

Parental
Responsibility

Ordinance

AMENDED

COPY

By: OAG/ ESCSP

Eastern Shoshone Parental Responsibility Ordinance



Approved by
Shoshone General Council
Resolution No. 2009-10171
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Eastern Shoshone Parental Responsibility Ordinance

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Eastern Shoshone Parental Responsibility Ordinance

SGC Resolution # 2009-10171

Chapter 1: Preliminary Provisions

Section 101 - Inherent Tribal Authority

The power to legislate for the administration of justice for an Indian Tribe extends back to time immemorial if not limited by Congress itself. This exercise of inherent tribal sovereignty provides the basis upon which this code is enacted. It is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can be reasonably avoided.

Section 102 – Name of the Ordinance

This ordinance shall be known as the Eastern Shoshone Parental Responsibility Ordinance and shall be referred to as the Eastern Shoshone Parental Responsibility Ordinance and abbreviated as ESPRO. Citation to this ordinance shall be by (Shoshone Ordinance, number of code and section).

Section 103 – Controlling Law

- (a) **Law and Order Code.** Unless otherwise provided for in this Ordinance, the Shoshone and Arapaho Tribes of the Wind River Indian Reservation Law and Order Code (S&A LOC), Title II, Rules of Civil Procedure, shall apply to all actions filed pursuant to the Eastern Shoshone Parental Responsibility Ordinance.
- (b) **Conflict between Code and Ordinance.** If a conflict in the ESPRO and the S&A LOC occurs under this ordinance, the courts shall resolve this case in favor of the provisions of the ESPRO, unless such resolution would be contrary to the general principles of fairness and justice as prescribed and interpreted by the courts.
- (c) **Current Law.** At all times the courts shall abide by the current, approved Eastern Shoshone Child Support Program (ESCSP) Guidelines.

Section 104 – Purpose and Construction

- a. **Child Welfare.** The children and families of the Eastern Shoshone Tribe are the Tribe's most important resource and their welfare is of paramount importance to the Tribe. The Eastern Shoshone Tribe has a vested interest in ensuring that tribal children receive emotional and financial support from their parents while also respecting the traditional values and customs of the Tribe and its community.
- b. **Liberal Application.** The rights and remedies under this Ordinance shall be applied liberally for the benefit of the child to the maximum extent permitted by law.

- c. **Code Enactment.** The Eastern Shoshone Tribe acknowledges that, ultimately, a joint family support ordinance of both tribes may be approved, and may supersede this Ordinance in whole or in part.
- d. **No Waiver of Sovereign Immunity.** Except as otherwise expressly provided herein, nothing in this Eastern Shoshone Parental Responsibility Ordinance shall supersede.

Section 105 – Prior Inconsistent Resolutions and Ordinances Repealed

- a. **Repeal of Conflicting Resolutions.** Any and all resolutions and ordinances of the Shoshone Council of the Eastern Shoshone Tribe, which conflict in any way with the provisions of this Eastern Shoshone Parental Responsibility Ordinance are hereby repealed to the extent that they are inconsistent with or conflict with, or are contrary to the spirit or purpose of this Eastern Shoshone Parental Responsibility Ordinance. Those which do not conflict will remain in effect.
- b. **Conflicts.** In the event that this Eastern Shoshone Responsibility Ordinance may be amended by the Eastern Shoshone General Council and amendments shall be made a part hereof for all purposes and shall be certified and incorporated herein in a manner consistent with the numbering and organization thereof.

Section 106 – Amendment of Ordinance

- a. **Amendment by Shoshone General Council.** The Eastern Shoshone Parental Responsibility Ordinance may be amended by the Eastern Shoshone General Council and amendments shall be made a part hereof for all purposes and shall be certified and incorporated herein in a manner consistent with the numbering and organization thereof.
- b. **Resolution Required.** No amendment shall be effective until adopted by resolution of the Eastern Shoshone General Council.
- c. **Review of Ordinance and Recommendations.** The program shall review and revise this Ordinance every four years, and make recommendations as necessary for the amendment of this Ordinance. The program may issue written directives regarding such matters on an emergency or temporary basis pending review and consideration by the Shoshone Council.

Section 107 – Judges Appointed under this Ordinance

- a. **The Shoshone and Arapahoe Law and Order Code Applies to Judge Acting Under FSO.** The Courts' Judge, who is assigned to hear cases under this Ordinance, shall be subject to the rules of the Shoshone and Arapaho Law and Order Code that are applicable to a Judge, including position qualifications, performance expectations, and conflict of interest.

Section 108 – Establishment of a Child Support Program

- a. **Designation of Child Support Program.** The Eastern Shoshone Tribe shall designate a program that shall have the authority and responsibilities set forth in this Ordinance to implement the requirements of 45 CFR 309.
- b. **Grievance Process Required.** The policies and procedures of the Program shall include a grievance process by which persons aggrieved by a Program decision may seek a review and receive a final determination.

Chapter 2: General

Section 201 - Definitions

For purposes of this Ordinance:

- A. **“Absent Parent”** means a parent of (a) child(ren) either during the course of the marriage or outside the marriage who is not providing the custodial parent with child support for the benefit of the child(ren) or who is bound by an administrative or court order to pay child support obligation.
- B. **“Basic Visitation”** means a custody arrangement whereby one parent has physical custody and the other parent has visitation with the children of the parties less than 35% of the time.
- C. **“Child”** means any person under the age of 18 or is over 18 and is enrolled full time in high school or a General Equivalency Diploma (GED) program, and is not otherwise emancipated, self-supporting, married, or an active member of the armed forces; or a person who is over the age of 18 and for whom equity demands continued child support.
- D. Unless otherwise specified, **“Child Support”** as used in this Ordinance means the financial obligation a parent has towards his or her child or children, whether such obligation is established through judicial or administrative process, by stipulation of the absent parent, or by parentage of any child or children. The financial obligation of a parent shall be met through the payment of monies and/or through the provision of other goods and/or services, as ordered by the court or agreed by the parties.
- E. **“Court Order”** means any order, judgment or decree of a court or authorized hearing body, establishing or modifying parentage for a child (ren) and/or liability for public debt and/or child support for any child (ren).
- F. **“Custodial Parent”** means the parent who holds legal custody of the child or children on the basis of agreement or court order by or with the parents in the absence of one parent. The term custodial parent shall also include a guardian or custodian appointed by a court of competent jurisdiction.
- G. **“Employer”** includes all persons or entities who agree to compensate another person for services performed at that person or entity’s request.
- H. **“Garnishment”** is the process whereby a court order is directed to an employer, bank, or agent holding monies or property of an absent parent, to make payments or deliver property to satisfy a child support obligation in accordance with the order.

- I. "Gross Income" includes income from any source and includes, but is not limited to income from salaries, wages, tips, commissions, bonuses, dividends or other corporate distributions, severance pay, pensions, interest, trust income, annuities, capital gains, income from sales of Indian arts and crafts, social security benefits, workers compensation benefits, unemployment insurance benefits, disability insurance benefits, significant in-kind benefits that reduce personal living expenses, prizes and alimony or maintenance received. It includes in-kind non-cash income calculated at reasonable market value.
- J. "Eastern Shoshone" fully includes members or traditions of the Eastern Shoshone Tribe of Wyoming.
- K. "Income" is defined as actual gross income of a parent if employed to full capacity or potential income if unemployed or underemployed.
- L. "Payee" shall mean the person, or the IV-D agency on behalf of the individual, with the right to receive child support.
- M. "Payer" shall mean a person or other entity with a present, legal obligation, whether as an individual, employer, buyer of goods, debtor, pension fund, or otherwise, to pay an obligor. Persons who se obligations are not a legal but a moral obligation are, not payers for purposes of this Ordinance.
- N. "Parent" means the biological or adoptive mother or father of a child. "Parentage" means the condition of being the biological or adoptive mother or father of any child or children. The term includes both the paternity and maternity of any child or children.
- O. "Primary Physical Custody" means physical custody of a child or children 65% of the time.
- P. "Public Assignment of Child Support Rights" means the assignment of child support rights, including the right to establish or enforce child support or parentage, by the custodial parent to the Shoshone Tribe or another tribe or state agency. Such assignment may be in connection with the payment of benefits under the Federal Temporary Aid to Needy Families (TANF) to or for the benefit of any child or children by the Shoshone Tribe, or another tribe, or any state agency, as a consequence of the failure of an absent parent to provide child support.
- Q. "Shared Responsibility" means a custody arrangement whereby each parent provides a suitable home for the children of the parties, when the children spend at least thirty-five percent of the year in each home and the parents significantly share the duties, responsibilities and expenses of parenting.
- R. "Support Enforcement Agency" means a Shoshone Tribal, another tribe, or state agency authorized to engage in any of the following activities:
 - 1. Enforcement of support orders or laws relating to the duty of support;
 - 2. Establishment or modification of child support obligations;
 - 3. Determination of parentage; or
 - 4. Location of obligors or their assets.
- S. "TANF" means Temporary Assistance for Needy Families, the government benefit program to support families with dependent children that has replaced AFDC (Aid to Families with Dependent Children".

- T. “Wage Assignment” means either a voluntary written assignment of earned wages or a court order assignment of wages, which is submitted to an employer, authorizing the employer to pay a portion of the earned wages of the employee to ESCSP for the benefit of the child.
- U. “Wage Execution” is a required remedy that must be included in a court order directing an employer to make payments to ESCSP for the benefit of a child from the earned wages of an employee.
- V. “ESCSP” means the Eastern Shoshone Child Support Program.

Chapter 3: Jurisdiction

Section 301 - Statement of Policy

- A. It is the public policy of the Eastern Shoshone Tribe to support the rights of children. Children represent a continuation of the Eastern Shoshone way of life and of future generations. Parents and relations have a responsibility to contribute to the nourishment and support of their children. Parents must also establish the parentage of their children for tribal enrollment and for identity in family and with their relations. Parents have a duty to nourish and support children. Where there is disharmony in the family, parents will subordinate their interests in favor of their children.
- B. Both parents have an obligation towards their children that includes much more than financial support; it includes time and attention as well as guidance and teaching of Shoshone values. While it is the policy of the Shoshone Tribe to support these non-financial elements of parenthood, nothing in this Ordinance makes them mandatory.
- C. Children shall be maintained as completely as possible from the resources of their parents. This ordinance establishes a process for the establishment of parentage; the establishment, modification and enforcement of child support obligations; and adds remedies to those already existing for child support enforcement. It also provides for a uniform schedule of child support payments in the interest of equity and to provide parties and judges with guidance in determining child support. This Ordinance shall be liberally construed to effectuate the policies stated herein.
- D. In no manner is this Ordinance intended, nor is it deemed, to relieve the State of Wyoming from providing equal protection of the laws of their respective states and the United States to their citizens.

Section 302 - Tribal Policy

The Court shall have jurisdiction in all civil proceedings described in this Ordinance.

- A. Declaration of Policy. It is hereby declared that as a matter of tribal policy that the public and tribal interests demand that the Shoshone Tribe provide all individuals subject to the jurisdiction of the Tribe with an effective means of redress for establishment of paternity, and establishment, modification, and enforcement of child support obligations.

- B. Purpose of Jurisdictional Provisions. The jurisdictional provisions of this Parental Responsibility Ordinance are to ensure maximum protection for the Tribe, its members, and other residents of the reservation, and shall be applied equally to all persons.
- C. Availability of ESCSP services. Any person, whether or not subject to the jurisdiction of the tribe, may request relief from the Court or services from the Eastern Shoshone Child Support Program.

Section 303 - Territorial Jurisdiction

- A. Jurisdiction within the exterior boundaries. The jurisdiction of the Courts of the Shoshone and Arapaho Tribes shall extend to the territory within the Wind River Indian Reservation and to such other lands without such boundaries as may have been or may hereafter be added to the Reservation or held in trust for the tribes under any law of the United States or otherwise.
- B. Extended Jurisdiction. The jurisdiction of the Courts of the Shoshone and Arapaho Tribes shall extend beyond the territorial limitation set forth above, to effectuate the jurisdictional provisions set forth below, to the greatest extent permissible by law.

Section 304 - Personal Jurisdiction

- A. "Person" used inclusively. As used in these jurisdictional provisions the word "person" shall include any individual, firm, company, association, corporation or tribe.
- B. Scope of Personal Jurisdiction. The Courts of the Shoshone and Arapaho Tribes shall have personal jurisdiction over the following persons:
 - 1. Any person residing, located or present within the reservation for any civil cause of action;
 - 2. Any person who transacts, conducts, or performs any business or activity within the reservation, either in person or by an agent or representative for any civil cause of action;
 - 3. Any person who owns, uses or possesses any property within the reservation, either in person or by an agent or representative, for any civil cause of action;
 - 4. Any person who commits tortuous conduct within the reservation, either in person or by an agent or representative, for any civil cause of action arising from such act, conduct of omission; and
 - 5. Any enrolled or non-enrolled member of any indigenous Indian tribe who commits a criminal offense prohibited by this code or other law of the tribes by his or her conduct or the conduct of another for which they are legally accountable, if:
 - a. The conduct occurs either wholly or partly within the reservation;

- b. The conduct which occurs outside the reservation constitutes an attempt, solicitation, or conspiracy to commit an offense within the reservation, and an act in furtherance of the attempt or conspiracy occurs within the reservation; or
 - c. The conduct which occurs within the reservation constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense prohibited by this Code, tribal law or such other jurisdiction.
- C. Jurisdiction may rest on more than one provision. None of the foregoing bases of jurisdiction is exclusive, and jurisdiction over a person may be established upon any one or more of them as applicable.

Section 305 - Jurisdiction over Property

- A. Real and Personal Property. Subject to any contrary provisions, exceptions, or limitations contained in either federal laws or the Shoshone and Arapaho Law and Order Code, the Courts of the Shoshone and Arapaho Tribes shall have jurisdiction over any real or personal property located on the reservation.
- B. Property Available for Satisfaction of Child Support Obligation. The Courts of the Shoshone and Arapaho Tribes shall determine the ownership thereof, or rights therein, and to determine the application of such property to the satisfaction of a child support obligation for which the owner of the property may be liable.

Section 306 - General Subject Matter Jurisdiction

Subject to any contrary exceptions or limitations contained in either federal or applicable tribal law, the Courts shall have general subject matter jurisdiction over all actions for paternity establishment, and the establishment, modification, and enforcement of child support obligations to the maximum extent allowed by law.

Section 307- Exclusive Original Jurisdiction

The Courts shall have exclusive original jurisdiction of the establishment of paternity, and the establishment, modification and enforcement of child support obligations.

Section 308 - Full Faith and Credit for Child Support Orders

- A. Valid Child Support Orders. The Courts shall recognize and provide full faith and credit to valid child support orders, including income withholding orders, from a state or another tribe pursuant to the Federal Full Faith and Credit for Child Support Orders Act (FFCCSOA), 28 U.S.C. 1738B.
- B. Recognition of Foreign Orders by Private Petition. Any person who has not applied for services from ESCSP may seek recognition of a foreign order of support by filing a Petition for Recognition of Foreign Judgment pursuant to the process of Title I, Chapter 9 of the S & A LOC.

- C. ESCSP to Provide Assistance with Recognition of Foreign Orders. Any person may seek recognition of a foreign order of support by submitting a request for assistance to the Eastern Shoshone Child Support Program.
- D. Enforcement of Foreign Orders. A foreign order recognized by the Courts shall be enforced in accordance with the provisions of this Ordinance and the ESCSP Guidelines.

Chapter 4: Civil Procedure

Section 401 - Service of Process

- A. Service by Publication. In addition to the process of service required by the Shoshone and Arapahoe Law and order Code, service by publication shall be made when, after due diligence, the ESCSP has insufficient information for personal service or it is believed that a party is avoiding service.
- B. Publication Requirements. The ESCSP shall publish the contents of the Summons in one or more local newspapers of general circulation once per week for four (4) weeks and leaving an extra copy of the Summons and Complaint with the courts and the ESCSP for the party.
- C. Limitations on Service by Mail. All papers required to be filed may be served by certified or registered mail, except a Summons and Complaint or an Order to Show Cause.

Section 402 - Legal Actions in the Courts

- A. ESCSP as Representative of Tribe. The ESCSP shall prosecute paternity, child support and support enforcement actions as the representative of the Tribe on behalf of the best interest of the child and include the child's name and date of birth on the heading of its pleadings.
- B. Pleadings Format. Original pleadings shall name the party that applied for services from ESCSP as the petitioner and the other parent or guardian as the respondent.
- C. Guardian Ad Litem. The Courts may appoint a Guardian Ad Litem for a minor child but ESCSP shall not be responsible to pay the fees for a Guardian Ad Litem for a minor child in a paternity or child support action.

Section 403 – Trial to the Courts

In any action brought by the ESCSP in which a party makes a request for a trial, the trial shall be to the Courts.

Section 404 - Attorney Fees and Other Court Costs

- A. ESCSP is not required to Pay Attorney Fees. At no time shall the Courts order ESCSP to pay attorney fees.
- B. Filing fees. The Courts may charge a filing fee on cases brought by ESCSP provided there is a payment agreement between the Courts and ESCSP.
- C. **Section 405 - Appeals**

An appeal of a decision under the ESCSP shall be made to the Court of Appeals pursuant to the current Shoshone and Arapahoe Law and Order Code appeal procedures and requirements.

Chapter 5: Paternity

Section 501 – Relationship Established

- A. The parent and child relationship may be established between a child and:
- a) The mother of a child. The natural mother by proof of her having given birth to the child; or
 - b) The Natural Father. The natural father through traditional practices recognized by the tribe, voluntary acknowledgment by a state or tribal process, a stipulation and order, or order of the Courts establishing the parent and child relationship, or
 - c) An Adoptive Parent. An adoptive parent by proof of adoption.

Section 502 - Artificial Insemination

- A. Husband as Natural Father.
If, under the supervision of a licensed physician and with the informed consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated as if he were the natural father of a child thereby conceived; provided:
- a) The husband's consent shall be in writing and signed by him and his wife; and
 - b) The physician shall certify their signatures and the date of the insemination and file the husband's consent with the state office of vital records and services:
 1. The physician's failure to do so does not affect the father and child relationship.
 2. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the Courts for good cause shown.
- B. Donor not to be treated as the Natural Father. The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated as if he were not the natural father of a child thereby conceived.

Section 503 - Rebuttable Presumptions

- A. Marital Presumption. A man is presumed to be the natural father of a child if he and the natural mother were married at the time of the child's birth, or if the child was born within three hundred (300) days after the marriage was terminated.
- 1) Any action to challenge a marital presumption must be filed within two (2) years after the date of the child's birth, unless good cause is established for a challenge filed more than two (2) years after the date of the child's birth.

- 2) If paternity has been established pursuant to the laws of the Tribe, another tribe or a state, and due process has been provided, the ESCSP is prohibited from providing IV-D paternity services. The person contesting paternity under this presumption may obtain genetic testing through alternative means at their own expense.
- B. Application of Genetic Test Results. There is a rebuttable presumption that an alleged father is the biological father in any case where the genetic test results indicate a statistical probability of paternity of 99 percent or more.
- C. Effect of Paternity Establishment under this Ordinance upon Tribal Membership. The Eastern Shoshone Tribe, when identifying or defining family or extended family pursuant to Tribal tradition and customs, or how it defines its membership, need not rely upon a determination of paternity under this Ordinance.

Section 504 - Commencement of a Paternity Proceeding

- A. Persons Who May Commence a Proceeding. Any parent, legal custodian, interested family member of the minor child who has custody of the child, or the ESCSP may commence a proceeding authorized under this Ordinance.
- B. Minor Parents. When a mother or a potential father is a minor, the minor's parent, a legal custodian, or interested family member of the minor child who has custody of the child may take action or apply for IV-D services on behalf of the minor child.
- C. Limitations on Commencement of Action. An action to establish paternity must be filed on or before the date on which the child reaches the age of eighteen (18), except as provided by subsection (d) of this Section.
- D. Extension of Time for Minor Child. A child, for whom paternity has not been determined, may bring an action on their own behalf within 3 years of turning 18.
- E. Use of Court Forms. The ESCSP shall use the Court's approved forms, petitions, and summons when commencing a paternity action.

Section 505 - Procedures in the Best Interests of the Child

- A. Closed Hearings. A hearing involving the paternity of a child shall be closed to the public.
- B. Expedited Determination. When a child that may be eligible for enrollment with the Tribe is or may become involved in an adoption proceeding under the Indian Child Welfare Act, or is a tribal member involved in an adoption proceeding, the Tribe shall make an expedited determination of paternity pursuant to ESCSP policy and procedure.
- C. ESCSP is not required to Bring Paternity Action in Certain Cases. In cases of incest or rape, and upon a determination by the courts that it is not in the best interest of the parties to determine paternity, the ESCSP shall not be required to determine paternity

Section 506 - Genetic Testing

- A. Provision of Genetic Testing. When paternity is contested by either party, whether married or unmarried, the Tribe, through ESCSP, shall provide for genetic testing, unless otherwise barred in this Ordinance. If both parties voluntarily request genetic testing, the ESCSP shall provide genetic testing.
- B. Contents of Petition to Establish Paternity. A contested paternity determination shall be based upon a sworn statement that sets forth:
 - a. A reasonable possibility of the requisite sexual contact between the parties; or
 - b. A reasonable possibility of the nonexistence of the requisite sexual contact between the parties.
- C. Use of Accredited Laboratory Required. When paternity is determined by genetic testing, ESCSP or any individual party must utilize an accredited genetic testing laboratory that provides for a genetic testing process that is medically and legally acceptable pursuant to ESCSP Policy and Procedure.
- D. Objection to Testing Results. A party that contests a paternity presumption based on genetic testing results shall have an affirmative duty to present good cause for requesting a second set of genetic testing.
 - a. The contesting party must pay for a second set of tests within sixty (60) days of the Court's order and failure to do so may result in a default judgment.
 - b. The contesting party may choose another accredited genetic testing laboratory at their own expense.

Section 507 – Voluntary Acknowledgment of Paternity

- A. Notice of Right to Acknowledge Paternity and of the Effects of Acknowledgment. All correspondence, notices, and legal documents from the ESCSP that address the need for a determination for paternity, shall inform the alleged father of his right to voluntarily acknowledge his paternity, his right to request genetic testing, his right to participate in the child's life as the father, the obligation for child support and the possible penalties for non-payment of support.
- B. Standards for Voluntary Acknowledgment. A voluntary acknowledgement of paternity maybe in the form of an ESCSP approved form filed with ESCSP or the Courts, any state's vital record form, or any tribes' equivalent form provided:
 - a. Due process has been provided pursuant to the laws of the jurisdiction; and
 - b. The time to appeal the voluntary acknowledgment has expired.
- C. Tribal Custom. A tribal tradition or practice that involves the acknowledgment and welcoming of a child into a family may be considered when determining paternity

Chapter 6: Support Obligations

Section 601 - Child Support Guidelines

- A. Guidelines to be maintained by ESCSP. On behalf of the Eastern Shoshone Tribe, the Eastern Shoshone Child Support Program shall maintain one set of guidelines that shall be uniformly and consistently applied under the Eastern Shoshone Parental Responsibility Ordinance in all cases.
- a. The ESCSP shall review the Guidelines, at a minimum, once every four (4) years to ensure they reflect the values of the Tribe, the social and economic realities of tribal members, and are in compliance with the regulation requirements of 45 CFR 309.
 - b. The ESCSP Guidelines shall take into account the needs of the child and the earnings and income of a parent who has the responsibility to make payment of financial support.
 - c. The ESCSP Guidelines shall be based on specific, descriptive, and numeric criteria that result in a computation of a support determination.
 - d. The ESCSP may issue written directives regarding the Guidelines on an emergency or temporary basis pending review and approval of the Tribal Council.
- B. In-Kind Support Recognized. The Eastern Shoshone Tribe recognizes the value of in-kind contributions to the support of children and may enter in-kind support obligations pursuant to the ESCSP Child Support Guidelines.
- a. An in-kind support obligation must also include the equivalent dollar amount that would be paid, but for the in-kind order.
 - b. An in-kind support obligation may not be used to satisfy obligations due to another tribe or a state and may only be used to satisfy custodial arrears with the consent of the custodial parent to whom the arrears are due.
- C. Rebuttable Presumption in Favor of Guidelines. There shall be a rebuttable presumption that the application of ESCSP Guidelines is the correct and appropriate amount of support to be ordered and if the Courts make a different finding, it must:
- a. Identify the specific criteria relied upon to deviate from the application of the ESCSP Guidelines; and
 - b. Include the reasons and justification for deviating from the ESCSP Guidelines that would make the application unjust or inappropriate; and
 - c. Indicate that the needs of the child were taken into consideration; and
 - d. Make a written finding on the record of what the required and appropriate support amount would have been and the amount of support ordered.
- D. Deviation from Guidelines. The Courts may deviate from the Child Support Guidelines on a showing of good cause, including but not limited to, the following:
1. The party is under a custody order based on the Indian Child Welfare Act or through the Eastern Shoshone Child Protection Services and actively working on their case plan; or

2. Both parties have entered into a written stipulation that deviates from the Child Support Guidelines and the Courts find the needs of the child are met; or
3. There are extraordinary needs of the parent required to pay support for a child (ren).
4. Evidence including, but not limited to, one or more of the following factors:
 - a. The financial resources of the parent required to pay support and child; or
 - b. The standard of living the child would have enjoyed had a marriage not been dissolved; or
 - c. The special physical, emotional, and educational condition of the child and his or her needs; and
 - d. Substantial contributions toward the emotional welfare and care of a child from the extended family.
- E. Hierarchy of Payments. When ordering payment of support obligations, the Courts and ESCSP shall comply with the hierarchy of payments as set out in 45 CFR 309.115.

Section 602 - Modification of Support Obligations

- A. Review Hearing Notice. The ESCSP shall provide notice of the right to a review hearing for ESCSP clients every thirty three (33) months. If both parties decline the opportunity, no hearing will be required.
- B. Change of Circumstances. Any party may request a modification based upon a substantial change in circumstances as defined in the ESCSP Guidelines.
- C. Tribal Traditions. When making, establishing or modifying a child support obligation, the Courts may take into consideration tribal traditions and customs.

Chapter 7: Enforcement of Support Obligations

Section 701 - Enforcement Required

- A. Enforcement of Support Orders. Support obligations ordered pursuant to the Eastern Shoshone Parental Responsibility Ordinance or foreign orders of support that have been given full faith and credit shall be enforced when a party who is required to pay support fails to do so in a timely and consistent manner.
- B. Persons Subject to Enforcement Processes. All persons or entities that are subject to the jurisdiction of the Tribe shall also be subject to the enforcement processes set out in this Ordinance and the ESCSP Guidelines.

Section 702 - Income Withholding

- A. Mandatory Income Withholding. The income of a party who is required to pay support shall be subject to immediate income withholding but no later than the date on which the payments which the party who is required to pay support has failed to make payments that are at least the equivalent to the support payable for one month, unless:

- a. Either party demonstrates and the Courts enter a finding that there is good cause not to require mandatory income withholding; or
 - b. There is a stipulation between the parties that provides for an alternative arrangement and the Courts have signed an order reflecting the terms and directives of a stipulation.
- B. Grounds for Contesting Order. The only basis for contesting an income withholding order is an error in the amount that is ordered to be withheld or mistake in the identity of the person against whom the income withholding order is issued.
- C. Arrearages. In addition to an amount sufficient to pay current support, the Court shall order an amount to be paid to liquidate custodial arrears and may order an amount to be paid to liquidate TANF arrears due to a Tribe or State, unless waived by the applicable State or Tribal agency.
- D. Limits on Withholding. At no time shall the amount withheld from a parent who is responsible to pay support exceed the limits set out in the Consumer Credit Protection Act, although the Courts may set lower amounts.
- E. Notice. Notice of income withholding must be sent by using the Standard Federal Income Withholding form, as required by 45 CFR 309-310.

Section 703 - Other Enforcement Techniques

The Court may order any person, who has been found to have failed to comply with an order of the Court, to comply with any of the following enforcement measures:

- A. Obtain services that address employment and training issues; or
- B. Obtain services that address social and mental health issues or
- C. Obtain services that address personal issues; or
- D. Obtain services that address the health and welfare of a child; or
- E. Participate in cultural or traditional guidance.

Section 704 - Civil Sanctions

The remedies and sanctions provided in the Eastern Shoshone Parental Responsibility Ordinance are in addition to the contempt powers provided in the Shoshone and Arapaho Law and Order Code, Title 1, Chapter 4.

Chapter 8: Miscellaneous Provisions

Section 801 - Safeguarding and Confidentiality

- A. Domestic Violence. The Court and ESCSP shall be prohibited from releasing information on the whereabouts of any party when a protective order is in place or domestic violence is suspected.

- B. Release of Information Prohibited. The Court and ESCSP shall be prohibited from disclosing information maintained in ESCSP files except as allowed under Federal and Tribal Law, and limited to information necessary for pursuing a legal action.
- C. Sanctions. All employees of the Tribe that violate this section shall also be subject to the confidentiality sanctions of ESCSP Policy and Procedures.

Section 802 - Employer Compliance

- A. Application of Enforcement Actions to Employers. All employers who are subject to the jurisdiction of the Eastern Shoshone Tribe including the Tribe itself and its programs, departments, agencies or other entities shall:
 - a. Honor income withholding orders or notices from the Court or ESCSP and withhold the amount required and if they fail to do so, the employer shall be liable for the accumulated amount that should have been withheld.
 - b. Be prohibited from refusing to hire, discharging an employee, or taking disciplinary action against employee based upon income withholding.
- B. Contempt. Parties subject to this Chapter, and other applicable sections of the PRO, or the ESCSP Guidelines, may also be subject to contempt of the Shoshone and Arapaho Law and Order Code, Title 1, Chapter 4.