

Chapter XIX

PATERNITY CODE

1901. PURPOSE - The purpose of this Chapter is to assert tribal sovereignty to its fullest by incorporating Bay Mills Indian Community traditions, values and customs which will facilitate the stability of Indian families and the tribal community by ensuring that the father of each Indian child is identified and has all rights and responsibilities arising from that identification.
1902. DEFINITIONS - As used in this Chapter, the following terms have the meanings prescribed herein:
- A. "Child" means any unmarried person under the age of 18 years, including persons who have "independent living" status under the laws of the State of Michigan, or an unmarried person who is attending high school after attaining the age of 18 who has not reached the age of 19.
 - B. "Legal Custody" means the legally acknowledged right and responsibility to make major decisions concerning a child, such as consent to marry, consent to enter military service, consent to obtain a motor vehicle operator's license, authorization for non-emergency medical care, and the choice of school and religion.
 - C. "Nonlegal Responsible Relative" means a relative who assumes responsibility for the care of a child, excepting a relative who has physical custody during a court-order visitation period.
 - D. "Physical Placement" means the condition under which a person has a right to have a child physically placed with that person and has the right and responsibility to make, during that placement, routine daily decisions regarding the child's care, consistent with the major decisions made by a person having legal custody.
 - E. "Support" means payment of the expenses of necessary shelter, food, care, clothing, medical and dental care, child care and education.

F. “Genetic Testing” means a sample of an individual’s blood, saliva or tissue collected from the individual that is used for genetic paternity testing conducted.

1903. **JURISDICTION** - The Bay Mills Tribal Court shall have exclusive jurisdiction in the following proceedings:

A. Actions establishing paternity in which the alleged father resides or is domiciled on the Bay Mills Indian Reservation.

1904. **JURISDICTION IN ALL OTHER ACTIONS** - The Bay Mills Tribal Court shall have jurisdiction over any action brought under this Chapter to the extent not prohibited by other tribal law or federal law.

1905. **ACKNOWLEDGEMENT OF PATERNITY** - The paternity of any Indian child may be established through the signing of a statement by the father and mother of the child before the Clerk of Tribal Court. The acknowledgement statement shall identify the father and mother by birth date, social security number, and residence, and shall likewise so identify the child. Upon receipt of such statement, witnessed by the clerk, a judge of the Bay Mills Tribal Court may enter an order of filiation.

1906. **INITIATION OF PATERNITY DETERMINATION** - The Bay Mills Tribal Court may entertain a petition to determine the paternity of an Indian child filed by:

A. The child;

B. The child’s biological mother;

C. A man alleged or alleging himself to be the child’s father; or

D. The custodian of the child.

1907. **TIME FOR FILING PATERNITY ACTION** - If a petition to determine paternity is brought before the birth of the child, no hearing shall be conducted until after the birth, unless the Court shall determine that any action is necessary in order to preserve testimony. If petition to determine paternity is brought more than 20 years after the birth of the child, and the alleged father is deceased, the Court may dismiss the petition.

1908. CONTENT OF PETITION - A petition to determine paternity may be joined with a request to order child support under Chapter XX of the Bay Mills Tribal Code. It shall state the name and date of birth of the child if born, or that the mother is pregnant if the child is unborn, the name of any alleged father, whether any party has filed an action to determine paternity in any other court, and if a judgment of paternity has been rendered by any other court. The petition shall also give notice of a party's right to request a genetic test under Section 1918.

1909. PATERNITY ADJUDICATION NECESSARY FOR DETERMINATION OF FATHER'S RIGHT - The Bay Mills Tribal Court shall decline to issue an order for child support, physical placement or legal custody unless the man has been adjudicated or has acknowledged paternity.

1910. SUMMONS - The summons to be served, 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 18, or until the child graduates from high school or its equivalent up to age 19, 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, 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 clear and convincing evidence that you are the father. If genetic tests show that you are not excluded as the father and that the statistical probability of your being the father is 99.0% or higher, you are

rebuttable presumed to be the father.

4. The following defenses are available to you:
 - a. That you were sterile or impotent at the time of conception;
 - b. That you did not have sexual intercourse with the mother of the child during the conceptive period;
 - c. That another man did have sexual intercourse with the mother of the child during the conceptive period.

5. If you fail to appear at any stage of the proceeding, including genetic test, the Court may enter a default judgment finding you to be the father. A default judgment will take effect twenty-one (21) days after it is served on or mailed to you, unless within those twenty-one (21) days you present yourself to the Court good cause for your failure to appear or present yourself for genetic test. You need not appear at the time and place specified in the summons if you complete the enclosed waiver of first appearance statement and deliver it to the Court by the date specified in the waiver statement.

1911. TIME OF FIRST APPEARANCE - The first appearance may not be held any sooner than twenty-one (21) days after service or receipt of the summons and petition, unless the parties agree that first appearance may be held in less time.

1912. WAIVER OF FIRST APPEARANCE - The respondent may waive first appearance if he signs a statement which reads substantially as follows:

WAIVER OF FIRST APPEARANCE

1. I understand that by signing this waiver and agreeing to its terms I am not required to appear at the time and place specified in the summons. If I do not sign this statement, I am required to appear at the time

and place specified.

2. I understand that I will be notified by the Court of all future stages of the proceeding and agree to appear at those stages. If I fail to appear at any stage, including a scheduled genetic test, the Court may enter a default judgment against me.
3. I enter the following plea:
 - I agree that I am the child's father.
 - I deny that I am the child's father.
 - I agree that I am the child's father, subject to the confirmation by a genetic test.

If I enter a plea agreeing that I am the child's father, a judgment of paternity will be entered against me. If I enter a plea denying that I am the child's father, or a plea agreeing that I am the child's father subject to a genetic test, I agree to undergo a genetic test.

4. This waiver of first appearance is valid only if delivered to the Court on or before_____.
5. I will keep the clerk of Bay Mills Tribal Court informed of my address at all times. The following is my current address:
_____(Respondent).

1913. FIRST APPEARANCE - At the first appearance, the Court shall inform the parties of the legal consequences of paternity, as described in the summons contents in Section 1910, shall order all parties to submit to genetic tests, and/or enter a judgment of paternity if admitted by the alleged father on the waiver of first appearance statement. In the event a judgment is entered, the Court shall schedule a hearing on child support.

1914. HEARINGS ON CONTESTED PATERNITY - When the alleged father denies paternity, the Court shall determine whether the case should proceed formally or informally.

- A. Informal Hearing - At an informal hearing, the Court may hear witnesses presented by the parties, and based upon that evidence, recommend that the action be dismissed,

that the alleged father voluntarily admit paternity, that the alleged father agree to provide support and have granted reasonable and liberal rights of visitation and/or physical placement, and if the parties agree to the recommendations, enter an order of paternity and support.

- B. Formal Hearing - The petitioner must demonstrate, by clear and convincing evidence, that the alleged father is in fact the child's father. Upon a determination that the petitioner has met this burden, the Court shall then determine child support, legal custody, periods of physical placement and like matters.

1915. TESTIMONY RELATING TO PATERNITY - In any hearing relating to paternity, evidence may include, but is not limited to:

- A. Evidence of sexual intercourse between the mother and alleged father at any possible time of conception or evidence of a relationship between the mother and alleged father at any time.
- B. An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy.
- C. Genetic test results.
- D. The statistical probability of the alleged father's paternity based upon the genetic tests.
- E. Medical, scientific or genetic evidence relating to the alleged father's paternity of the child based on tests performed by experts.
- F. A copy of the child's birth certificate, if born in the State of Michigan to indicate the existence of any names inserted as the child's father, and the date on which insertion occurred.
- G. Evidence offered by the alleged father that another identified man who is not subject to the Court's jurisdiction had sexual intercourse with the mother may be admitted only after the alleged father has submitted to the ordered genetic tests.

1916. JUDGMENT OF PATERNITY AFTER FAILURE TO APPEAR - If respondent is the alleged father and fails to appear at any time not waived by the Court, the Court may, if no good cause to contrary, enter an order adjudicating the respondent to be the father and enter appropriate orders for support, legal custody

and physical placement, which shall be served on respondent or mailed by registered or certified mail to his last known address. Such order shall take effect twenty-one (21) days after service unless, within that time, the respondent presents to the Court evidence of good cause for his failure to appear or to undergo a genetic test.

1917. REOPENING DEFAULT JUDGMENT OF PATERNITY - A default judgment adjudicating a person to be the father of a child may be reopened upon petition for good cause shown.
1918. GENETIC TESTS IN PATERNITY ACTIONS - Any genetic test ordered by the Court in a paternity action is subject to this Section. A genetic test must be ordered in any action in which the petitioner is an adult and seeks to establish the identity of his/her father.
- A. Person to be Tested - The Court may, and upon request of any party shall, require the child, mother, any male for whom there is probable cause to believe that the had sexual intercourse with the mother during a possible time for the child's conception, or nay male witness who will testify or testifies as to his sexual relations with the mother, to submit to genetic tests. Probable cause may be established by the petition or an affidavit from the child's mother, or after examination under oath of a complainant or witness.
 - B. Genetic Test Administration and Evidence - Any ordered genetic test shall be performed by an expert qualified as an examiner of genetic markers present on blood cells and components, appointed by the Court. A report completed and certified by the expert stating genetic test results and the statistical probability of the alleged father's paternity based upon the genetic tests is admissible as evidence without expert testimony and may be entered into the record at any hearing if, at least ten (10) days prior to the hearing, the party offering the report files it with the Court with notice to the other parties.
 - C. Genetic Test Results; Presumption - If the ordered genetic tests show that the alleged father is not excluded, and that the statistical probability of the alleged father's paternity is 99.0% or greater, the alleged father is rebuttably presumed to be the child's parent.

D. **Costs of Genetic Tests** - The fees and costs of genetic tests shall be paid by either the mother or father, if one or both have sufficient resources to pay the costs of genetic tests. Fees and costs of such tests shall be paid by the child seeking to establish identity of his/her father, when such child is 18 years of age or older.

1919. **JUDGMENT OF PATERNITY** - The judgment or order of the Court determining the existence or nonexistence of paternity is determinative for all purposes. If paternity is found to exist, the order may contain any other provision appropriate, including the duty of support, the legal custody and guardianship of the child, periods of physical placement, or any other matter in the best interests of the child. Unless the Court specifically orders otherwise, the mother shall have sole legal custody of the child. Any order of support shall comply the provisions of Chapter XX of the Bay Mills Tribal Code.

1920. **CONFIDENTIALITY** - Upon the request of any interested party, the Tribal Court proceedings and records under this Chapter shall be closed to the public.