



**HO-CHUNK NATION CODE (HCC)
TITLE 4 – CHILDREN, FAMILY, AND ELDER CODE
SECTION 2 – RECOGNITION OF FOREIGN CHILD SUPPORT
ORDERS ORDINANCE**

ENACTED BY LEGISLATURE: OCTOBER 19, 2004

LAST AMENDED AND RESTATED: JUNE 22, 2005

CITE AS: 4 HCC § 2

This Ordinance supersedes the Recognition of Foreign Child Support Orders Ordinance enacted as Ho-Chunk Code 96-003 on 8/20/1996.

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1. Authority.

a. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.

c. Article V, Section 2(u) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.

2. Purpose. The purpose of this Ordinance is to provide for the enforcement of child support orders of another tribe, state, or other foreign jurisdiction.

3. Definitions. As used in this Act, the following shall have the meaning provided here.

a. “Court” means the Nation’s Trial Court.

b. “Nation” means the Ho-Chunk Nation.

c. “Per Capita Payment” means a distribution from the Nation to a member of the Ho-Chunk Nation made pursuant to the Nation’s *Per Capita Distribution Ordinance* (2 HCC § 12).

d. “Petition” means a written order to register and enforce a Child Support Order of another jurisdiction under this Ordinance.

4. Foreign Child Support Order.

a. Motion. Any person, tribe, state, or foreign jurisdiction that wishes to enforce a Child Support Order against per capita payments, wages, compensation, or other payments from the Nation must apply to the Court by filing a Petition to register and enforce a foreign Child Support Order. The Petition shall be accompanied by an authorized copy of the Child Support Order.

b. The foreign Child Support Order shall recite or be accompanied by documentation showing the jurisdiction of the foreign court or administrative agency, the authority for entering the order, the name of the person/defendant subject to the order and his/her relationship to the child, and the amount of child support.

c. Service of Process. The defendant shall be served with a copy of the Petition and Child Support Order. Service shall be made in any manner permitted for service of process commencing an action in the Court under the Ho-Chunk Nation *Rules of Civil Procedure*.

5. Hearing. Within twenty (20) days after service of the Petition, the defendant may request a formal hearing regarding the Child Support Order. The hearing shall not review the merits of the Order and shall be limited to issues regarding:

a. Whether the foreign court or administrative agency had jurisdiction to enter the child support order.

b. Whether the defendant had due process including proper notice and a fair hearing.

c. Whether collusion, fraud, or clear mistakes of law or fact are present.

d. Whether there is conflict with any state or federal law.

e. Whether there is a conflict with the Nation’s law or public policy.

6. Judgment.

a. Judgment shall either enforce the Child Support Order and grant child support payments or dismiss the motion on one or more of the grounds set forth in Section 5.

b. Except as otherwise provided in this section, a judgment shall not allow any modification from the foreign Child Support Order or otherwise change the percentage, agreed amount, or amount if in arrears of child support to be awarded.

c. Default Judgment. If the defendant fails to respond within twenty (20) days to the child support Petition, the Court may enter a default judgment granting the relief sought in the Petition.

7. Modification of a Foreign Child Support Order. A party may request modification of a foreign child support order by filing a child support petition including all the information set forth in paragraph 23b of the *Child Support Enforcement Code* (4 HCC § 7) as well as a copy of the foreign child support order.

a. The Court shall refer the modification petition to the Ho-Chunk Nation Child Support Program for its recommendation.

b. The Court may modify an order issued by another nation, state, or tribe if the Tribe has jurisdiction to make a child support order; and

(1) The court of the other nation, state or tribe no longer has continuing, exclusive jurisdiction of the child support order because that jurisdiction is no longer the child's state or tribe or the residence of any party; or

(2) Both parties have agreed to the Ho-Chunk Nation Trial Court assuming jurisdiction over the modification.

8. Enforcement.

a. The Court may enforce the judgment for child support through an order garnishing the defendant's wages, compensation, or other payments owing from the Nation and any of its enterprises, programs, and projects other than per capita payments to defendant under paragraph b, below.

b. Enforcement Against Per Capita Payments. Each judgment entered by the Court for child support under this section shall, unless ordered otherwise by the Court based upon its construction of the foreign order and upon receipt by the Department of Treasury and the Office of Tribal Enrollment, constitute a lien upon and assignment of defendant's per capita payments under the *Per Capita Distribution Ordinance* (2 HCC § 12). A judgment received within fifteen (15) days of a per capita payment distribution shall not be effective for that payment, but shall be effective for all subsequent payments.

(1) An order of the Court placing a lien upon and assigning defendant's per capita for child support shall be immediately directed to the Office of Tribal Enrollment and the Department of Treasury of the Nation.

(2) Except as provided in paragraph (3), below, the Department of Treasury must withhold the specified amount from the debtor-parent's per capita payment and transmit such funds directly to the Clerk of Court or the Court's designee. The Clerk of Court shall remit the payments to the claimant if payment is transmitted to the Clerk instead of a designee.

(3) The maximum amount in any one per capita payment check subject to withholding under this Ordinance is sixty percent (60%).

9. Termination. The debtor-parent's obligation to pay child support shall lapse when judgment is satisfied.

Legislative History:

8/20/96	Legislature adopts Recognition of Foreign Child Support Orders Ordinance.
8/17/04	Legislature places draft Recognition of Foreign Child Support Orders Ordinance (4 HCC § 2) out for 45-day Public Review.
10/19/04	Enacted as Recognition of Foreign Child Support Orders Ordinance (4 HCC § 2) by Legislative Resolution 10/19/04G.
6/22/05	Amended and restated by Legislative Resolution 6/22/05D amending paragraph 8b(3).