continue working in their chosen field or livelihood is not unreasonably jeopardized (e.g., court ordered sale of vehicles or equipment necessary to the pursuit of a spouse's livelihood);

(F) The direct or indirect contribution to the education or career development of the other spouse; and

(G) The interruption in education or career opportunities to benefit the other's career, the marriage, or any children.

14A.3.110 Modification and Termination of Property Disposition.

The provisions as to property disposition may not be revoked or modified, unless the Tribal Court finds the existence of conditions that justify the reopening of a judgment under the laws of the Hoopa Valley Indian Tribe.

14A.3.120 Spousal Maintenance - Computation Factors.

(A) In a proceeding for dissolution of marriage, legal separation, or a declaration of invalidity, the Tribal Court may grant a maintenance order for either spouse only if the Tribal Court finds that the spouse seeking maintenance:

(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) The maintenance order shall be in such amounts and for such periods of time as the Tribal Court deems just, without regard to marital misconduct, and after considering all relevant factors, including:

(1) The financial resources of the party seeking maintenance, including marital property apportioned to him or her and his or her ability to meet his or her other needs independently;

(2) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(3) The standard of living established during the marriage;(4) The education of one spouse during the marriage;

(5) The duration of the marriage;(6) The age and the physical and emotional condition of the spouse seeking maintenance;

(7) The ability of the spouse from whom maintenance is sought to meet his or her needs while meeting those of the spouse seeking maintenance; and

(8) Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

14A.3.130 Payment of Spousal Maintenance - Records.

(A) The Tribal Court may upon its own motion or upon motion of either party, order maintenance payments be made to:

(1) The person entitled to receive the payments; or

(2) The clerk of the Tribal Court for remittance to the person entitled to receive the payments.

(B) If payments are made to the clerk of the Tribal Court:

(1) The clerk shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order; and

(2) The parties affected by the order shall inform the clerk of the Tribal Court of any change of address.

(C) If the person obligated to pay support has left or is beyond the jurisdiction of the Tribal Court, any party may institute any other proceeding available under the laws of the Hoopa Valley Indian Tribe for enforcement of the duties of support and maintenance.

14A.3.140 Modification and Termination of Spousal Maintenance.

(A) Except as otherwise provided in Section 14A.3.50(F), the provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and, except as otherwise provided in Section 14A.3.140(B), only upon a showing of changed circumstances that are substantial and continuing.

(B) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

14A.3.150 Costs and Expenses.

The Tribal Court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount to the other party for the costs and expenses of maintaining or defending any proceeding under this Chapter. For the purpose of this Section, costs and expenses may include fees of a Spokesperson or attorney, deposition costs and such other reasonable expenses as the Tribal Court finds necessary to the full and proper presentation of the action, including any appeal. The Tribal Court may order all such amounts paid directly to the attorney or Spokesperson, who may enforce the order in his or her name with the same force and effect, and in the same manner, as if the order had been made on behalf of any party to the action.

14A.3.160 Decree - Finality - Restoration of Former Name.

(A) A decree of dissolution of marriage or legal separation, or declaration of invalidity of marriage is final when entered, subject to the right of appeal. An appeal from a decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of the provision of the decree that dissolved the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal. An order directing payment of money for support or maintenance of the spouse or minor child(ren) shall not be suspended or the execution thereof stayed pending the appeal.

(B) The Tribal Court may, upon hearing within six (6) months after the entry of a decree of legal separation, convert the decree of legal separation to a decree of dissolution of marriage.

(C) The Tribal Court shall, upon motion of either party after expiration of six (6) months from the entry of a legal separation, convert the decree of legal separation to a decree of dissolution of marriage.

(D) Upon request by a party whose marriage is dissolved or declared invalid, the Tribal Court shall order his or her former name restored.

14A.3.170 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 suspended, but he or she may move the Tribal Court to grant an appropriate order.

Chapter 4 - Parenting Plans and Visitation

Sec.

14A.4.10 Policy - Best Interests of the Child
14A.4.20 Civil Procedure to Govern - Designation of Proceedings.
14A.4.30 Petition for Parenting Plan
14A.4.40 Parenting Plan
14A.4.50 Temporary or Interim Parenting Plan
14A.4.60 Visitation Rights - Person Other Than Parent
14A.4.70 Modification of Parenting Plan or Visitation
14A.4.80 Representation of Child by Counsel - Fees

14A.4.10 Policy - Best Interests 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 interest of the child shall be the standard by which the Tribal 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 interest of the child. The best 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, and physical care. Furthermore, 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, mental or emotional harm.

14A.4.20 Civil Procedure to Govern - Designation of Proceedings.

(A) Except as otherwise specified herein, Title 2 (Civil Actions) of the Hoopa Valley Tribal Code shall govern all proceedings under this Title.

(B) In cases where the parents are not married, a separate parenting and support proceeding between the parents shall be entitled "In re the parenting and support of _____".

(C) The initial pleading in all proceedings under this Title shall be designated a petition. A responsive pleading shall be designated a response.

14A.4.30 Petition for Parenting Plan.

Either parent may petition the Tribal Court for resolution of a child custody dispute. The Tribal Court shall issue a parenting plan on the basis of the best interests of the child. In determining the best interests of the child, the Tribal Court shall consider all relevant factors including those factors enumerated in Sections 14A.4.10 and 14A.4.40.

14A.4.40 Parenting Plan.

(A) The Tribal Court shall enter a parenting plan if it finds each of the following:

(1) That one of the parties is an enrolled member of the Hoopa Valley Indian Tribe and, at the time the action was commenced, was domiciled within the Reservation for at least ninety (90) days; and

(2) That Hoopa Valley is the home reservation of the child on the date of the commencement of the proceedings, or was the home reservation of the child within six (6) months before the commencement of the proceeding and the child is absent from this Reservation but a parent or other person acting as a parent continues to live on this Reservation.

(B) Before entering a parenting plan, the Court shall determine whether one parent is entitled to preference in the awarding of custody. Custody preference shall be measured by the best interests of the child.

(C) If the Tribal Court finds by clear and convincing evidence that a parent or child is a victim of domestic violence, the Tribal Court may make an order that adequately provide for the safety of the victimized parent, including any of the following:

(1) The address and telephone number of the parent or child be kept confidential in the proceedings.
(2) An exchange of a child to occur in a protected setting.
(3) Visitation be supervised by another person or agency with any conditions of visitation stated specifically within the order. The perpetrator may be ordered to pay a fee to defray the costs of supervised visitation.
(4) The perpetrator of domestic violence attend and complete a domestic violence batterer's program and/or counseling.
(5) Prohibit overnight visitation.
(6) Require a bond from the perpetrator of domestic violence for the return and safety of the minor child.
(7) Order that the perpetrator of domestic violence cannot remove the child from the territory of the Hoopa Valley Indian Reservation during visitation.

(D) If the Tribal Court finds by clear and convincing evidence that a parent habitually or frequently uses a controlled substance or alcohol, the Court may

make an order that the parent undergo periodic drug or alcohol testing by the Division of Human Services prior to visitation. A positive drug screen will cancel the visitation. The parent may be ordered to pay a fee to defray the costs of the drug testing.

(E) The objectives of any proposed or ordered parenting plan shall be:

(1) To provide for the child's physical care and to maintain the child's emotional stability;

(2) To provide for the child's changing needs as the child grows;

(3) To promote and preserve the child's Indian heritage and to provide for the maintenance of the child's tribal affiliation;

(4) To set forth the authority and responsibilities of each parent consistent with the restrictions noted in Section 14A.4.40(H);

(5) To minimize the child's exposure to harmful parental conflict;

(6) To encourage parents to meet their responsibilities through the parenting plan rather than by relying on Tribal Court intervention; and

(7) To otherwise protect the best interests of the child consistent with the policy expressed in Section 14A.4.10.

(E) The contents of any proposed or ordered parenting plan shall include:

(1) **Dispute Resolution.** A process for resolving disputes, other than Tribal Court action, shall be provided unless it is beyond the financial means of the parties, or precluded or limited by the Tribal Court as provided herein. The dispute resolution process may include counseling, mediation, arbitration or other method agreed upon by the parties. In the dispute resolution process:

(a) Preference shall be given to carrying out the parenting plan;

(b) 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;

(c) If the Tribal Court finds that a parent has used or frustrated the dispute resolution process without good reason, the Tribal Court may impose financial sanctions against that parent; and

(d) Both parents have the right of court review of the dispute resolution process.

(2) **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:

(a) 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

(b) 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.

(3) **Residential Provisions.** The residential schedule shall designate in which parent's home each child shall reside on given days of the year, including provisions for holidays, birthdays, vacations and other special occasions.

(F) 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.

(G) The Tribal Court may authorize and approve the utilization of a uniform parenting plan form for all proceedings under this Chapter.

(H) **Restrictions in Parenting Plans.** The Tribal 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:

(1) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions;

(2) Physical, sexual or a pattern of emotional abuse of a child;

(3) A history of acts of domestic violence;

(4) An assault or sexual assault that causes grievous bodily harm or the reasonable fear of such harm;

(5) Neglect or substantial non-performance of parenting functions;

(6) Long term emotional or physical impairment that interferes with the parent's performance of parenting functions;

(7) Long term impairment resulting from drug, alcohol or other substance abuse that interferes with the performance of parenting functions;

(8) Abusive use of conflict by the parent that creates the danger of serious damage to the child's psychological development;

(9) Withholding from the other parent access to the child for a protracted period without good cause; or

(10) Such other factors as the Tribal Court expressly finds adverse to the best interests of the child.

If a party offers evidence of abuse, neglect or domestic violence, the Court shall schedule a separate hearing to consider such evidence. Prior to the hearing, the Court shall provide confidential 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. 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.

(I) If the Court makes a finding of abuse, neglect, domestic violence, or substance abuse by either or both parents, the Court may recommend that the parties seek appropriate treatment, services or training. The success of any remedial or rehabilitative efforts will be reviewed under Section 14A.4.70 below.

(J) If the parents are unable to reach agreement on the terms of the parenting plan and the Tribal Court determines that it needs additional information before ordering a parenting plan, the Tribal Court may:

(1) Interview the child in chambers to ascertain the child's needs and desires. The Tribal Court may permit counsel to be present at the interview. The Tribal Court shall cause a record of the interview to be made and to be made part of the record in the case; and/or

(2) Seek the advice of the Tribe's Department of Human Services. Human Services shall evaluate the parents' ability to provide adequate food, clothing, shelter, medical care, love and emotional support, and day to day supervision. The evaluation should also report on circumstances indicating any conduct outlined in Section H above. The advice given shall be in writing and shall be made available by the Tribal Court to counsel upon request. Counsel may call for cross-examination of any persons consulted by the Tribal Court.

(K) In ordering a permanent parenting plan, the Tribal Court shall not draw any presumptions from the provisions of a temporary parenting plan or separation agreement.

(L) If the issue of child custody is before the Tribal Court at the time it issues a judgment under Sections 14A.3.60, 14A.3.70, or 14A.3.80, the Tribal Court shall concurrently issue a parenting plan under this Section.

14A.4.50 Temporary or 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 that the Tribal Court considers a parenting plan under Section 14A.4.40.

14A.4.60 Visitation Rights - Person Other Than Parent.

(A) The Tribal Court may order visitation rights for a person other than a parent when consistent with community standards and in the best interests of the child.

(B) A person other than a parent may petition the Tribal Court for visitation rights at any time.

(C) The Tribal Court may modify an order granting or denying visitation rights in accordance with Section 14A.4.70.

14A.4.70 Modification of Parenting Plan or Visitation.

(A) A parenting plan or visitation with the child may be modified if the Tribal 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 Tribal Court shall enter on the record its reason 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 (A) of this Section.

14A.4.80 Representation of Child by Counsel - Fees.

The Tribal Court may appoint a private attorney or spokesperson to represent the interests of a minor or dependent child with respect to his or her parenting plan. The Tribal Court may enter an order for costs, fees and disbursements in favor of the child's representative. The order may be made against either or both parents.

Chapter 5 - Parent and Child

Sec.

14A.5.10 "Parent and Child Relationship" Defined
14A.5.20 Relationship Not Dependent on Marriage
14A.5.30 How Parent and Child Relationship Established
14A.5.40 Presumption of Paternity
14A.5.50 Artificial Insemination
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14A.5.110 Civil Action - Testimony - Evidence – Jury
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14A.5.180 Action to Determine Mother and Child Relationship
14A.5.190 Hearing or Trials to be Closed Court - Records Confidential

14A.5.10 "Parent and Child Relationship" Defined.

As used in this Title, "parent and child relationship" means the legal relationship existing between a child and his or her natural 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.

14A.5.20 Relationship Not Dependent on Marriage.

The parent and child relationship extends equally to every child and to every parent, without regard to the marital status of the parents.

14A.5.30 How Parent and Child Relationship Established.

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; or

(C) An adoptive parent may be established by proof of adoption or under the laws of the Hoopa Valley Indian Tribe.

14A.5.40 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 is born during the marriage, or within three hundred (300) days after the marriage is 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 have 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 child;

(4) He acknowledges his paternity of the child in writing filed with the Office of Vital Statistics of the State of California, or the Hoopa Valley Tribal Enrollment Office, who shall promptly inform the mother of the filing of the acknowledgement, and she does not dispute the acknowledgement within a reasonable time after being informed thereof, in a writing filed with the Office of Vital Statistics or the Hoopa Valley Tribal Enrollment Office. In order to enforce rights of residential time, custody and visitation, a man presumed to be the father as a result of filing a written acknowledgement must seek appropriate judicial orders under this Title; or

(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) He has acknowledged his paternity of the child in writing filed with the Office of Vital Statistics or the Hoopa Valley Tribal Enrollment Office;

(b) With his consent, he is named as the child's father on the child's birth certificate; or

(c) He is obligated to support the child under a written voluntary promise or by Court order.

(B) A presumption under this Section may be rebutted in an appropriate action only by clear, cogent, and convincing evidence. If two (2) or more presumptions arise that conflict with each other, the presumption that on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a Court decree establishing paternity of the child by another man.

14A.5.50 Artificial Insemination.

(A) 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 husband, the husband is treated in law as if he were the natural father of the child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the Office of Vital Statistics, where it shall be kept confidential and in a sealed file.

(B) The donor of semen provided to a licensed physician for use in artificial insemination 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. The agreement must be in writing and signed by the donor and the woman. The physician shall certify their signatures and the date of the insemination and file the agreement with the Office of Vital Statistics, where it shall be kept confidential and in a sealed file.

(C) The failure of a licensed physician to perform any administrative act required by this Section shall not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a Court or of a file held by the supervising physician or elsewhere, are subject to inspection only in exceptional cases upon an order of the Tribal Court for good cause shown.

14A.5.60 Determination of Father and Child Relationship - Who May Bring Action - When Action May Be Brought.

(A) A child, a child's natural mother, a man alleged or alleging himself to be the father, a child's guardian, a child's personal representative, the Hoopa Valley Indian Tribe, or any interested party may bring an action at any time for the purpose of declaring the existence or nonexistence of the father and child relationship.

(B) A man presumed to be a child's father under Section 14A.4.40 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.

(C) In an action brought by the Tribe pursuant to this Chapter, the Tribe shall be represented by the tribal attorney.

(D) Regardless of its terms, no agreement between an alleged or presumed father and the mother or child, shall bar an action under this Section.

(E) If an action under this Section is brought before the birth of the child, all proceedings may be stayed until after the birth, except service of process and discovery, including the taking of depositions to perpetuate testimony.

(F) Actions under this Chapter may be maintained as to any child, whether born before or after the enactment of this Chapter.

14A.5.70 Jurisdiction.

(A) The Tribal Court shall have jurisdiction over any action brought under this Chapter. The action may be joined with an action for divorce, dissolution, declaration of invalidity, separate maintenance, support, or any other civil action in which paternity is an issue including proceedings in Children's Court.

(B) Any person who has sexual intercourse within the exterior boundaries of the Hoopa Valley Indian Reservation with a person who is a member or is eligible to become a member of the Hoopa Valley Indian Tribe thereby submits to the jurisdiction of the Courts of the Tribe as to an action brought under this Chapter with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by law, personal jurisdiction may be acquired by personal service of summons outside the Reservation or by service in accordance with Title 2 (Civil Actions) of the Hoopa Valley Tribal Code as now or hereafter amended.

14A.5.80 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 Tribal Court. The child's mother or father may not represent the child as guardian or otherwise. 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 Tribal Court, shall be given notice of the action in a manner prescribed by the Tribal Court and an opportunity to be heard.

(B) Any party may cause to be joined as additional parties, other men alleged to be the father of the child, or any other person necessary for a full adjudication of the issues.

(C) The failure or inability to join as a party an alleged or presumed father does not deprive the Tribal Court of jurisdiction to adjudicate some or all of the issues based on the evidence and parties available to it.

(D) If more than one party is alleged to be the father of the child, the default of a party shall not preclude the Tribal Court from finding any other party to be the father of the child.

14A.5.90 DNA Tests.

(A) The Tribal Court may, and upon request of a party shall, require the child, mother, and any alleged father who has been made a party to submit to DNA tests. If an alleged father objects to a proposed order requiring him to submit to paternity DNA tests, the Tribal Court may require the party making the allegation of possible paternity to provide sworn testimony, by affidavit or otherwise, stating

the facts upon which the allegation is based. The Tribal Court shall order DNA tests if it appears that a reasonable possibility exists that the requisite sexual contact occurred. The tests shall be performed by an expert in paternity DNA testing appointed by the Tribal Court. The expert's verified report identifying the DNA characteristics observed is admissible in evidence in any hearing or trial in the parentage action, if (1) the alleged or presumed father has had the opportunity to gain information about the security, validity, and interpretation of the tests and the qualifications of any experts, and (2) the report is accompanied by an affidavit from the expert that describes the expert's qualifications as an expert and analyzes and interprets the results. Verified documentation of the chain of custody of the DNA samples is admissible to establish the chain of custody. The Tribal Court may consider published sources as aids to interpretation of the test results.

(B) The Tribal Court, upon request by a party, shall order that additional DNA tests be performed by the same or other experts qualified in paternity DNA testing, if the party requesting additional tests advances the full costs of the additional testing within a reasonable time. The Tribal Court may order additional testing without requiring that the requesting party advance the costs only if another party agrees to advance the costs or if the Tribal Court finds, after hearing, that (1) the requesting party is indigent, and (2) the laboratory performing the initial tests recommends additional testing or there is substantial evidence to support a finding as to paternity contrary to the initial DNA test results. The Tribal Court may later order any other party to reimburse the party who advanced the costs of additional testing for all or a portion of the costs.

(C) In all cases, the Tribal Court shall determine the number and qualifications of the experts.

14A.5.100 Evidence Relating to Paternity.

Evidence relating to paternity may include:

(A) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(B) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(C) Blood or DNA test results, weighted in accordance with evidence of the statistical probability of the alleged father's paternity;

(D) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the Tribal Court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(E) All other evidence relevant to the issue of paternity of the child.

14A.5.110 Civil Action -Testimony - Evidence - Jury.

(A) An action under this Chapter is a civil action governed by Title 2 (Civil Actions) of the Hoopa Valley Tribal Code.

(B) The mother of the child and the alleged father are competent to testify and may be compelled to testify.

(C) Upon refusal of any witness, including a party, to testify under oath or produce evidence of any other kind on the ground that said witness may be incriminated thereby, and if a party requests the Tribal Court to order that person to testify or provide the evidence, the Tribal Court shall then hold a hearing and shall so order, unless it finds that to do so would be clearly contrary to the public interest, and that person shall comply with the order.

If, but for this Section, the witness would have been privileged to withhold the answer given or have evidence produced, the witness may not refuse to comply with the order on the basis of the privilege against self-incrimination; but the witness shall not be prosecuted or subjected to penalty or forfeiture for or on account of any transaction, matter, or fact concerning which he or she has been ordered to testify pursuant to the Section. The witness may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or for offering false evidence to the Tribal Court.

(D) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

(E) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the Tribal Court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the nonparty has undergone and made available to the Tribal Court DNA tests the results of which do not exclude the possibility of the nonparty's paternity of the child.

(F) The trial shall be by the Tribal Court without a jury.

14A.5.120 Judgment or Order Determining Parent and Child Relationship Support Judgment and Orders - Custody.

(A) The judgment and order of the Tribal Court determining the existence or nonexistence of the parent and child relationship shall be determinative for all purposes.

(B) If the judgment and order of the Tribal Court is at variance with the child's birth certificate, the Tribal Court shall order that an amended birth certificate be issued.

(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 Tribal 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 direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(D) Support judgments and orders shall be for periodic payments, which may vary in amount. The Tribal Court may limit the father's liability for the past support to the child to the proportion of the expenses already incurred as the Tribal Court deems just. The Tribal Court shall not limit or affect in any manner the right of nonparties to seek reimbursement for support and other services previously furnished to the child.

(E) After considering all relevant factors, the Tribal Court shall order either or both parents to pay an amount of support determined pursuant to Chapter 14A.6.

(F) On the same basis as provided in Chapter 14A.4, the Tribal 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.

(G) In any dispute between the natural parents of a child and a person or persons who have (1) 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 Department of Human Services 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 Tribal Court shall consider the best interest and welfare of the child, including the child's need for situational stability, in determining the matter of custody, and the parent or person who is more fit shall have the superior right to custody.

14A.5.130 Support Orders -Time Limit, Exception.

The Tribal Court may not order payment for support provided or expenses incurred more than five (5) years prior to the commencement of the action. Any period of time in which the responsible party has concealed himself or avoided the jurisdiction of the Tribal Court under this Chapter shall not be included within the five (5) year period.

14A.5.140 Temporary Support -Temporary Restraining Order Preliminary Injunction - Support Debts, Notice.

(A) If the Tribal Court has made a finding as to the paternity of a child, or if a party's acknowledgement of paternity has been filed with the Tribal Court, or a party alleges he is the father of the child, any party may move for temporary support for the child prior to the date of entry of the final order. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(B) Any party may request the Tribal Court to issue a temporary restraining order or preliminary injunction providing relief proper in the circumstances, and restraining or enjoining any party from:

(1) Molesting or disturbing the peace of another party;

(2) Entering the home of another party; or

(3) Removing a child from the jurisdiction of the Tribal Court.

(C) The Tribal Court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.

(D) The Tribal Court may issue a temporary restraining order or preliminary injunction and an order for temporary support in such amounts and on such terms as are just and proper in the circumstances.

(E) A temporary order, temporary restraining order, or preliminary injunction:

(1) Does not prejudice the rights of a party or any child that are to be adjudicated at subsequent hearings in the proceeding;

(2) May be revoked or modified;

(3) Terminates when the final order is entered or when the petition is dismissed; and

(4) May be entered in a proceeding for the modification of an existing order.

14A.5.150 Costs.

(A) The Tribal Court may order reasonable fees of experts and the child's guardian ad litem, and other costs of the action, including the cost of DNA tests, to be paid by the parties in proportions and at times determined by the Tribal Court.

(B) The Tribal Court may order that all or a portion of a party's reasonable attorneys' fees be paid by another party.

14A.5.160 Enforcement of Judgments or Orders.

(A) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this Chapter or under other or prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, or the child's confinement, education, support, or funeral, or by any other person, including a private agency, to the extent it has furnished or is furnishing these expenses.

(B) The Tribal Court may order support payments to be made to a parent, the clerk of the Tribal Court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the Tribal Court.

(C) All remedies for the enforcement of judgments apply.

14A.5.170 Modification of Judgment or Order - Continuing Jurisdiction.

(A) The Tribal Court has continuing jurisdiction to prospectively modify a judgment and order for future support upon a showing of a substantial change of circumstances.

(B) A judgment or order entered under this Chapter may be modified without a showing of substantial change of circumstances that are substantial and continuing if:

(1) The order works a severe economic hardship on either party or the child;

(2) A party requests an adjustment in an order that was based on guidelines that determined the amount of support according to the child's age, and the child is no longer in the age category on which the current support amount is based;

(3) 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

(4) There has been a change in the court adopted Child Support Schedule.

14A.5.180 Action to Determine Mother and Child Relationship.

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

14A.5.190 Hearing or Trials to be in Closed Court -Records Confidential.

(A) Any hearing or trial held under this Chapter shall be held in closed Tribal 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 Tribal Court for good cause shown following reasonable notice to all parties of the hearing where such order is sought.

Chapter 6 - Child Support

Sec.

14A.6.10 Introduction - Child Support
14A.6.20 Authority to Establish a Child Support Schedule
14A.6.30 General Standards for the Application and Use of the Child Support Schedule
14A.6.40 Child Support Schedule and Calculations
14A.6.50 Guidelines for Deviation from Support Obligation
14A.6.60 In-Kind Services and Resources
14A.6.70 Modification and Termination of Provisions for Child Support
14A.6.80 Collection of Past Due Support
14A.6.90 Payment of Support – Records
14A.6.100 Assignments

Appendix I Child Support Schedule

14A.6.10 Introduction - Child Support.

(A) Children are the most vital resource to the continued existence and integrity of the Hoopa Valley Indian Tribe. Therefore, the Tribe has a compelling interest in promoting and maintaining the health and well-being of all Hoopa Valley children. Hoopa Valley Child Support Guidelines are in the best interests of Indian families, especially Indian children who have a right and a need to receive parental support. The adoption of these Child Support Guidelines and attached Child Support Schedule by the Tribal Council is a proper exercise of its tribal sovereignty.

(B) By adopting these Child Support Guidelines and Schedule the Tribe affirms and recognizes both parents' obligation to provide support for their children as their respective income, resources and abilities allow. Furthermore, 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.

14A.6.20 Authority to Establish a Child Support Schedule.

(A) The Tribal Court, with prior approval of the Tribal Council, may amend the Hoopa Valley Child Support Schedule, attached as Appendix I to this Chapter.

(B) The Child Support Schedule shall establish a fair formula that the Tribal Court shall follow when setting child support.

(C) In addition to incorporating the computation factors set out in this Chapter, the Child Support Schedule shall provide for the use of innovative ways of satisfying child support obligations as provided in Section 14A.6.60.

(D) The Tribal Court is authorized to adopt supplemental policies, such as worksheets and explanatory materials, as are found necessary for the effective implementation of this Chapter. If supplemental policies do not ensure the effective implementation of this Chapter's purpose and intent, the Tribal Court shall propose amendments for enactment by the Tribal Council.

14A.6.30 General Standards for the Application and Use of the Child Support Schedule.

(A) In a proceeding for dissolution of marriage, legal separation, declaration of invalidity, custody or visitation, maintenance, or child support, the Tribal Court may order either or both parents owing a duty of support to a child, born to or adopted by the parents, to pay an amount reasonable and necessary for support, without regard to marital misconduct. The parents' obligation for support shall be based on the factors and guidelines set out below.

(B) The basic child support obligation derived from the Child Support Schedule shall be apportioned between the parents based on each parent's share of their combined monthly net income.

(C) Ordinary health care expenses are included in the Child Support Schedule. Extraordinary health care expenses not covered by private health insurance or Indian Health Service (i.e., those expenses that exceed five percent (5%) of the basic support obligation) shall be shared by the parents in the same proportion as the basic child support obligation.

(D) Work related day care and special child rearing expenses are not included in the Child Support Schedule. The parents shall share these expenses in the same proportion as the basic child support obligation. The Tribal Court may enter a child support order to include a duty to provide for day care expenses.

(E) The Tribal Court may deviate from the basic allocation formula if the child(ren) spend(s) a significant amount of time with the parent who is obligated to make support transfer payments.

(F) When combined monthly net income is less than six hundred dollars ($600.00), a support order for not less than twenty-five dollars ($25.00) per month per child shall be ordered.

(G) Neither parent's child support obligation shall exceed thirty-five percent (35%) of their net earnings unless good cause is shown, in which case the support obligation shall not exceed fifty percent (50%) of their net earnings.

(H) All income and resources of each parent's household shall be disclosed and considered by the Tribal Court. All such disclosures, including worksheets, pay stubs, tax returns, etc., shall be confidential and available only to the parties and the Tribal Court, and solely for the purpose of establishing child support obligations.

(I) Before applying any disability benefits into gross income calculations, the Tribal 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).

14A.6.40 Child Support Schedule and Calculations.

(A) **Basic Child Support Obligation.** A child support obligation shall be set at the basic support amount listed in the attached Hoopa Valley Child Support Schedule and be based on the combined net income of both parents. Monthly net income shall be determined by subtracting the appropriate deductions, in accordance with Section 14A.6.40(D), from monthly gross income.

(B) **Gross Income.** Monthly gross income shall be calculated by adding income received from all sources including:

(1) Salaries;

(2) Wages;

(3) Commissions;

(4) Revenue from sales of goods and products;

(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) Severance pay;

(14) Annuities;

(15) Capital gains;

(16) Pension/retirement benefits;

(17) Workers' compensation;

(18) Unemployment benefits;

(19) Spousal maintenance actually received;

(20) Bonuses;

(21) Social security benefits (SSA);

(22) Disability insurance benefits; and

(23) Gifts and prizes greater than or equal to two hundred and fifty dollars ($250) in value.

(C) **Items Disclosed but not Included in Gross Income.** The following sources of income and resources shall be disclosed but not included in gross income:

(1) Income of a new spouse or income of other adults in the household;

(2) Child support received from other relationships;

(3) Gifts and prizes less than two hundred and fifty dollars ($250) in value;

(4) Temporary Assistance to Needy Families (TANF);

(5) Supplemental security income (SSI);

(6) General assistance; and

(7) Food stamps.

(D) **Deductions from Gross Income.** Monthly net income shall be calculated by deducting the following expenses from monthly gross income:

(1) Federal, state and tribal income taxes;

(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 maintenance to the extent actually paid;

(7) Up to two thousand dollars ($2,000) per year in voluntary pension payments actually made; and

(8) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.

(E) **Monthly Net Income above Five Thousand Dollars.** When combined monthly net income exceeds five thousand dollars ($5,000), support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net incomes of five thousand dollars ($5,000) unless good cause is found to deviate below that amount, but the Tribal Court may exceed the presumptive amount of support set for combined monthly net income of five thousand dollars ($5,000) upon written findings of fact establishing such increase as both necessary and in the best interests of the child(ren).

14A.6.50 Guidelines for Deviation from Support Obligation.

The child support obligations found in the attached Schedule are presumptive and may be increased or decreased when based on the factors in this Section and supported by the evidence. In deviating from the basic support obligation, the Tribal Court shall enter a written finding for the record that the application of the Guidelines or Schedule would be unjust or inappropriate, state the amount of support that would have been required under the Schedule, and include justification why the order varies from the Guidelines or Schedule. The Tribal Court may take into consideration the following factors:

(A) **Age(s) of the child(ren).** The obligation shall be set closer to the higher end of the basic support obligation for older children (columns B), and closer to the lower end of the basic support obligation for younger children (columns A). See Schedule.

(B) **Number of children in family.** The obligation shall be set lower per child the greater the number of children for which the obligation is being paid. See Schedule.

(C) **Children from other relationships.** The obligation may be set at a lower amount than it otherwise would be when either or both parents before the Tribal Court have children from other relationships to whom the parent owes a duty of support and is actually providing support.

(D) **Seasonal or non-recurring income.** If the income of either parent is seasonal or non-recurring, the obligation may be set at a lower amount than it otherwise would be, or it may be set on a schedule that varies the amount at different times of the year.

(E) **Social services provided by Tribe or other agency.** Whenever the Tribe or other 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.

(F) **Mentally or physically disabled child.** In the case of a mentally or physically disabled child, if the Tribal Court deems it appropriate, the Tribal Court may order support to continue past the age of emancipation and to be paid to the parent or guardian, with whom the child resides, or to the child. A child's special needs may be considered as a basis for setting a higher amount of support than would otherwise be determined.

(G) **Substantial Wealth.** In the case of a parent with substantial wealth, if the Tribal Court deems it appropriate, the Tribal Court may set a higher amount of support than would otherwise be determined.

(H) **Voluntary Unemployment.** Unemployment shall not be cause for a finding of substantial hardship where the Tribal Court determines that the person contesting application of these guidelines, or supplemental policies adopted by the Court, has declined to pursue employment opportunities reasonable open to the respondent based on his or her ability and local employment opportunities. In such cases, the Court shall impute to the respondent that amount of income that the respondent is reasonably capable of earning and calculate a child support award based on the imputed income.

14A.6.60 In-Kind Services and Resources.

Although consistent with Hoopa Valley community standards, in-kind services are extremely difficult to monitor and guarantee, particularly as they relate to issues of quantity, quality and value. As a consequence, the Tribal Court shall only utilize in-kind services as a set-off against a child support obligation in those exceptional cases where full financial support is not possible. Both parties shall agree to the provision and terms of such in-kind services, and the Tribal Court shall incorporate clear written standards and requirements for their delivery in its order.

(A) **In-kind services, resources.** Whenever a parent is able to provide appropriate and acceptable in-kind services or resources for the support of the child(ren), such as fish, game, firewood, clothing, child care, or other basic needs, such services or resources may be applied as a setoff against the future months' support obligation if authorized by court order.

(B) **In-kind services, resources from extended family or community members.** Whenever extended family or community members are able to provide food, clothing, shelter, child care, or other basic needs for the child(ren), such services or resources may be applied as a setoff against the next month's support obligation if authorized by court order.

14A.6.70 Modification and Termination of Provisions for Child Support.

(A) **Change of Circumstances.** A child support award may be modified upon a showing of a change of circumstances that are substantial and continuing as provided by tribal law. A substantial and continuing change of circumstances will be presumed if support as calculated under this Chapter is more than fifteen percent (15%) greater or less than the outstanding support order.

(B) 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:

(1) The order works a severe economic hardship on either party or the child;

(2) A party requests an adjustment in an order that was based on guidelines that determined the amount of support according to the child's age, and the child is no longer in the age category on which the current support amount is based;

(3) 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

(4) There has been a change in the court adopted Child Support Schedule.

(C) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child, but not by death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked or commuted to a lump sum payment, to the extent just and appropriate in the circumstances.

14A.6.80 Collection of Past Due Support.

(A) To collect the payment due, the custodian of a child shall file with the Tribal Court (i) a motion requesting establishment of a judgment; (ii) an affidavit that states 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; and (iii) notice of the obligor's right to respond. Service on the obligor must be in the manner provided in Title 2 (Civil Actions) of the Hoopa Valley Tribal Code. The child's custodian shall file with the Tribal Court proof of service of the petition, affidavit, and notice. The obligor shall respond no later than twenty (20) days after service by filing an affidavit with the Tribal Court. If the obligor's affidavit states that the obligor has paid any of the amounts claimed to be delinquent, describes in detail the method of payment or offers any other defense to the petition, then the obligor is entitled to a hearing. After the hearing, if any, the Tribal Court shall enter a judgment for the amount of money owed. If the obligor does not file an affidavit under this Section, the Tribal Court shall enter a default judgment against the obligor.

(B) 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. At any time, the Tribal Council may determine whether "income" should exclude per capita, trust, or IIM payments as allowed under 45 CFR 309.05.

(C) In addition to amounts withheld by garnishment or assignment to pay the current month's obligation, the amount withheld must include an amount to be applied toward liquidation of any overdue support.

(D) The total amount to be withheld under paragraphs (B) and (C) of this section may 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.

(E) Income withholding, by assignment or garnishment, must comply with procedural due process requirements as established by Tribal law.

(F) The Tribe, its departments and entities, including a Tribal Child Support Enforcement Agency if and when established, shall promptly refund amounts which have been improperly withheld.

(G) The Tribe, its departments and entities, including a Tribal Child Support Enforcement Agency if and when established, shall promptly terminate income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied.

(H) 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.

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

a. Either the custodial or noncustodial parent demonstrates, and the tribunal enters a finding, that there is good cause not to require income withholding; or

b. A signed written agreement is reached between the noncustodial and custodial parent, which provides for an alternative arrangement, and is reviewed and entered into the record by the tribunal.

(J) 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 Tribal Court support order are at least equal to the support payable for one month.

(K) The only basis for contesting a withholding is a mistake of fact, which for purposes of this paragraph means an error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.

(L) Any employer who discharges a noncustodial parent from employment, refuses to employ, or takes disciplinary action against any noncustodial parent because of the withholding shall be subject to a maximum fine of five hundred dollars ($500.00) per incident.

(M) The Tribal Court, or a Tribal Child Support Enforcement Agency, if established, must send the noncustodial parent's employer a notice using the standard federal income withholding form to initiate income withholding.

(N) The Tribal Court, or a Tribal Child Support Enforcement Agency, if established, must allocate withheld amounts across multiple withholding orders to ensure that in no case shall allocation result in a withholding for one of the support obligations not being implemented.

(O) The Tribe Court, or a Tribal Child Support Enforcement Agency, if established, is responsible for receiving and processing income withholding orders from States, Tribes, and other entities, and ensuring orders are properly and promptly served on employers within the Tribe's jurisdiction.

(P) The Tribal Council may enter into a Reciprocal Child Support Enforcement Agreement with the State of California, or its political subdivisions, for the purpose of enforcing and distributing support obligations in the Hoopa Valley.

14A.6.90 Payment of Support - Records.

(A) The Tribal Court may upon its own motion or upon motion of either party, order support payments be made to:

(1) The person entitled to receive the payments;

(2) The clerk of the Tribal Court for remittance to the person entitled to receive the payments; or

(3) The State Department of Child Support Services pursuant to a Reciprocal Child Support Enforcement Agreement between the Hoopa Valley Indian Tribe and the State of California.

(B) If payments are made to the clerk of the Tribal Court:

(1) The clerk shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order; and

(2) The parties affected by the order shall inform the clerk of the Tribal Court of any change of address.

(C) If the person obligated to pay support has left or is beyond the jurisdiction of the Tribal Court, any party may institute any other proceeding available under the laws of the Hoopa Valley Indian Tribe for enforcement of the duties of support and maintenance.

14A.6.100 Wage Assignments and Garnishment.

(A) In the event a person obligated to pay child support is in arrears for at least one month, the Tribal Court may order the person obligated to pay child support to make an assignment of part of his or her periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds two (2) weeks after service upon such person of notice that the assignment has been made. The payor shall withhold the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the clerk of the Tribal Court. The payor may deduct from each payment a sum not exceeding one dollar ($1.00) as reimbursements for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this Section.

(B) Persons who are owed child support that is in arrears and is based on an order, judgment or decree from a court other than the Hoopa Valley Tribal Court may seek garnishment of the debtor's wages or salary under Title 45 of the Hoopa Valley Tribal Code, provided that the Tribal Court shall hear the petition for enforcement of a foreign court's child support order in accordance with Chapter 7 of this Code.

Appendix I - Child Support Schedule

Combined Monthly Net Income	One Child Family		Two Child Family		Three Child Family		Four Child Family		Five Child Family	
	-A-	-B-	-A-	-B-	-A-	-B-	-A-	-B-	-A-	-B-
$600	$100	$123	$77	$95	$65	$80	$55	$68	$47	$59
700	116	143	90	111	75	93	64	79	56	68
800	133	164	103	128	86	107	73	90	63	78
900	149	185	116	143	97	119	82	101	71	89
1000	165	204	128	158	107	133	91	112	79	98
1100	182	224	141	174	118	145	100	123	87	107
1200	198	245	154	190	128	158	108	134	95	117
1300	214	264	166	206	139	171	117	145	102	126
1400	230	284	179	221	149	185	126	156	110	136
1500	245	303	191	235	159	197	134	166	117	145
1600	260	321	202	250	169	209	143	176	125	154
1700	275	340	214	264	179	221	151	186	131	163
1800	290	359	225	278	188	233	159	197	139	171
1900	305	377	237	293	198	245	167	206	146	180
2000	320	395	248	307	208	257	176	217	153	189
2100	335	414	260	322	217	269	184	227	160	198
2200	350	433	272	336	227	281	192	237	167	207
2300	365	451	284	350	236	293	200	248	175	216
2400	380	470	295	365	246	305	209	257	182	224
2500	395	488	306	379	256	316	216	267	188	233
2600	401	496	312	385	260	321	220	272	192	237
2700	407	503	316	390	263	326	224	276	194	241
2800	412	509	320	395	267	330	226	279	197	243

2900	417	515	323	400	270	334	229	282	200	246
3000	421	520	327	404	273	337	231	285	201	248
3100	425	524	329	407	275	340	233	287	203	251
3200	427	528	332	410	277	343	234	290	204	252
3300	430	531	334	412	278	344	235	291	205	254
3400	431	533	335	413	279	345	236	292	206	255
3500	431	533	335	414	280	346	237	293	206	256
3600	433	534	336	415	281	347	238	293	207	257
3700	434	535	337	416	281	347	239	294	208	257
3800	436	539	339	419	283	350	239	296	209	258
3900	447	552	347	429	290	358	245	303	213	264
4000	457	565	355	438	296	366	251	310	218	270
4100	467	578	363	449	303	375	256	317	224	276
4200	479	591	371	458	310	383	263	323	229	283
4300	488	604	380	469	317	392	268	331	233	289
4400	498	616	387	478	323	399	273	337	238	294
4500	508	627	394	487	329	407	278	344	242	300
4600	517	638	401	496	335	414	283	350	247	305
4700	526	650	409	505	341	422	288	356	251	311
4800	535	662	416	514	347	429	293	362	256	317
4900	545	673	423	523	353	436	299	368	260	322
5000	554	684	431	531	359	444	303	375	265	328

Columns A = Children ages 0 - 12 years
Columns B = Children ages 13 - 18 years

Chapter 7 - Recognition of Foreign Spousal Support, Child Support and Child Custody Orders

Sec.

Subchapter I - Foreign Spousal Support and Child Support Orders
14A.7.10 Foreign Spousal Support and Child Support Orders – Defined
14A.7.20 Foreign Spousal Support and Child Support Orders – When Recognized
14A.7.30 Procedure for Recognition and Enforcement of Foreign Spousal Support and Child Support Orders

Subchapter II - Foreign Child Custody Orders
14A.7.40 Purpose and Scope
14A.7.50 Application
14A.7.60 Registration of Child Custody Determinations

Subchapter I - Foreign Spousal Support and Child Support Orders

14A.7.10 Foreign Spousal Support and Child Support Order - Defined.

As used in this Title "foreign spousal support and child support order" means any judgment, decree or order for spousal support or child support of any tribal or state court.

14A.7.20 Foreign Spousal Support and Child Support Orders - When Recognized.

(A) The Tribal Court shall not recognize and enforce any foreign spousal support or child support order unless the proponent of the foreign spousal support or child support order:

(1) Complies with the procedure set forth in this Chapter;

(2) Submits proof that the person against whom the foreign spousal support or child support order has been rendered is subject to the jurisdiction of the Tribal Court;

(3) Submits proof that the foreign spousal support or child support order is based on valid subject matter and personal jurisdiction; and

(4) Submits proof that an attempt was made to enforce the judgment in the jurisdiction that the foreign spousal support or child support order was rendered and that such attempt was unsuccessful; or good cause exists why an attempt at enforcement of the foreign spousal support or child support order in the jurisdiction in which the foreign spousal support or child support order was rendered would be futile.

(B) The Tribal Court need not recognize a foreign spousal support or child support order if:

(1) The defendant in the proceeding in the foreign court did not receive notice of said proceedings in sufficient time to allow him or her to defend;

(2) The foreign judgment violated the Indian Civil Rights Act of 1968, 25 U.S.C. §§1301 - 1341, the U.S. Constitution, or rights contained in the relevant state or tribal constitution;

(3) The foreign spousal support or child support order was obtained by fraud;

(4) The foreign spousal support or child support order would serve to violate any federal law, tribal law, custom or tradition, or the Treaties between the Hoopa Valley Indian Tribe and the Federal Government; or

(5) The cause of action on which the order is based is contrary to the general welfare of the Hoopa Valley Indian Tribe or its members.

14A.7.30 Procedure for Recognition and Enforcement of Foreign Spousal Support and Child Support Orders.

(A) Proper filing of a foreign spousal support or child support order with the Tribal Court shall be accomplished when the proponent has paid all necessary filing fees and delivered to the Tribal Court a certified copy of the foreign judgment, along with a motion requesting that the Tribal Court recognize and enforce the foreign spousal support or child support order.

(B) Upon proper filing of a foreign spousal support or child support order with the Tribal Court, the Tribal Court shall issue a summons directing the defendant to appear on a date not more than thirty (30) days from the date of service and respond to the motion requesting the Tribal Court to recognize and enforce the foreign spousal support or child support order. Such summons shall be served on the defendant in a manner consistent with Title 2 (Civil Actions) of the Hoopa Valley Tribal Code.

(C) Failure to appear as directed by the summons or failure to respond to the motion requesting the Tribal Court to recognize and enforce the foreign spousal support or child support order once personal jurisdiction over the defendant has been obtained shall not prevent the Tribal Court from ruling on the motion.

Subchapter II - Foreign Child Custody Orders

14A.7.40 Purpose and Scope.

In accordance with the goals of the Parental Kidnapping Prevention Act, 28 USCA §1738A, and the Uniform Child Custody Jurisdiction and Enforcement Act, the Tribal Council 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.

14A.7.50 Application.

As a matter of comity, the Tribal Court will recognize and enforce a foreign custody order that meets all requirements of this Chapter.

14A.7.60 Registration of Child Custody Determinations.

(A) A child custody determination issued by a court of another state or tribe may be registered with the Tribal Court, with or without a simultaneous request for enforcement, by sending to the clerk of the Tribal Court:

(1) A letter or other documentation requesting registration and the appropriate filing fee;

(2) 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;

(3) 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;

(4) 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;

(5) A statement that to the best of the knowledge and belief of the person seeking registration, the issuing jurisdiction would give reciprocity to a Hoopa Valley Tribal Court order; and

(6) 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.

(B) On receipt of the documents required under Subsection (A), the Tribal Court shall serve notice upon the persons named pursuant to Subsection (A)(6) and provide them with an opportunity to contest the registration.

(C) 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 Tribal Court shall confirm the registered determination unless the person contesting registration establishes that:

(1) The issuing state court did not have jurisdiction over the child under the Uniform Child Custody Jurisdiction and Enforcement Act or the issuing tribal court did not have personal jurisdiction over the parties and child in accordance with the issuing tribe's laws;

(2) 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;

(3) The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so;

(4) 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;

(5) The cause of action on which the custody order is based is repugnant to the public policy of the tribe or would be contrary to the general welfare of the Tribe or its members; or

(6) The foreign custody determination would serve to violate any federal law, tribal law, custom or tradition, or the laws of the issuing jurisdiction violate Hoopa Valley custom, tradition, or sense of justice.

(D) 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.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify: that the Hoopa Valley Tribal Council is composed of eight members, of which five (5) were present, constituting a quorum, at a Regular Meeting thereof, duly and regularly called, noticed, convened, and held this 3rd day of March, 2005; that this Ordinance was adopted at said

meeting by a vote of four (4) for and none against; and that since its adoptions this Ordinance has not been altered, rescinded, or amended in any way.

DATED THIS 3rd DAY OF MARCH, 2005.

CLIFFORD L. MARSHALL, CHAIRMAN
HOOPA VALLEY TRIBAL COUNCIL

ATTEST:

DARCY A. MILLER, EXECUTIVE SECRETARY
HOOPA VALLEY TRIBAL COUNCIL