

DEFINITIONS

Wherever used in this Ordinance, the terms defined in this part shall have the following meaning:

1. "Shall" and "May"

"Shall" is mandatory and "may" is permissive. "Shall not" and "may not" are prohibitory.

2. Severability

If a provision or clause of this Ordinance or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

3. Family support

"Family support" means an agreement between the parents, or an order or judgment, that combines child support and spousal support without designating the amount to be paid for child support and the amount to be paid for spousal support.

4. Support

"Support" refers to a support obligation owing on behalf of a child, spouse, or family. It also includes past due support or arrearage when it exists. "support", when used with reference to a minor child, includes maintenance and education.

5. Support Order

"Support order" means a judgment or order of support in favor of a support recipient, whether temporary or final, or subject to modification or termination, regardless of the kind of

action or proceeding in which it is entered, as provided for in this Ordinance.

Section I. Application and Scope of Ordinance

(a) This Ordinance applies to all proceedings commenced on or after the date of its adoption.

(b) This Ordinance applies to all pending actions and proceedings prior to its effective date on which a judgment has not been entered. Evidence adduced after the effective date of this Ordinance shall be in compliance with this Ordinance.

(c) This Ordinance applies to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this Ordinance.

(d) In any action or proceeding in which an appeal was pending or a new hearing was ordered prior to the effective date of this ordinance, the provisions in effect at the time of the order sustaining the appeal or the new hearing govern the appeal, the new hearing, and any subsequent hearing or appeal.

(e) Application to Prior state and Federal Court Proceedings

Final judgments, orders, decisions and determinations made by state or federal court prior to the date of adoption of this Ordinance shall be given the same effect as if made by the Bishop Paiute Tribal Judicial System.

Section II. Jurisdiction

(a) The Bishop Paiute Indian Tribe possesses inherent sovereign power as embodied in its governing documents to govern paternity and parentage matters arising within the jurisdictional boundaries of the reservation.

(b) The Bishop Paiute Indian Tribe, by adoption of this Ordinance exercises its original and appellate civil jurisdiction over all paternity and parentage matters enumerated in this Ordinance.

(c) The Bishop Paiute Indian Tribal Justice System shall have exclusive jurisdiction over all matters relating to the determination of paternity of a child and to obtain judgment and orders for support of the child.

(d) The Bishop Paiute Indian Tribe may establish a Tribal Court, or operate its judicial decision-making body through the Tribal Council, or by appointment of a commission.

(e) All proceedings under this Ordinance shall be in accordance with the rules of procedures for civil actions developed by the Bishop Indian Tribal Council.

Section III. Effect of Judgment

(a) A judgment of the court establishing the identity of the father of the child shall be conclusive of that fact in all subsequent determinations of inheritance and to satisfy the criteria for enrollment in the Bishop Paiute Indian Tribe.

(b) If the paternity of any child brought before the Tribal Court is not established, at the discretion of the Tribe's governing body, the child may be deemed to have the degree of Indian blood of the tribal member mother for the purposes of meeting the criteria for enrollment in the Bishop Paiute Indian Tribe.

section IV. Relationship established

The parent and child relationship may be established between

a child and:

(1) The natural mother by proof of her having given birth to the child or as provided in this Chapter:

(2) The natural father as provided in this Chapter.

(3) An adoptive parent by proof of adoption.

Section V. Presumption of paternity

(a) A man is presumed to be the natural father of a child

if:

1. He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred (300) days after the marriage is terminated by death, annulment or divorce or after a decree of separation is entered by a court; or

2. Before the child's birth, he and the child's natural mother attempted to marry each other by a marriage solemnized in apparent compliance with Tribal custom or state law, although the attempted marriage is or could be declared 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 three hundred (300) days after its termination by death, annulment or divorce: or

(ii.) If the attempted marriage is invalid without a court order, the child is born within three hundred (300) days after the termination of cohabitation; or

3. After the child's birth, he and the child's natural mother married or attempted to marry each other by a marriage solemnized in apparent compliance with Tribal custom or state

law, although the attempted marriage is or could be declared invalid; and

(i.) He has acknowledged his paternity of the child in writing filed with the Tribal Court or the state office of vital records services; or

(ii.) With his consent, he is named as the child's father on the child's birth certificate; or

(iii.) He is obligated to support the child under a written voluntary promise or by court order; or

4. While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child.

(b) A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two (2) or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls.

(c) A presumption is rebutted by a court decree establishing paternity of the child by another man.

#### Section VI. Artificial insemination

(a) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated as if he were the natural father of a child thereby conceived. The husband's consent shall 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 state office of vital records and services, where it shall be kept confidential and in a sealed file. However, the physician's failure to do so does 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 upon an order of the court for good cause shown.

(b) The donor or semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated as if he were not the natural father of a child conceived by this method.

Section VII. Right to bring paternity action; effect of agreements; proceedings when child not yet born

(a) A child, his natural mother or a man presumed to be his father under this Ordinance may bring a paternity action:

1. At any time for the purpose of declaring the existence of the father and child relationship presumed under this Ordinance; or

2. For the purpose of declaring the nonexistence of the father and child relationship presumed under this Ordinance only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but in no event later than two (2) years after the child's birth. 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 •.

(b) Any interested party may bring an action at any time for

the purpose of determining the existence or nonexistence of the father and child relationship presumed under this Ordinance.

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under this Ordinance may be brought by the child, Toiyabe Indian Health project (TIHP), the mother or personal representative of the child, 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.

(d) Regardless of its terms, an agreement other than an agreement approved by the Bishop Paiute Tribal court between an alleged or presumed father and the mother or child does not bar an action under this Ordinance.

(e) If an action under this Ordinance 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.

Section VIII. Statute of limitations for paternity actions;  
effect on probate matters

(a) An action to determine the existence of the father and child relationship as to a child who has no presumed father under this Ordinance may not be brought later than two (2) years after the birth of the child or later than two (2) years after the effective date of this Ordinance, whichever is later.

(b) This Ordinance extends the time within which a right of

inheritance or a right to succession may be asserted beyond the time provided by Tribal Ordinance relating to distribution. and closing of decedents' estates or to the determination of heirship, or otherwise.

Section IX. Jurisdiction; joinder with action for divorce;  
venue

(a) The Bishop Paiute Tribal Court's jurisdiction of an action brought under this Ordinance may be joined with an action for divorce, annulment, separate maintenance, and support or any action affecting the parent/child relationship at such time as the Bishop Paiute Tribal Council adopts such ordinance.

(b) An action to determine paternity may be brought on the reservation in which the child resides, is found, or if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

Section X. Parties; notice and hearing required

(a) The child shall be made a party to the action. If the child is a minor, the child shall be represented by his guardian if one has been appointed, or a guardian ad litem appointed by the court.

(b) The child's mother or father may not represent the child as guardian or otherwise. The natural mother, each man presumed to be the father under this Ordinance and each man alleged to be the natural father maybe made parties and shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard.



Section XI. Informal hearing; refusal of witnesses or parties to testify; testimony of physician

(a) As soon as practicable after an action is brought to declare the existence or nonexistence of the father and child relationship, a pretrial hearing shall be held. The court may order

that the hearing be held before a referee. The public is barred from the hearing. A record of the proceeding shall be kept.

(b) Upon refusal of any witness or party to testify under oath or produce evidence, the court may order that person to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that the testimony or evidence might tend to incriminate the person, the court may grant immunity from all criminal liability on account of the testimony or evidence that is required to be produced. An order granting

immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence is required to be produced, 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 a civil contempt of the court.

(c) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

Section XII. Blood tests; experts

(a) The court may, and upon request of a party shall require the child, mother or alleged father to submit to blood tests.

The tests shall be performed by an expert qualified as an examiner of blood types appointed by the court.

(b) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of blood types.

(c) In all cases the court shall determine the number and qualifications of the experts.

### Section XIII. Evidence relating to paternity

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) Blood test results are 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 court may and upon request of a party shall require the child, the mother or the man to submit to appropriate tests; and

(e) All other evidence relevant to the issue of paternity of the child.

Section XIV. Recommendations for settlement; acceptance or

refusal; dismissal based on blood tests

(a) On the basis of the information produced at the pretrial hearing, the Bishop Paiute Tribal Court shall evaluate the probability of determining the existence or nonexistence of the father

and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties which may include any of the following:

1. That the action be dismissed with or without prejudice;
2. 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 Bishop Paiute Tribal Court. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the Bishop Paiute Tribal Court shall consider the best interest of the child.

(b) In the best interest of the child, the court may order that the alleged father's identity be kept confidential and 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; or that the alleged father voluntarily acknowledge his paternity of the child.

(c) If the parties accept a recommendation made in accordance with subsection (a) of this section and blood tests .have not been taken, the court shall require the parties to submit to blood tests if practicable. Thereafter the Bishop Paiute Tribal Court shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

(d) The guardian ad litem of the child may accept or refuse to accept a recommendation under this section.

(e) The informal hearing may be terminated and the action set for trial if the Bishop Paiute Tribal Court finds it unlikely that all parties would accept a recommendation made under subsection (a) or (c) or this section.

(f) If the scientific evidence resulting from the blood tests conclusively shows that the respondent could not have been the father, the action shall be dismissed.

Section XV. Civil action; testimony and admissibility of  
evidence demand for jury

(a) An action under this Ordinance is a civil action governed by the Bishop Paiute Tribal Court Rules contained in this Ordinance. The mother of the child and the alleged father are competent to testify and may be compelled to testify.

(b) Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the probable time of conception of the child is inadmissible as evidence unless offered by the mother.

(c) In an action against an alleged father, evidence offered

by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible as evidence only if the alleged father has undergone and made available to the court blood tests which do not exclude the possibility of his paternity of the child.

(d) The trial shall be by the court, without a jury, unless either party demands a trial by jury.

Section XVI. Effect of judgment or order; new birth certificate; determination of support; continuing jurisdiction

(a) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(b) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued.

(c) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the duty of support, provision of health care coverage, the custody and guardianship of the child, visitation privileges 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.

(d) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and related medical/hospital expenses.

(e) Support judgments or orders ordinarily shall be for pe-

riodic payments which may vary in amount. In the best interest of the child, a lump sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court, as it deems just, may limit the father's liability for past support of the child to the proportion of the expenses already incurred.

(f) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts including:

1. The needs of the child;
2. The standard of living and circumstances of the parents;
3. The relative financial means of the parents;
4. The earning ability of the parents;
5. The need and capacity of the child for education including higher education;
6. The age of the child;
7. The financial resources and the earning ability of the child;
8. The responsibility of the parents for the support of others; and
9. The value of services contributed by the custodial parents.

(g) The court has continuing jurisdiction to modify a judgment or order made pursuant to this Ordinance.

Section XVII. Fees and costs

The court may order reasonable fees for attorneys, experts, the child's guardian ad litem, and other costs of the action and pretrial proceedings including blood tests, to be paid by the parties in proportions and at times determined by the court. The filing fee for filing a paternity action is \$\_\_\_\_\_.

Section XVIII. Court orders for support payments; failure to obey

(a) If existence of the father and child relationship is declared, or paternity, or a duty of support has been acknowledged or adjudicated under this Ordinance, the court may order support payments to be made to the mother, the court, or a person, corporation or agency designated to administer them for the benefit of the child under the supervision of the court.

(b) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

Section XIX. Right to counsel; free transcript for appeal

(a) At the pretrial hearing and in further proceedings any party may be represented by counsel.

(b) 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.

Section XX. Confidentiality of proceedings and records

(a) Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this Ordinance shall be held in closed court without admittance of any person other

than those necessary to the action or proceedings.

(b) All papers and records other than the final judgment pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in the state office of vital records services or elsewhere, are subject to inspection only by court order.

Section XXI. Action to declare mother and child relationship

(a) Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. The provisions of this Ordinance are applicable to establish the mother and child relationship.

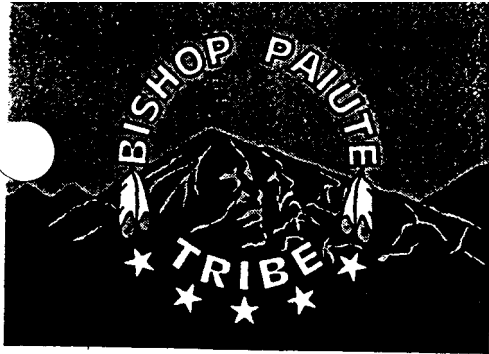
Section XXII. Written promise to furnish support;

confidentiality thereof

(a) Any promise in writing to furnish support for a child arising out of a presumed father and child relationship does not require consideration and is enforceable according to its terms subject to Section VII.(d).

(b) In the best interest of the child or the mother, the court may, upon the promisor's request, 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.





PATERNITY ORDINANCE

BISHOP PAIUTE INDIAN RESERVATION  
Bishop, California

ORDINANCE NO. 93-02

SUBJECT: Law Governing Paternity Proceedings

WHEREAS: The Bishop Paiute Indian Reservation was created by Trust Agreement, April 17, 1939; and

WHEREAS: The government documents of the Bishop Paiute Indian Reservation provide that certain ordinances be adopted to govern the tribe, including the establishment of a judicial system;

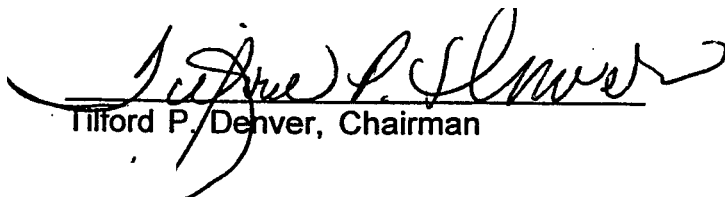
NOW THEREFORE BE IT RESOLVED: That the Bishop Paiute Indian Tribe hereby adopts this Paternity Ordinance No. 93-02 on this 14th day of July, 1993, pursuant to the following certification.

The foregoing Ordinance 93-02 passed and adopted this 14th day of July by the following vote:

YES: 3

NO: 1

ABSTAIN: 1

  
Tilford P. Denver, Chairman

/s/ Lucinda  
Tribal Secretary



# BISHOP TRIBAL COUNCIL

## RESOLUTION T93-25

SUBJECT: Ordinance Establishing a Tribal Judicial System for and Paternity Proceedings

WHEREAS: The Bishop Indian Tribal Council is the federally recognized governing body of the Bishop Paiute Reservation; and

WHEREAS: The Bishop Indian Tribal Council desires to establish a tribal judicial system for the final determination of all parentage proceedings brought to determine the paternity of a child and to obtain a judgment for the support of the child; and

WHEREAS: The Bishop Paiute Indian Tribe possesses inherent sovereign power as embodied in its governing documents to adjudicate all domestic relations matters arising within the jurisdictional boundaries of the Bishop Paiute Reservation; and

WHEREAS: The Bishop Paiute Tribe, by the adoption of an ordinance governing paternity exercises its exclusive original and appellate civil jurisdiction over all paternity and parentage matters enumerated in Ordinance 93-02; and

WHEREAS: The Bishop Indian Tribal Council shall have exclusive jurisdiction over all matters relating to the determination of paternity of a child and to obtain judgment and orders for support of the child; and

WHEREAS: The Bishop Indian Tribal Council may establish a Tribal Court, or operate its judicial decision-making body through the Tribal Council, or appoint a commission to adjudicate all paternity matters pursuant to Ordinance 93-02;

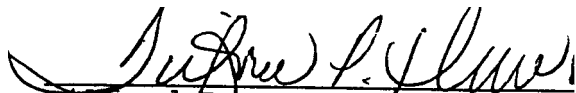
NOW THEREFORE BE IT RESOLVED: That the Bishop Indian Tribal Council authorizes the establishment of a tribal judicial system for the adjudication of paternity and parentage matters.

BE IF FURTHER RESOLVED: That the Bishop Indian Tribal Council authorizes the adoption of Ordinance 93-02 to govern the establishment and administration of the tribal judicial system to exercise tribal jurisdiction over actions brought to determine the paternity of a child and to obtain a judgment for the support of the child.

C E R T I F I C A T I O N

I, the undersigned, Chairman of the Bishop Indian Tribal Council, hereby certify that the Bishop Indian Tribal Council adopted this resolution by a vote of 3 FOR, 1 AGAINST, 1 ABSTAIN, on this 14th day of July, 1993, and that this resolution has not been rescinded or amended in any way.

9.8.

  
Clifford P. Denver  
Tribal Chairman

7-14-93  
Date

  
Lucinda Yandell Secretary

7-14-93  
Date