

LEECH LAKE BAND OF OJIBWE JUDICIAL CODE

TITLE 6 – FAMILY RELATIONS CODE

CHAPTER 10A - LEECH LAKE PARENTAGE ACT

6-10A-0 **Title**

Sections 6-10A-0 through 6-10A-31 shall be referred to as the “Leech Lake Parentage Act” of the Leech Lake Band of Ojibwe.

6-10A-1. **Purpose**

The Parentage Act shall be liberally interpreted and applied to fulfill the following purposes:

1. To ensure that children know who their biological parents are where possible and appropriate;
2. To establish a confidential process by which the parental heritage of Ojibwe children may be identified;
3. To ensure that the interests of children are protected to the fullest extent of the law;
4. To assert Tribal jurisdiction over the establishment of parentage of tribal children.
5. To ensure the future of the Leech Lake Band of Ojibwe by granting authority to the Leech Lake Tribal Court and the LLBO CSEP to effectively fulfill the purposes of this Act.

6-10A-2. **Definitions**

1. Terms under this Chapter shall be liberally construed so as not to limit the jurisdiction of the Tribal Court over tribal children, and to facilitate the authority of the Tribal Court to act to protect the interests of tribal children and their families. When interpreting terms not defined by this Chapter, the Court shall take into consideration tribal laws and customs. Unless in conflict with applicable tribal law, terms not specifically defined in this Chapter shall be defined according to their normal usage, or as defined in the federal regulations for Tribal Child Support Enforcement Programs found at 45 CFR § 309 et seq.
2. For purposes of this Chapter, the following definitions apply:
 - a. **"Acknowledged father"** means a man who has established a father-child relationship under sections of this Chapter.
 - b. **"Adjudicated father"** means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child.
 - c. **"Alleged father"** means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. The term does not include a presumed father or a man whose parental rights have been terminated or declared not to exist.
 - d. **"Child"** means an individual of any age whose parentage may be determined under the sections of this Chapter.
 - e. **"Determination of parentage"** means the establishment of the parent-child relationship by the signing of an acknowledgment of paternity under the sections of this Chapter or adjudication by the court.
 - f. **"Tribal Court"** means the Leech Lake Tribal Court of the Leech Lake Band of Ojibwe.

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- g. **"Duress"** means use of physical or psychological force to coerce a person to sign an acknowledgment of paternity.
- h. **"Ethnic or racial group"** means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of the individual's ancestry or that is so identified by other information.
- i. **"Leech Lake Tribal Court"** means the Leech Lake Tribal Court of the Leech Lake Band of Ojibwe.
- j. **"Fraud"** means an intentional misrepresentation of a material fact that could not have been discovered with reasonable diligence and was reasonably relied on by a person who signed an acknowledgment of paternity.
- k. **"Genetic testing"** means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination the following:
 - (1) Deoxyribonucleic acid, and
 - (2) Blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.
- l. **"Material mistake of fact"** means a mistake as to the facts that could not have been known at the time a signatory executed an acknowledgment of paternity.
- m. **"Parent"** means an individual who has established a parent-child relationship under the sections of this Chapter.
- n. **"Parent-child relationship"** means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.
- o. **"Presumed father"** means a man who, by operation of law under this Chapter, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.
- p. **"Probability of paternity"** means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability.
- q. **"Record"** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- r. **"Signator"** means an individual who authenticates a record and is bound by its terms.
- s. **"State"** means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- t. **"Title IV-A"** refers to title IV-A of the Social Security Act under which the federal government provides funds to Tribes and States to provide temporary financial assistance to families using federal dollars.
- u. **"Title IV-D"** means title IV-D of the Social Security Act, under which the federal government provides funds to tribes and states to administer child support programs that provide services related to child support.

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- v. **“Title IV-E”** refers to title IV-E of the Social Security Act under which the federal government provides funds to tribes and states to assist with the costs of operating foster care programs.
- w. **“Title XIX”** refers to title XIX of the Social Security Act under which the federal government provides funds to states to provide medical care assistance through a state-operated and administered program that provides medical benefits for certain indigent or low-income persons in need of health and medical care.
- x. **“Tribal Child Support Program”** means the Leech Lake Band of Ojibwe Child Support Enforcement Program, which provides child support enforcement services to children and families.
- y. **“LLBO CSEP”** means the Leech Lake Band of Ojibwe Child Support Enforcement Program.
- z. **“Leech Lake Band of Ojibwe Child Support Enforcement Program”** means the tribal child support program which provides child support enforcement services to children and families and is authorized to seek:
 - (1) Location of obligors or their assets and obligees;
 - (2) Determination of parentage;
 - (3) Establishment or modification of child support; or
 - (4) Enforcement of support orders or laws relating to the duty of support.

6-10A-3. Authority and Scope of Jurisdiction of the Leech Lake Band of Ojibwe to Establish Parentage

1. The Leech Lake Band of Ojibwe has the inherent authority to protect its political integrity and provide for the welfare of its children.
2. The Leech Lake Tribal Court has jurisdiction over any action brought in Tribal Court under the Leech Lake Parentage Act.
3. The action to establish parentage may be joined with an action for divorce, annulment, legal separation, custody under the Leech Lake Parentage Act.
4. The Tribal Court and LLBO CSEP may assert jurisdiction under this Act over:
 - a. All members or persons eligible for membership in the Leech Lake Band of Ojibwe or the Minnesota Chippewa Tribe;
 - b. Any person eligible for membership in any federal or state recognized tribe coming under the jurisdiction of the Leech Lake Band of Ojibwe;
 - c. Any person who is alleged to be a parent of a child, including any unborn child, whose parenting partner is a member or eligible for membership in the Leech Lake Band of Ojibwe or the Minnesota Chippewa Tribe, or who is a member or eligible for membership in any federal or state recognized tribe coming under the jurisdiction of the Leech Lake Band of Ojibwe;
 - d. Any person who knowingly consents to become subject to the jurisdiction of the Leech Lake Tribal Court or the LLBO CSEP.
5. The Tribal Court may exercise personal jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if:

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- a. The individual is personally served with a summons within the exterior boundaries of the Leech Lake Reservation;
 - b. The individual submits to the jurisdiction of the Leech Lake Band of Ojibwe by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
 - c. The individual resided with the child within the exterior boundaries of the Leech Lake Reservation;
 - d. The individual resided within the exterior boundaries of the Leech Lake Reservation and provided prenatal expenses or support for the child;
 - e. The child resides within the exterior boundaries of the Leech Lake Reservation as a result of the acts or directives of the individual;
 - f. The individual engaged in sexual intercourse within the exterior boundaries of the Leech Lake Reservation and the child may have been conceived by that act of intercourse; or
 - g. There is any other basis consistent with the constitutions of the Tribe and the United States for the exercise of personal jurisdiction.
6. Lack of jurisdiction over one individual does not preclude the court from making an adjudication of parentage binding on another individual over whom the court has personal jurisdiction.
 7. This Chapter does not create, enlarge, or diminish parental rights or duties under other laws of the Leech Lake Band of Ojibwe.
 8. The Tribal Court has the authority to punish for contempt, committed in or out of the Court's presence.
 9. Whenever state, federal, and other tribal courts have jurisdiction over any of the matters provided for in this Chapter, the Tribal Court shall have concurrent jurisdiction over the same matters, to the extent consistent with federal law.

6-10A-4. Sovereign Immunity of the Leech Lake Band of Ojibwe

Nothing in this Act shall abrogate or otherwise impair the sovereign immunity of the Leech Lake Band of Ojibwe.

6-10A-5. Protection of Participants – Hearings And Records; Confidentiality

1. Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this Act shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the tribal court or of a file in the LLBO CSEP or elsewhere, are subject to inspection only upon consent of the Tribal Court and all interested persons, or in exceptional cases only upon an order of the Tribal Court for good cause shown.
2. In all actions under this Act in which the LLBO CSEP provides services to a party or parties to the action, notwithstanding statutory or other authorization for the child support program to release private data on the location of a party to the action, information on the

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location of one party may not be released by the LLBO CSEP to the other party if the LLBO CSEP has:

- a. Knowledge that a protective order with respect to the other party or child has been entered; or
- b. Reason to believe that the release of the information may result in physical or emotional harm to the other party or child.

6-10A-6. Authorized Release of Case Records and Other Information

1. The use or disclosure of personal information received or maintained by the LLBO CSEP and the Tribal Court shall be limited to purposes directly connected with the child support program, the Tribal Court, titles IV-A, IV-E, and XIX, and for purposes prescribed by the Secretary in federal regulations.
2. Records of the LLBO CSEP, including case notes and correspondence, may be disclosed to the following persons and entities, unless otherwise protected by this section:
 - a. Tribal child support program staff;
 - b. Leech Lake Tribal Court judges;
 - c. Leech Lake Tribal Court clerks and the court manager for filing purposes;
 - d. Tribal Social Services agencies, including Tribal Foster Care;
 - e. State of Minnesota IV-D employees directly connected with the administration of Titles IV-D, IV-A, IV-E, XIX programs, as outlined in the Leech Lake and Minnesota cooperative agreement on child support enforcement;
 - f. A court having jurisdiction in parentage, support or abandonment proceedings or actions;
 - g. The legal guardian, attorney, or agent of a child;
 - h. An agency of the federal government or any other state or tribal child support enforcement IV-D program engaged in the establishment of paternity, a child support obligation, or the enforcement of support for a child in a case.
3. The Leech Lake Tribal Court and the LLBO CSEP may limit the information disclosed to persons, agencies, and entities named in this section to that information necessary to accomplish the purposes for which it is requested or for which it is being disclosed. Nothing this section gives these entities or persons the right to review or copy the complete case record.
4. A final order in a proceeding under this Chapter is available for public inspection. Other Tribal Court papers and records are available only with the consent of the parties or on order of the Court for good cause.

6-10A-7. Publication of Proceedings

When providing service by publication, the names of children in the matter shall not be disclosed. Only the child's initials shall be published.

6-10A-8. Sanctions For Unauthorized Use Or Disclosure of Information

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Any person, including but not limited to any tribal employee, elected officials, court employees, and employees of the LLBO CSEP, who willfully discloses otherwise confidential information related to an action to determine parentage, other than expressly authorized and provided for under this Chapter, may be subject to a civil fine not to exceed five hundred dollars (\$500.00) and any other disciplinary measures in place with the Tribe. The Tribal Court and LLBO CSEP shall develop safeguarding procedures pertaining to the establishment of parentage and support.

6-10A-9. Parent and Child Relationship Defined

For the purposes of this Chapter, “parent and child relationship” means the legal relationship existing between a child and the child's biological or adoptive parents incident to which tribal law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

6-10A-10. Relationship Not Dependent On Marriage

The parent and child relationship may exist regardless of the marital status of the parents.

6-10A-11. How Parent And Child Relationship Established

The parent and child relationship between a child and

1. The biological mother may be established by proof of her having given birth to the child, or as otherwise provided under this Chapter;
2. The biological father may be established as provided for under this Chapter; or
3. An adoptive parent may be established by proof of adoption.

6-10A-12. Custody And Parenting Time With Children Born Outside Of Marriage

1. *Mother's right to custody.* The biological mother of a child born to a mother who was not married to the child's father when the child was born and was not married to the child's father when the child was conceived has sole custody of the child until paternity has been established or until custody is determined in a separate proceeding in Tribal or state court.
2. *Father's right to parenting time and custody.*
 - a. If paternity has been acknowledged and paternity has been established under the Leech Lake Parentage Act, the father's rights of parenting time or custody are determined under the Leech Lake Parentage Act.
 - b. If paternity has not been acknowledged and paternity has been established under the Leech Lake Parentage Act, the biological father may petition for rights of parenting time or custody in the paternity proceeding or in a separate proceeding under the Leech Lake Family Code.
3. *Father's right to parenting time and custody; recognition of paternity.* If paternity has been recognized under this Chapter, the father may petition for rights of parenting time or custody in an independent action under the Leech Lake Parentage Act. The proceeding

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must be treated as an initial determination of custody. An action to determine custody and parenting time may be commenced pursuant to the Leech Lake Parentage Act without an adjudication of parentage. These proceedings may not be combined with any proceeding under the Leech Lake Domestic Violence Code.

6-10A-13. Presumption Of Paternity

1. *Presumption.* A man is presumed to be the biological father of a child if:
 - a. He and the child's biological mother are or have been married to each other and the child is born during the marriage, or within 280 days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution, or divorce, or after a decree of legal separation is entered by a court. The presumption in this paragraph does not apply if the man has joined in a recognition of parentage recognizing another man as the biological father under this Chapter;
 - b. Before the child's birth, he and the child's biological mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared void, voidable, or otherwise invalid, and
 - (i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 280 days after its termination by death, annulment, declaration of invalidity, dissolution or divorce; or
 - (ii) if the attempted marriage is invalid without a court order, the child is born within 280 days after the termination of cohabitation;
 - c. After the child's birth, he and the child's biological mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared void, voidable, or otherwise invalid, and,
 - (i) he has acknowledged his paternity of the child in writing filed with the LLBO CSEP, Tribal Court, or a State registrar of vital statistics;
 - (ii) with his consent, he is named as the child's father on the child's birth record; or
 - (iii) he is obligated to support the child under a written voluntary promise or by court order;
 - d. While the child is under the age of majority, he receives the child into his home and openly holds out the child as his biological child;
 - e. He and the child's biological mother have executed a recognition of parentage in accordance with this Chapter and another man is presumed to be the father under this subdivision;
 - f. He and the child's biological mother have executed a recognition of parentage in accordance with this Chapter and another man and the child's mother have executed a recognition of parentage in accordance with this Chapter; or
 - g. He and the child's biological mother executed a recognition of parentage in accordance with section this Chapter when either or both of the signatories were less than 18 years of age.
2. *Rebuttal.* A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with

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each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man.

6-10A-14. Determination of Father and Child Relationship: Who May Bring Action: When Action May Be Brought

1. *Actions under section 6-10A-13.1(a), (b), or (c).* A child, the child's biological mother, or a man presumed to be the child's father under section 6-10A-13.1(a), (b), or (c) may bring an action:
 - a. At any time for the purpose of declaring the existence of the father and child relationship presumed under section 6-10A-13.1(a), (b), or (c); or
 - b. For the purpose of declaring the nonexistence of the father and child relationship presumed under section 6-10A-13.1(a), (b), or (c), only if the action is brought within two years after the person bringing the action has reason to believe that the presumed father is not the father of the child, but in no event later than three years after the child's birth. However, if the presumed father was divorced from the child's mother and if, on or before the 280th day after the judgment and decree of divorce or dissolution became final, he did not know that the child was born during the marriage or within 280 days after the marriage was terminated, the action is not barred until one year after the child reaches the age of majority or one year after the presumed father knows or reasonably should have known of the birth of the child, whichever is earlier. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.
2. *Actions under other paragraphs of section 6-10A-13.1.* The child, the mother, or personal representative of the child, Tribal Child Welfare Agency, the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor may bring an action:
 - a. At any time for the purpose of declaring the existence of the father and child relationship presumed under sections 6-10A-13.1(d), (e), (f), or (g), or the nonexistence of the father and child relationship presumed under section 6-10A-13.1(d);
 - b. For the purpose of declaring the nonexistence of the father and child relationship presumed under section 6-10A-13.1(f), only if the action is brought within six months after the person bringing the action obtains the results of genetic tests that indicate that the presumed father is not the father of the child;
 - c. For the purpose of declaring the nonexistence of the father and child relationship presumed under section 6-10A-31, only if the action is brought by the minor signatory within six months after the minor signatory reaches the age of 18. In the case of a recognition of parentage executed by two minor signatories, the action to declare the nonexistence of the father and child relationship must be brought within six months after the youngest signatory reaches the age of 18.

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3. *Action regarding child with no presumed father under section 6-10A-13.* An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under section 6-10A-13 may be brought by the child, the mother or personal representative of the child, the LLBO CSEP or Tribal Child Welfare, the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.
4. *Effect of agreement by mother and alleged or presumed father.* Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with section 6-10A-20, between an alleged or presumed father and the mother, does not bar an action under this section by the LLBO CSEP or other tribal agency chargeable by law with the support of the child.
5. *Action brought before birth of child.* If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.
6. *Adopted child.* If the child has been adopted, an action may not be brought.

6-10A-15. Limitation Of Actions: Exceptions

1. *Actions for children without a presumed father.* Except as otherwise provided under tribal law, an action to determine the existence of the father and child relationship as to a child who has no presumed father under section 6-10A-13 is not barred until one year after the child reaches the age of majority.
2. *Heirship.* Section 6-10A-14 and this section does not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by tribal law relating to distribution and closing of decedents' estates or to the determined Band of Ojibwe of heirship, or otherwise.

6-10A-16. Parties

The child may be made a party to the action. If the child is a minor and is made a party, a general guardian or a guardian ad litem shall be appointed by the Tribal Court to represent the child. The child's mother or father may not represent the child as guardian or otherwise. The biological mother, each man presumed to be the father under section 6-10A-13, and each man alleged to be the biological father, shall be made parties or, if not subject to the jurisdiction of the Tribal Court, shall be given notice of the action in a manner prescribed by the Tribal Court and shall be given an opportunity to be heard. The LLBO CSEP is joined as a party in each case where rights to child support are assigned and in each case in which it is providing services pursuant to an application for child support services. A person who may bring an action under section 6-10A-14 may be made a party to the action. The Tribal Court may align the parties. The child shall be made a party whenever:

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1. The child is a minor and the case involves a compromise under section 6-10A-20.1 , or a lump sum payment under section 6-10A-23.4, in which case the director of the LLBO CSEP shall also be made a party; or
2. The child is a minor and the action is to declare the nonexistence of the father and child relationship; or
3. An action to declare the existence of the father and child relationship is brought by a man presumed to be the father under section 6-10A-13, or a man who alleges to be the father, and the mother of the child denies the existence of the father and child relationship.

6-10A-17. Pretrial Proceedings

As soon as practicable, after an action to declare the existence or nonexistence of the father and child relationship has been brought, a pretrial hearing shall be held in accordance with the rules of civil procedure under tribal law. The public shall be barred from the hearing. A record of the proceeding or any portion thereof shall be kept if any party requests, or the Tribal Court so orders.

6-10A-18. Genetic Tests

1. *Acceptable Genetics Testing Laboratory.* Genetic testing must be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:
 - a. The American association of blood banks, or a successor to its functions;
 - b. The American society for histocompatibility and immunogenetics, or a successor to its functions; or
 - c. An accrediting body designated by the federal secretary of health and human services.
2. *Specimen.* A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.
3. *Testing laboratory – Data bases; Disagreement.* Based on the ethnic or racial group of an individual, the testing laboratory shall determine the data bases from which to select frequencies for use in calculation of the probability of paternity. If there is a disagreement as to the testing laboratory's choice, the following rules apply:
 - a. The individual objecting may require the testing laboratory, within thirty days after receipt of the report of the test, to recalculate the probability of paternity using an ethnic or racial group different from that used by the laboratory. The cost of any retesting shall be the responsibility of the individual who objected.
 - b. The individual objecting to the testing laboratory's initial choice shall:
 - i. If the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or
 - ii. Engage another testing laboratory to perform the calculations.

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- c. The testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate. If available, the testing laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.
4. *Recalculation.* If, after recalculation using a different ethnic or racial group, genetic testing does not rebuttably identify a man as the father of a child under this Chapter, an individual who has been tested may be required to submit to additional genetic testing.
5. *Reporting of genetic testing.* A report of genetic testing must be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of this Chapter is self-authenticating.
6. *Reliable chain of custody.* Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:
 - a. The names and photographs of the individuals whose specimens have been taken;
 - b. The names of the individuals who collected the specimens;
 - c. The places and dates the specimens were collected;
 - d. The names of the individuals who received the specimens in the testing laboratory; and
 - e. The dates the specimens were received.
7. *Genetic tests required.*
 - a. The Tribal Court or LLBO CSEP may, and upon request of a party, shall, require the child, mother, or alleged father to submit to genetic tests. A mother or alleged father requesting the tests shall file with the LLBO CSEP and Tribal Court an affidavit either alleging or denying paternity and setting forth facts that establish the reasonable possibility that there was, or was not, the requisite sexual contact between the parties.
 - b. A copy of the test results must be served on each party by first class mail to the party's last known address. Any objection to the results of genetic tests must be made in writing no later than 30 days after service of the results. Test results served upon a party must include notice of this right to object.
 - c. If the alleged father is dead, the Tribal Court may, and upon request of a party shall, require the decedent's parents or brothers and sisters or both to submit to genetic tests. However, in a case involving these relatives of an alleged father, who is deceased, the Tribal Court may refuse to order genetic tests if the Court makes an express finding that submitting to the tests presents a danger to the health of one or more of these relatives that outweighs the child's interest in having the tests performed. The tests shall be performed by a qualified expert appointed by the Tribal Court.
8. *Additional testing.* Unless otherwise agreed by the parties, a party wanting additional testing must first contest the original tests under this section and must pay in advance for the additional testing. The additional testing must be performed by another qualified expert.
9. *Experts qualifications.* In all cases, the Tribal Court shall determine the number and qualifications of the experts.
10. *Positive test results.*

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- a. If the results of genetic tests completed in an accredited laboratory indicate that the likelihood of the alleged father's paternity, calculated with a prior probability of no more than 0.5 (50 percent), is 92 percent or greater, upon motion the Tribal Court shall order the alleged father to pay temporary child support determined according to the Leech Lake Parentage Act, Title 6, Chapter 10C. The alleged father shall pay the support money to the LLBO CSEP pending the results of the paternity proceedings.
- b. If the results of the genetic tests completed in an accredited laboratory indicate that likelihood of the alleged father's paternity, calculated with a prior probability of no more than 0.5 (50 percent), is 99 percent or greater, there is an evidentiary presumption that the alleged father is the biological father and the party opposing the establishment of the alleged father's paternity has the burden of proving by clear and convincing evidence that the alleged father is not the father of the child.
- c. A determination under this subdivision that the alleged father is the biological father does not preclude the adjudication of another man as the legal father under section 6-10A-13.2.

6-10A-19. Evidence Relating To Paternity

1. *Included evidence.* Evidence relating to paternity may include:
 - a. Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;
 - 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, weighed in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;
 - d. Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the Tribal Court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and
 - e. All other evidence relevant to the issue of paternity of the child.
2. *Compelled testimony.* Upon refusal of a witness, including a party, to testify under oath or produce evidence, the Tribal Court may order the party to testify under oath and produce evidence concerning all relevant facts. No testimony or other information compelled under the order, or any information directly or indirectly derived from such testimony or other information, may be used against the witness in any criminal case, except for perjury committed in the testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence is subject to the sanctions within the jurisdiction of the Tribal Court.
3. *Medical privilege.* Testimony of a physician concerning the medical circumstances of the pregnancy itself and the condition and characteristics of the child upon birth is not privileged.

6-10A-20. Pretrial Orders And Recommendations

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1. *Permissible orders and recommendations.* On the basis of the information produced at the pretrial hearing, including information as to the financial status of the parties, the Tribal Court may:
 - a. Recommend that the alleged father voluntarily acknowledge his paternity of the child if the parties have agreed on a financial settlement; or
 - b. Recommend that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the Tribal Court. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the Tribal Court shall consider the best interest of the child under the Leech Lake Parentage Act discounted by the improbability, as it appears to the Court, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the Tribal Court may order that the alleged father's identity be kept confidential. In that case, the Court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him. The child, on reaching 21 years of age or older, may petition the Tribal Court to disclose the alleged father's identity. The Tribal Court shall grant the petition if after considering the interests of all known persons involved, the Court determines that disclosure of the information would be of greater benefit than nondisclosure.
2. *Agreement with recommendations.* If the parties accept a recommendation made in accordance with subdivision 1 of this section, judgment shall be entered accordingly. The Tribal Court shall advise all parties that pretrial recommendations are not binding and will have no effect if the recommendation is disregarded and the matter is set for trial.
3. *Refusal to agree with recommendations.* If a party refuses to accept a recommendation made under subdivision 1 of this section and genetic tests have not been taken, the Tribal Court shall require the parties to submit to genetic tests. If a party refuses to accept the final recommendation the action shall be set for trial.
4. *Guardian ad litem.* The guardian ad litem may accept or refuse to accept a recommendation under this section.
5. *Setting action for trial.* The informal hearing may be terminated and the action set for trial if the Tribal Court finds it unlikely that all parties would accept a recommendation made under subdivisions 1 or 3 of this section.

6-10A-21. Civil Action

An action filed pursuant to this Chapter is a civil action governed by the rules of civil procedure under tribal law. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Sections 6-10A-18 and 6-10A-19 apply to proceedings under this section.

6-10A-22. Default Order Of Parentage

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In an action to determine the existence of the father and child relationship under this Chapter, if the alleged father fails to appear at a hearing after service duly made and proved, the Tribal Court shall enter a default judgment or order of paternity.

6-10A-23. Judgment Or Order

1. *Determinative.* The judgment or order of the Tribal Court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.
2. *New birth record.* If the judgment or order of the Tribal Court is at variance with the child's birth record, the Tribal Court shall instruct and require the parties to file the Tribal Court order with the state registrar for vital statistics under section 6-10A-29.
3. *Judgment; order.* The judgment or order shall contain provisions concerning the duty of support, the custody of the child, the name of the child, the Social Security number of the mother, father, and child, if known at the time of adjudication, parenting time with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. Custody and parenting time and all subsequent motions related to them shall proceed and be determined under the Leech Lake Parentage Act. The duty of support and all subsequent motions related to support shall proceed and be determined in accordance with the Leech Lake Parentage Act, Title 6, Chapter 10C.
4. *Statute of limitations.* Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump sum payment may be ordered in lieu of periodic payments of support. The Tribal Court shall limit the parent's liability for past support of the child to the proportion of the expenses that the Court deems just, which were incurred in the two years immediately preceding the commencement of the action. In determining the amount of the parent's liability for past support, the Tribal Court may deviate downward from the guidelines if:
 - a. The child for whom child support is sought is more than five years old and the obligor discovered or was informed of the existence of the parent and child relationship within one year of commencement of the action seeking child support;
 - b. The obligor is a custodian for or pays support for other children; and
 - c. The obligor's family income is less than 175 percent of the federal poverty level.
5. *Entry of judgment.* Any order for support or maintenance issued under this section shall provide for a conspicuous notice that, if the obligor fails to make a support payment, the payment owed becomes a judgment by operation of law on and after the date the payment is due and the obligee or the LLBO CSEP may obtain entry and docketing of the judgment for the unpaid amounts.
6. *Required information.* Upon entry of judgment or order, each parent who is a party in a paternity proceeding shall:
 - a. File with the LLBO CSEP the party's Social Security number, residential and mailing address, telephone number, driver's license number, and name, address, and telephone number of any employer if the party is receiving services from the LLBO CSEP or begins receiving services from this program;
 - b. File the information in paragraph (a) with the Tribal Court; and

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- c. Notify the Tribal Court and, if applicable, the LLBO CSEP responsible for child support enforcement of any change in the information required under this section within ten days of the change.

6-10A-24. Enforcement of Judgment Or Order

1. *Who may enforce.* If existence of the parent and child relationship is declared, or parentage or a duty of support has been acknowledged or adjudicated under this Chapter or under prior tribal law, the obligation of the noncustodial parent may be enforced in the same or other proceedings by the custodial parent, the child, the LLBO CSEP that has furnished or may furnish support, or by any other person, including a private agency, to the extent that person has furnished or is furnishing support.
2. *Determinations from Foreign Jurisdictions.* Full faith and credit shall be given to a determination of paternity properly made by a foreign jurisdiction, whether established through voluntary acknowledgment or through administrative or judicial processes. Such determination will be considered properly made when:
 - a. The issuing court or administrative agency had personal jurisdiction over the person claimed to be bound by the foreign order and subject matter jurisdiction over the matter;
 - b. Proper service of process under the law of the issuing jurisdiction was made on such person;
 - c. The order was issued according to the laws of that jurisdiction; and
 - d. Recognition of the foreign paternity determination of Ojibwe does not violate the public policy of the Leech Lake Band of Ojibwe.
3. *Contempt of Court.* Willful failure to obey the judgment or order of the Tribal Court is a contempt of the court. All remedies for the enforcement of judgments apply including those available under the Leech Lake Parentage Act and other applicable tribal law.

6-10A-25. Modification Of Judgment Or Order

The Tribal Court entering a judgment or order for the payment of a lump sum pursuant to the provisions of this Chapter, may specify that the judgment or order may not be modified or revoked.

6-10A-26. Right To Counsel: Costs: Free Transcript On Appeal

1. *Representation by counsel.* In all proceedings under this Chapter, any party may be represented by counsel. The tribal child support staff attorney or other tribal attorney shall represent the LLBO CSEP. The Tribal Court may appoint, where possible, counsel for a party who is unable to pay timely for counsel in proceedings under this Chapter. If the Tribal Court is unable to appoint counsel, it will provide the party with information on local legal services that may be available.

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2. *Guardian; legal fees.* The Tribal Court may order expert witness and guardian ad litem fees and other costs of the trial and pretrial proceedings, including appropriate tests, to be paid by the parties in proportions and at times determined by the Court. The Court shall require a party to pay part of the fees of court-appointed counsel according to the party's ability to pay, but if counsel has been appointed the appropriate agency shall pay the party's proportion of all other fees and costs. The LLBO CSEP shall pay the fees and costs for genetic tests in a proceeding in which it is a party, is the real party in interest, or is acting on behalf of the child. However, at the close of a proceeding in which paternity has been established under this Chapter, the Tribal Court shall order the adjudicated father to reimburse the LLBO CSEP, if the Court finds he has sufficient resources to pay the costs of the genetic tests.
3. *Court Filing Fee Waived.* The LLBO CSEP shall not be responsible for court filing fees when bringing an action in tribal court under this Chapter or other chapters of the Leech Lake Parentage Act.
4. *Inability to pay for transcript.* If a party is financially unable to pay the cost of a transcript, the Court shall furnish on request a transcript for purposes of appeal.

6-10A-27. Action To Declare Mother and Child Relationship

A child, the father or personal representative of the child, LLBO CSEP, the personal representative or a parent of the father if the father has died, a woman alleged or alleging herself to be the mother, or the personal representative or a parent of the alleged mother if the alleged mother has died or is a minor may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this Chapter applicable to the father and child relationship apply.

6-10A-28. Promise To Render Support

1. *No consideration required.* A person's signed promise to furnish support for a child, growing out of a supposed or alleged parent and child relationship, does not require consideration and is enforceable according to its terms, subject to section 6-10A-14.4.
2. *Confidentiality.* In the best interest of the child or the custodial parent, the Tribal Court may, and if a provision of the writing so requires shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

6-10A-29. Birth Records

1. *Replacement birth record.* Upon the determination of the Leech Lake Band of Ojibwe of the father child relationship under this Chapter, the Tribal Court shall prepare an order containing the paternity acknowledgement or other findings of the Court. The Tribal Court shall require the parties to seek a replacement birth certificate from the state registrar of vital statistics.

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2. *Information contained.* The court order shall instruct that the fact that the father and child relationship was declared after the child's birth not be ascertainable from the replacement certificate but the actual place and date of birth shall be shown.
3. *Confidentiality.* The evidence upon which the replacement record was made and the original birth record shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the Tribal Court and all interested persons, or in exceptional cases only upon an order of the Court for good cause shown.

6-10A-30. Adoption; Termination of Ojibwe Proceedings

1. *Notification of father.* If a mother relinquishes or proposes to relinquish for adoption a child who has
 - a. A presumed father under this Chapter,
 - b. A father whose relationship to the child has been determined by a court or established by voluntary acknowledgement under this Chapter, or
 - c. A father as to whom the child is a legitimate child under prior tribal law or under the law of another jurisdiction, the father shall be given notice of the adoption proceeding as provided by the Leech Lake Customary Adoption Code or other tribal law.
2. *No father.* If a mother relinquishes or proposes to relinquish for adoption a child who does not have
 - a. A presumed father under this Chapter,
 - b. A father whose relationship to the child has been determined by a court, or
 - c. A father as to whom the child is a legitimate child under prior tribal law or under the law of another jurisdiction, notice of the adoption proceeding shall be given as required under the Leech Lake Customary Adoption Code or other tribal law.

6-10A-31. Recognition of Parentage

1. *Recognition by parents.* The mother and father of a child born to a mother who was not married to the child's father nor to any other man when the child was conceived nor when the child was born may, in a writing signed by both of them before a notary public and filed with the LLBO CSEP or Tribal Court, state and acknowledge under oath that they are the biological parents of the child and wish to be recognized as the biological parents. The recognition must be in the form prepared by the LLBO CSEP pursuant to this section. The requirement that the mother not be married when the child was conceived nor when the child was born does not apply if her husband or former husband joins in the recognition under this section.
2. *Joinder in recognition by husband.* A man who is a presumed father under section 6-10A-13.1(a), may join in a recognition of parentage that recognizes that another man is the child's biological father. The man who is the presumed father under section 6-10A-13.1(a), must sign an acknowledgment under oath before a notary public that he is renouncing the presumption under section 6-10A-13.1(a), and recognizing that the father who is executing the recognition under this section is the biological father of the child. A joinder in a recognition under this subdivision must be executed in the Tribal Court within

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one year after the child's birth. The Tribal Court shall instruct the parties to file the joinder with the state registrar of vital statistics. The joinder must be on a form prepared by the LLBO CSEP. Failure to properly execute a joinder in a recognition does not affect the validity of the recognition under this section. A joinder without a corresponding recognition of parentage has no legal effect.

3. *Revocation of recognition.* A recognition may be revoked in a writing signed by the mother or father before a notary public and filed with the LLBO CSEP or Tribal Court within the earlier of 60 days after the recognition is executed or within 10 days after the date of the first hearing, in a proceeding to which the signatory is a party, before a court to adjudicate on issue relating to the child, including a proceeding that establishes support. A joinder in a recognition may be revoked in a writing signed by the man who executed the joinder and filed with the LLBO CSEP or Tribal Court within 60 days after the joinder is executed. Upon receipt of a revocation of the recognition of parentage or joinder in a recognition, LLBO CSEP or Tribal Court shall forward a copy of the revocation to the nonrevoking parent, or, in the case of a joinder in a recognition, to the mother and father who executed the recognition.
4. *Effect of recognition.* Subject to this section and section 6-10A-13.1(f) or (g), the recognition has the force and effect of a judgment or order determining the existence of the parent and child relationship under this Chapter. If the conditions in section 6-10A-13.1(f) or (g), exist, the recognition creates only a presumption of paternity for purposes of this Chapter. Once a recognition has been properly executed and filed with the LLBO CSEP or Tribal Court, if there are no competing presumptions of paternity, a judicial or administrative court may not allow further action to determine parentage regarding the signator of the recognition. An action to determine custody and visitation may be commenced pursuant to the Leech Lake Parentage Act, without an adjudication of parentage. Until an order is entered granting custody to another, the mother has sole custody. The recognition is:
 - a. A basis for bringing an action to award custody or visitation to either parent, establishing a child support obligation which may include up to the two years immediately preceding the commencement of the action, ordering a contribution by a parent to reimburse the Tribe or state for public assistance, or ordering reimbursement for the costs of genetic testing as provided under this Chapter;
 - b. Determinative for all other purposes related to the existence of the parent and child relationship; and
 - c. Entitled to full faith and credit in other jurisdictions.
5. *Action to vacate recognition.*
 - a. An action to vacate a recognition of paternity may be brought by the mother, father, husband or former husband who executed a joinder, or the child. An action to vacate a recognition of parentage may be brought by the LLBO CSEP. A mother, father, or husband or former husband who executed a joinder must bring the action within one year of the execution of the recognition or within six months after the person bringing the action obtains the results of genetic tests that indicate that the man who executed the recognition is not the father of the child. A child must bring an action to vacate within six months after the child obtains the result of genetic tests that indicate that the

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man who executed the recognition is not the father of the child, or within one year of reaching the age of majority, whichever is later. If the Tribal Court finds a prima facie basis for vacating the recognition, the Court shall order the child, mother, father, and husband or former husband who executed a joinder to submit to genetic tests. If the Court issues an order for the taking of genetic tests, the Court shall require the party seeking to vacate the recognition to make advance payment for the costs of the genetic tests. If the party fails to pay for the costs of the genetic tests, the Court may dismiss the action to vacate with prejudice. The Court may also order the party seeking to vacate the recognition to pay the other party's reasonable attorney fees, costs, and disbursements. If the results of the genetic tests establish that the man who executed the recognition is not the father, the Court shall vacate the recognition. If a recognition is vacated, any joinder in the recognition under subdivision 2 of this section is also vacated. The Court shall terminate the obligation of a party to pay ongoing child support based on the recognition. A modification of child support based on a recognition may be made retroactive with respect to any period during which the moving party has pending a motion to vacate the recognition but only from the date of service of notice of the motion on the responding party.

- b. The burden of proof in an action to vacate the recognition is on the moving party. The moving party must request the vacation on the basis of fraud, duress, or material mistake of fact. The legal responsibilities in existence at the time of an action to vacate, including child support obligations, may not be suspended during the proceeding, except for good cause shown.
6. *Recognition form.* The LLBO CSEP shall prepare a form and instructions for the recognition of parentage under this section. The recognition form must be drafted so that the force and effect of the recognition, the alternatives to executing a recognition, and the benefits and responsibilities of establishing paternity are clear and understandable. The form must include a notice regarding the finality of a recognition and the revocation procedure under this section. The form must include a provision for each parent to verify that the parent has read or viewed the instructions accompanying the form describing the recognition of paternity. The individual providing the form to the parents for execution shall provide oral notice of the rights, responsibilities, and alternatives to executing the recognition. Notice may be provided by audiotape, videotape, or similar means. Each parent must receive a copy of the recognition.
7. *Notice.* If the LLBO CSEP or Tribal Court receives more than one recognition of parentage for the same child, the LLBO CSEP or Tribal Court shall notify both signatories on each recognition that the recognition is no longer final and that each man has only a presumption of paternity under section 6-10A-13.1.
8. *Execution by a minor parent.* A recognition of parentage executed and filed in accordance with this section by a minor parent creates a presumption of paternity under this Chapter.