

CHAPTER 12
STOCKBRIDGE-MUNSEE TRIBAL LAW
YOUTH CODE
PATERNITY

Section 12.1 Paternity

(A) Custody - The biological mother of a child born out of wedlock has all the rights and responsibilities consistent with the rights and responsibilities of a parent of a biological child except where the court grants legal custody to another person or transfers legal custody to an agency.

(B) Acknowledgment of Paternity - The putative father of a child born out of wedlock may assume parental responsibility for the child and recognize such child as his biological child heir and offspring by executing a formal acknowledgment of paternity on a form provided for that purpose by the Indian Child Welfare Worker, or the Tribal Court. The acknowledgment shall also be signed by the mother of the child.

Section 12.2 Petition to Determine Paternity.

(A) Who May File: Any interested party, including the biological mother, the putative father, the child, and the Indian Child Welfare Worker, may petition the court for the determination of the paternity of a child.

Upon the filing of a petition, the Court Clerk shall issue a summons to the putative father or, if the petition is brought by the putative father, to the mother or legal custodian setting a date for an initial hearing and commanding appearance at the hearing.

(B) Petition Contents: The petition shall be entitled; "In the matter of the paternity of (child's name)" and shall contain the following information:

- (1) The name, birth date, and residence of the child.
- (2) Information showing that the child is a tribal child, or a descendant of a Tribal member.
- (3) The name and address of the biological mother.
- (4) The name and address of the putative father.
- (5) The name, address, and relationship to the child of all other interested parties.
- (6) The petitioner's interest in the matter.

(C) Notice of Hearing: The Court Clerk shall cause the summons and a copy of the petition to be served personally or by certified or registered mail upon all interested parties pursuant to established court procedures for service. Service shall also be made on the Indian Child Welfare Worker by ordinary mail if the ICWW is not the petitioner. Proof of service shall be filed with the court on a form provided for that purpose by the Office of the Court Clerk. Service shall be made at least ten (10) days prior to the initial hearing.

(D) A petition for determination of paternity brought by a party other than the child must be filed within eighteen (18) years after the child's birth.

Section 12.3 Initial Hearing

At the initial hearing the Court shall determine whether any interested party wishes to contest the petition. Before doing so, the Court shall inform the parties of the following:

(A) The nature and possible consequences of the proceeding.

(B) The right to confront and cross-examine witnesses.

(C) The right to be represented by counsel at the party's own expense, and the availability, if any, of free or low cost representation for the indigent.

(D) The right to request genetic tests provided the party so requesting shall pay the costs thereof, except where such costs are awarded as part of an adjudicated proceeding.

(E) That the party contesting the petition has the defenses that the putative father was sterile or impotent at the time of conception, did not have sexual intercourse with the mother during the period eight (8) to ten (10) months prior to the birth of the child, or that another man had sexual intercourse with the mother during that period of time.

Section 12.4 Genetic Tests.

(A) The Court may, and upon request of a party the Court shall, require the child, putative father or mother, to submit to genetic tests. If the Court deems it necessary, for the sole purpose of determining paternity, the Court shall order any other individual, including any male witness who testifies or will testify about his sexual relations with the biological mother at a possible time of conception to submit to genetic tests. The tests shall be performed by an expert qualified as an examiner of genetic markers present on the cells of the specific body material to be used for the tests, appointed by the Court. The Court is not required to order genetic tests on deceased individuals.

(B) The Court may order such tests by additional experts at the request and expense of a party as the Court deems desirable.

(C) Whenever the results of the genetic tests exclude the putative father as the biological father of the child, this evidence shall be conclusive evidence of nonpaternity and the Court shall dismiss the action. Whenever the results of the tests exclude any male witness, the tests shall be conclusive evidence of nonpaternity of that male witness. If any party refuses to submit to the genetic tests this fact shall be taken into account as evidence and, a default judgement may be entered by the Court and such refusal shall be deemed a contempt of the Court. If the action was brought by the child's biological mother but she refuses to submit herself or the child to the genetic tests, the action shall be dismissed.

Section 12.5 Paternity Hearing.

If the matter remains contested following the genetic tests, the Court shall expeditiously and fairly conduct a hearing to determine paternity. The hearing may be conducted in an informal manner, but the decision shall be based solely upon the evidence produced at the hearing. The hearing shall be closed to the public, and the proceedings shall remain confidential except upon order of the Court for good cause shown.

Section 12.6 Judgment.

(A) If the paternity of the putative father is established at the hearing by a preponderance of evidence, a judgment establishing paternity and declaring the putative father to be the biological father shall be entered. If paternity is not so established, the petition shall be dismissed.

(B) If paternity is established, the judgment may make provision for custody, visitation, support, and other relevant matters.

Section 12.7 Effect of Marriage by Biological Mother and Putative Father.

In any case where the putative father and biological mother of any child born out of wedlock shall lawfully marry, such child shall be considered the biological child of the mother and father, unless the parental rights of either parent were terminated prior to the marriage.

LEGISLATIVE HISTORY

Stockbridge-Munsee Children's Code approved by Tribal Council, August 8, 1981, by Resolution No. 0764.

Ordinance Committee revised as Stockbridge-Munsee Youth Code, submitted to Tribal Council for review May 3, 1988.

Tribal Council adopted Youth Code by motion August 16, 1988.

Resolution No. 1104 dated August 29, 1988 officially adopted Youth Code, at a Council meeting on September 20, 1988.

BIA recommended changes that were approved by Tribal Council by Resolution No. 1161, July 18, 1989.

Amended on March 21, 2000, Resolution Number 08-2000 deleting references to blood tests, inserting genetic tests, and removing references to illegitimate children.

Amendments approved by BIA on March 31, 2000.