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CHAPTER 4-4 EXCLUSION AND REMOVAL

§4-4-1 Definitions

(a) "Exclusion and removal" means the temporary or permanent banishment or expulsion of an individual from within the boundaries of the Nez Perce Reservation.

(b) "Fraud" means a false representation of a matter of fact by words, conduct, false or misleading allegations, or by concealment of a fact which should have been disclosed which is intended to and does in fact deceive another to his legal injury or detriment.

§4-4-2 Persons Subject to Exclusion and Removal

All persons except those authorized by federal law to be present on tribal land and persons with interests in real property on the reservation may be excluded or removed from the Nez Perce Reservation.

§4-4-3 Grounds for Exclusion and Removal

In addition to any remedy or penalty provided by this code, a person subject to removal and exclusion under this chapter may be subject to a civil proceeding for exclusion or removal from the Nez Perce Reservation upon any one or more of the following grounds:

(a) doing or attempting to do any act upon the reservation which unlawfully threatens the peace, health, safety, morals or general welfare of the tribe, its members, or other persons;

(b) any act causing serious physical loss or damage of any nature to the property of the tribe or any reservation resident;

(c) entering an area in violation of any order of the Nez Perce Tribal Executive Committee designating such area as closed;

(d) failing or refusing to pay any taxes, rents or other charges justly due the Nez Perce Tribe or any entity of the tribe, after reasonable notice and an opportunity to pay, unless such charges or fees are related to an interest in real property;

(e) mining, prospecting, cutting timber or vegetation or other use, abuse, taking of or damage to tribal property without authorization;

(f) committing a fraud;

(g) trading or conducting business within the reservation in violation of tribal law;

(h) hunting, fishing or trapping without lawful authority or permission or in violation of tribal or federal law;

(i) disturbing or excavating items, sites or locations of religious, historic or scientific significance without the authority of the tribe or in violation of tribal or federal law; or

- (j) failing to obey an order of the Tribal Court.

§4-4-4 Proceedings for Exclusion

The prosecutor may bring an exclusion action pursuant to this chapter on behalf of the tribe by filing a complaint in Tribal Court. Before filing a complaint, the prosecutor shall cause any proposed exclusion and removal under this chapter to be investigated sufficiently to determine whether, in his discretion, an exclusion action shall be filed on behalf of the tribe. The filing of a complaint under this chapter shall constitute a civil cause of action.

§4-4-5 Hearing on Exclusion and Removal

(a) Upon the filing of a complaint for exclusion, the tribal prosecutor shall promptly cause notice and a copy of the complaint to be served personally or by registered mail upon the respondent. The notice shall state the time and place at which a tribal court hearing will be held on the complaint and that the respondent may appear with counsel, if he desires, and present evidence in his own behalf.

(b) The burden of proof shall be upon the tribal prosecutor to prove by a preponderance of the evidence that the respondent committed one or more of the acts set forth in this chapter. If the respondent is found to have committed such act(s), the Court shall issue an order of exclusion and removal which shall include the duration of the exclusion. If the respondent is not present at such hearing or if a decision is not rendered until after the hearing, appropriate notice shall be served on the respondent in the manner provided above informing him of the action of the Tribal Court and such notice shall include a copy of any order or exclusion and/or removal.

§4-4-6 Appeals

Any person upon whom an order of exclusion and removal is issued under this chapter may appeal such order to the Nez Perce Court of Appeals as provided by this code.

§4-4-7 Enforcement of Orders of Exclusion and Removal

If any person ordered excluded from the Nez Perce Reservation under this title does not obey such order, the Tribal Court shall issue one or more of the following orders:

- (a) direct any tribal police officer to remove the respondent from the reservation or portions of the reservation covered by the exclusion order at the respondent's expense;
- (b) direct any tribal police officer to prevent the respondent from reentry onto any reservation lands covered by the exclusion order for so long as the order remains in effect;
- (c) find the respondent in contempt.

§4-4-8 Emergency Exclusion and Removal Without Prior Hearing (adopted 10/12-13/99)

(a) Whenever the Tribal Court finds that there is an immediate need to order the exclusion and/or removal of a person from the Nez Perce Reservation and that the granting of notice and opportunity to be heard to such persons prior to making such order would cause a delay seriously detrimental to the interests of the Tribe, its members, or the other residents of the reservation, the Tribal Court shall immediately order such exclusion and/or removal and provide the notice and opportunity for review of such decision outlined below.

(b) Whenever the exclusion and/or removal of a person is ordered without a prior hearing as provided herein, the person shall be served with a notice of such action. Such notice shall state the nature and extent of the exclusion and/or removal so ordered, shall state the reasons why no prior hearing was held, shall inform the person that once he has complied with the order, he may immediately petition the Tribal Court for a hearing to reconsider the order, that he may be represented by counsel at his own expense at the hearing and present evidence in his own defense, and shall inform him that his compliance with such order shall be enforced by Tribal Law Enforcement Officers. A copy of the order shall be served with the notice and such service may be accomplished by personal service or, if personal service is not reasonably possible, by mailing to the person by United States registered mail, return receipt requested, at his last known address.

(c) Upon receipt of a petition for a hearing as provided in § 4-4-8(b), the Tribal Court shall schedule a hearing to allow the person to present evidence. Such hearing shall be held within ten business days of receipt of the petition, provided, however, that the order of exclusion and/or removal shall remain in force pending hearing and a decision thereon, except for the limited purpose of attending a hearing.

(d) The Tribal court shall, as a result of such hearing, either affirm, modify or rescind its previous order, and shall give the person notice of such decision in the same manner as provided for service of the notice in § 4-4-8(b).

(e) Nothing in this Section shall in any way limit Tribal Law Enforcement's authority to detain and eject any non-Indian offender.

CHAPTER 4-5 DOMESTIC RELATIONS

INTRODUCTORY PROVISIONS

§4-5-1 Definitions (amended by NPTEC 7/8/03)

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (a) "Annulment" or "nullity" means the act of declaring a marriage void.
- (b) "Business day" means a day on which Nez Perce tribal offices are open for regular business.
- (c) "Child Support Enforcement Program (CSEP)" means the Nez Perce Tribe Child Support Enforcement Program.
- (d) "Current support" means the present month's required support pursuant to an order that is to be paid in increments, excluding amounts ordered to satisfy a delinquency.
- (e) "Delinquency" means the amount of unpaid support that has accrued from the date a child support order is entered or an amount due on a judgment for support for a prior period.
- (f) "Dependent child" means any child for whom a support order has been established or for whom a duty of support is owed.
- (g) "Dissolution" or "divorce" means the act of terminating a marriage not including annulment.
- (h) "Duty of support" means the duty to provide for the needs of a dependent child, which may include the costs of necessary food, clothing, shelter, education, and health care including health insurance premiums for the child. The duty includes any obligation to make monetary payment, to pay expenses or to reimburse another person or an agency for the cost of necessary support furnished a dependent child. The duty may be imposed by court order, by operation of law, or otherwise.
- (i) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.
- (j) "Employer" includes the Nez Perce Tribe and any person or entity who pays or owes income to the obligor.
- (k) "Estate" means the total property of any kind owned by a deceased person prior to the distribution of that property in accordance with the terms of a will, or, when there is no will, by the laws of inheritance in the state of domicile of the deceased.

(l) "Income" means any form of periodic payment to an individual, regardless of source, including, but not limited to, wages, salary, bonus, commission, compensation for services rendered or goods sold, compensation as an independent contractor; and notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy support obligations, specifically includes periodic payments pursuant to pension and annuity or retirement programs, or disability or insurance policies of any type, with the following exceptions:

- (1) Unemployment compensation payments made under chapter 13, title 72, Idaho Code or under the jurisdiction of any other state or tribe, shall be exempt from the provisions of this chapter;
- (2) Worker's compensation payments made under chapter 8, title 72, Idaho Code or under the jurisdiction of any other state or tribe, shall be exempt from the provisions of this chapter;
- (3) Public assistance payments made under the Tribal TANF or General Assistance Program, or title 56, Idaho Code, shall be exempt from the provisions of this chapter.

(m) "In-Kind Payments" as permitted by the trier of fact includes, but is not limited to, the provision of traditional foods and services.

(n) "Maintenance" means the furnishing by one person to another of support, for the means of living including food, clothing, shelter and other reasonable needs.

(o) "Marriage" means the civil status, condition or relation of a man and woman considered united in law as husband and wife.

(p) "Minor" or "Child" means any person under the age of eighteen (18).

(q) "Obligee" means any person, tribal agency, state agency or bureau entitled by order to receive child support payments or child and spousal support payments, or the person or agency to whom the right to receive or collect support has been assigned.

(r) "Obligor" means any person obligated by order to pay child or spousal support.

(s) "Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse or former spouse who is living with a child or children for whom the individual also owes support.

(t) "Support order" means a judgment, decree, or order issued by the Nez Perce Tribal Court creating a duty of support for a minor child, spouse or former spouse, as herein defined; or a judgment, decree, order or administrative ruling issued by a court or agency of competent jurisdiction of another tribe, state or country, creating a duty of support for a minor child, spouse or former spouse, as herein defined, which has been registered or otherwise made enforceable by this tribe.

§4-5-2 Scope

(a) This chapter will apply to the creation and dissolution of a marriage of which at least one party to the marriage is an Indian.

(b) Marriages performed under this chapter may be performed within or without the exterior boundaries of the Nez Perce reservation. (amended 9/12/06)

§4-5-3 Enforcement

(a) In addition to any other applicable remedy or penalty provided by this code, any person who violates the provisions of this chapter or misrepresents any fact required to be stated on a certificate form or marriage license may be subject to fine for a civil infraction. The Tribal Court may require reasonable security for a party's payments required under this chapter and may enforce such security by any applicable remedy.

(b) Child Support Enforcement Program Authorized to Act on Behalf of Tribe. Having properly received and processed an application by a custodial or non-custodial parent, Child Support Enforcement Program may enforce child support actions or orders, including temporary child support actions, on behalf of the Nez Perce Tribe, pursuant to any provisions or amendments provided for by the Nez Perce Tribal Code. (section added by NPTEC 10/13/09)

A filing fee shall not be assessed in cases brought on behalf of the Nez Perce Tribe.

§4-5-4 Marriage License

(a) The Clerk of Court may issue a marriage license form to parties:

- (1) who reasonably appear eligible to marry; and
- (2) upon payment of a fee to be established by the Court.

(b) No person shall conduct a marriage ceremony without first requesting that the parties submit a marriage license. Once the marriage ceremony is complete, such person shall properly endorse the license and return it to the court clerk for filing. Upon receipt and filing of the marriage license the clerk shall issue a marriage certificate to the parties involved.

§4-5-5 Marriage Ceremony (amended by NPTEC 6/23/15)

(a) The marriage ceremony may be conducted by:

- (1) a certified member of the clergy having authority to marry;
- (2) a current judge of the Nez Perce Tribal Court; or
- (3) the current Chairman of NPTEC.
- (4) a person recognized by the community as spiritual leader and whose status

has been determined by the Nez Perce Tribal Executive Committee according to the Policy for Approving Officials to Conduct Marriage Ceremonies.

- (b) The person conducting the marriage ceremony must be reasonably assured of:
 - (1) the identity of the parties;
 - (2) the real and full names and places of residence of the parties; and
 - (3) that the parties have a right to marry in accordance with this chapter.

(c) No particular form for the ceremony of a marriage is required, but the parties must declare, in the presence of at least two (2) witnesses and the person solemnizing the marriage that they take each other as husband and wife.

ANNULMENT

§4-5-6 Void and Voidable Marriages

A marriage is illegal and void from the beginning if:

- (a) either party is less than eighteen (18) years old unless such party:
 - (1) has the written and properly notarized consent of his parent or guardian to marry; or
 - (2) if after obtaining the age of eighteen (18), freely cohabits with the other as husband or wife.
- (b) either party was of unsound mind unless after coming to reason, such party freely cohabits with the other as husband or wife;
- (c) the consent of either party is obtained by fraud or duress unless such party afterward, with full knowledge of the facts constituting the fraud or regardless of the duress used, freely cohabited with the other as husband or wife;
- (d) the marriage is between parents and children, ancestors and descendants of every degree, brothers and sisters of the half as well as the whole blood, uncles and nieces, or aunts and nephews or first cousins whether the relationship is legitimate or illegitimate;
- (e) the marriage is contracted by a person during the time he is legally married to another unless the actor believes the original spouse to be dead at the time.

§4-5-7 Annulment Actions/Judgment

- (a) An action to obtain a decree of nullity of marriage may be commenced if:
 - (1) the marriage is in violation of the age requirements of this chapter and the

action is brought by the under aged party to the marriage within four (4) years after arriving at the age of eighteen (18), or by a parent, guardian, or other person having charge of such party, at any time before such party reaches the age of eighteen (18);

- (2) either party is legally married to another, and the action is brought by either party or by such original spouse;
- (3) either party was of unsound mind and the action is brought by such party, or a relative or guardian of such party;
- (4) the marriage is between relatives and the action is brought by another relative of the parties or the tribe;
- (5) consent of either party was obtained by fraud and the action is brought by the party injured, within four (4) years after the discovery of the facts constituting the fraud; or
- (6) consent of either party was obtained by force and the action is brought by the party injured, within four (4) years after the marriage.

§4-5-8 Legitimacy of Children

It shall be a rebuttable presumption that children conceived during a marriage are legitimate and have rights to the estate of both parents. The Tribal Court may at any time issue necessary orders for the support of children as the circumstances require.

DISSOLUTION

§4-5-9 Dissolution of Marriage

A marriage is dissolved by:

- (a) the death of one of the parties; or
- (b) the judgment of the Tribal Court or any other court of competent jurisdiction decreeing a dissolution and restoring the parties to the state of unmarried persons.

§4-5-10 Grounds for Dissolution

A dissolution may be granted if one or other of the parties alleges irreconcilable differences in the marriage.

§4-5-11 Proceedings

- (a) Dissolution proceedings shall be initiated by the filing of a petition. No decree of dissolution shall be granted except after hearing before the Court.
- (b) Unless determined otherwise by the Court, or upon agreement by both parties, no

hearing on the petition for dissolution shall be held until at least twenty (20) business days after the filing of the petition. At any time prior to hearing, the Court upon application of one of the parties, may require conference of the parties in order to determine whether or not reconciliation is practicable. The Court may allow additional parties to attend the meeting as it determines appropriate. If the Court determines that as a result of the meeting, reconciliation is practicable and it is in the best interest of the parties and children, if any, it may stay the proceedings for up to ninety (90) days.

SEPARATE MAINTENANCE/CHILD SUPPORT (section amended by NPTEC 7/8/03 and moved to end of Chapter)

§4-5-12 *Temporary Alimony/Child Support (now § 4-5-50)*

§4-5-13 *Maintenance/Child Support (now § 4-5-51)*

PROPERTY RIGHTS

§4-5-14 **Property Settlement Agreement**

This chapter shall govern the property rights of married persons, subject to a written property settlement agreement between such persons entered into prior to or during the marriage. Such an agreement must be recorded in the office of the recorder of every county and/or Bureau of Indian Affairs (BIA) for property held in trust by the BIA for the benefit of either of the parties in which any real estate affected by the agreement is located. The effect of recording or non-recording of such agreement shall be the same as if the agreement were a conveyance of real property.

§4-5-15 **Separate Property**

(a) The sole and separate property of married persons shall include all property of a husband or wife:

- (1) owned by him or her before marriage or acquired after marriage by either gift, bequest, devise or descent; or
- (2) acquired with the proceeds of his or her separate property.

(b) During the marriage, a party has the management, control and sole authority to dispose of his separate property and the separate property of one spouse shall not be liable for debts contracted to with the separate property of the other.

§4-5-16 **Community Property**

(a) All other property acquired after marriage by either husband or wife is community property. The income of all property, separate or community, is community property unless the conveyance by which it is acquired provides or both spouses, by written agreement specifically so providing, declare that all or specifically designated property and the income from all or the specifically designated property shall be the separate property of one of the spouses or the income from all or specifically designated separate property be the separate property of the spouse to whom the property belongs. Such property shall be subject to the management of the

spouse owning the property and shall not be liable for the debts of the other member of the community.

(b) Property conveyed by one spouse to the other shall be presumed to be the sole and separate estate of the grantee and only the grantor spouse need execute and acknowledge the deed or other instrument of conveyance notwithstanding the provisions of section 4-5-17; provided, however, that the income from such property shall not be the separate property of the grantee spouse unless this fact is specifically stated in the instrument of conveyance.

§4-5-17 Management of Community Property

Either the husband or the wife shall have the right to manage and control the community property, and either may bind the community property by contract, except that neither the husband nor wife may sell, convey or encumber the community real estate unless the other joins in executing and acknowledging the deed or other instrument of conveyance, by which the real estate is sold, conveyed or encumbered, and any community obligation incurred by either the husband or the wife without the consent in writing of the other shall not obligate the separate property of the spouse who did not so consent; provided, however, that the husband or wife may by express power of attorney give to the other the complete power to sell, convey or encumber community property, either real or personal.

§4-5-18 Disposition of Property

(a) Unless there are compelling reasons otherwise, in the event a dissolution is granted, the Court shall dispose of the community property of the parties in substantially equal division in value or assign the property in such proportions as it deems just. In making its determination, the Court shall consider all the facts of the case and the condition of the parties.

(b) If real property is involved in the disposition of property from a decree of dissolution, its disposition shall be consistent with the just apportionment of the property and may be assigned to either party either absolutely or for a limited period subject to future disposition by the Court or sold and the proceeds divided.

CUSTODY OF CHILDREN

§4-5-19 Care and Custody of Children (amended by NPTEC 3/25/03)

(a) Unless otherwise provided by this code or court order, the parents of an unmarried child(ren) are equally entitled to his custody and responsible for his care and support. If either the father or mother is deceased or has been determined to have abandoned the family or to be unable or to have refused to take custody of the child(ren), his or her rights and responsibilities shall transfer to the other parent or grandparent(s) if neither parent is willing and able to care for the child(ren).

(b) In cases where the parents of a child(ren) are not married to each other, either parent may petition for an order of custody and child support.

(c) In cases where the parent(s) of a child(ren) are unable to provide a suitable home

or for reasons proved to a court, in a separate Minor in Need of Care hearing or similar hearings in another jurisdiction are unfit to have custody of child(ren), the grandparent(s) may petition the court for the legal/physical custody of the child(ren).

(d) The judge shall consider, the child(ren)'s wishes as to with whom he should reside.

§4-5-20 Emancipation

The rights of the parents shall be surrendered and their duties to provide care and support terminated upon the marriage or emancipation of the child. Emancipation shall be initiated by the filing of a petition with the Court by the child requesting emancipation who is over the age of sixteen (16). The Court may grant such status when the child proves that he is capable of functioning as an independent and responsible member of the community.

§4-5-21 Proceedings (amended by NPTEC 3/25/03)

(a) The Court shall provide or remand physical/legal custody, care, and education, when it is deemed in the best interest of said child(ren).

(b) In reaching a decision on custody, and placement and visitation of a child(ren) the Court shall consider all relevant factors including:

- (1) the wishes of the child(ren) as to his custody and the older the child(ren), the more weight shall be given by the trier of fact;
- (2) the wishes of the biological/legal parent(s);
- (3) the relationship between the child(ren) and his parent(s) and siblings;
- (4) the child(ren)'s adjustment or lack of adjustment, to a new home, school, or community;
- (5) the need to promote continuity and stability in the life of the child(ren).

CHILD CUSTODY JURISDICTION

§4-5-22 Purposes of this Sub-title - Construction of Provisions

Solely for purposes of this sub-title, the Nez Perce Reservation shall be considered a "state."

- (a) The general purposes of this sub-title are to:
- (1) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;
 - (2) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in

the interest of the child;

- (3) assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;
- (4) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;
- (5) deter abductions and other unilateral removals of children undertaken to obtain custody awards;
- (6) avoid relitigation of custody decisions of other states in this state insofar as feasible;
- (7) facilitate the enforcement of custody decrees of other states;
- (8) promote and expand the exchange in information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and
- (9) make uniform the law of those states which enact it.

(b) This sub-title shall be construed to promote the general purposes stated in this section.

§4-5-23 Definitions

As used in this sub-title:

- (a) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;
- (b) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person;
- (c) "Custody proceeding" means proceedings in which a custody determination is one of several issues, and includes child neglect and dependency proceedings;
- (d) "Decree" or "custody decree" means a custody determination contained in a judicial decree made in a custody proceeding, and includes an initial decree and a modification decree;
- (e) "Home state" means the state in which the child immediately preceding the time

involved lived with his parents, a parent, or a person acting as parent, for at least six (6) consecutive months, and in the case of a child less than six (6) months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six (6) month or other period;

(f) "Initial decree" means the first custody decree concerning a particular child;

(g) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the Court which rendered the prior decree or by another court;

(h) "Physical custody" means when a child resides with or is under the care and supervision of a parent or party;

(i) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody; and

(j) "State" means the Nez Perce Reservation, any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

§4-5-24 Jurisdiction

(a) The Tribal Court has jurisdiction to make a child custody determination by initial or modification decree if:

(1) the state:

(A) is the home state of the child at the time of commencement of the proceeding; or

(B) had been the child's home state within six (6) months before commencement of the proceeding and the child is sent from the state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state;

(2) it is in the best interest of the child that the Court assume jurisdiction because:

(A) the child and his parents, or the child and at least one contestant, have a significant connection with this state; and

(B) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationship;

(3) the child is physically present in this state and:

- (A) the child has been abandoned; or
 - (B) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or
- (4)
- (A) it appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (1), (2), or (3) of this section, or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child; and
 - (B) it is in the best interest of the child that the Tribal Court assume jurisdiction.

(b) Except under paragraphs (3) and (4) of subsection (a) of this section, physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on the Court to make a child custody determination.

(c) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

§4-5-25 Notice and Opportunity to be Heard

Before making a decree under this sub-title, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons are outside this state, notice and opportunity to be heard shall be given pursuant to section 4-5-26.

§4-5-26 Notice to Persons Outside this State -- Submission to Jurisdiction

- (a) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be:
- (1) by personal delivery outside this state in a manner prescribed for service of process within this state;
 - (2) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;
 - (3) by any form of mail addressed to the person to be served and requesting a receipt; or
 - (4) as directed by the Court, including publication, if other means of notification are ineffective.

(b) Notice shall be served, mailed, delivered, or last published at least twenty (20) days before any hearing.

(c) Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(d) Notice is not required if a person submits to the jurisdiction of the Court.

§4-5-27 Simultaneous Proceedings in other States

(a) The Court shall not exercise its jurisdiction under this sub-title if at the time of filing the petition of proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this subtitle, unless the proceeding is stayed by the Court of another state because the Tribal Court is a more appropriate forum or for other reasons.

(b) Before hearing the petition in a custody proceeding the Court shall examine the pleadings and other information supplied by the parties under section 4-5-30 and shall consult the child custody registry established under section 4-5-38, concerning the pendency of proceedings with respect to the child in other states. If the Court has reason to believe that proceedings may be pending in another state it shall direct any inquiry to the state court administrator or other appropriate official of the other state.

(c) If the Court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the Court assumed jurisdiction it shall stay the proceeding and communicate with the Court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with sections 4-5-41 through 4-5-44. If the Court has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the Court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the most appropriate forum.

§4-5-28 Inconvenient Forum

(a) If the Court has jurisdiction under this sub-title to make an initial or modification decree, it may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(b) A finding of inconvenient forum may be made upon the Court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(c) In determining if it is an inconvenient forum, the Court shall consider if it is in the

interest of the child that another state assume jurisdiction. For this purpose, it may take into account the following factors, among others:

- (1) if another state is or recently was the child's home state;
- (2) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;
- (3) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;
- (4) if the parties have agreed on another forum which is no less appropriate; and
- (5) if the exercise of jurisdiction by the Court would contravene any of the purposes stated in §4-5-22.

(d) Before determining whether to decline or retain jurisdiction the Court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the most appropriate court and that a forum will be available to the parties.

(e) If the Court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(f) The Court may decline to exercise its jurisdiction under this chapter if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(g) If it appears to the Court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings, necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the Court for remittance to the proper party.

(h) Upon dismissal or stay of proceedings under this section the Tribal Court shall inform the Court found to be the more appropriate forum of this fact, or if the Court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the Court administrator or other appropriate official for forwarding to the appropriate court.

(i) Any communication received from another state informing the Tribal Court of a finding of inconvenient forum because the Court is the more appropriate forum shall be filed with the clerk of the Court. Upon assuming jurisdiction, the Court shall inform the original court of this fact.

§4-5-29 Jurisdiction Declined by Reason of Conduct

(a) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the Court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(b) Unless required in the interest of the child and subject to subsection (a) of section 4-5-35, the Court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the Court subject to subsection (a) of section 4-5-35, may decline to exercise jurisdiction if this is just and proper under the circumstances.

(c) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorney's fees, incurred by other parties or their witnesses.

§4-5-30 Information Under Oath to be Submitted to the Court

(a) Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five (5) years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath if:

- (1) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;
- (2) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and
- (3) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(b) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the Court. The Court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the Court's jurisdiction and the disposition of the case.

(c) Each party has a continuing duty to inform the Court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

§4-5-31 Additional Parties

If the Court learns from information furnished by the parties pursuant to section 4-5-30, or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside the reservation he shall be served with process or otherwise notified in accordance with section 4-5-26.

§4-5-32 Appearance of Parties and the Child

(a) The Court may order any party to the proceeding who is in this state to appear personally before the Court. If that party has physical custody of the child, the Court may order that he appear personally with the child.

(b) If a party to the proceeding whose presence is desired by the Court is outside this state with or without the child the Court may order that the notice given under section 4-5-26, include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(c) If a party to the proceeding who is outside this state is directed to appear under subsection (b) of this section or desires to appear personally before the Court with or without the child, the Court may require another party to pay to the clerk of the Court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

§4-5-33 Binding Force and Res Judicata Effect of Custody Decree

A custody decree rendered by the Court binds all parties who have been served or notified in accordance with section 4-5-26, or who have submitted to the jurisdiction of the Court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this sub-title.

§4-5-34 Recognition of Out-of-State Custody Decrees

The Court shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this chapter or which was made under factual circumstances meeting the jurisdictional standards of the chapter, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this chapter.

§4-5-35 Modification of Custody Decree of Another State (amended by NPTEC 7/8/03)

(a) If a court of another state has made a custody decree, the Court shall not modify that decree unless:

- (1) the decree concerns child support and is from the State of Idaho or the

State of Washington and the terms of the inter-governmental child support agreements between those states and the Nez Perce Tribe apply, in which case such terms shall supersede the process set forth in this chapter.

§4-5-36 Time and Standard for Modifying Custody Decree

(a) No motion to modify a custody decree may be made earlier than two (2) years after its date, unless the Court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral or emotional health; except that nothing in this section shall be construed to prevent the Court from reconsidering a custody decree entered upon legal separation in the event of application before the expiration of two (2) years by either party for a decree terminating the marriage.

(b) No modification decree shall be entered except upon a showing that a permanent material change has occurred since the prior decree and that it is in the best interests of the child that the decree be modified.

§4-5-37 Filing and Enforcement of Custody Decree of Another State

(a) A certified copy of a custody decree of another state may be filed in the office of the clerk. The clerk shall treat the decree in the same manner as a custody decree of the Tribal Court. A custody decree so filed has the same effect and shall be enforced in a like manner as a custody decree rendered by the Court.

§4-5-38 Registry of Out-of-State Custody Decrees and Proceedings

The clerk of the Court shall maintain a registry in which he shall enter the following:

- (a) certified copies of custody decrees of other states received for filing;
- (b) communications as to the pendency of custody proceedings in other states;
- (c) communications concerning a finding of inconvenient forum by a court of another state; and
- (d) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of the Court or the disposition to be made by it in a custody proceeding.

§4-5-39 Certified Copies of Custody Decree

The clerk of the Court, at the request of the Court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

§4-5-40 Testimony by Deposition in Another State

In addition to other procedural devices available to a party, any party to the proceeding or

a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The Court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

§4-5-41 Hearings and Studies in Another State

(a) The Court may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the Court; and to forward to the Court certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties.

(b) The Court may request the appropriate court of another state to order a party to custody proceedings pending in the Court to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

§4-5-42 Assistance to Courts of Other States

(a) Upon request of the Court of another state the Court may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced shall be forwarded by the clerk of the Court to the requesting court.

(b) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(c) Upon request of the Court of another state the Court may order a person in this state to appear alone or with the child in a custody proceeding in another state. The Court may condition compliance with the request upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed.

§4-5-43 Preservation of Documents for use in Other States

In any custody proceeding the Court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches eighteen (18) years of age. Upon appropriate request of the Court of another state the Court shall forward to the other court certified copies of any or all of such documents.

§4-5-44 Request for Court Records of Another State

If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in the Tribal Court, the Court upon taking jurisdiction of the case shall request of the Court of the other state a certified copy of the transcript of any court record

and other documents mentioned in section 4-5-43.

§4-5-45 International Application

The general policies of this sub-title extend to the international area. The provisions of this chapter relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

§4-5-46 Priority

Upon the request of a party to a custody proceeding which raises a question of existence or exercise of jurisdiction under this sub-title the case shall be given calendar priority and handled expeditiously.

SEPARATE MAINTENANCE/CHILD SUPPORT

§4-5-50 Temporary Spousal/Child Support (section was formerly § 4-1-12 renumbered and amended by NPTEC 7/8/03) (section amended 2/26/08)

(a) While an action for dissolution is pending and upon consideration of the financial status of the parties, the court may order the payment by one party to the other:

- (1) of temporary maintenance in an amount and according to appropriate terms under the circumstances;
- (2) of temporary support of a child based on the child support guidelines;
- (3) of a reasonable amount for the cost of maintaining or defending any dissolution proceedings.

(b) In those instances where the Court deems it necessary, it may appoint a guardian ad litem to represent a minor or dependent child with respect to his support, custody and visitation. Any costs or fees for such representation shall be borne by either or both of the child's parents.

§4-5-51 Maintenance/Child Support (formerly 4-5-13 renumbered and amended by NPTEC 7/8/03)

(a) Action for separate maintenance and/or child support may be maintained by one spouse who is living separate from the other.

(b) Where a dissolution is granted and after considering all relevant factors, the Court may order separate maintenance for either spouse in such amounts and for such period of time the Court deems just. Separate maintenance may be awarded to a spouse only if such spouse:

- (1) lacks sufficient property to provide for his or her reasonable needs; and
- (2) is unable to support himself or herself through employment.

(c) The court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for such child's support. (subsection amended 2/26/08)

(1) The Tribe shall establish guidelines for determining the amount of child support. The amount resulting from the application of these guidelines is the amount of child support ordered unless a written finding is made, based on criteria approved by the Tribe, that application of the guidelines would be inappropriate or unjust in a particular case. The Tribe shall review the guidelines at least once every four (4) years to ensure that their application results in the determination of appropriate child support amounts. The Tribe shall base the guidelines and criteria for deviation from them on all relevant factors, including:

(A) The financial resources and needs of the child.

(B) The financial resources and needs of the custodial party.

(C) The standard of living the child would have enjoyed had the marriage not been dissolved.

(D) The physical and emotional condition of the child and the child's educational needs.

(E) The financial resources and needs of the noncustodial parent.

(2) The child support guidelines shall be used in determining the ability to pay child support and the amount of payments. The obligation to pay child support is primary and other financial obligations are secondary.

(A) There shall be a rebuttable presumption that the amount of the award which would result from the application of the guidelines is the amount of the child support to be awarded, unless evidence is presented in a particular case which indicates that an application of the guidelines would be unjust or inappropriate.

(B) If the court determines that the circumstances exist to permit a departure from the guidelines, the judge making the determination shall make a written or specified finding on the record that the application of the guidelines would be unjust or inappropriate in the particular case before the court

(C) In-kind payments may be permitted to satisfy a support obligation provided that the court order:

(i) states the specific dollar amount of the support obligation,
and

(ii) describes the type of in-kind payment that is being allowed to

satisfy the specific dollar amount of the support order, and

(iii) prohibits the in-kind payment from satisfying any assigned support obligations.

(3) The court may order either parent to name any child under eighteen as a beneficiary of any medical or dental or benefit plan carried by such parent or available to such parent on a group basis through employment.

MANDATORY INCOME WITHHOLDING FOR CHILD SUPPORT (§ 4-5-52 - § 4-5-66 adopted by NPTEC 7/8/03)

§4-5-52 Remedies in Addition to Other Remedies

(a) The remedies provided in this chapter are in addition to, and not in substitution for, any other remedies provided by law.

(b) The provisions of this chapter apply to any dependent child, whether born before or after the effective date of this act, and regardless of the past or current marital status of the parents.

§4-5-53 Income Withholding

(a) The CSEP may enforce a support order which is, or has been issued or modified against a noncustodial parent by withholding:

(1) as much of his/her income as is necessary to pay the current monthly support amount and if needed an additional amount to be applied toward any arrearage. The total amount may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Act (15 U.S.C. 1673 (b));

(b) The CSEP will comply with all procedural due process requirements of the Nez Perce Tribe.

(c) Income Withholding does not apply to in-kind payments.

(d) Mistake of fact is the only basis for contesting income withholding.

§4-5-54 Notice of Immediate Income Withholding

(a) The court shall order income withholding in all support orders effective the date of the order unless an exception is granted by the court pursuant to subsection (b) of this section. All support orders shall notify the obligor that income withholding shall be enforced by a withholding order issued to the obligor's employer, without additional notice to the obligor.

(b) Immediate income withholding shall not be ordered if

(1) One of the parties demonstrates and the court makes a specific written

finding that there is good cause not to require immediate income withholding. A finding of good cause by the court must be based on, at a minimum:

(A) A written determination and explanation of why implementing immediate withholding would not be in the best interests of the child; and

(B) Proof of timely payment of previously ordered support in cases involving the modification of support orders; or

(2) A written agreement is reached between the obligor and obligee and the CSEP in cases where the CSEP is providing child support services, which provides for an alternative arrangement, and such agreement is determined by the court to be in the best interests of the child.

(c) Failure to provide for income withholding does not affect the validity of the support order.

§4-5-55 Income Withholding Upon a Delinquency

If a support order does not include immediate income withholding, the obligor is subject to income withholding upon a delinquency at least equal to the child support payment for one (1) month, without the need for a judicial or administrative hearing.

§4-5-56 Judicial Proceedings for Income Withholding

(a) A proceeding to enforce a duty of support is commenced by:

(1) filing a petition or complaint for an original action; or

(2) motion in an existing action or under an existing case number.

(b) Venue for the action is in the tribal court or county district court where the dependent child resides or is present, where the obligor resides, or where the prior support order was entered. The petition or motion may be filed by the obligee, the tribe or any agency providing care or support to the dependent child.

(c) A filing fee shall not be assessed in cases brought on behalf of the Nez Perce Tribe.

(d) A petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the income withholding order, pursuant to § 4-5-54 or § 4-5-55, and:

(1) The name, address, and social security number of the obligor;

(2) A copy of the support order;

- (3) The name and address of the obligor's employer;
- (4) The amount of any delinquency; and
- (5) Whether the obligee has received public assistance from any source on behalf of the minor child, and, if so, from which source(s).

(e) Upon receipt of a petition or motion, the court shall issue an income withholding order pursuant to § 4-5-54 or § 4-5-55 using the form prescribed by the U.S. Federal Office of Child Support Enforcement, to the employer. The court shall also order the employer to remit the amount withheld to the person or entity designated in the income withholding order within seven (7) business days after the date the amount would have been paid or credited to the obligor. The income withholding shall include: **(subsection amended 2/26/08)**

- (1) The maximum amount of current support, if any, to be withheld from the obligor's earnings each month, or from each earnings disbursement;
- (2) The total amount of the arrearage or reimbursement judgment previously entered by the court, if any, if any; and
- (3) The amount of arrearage payment specified in the support order, if any.

(f) If the petition or motion indicates the obligee has received public assistance from any source on behalf of a minor child, the clerk shall immediately forward a copy of the petition or the motion to the CSEP.

(g) The court retains continuing jurisdiction under this chapter until all duties of support of the obligor, including any delinquency, have been satisfied or until the order is otherwise unenforceable.

(h) An order originating in or recognized by the Nez Perce Tribal Court for child support shall become unenforceable ten years after the eighteen birthday or emancipation of the youngest child named in the child support order, whichever last occurs. **(subsection added 1/13/15)**

(i) The statute of limitations for enforcement of child support may be tolled upon an evidentiary finding that fraud or willful concealment has taken place by a party to the case. **(subsection added 1/13/15)**

§4-5-57 Service of Income Withholding Order in a Judicial Proceeding

(a) The following items and documents shall be served on the employer personally or by any form of mail requiring a return receipt:

- (1) two (2) conformed copies of the income withholding order, one (1) of which is for the employer, and one (1) for the obligor;
- (2) four (4) answer forms in substantial compliance with § 4-5-60;

- (3) Three (3) stamped envelopes provided by the obligee and addressed to, respectively, the person or entity designated in the income withholding order, the obligee's attorney or the obligee, and the obligor.

§4-5-58 Employer's Duties and Responsibilities - Fee for Employer

(a) Upon receiving an income withholding order from the court, the employer shall answer the income withholding order on forms supplied with the income withholding order within ten (10) days after the date of service. The employer shall deliver the original answer to the court and shall mail one (1) copy to the obligee or obligee's attorney and shall deliver one (1) copy to the obligor as soon as is reasonably possible. The answer shall state whether the obligor is employed by or receives income from the employer, whether the employer will honor the income withholding order, and whether there are multiple child support income withholding orders or garnishments against the obligor. Upon receiving an income withholding order from the CSEP, the employer shall begin income withholding pursuant to this section.

(b) If the employer possesses any income due and owing to the obligor, the income subject to the income withholding order shall be withheld immediately upon receipt of the income withholding order. The withheld income shall be delivered to the person or entity designated in the income withholding order within seven (7) business days after the date the amount would have been paid or credited to the employee.

(c) The total amount to be withheld from the obligor's earnings each month, or from each earnings disbursement, shall not exceed forty percent (40%) of the disposable earnings of the obligor for that period. If the amounts to be paid toward the arrearage are specified in the support order, then the maximum amount to be withheld is the sum of the current support ordered and the amount ordered to be paid toward the arrearage, or fifty percent (50%) of the disposable earnings of the obligor for that period, whichever is less. (In no event shall the amount to be withheld from the earnings of the obligor exceed the amount specified under section 303(b) of the Consumer Credit Act (15 U.S.C. 1673(b)).

(d) When an employer receives an income withholding order issued by another tribe or state, the employer shall apply the income withholding law of the jurisdiction of the obligor's principal place of employment in determining:

- (1) The employer's fee for processing an income withholding order;
- (2) The maximum amount permitted to be withheld from the obligor's income;
- (3) The time periods within which the employer must implement the income withholding order and forward the child support payment;
- (4) The priorities for withholding and allocating income withheld for multiple child support obligees; and
- (5) Any withholding terms or conditions not specified in the income

withholding order.

(e) If an obligor is subject to two (2) or more income withholding orders for child support on behalf of more than one (1) obligee, the employer may send the entire amount withheld from that obligor to the Nez Perce Accounting Department. The Accounting Department shall apportion the amount of income withheld between all obligees of the obligor as follows: the support obligation for the current month shall be paid first. If the amount of nonexempt disposable income withheld is not sufficient to pay the total support obligation for the current month for each obligee for whom there is an income withholding order, the amount withheld shall be divided between each obligee for whom there is an income withholding order on a pro rata basis. If the amount of the nonexempt disposable earnings withheld is in excess of the total support obligation for the current month for each obligee for whom there is an income withholding order, the excess shall be divided between each obligee for whom there is an income withholding order which includes withholding for any delinquency on a pro rata basis unless otherwise ordered by the court. (subsection amended 2/26/08)

(f) The employer shall continue to withhold the ordered amounts from nonexempt income of the obligor until notified by the court or the CSEP that the income withholding order has been modified or terminated. The employer shall promptly notify the CSEP when the employee is no longer employed, and of the employee's last known address, and the name and address of his new employer, if known. (subsection amended 2/26/08)

(g) The employer may deduct a processing fee, not to exceed five dollars (\$5.00), to cover the costs of each withholding. Such fee is to be withheld from the obligor's income in addition to the amount withheld to satisfy the withholding order, but the total amount withheld, including the fee, shall not exceed forty percent (40%) of the obligor's disposable income.

(h) The employer may combine amounts withheld from various employees for a particular entity in a pay period into a single payment for that pay period, as long as the portion thereof which is attributable to each individual employee is separately designated.

(i) An order for income withholding for support entered under this chapter shall have priority over any other wage assignment or garnishment, except for another wage assignment, income withholding order, or garnishment for child support.

§4-5-59 Penalties for Employers

(a) An employer may not discharge, discipline, or refuse to employ an obligor on the basis of an income withholding order issued under this chapter. If an employer discharges, disciplines, or refuses to employ an obligor because of an income withholding obligation, the obligor shall have a cause of action against the employer. The employer shall be liable for double the amount of lost wages and other damages suffered as a result of the violation and for costs and reasonable attorney's fees and may be subject to a civil penalty of up to three hundred dollars (\$300) for each violation. In addition, the employer may also be ordered to hire, rehire, or reinstate the aggrieved obligor.

(b) An employer who knowingly fails to retain and remit to the Nez Perce

Accounting Department an amount pursuant to the income withholding order shall be liable to the CSEP for the amount to be retained specified in the income withholding order and may be subject to a fine of up to one hundred dollars (\$100), which is a debt due and owing to the CSEP unless: (subsection amended 2/26/08)

- (1) The employer notifies the court or CSEP that the obligor is not in his employ and the CSEP verifies the obligor's nonemployment and withdraws its income withholding order; or
- (2) The obligor's income is not sufficient and therefore the restrictions in section 303(b) of the Consumer Credit Production Act (15 U.S.C. 1673(b)), apply and a lesser amount must be withheld.

(c) No employer who complies with an income withholding order that is regular on its face shall be subject to civil liability to any individual or agency for conduct in compliance with the income withholding order.

§4-5-60 Identifying Information -- Filing with Tribunal and Child Support Services

Obligors and obligees shall file with the court or the CSEP, if the CSEP is providing child support services, identifying information including social security number, residential and mailing address, telephone number, driver's license number, and name, address, and telephone number of the employer. Obligors and obligees shall provide written notification of any changes within ten (10) days after such changes. (subsection amended 2/26/08)

§4-5-61 Order for Payment of Medical Expenses

(a) A proceeding to enforce a support order directing the payment of medical expenses of a dependent child may be commenced as provided in § 4-5-56.

(b) The petition or motion may be filed by an obligee when medical expenses not otherwise provided without charge to the obligee by the Indian Health Service, or Nimiipuu Health, or Medicaid, or otherwise covered by insurance have been incurred in the amount of one hundred dollars (\$100) or more, or when insurance premiums, deductibles, or payments on submitted claims for which payment or reimbursement is claimed to be due from the obligor equal or exceed one hundred dollars (\$100). The petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the order, including (amended by NPTEC 3/22/11)

(c) Upon the filing of a petition or motion and affidavit containing the information required in subsection (2) of this section, the clerk of the court shall set a hearing thereon. The obligee shall serve a copy of the petition or motion, accompanying affidavit and notice of hearing on the obligor by personal service or certified mail, pursuant to the Nez Perce Tribe's rules of civil procedure.

(d) After hearing, the court shall enter its order directing payment of the specific sums, if any, for which the obligor is found to be liable for previously incurred medical expenses. In addition, if the court determines that some or all of the medical expenses of the

dependent child are of an ongoing or recurring nature and the anticipated amounts thereof are capable of determination to the satisfaction of the court, the court may order payment to the obligee of a specific sum per month toward such expenses.

(e) For purposes of this section "medical expenses" means any and all costs and expenses related to health care incurred on behalf of a dependent child, including insurance premiums and any deductible amounts, all or a portion of which are ordered to be paid by the obligor in addition to any amount awarded as child support, pursuant to a support order.

§4-5-62 Termination of Income Withholding upon Obligor's Request

(a) An obligor whose income is subject to withholding upon a delinquency under this chapter may request a hearing to quash, modify, or terminate the withholding, by filing a motion requesting such relief before the court which issued the income withholding order. A copy of the motion and a notice of hearing shall be served upon the obligee by personal service or certified mail, pursuant to the Nez Perce Tribe's rules of civil procedure.

(b) In a hearing to quash, modify, or terminate the income withholding order, the court may grant relief only upon a showing by the obligor that there is a substantial probability that the obligor would suffer irreparable injury and that the obligee would not suffer irreparable injury. Satisfaction by the obligor of any delinquency subsequent to the issuance of the income withholding order is not grounds to quash, modify, or terminate the income withholding order.

(c) Mistake of fact is the only basis for contesting income withholding.

§4-5-63 Health Insurance Coverage - Enforcement

(a) Where a person is required by court or administrative order to provide health insurance coverage for a dependent child, that person is eligible for family health coverage through an employer and fails to provide such coverage or lets it lapse, the CSEP or other obligee may seek enforcement of the coverage order as provided under this section provided that, where health care is available to a child based upon a parent's status as an American Indian/Alaskan Native, the federal health care exemption shall apply and CSEP shall not seek enforcement. (amended by NPTEC 3/22/11)

- (1) If the obligor's order to provide health insurance coverage contains language notifying the obligor that failure to provide such coverage may result in direct enforcement of the order and orders payments through, then the CSEP may, without further notice to the obligor, send a notice of intent to enroll to the obligor's employer by certified mail, return receipt requested. The notice which shall include a copy of the order shall require the employer to enroll the child in the health insurance plan as provided in subsection (3) of this section.
- (2) If the obligor's order to provide health insurance coverage does not order payments through, and has not been submitted to, the CSEP:

- (A) The obligee may, without further notice to the obligor, send a certified copy of the order requiring health insurance coverage to the obligor's employer by certified mail, return receipt requested; and
- (B) The obligee shall attach a notarized statement to the order declaring that the order is the latest order addressing coverage entered by the court.

(b) Upon receipt of an order that provides for health insurance coverage, or a notice of intent to enroll:

- (1) The obligor's employer shall answer the party who sent the order or notice within thirty (30) days and confirm that the child:
 - (A) Has been submitted in the health insurance plan;
 - (B) Cannot be covered, stating the reasons why such coverage cannot be provided.
- (2) The employer shall withhold any required premium for the obligor's dependents from the obligor's income or wages;
- (3) If more than one (1) plan is offered by the employer, and each plan may be extended to cover the child, then the child shall be enrolled in the obligor's plan. If the obligor's plan does not provide coverage which is accessible to the child, the child shall be enrolled in the least expensive plan otherwise available to the obligor parent;
- (4) The employer or insurer shall provide the name of the health insurance coverage provider or insurer, the extent of coverage available and other necessary information to the CSEP or other obligee and shall make available any necessary claim forms or enrollment membership cards.

(c) If the order for coverage contains no language notifying the obligor that failure to provide health insurance coverage may result in direct enforcement of the order, the CSEP or other obligee may serve a written notice of intent to enforce the order on the obligor by certified mail, return receipt requested, or by personal service. If the obligor fails to provide written proof that such coverage has been obtained or applied for within thirty (30) days of service of the notice, or within thirty (30) days of coverage becoming available, the CSEP or other obligee may proceed to enforce the order directly as provided in subsection (b) of this section.

(d) If the obligor ordered to provide health insurance coverage elects to provide coverage that will not be accessible to the child because of geographic or other limitations when accessible coverage is otherwise available, the CSEP or other obligee may serve a written notice of intent to enroll the child in a separate health insurance coverage plan on the obligor by certified mail, return receipt requested. The notice shall also specify the type and cost of

coverage.

(e) If the CSEP serves a notice under subsection (e) of this section, the obligor may, within thirty (30) days of the date of service:

- (1) File a motion with the tribal court; or
- (2) Provide written proof to the CSEP that the obligor has either applied for or obtained coverage accessible to the child.

(f) If an obligee other than the CSEP serves a notice under subsection (5) of the section, within thirty (30) days of the date of service, the obligor shall provide written proof to the obligee that the obligor has either applied for, or obtained, coverage accessible to the child.

(g) If the obligor fails to respond to a notice served under subsection (5) of this section to the party who served the notice, the party who served the notice may enroll the obligor's child in the health insurance coverage specified in the notice directly. The employer shall withhold the amount of the premium from the income of the obligor. The amount to be withheld from the income of the obligor shall not exceed the amount specified in section 303(b) of the Consumer Credit Act (15 U.S.C. 1673(b)). The employer shall forward the amount of premium withheld to the insurance provider.

(h) If the coverage is terminated or amended, the employer shall mail a notice of termination or amendment to the CSEP or other obligee at the obligee's last known address within forty-five (45) days of the termination date.

(i) This section shall not be construed to limit the right of the obligor or the obligee to bring an action in court at any time to enforce, modify or clarify the original support order.

(j) If the amount of the obligor's income or wages which are withheld under subsection (c)(2) of this section is insufficient to pay the premium for the dependents, the obligor shall, nevertheless, be responsible for payment of the premium.

(k) The employer shall not disenroll or eliminate coverage of any such child unless:

- (1) The employer has been provided satisfactory written evidence that the order requiring such health care coverage is no longer in effect; or
- (2) The employer has received confirmation that the child is enrolled in other comparable health care coverage; or
- (3) The employer has eliminated family health coverage for all of its employees; or
- (4) The employee upon whose employment the health coverage is premised has ceased employment with the employer and reasonable measures have been taken to give notice to the parents or guardians of the child.

§4-5-64 Termination or Modification of Income Withholding upon Obligee's Request

The court may quash, modify or terminate an income withholding order upon written request therefor by the obligee, unless the court finds that the termination would not be in the best interests of the dependent child.

§4-5-65 Termination of Income Withholding by the Court in a Judicial Proceeding

If the clerk is unable to deliver payments under the income withholding order for a period of three (3) months due to the failure of the obligee to notify the clerk of a change of address, the court shall terminate the income withholding order, and shall mail a copy of the termination order to the employer and to the obligor. The court shall return all undeliverable payments to the obligor.

§4-5-66 Location of Noncustodial Parent

(a) The Nez Perce Tribe Child Support Enforcement Division (CSEP) maintains a service to locate noncustodial parents using:

- (1) All sources of information and available records on the Nez Perce Reservation, in Idaho or other states; and
- (2) The Federal Parent Locator Service (FPS) maintained by the federal Department of Health and Human Services.

§4-5-67 Modification (section added 2/26/08)

(a) Any order for child support, in which the tribal court has original jurisdiction or to which both parties agree to a modification in tribal court, may be modified on a showing of changed circumstance that is substantial and continuing, except as to any amount that may have accrued as an arrearage before the date of notice of the motion to modify.

- (1) If application of the guidelines results in an order that varies fifteen percent (15%) or more from the existing amount, the fifteen percent variation in the amount of the order will be considered evidence of a substantial and continuing change of circumstances.
- (2) The addition of health insurance coverage as defined in section 4-5-51(c)(3) or a change in the availability of health insurance coverage may constitute a continuing and substantial change in circumstance.

(b) Modification is effective on the first day of the month following notice of the motion for modification unless the court, for good cause shown, orders the change to become effective at a different date but not earlier than the date of filing the motion for modification. The order of modification may include an award of attorney fees and court costs to the prevailing party.

(c) In a case receiving CSEP services, a party or the CSEP, if there is an assignment

of rights resulting from the custodial person receiving TANF benefits, may request every three years that an order for child support be reviewed and, if appropriate, adjusted.

- (1) The request may be made without a specific showing of a changed circumstance that is substantial and continuing.
- (2) The CSEP shall conduct the review in accordance with the tribal child support guidelines.
- (3) If appropriate, the CSEP shall file a motion in the tribal court to adjust the support amount.
- (4) Every three years the CSEP shall notify the parties of their right to request a review of the order for support. The CSEP shall notify the parties by first class mail at their last known address or by including the notice in an order.

(d) If a party in a case receiving CSEP services requests a review and adjustment sooner than three years, the party shall demonstrate a changed circumstance that is substantial and continuing.

(e) Children of the party requesting the modification who are born or adopted after the entry of the existing order shall not be considered in determining a modified support obligation.

§4-5-68 Income Withholding Orders from Foreign Jurisdictions (section added 2/26/08)

The CSEP shall receive and process income withholding orders from other Tribes, States and other entities as follows: Within five days of receiving an income withholding order from a foreign jurisdiction either directly or as forwarded from a Tribal employer, the CSEP shall request transmittal of the case from the initiating IV-D agency. Upon receipt of the foreign order, CSEP shall proceed pursuant to § 4-5-53 and the procedural rules for the Recognition and Enforcement of Foreign Judgments. (amended by NPTEC 3/22/11)

§4-5-69 Termination of Income Withholding upon Satisfaction of Support Obligation (section added 2/26/08)

Notice terminating the income withholding will be promptly sent to the employer when the support obligation, including any arrears, has been satisfied.

§4-5-70 Amounts Improperly Withheld (section added 2/26/08)

The Nez Perce Accounting Department will promptly refund to the obligor any amounts improperly withheld from the obligor's earnings.