

# TOHONO O'ODHAM RULES OF COURT

## Section 5: Family Law and Will Procedures

### **Rule 1. General Procedures.**

Unless otherwise provided by these Rules, the Tohono O'odham Rules of Civil Procedure will apply.

### **Rule 2. Child Support Guidelines.**

#### **Rule 2.1. Purpose.**

- (a) To establish a standard of support for children consistent with the reasonable needs of children and the ability of parents to pay;
- (b) To make child support awards consistent for persons in similar circumstances;
- (c) To give parents, guardians, legal custodians, and the Court guidance in establishing child support orders and to promote settlements; and
- (d) To comply with federal law (42 U.S.C. § 651 et seq., 45 C.F.R. § 302.56).

#### **Rule 2.2. Premises.**

- (a) These guidelines apply to all child support calculations in adult civil and children's civil courts.
- (b) The child support award should permit the children a standard of living which approximates as closely as possible the one they would have had if the family remained together, recognizing the cost of maintaining two households.
- (c) The child support obligation has priority over all other financial obligations.
- (d) A custodial parent who receives child support can still be eligible for spousal maintenance.
- (e) The obligation to support other children will be considered by the court, but does not necessarily entitle the paying parent to a reduction of support, proportionate or otherwise.

#### **Rule 2.3. Presumption.**

In any action to establish or modify child support, whether temporary or permanent, these guidelines should be used to establish or modify child support. The Court may deviate from the guidelines where their application would be inequitable. In such cases, the Court must specify the reasons these guidelines were not applied. A child support guidelines worksheet in substantial compliance with the forms in these Rules should be used for child support calculations.

**Rule 2.4. Child Support Calculations.****(a) Determination of Gross Income.**

- (1) Gross income includes income from any source, including but not limited to: income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workman's compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, and spousal maintenance received.
- (2) Gross income does not include benefits received from public assistance programs including, aid to families with dependent children, educational stipends, supplemental security income, food stamps, general assistance, or sums received as child support.
- (3) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income means gross receipts minus ordinary and necessary expenses required to produce income. "Ordinary and necessary expenses" does not include amounts determined by the Court to be inappropriate for determining gross income for child support.
- (4) Expense reimbursements or benefits received by a parent in employment or self-employment or operation of a business will be counted as income if they are significant and reduce personal living expenses.
- (5) If a parent is unemployed or working below full earning capacity, the Court may consider the reasons. If earnings are reduced as a matter of choice and not for reasonable cause, such as caring for children, the Court may attribute income to the parent up to his or her earning capacity. The attributed income may include but is not limited to: the noncustodial parent's assets, residence, employment and earnings history, job skills, education levels, literacy, age, health, criminal record, other employment barriers, and record of seeking work. In attributing income, the Court may also consider: the local job market, the availability of employers, prevailing earnings level in the local community, and other relevant background factors.
- (6) The Court may consider the benefits a parent derives from remarriage, residence with a third party, expense-sharing, or other sources.

**(b) Adjustment of Gross Income.**

- (1) Spousal maintenance and court-ordered child support of other children, actually paid, will be deducted from the gross income of the payer. "Other children" means children who are not the subject of this child support determination, but for whom the payer has a duty to support.
- (2) The cost of medical insurance coverage for the children will be deducted from the gross income of a parent. If the medical insurance premium covers multiple people, the party requesting this adjustment must provide an itemization showing how much of the premium is attributable to each person.
- (3) Supplemental considerations—other factors which may warrant adjustments to the gross income of the payer. These include:
  - (A) the overall financial circumstances and needs of both parents;
  - (B) the proportionate share of community debts and expenses paid;

- (C) tax considerations; and
  - (D) any other relevant factors.
- (4) The Court must determine any particular supplemental consideration on an individual basis and in its own discretion.
- (c) Determination of Parental Adjusted Gross Income.** Adjusted Gross Income is gross income minus adjustments. The Adjusted Gross Income for each parent will be established, and then added together. The product is the Combined Adjusted Gross Income.
- (d) Determination of Basic Child Support.** The parties will match the Combined Adjusted Gross Income figure on the Schedule of Basic Child Support Obligation to the closest column for the number of children involved. The product is the Basic Child Support Obligation.
- (e) Determination of Total Child Support.**
- (1) The Court may add the following to the Basic Obligation:
    - (A) Child Care Costs. Actual child care expenses appropriate to the parents' financial abilities and to the life-style of the children had the family remained intact.
    - (B) Education Expenses. Any reasonable and necessary expenses for attending private or special schools or necessary expenses to meet particular educational needs of a child, when such expenses are incurred by agreement of both parents, or ordered by the Court.
    - (C) Older Child Adjustment. The average expenditures for children over age 12 exceed the average expenditures for all children by approximately 10 percent. The Court, therefore, may increase child support for an older child by an amount up to 10 percent of the support shown on the schedule.
  - (2) The net figure derived from adding any of these allowable sums to the Basic Child Support Obligation is the total Child Support Obligation.
- (f) Determination of Parental Proportionate Shares of Total Child Support.** The Total Child Support Obligation will be divided between the parents in proportion to their adjusted gross incomes. The obligation of each parent is computed by multiplying each parent's share of their Combined Adjusted Gross Income by the Total Child Support Obligation. The custodial parent is presumed to spend his or her share on the children.

**Rule 2.5. Child Support Award.**

The Court will order the noncustodial parent to pay child support in an amount equal to his or her proportionate share of the Total Child Support Obligation.

Example: For one child, age 15, a Combined Adjusted Gross Income of \$1,000, and the noncustodial father's adjusted gross income is \$600.

The father's adjusted gross income is divided by the Combined Adjusted Income. The product is the father's share of the Combined Adjusted Gross Income. Therefore: \$600 divided by \$1000 = 60% for the father's share. On the Schedule, the basic child support obligation for Combined Adjusted Gross Income of \$1,000 for One Child is \$189. To this the Court adds \$11 because the

child is over the age of 12, approximately 6% in this example. The Total Child Support Obligation is \$200.

The father's share is 60% of \$200, or \$120. The mother's share is 40% of \$200, or \$80. Since the mother is presumed to spend her contribution directly to the child as she is the custodial parent, the child support award is that the father pays the mother \$120 per month.

**Rule 2.6. Shared Custody Situations.**

These guidelines seek to remove financial incentives associated with custody and visitation arrangements. If the parents have shared custody, the Court may deviate from the child support guidelines based on the specific expenses related to shared custody.

**Rule 2.7. Visitation or Parenting Time.**

The Court may consider the costs of visitation or parenting time and may allocate such costs between the parents in proportion to their ability to pay.

**Rule 2.8. Abatement.**

When the noncustodial parent is directly providing for the children's needs for an extended period, such as on a long visit, the Court may order a reduction of child support paid to the custodial parent for that period.

**Rule 2.9. Gifts in Lieu of Money.**

The child support award is to be paid in money. Gifts of clothing, etc. in lieu of money are not to be offset against the support except by court order.

**Rule 2.10. Medical Insurance.**

An order for child support will assign responsibility for providing medical insurance for the children who are the subject of the support award. The Court will specify the percentage of uninsured medical expenses for the children, which each parent must pay. The apportionment will reflect the parents' respective ability to pay.

**Rule 2.11. Exchange of Financial Information.**

The Court will order that, every 12 months, the parties exchange financial information such as tax returns, spousal affidavits, and earning statements.

**Rule 2.12. Judge's Findings.**

The Court must make findings in the record as to Gross Income, Adjusted Gross Income, Basic Child Support Obligation, Total Child Support Obligation, each parent's proportionate share of the Total Child Support Obligation, and the child support award. If applicable, the Court must make findings in the record as to each parent's earning capacity. These findings may be made by incorporating a worksheet containing this information into the file.

**Rule 2.13. Adoption, Modification of Child Support Guidelines.**

The adoption or subsequent modification of these guidelines is not, by itself, a substantial and continuing change of circumstances sufficient to support modifying an existing child support award.

**Rule 2.14. Child Support Payments.**

(a) **Child Support Ledger.** The Court will maintain a child support ledger to keep track of child support payments and any arrearages.

(b) **Non-Payroll Deduction Payments.** A parent may be ordered to pay child support that does not involve wage assignments or garnishment. A parent ordered to pay child support who is not required to make the payments through an automatic payroll deduction must deliver the payment to the Court for the child support to be documented. The parties must notify the Court in writing of any change of address or employment within five business days of the change.

(c) **Wage Assignment; Proof of Payment.**

(1) *Wage Assignment.* The Court may encourage a parent to arrange with his or her employer to have the child support or a specific amount deducted per paycheck to meet the parent's child support obligation.

(2) *Proof of Payment.* If the payroll deduction for child support is not forwarded to the Court, the parent ordered to pay child support must, every six months, provide to the judicial accounting department and the other party proof of the parent's payments.

(3) *Address Update.* Both parties must notify the Court of any change of address.

(d) **Garnishment.** The Court will provide in the order that garnishment of a parent's wages may be a means for child support payment, and may order garnishment as the means for the parent to pay the child support. If wages are garnished in the order, the Court will serve the garnishment order on the garnished parent's employer under the Tohono O'odham Civil Rules of Procedure. The parties must notify the Court in writing of any change of address or employment within five business days of the change.

**Rule 2.15. Child Support Schedule.**

Parties will reference the Schedule of Basic Child-Support Obligations in determining any child support award. See Attachment below or the Judiciary's website at [tojcnnsn.gov/forms](http://tojcnnsn.gov/forms).

**Rule 3. Termination of Support.**

Unless the Court has set a date certain for termination of child support, a party must petition the Court to stop the child support upon full satisfaction of a child support order and include evidence that all past due support has been paid in full.

**Rule 4. Post-Decree/Postjudgment Proceedings.**

**Rule 4.1. Modification or Enforcement of Prior Orders; General Provisions.**

- (a) A party seeking to modify or enforce a prior child support or custody order issued by the Court must file a verified petition with the Clerk of the Court and pay the required filing fee, if any. All petitions to enforce or modify must be sworn under oath. The petition must indicate, at minimum, the nature of the proceeding and the specific relief sought and the reasons why the Court should grant the relief.
- (b) A party may petition to modify or enforce a prior child support or custody order in the same pleading.

**Rule 4.2. Garnishment.**

- (a) **Petition for Garnishment; Contents and Service.** A petition for garnishment, whether filed as its own action or as part of a petition to modify, must be served on the person to be garnished under the Tohono O’odham Rules of Civil Procedure, and the petition must include:

- (1) the name, address, and social security number of the person to be garnished;
- (2) the tribal enrollment numbers of both the parent to be garnished and the petitioner, if applicable and known to the petitioner;
- (3) the birthdates of both parents;
- (4) a certified copy of the child support order, with all modifications;
- (5) a statement that the judgment is final and that no appeal is pending;
- (6) the amount of arrearages, if any;
- (7) payment history; and
- (8) the name and address of the employer of the person to be garnished.

- (b) **Response.** The parent to be garnished may file a response. The parent must file a response if contesting any allegation in the petition, or raising the following:

- (1) the amount of disposable earnings as defined by 4 T.O.C. Ch. 3 § 3103(D);
- (2) the existence of multiple child support proceedings; or
- (3) that the parent is a tribal elder or vulnerable adult.

- (c) **Service on Employer.** When a wage assignment or garnishment of wages is ordered, service will be as follows:

- (1) *Wage Assignment.* The petitioner will deliver the wage assignment to the employer.
- (2) *Garnishment.* The Court will serve an order of garnishment on the employer.

- (d) **Employer Certification.** Within 10 business days of being served with garnishment, the employer must file with the Court a certification signed by an authorized representative of the employer containing:

- (1) whether the garnished parent was employed by the employer on the date the order

- was served;
- (2) whether the employer anticipates owing earnings to the employee within 60 days after the date the order was served;
  - (3) if the employer is unable to identify the garnished person as an employee after making a good faith effort to do so, a brief statement of the effort made and the reason for the inability to identify;
  - (4) the dates of the employee's next two pay periods occurring after the date the order was served;
  - (5) the amount of earnings and disposable earnings payable to the employee on the next two pay periods as defined by 4 T.O.C. Ch. 3 § 3103(I),(K);
  - (6) the pay period of the employee, whether weekly, biweekly, semimonthly, monthly, or other specified period;
  - (7) the outstanding judgment now due and owing as stated in the order;
  - (8) whether the employee is subject to another garnishment, and if so, a description of that garnishment and to whom it is owed, including the name, address, and telephone number;
  - (9) the name, address, and telephone number of the recipient; and
  - (10) the date and manner of service the employer will use to serve a copy of the certification on the employee and other parent.

**(e) Stay of Garnishment.** Any party may file a motion to stay the garnishment order. The motion must be signed and notarized, state specific grounds, and provide supporting evidence to establish:

- (1) lack of personal or subject-matter jurisdiction;
- (2) applicability of one or more of the withholding restrictions in 4 T.O.C. Ch. 3, Art. VI; or
- (3) a mistake of fact:
  - (A) Error in the amount of current child support or arrears owing, or
  - (B) The identity of the alleged noncustodial parent.

**Rule 5. Precedence of Children's Court Child in Need of Care Cases.**

**(a) Civil Court Stay Upon Notification.** The Civil Court will stay any pending or prior child custody or support matter upon notification from the Children's Court that a Child in Need of Care matter is pending in the Children's Court. If the Civil Court case involves more than one child, the stay will only apply to the children who are the subject of the Child in Need of Care matter.

**(b) Lift of Stay; Adoption of Children's Court Order.** When the Civil Court receives the final order from the Children's Court regarding custody and support, the Civil Court will lift the stay and adopt the Children's Court order as the Civil Court order.

**(c) Post-Adjudication Petitions.** Any post-adjudication petition to modify an order adopted by the Civil Court under this Rule must be filed in the Civil Court.

**Rule 6. Wills.**

As of November 1, 2011, the Court's policy of storing wills is rescinded. Wills currently housed with the Judicial Branch are only held for safekeeping. It is the responsibility of the personal representative, family member, or other appropriate person to file a proper pleading with the Court to initiate a probate.

#### Section History

Adopted on December 10, 1987 by Administrative Order II. Amended, reorganized, and renumbered to consolidate the Administrative Orders into the Tohono O'odham Rules of Court on November 1, 2011. Amended by the 2017 Tohono O'odham Rules of Court. Amended by the 2023 Tohono O'odham Rules of Court. Amended by the 2024 Tohono O'odham Rules of Court.



**SCHEDULE OF BASIC CHILD SUPPORT OBLIGATIONS**

**This schedule is only part of the overall guidelines and must be used together with the accompanying information.**

<b><u>COMBINED MONTHLY ADJ. GROSS INCOME</u></b>	<b><u>ONE CHILD</u></b>	<b><u>TWO CHILDREN</u></b>	<b><u>THREE CHILDREN</u></b>	<b><u>FOUR CHILDREN</u></b>	<b><u>FIVE CHILDREN</u></b>
\$500	\$69	\$116	\$141	\$180	\$219
\$600	\$83	\$136	\$171	\$212	\$253
\$700	\$96	\$158	\$198	\$224	\$250
\$800	\$108	\$178	\$225	\$272	\$319
\$900	\$121	\$198	\$222	\$304	\$386
\$1,000	\$134	\$218	\$276	\$332	\$388
\$1,100	\$147	\$238	\$303	\$364	\$425
\$1,200	\$159	\$258	\$320	\$392	\$464
\$1,300	\$172	\$278	\$357	\$420	\$483
\$1,400	\$184	\$298	\$381	\$448	\$515
\$1,500	\$197	\$316	\$408	\$480	\$552
\$1,600	\$209	\$336	\$432	\$508	\$584
\$1,700	\$222	\$356	\$459	\$536	\$613
\$1,800	\$234	\$374	\$483	\$564	\$645
\$1,900	\$246	\$394	\$507	\$588	\$669
\$2,000	\$258	\$412	\$534	\$616	\$698
\$2,100	\$271	\$432	\$558	\$644	\$730
\$2,200	\$283	\$450	\$582	\$672	\$762
\$2,300	\$295	\$468	\$606	\$700	\$794
\$2,400	\$307	\$488	\$633	\$724	\$815
\$2,500	\$319	\$506	\$657	\$752	\$847
\$2,600	\$331	\$524	\$681	\$780	\$879
\$2,700	\$343	\$542	\$705	\$804	\$903
\$2,800	\$355	\$562	\$729	\$832	\$935
\$2,900	\$367	\$580	\$756	\$860	\$964
\$3,000	\$379	\$598	\$780	\$884	\$988
\$3,100	\$391	\$618	\$804	\$912	\$1,020
\$3,200	\$403	\$634	\$828	\$936	\$1,044
\$3,300	\$415	\$652	\$852	\$964	\$1,076
\$3,400	\$427	\$670	\$876	\$985	\$1,094
\$3,500	\$439	\$690	\$900	\$1,016	\$1,132
\$3,600	\$451	\$708	\$924	\$1,040	\$1,156
\$3,700	\$463	\$726	\$948	\$1,064	\$1,180
	<b>ONE</b>	<b>TWO</b>	<b>THREE</b>	<b>FOUR</b>	

<b><u>COMBINED MONTHLY ADJ. GROSS INCOME</u></b>	<b><u>CHILD</u></b>	<b><u>CHILDREN</u></b>	<b><u>CHILDREN</u></b>	<b><u>CHILDREN</u></b>	<b><u>FIVE CHILDREN</u></b>
\$3,800	\$475	\$744	\$972	\$1,092	\$1,212
\$3,900	\$487	\$762	\$996	\$1,116	\$1,236
\$4,000	\$498	\$798	\$1,020	\$1,140	\$1,260
\$4,250	\$522	\$814	\$1,068	\$1,192	\$1,316
\$4,500	\$557	\$864	\$1,126	\$1,269	\$1,412
\$4,750	\$581	\$904	\$1,164	\$1,312	\$1,460
\$5,000	\$616	\$958	\$1,201	\$1,354	\$1,507
\$5,250	\$640	\$989	\$1,239	\$1,396	\$1,553
\$5,500	\$660	\$1,020	\$1,277	\$1,440	\$1,603
\$5,750	\$680	\$1,050	\$1,315	\$1,482	\$1,649
\$6,000	\$700	\$1,080	\$1,352	\$1,525	\$1,698
\$6,250	\$715	\$1,104	\$1,390	\$1,567	\$1,744
\$6,500	\$730	\$1,128	\$1,428	\$1,610	\$1,792
\$6,750	\$735	\$1,152	\$1,466	\$1,652	\$1,838
\$7,000	\$750	\$1,176	\$1,504	\$1,695	\$1,886
\$7,250	\$760	\$1,200	\$1,542	\$1,737	\$1,932
\$7,500	\$770	\$1,224	\$1,580	\$1,780	\$1,980
\$7,750	\$780	\$1,240	\$1,599	\$1,802	\$2,005
\$8,000	\$790	\$1,256	\$1,620	\$1,826	\$2,032