

POKAGON PATERNITY PROCEEDING ACT

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CHAPTER 1

LEGISLATIVE FINDINGS

Section 1.01 Enforceability of Foreign Court Orders

Pursuant to Pokagon Band Tribal Court Code Rule 7(F) and MCR 2.615, it is ordinarily the policy of the Band to accept judgment orders and decrees from the state courts of Michigan, as well as any other state court that provides reciprocal enforcement of judgments rendered from the Pokagon Band Tribal Court.

Notwithstanding this policy to accept judgments and decrees from other jurisdictions, the determination of paternity with regard to Pokagon citizenship is a matter of sensitivity and great importance to the Band. Consequently, any state paternity determination that does not comply with this Act shall be deemed repugnant to public policy and unenforceable under Pokagon Band Tribal Court Code Rule 7(F).

Section 1.02 Purpose

The purpose of this Act is to provide a procedure for determining paternity of a child born out of wedlock in order to allow adoption, custody, termination, or child-support proceedings to move forward more expeditiously.

Section 1.03 Authority

Pursuant to the duties and powers of the Tribal Council in Article IX, subsections 1(a), 2(a), and 2(h) of the Constitution and the inherent authority of the Band as a sovereign tribal nation to provide for the health, safety, and welfare of the Pokagon Band, the Tribal Council hereby enacts this Paternity Proceeding Act.

Section 1.04 Severability

If any section, subsection, paragraph, sentence, phrase or other portion of this Act is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, such portion of this Act shall be deemed to be separate, distinct, and independent from the remaining portion of this Act, which shall not be affected by the judicial decision and shall remain in effect.

Section 1.05 Definitions

The following terms, whenever used or referred to in this Code, shall have the respective meanings stated below:

- (a) "Child Protection Code" means the Pokagon Band of Potawatomi Indians Child protection Code enacted May 25, 2004, as amended.
- (b) "Department of Social Services" means the Tribal agency responsible for child welfare matters.
- (c) "Enrollment Committee" means the committee created under Article X, Section 3 of the Pokagon Band of Potawatomi Indians Constitution adopted November 11, 2005.

(d) "Guardian *ad litem*" means a licensed attorney appointed by the Court to take legal action on behalf of a minor.

(e) "Petition to Establish Paternity" means the form created by the Tribal Court and used for petitions in this Act.

(f) "Putative Father" means the alleged father of a child born out of wedlock.

(g) "Tribal Court" means the court given the general adjudicatory authority under Article XII of the Pokagon Band of Potawatomi Indians Constitution adopted November 11, 2005.

CHAPTER 2

STANDING

Section 2.01 Right to Bring Action

The following have the right to bring a paternity action:

- (a) Child's mother;
- (b) Parent or legal guardian of the mother if the mother is a minor or incapacitated and the personal representative of the mother's estate if the mother has died;
- (c) The man claiming to be the father under Chapter 3 or Chapter 4;
- (d) Parent or legal guardian of the Putative Father if the Putative Father is a minor or incapacitated and the personal representative of the Putative Father's estate if the Putative Father has died;
- (e) Guardian *ad litem*;
- (f) Department of Social Services if it is providing services to the child; or
- (g) Legal guardian of the child or personal representative of the child's estate if the child has died.

CHAPTER 3

PUTATIVE FATHER PETITION BY SWORN AFFIDAVIT

Section 3.01 Filing

The Putative Father shall file:

- (a) A Petition to Establish Paternity ("Petition") with the Tribal Court; and
- (b) An individual sworn affidavit that he is the father or a joint affidavit with the mother affirming

his parentage.

Section 3.02 Service

(a) The Petition shall be served in a manner pursuant to Section 12(A)(3) of the Child Protection Code.

(b) The Putative Father shall serve a copy on:

- (1) The child's mother, unless she filed a joint affidavit with the Putative Father;
- (2) The child's guardian *ad litem*, if any;
- (3) Child's legal guardian, if any.
- (4) Any other person with legal custody rights to the child;
- (5) The Enrollment Committee; and
- (6) The Department of Social Services.

Section 3.03 No Objection

All persons under section 2.01 and subsection 3.02(b) shall have thirty (30) calendar days from the date the petition is filed with the Court to object to the request for the paternity determination in the Petition. If there is no objection then the Court shall find that the petitioner is the legal father and issue an order of paternity under section 7.02 of this Act.

Section 3.04 Response in Opposition

If any person timely files opposition to the Petition with the Tribal Court, pursuant to section 3.03, the Court shall proceed to Chapter 5 of this Act.

Section 3.05 Notice of Hearings

The Putative Father shall be entitled notice of any hearings involving the child subject to a paternity petition.

CHAPTER 4

INITIATING PATERNITY PROCEEDINGS

Section 4.01 Filing

A person with standing under section 2.01 may file a Petition to Establish Paternity. The petitioner shall file the Petition and the Questionnaire form described under section 4.02 with the Tribal Court.

Section 4.02 Questionnaire

The petitioner shall answer all questions in the Tribal Court Questionnaire form completely and accurately to the best of his or her knowledge. The petitioner shall sign, notarize, and file the Questionnaire form and the petition with the Court. The Questionnaire form shall contain the following questions:

- (a) A statement of applicable grounds affording petitioner standing to request a determination of paternity.
- (b) Whether the mother was married at the time of conception of the child or at any time after conception;
- (c) Whether the mother was cohabiting with a person of the opposite sex at the time of conception or birth of the child;
- (d) Whether the mother has received support payments or promises of support payments with respect to the child or in connection with the pregnancy;
- (e) Whether the mother has a reasonable belief regarding the identity of the child's father; including the name and address of the alleged father.
- (f) Whether any person has formally or informally acknowledged or declared the person's possible paternity of the child.

Section 4.03 Preliminary Notice to Putative Father

- (a) The Putative Father may voluntarily acknowledge his paternity or agree to genetic testing without a formal court procedure or court order. Upon the filing of a Petition to Establish Paternity under section 4.01, the Tribal Court shall send notice and a Voluntary Acknowledgement form provided by the Court to the Putative Father with an option to voluntarily acknowledge paternity and/or an option to participate in genetic testing.
- (b) If the Putative Father acknowledges paternity but does not voluntarily agree to genetic testing, the affidavit of acknowledgement shall be treated like an affidavit under subsection 3.01(b) and the Tribal Court shall serve all parties under subsection 3.02(b) and sections 3.03 through 3.05 shall apply.
- (c) If the Putative Father agrees to participate in genetic testing, Social Services shall arrange for the collection of genetic samples from the child and the Putative father and shall refer the child's parent or guardian and the Putative Father to the testing facility in order to make a paternity determination.

Section 4.04 Refusal by Other Parties

If the child or mother refuses to voluntarily submit to genetic testing, the Court shall require testing pursuant to section 6.03.

Section 4.05 Results

If the results of the genetic test meet the evidentiary standard under subsection 5.02(c) and the requirements under section 7.01 then a rebuttable presumption is established and the Court shall give notice to all parties under subsection 3.02(b) and sections 3.03 through 3.05 shall apply.

Section 4.06 No Response

If the Putative Father does not respond to the preliminary notice within thirty (30) calendar days of proof of service of the notice, the petitioner shall proceed with section 4.07.

Section 4.07 Service

- (a) The Petition shall be served in a manner pursuant to Section 12(A)(3) of the Child Protection Code.
- (b) The petitioner shall serve a copy on:
 - (1) The child's mother;
 - (2) Child's guardian *ad litem*;
 - (3) The child's guardian, if applicable.
 - (4) The Putative Father, if it is someone other than the Putative Father initiating;
 - (5) Every other person with legal custody rights to the child;
 - (6) The Enrollment Committee;
 - (7) The Department of Social Services; and
 - (8) Anyone else required by the Tribal Court.

Section 4.08 Notice of Hearings

A person who has standing and files a Petition to Establish Paternity shall be entitled notice of every hearing involving the child subject to a paternity petition.

CHAPTER 5

HEARING AND EVIDENCE TO DETERMINE IDENTITY OF FATHER

Section 5.01 Personal Jurisdiction Over Non-Resident

In a proceeding to determine parentage, the Tribal Court may exercise personal jurisdiction over a

nonresident individual or the individual's guardian or conservator if any of the following are true:

- (a) The individual submits to the jurisdiction of the Tribe by consent in a record, by entering a general appearance, or by filing a document having the effect of waiving any contest to personal jurisdiction;
- (b) The individual resided with the child within the jurisdictional boundaries of the Tribe;
- (c) The individual resided within the jurisdictional boundaries of the Tribe and provided prenatal expenses or support for the child;
- (d) The child resides within the jurisdictional boundaries of the Tribe as a result of the acts or directives of the individual;
- (e) The individual engaged in sexual intercourse within the jurisdictional boundaries of the Tribe and the child may have been conceived by that act of intercourse; or
- (f) There is any other basis consistent with the constitution of the Tribe and the United States for the exercise of personal jurisdiction.

Section 5.02 Presumption of Fact

A man is presumed to be the child's father if anyone of the following is true:

- (a) The man and child's biological mother are or have been married to each other; and child is born during the marriage or not later than three hundred (300) calendar days after the marriage is terminated in death, annulment, dissolution, or after a decree of legal separation is entered by a court;
- (b) The man and the child's biological mother attempted to marry each other by a marriage solemnized in apparent compliance with the law, even though the marriage is legally void for some reason; and child is born during the attempted marriage or not later than three hundred (300) calendar days after the attempted marriage; or
- (c) The man undergoes a genetic test that indicates with at least a ninety-nine (99%) probability that the man is the child's biological father.

Section 5.03 Service

Service of summonses, subpoenas, notices, and other documents shall comply with Section 12 of the Child Protection Code.

Section 5.04 Notice

A service of summons shall be served on:

- (a) The child's mother;
- (b) The child's guardian *ad litem*;

- (c) The child's legal guardian, if applicable;
- (d) Any other person with legal custody rights to the child;
- (d) The Department of Social Services;
- (e) The Enrollment Committee;
- (f) The Putative Father, if it is someone other than the person initiating the proceeding. The notice to the Putative Father shall include a statement that failure to attend the hearing may be considered a denial of interest in the child, a waiver of notice for all subsequent hearings, and could result in termination of any alleged parental rights; and
- (g) Anyone else as determined by the Court.

Section 5.05 Unknown Father

If the mother has failed to name a Putative Father or has failed to file a notice of intent to release the identity of the Putative Father, the Tribal Court shall require the mother to complete and file a Questionnaire form, as described in section 4.02, in an effort to identify the biological father.

Section 5.06 No Evidence of Putative Father

If, after inquiry there is no evidence indicating the identity of a Putative Father, the Tribal Court Clerk shall publish a notice in a manner to notify and provide any interested persons opportunity to participate in the proceeding. Petitioner bears the cost of notice.

Section 5.07 Waiver of Rights

The Tribal Court may determine the Putative Father has waived his right to notice of the hearing if he fails to appear after proper notice.

Section 5.08 Intervention

(a) All persons that have standing to bring a paternity action, under section 2.01 also have the right to intervene in a pending paternity proceeding under this Act as of right.

(b) The Enrollment Committee or Department of Social Services, when it is not providing services, each have a permissive right of intervention.

Section 5.09 Adjournment

If the Putative Father did not receive timely notice of the hearing, has not waived notice, and is not present at the hearing, the Tribal Court shall adjourn the hearing until the Putative Father is properly served with a notice of the hearing.

Section 5.10 Determination

During a hearing on the petition, the Tribal Court shall receive evidence as to the identity of the father of the child and enter a finding identifying the father or declaring that the identity cannot be determined at this time based on the evidence presented.

Section 5.11 Factors

Evidence relating to paternity may include:

(a) Evidence that sexual intercourse occurred between the mother and Putative Father during the possible time of conception;

(b) An expert's opinion concerning the statistical probability of the alleged father's paternity, which opinion is based upon the duration of the mother's pregnancy and the evidence described under subsection 5.11(a);

(c) Genetic test results, if available, stating the statistical probability of the alleged father's paternity;

(d) The man has filed a Petition to claim paternity under Chapter 3 or section 4.03 of this Act and the Petition has not been withdrawn from the Court or successfully challenged;

(e) The man openly holds the child out as the man's biological child. Evidence of this may be found through:

- (1) Providing care and a home for the child;
- (2) Proof of substantial financial support;
- (3) Claiming the child on tax returns;
- (4) Listing the child on insurance policies; or
- (5) Any other action consistent with that of a parent; and

(f) The man presents a certified copy of the child's birth certificate or a certified copy of acknowledgement of his paternity filed with a state agency or Vital Statistics Bureau that lists him as the father.

Section 5.12 Other Reliable Evidence

The Tribal Court may also consider any other reliable evidence that is relevant to the issue of paternity of the child.

CHAPTER 6

GENETIC TESTING

Section 6.01 Genetic Testing Defined

Genetic tests shall consist of the medical procedure comparing the alleged parent(s) Deoxyribonucleic acid ("DNA") to the child's for a match.

Section 6.02 Voluntary Submission

(a) Upon notice or petition of a paternity proceeding, the Putative Father may voluntarily submit to genetic tests to affirm or deny the Petition.

(b) The child's mother, guardian *ad litem*, or legal guardian may consent on behalf of the child to submit to genetic tests.

(c) Upon notice or petition of a paternity proceeding, the mother may voluntarily submit to genetic tests to affirm or deny the Petition.

Section 6.03 Preliminary Order

(a) After a petition for paternity is filed, the Tribal Court may, *sua sponte* or on the motion of any other party to the proceeding, require the child's mother, the child, and the Putative Father to submit to genetic tests. The Tribal Court may issue a preliminary order for genetic testing which allows any person subject to the order fourteen (14) calendar days to file a written objection to the order with the Court.

(b) If no written objection to the preliminary order is filed with the Court within fourteen (14) calendar days after service of the preliminary order, the preliminary order will become a final order and those person(s) subject to the order shall have thirty (30) calendar days to comply with the order or such other period as the Court may order.

(c) If any person, subject to the preliminary order for genetic testing, files a timely objection to the order with the Tribal Court, the Court shall conduct a hearing to consider such objection and any responses thereto filed by the other parties.

(d) After the Tribal Court has considered any objections to the preliminary order for genetic testing, the Court shall issue a final order for genetic testing or a statement that testing is not required.

Section 6.04 Laboratory Requirements

(a) Genetic testing must be a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:

(1) The American Association of Blood Banks, or a successor to its functions;

(2) The American Society for Histocompatibility and Immunogenetics, or a successor to its functions; or

- (3) An accrediting body designated by the Secretary of Health and Human Services.

Section 6.05 Reporting

(a) Self-Authentication. A report of genetic testing must be in a record and signed under penalty of perjury by a designee of the testing laboratory.

(b) Chain of Custody. Documentation of the following information is sufficient to establish a reliable chain of custody that allows the genetic testing be admissible without testimony:

- (1) Names and photographs of the individuals whose specimens have been taken;
- (2) Names of the individuals who collected the specimens;
- (3) Places and dates the specimens were collected;
- (4) Names of the individuals who received the specimens in the testing laboratory; and
- (4) Dates the specimens were received.
- (5) Name of the person conducting the final test and the date of the final test.

Section 6.06 Results

(a) The results shall be filed with the Court within fourteen (14) calendar days of receipt from the testing agency.

(b) Any objection to the results and request for additional testing shall be filed within fourteen (14) calendar days of receipt from the testing agency.

(c) The results shall not be made part of the record until the expiration of the fourteen (14) calendar day period and there are no objections or if an objection is filed after a determination of admissibility is rendered.

Section 6.07 Additional Testing

(a) Unless otherwise provided by the Court, there shall be no additional genetic testing.

(b) The Court may not order additional tests be conducted to confirm or disprove the original test unless the party challenging the test result provides advance payment for the testing.

Section 6.08 Putative Father Unavailable for Testing

If the Putative Father is not available to participate in genetic testing, the Court may order the following individuals to submit specimens for genetic testing:

- (a) Parents of the Putative Father;

- (b) Brothers and sisters of the Putative Father;
- (c) Other children of the Putative Father and their mothers; and
- (d) Other relatives of the Putative Father necessary to complete genetic testing.

Section 6.09 Costs

The cost of initial genetic testing must be advanced:

(a) By Department of Social Services in a proceeding in which the Social Services is providing services, however, Social Services may seek reimbursement from the Putative Father as determined by this Court;

- (b) By the petitioner;
- (c) As agreed by the parties; or
- (d) As ordered by the Court.

CHAPTER 7

ORDER FOR PATERNITY

Section 7.01 Burden of Proof – Clear and Convincing

The petitioner has the burden to provide clear and convincing evidence that the alleged father is the biological father of the child.

Section 7.02 Order for Paternity

Upon finding that a man is the child's biological father, the Tribal Court shall prepare and issue an order of paternity. The order shall contain:

- (a) Proper identification of the Tribal Court's action and proceedings;
- (b) Date of the Tribal Court's final determination;
- (c) Child's name, address, Social Security number, and, if available, tribal identification number; and
- (d) Father's name, address, Social Security number, and, if applicable, tribal identification number.

Section 7.03 Issuance

The Tribal Court shall issue the order to:

- (a) The man petitioning or petitioned to be the biological father;
- (b) The mother, unless she filed a joint affidavit affirming the Putative Father's parentage under subsection 3.01(b) of this Act;
- (c) The child's guardian *ad litem*;
- (d) The child's legal guardian, if any;
- (e) Any other person with legal custody rights to the child;
- (f) The Enrollment Committee;
- (g) The Department of Social Services; and
- (h) Anyone else determined by the Court.

CHAPTER 8

REHEARING AND APPEALS

Section 8.01 Rehearing

- (a) Any person with standing under section 2.01 or any Pokagon governmental agency with a legitimate interest may file a motion with the Tribal Court for a rehearing.
- (b) A rehearing may be granted if the Court relied on a presumption under section 5.02 when rendering the final decision and the petitioner can show:
 - (1) Newly discovered evidence not otherwise discoverable before the final decision was rendered; or
 - (2) Fraud.
- (c) A rehearing shall not be granted if the Court relied on genetic test results to render a final decision unless the petitioner can show substantial evidence that would render the genetic tests invalid or unreliable.

Section 8.02 Appeals

Chapter 5 of the Pokagon Band of Potawatomi Indians Court Rules of Appellate Procedures governs appeals procedures under this Act.

LEGISLATIVE HISTORY

Pokagon Paternity Proceeding Act, enacted on April 3, 2013 by Resolution No. 13-04-03-12 and pursuant to the enacting resolution, the Pokagon Paternity Proceeding Act shall become effective 30 days after enactment.

Current Through April 3, 2013; Res. 13-04-03-12