

Act 09-26

An Act amending Title 8, chapter 12, to be in alignment with federal regulations for child support program funding, clarifying the meaning and practical application of this Chapter to Band members.

The District II Representative introduced the following Bill on the 25th day of February, 2026.

BE IT ENACTED BY THE BAND ASSEMBLY OF THE NON-REMOVABLE MILLE LACS BAND OF OJIBWE:

Section 1. Amending Title 8, chapter 12, subchapter 1.

§ 2003. Definitions.

For the purposes of this chapter, the following terms shall have the meaning assigned to them in this section.

- (n) **“IV-D case”** means a case where a party has applied for child support services from a public authority or has assigned to a tribe or a state their rights to child support because of the receipt of public assistance under Title IV-D of the Social Security Act, 45 U.S.C. § 309.
- (q) **“Non-cash support”** means support provided in the nature of goods and/or services rather than in cash, which contributes directly to meeting the needs of a child. Non-cash support may include services such as making repairs to an automobile or a home, the clearing up or upkeep of property, providing a means for travel, providing needed resources for a child’s participation in tribal customs and practices, or other goods or services that contribute to the needs of a child, and can be reasonably assigned a cash value that is contained in the support order.
- (x) **“Parent”** means the lawful mother or father of a child or, where applicable throughout this statute, a third-party guardian with legal custody of the child.
- (bb) **“Public authority”** means a local unit of government acting on behalf of a tribe or a state that is responsible for child support enforcement through establishment, modification, locating parents and their assets, and paternity, and includes but is not limited to the Band Authority.
- (jj) **“Title IV-D”** means Title IV-D of the Social Security Act under which the federal government provides funds to tribes and states to administer child support programs that provide ~~services related to~~ child support services.

§ 2004. Band Authority.

- (a) There is hereby established the Mille Lacs Band Child Support Enforcement Program (the Band Authority) within the Band's Department of Administration.
- (b) The Band authority is authorized to provide child support enforcement services to all parents and children subject to the jurisdiction of the Band. The Band Authority is authorized, among other things, to:
 - (1) locate custodial parents and noncustodial parents, as well as their sources of income, assets, and debts;
 - (2) seek a determination of parentage;
 - (3) seek the establishment or modification of child support;
 - (4) enforce support orders and laws relating to the duty of support;
 - (5) make reasonable information requests from state and tribal governments, to include other Band departments, for the purpose of establishing, modifying, and enforcing a child support obligation; and
 - (6) seek Court orders authorizing holds on Band members' monthly per capita (or other bonus) payments to facilitate either a determination of parentage or the administration of a child support obligation.
- (c) ~~In providing child support enforcement services, the Band Authority may provide the services of an attorney or an attorney's representative to a party seeking to establish, modify or enforce a child support obligation.~~

~~(1) The provision of such services shall not create an attorney-client relationship between the attorney or attorney's representative and the party to whom such services are provided. Attorneys and attorney's representatives employed by or under contract with the Band Authority have an affirmative duty to inform applicants for and recipients of services from the Band Authority that Applicants should be informed of the fact that no attorney-client relationship exists or will be formed between the attorney or attorney's representative and the applicant for or recipient of such services. In providing such services, the Band authority shall be the sole client of the attorney or attorney's representative, and an attorney-client relationship shall only exist between the attorney or attorney's representative and the Band Authority.~~

§ 2005. Judicial Proceedings.

- (a) The Court shall have jurisdiction under this chapter over all parents and children subject to the jurisdiction of the Band. Except as otherwise provided by Federal law, such jurisdiction shall include, but not be limited to:
- (1) all persons who are members of or are eligible for membership who reside within the Band's geographic limits,
 - (2) all persons who are alleged to be the parent of a child, including an unborn child, and whose parenting partner is a member of or is eligible for membership in the Band or is a member of or eligible for membership in another tribe and resides within the Band's geographic limits, and
 - (3) all persons who knowingly consent to the jurisdiction of the Band under this chapter.
- (b) Except as otherwise provided by Federal law, if another federal, state or tribal court has jurisdiction over any matter provided for in this chapter, the Band Court shall have concurrent jurisdiction over the same matter.
- (c) An action to establish, modify, or enforce a child support obligation may be filed separately or may be joined with an action for divorce, annulment, legal separation, or child custody or guardianship.
- (d) Unless an action to establish, modify, or enforce a child support obligation has been joined with an action for child custody or guardianship, in establishing, modifying, or enforcing a child support obligation, the Court shall not change or modify the custody or guardianship of the child.
- (e) Except as otherwise expressly provided in this chapter, in every action under this chapter:
- (1) the Court shall inform the parties to the action that they have the right to have a lawyer or other person(s) they have selected represent them in the proceeding at their own expense;
 - (2) if it appears that a party to the action cannot afford private counsel, the Court shall inform the party of available services that might provide counsel at a reduced fee or pro bono;
 - (3) the parties to the action shall have the opportunity to introduce, examine, and cross-examine witnesses in accordance with the Court's rules;
 - (4) the parties to the action shall have the opportunity to discover, offer, or inspect evidence in accordance with the Court's rules; and

- (5) the parties to the action shall have the opportunity to present arguments and statements in accordance with the Court's rules.
- (f) All judicial proceedings in an action to establish, modify, or enforce a child support obligation are confidential. In accordance with this provision:
 - (1) When providing service by publication in such an action, the names of the children subject to the action shall not be disclosed. Only the children's initials shall be used.
 - (2) Court files and hearings in such an action will be closed to outside observers. Only the parties directly involved, necessary witnesses, and Court personnel shall be present at hearings. The Court may utilize its discretion to permit other observers, provided that the Court has offered all parties the opportunity to object.
 - (3) Any person, including but not limited to any employee or official of the Band, who willfully discloses otherwise confidential information related to an action to establish, modify, or enforce a child support obligation, except as expressly authorized and provided for by Court order or otherwise pursuant to this chapter, and who is found guilty of an unauthorized disclosure of information, may be subject to a civil fine not to exceed Five Hundred Dollars (\$500.00).

(g) The notice requirements for a child support establishment action are as follows:

- (1) Once a child support establishment action has been initiated, the Court shall issue a summons to the respondent.
- (2) The respondent shall have 21 days to respond to the summons issued.
- (3) An initial hearing shall be scheduled upon return receipt of the summons and the Court shall serve a hearing notice to the respondent at the address where service was perfected.
- (4) If the respondent fails to respond to the summons, a judgment by default may be entered against the respondent for the relief demanded in the child support action.
- (5) All parties shall be notified of a child support action being initiated and of all hearings.

(h) A petition to establish a presumptive child support obligation shall include the following information:

- (1) The names, dates of birth, addresses, and tribal affiliations, if any, of the biological mother, the alleged father(s), the child, and all others who have legal rights of custody, visitation, or support of the child;
 - (2) Social Security numbers of the parties and the minor children of the parties shall be considered private information and shall be available only to the Band Authority and the Court;
 - (3) The basis for the Petition and the Court's jurisdiction;
 - (4) The primary residence of and primary caregiver for the minor child;
 - (5) Gross income of the parties as calculated under § 2008;
 - (6) Names and addresses of the parties' employers;
 - (7) Health insurance coverage of the parties;
 - (8) Types and amounts of public assistance received by the parties;
 - (9) Other support obligations and other children residing in the homes of either party;
 - (10) Any existing child support orders for the minor child;
 - (11) A copy of the child's certified birth certificate attached as a supporting document;
 - (12) The notarized signature of the petitioner or attorney for the petitioner verifying the truth of the information in the Petition; and
 - (13) Any other information relevant to the computation of the child support obligation under § 2013.
- (i) In a case where domestic violence has been an issue, an address is not required for the aggrieved party.
- ~~(g)~~(j) Child support proceedings should not be discussed with the children involved or with other children in the household. Parents are to refrain from using their children as tools against each other.
- ~~(h)~~(k) If the Court has knowledge that a protective order exists or potential harm of emotional and/or physical abuse exists with respect to a party involved in a child support proceeding, the Court shall not release any private data regarding the physical or employment location of the party protected by the protective order to the party or their representatives against whom the protective order was established. The Court

may utilize its discretion to authorize separate proceedings to ensure the safety of the protected party while encouraging the utmost participation by the parties.

- (±)(1) To ensure an equal distribution of child support amongst a supported child or children, the Court may schedule a hearing to address multiple child support orders pertaining to the same child or children. The Court may utilize its discretion to determine how such a hearing will be structured.

§ 2006. Support Order.

- (a) **General.** Incorporation of support order in decree of dissolution, legal separation, or annulment; provision for child support in other proceedings. The Court shall incorporate in every decree of dissolution, legal separation, or annulment an order providing for the support of the parties' children as provided in this chapter. The Court shall also provide for the support of the parties' children in any other proceeding related to custody, parenting time, adjudication of parentage, or support.
- (b) **Designation of support and maintenance payments.** Every support order incorporated in a decree of dissolution, legal separation, or annulment shall clearly designate whether payments ordered are for child support or for maintenance of the spouse or former spouse.
- (1) If payments are ordered for child support and spousal maintenance, the order shall clearly state the amount that is for child support and the amount that is for spousal maintenance.
- (2) An award of payments from future income or earnings of the parent who is the primary physical custodian of the child or children subject to the order is presumed to be for spousal maintenance, and an award of payments from the future income or earnings of the parent who is not the primary physical custodian of the child or children subject to the order is presumed to be for child support, unless otherwise designated by the Court.
- (c) **Marital misconduct not to affect support obligations.** The Court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.
- (d) **Stipulations for child support.** The Court shall approve a child support stipulation of the parties if each party is represented by independent counsel or if the Court makes a finding that the stipulation is fair to both parties and is in the best interest of the child.
- (e) **Percentage payments.** ~~The Court may order an obligor to pay child support in the form of a percentage of the obligor's net bonuses, commissions, or other forms of compensation, in addition to, or if the obligor receives no base pay, in lieu of, an~~

~~order for a specific dollar amount.~~ **Payments.** All court ordered payment obligations must be based on specific descriptive and numeric criteria in order to be reasonably assigned a cash value.

- (f) **Lien on property; appointment of trustee.** With the exception of property held by the United States in trust for an obligor, the Court may make any support order a lien or charge upon the property of the obligor, either at the time of the entry of the order or by subsequent order upon proper application. In addition, the Court may appoint a trustee to receive funds or other property awarded as support money. The Band Authority shall not be appointed by the Court as a trustee~~When appropriate, the Court may name the Band Authority as trustee.~~
- (g) **Payments made to ~~Band Authority or other public authority.~~** In any support order, the Court may require that child support payments be made to ~~the Band Authority or other~~a public authority for the benefit of the obligee.
- (h) **Seasonal income.** The Court shall establish the annual child support obligation of an obligor with a seasonal income so that the obligor makes either the same monthly payments throughout the year or monthly payments that reflect variations in the obligor's income.
- (i) **Duration of support payments.**
 - (1) Child support payments shall stop when the child is 18 years old unless the Court finds that:
 - (i) it would be in the best interests of the child to continue support payments until the child is 21 years old; and
 - (ii) the child is (i) disabled or (ii) between 18 and 21 years old and enrolled in high school on a full-time basis.
 - (2) If the Court makes such findings, it may order that support payments shall continue while the child is between 18 and 21 years old, but only for so long as the child is disabled or enrolled in high school on a full-time basis.
 - (3) When a child's full-time high school enrollment status is in dispute, the Court shall make the determination.
- (j) **Notice of address or residence change.** Every obligor under a support order shall notify the obligee and the public authority responsible for collection of support money, if any, of a change of address or residence within 60 calendar days of the address or residence change.
 - (1) The Court may waive or modify the requirements of this paragraph by order if necessary to protect the obligee from contact by the obligor.

- (k) **Satisfaction of child support obligation.** The Court may conclude that an obligor has satisfied a child support obligation by providing a home, care, and support for the child while the child was living with the obligor, if the court finds that the child was integrated into the family of the obligor with the consent of the obligee and child support payments were not assigned to a public authority or other public agency.
- (l) **Other custodians.** If a child resides with a person other than a parent and the Court approves of the physical custody arrangement, the Court may order child support payments be made to the person having physical custody regardless of whether the person has legal custody. A duly executed Delegation of Parental Authority, on its own, does not establish physical custody.
- (m) **Adjustment to support order.** A support order issued under this section may provide that during any period of time of 30 consecutive days or longer that the child is residing with the obligor, the amount of support otherwise due under the order may be reduced.
- (n) **Determination of controlling order.** In situations in which more than one support order involving the same obligor and child exists, the obligor, the obligee, or the public authority responsible for collection of support money, if any, may request that the Court determine which order is the controlling order. The Court shall presume that the latest order that involves the same obligor and child is controlling in the absence of proof to the contrary.

§ 2007. Providing Income Information.

- (a) In any proceeding for dissolution, legal separation, or annulment where the parties have joint children for whom a support order must be entered under this chapter, or in any other proceeding in which a support order may be entered under this chapter, the parties shall serve and file with their initial pleadings or motion documents a financial affidavit disclosing all sources of income for purposes of calculating gross income under § 2008 of this Title. Once service has been processed and a hearing date is scheduled, the respondent shall have ten (10) days prior to the hearing to provide a financial affidavit to the Band Authority. Respondent may be held in Contempt of Court if they do not provide a financial affidavit or respond to a financial affidavit request.
 - (1) The financial affidavit shall include relevant supporting documentation necessary to calculate gross income and parental income for determining child support including, but not limited to, pay stubs for the previous three months and employer statements or statements of receipts and expenses if self-employed. The supporting documentation shall also include relevant copies of each parent's most recent federal tax returns including W-2 forms, 1099 forms, unemployment benefit statements, workers' compensation statements,

and all other documents evidencing earnings or income as received that provide verification for the financial affidavit, including verification of per capita income, if applicable.

- (b) In addition to the requirements of § 2007(a), at any time after a proceeding seeking child support payments has been commenced or when a child support order is in effect, a party to the proceeding, the obligor or obligee under the support order, or the Band Authority may request that a party to the proceeding or the obligor or the obligee under the support order produce a copy of the most recent federal tax returns filed with the Internal Revenue Service by the person to whom the request is directed. If a copy of the most recent federal tax returns filed with the Internal Revenue Service is not provided upon request, the person to whom the request is directed may be held in Contempt of Court.
- (1) The person to whom the request is directed shall provide a copy of the tax returns to the person making the request within 30 calendar days of receipt of the request unless the request is not made in good faith. ~~A request under this paragraph may not be made more than once every two years, in the absence of good cause for more frequent requests.~~ A request under this paragraph shall be made only if good cause exists to do so.
- (c) If a parent subject to the jurisdiction of the Court does not serve and file the financial affidavit and supporting documentation with the parent's initial pleading or motion documents, the Court shall set income for that parent based on credible evidence before the Court or in accordance with § 2011 of this Title. The Court may consider credible evidence from one party that the financial affidavit submitted by the other party is false or inaccurate.
- (d) If the Court determines that a party does not have access to documents that are required to be disclosed under this section, the Court may consider the testimony of that party as credible evidence of that party's income.

§ 2008. Calculation of Gross Income.

- (a) Subject to the exclusions and deductions in this section, gross income includes any form of periodic payment to a parent including, but not limited to, salaries, wages, commissions, self-employment income as defined in § 2009 of this Title, workers' compensation, unemployment benefits, annuity payments, military and naval retirement, pensions and disability payments, spousal maintenance payments pursuant to a court order entered in a prior proceeding or in the current proceeding, Social Security and veterans benefits, including Social Security and veterans benefits provided for a joint child to the extent specified in § 2010 of this Title, potential income as defined in § 2011 of this Title, and per capita payments to enrolled Tribal members of federally recognized Tribes authorized by a Tribal Net Revenue Allocation Plan or other Tribal law or resolution.

- (1) Salaries, wages, commissions, or other compensation paid to a parent by third parties shall be included in gross income notwithstanding the parent's participation in an employer-sponsored benefit plan that allows the parent to pay for a benefit or expense using pretax dollars, such as flexible spending plans and health savings accounts.
 - (2) Pension deductions not exceeding ten percent of gross wages shall not be included in gross income.
- (b) A parent's gross income does not include compensation received by the parent for employment in excess of a 40-hour week, provided that:
- (1) Child support is ordered in an amount at least equal to the presumptive child support obligation calculated under § 2013 of this Title based on gross income not excluded under this clause; and
 - (2) The parent demonstrates and the Court finds that:
 - (i) The excess employment began after the filing of the petition for dissolution, legal separation, or annulment or a petition related to custody, parenting time, or support;
 - (ii) The excess employment reflects an increase in the work schedule or hours worked over that of the two years immediately preceding the filing of the petition;
 - (iii) The excess employment is voluntary and not a condition of employment;
 - (iv) The excess employment is in the nature of additional, part-time or overtime employment compensable by the hour or fraction of the hour; and
 - (v) The parent's compensation structure has not been changed for the purpose of affecting the parent's child support obligation.
- (c) Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be included in the parent's gross income if they reduce the parent's personal living expenses.
- (d) A parent's gross income may be calculated either on an annual or monthly basis. Weekly income shall be translated to monthly income by multiplying weekly income by 4.33.

- (e) A parent's gross income does not include child support payments received by the parent.
- (f) It is a rebuttable presumption that adoption assistance payments, guardianship assistance payments, and foster care subsidies are not gross income. This presumption may be rebutted if such payments are used for the recipient's personal living or other expenses unrelated to the adoption, guardianship, or foster care.
- (g) A parent's gross income does not include the income of the parent's spouse.
- (h) Child support or spousal maintenance payments ordered by a court for a non-joint child or former spouse or ordered payable as part of the current proceeding shall be deducted from other periodic payments received by the parent making such payments for purposes of determining that parent's gross income.
- (i) A parent's gross income does not include public assistance benefits received under the TANF program, the Minnesota Family Investment Program, or other programs of public assistance based on need.
- (j) A parent's gross income does not include grants and/or scholarships for post-secondary education.
- (k) For purposes of calculating gross income of a third-party guardian with legal custody or other custodial party who is not a biological parent, the Court shall not utilize the third-party guardian's income.

§ 2011. Potential Income.

- (a) **General.** This section applies to child support orders including orders for past support. If a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income, child support must be calculated based on a determination of potential income.
 - (1) For purposes of this determination, it is a rebuttable presumption that a parent can be gainfully employed on a full-time basis. As used in this section, "full time" means 40 hours of work in a week except in those industries, trades, or professions in which most employers, due to custom practice, or agreement use a normal work week of more or less than 40 hours in a week.
- (b) **Methods.** Determination of a parent's potential income must be made according to one of the following ~~two~~three methods, as appropriate:
 - (1) the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings level in the community; or

- (2) if the parent is receiving unemployment compensation or workers' compensation, the parent's income may be calculated using the actual amount of the unemployment compensation or workers' compensation benefit received.

Potential income may be calculated based on Tribal, State, or Federal minimum wages, whichever is greater.

- (c) **Parent not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis.** A parent is not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis upon a showing by the parent that:

- (1) the unemployment, underemployment, or employment on a less than full-time basis is temporary and will ultimately lead to an increase in income;
- (2) the unemployment, underemployment, or employment on a less than full-time basis represents a bona fide career change that outweighs the adverse effect of the parent's diminished income on the child; or
- (3) the unemployment, or underemployment, or employment on a less than full-time basis is because the parent is physically or mentally incapacitated or incarcerated, except where the reason for incarceration is the parent's nonpayment of support.

- (d) **TANF Recipient.** If the parent of a joint child is a recipient of a TANF cash grant, no potential income is to be imputed to the parent.

- (e) **Caretaker.** If a parent stays at home to care for a child who is subject to the child support order, the Court shall consider the following factors when determining whether the parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis:

- (1) parenting and child care arrangements before the child support action;
- (2) the stay-at-home parent's employment history, recent employment earnings, and the availability of jobs within the community for an individual with that parent's qualifications;
- (3) the relationship between the employment-related expenses including, but not limited to, child care and transportation costs required for the parent to be employed, and the income the stay-at-home parent could receive from

available jobs within the community for an individual with that parent's qualifications;

- (4) the child's age and health including whether the child is physically or mentally disabled; and
- (5) the availability of child care providers.

This paragraph does not apply if the parent stays at home only to care for non-joint children.

- (f) **Economic Conditions.** A self-employed parent is not considered to be voluntarily unemployed, underemployed, or employed on a less than full-time basis if that parent can show that the parent's net self-employment income is lower because of economic conditions that are directly related to the source or sources of that parent's income.
- ~~(g) **Per Capita Income.** If income is imputed to an obligor and the obligor received per capita income, the Court shall not include the per capita income as part of the obligor's gross income. This provision shall not prevent the Band Authority from intercepting per capita income in order to enforce any child support order.~~

§ 2013. Presumptive Child Support Obligation.

- (h) A final child support order shall separately designate the amount owed for basic support, child care support, ~~and medical support, and overdue support, if applicable.~~

§ 2014. Guideline Used in Child Support Determinations.

- (a) **Use of guideline.**
 - (1) The guideline in this section establishes a rebuttable presumption of the appropriate level of basic support for a joint child and shall be used in any judicial or administrative proceeding to establish or modify a support obligation under this chapter. The actual level of basic support for a joint child may deviate from the guideline level in accordance with other provisions of this chapter.
 - (2) The presumptive basic support obligation for a joint child shall be determined by referencing the guideline for the appropriate number of joint children and the combined parental income for determining child support of the parents.
 - (3) If a joint child is not in the custody of either parent and a support order is sought against one or both parents, the basic support obligation shall be

determined separately for each parent against whom a support order is sought by referencing the guideline for the appropriate number of joint children and that parent's individual parental income for determining child support, not the combined parental incomes for determining child support of both parents.

- (b) **Basic support; guideline.** Unless otherwise agreed to by the parents and approved by the Court when establishing basic support, the Court must order that basic support be divided between the parents based on their proportionate share of the parents' combined monthly parental income for determining child support (PICS). ~~The presumptive level of basic support must be computed in accordance with MINN. STAT. § 518A.35, or other Minnesota child support statute, subject to any contrary Mille Laes Band law.~~
- (c) **More than six children.** If a child support proceeding involves more than six children, the Court may derive a support order without specifically following § 2014(b). However, the Court must consider the basic principles encompassed by the guideline and both parents' needs, resources, and circumstances.

§ 2015. Non-Cash Support.

An obligor's provision of non-cash support may satisfy up to 50 percent of the obligor's child support obligation, but only under the following circumstances:

- (a) The obligor and obligee agree to the type of non-cash support that will be provided and the extent to which it will satisfy the obligor's child support obligation;
- (b) The Court approves the provision of non-cash support in a written order that:
 - (1) states the specific dollar amount of the obligor's total child support obligation;
 - (2) describes the type(s) of non-cash support that will be provided to satisfy the underlying specific dollar amount of the support order;
 - (3) states that no more than 50% of the obligor's total child support obligation may be satisfied by the provision of such non-cash support; and
 - (4) provides that the non-cash support shall not satisfy any portion of the obligor's child support obligation that has been or in the future is assigned to a public authority or other public agency.
- ~~(c) Non-cash payments will not be permitted to satisfy already assigned support obligations.~~

§ 2016. Parenting Expense Adjustment.

- (a) **General.** The parenting expense adjustment under this section reflects the presumption that while exercising parenting time, a parent is responsible for and incurs cost of caring for the child, including, but not limited to, costs of food, transportation, recreation, and household expenses.
- (1) Every child support order shall specify the percentage of parenting time and/or number of overnights granted to each parent.~~that~~ The percentage of parenting time means the percentage of time and/or number of overnights a child is scheduled to spend with the parent during a calendar year according to a court order. Parenting time includes time with the child whether it is designated as visitation, physical custody, or parenting time or is otherwise designated. The percentage of parenting time may be determined by calculating the number of overnights that a child spends with a parent, or by using a method other than overnights if the parent has significant time periods or separate days where the child is in the parent's physical custody and under the direct care of the parent but does not stay overnight. The Court may consider the age of the child in determining whether a child is with a parent for a significant period of time.
- (2) If there is no court order awarding parenting time, the Court ~~shall~~may determine the child support award without consideration of the parenting expense adjustment.

If a parenting time order is subsequently issued or is issued in the same proceeding, then the child support order shall include application of the parenting expense adjustment.

- (b) Calculation of parenting expense adjustment. The obligor is entitled to a parenting expense adjustment calculated as provided in this paragraph. The Court shall:
- (1) find the adjustment percentage based on the number of overnights with whom the child or children spend with each parent.~~corresponding to the percentage of parenting time allowed to the obligor as follows:~~

Percentage Range of Parenting Time	Adjustment Percentage
Less than 10 percent	No adjustment
10 percent to 45 percent	12 percent
45.1 percent to 50 percent	Presume parenting time is equal

- ~~(2) — multiply the adjustment percentage by the obligor’s basic child support obligation to arrive at the parenting expense adjustment; and~~
 - ~~(3) — subtract the parenting expense adjustment from the obligor’s basic child support obligation. The result is the obligor’s basic support obligation after the parenting expense adjustment.~~
- (c) Calculation of basic support when parenting time is presumed equal.
- (1) If the parenting time is presumed equal under § 2016(b) and the parental incomes for determining child support of the parents also are equal, no basic support shall be required unless the Court determines that the expenses for the child are not equally shared.
 - ~~(2) — If the parenting time is equal but the parents’ incomes for determining child support are not equal, the parent having the greater parental income for determining child support shall be obligated for basic support calculated as follows:~~
 - ~~(i) — Multiply the combined basic support calculated under § 2014 of this Title by 0.75;~~
 - ~~(ii) — Prorate the amount under § 2016(c)(2)(i) between the parents based on each parent’s proportionate share of the combined PICS; and~~
 - ~~(iii) — Subtract the lower amount from the higher amount. The resulting figure is the basic support obligation after the parenting expense adjustment for the parent with the greater parental income for determining child support.~~

§ 2018. Equitable Distribution of Child Support.

Where practical, the Court should seek to establish child support orders that equally apportion child support to all of the children with child support cases of an obligor.

- (a) **One Order.** Where multiple joint children are supported by one child support order, the Court may order support on a per-child basis.
- (b) **Multiple Orders.** Where an obligor owes child support to separate obligees, the Court may equitably apportion child support by determining the maximum child support amount that the obligor is able to pay and thereafter ensuring that each child case is supported equally to the maximum extent possible.

§ 2019. Modification of Orders or Decrees.

- (a) **Authority.** After entry of a temporary or permanent support order under this subchapter, on motion of either of the parents, a copy of which must be served on a public authority of payments are made through it, or on motion of a public authority, the Court may, from time to time, modify any term or condition of the order or make a new order respecting any matter which it might have made in the original proceeding, to the extent and under the circumstances described in this section.
- (1) A parent or a public authority may also bring a motion for contempt of court if the obligor is in arrears in support payments or is non-compliant with the prescribed conditions of the current support order.
- (b) **Modification.**
- (1) The notice requirements for a motion for modification are as follows:
- (i) All parties shall be notified of a motion for modification and of all hearings, and shall be given an opportunity to be heard.
 - (ii) The moving party is responsible for effectuating service of a motion to take child support enforcement action or motion to modify an existing child support obligation on the non-moving party.
 - (iii) The Court shall be responsible for service of notice of the scheduled Motion Hearing and subsequent order(s).
 - (iv) The Court shall not schedule a hearing on a Motion to Modify an Existing Child Support Obligation no less than 20 days after service is effectuated on the non-moving party.
- (2) A motion for modification of an existing child support order shall include the following:
- (i) The names, dates of birth, addresses, and tribal affiliations, if any, of the biological mother, the father, the child, and all others who have legal rights of custody, visitation, or support of the child;
 - (ii) Income information of the biological mother, the father, the child, and all others who have legal rights of custody, visitation, or support of the child;
 - (iii) All necessary facts and necessary underlying documents showing that there has been a substantial change in circumstances from those prevailing when the existing order was entered and that one or more of the terms of the existing order is unreasonable and unfair under the new circumstances.

- (iv) The notarized signature of the petitioner or attorney for the petitioner verifying the truth of the information in the Petition.
- (3) A party may request assistance from the Band Authority in seeking a motion for modification of an existing child support obligation.
- (4) In a case where domestic violence has been an issue, an address is not required for the aggrieved party.
- ~~(1)~~(5) The terms of an existing support order may be modified or a new order may be made upon a showing that there has been a substantial change in circumstances from those prevailing when the existing order was entered and that one or more of the terms of the existing order is unreasonable and unfair under the new circumstances.
- ~~(2)~~(6) Any one or more of the following facts is sufficient to establish that there has been a substantial change in circumstances from those prevailing when the existing order was entered:
 - (i) substantially increased or decreased gross income of an obligor or obligee;
 - (ii) substantially increased or decreased need of an obligor or obligee of the child or children that are subject to the proceedings;
 - (iii) receipt of assistance under the TANF program;
 - (iv) a change in the cost of living for either party as measured by the Federal Bureau of Labor Statistics;
 - (v) extraordinary medical expenses of the child not provided for under § 2021 of this Title;
 - (vi) a change in the availability of appropriate health care coverage or a substantial increase or decrease in health care coverage costs;
 - (vii) the addition of work-related or education-related child care expenses of the obligee or a substantial increase or decrease in existing work-related or education-related child care expenses; or
 - (viii) ~~the emancipation of the child~~the child has reached the age of majority.
- ~~(3)~~(7) Any one or more of the following facts is sufficient to create a rebuttable presumption that the terms of the existing support order are unreasonable and unfair under the new circumstances:

- (i) the application of the child support guideline in § 2014 of this Title to the current circumstances of the parties results in a calculated basic support obligation that is at least 20 percent and at least \$75.00 per month higher or lower than that provided in the existing support order or, if the basic support obligation under the existing support order is less than \$75.00, it results in a calculated basic support obligation that is at least 20 percent higher or lower;
- (ii) the medical support provisions of the order established under § 2021 of this Title are not enforceable by a public authority or the obligee;
- (iii) health coverage ordered under § 2021 of this Title is not available to the child for whom the order is established by the parent ordered to provide such coverage;
- (iv) the existing support obligation is in the form of a statement of percentage and not a specific dollar amount;
- (v) the gross income of an obligor or obligee has decreased by 20 percent through no fault or choice of the party; or
- (vi) a deviation from the child support guideline was granted based on the factor identified in § 2023 (a)(4) of this Title and the child no longer resides in a foreign country or the factor is otherwise no longer applicable.

~~(4)~~(8) By itself, the fact that an obligor or obligee has become responsible for the support of an additional non-joint child since the entry of an existing support order is not a substantial change in circumstances from those prevailing when the existing order was entered and does not create a rebuttable presumption that the terms of the existing order are unreasonable and unfair. However, § 2012 of this Title shall be considered if there are other grounds which allow a modification of the existing order.

~~(5)~~(9) If an obligor is receiving per capita income, incarceration and corresponding inability to earn an income shall not serve as a basis for modification of a child support order.

~~(6)~~(10) On a motion for modification of support, the Court:

- (i) shall apply §§ 2013 and 2014 of this Title, and shall not consider the financial circumstances of either parent's spouse, if any; and

- (ii) shall not consider compensation received by a parent for employment in excess of a 40-hour week if the parent demonstrates, and the Court finds, that:
- (A) the excess employment began after entry of the existing support order;
 - (B) the excess employment is voluntary and not a condition of employment;
 - (C) the excess employment is in the nature of additional, part-time employment, or overtime employment compensable by the hour or fractions of an hour;
 - (D) the parent's compensation structure has not been changed for the purpose of affecting a support obligation; and
 - (E) in the case of an obligor, existing child support payments are at least equal to the presumptive child support obligation calculated under § 2013 of this Title based on income not excluded under this subparagraph;

provided that, in the case of an obligor who is in arrears in child support payments to the obligee, any net income from excess employment must be used to pay the arrearages until the arrearages are paid in full.

~~(7)~~(11) A modification of support may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion on the responding party and on the Band Authority or other public authority if public assistance is being furnished.

~~(8)~~(12) Subject to the requirements of § 2017 of this Title, the Court need not hold an evidentiary hearing on a motion for modification of support if both parents agree to modify the child support award and submit an Agreed Order to the Court for approval.

~~(9)~~(13) An enactment, amendment, or repeal of law does not constitute a substantial change in the circumstances for purposes of modifying a child support order except as expressly provided in such enactment, amendment, or repeal.

~~(10)~~(14) In the event that a single obligor owes child support to separate obligees, the Band Authority may move the Court to simultaneously modify all of the obligor's child support orders within the Court's jurisdiction in order to equally distribute the support amount amongst all of the children.

- (c) **Child Support on Death of Obligor.** Unless otherwise agreed in writing or expressly provided in a support order, provisions for the support of a child are not terminated by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, terminated, revoked, or commuted to a lump-sum payment, to the extent just and appropriate under the circumstances.
- (d) **Child Support on Death of Obligee.** When a custodial party who has an open case with an arrear balance receiving arrear payments becomes deceased, the Court shall make a determination as to whether the arrears should be expunged or remain outstanding. The Band Authority shall not be appointed as a trustee to disburse ongoing arrear payments to the child(ren), whether the payments should continue and the Band Authority should be appointed as a trustee to disburse ongoing arrear payments to the child(ren), regardless of whether the child(ren) have reached the age of majority.
- (1) If children ~~receiving arrear payments~~ have reached the age of majority, the children may become a party to the child support matter and may motion the Court for forgiveness of the obligor's arrears.
- (2) ~~If the Band Authority is appointed as a trustee, the Court may require regular reports on how the arrears payments have been disbursed.~~
- (e) **Automatic Termination of Support.**
- (1) Unless a support order provides otherwise, a child support obligation that specifies a specific amount for a specific child terminates with respect to that child automatically and without any action by the obligor to reduce, modify, or terminate the order when the requirements of § 2006(i) of this Title have been met.
- (2) Unless a support order provides otherwise, a child support obligation for two or more children that is not based on and does not otherwise specify a specific amount for each child continues in the full amount until all of the children for whose benefit the order was made are 18 years old unless modified by the Court. The obligor may request modification of the child support obligation under such an order when one or more of the children ~~become 18 years old~~ reach the age of majority. Upon such request, the Court shall determine the new child support obligation under all applicable provisions of this subchapter on the basis of the income of the parties at the time the modification is sought.
- (f) **Form.** The Band Authority shall prepare and make available to Court administrators, obligors, and persons to whom child support is owed a form to be submitted by the obligor or the person to whom child support is owed in support of a motion for modification of an order for support or for contempt of court.

- (g) **Child Care Exception.** Child care support must be based on actual child care expenses. The Court may provide that a decrease in the amount of child care support based on a decrease in actual child care expenses is effective as of the date the expense is decreased.

§ 2021. Medical Support.

(a) **Medical support order.**

- (1) A completed national medical support notice issued by the Band Authority or a Court order that complies with this section is a qualified medical child support order under the Federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1169(a).
- (2) Every Court order addressing child support must state:
- (i) The names, and last-known addresses, ~~and Social Security numbers~~ of the parents and the joint child that is subject of the order unless the Court prohibits the inclusion of an address ~~or Social Security number~~ and orders the parents to provide the address ~~and Social Security number~~ to the administrator of the health plan providing health care benefits for the joint child.
 - (ii) If a joint child does not presently have appropriate health care coverage, whether appropriate health care for the joint child is available and, if so:
 - (A) The parents' responsibilities for carrying health care coverage;
 - (B) The cost of premiums and how the cost is allocated between the parents; and
 - (C) The circumstances, if any, under which an obligation to provide health care coverage for the joint child will shift from one parent to the other.
 - (iii) If appropriate health care coverage is not available for the joint child, whether a contribution for medical support is required; and
 - (iv) How unreimbursed or uninsured medical expenses will be allocated between the parents.

- (b) **Determining appropriate health care coverage.** In determining whether a parent has appropriate health care coverage for a joint child, the Court must consider the following factors:
- (1) Comprehensiveness of health care coverage providing medical and dental benefits, as well as benefits pertaining to the child's vision.
 - (i) Dependent health care coverage providing medical benefits is presumed comprehensive if it includes medical, dental, and hospital coverage and provides for preventive, emergency, acute, and chronic care.
 - (ii) If both parents have dependent health care coverage providing medical and dental benefits that is presumed comprehensive under this subparagraph, the Court must determine which parent's coverage is more comprehensive by considering what other benefits are included in the coverage.
 - (2) Accessibility.
 - (i) Dependent health care coverage is accessible if the covered joint child can obtain services from a health plan provider with reasonable effort by the parent with whom the joint child resides. Health care coverage is presumed accessible if:
 - (A) Primary care is available within 30 miles of the joint child's residence and specialty care is available within 60 miles of the joint child's residence;
 - (B) The health care coverage is available through an employer and the employee can be expected to remain employed for a reasonable amount of time; and
 - (C) No pre-existing conditions exist to unduly delay enrollment in health care coverage.
 - (3) The joint child's special medical needs.
 - (4) Affordability.
 - (i) Dependent health care coverage is affordable if it is reasonable in cost.
 - (ii) If both parents have dependent health care coverage available for a joint child that is comparable with regard to comprehensiveness of medical and dental benefits, accessibility, and the joint child's special

needs, the least costly health care coverage is presumed to be the most appropriate health care coverage for the joint child.

(c) **Ordering Health Care Coverage.**

- (1) If a joint child is presently enrolled in a health care plan or plans providing medical and dental benefits, the Court must order that the parent who currently has the joint child enrolled continue that enrollment unless the parents agree otherwise or a parent requests a change in health care coverage and the Court determines that other health care coverage is more appropriate. A parent must cover the joint child under a health care plan if accessible to them at a reasonable cost.
- (2) If a joint child is not presently enrolled in a health care plan or plans providing medical and dental benefits, upon motion of a parent or the Band Authority, the Court must determine whether appropriate health care coverage providing medical and dental benefits for the joint child is available to one or both parents.
- (3) If appropriate health care coverage providing medical and dental benefits to the joint child is only available to one parent, the Court must order that parent to carry the coverage for the joint child.
- (4) If appropriate health care coverage providing medical and dental benefits to the joint child is available to both parents, the Court must order the parent with whom the joint child resides to carry the coverage for the joint child, unless:
 - (i) A parent expresses a preference for health care coverage providing medical and dental benefits to the joint child that is available to the parent with whom the joint child does not reside;
 - (ii) The parent with whom the joint child does reside is already carrying dependent health care coverage providing medical and dental benefits for other children and the cost of contributing to the premiums of the other parent's coverage would cause the parent with whom the joint child does not reside extreme hardship; or
 - (iii) The parents agree as to which parent will carry health care coverage providing medical and dental benefits to the joint child and agree on the allocation of costs.
- (5) If the exception in § 2021(c)(4)(i) or (ii) applies, the Court must determine to which parent the most appropriate health care coverage providing medical and dental benefits to the joint child is available and order that parent to carry health care coverage for the joint child.

- (6) If appropriate health care coverage providing medical and dental benefits to the joint child is not available to either parent, the Court must order the parents to contribute toward the actual health care costs of the joint child based on a pro rata share, unless § 2021(c)(7) shall apply.
- (7) If the joint child is receiving any form of public coverage, the parent with whom the joint child does not reside shall contribute a monthly amount toward the actual cost of public coverage. The monthly amount shall take into account the needs of the child and the earnings and income of the noncustodial parent.
 - (i) ~~The amount of the noncustodial parent's contribution is determined by applying the noncustodial parent's PICS to the premium schedule for public coverage. If the noncustodial parent's PICS meets the eligibility requirements for public coverage, the contribution is the amount of the premium for the highest eligible income on the appropriate premium schedule for public coverage. For purposes of determining the premium amount, the noncustodial parent's household size is equal to one parent plus the number of children who are the subject of the child support order.~~

§ 2023. Deviation from Presumptive Child Support Obligation.

- (a) **General factors.** The Court must take into account the factors listed in this section in establishing or modifying a child support obligation. These factors are in addition to the child support guideline in § 2014 of this Title and the other factors used to calculate the presumptive child support obligation under § 2013 of this Title. On the basis of the factors listed in this section, the Court may deviate upward or downward from the presumptive child support obligation. The Court may deviate from the presumptive child support obligation in order to encourage prompt and regular payment of child support, to prevent either parent or the joint child or children from living in poverty, or for other purposes. Among the factors to be considered are the following:
 - (1) All earnings, income, circumstances, and resources of each parent, including real and personal property, but excluding income from excess employment of the obligor or obligee that meets the criteria of § 2008 (b) of this Title;
 - (2) The extraordinary financial needs and resources, physical and emotional conditions, and educational needs of the child to be supported;
 - (3) The standard of living the child would enjoy if the parents were currently living together, but recognizing that the parents now have separate households;

- (4) Whether the child resides in a foreign country or more than one year that has a substantially higher or lower cost of living than this country;
- (5) Which parent is entitled to claim the child as a dependent for income tax purposes and the financial benefit that parent receives from claiming the child as a dependent;
- (6) The parents' debts as provided in §2023(b);
- (7) The obligor affirmatively demonstrates having made significant contributions toward the support of the child that have not otherwise been quantified or considered; and
- (8) Whether the obligor's total payments for court-ordered child support exceed the limitations set forth in 24 MLBS §3353.

(b) The child support order under this section shall state the amount of support that would have been available under the guidelines and include the justification for why the order varies from the guidelines.

(b)(c) Debt owed to private creditors.

- (1) In establishing or modifying a support obligation, the Court may consider debts owed to private creditors, but only if:
 - (i) The right to support has not been assigned;
 - (ii) The Court determines that the debt was reasonably incurred for necessary support of the child or parent or for the necessary generation of income.
 - (A) If the debt was incurred for the necessary generation of income, the Court may consider only the amount of debt that is essential to the continuing generation of income; and
 - (iii) The parent requesting a deviation from the presumptive child support obligation produces a sworn schedule of the debts, with supporting documentation, showing goods or services purchased, the recipient of them, the original debt amount, the outstanding balance, the monthly payment, and the number of months until the debt will be fully paid.
- (2) A schedule prepared under § 2023(b)(1)(iii) must contain a statement that the debt will be fully paid after the number of months shown in the schedule, barring emergencies beyond the parent's control.

- (3) Any deviation below the presumptive child support obligation that is based on a consideration of debts owed to private creditors must not exceed 18 months in duration. After 18 months the support obligation must increase automatically to the level determined by the Court without consideration of such debts. In addition, the Court may order one or more step increases in the support obligation during the 18-month period to reflect debt retirement.
 - (4) If payment of debt is ordered pursuant to this section, the payment must be ordered to be in the nature of child support.
- ~~(e)~~(d) **Evidence.** The Court may receive evidence on the factors in this section to determine if the presumptive child support obligation should be modified in a particular case.
- ~~(d)~~(e) **Payments assigned to a public authority.** If the child support payments are assigned to a public authority or other public agency under MINN. STAT. §256.741 § 2006(g), the Court may not deviate downward from the presumptive child support obligation unless the Court specifically finds that the failure to deviate downward would impose an extreme hardship on the obligor.
- ~~(e)~~(f) **Joint legal custody.** An award of joint legal custody is not a reason for deviation from the presumptive child support obligation.
- ~~(f)~~(g) **Self-support limitation.** If the obligor establishes that, after payment of income and payroll taxes, their monthly income is less than the monthly self-support reserve described in § 2022(a)(2) of this Title, the Court may provide for a downward deviation from the presumptive child support obligation.

Section 2. Amending Title 8, chapter 12, subchapter 2.

§ 2034. Establishing Paternity Through Court Order.

- (a) **Who may file.** A child, a child’s legal guardian, a child’s biological mother, an alleged father of a child, or the Band Authority may file a petition requesting the Court to establish paternity. The biological mother and an alleged father may file jointly.
- (b) **Petition.**
 - (1) A petition to establish paternity shall include the following:
 - (i) The names, dates of birth, addresses, and tribal affiliations, if any, of the biological mother, the alleged father(s), the child, and all others who have legal rights of custody, visitation, or support of the child;

- (ii) A short statement alleging facts to establish a reasonable possibility of the requisite sexual contact between the biological mother and alleged father;
- (iii) The marital status of the biological mother and the alleged father(s);
- (iv) The consent, if any, of the biological mother and the alleged father to establish the alleged father as the biological father of the child;
- (v) Whether any party has filed an action to determine paternity in any other court or with any agency and, if so, whether a judgment or other determination of paternity has been rendered by any other court or agency;
- (vi) A copy of the child's certified birth certificate attached as a supporting document; and
- (vii) The notarized signature of the petitioner or attorney for the petitioner verifying the truth of the information in the Petition.

(2) In a case where domestic violence has been an issue, an address is not required for the aggrieved party.

(2)(3) A paternity petition may also include a request to establish paternity by whatever means appropriate and a request that the Court issue a child support order according to § 2013 once paternity is established.

- (c) **Notice.** All parties, including the biological mother and ~~each~~ man alleged to be the biological father, shall be notified of the petition and of all hearings, and shall be given an opportunity to be heard. The party required to provide notice shall do so in compliance with the notice requirements found in the Federal Rules of Civil Procedure.
- (d) **Summons.** The summons to be served on the alleged father(s) along with the Petition shall include the following notice, in addition to providing a time and date for appearance:

NOTICE TO RESPONDENT:

- (1) You have been named in a petition alleging paternity. A judgment of paternity would legally designate the child as your child, grant parental rights to you, create the right of inheritance for the child, obligate you to pay child support until the child reaches the age of eighteen (18), or, if the child is disabled or is attending high school on a full-time basis and the Court so orders, until the child reaches the age of twenty-one (21), and make your failure to pay child support punishable by contempt of court.

- (2) You may request genetic tests which will indicate the probability that you are or are not the father of the child. The Court will order genetic tests on request by you, the Band Authority, or any other party. Any person who refuses to take court-ordered genetic tests may be punished for contempt of court.
 - (3) The petitioner has the burden of proving by a preponderance of the evidence that you are the father. If a genetic test shows that you are not excluded as the father and that the statistical probability of your being the father is ninety-two percent (92%) or higher, you are presumed to be the father. If you are adjudicated as the father, the Court may order you to pay child support for the child.
 - (4) The following defenses are available to you:
 - (i) That you were sterile or impotent at the time of conception;
 - (ii) That you did not have sexual intercourse with the mother of the child during the conception period; or
 - (iii) That another man did have intercourse with the mother of the child during the conception period.
 - (5) If you fail to appear at any state of the proceedings, including a scheduled genetic test, the Court may enter a default judgment finding you to be the father. A default judgment will take effect twenty-eight (28) days after it is served on or mailed to you, unless within those twenty-eight (28) days you present yourself to the Court and establish good cause for your failure to appear and present yourself for the genetic test. The Court's entry of a default judgment has no effect on a determination regarding children's eligibility ~~does not make a child eligible~~ for enrollment in the Mille Lacs Band of Ojibwe.
- (e) **Hearing.** The following rules apply to paternity hearings:
- (1) The mother of the child and the alleged father(s) may be compelled to testify at the hearing.
 - (2) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.
 - (3) The hearing shall be conducted by the judge with no jury.
 - (4) Paternity hearings will be closed to outside observers. Only the parties directly involved, necessary witnesses, Band Authority, and Court personnel ~~shall~~may be present at hearings. The Court may utilize its discretion to permit other

observers, provided that the Court has offered all parties the opportunity to object.

(f) **Genetic Tests.**

- (1) If the alleged father(s) is alive and available, the Court may require the child, mother, and alleged father(s) to submit to genetic tests, unless the Court determines it would not be in the best interest of the child in accordance with § 2034(i) of this Title.
- (2) An alleged father may be excused from the requirement to submit to a genetic test if the Court determines that there is no reasonable possibility that sexual contact occurred at or near the time of conception.
- (3) If genetic testing is required by the Court, such testing shall be performed by an expert in paternity genetic testing at an accredited laboratory which performs, at a reasonable cost, legally and medically acceptable genetic tests which intend to identify the father or exclude the alleged father approved by the Court.
 - ~~(i) — If such test confirms parentage, the disputing parent shall pay the cost of testing. If the test disproves parentage, the petitioner shall pay the cost of testing.~~
 - ~~(ii)~~(i) The Band Authority shall not be required to pay for any genetic testing ordered by the Court in a non-child support matter.
- (4) The Court may order additional genetic tests by other experts qualified in paternity genetic testing upon reasonable request of a party, at that party's expense.

(g) **Evidence.** The Court may consider the following types of evidence in paternity cases:

- (1) Genetic test results, including the impossibility or the statistical probability of an alleged father's paternity, presented by either expert testimony or a written report ~~accompanied by an affidavit~~ by an accredited genetic testing laboratory. The following types of genetic tests are admissible as evidence of paternity provided that the results of all tests, when taken together, either exclude an alleged father or yield a statistical probability of at least ninety-two percent (92%) that the alleged father is the biological father: DNA, HLA (Human Leukocyte Antigens), red blood cell enzyme, red blood antigen, and serum protein tests;
- (2) Evidence of sexual intercourse between the mother and the alleged father(s) at any possible time of conception;

- (3) An expert's opinion concerning the statistical probability of an alleged father's paternity, based upon the duration of the mother's pregnancy;
 - (4) Medical or anthropological evidence relating to an alleged father's paternity of the child based on tests which may be ordered by the Court and performed by experts;
 - (5) Cultural evidence, a reputation in the community as to paternity, or both; or
 - (6) Any other reliable evidence which is relevant to the issue of paternity of the child.
- (h) **Presumption of Paternity.** A man is presumed to be the biological father of a child if he and the biological mother were married at the time of the child's birth or if the child was born within three hundred (300) days after the marriage was terminated. The presumption can only be overcome by genetic testing proving another man is the father by a statistical probability of ninety-two percent (92%).
- (i) **Best Interest of the Child Not to Establish Paternity.** The Court may determine that it is not in the best interest of the child to establish paternity if:
- (1) The child was conceived as a result of rape, incest, sexual abuse of a minor, or sexual assault;
 - (2) A legal proceeding for adoption is pending before a court of competent jurisdiction; or
 - (3) The cooperation of the child's custodian in the establishment of paternity is reasonably likely to result in physical or emotional harm to the child or to the child's custodian.
- (j) **Judgment of Paternity After Failure to Appear.** If the respondent is the alleged father and fails to appear for a Court proceeding or for a genetic or other test at any time not waived by the Court, the Court may, if no good cause to the contrary exists, enter an order that the respondent is the father, which shall be served on respondent personally, or by registered or certified mail to his last known address, or by publication if the respondent's address is not known.
- (1) Such order shall take effect twenty-eight (28) days after service unless, within that time, the respondent presents to the Court evidence of good cause for his failure to appear at the proceeding or to undergo the genetic or other test.
 - (2) No default order shall be entered by the Court unless the respondent was properly served with notice of the proceeding or test at which he failed to appear in accordance with § 2034(c) and (d) and the Federal-Mille Lacs Band Rules of District Court and Rules of Civil Procedure.

- (k) **Judgment of Paternity.** The judgment or order of the Court determining the existence or nonexistence of paternity shall be based on a preponderance of the evidence and shall be final subject only to an appeal to the Band's Court of Appeals. The Court may provide for the support of children in an adjudication of parentage so ordered.
 - (1) If the judgment or order of the Court is different from the child's birth certificate, the Band Authority shall send the order to the Department of Vital Statistics of the state in which the child was born. ~~The Court shall order the child's parents to reimburse the Band Authority for any associated expenses.~~
- (l) **Reopening Default Judgment of Paternity.** A default judgment declaring a person to be the father of a child may be reopened upon petition for good cause shown within ninety-one (91) calendar days of the default judgment.
- (m) **Time for Filing Paternity Action.** A petition to determine paternity may be filed at any time, but only for any child up to and including at least 18 years of age, for the purpose of establishing the existence of a father and child relationship. If a petition to determine paternity is brought before the birth of the child, no hearing or other proceeding shall be conducted until after the birth unless the court shall determine that an action is necessary in order to preserve testimony.
- (n) **Hearing Closed, Records Sealed.** Paternity proceedings shall be closed and all records shall be sealed except as ordered by the Court for the purpose of requesting an amended birth certificate, or for any purpose consistent with the best interest of the child.

§ 2035. Establishing Paternity by Acknowledgement.

- (a) **Request for recognition.** The mother and alleged father of a child born to a mother who was not married to the child's alleged father nor to any other man when the child was conceived nor when the child was born may, in a writing signed by both of them before a notary public and filed with the Court, state and acknowledge under oath that they are the biological parents of the child and wish to be recognized as the biological parents.
 - (1) The recognition must be on the form prepared by the Band Authority provided by the state in which the child was born under § 2035(f), except that it may also include the joinder in recognition provisions under § 2035(b). The requirement that the mother not be married when the child was conceived nor when the child was born does not apply if her husband or former husband joins in the recognition under § 2035(b).

- (b) **Joinder in recognition by husband.** A man who is a presumed father under § 2034(h) of this Title may join in a recognition of parentage that recognizes that another man is the child's biological father.
- (1) The man who is the presumed father under § 2034(h) must sign an acknowledgment under oath before a notary public that he is renouncing the presumption under § 2034(h) and recognizing that the father who is executing the recognition under this section is the biological father of the child.
 - (2) A joinder in a recognition under this paragraph must be executed within one year after the child's birth and the joinder must be filed with the Court.
 - (i) The joinder must be on a form prepared by the Band Authority.
 - (ii) Failure to properly execute a joinder in a recognition does not affect the validity of the recognition under this section.
 - (iii) A joinder without a corresponding recognition of parentage has no legal effect.
- (c) **Revocation of recognition.** A recognition may be revoked in a writing signed by the mother or father before a notary public and filed with the Court within sixty (60) calendar days after the recognition is executed or the date of a hearing in an action relating to the child in which the revoking party is a party.
- (1) A joinder in a recognition may be revoked in a writing signed by the person who executed the joinder and filed with the Court within sixty (60) calendar days after the joinder is executed.
 - (2) Upon receipt of a timely revocation of the recognition of parentage or joinder in a recognition, the Court shall forward a copy of the revocation to the non-revoking parent, or, in the case of a joinder in a recognition, to the mother and father who executed the recognition, and the recognition shall have no further force or effect.
- (d) **Effect of recognition.** Once a recognition has been properly executed and filed with the Court in accordance with § 2035(a), if there are no competing presumptions of paternity under § 2034(h) of this Title or if any such presumption has been renounced under § 2035(b), and if neither the recognition nor the joinder in recognition, if any, has been revoked under § 2035(c) and no other recognition has been filed for the same child, the recognition:
- (1) has the force and effect of a judgment or order determining the existence of the parent-child relationship, is determinative for all purposes related to the existence of the parent and child relationship, and is entitled to full faith and credit in other jurisdictions;

- (2) precludes any further action to determine parentage regarding the signatory of the recognition, except as provided in § 2035(e); and
- (3) is a basis for bringing an action:
 - (i) to award legal and physical custody or parenting time to either parent, provided that, until an order is entered granting custody to another, the mother shall have sole custody of the child;
 - (ii) to establish a child support obligation, which may be retroactive for up to two years immediately preceding the commencement of the action;
 - (iii) to obtain an order for contribution to the reasonable expenses of the mother's pregnancy and confinement; and/or
 - (iv) to obtain an order for reimbursement of the costs of blood or genetic testing.

(e) **Action to vacate recognition.**

- (1) An action to vacate a recognition of paternity may be brought by the mother, father, husband or former husband who executed a joinder, the child who was the subject of the recognition, or the ~~Band Authority~~state in which the child was born.
 - (i) A mother, father, or husband or former husband who executed a joinder must bring the action within one year of the execution of the recognition or within six months after the person bringing the action obtains the results of blood or genetic tests that indicate that the person who executed the recognition is not the father of the child.
 - (ii) A child must bring an action to vacate within six months after the child obtains the results of blood or genetic tests that indicate that the person who executed the recognition is not the father of the child, or within one year of reaching the age of majority, whichever is later.
 - (iii) If the Court finds a prima facie basis for vacating the recognition, the Court shall order the child, mother, father, and husband or former husband who executed a joinder to submit to blood or genetic tests.
 - (A) If the Court issues an order for the taking of blood or genetic tests, the Court shall require the party seeking to vacate the recognition to make advance payment for the costs of the blood or genetic tests.

- (B) If the party fails to pay for the costs of the blood or genetic tests, the Court shall dismiss the action to vacate with prejudice.
 - (C) The Court may also order the party seeking to vacate the recognition to pay the other party's reasonable attorney's fees, costs, and disbursements.
 - (D) If the results of the blood or genetic tests establish that the person who executed the recognition is not the father, the court shall vacate the recognition.
 - (E) If a recognition is vacated, any joinder in the recognition under § 2035(b) is also vacated.
 - (F) The Court shall terminate the obligation of a party to pay ongoing child support based on the recognition.
 - (G) A modification of child support based on a recognition may be made retroactive with respect to any period during which the moving party has pending a motion to vacate the recognition but only from the date of service of notice of the motion on the responding party.
- (2) The burden of proof in an action to vacate the recognition is on the moving party. Such request must be on the basis of fraud, duress, or material mistake of fact.
- (i) The legal responsibilities in existence at the time of an action to vacate, including child support obligations, may not be suspended during the proceeding, except for good cause shown.
- (f) **Recognition form.** ~~The Band Authority~~ state in which the child was born shall ~~prepare~~ provide a form for the recognition of parentage under this section. ~~In preparing the form, the Band Authority shall consult with the individuals specified in § 2035(g).~~ The recognition form must be drafted so that the force and effect of the recognition, the alternatives to executing a recognition, and the benefits and responsibilities of establishing paternity are clear and understandable. The form must include a notice regarding the finality of a recognition, the revocation procedure under § 2035 (c), and the procedure for vacating the recognition under § 2035 (e). The form must include a provision for each parent to verify that the parent has read or viewed the educational materials prepared by the Band Authority describing the recognition of paternity. The individual providing the form to the parents for execution shall provide oral notice of the rights, responsibilities, and alternatives to executing the recognition. Notice may be provided by audiotape, videotape, or similar means. Each parent must receive a copy of the recognition.

- (g) **Paternity educational materials.** ~~The Band Authority~~ state in which the child was born shall prepare provide educational materials for new and prospective parents that describe the benefits and effects of establishing paternity. The materials must include a description and comparison of the procedures for establishment of paternity through a recognition of parentage under this section and an adjudication of paternity under § 2034 of this Title. The Band Authority shall consider the use of innovative audio or visual approaches to the presentation of the materials to facilitate understanding and presentation. In preparing the materials, the Band Authority shall consult with child advocates and support workers, battered women’s advocates and advocates for domestic abuse victims, social service providers, educators, attorneys, hospital representatives, and people who work with parents in making decisions related to paternity. The Band Authority will make the materials available without cost to hospitals, requesting agencies, and other persons for distribution to new parents.
- ~~(h) — Hospital distribution of educational materials; recognition form.~~ Hospitals that ~~provide obstetric services and the Band Authority shall distribute the educational materials and recognition of parentage forms prepared by the Band Authority to new parents and shall assist parents in understanding the recognition of parentage form in accordance with § 2035 (f).~~
- ~~(i)~~(h) **More than one recognition.** If the Court receives more than one recognition of parentage for the same child, the Court shall notify the signatory on each recognition that the recognition is no longer effective and that each man has only a presumption of paternity.

Section 3. Amending Title 8, chapter 12, subchapter 3.

§ 2051. Recognition and Registration of Child Support Orders from Foreign Jurisdictions.

- ~~(a)~~ The Band Authority is responsible for receiving and processing income withholding orders from States, Tribes, and other entities, and ensuring that such orders are properly and promptly served on employers and other payers of funds within the Band’s jurisdiction. The Band Authority will extend the full range of services available to respond to all requests from, and cooperate with, State and Tribal IV-D agencies.
- ~~(b)~~ The Band, the Court, and the Band Authority will recognize child support orders issued by other Tribes and Tribal organizations and by States, in accordance with the requirements under the Federal Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B.
- ~~(c)~~ The Band Authority is responsible to file a Motion to Register a Foreign Order with the Court upon the receipt of the request to enforce a foreign order. The Motion must be accompanied by a copy of:

- (1) The court order from the jurisdiction that is requesting enforcement;
 - (2) A copy of the Federal Notice of Income Withholding;
 - (3) A certified copy of a child support account statement prepared by the foreign jurisdiction; and
 - (4) A Proposed Order for Withholding.
- (d) The Court may not delay enforcement of any foreign child support orders.
- (e) The Band Authority must promptly serve written notice of income withholding, showing the current child support obligation and the amount of arrearage, on the obligor before serving the notice of income withholding and a copy of the Court's order establishing the child support obligation on the employer or other payer of funds.
- (f) The obligor may, at any time, waive the written notice required by § 2051(e).
- (g) The obligor may object to the registration of the foreign order only based on:
- (1) A mistake of identity; and/or
 - (2) A mistake of fact that the amounts to be withheld are incorrect based on the foreign court order.
- (h) If the obligor fails to promptly move the Court for an Order denying the registration of the foreign order, the Band Authority shall serve a copy of the federal notice of income withholding, showing the current child support obligation and the amount of the arrearage, a copy of the Court's order, and the provisions of this subchapter on the employer or other payer of funds.
- (i) If the obligor files an objection based on § 2051(e) the Court shall hold a hearing on the motion and notify the parties of its decision.
- (1) If the Court finds that there has been a mistake of identity or a mistake of fact that the withholding is not the amount of the foreign jurisdiction's order, the Court shall enter an order denying withholding.
 - (2) If the Court finds that there was not a mistake of identity or a mistake of fact, the Court shall order withholding to begin no later than the first pay period that occurs after 14 days following the date of the hearing.

§ 20521. Withholding.

(a) Court-ordered child support shall be withheld from the obligor's income, regardless of the source, in accordance with this subchapter.

(b) ~~If a determination is made that an obligor has made excess child support payments, the Band Authority must be responsible to immediately reimburse the obligor. To recover its costs, the Band Authority may motion the Court to recoup the excess payments from the obligee, shall:~~

~~(1) Apply the amount of the overpayment to reduce the amount of any child support or maintenance-related arrearages or debts owed to the obligee; and~~

~~(2) If an overpayment exists after the reduction of any arrearage or debt, reduce the amount of the child support remitted to the obligee by an amount no greater than 20% of the current monthly support or maintenance obligation and remit this amount to the obligor until the overpayment is reduced to zero (0).~~

§ 20532. Withholding Upon Notice from Obligee or Public Authority.

~~(a) Except as provided in § 2052(c), an employer or other payer of funds must withhold income or other payments from an obligor upon notice from an obligee or public authority when the following conditions are met:~~

~~(1) the obligor is at least 30 days in arrears in making Court-ordered child support payments to the obligee;~~

~~(2) the obligee or public authority serves written notice of income withholding, showing the current child support obligation and the amount of the arrearage, on the obligor at least 20 days before serving the notice of income withholding and a copy of the Court's order establishing the child support obligation on the employer or other payer of funds;~~

~~(3) within the 20-day period, the obligor fails to move the Court for an order denying or changing the amount of withholding on the grounds that an arrearage of at least 30 days did not exist as of the date of the notice of income withholding, or that the notice contains a mistake of fact with respect to the amount of the current child support obligation or the amount of the arrearage; and~~

~~(4) the obligee or public authority serves a copy of the notice of income withholding, showing the current child support obligation and the amount of the arrearage, a copy of the Court's order, and the provisions of this subchapter on the employer or other payer of funds.~~

~~(b) The obligor may, at any time, waive the written notice required by § 2052(a)(2).~~

~~(e)(a) Income or other payments shall not be subject to withholding where:~~

~~(1) Either the custodial or noncustodial parent demonstrates, and the Court enters a finding, that there is good cause not to require withholding of income or other payments; or~~

~~(2) A signed written agreement is reached between the noncustodial and custodial parent, which provides for an alternative to withholding, and the agreement is reviewed and entered into the record by the Court.~~

~~(2)(b) An employer or other payer of funds must withhold income or other payments from an obligor upon notice from an obligee or Band Authority when the obligor has failed to make court ordered child support payments and arrears has accumulated in an amount equal to at least one (1) month's current support.~~

§ 20543. Withholding Hearing; Service of Withholding Order Band Authority Requirements.

~~(a) Within 30 days from the date an obligor files a motion with the Court to deny or change the amount of withholding under § 2052(a)(3) of this Title, the Court shall hold a hearing on the motion and notify the parties of its decision.~~

~~(1) If the Court finds an arrearage of at least 30 days did not exist as of the date of the notice of income withholding, the Court shall enter an order denying withholding.~~

~~(2) If the Court finds that an arrearage of at least 30 days existed as of the date of the notice of income withholding, but that there was a mistake in the amount of the current support obligation or the amount of the arrearage, the Court shall order income withholding in the corrected amount. If the Court finds there was no mistake of fact, the Court shall order income withholding in the amount specified in the notice. If the Court orders income withholding, it shall order withholding to begin no later than the first pay period that occurs after 14 days following the date of the hearing.~~

~~(b)(a) The Band Authority will promptly refund amounts which have been improperly withheld.~~

~~(e)(b) If the Court issues an order for withholding under § 2053(a) this Title, it shall provide a copy of the order to the Band Authority. The Band Authority shall serve notice of the order on the obligor's employer or other payer of funds using the standard Federal withholding form Notice of Income Withholding together with a copy of the order. The Band Authority must allocate 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.

§ 20554. Effect of Notice or Order for Withholding; Commencement and Amount of Withholding; ~~Orders from Other Jurisdictions~~ Employer Responsibilities.

- (a) Notwithstanding any law to the contrary, a notice of withholding, served in accordance with ~~§ 2052(a) of this Title or a withholding order issued and served in accordance with § 2053 of this Title~~, is binding on an employer or other payer of funds who is subject to the jurisdiction of the Band
- (b) Withholding shall begin no later than the first pay period that occurs after 14 days following the date of service of the notice to the obligor's employer or other payer of funds under ~~§ 2052(a)(4) of this Title or § 2053(e) of this Title~~.
 - (1) An employer shall not discharge, refuse to hire, or otherwise discipline an employee as a result of a wage or salary withholding authorized by this subchapter.
 - (2) An employer who is found to have violated this provision shall be subject to a fine of \$500.00.
- (c) ~~Except as provided in § 2054(d) and (h), a~~ An employer or other payer of funds shall withhold and pay to the obligee or public authority, as specified in the notice served through the Federal Notice of Income Withholding form on the employer or other payer of funds:
 - (1) the obligor's current child support obligation; and
 - (2) an additional amount not to exceed 20 percent of the current monthly obligation until the arrearage is paid.
- (d) An employer or other payer of funds shall not withhold an obligor's earnings more than the maximum amount permitted under the Consumer Credit Protection Act, 15 U.S.C. § 1673(b)(2).
- (e) Absent an order to the contrary, if an arrearage exists at the time a support order would otherwise terminate, income withholding shall continue in effect or may be implemented in an amount equal to the support order until all arrears have been paid in full.
- (f) If an employer or other payer of funds fails to withhold income or other payments in accordance with this subchapter, the employer or other payer of funds will be liable for the accumulated amount the employer or other payer of funds should have withheld from the obligor.


- ~~(g) — The Band Authority is responsible for receiving and processing income withholding orders from States, Tribes, and other entities, and ensuring that such orders are properly and promptly served on employers and other payers of funds within the Band’s jurisdiction. The Band Authority will extend the full range of services available to respond to all requests from, and cooperate with, State and Tribal IV-D agencies.~~
- ~~(h) — The Band, the Court, and the Band Authority will recognize child support orders issued by other Tribes and Tribal organizations and by States, in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B. The Court may not delay enforcement of any foreign child support orders.~~

EFFECTIVE DATE. This bill shall take effect immediately upon signature by the Chief Executive, or lack of a veto, as provided in 3 MLBS § 17.

**Act 09-26
(Band Assembly Bill 22-01-09-26)**

Introduced to the Band Assembly on this
Twenty-fifth day of February in the year
Two thousand twenty-six.

Passed by the Band Assembly on this
Twenty-fifth day of February in the year
Two thousand twenty-six.


Sheldon Boyd, Speaker of the Assembly

APPROVED

Date: 3-4-26


Virgil Wind, Chief Executive

OFFICIAL SEAL OF THE BAND

