

## **Title 7 – Domestic Relations**

### **Chapter 6 – Child Support**

**Sec.**

7-06.010	Introduction – Child Support
7-06.020	Authority to Establish a Child Support Schedule
7-06.030	General Standards for the Application and Use of the Child Support Schedule
7-06.040	Child Support Schedule and Calculations
7-06.050	Guidelines for Deviation from Support Obligation
7-06.060	In-Kind Services and Resources
7-06.070	Modification and Termination of Provisions for Child Support
7-06.080	Collection of Past Due Support
7-06.090	Payment of Support - Records
7-06.100	Assignments

*Appendices*

Appendix I	Child Support Schedule
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#### **Legislative History**

**Enacted:**

Domestic Relations, Ord. 188 (11/10/03), BIA (11/25/03).

**Repealed or Superseded:**

Child Support, Ord. 129 (12/1/98), BIA (1/25/99) (amending Ord. 101).

Domestic Relations, Ord. 101 (4/6/93), BIA (5/3/93) (repealing any and all prior domestic relations ordinances).

Law and Order Code, Ord. 7 (3/23/38), BIA (3/24/38) (Chapter III).

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**7-06.010 Introduction – Child Support.**

- (A) Children are the most vital resource to the continued existence and integrity of the Swinomish Indian Tribal Community. Therefore, the Tribe has a compelling interest in promoting and maintaining the health and well-being of all Swinomish children. Swinomish Child Support Guidelines are in the best interests of Indian families, especially Indian children who have a right and a need to receive parental support. The adoption of these Child Support Guidelines and attached Child Support Schedule by the Senate is a proper exercise of its tribal sovereignty.
- (B) By adopting these Child Support Guidelines and Schedule the Tribe re-affirms Swinomish custom and tradition which recognizes both parents' obligation to

provide support for their children as their respective income, resources and abilities allow. Furthermore, child support orders shall reflect the understanding that in order for children to prosper, their parents must also prosper. Therefore child support awards should not be so burdensome that the parents obligated to provide them are left with insufficient resources necessary for their own livelihood.

[History] Ord. 188 (11/10/03); Ord. 129 (4/6/93).

**7-06.020 Authority to Establish a Child Support Schedule.**

- (A) The Tribal Court, with prior approval of the Senate, may adopt or amend a Swinomish Child Support Schedule.
- (B) The Child Support Schedule shall establish a fair formula that the Tribal Court shall follow when setting child support.
- (C) In addition to incorporating the computation factors set out in this Chapter, the Child Support Schedule shall provide for the use of traditional and innovative ways of satisfying child support obligations as provided in Section 7-06.060.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-06.030 General Standards for the Application and Use of the Child Support Schedule.**

- (A) In a proceeding for dissolution of marriage, legal separation, declaration of invalidity, custody or visitation, maintenance, or child support, the Tribal Court may order either or both parents owing a duty of support to a child, born to or adopted by the parents, to pay an amount reasonable and necessary for support, without regard to marital misconduct. The parents' obligation for support shall be based on the factors and guidelines set out below.
- (B) The basic child support obligation derived from the Child Support Schedule shall be apportioned between the parents based on each parent's share of their combined monthly net income.
- (C) Ordinary health care expenses are included in the Child Support Schedule. Extraordinary health care expenses not covered by private health insurance or Indian Health Service (i.e., those expenses that exceed five percent (5%) of the basic support obligation) shall be shared by the parents in the same proportion as the basic child support obligation.
- (D) Work related day care and special child rearing expenses are not included in the Child Support Schedule. The parents shall share these expenses in the same

proportion as the basic child support obligation. The Tribal Court may enter a child support order to include a duty to provide for day care expenses.

- (E) The Tribal Court may deviate from the basic allocation formula if the child(ren) spend(s) a significant amount of time with the parent who is obligated to make support transfer payments.
- (F) When combined monthly net income is less than six hundred dollars (\$600.00), a support order for not less than twenty-five dollars (\$25.00) per month per child shall be ordered.
- (G) Neither parent's child support obligation shall exceed thirty-five percent (35%) of their net earnings unless good cause is shown, in which case the support obligation shall not exceed fifty percent (50%) of their net earnings.
- (H) All income and resources of each parent's household shall be disclosed and considered by the Tribal Court. All such disclosures, including worksheets, paystubs, tax returns, etc., shall be confidential and available only to the parties and the Tribal Court, and solely for the purpose of establishing child support obligations.
- (I) Before applying any disability benefits into gross income calculations, the Tribal Court shall consider the actual needs of the disabled party and the effect of the inclusion of such benefit on the disabled party, as well as the needs of the child(ren).

[History] Ord. 188 (11/10/03); Ord. 129 (4/6/93); Ord. 101 (4/6/93).

#### **7-06.040 Child Support Schedule and Calculations.**

- (A) **Basic Child Support Obligation.** A child support obligation shall be set at the basic support amount listed in the attached Swinomish Child Support Schedule and be based on the combined net income of both parents. Monthly net income shall be determined by subtracting the appropriate deductions, in accordance with Section 7-06.040 (D), from monthly gross income.
- (B) **Gross Income.** Monthly gross income shall be calculated by adding income received from all sources including:
  - (1) Salaries;
  - (2) Wages;
  - (3) Commissions;

- (4) Revenue from sales of goods and products;
- (5) Deferred compensation;
- (6) Overtime;
- (7) Contract-related benefits;
- (8) Income from second jobs;
- (9) Dividends;
- (10) Tribal per capita benefits;
- (11) Interest;
- (12) Trust income;
- (13) Severance pay;
- (14) Annuities;
- (15) Capital gains;
- (16) Pension/retirement benefits;
- (17) Workers' compensation;
- (18) Unemployment benefits;
- (19) Spousal maintenance actually received;
- (20) Bonuses;
- (21) Social security benefits (SSA);
- (22) Disability insurance benefits; and
- (23) Gifts and prizes greater than or equal to two hundred and fifty dollars (\$250) in value.

(C) **Items Disclosed but not Included in Gross Income.** The following sources of income and resources shall be disclosed but not included in gross income:

- (1) Income of a new spouse or income of other adults in the household;

- (2) Child support received from other relationships;
  - (3) Gifts and prizes less than two hundred and fifty dollars (\$250) in value;
  - (4) Temporary Assistance to Needy Families (TANF);
  - (5) Supplemental security income (SSI);
  - (6) General assistance; and
  - (7) Food stamps.
- (D) **Deductions from Gross Income.** Monthly net income shall be calculated by deducting the following expenses from monthly gross income:
- (1) Federal, state and tribal income taxes;
  - (2) Federal Insurance Contributions Act (FICA) deductions;
  - (3) Mandatory pension plan payments;
  - (4) Mandatory union or professional dues;
  - (5) State industrial insurance premiums;
  - (6) Court-ordered spousal maintenance to the extent actually paid;
  - (7) Up to two thousand dollars (\$2,000) per year in voluntary pension payments actually made; and
  - (8) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.
- (E) **Monthly Net Income above Five Thousand Dollars.** When combined monthly net income exceeds five thousand dollars (\$5,000), support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net incomes of five thousand dollars (\$5,000) unless good cause is found to deviate below that amount, but the Tribal Court may exceed the presumptive amount of support set for combined monthly net income of five thousand dollars (\$5,000) upon written findings of fact establishing such increase as both necessary and in the best interests of the child(ren).

[History] Ord. 188 (11/10/03); Ord. 129 (4/6/93).

**7-06.050 Guidelines for Deviation from Support Obligation.**

The child support obligations found in the attached Schedule are presumptive and may be increased or decreased when based on the factors in this Section and supported by the evidence. In deviating from the basic support obligation, the Tribal Court shall enter a written finding for the record that the application of the Guidelines or Schedule would be unjust or inappropriate, state the amount of support that would have been required under the Schedule, and include justification why the order varies from the Guidelines or Schedule. The Tribal Court may take into consideration the following factors:

- (A) **Age(s) of the child(ren).** The obligation shall be set closer to the higher end of the basic support obligation for older children (columns B), and closer to the lower end of the basic support obligation for younger children (columns A). See Schedule.
- (B) **Number of children in family.** The obligation shall be set lower per child the greater the number of children for which the obligation is being paid. See Schedule.
- (C) **Children from other relationships.** The obligation may be set at a lower amount than it otherwise would be when either or both parents before the Tribal Court have children from other relationships to whom the parent owes a duty of support and is actually providing support.
- (D) **Seasonal or non-recurring income.** If the income of either parent is seasonal or non-recurring, the obligation may be set at a lower amount than it otherwise would be, or it may be set on a schedule that varies the amount at different times of the year.
- (E) **Social services provided by Tribe or other agency.** Whenever the Tribe or other agency provides health care, housing, or other basic needs for the child(ren) at no cost or reduced cost, such services may be considered as a basis for setting a lower amount of support than would otherwise be determined.
- (F) **Mentally or physically disabled child.** In the case of a mentally or physically disabled child, if the Tribal Court deems it appropriate, the Tribal Court may order support to continue past the age of emancipation and to be paid to the parent or guardian, with whom the child resides, or to the child. A child's special needs may be considered as a basis for setting a higher amount of support than would otherwise be determined.

- (G) **Substantial Wealth.** In the case of a parent with substantial wealth, if the Tribal Court deems it appropriate, the Tribal Court may set a higher amount of support than would otherwise be determined.

[History] Ord. 188 (11/10/03); Ord. 129 (4/6/93); Ord. 101 (4/6/93).

**7-06.060 In-kind Services and Resources.**

Although consistent with Swinomish culture and tradition, in-kind services are extremely difficult to monitor and guarantee, particularly as they relate to issues of quantity, quality and value. As a consequence, the Tribal Court shall only utilize in-kind services as a set-off against a child support obligation in those exceptional cases where full financial support is not possible. Both parties shall agree to the provision and terms of such in-kind services, and the Tribal Court shall incorporate clear written standards and requirements for their delivery in its order.

- (A) **In-kind services, resources.** Whenever a parent is able to provide appropriate and acceptable in-kind services or resources for the support of the child(ren), such as fish, game, firewood, clothing or other basic needs, such services or resources may be applied as a set-off against the future months' support obligation if authorized by court order.
- (B) **In-kind services, resources from extended family or community members.** Whenever extended family or community members are able to provide food, clothing, shelter, or other basic needs for the child(ren), such services or resources may be applied as a set-off against the next month's support obligation if authorized by court order.

[History] Ord. 188 (11/10/03); Ord. 129 (4/6/93); Ord. 101 (4/6/93).

**7-06.070 Modification and Termination of Provisions for Child Support.**

- (A) **Change of Circumstances.** A child support award may be modified upon a showing of a change of circumstances that are substantial and continuing as provided by tribal law. A substantial and continuing change of circumstances will be presumed if support as calculated under this Chapter is more than fifteen percent (15%) greater or less than the outstanding support order.
- (B) An order of child support may be modified one (1) year or more after it has been entered without a showing of changed circumstances that are substantial and continuing if:
- (1) The order works a severe economic hardship on either party or the child;
  - (2) A party requests an adjustment in an order that was based on guidelines

that determined the amount of support according to the child's age, and the child is no longer in the age category on which the current support amount is based;

- (3) A child is still in high school, upon a finding that there is a need to extend support beyond the eighteenth (18<sup>th</sup>) birthday to complete high school; or
  - (4) There has been a change in the court adopted Child Support Schedule.
- (C) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child, but not by death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked or commuted to a lump sum payment, to the extent just and appropriate in the circumstances.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-06.080 Collection of Past Due Support.**

To collect the payment due, the custodian of a child shall file with the Tribal Court (A) a motion requesting establishment of a judgment; (B) an affidavit that states that one (1) or more payments of support are thirty (30) or more days past due and that specifies the amounts past due and the dates they became past due; and (C) notice of the obligor's right to respond. Service on the obligor must be in the manner provided in the Rules of Civil Procedure, Chapter 3-02. The child's custodian shall file with the Tribal Court proof of service of the petition, affidavit, and notice. The obligor shall respond no later than twenty (20) days after service by filing an affidavit with the Tribal Court. If the obligor's affidavit states that the obligor has paid any of the amounts claimed to be delinquent, describes in detail the method of payment or offers any other defense to the petition, then the obligor is entitled to a hearing. After the hearing, if any, the Tribal Court shall enter a judgment for the amount of money owed. If the obligor does not file an affidavit under this Section, the Tribal Court shall enter a default judgment against the obligor.

[History] Ord. 188 (11/10/03).

**7-06.090 Payment of Support - Records.**

- (A) The Tribal Court may upon its own motion or upon motion of either party, order support payments be made to:
- (1) The person entitled to receive the payments;
  - (2) The clerk of the Tribal Court for remittance to the person entitled to receive the payments; or



- (3) The state Office of Support Enforcement pursuant to a Reciprocal Child Support Enforcement Agreement between the Swinomish Indian Tribal Community and the state of Washington.
- (B) If payments are made to the clerk of the Tribal Court:
- (1) The clerk shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order; and
  - (2) The parties affected by the order shall inform the clerk of the Tribal Court of any change of address.
- (C) If the person obligated to pay support has left or is beyond the jurisdiction of the Tribal Court, any party may institute any other proceeding available under the laws of the Swinomish Indian Tribal Community for enforcement of the duties of support and maintenance.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**7-06.100 Assignments.**

In the event a person obligated to pay child support is in arrears for at least one (1) month, the Tribal Court may order the person obligated to pay child support to make an assignment of part of his or her periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds two (2) weeks after service upon such person of notice that the assignment has been made. The payor shall withhold the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the clerk of the Tribal Court. The payor may deduct from each payment a sum not exceeding one dollar (\$1.00) as reimbursements for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this Section.

[History] Ord. 188 (11/10/03); Ord. 101 (4/6/93).

**Appendix I - Child Support Schedule**

Combined Monthly Net Income	One Child Family		Two Child Family		Three Child Family		Four Child Family		Five Child Family	
	-A-	-B-	-A-	-B-	-A-	-B-	-A-	-B-	-A-	-B-
\$600	\$100	\$123	\$77	\$95	\$65	\$80	\$55	\$68	\$47	\$59
700	116	143	90	111	75	93	64	79	56	68
800	133	164	103	128	86	107	73	90	63	78
900	149	185	116	143	97	119	82	101	71	89
1000	165	204	128	158	107	133	91	112	79	98
1100	182	224	141	174	118	145	100	123	87	107
1200	198	245	154	190	128	158	108	134	95	117
1300	214	264	166	206	139	171	117	145	102	126
1400	230	284	179	221	149	185	126	156	110	136
1500	245	303	191	235	159	197	134	166	117	145
1600	260	321	202	250	169	209	143	176	125	154
1700	275	340	214	264	179	221	151	186	131	163
1800	290	359	225	278	188	233	159	197	139	171
1900	305	377	237	293	198	245	167	206	146	180
2000	320	395	248	307	208	257	176	217	153	189
2100	335	414	260	322	217	269	184	227	160	198
2200	350	433	272	336	227	281	192	237	167	207
2300	365	451	284	350	236	293	200	248	175	216
2400	380	470	295	365	246	305	209	257	182	224
2500	395	488	306	379	256	316	216	267	188	233
2600	401	496	312	385	260	321	220	272	192	237
2700	407	503	316	390	263	326	224	276	194	241
2800	412	509	320	395	267	330	226	279	197	243
2900	417	515	323	400	270	334	229	282	200	246
3000	421	520	327	404	273	337	231	285	201	248
3100	425	524	329	407	275	340	233	287	203	251
3200	427	528	332	410	277	343	234	290	204	252
3300	430	531	334	412	278	344	235	291	205	254
3400	431	533	335	413	279	345	236	292	206	255
3500	431	533	335	414	280	346	237	293	206	256
3600	433	534	336	415	281	347	238	293	207	257
3700	434	535	337	416	281	347	239	294	208	257
3800	436	539	339	419	283	350	239	296	209	258
3900	447	552	347	429	290	358	245	303	213	264
4000	457	565	355	438	296	366	251	310	218	270

4100	467	578	363	449	303	375	256	317	224	276
4200	479	591	371	458	310	383	263	323	229	283
4300	488	604	380	469	317	392	268	331	233	289
4400	498	616	387	478	323	399	273	337	238	294
4500	508	627	394	487	329	407	278	344	242	300
4600	517	638	401	496	335	414	283	350	247	305
4700	526	650	409	505	341	422	288	356	251	311
4800	535	662	416	514	347	429	293	362	256	317
4900	545	673	423	523	353	436	299	368	260	322
5000	554	684	431	531	359	444	303	375	265	328

Columns A = Children ages 0 – 12 years  
Columns B = Children ages 13 – 18 years