

CHAPTER 8B
PATERNITY CODE

8B-1 PATERNITY /PURPOSE

This Chapter provides a process for the Tribal Court to establish the paternity of a child.

8B-2 PATERNITY PROCEEDINGS –
GENERALLY

The paternity proceedings in this Chapter may be used in a variety of circumstances.

8B-2.01 Acknowledgement under section 8B-5 is an uncontested process allowing a father to swear under oath that he is the biological parent of a minor child. Establishment of paternity under section 8B-6 is generally a contested process or it may be used if an alleged father is dead or otherwise unavailable.

8B-2.02 An unwed father is not entitled to treatment as a parent under this Chapter unless his name appears on the minor child's Tribal, state or provincial certified birth certificate or unless he acknowledges or establishes his paternity as provided in this Chapter.

8B-2.03 An action of an adult child seeking to establish paternity under this Chapter must be filed within five (5) years from the time the child knew or should have known who is alleged to be the adult child's father.

8B-3 JURISDICTION

The Tribal Court shall have jurisdiction over all suits brought to determine paternity of a Kootenai child for any lawful purpose.

8B-4 DEFINITIONS

(a) "Child" shall mean any person who is less than eighteen (18) years of age and has not been emancipated by order of a court of competent jurisdiction.

(b) "Court" shall mean the Kootenai Tribal Court.

(c) "Kootenai Child" shall mean any person who is enrolled or eligible to be enrolled in the Kootenai Tribe, including a person under the age of eighteen (18) who is not emancipated according to the laws

of the Kootenai Tribe or is NOT otherwise legally considered an adult.

(d) "Genetic testing" means an analysis of genetic markers only 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 of the following:

(1) Deoxyribonucleic acid (DNA) ; and

(2) Blood-group antigens, red-cell antigens, human leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.

(e) "Paternity" as used in this Chapter shall mean the legal relationship between a child and a father.

(f) "Presumption" as used in this Chapter is an assumption recognized by law that a particular fact is true and may be admitted as evidence in a legal proceeding or judicially noticed, unless the presumed fact is rebutted by evidence sufficient to prove the fact to be untrue.

8B-5 ESTABLISHING PATERNITY BY
AFFIDAVIT AND/OR STIPULATION

8B-5.01 Voluntary Acknowledgment of Paternity
by Affidavit

(1) An alleged father of a child may voluntarily acknowledge paternity by an Affidavit of Paternity filed with the Court.

(2) If another man is already the presumed father of the child as provided in this Chapter, the Affidavit of Paternity shall not give rise to a presumption of paternity unless the man previously presumed to be the father of the child consents in writing with his signature being notarized and the document accepted by the Court, or until the previously established presumption has been rebutted.

(3) Disputes regarding paternity involving affidavits shall be resolved as provided for in section 8B-6 of this Chapter.

8B-5.02 Establishing Paternity by Stipulation

(1) A man may acknowledge that he is the biological father of a child by filing with the Court a notarized affidavit stating he is the biological father of the child.

(2) Upon receipt of a notarized affidavit, the Court shall promptly serve notice on the mother of the filing of the paternity affidavit by the alleged father.

(3) Within thirty (30) days after being served with notice of the alleged father's voluntary acknowledgment of paternity by affidavit, the mother may acknowledge the alleged father's paternity affidavit or dispute the affidavit by filing a written statement with the Court.

(4) If the mother and father sign a joint petition to establish paternity, the petition with a notarized affidavit can be presented to the Court for entry of an Order Establishing Paternity.

(5) If the mother does not sign a joint petition to establish paternity, the alleged father can file a petition to establish paternity attaching the notarized affidavit. The provisions of section 8B-6 will then apply.

8B-5.03 Affidavit or Stipulation Signed by a Minor. The Court may recognize or accept an affidavit or stipulation signed by a minor natural parent unless:

(1) It was signed by a minor who did not understand the consequences of signing the affidavit or stipulation; or

(2) The person who signed the affidavit or stipulation shows by clear, cogent and convincing evidence that he or she signed under duress, mistake or there was a violation of due process.

8B-6 ESTABLISHING PATERNITY THROUGH COURT ORDER

A child, a child's legal guardian, the child's natural mother, an alleged father of a child, or the Tribe, or another tribe, state, provincial or federal (U.S. or Canada) agency may file a petition requesting the Court to establish paternity. The natural mother and an alleged father may file jointly.

8B-6.01 Pleading to be filed:

(1) Summons. The summons may be signed by an attorney for a party or the Clerk of the Court. The summons to be served on the alleged father(s), along with the Petition, shall include the following notice, in addition to providing a time and date for appearance:

NOTICE TO RESPONDENT:

You have been named in a petition alleging paternity. A judgment of paternity would legally designate the child as your child, grant parental rights to you, create the right of inheritance for the child, obligate you to pay child support until the child reaches the age of eighteen (18), or until the child graduates from high school or its equivalent up to age nineteen (19), and make your failure to pay child support punishable by contempt of court.

You may request genetic testing, which will indicate the probability that you are or are not the father of the child. The Court will order genetic testing on a request by you, the child, the child's legal guardian, the child's natural mother, an alleged father of the child, or the Tribe, or another tribe, state, provincial or federal (U.S. or Canada) agency. Any person who refuses to comply with court-ordered genetic testing may be punished for contempt of court.

The petitioner has the burden of proving by clear and convincing evidence that the named alleged father is the father. If a genetic test shows that you are not excluded as the child's father and that the statistical probability of your being the child's father is ninety-five percent (95%) or higher, you are rebuttably presumed to be the child's father.

(a) The following defenses are available to you:

1. That you were sterile or impotent at the time of conception and had not voluntarily preserved semen;
2. That you did not have sexual intercourse with the mother of the child during the conception period;
3. That another man did have sexual intercourse with the mother of the child during the conception period; or
4. Any other defenses allowed pursuant to Kootenai law.

(b) If you fail to appear at any stage of the proceedings, including a scheduled genetic test, the Court may enter a default judgment finding you to be the child's father. A default judgment will take effect twenty (20) days after it is served on or mailed to you by certified mail return receipt requested unless, within those twenty (20) days, you present yourself to the Court and establish good cause for your failure to appear or present yourself for the genetic test

(2) Petition. A Petition to establish paternity shall include the following:

- (a) The names, dates of birth, address, and tribal affiliations, if any, of the natural mother, the alleged father(s), the child, and of all others who have legal rights of custody, visitation, or support of the child;
- (b) The marital status of the natural mother and the alleged father(s);
- (c) The consent, if any, of the natural mother and the alleged father to establish the alleged father as the natural father of the child;

(d) Whether any party has filed an action to determine paternity in any other court, or with any agency, and if a judgment of paternity has been rendered by any other court;

(e) A certified copy of the child's birth certificate attached as a supporting document;

(f) Whether a name change for the child is requested; and

(g) The notarized signature of the petitioner verifying the truth of the information in the Petition.

8B-6.02 Notice and Absent Parties

(1) All parties including the biological mother and each man alleged to be the natural father shall be notified of the petition and of all hearings, and shall be given an opportunity to be heard.

(2) The Court has jurisdiction to decide the issues before it whether or not all the alleged fathers participate in the establishment of paternity court process.

8B-6.03 Service

Service shall be performed as provided in Chapter 6 of this Law and Order Code.

8B-6.04 Hearing

The following rules apply to paternity hearings:

(1) The mother of the child and the alleged father(s) may be compelled to testify at the hearing.

(2) Testimony of a health-care provider concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged for purposes of admitting this evidence at the paternity hearing.

(3) The hearing shall be conducted by the judge with no jury.

(4) All hearings shall be closed unless all parties agree otherwise.

(5) If the petition contains a request that the child's name be changed, the Court shall hear testimony on this issue.

8B-6.05 Genetic Testing.

(1) If the alleged father(s) is alive and available, the Court shall require the child, mother, and alleged father(s) to submit to genetic testing, unless the Court determines it would not be in the best interest of the child because:

- (a) The child was conceived as the result of incest, sexual abuse of a minor, or sexual assault;
- (b) A legal proceeding of adoption is pending before a court of competent jurisdiction; or
- (c) The cooperation of the child's custodian in the establishment of paternity is reasonably likely to result in physical or emotional harm to the child or to the child's custodian.

(2) An alleged father may be excused from the requirement of genetic testing if the Court determines that there is no reasonable possibility that sexual contact occurred at or near the time of conception.

(3) If genetic testing is required by the Court, such testing shall be performed by a tribal, state, provincial and or federally accredited/certified expert in paternity genetic testing approved by the Court.

(4) If such testing confirms parentage, the disputing parent shall pay the cost of testing. If the test disproves parentage, the petitioner shall pay the cost of the testing.

(5) The Court may order additional genetic testing by other experts qualified in paternity genetic testing upon reasonable request of a party at that party's expense.

(6) The party receiving the genetic test results shall file them with the Clerk of the Court and provide all parties with a copy of the test results.

(7) The results of genetic testing must be accompanied by an affidavit describing the expert's qualifications; an analysis and interpretation of the genetic test results; and documentation of the chain of custody of the genetic sample.

(8) Unless a party objects to the genetic test results in writing at least five (5) days before the hearing, the test results shall be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity.

8B-6.06 Evidence and Burden of Proof. The Court may consider the following types of evidence in paternity cases:

(1) Genetic test results, including the impossibility or the statistical probability of an alleged father's paternity, presented by either expert testimony or a written report, accompanied by an affidavit. The following types of genetic tests are admissible as evidence of paternity provided that the results of all tests, when taken together, either exclude an alleged father or yield a statistical probability of at least ninety-five percent (95%) probability that the alleged father is the biological father:

- (a) DNA
- (b) HLA (Human Leukocyte Antigens)
- (c) Red blood cell enzyme
- (d) Red blood cell antigen
- (e) Serum protein tests, and/or
- (f) Any other scientifically approved genetic test.

(2) Evidence of sexual intercourse between the mother and an alleged father(s) at any possible time of conception;

(3) An expert's opinion concerning the statistical probability of an alleged father's paternity, based upon the duration of the mother's pregnancy;

(4) Medical or anthropological evidence relating to an alleged father's paternity of the child

based on tests which may be ordered by the Court and performed by experts;

(5) Cultural evidence and/or a reputation in the community as to paternity;

(6) Information kept by the Kootenai Tribal Enrollment Office in the normal course of business; or

(7) Any other reliable evidence which is relevant to the issue of paternity of the child.

The Burden of Proof lies with the Petitioner or party contesting the action and shall be by clear and convincing evidence.

8B-6.07 Presumption of Paternity. A man shall be presumed to be a child's natural father when:

(1) A genetic or other test establishes a ninety-five (95) percent or greater probability that the individual is the child's natural father; or

(2) The alleged father and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, or divorce; or

(3) Before the child's birth, the alleged father and the child's natural mother married but the marriage is invalid and the child was born within 300 days after the marriage; or

(4) The alleged father has acknowledged his paternity in writing; or

(5) The alleged father, with his consent, is named as the father on the child's birth certificate; or

(6) The alleged father acknowledges paternity in writing filed with the Tribal Enrollment Office or with the Registrar of Vital Statistics for the state or province where the child was born, and the natural mother did not dispute the acknowledgment within a reasonable time after being informed thereof.

A presumption of paternity may be rebutted only by clear and convincing evidence.

8B-6.08 Artificial Insemination.

(1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is artificially inseminated with the semen donated by a man not her husband, the husband is treated in law as if he were the natural father of the child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the Registrar of Vital Statistics or similar agency, where it shall be kept confidential and in a sealed file.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's is treated in law as if he were not the natural father of a child thereby conceived unless the donor and the woman agree in writing that said donor shall be the father. The agreement must be in writing and signed by the donor and the woman. The physician shall certify their signatures and the date of the insemination and file the agreement with the Registrar of Vital Statistics or similar agency, where it shall be kept confidential and in a sealed file.

(3) The failure of the licensed physician to perform any administrative act required by this section shall not affect the father and child relationship. 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 in exceptional cases upon an order of the Court for good cause shown.

8B-6.09 Best Interest of the Child NOT to Establish Paternity. The Court may determine upon a showing of good cause that it is not in the best interest of the child to establish paternity. Good cause may include, but is not limited to:

(1) The child was conceived as the result of rape, incest, sexual abuse of a minor, or sexual assault;

(2) A legal proceeding for adoption is pending before a court of competent jurisdiction; or

(3) The cooperation of the child's custodian in the establishment of paternity is

reasonably likely to result in physical or emotional harm to the child or to the child's custodian.

The Court may hold a closed, ex parte hearing to determine whether good cause exists to NOT establish paternity.

8B-6.10 Default Order of Paternity (Failure to Answer/Respond to Petition).

Entering a default order of paternity is against the public policy of the Kootenai Tribe.

However, if respondent is the alleged father and he fails to appear at any time not waived by the Court, the Court may, if no good cause to the contrary exists, enter an order that the respondent is the father, which shall be served on respondent personally, or by registered or certified mail to his last known address, or by publication if the respondent's address is not known. Such order shall take effect thirty (30) days after service unless, within that time, the respondent presents to the Court evidence of good cause for his failure to appear or to undergo a genetic test. Plaintiff has to request a default hearing within thirty-one (31) days after service has been accomplished.

8B-6.11 Order of Paternity

The order of the Court determining the existence or nonexistence of paternity shall be based on clear and convincing evidence and shall be final. If the order of the Court is different from the child's birth certificate, the Court shall send the order to the Registrar of Vital Statistics or similar agency of the state or province in which the child was born with instructions to amend the birth certificate upon receipt of the necessary documents and costs for filing with the state or province.

8B-6.12 Reopening Default Order of Paternity

An action where paternity was established by default order may be reopened upon petition for a showing of good cause.

8B-6.13 Disestablishment of Paternity

A declared father may file a Petition for Disestablishment of Paternity upon an initial showing that there is good cause to reopen the paternity matter. A Petition for Disestablishment must be filed no later than five (5) years after the

order establishing paternity was entered or no later than five (5) years from the time the father, the child and/or an interested party knew or should have known that the determined father was in fact not the natural father.

8B-6.14 Time for Filing Paternity Action. A petition to determine paternity may be filed at any time for the purpose of establishing the existence of a father and child relationship, but no later than five (5) years after the party knew or should have known of the father/child relationship.

(1) For the purposes of establishing a child support obligation, a petition to determine paternity must be filed before the child reaches the age of majority or is emancipated according to the laws of the Kootenai Tribe or is NOT otherwise legally considered an adult.

(2) If a petition to determine paternity is brought before the birth of the child, no hearing or other proceeding shall be conducted until after the birth unless the Court determines that an action is necessary in order to preserve testimony.

8B-6.15 Hearings Closed, Records Sealed.

Paternity Proceedings shall be closed and all records shall be sealed except as ordered by the Court for the purpose of requesting an amended birth certificate, or for any purpose consistent with the best interest of the child.

8B-7 ESTABLISHMENT OF PATERNITY WHEN NATURAL/ALLEGED PARENT IS MINOR

If either the natural mother or an alleged father is a minor, the Court shall provide the Tribal Prosecutor or other designated Tribal official with a copy of the paternity petition/affidavit and the prosecutor or other official may appear and/or at the Court's request advise the Court regarding protection of the minor parent(s).

8B-8 PATERNITY AND TRIBAL ENROLLMENT

Establishment of paternity under this Chapter has no effect on Kootenai enrollment procedure, status or membership. The Kootenai Tribal Council makes the final determination of eligibility for enrollment in the Kootenai Tribe of Idaho.

8B-9 PATERNITY ESTABLISHED BY OTHER JURISDICTIONS

8B-9.01 Properly issued court and administrative orders, judgments, or decrees of other Indian Tribes, states, provinces or federal agencies establishing paternity will be given full faith and credit in the Court. Such orders will be considered properly issued when the issuing court or administrative agency had personal jurisdiction over the person claimed to be bound by the foreign order; subject matter jurisdiction over the matter; proper service of process under the law of the issuing jurisdiction; and the issued order does not violate public policy of the Kootenai Tribe.

8B-9.02 A foreign order is authenticated by reasonable proof that the document tendered to the Clerk of the Court is a true copy of the foreign order as it is recorded in the agency or court of the issuing jurisdiction. An authentication stamp issued by a Clerk of Court or custodian of records, or a court seal, is sufficient evidence of authenticity.

8B-9.03 Unless defects in jurisdiction are apparent on the face of the foreign order, the person contesting enforcement of the order has the burden of showing the order is not valid. Upon a failure to respond to a notice of the order and to timely contest it, the Court shall enforce it as a Kootenai Tribal Court Order.

8B-9.04 Where a foreign order is invalid by reason of a lack of personal jurisdiction in the agency or court of the issuing jurisdiction, the Court may adopt some or all of its provisions as an original order of the Court to the extent that it does not violate the public policy of the Kootenai Tribe.

8B-10 DEFAULT PATERNITY ORDERS – REIMBURSEMENT OF CHILD SUPPORT PAID ERRONEOUSLY

8B-10.01 When a man has paid child support as the father of a child and the paternity of a different man is established later by the Court based on genetic testing, the Court may order reimbursement of the child support that was paid erroneously only if:

(1) The child support payments were retained by a state, provincial or tribal government under a permanent assignment of public assistance benefits;

(2) Notice of the hearing has been served on the appropriate government agency;

(3) The government agency that received and retained the payment is the party ordered to make the reimbursement and;

(4) Reimbursement extends back to the date the man can prove he attempted to contest the child support obligation or eighteen months, whichever is longer.

8B-6.11 CONFIDENTIALITY IN PATERNITY ACTIONS

The records filed in a paternity action shall be sealed. ONLY parties to the case may obtain copies of any filed pleadings without a court order and a showing of cause for why pleadings should be released.