

HO-CHUNK NATION CODE (HCC)
TITLE 4 – CHILDREN, FAMILY, AND ELDER WELFARE CODE
SECTION 7 – CHILD SUPPORT ENFORCEMENT CODE

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CHAPTER I
GENERAL PROVISIONS AND DEFINITIONS

1. Authority.

- a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution (õConstitutionö) 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(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.
- d. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.
- e. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.
- f. Article V, Section 2(u) of the Constitution grants the Legislature the power to enact laws to regulate domestic relations of persons within the jurisdiction of the Nation.

2. General. Ho-Chunk Nation parents have a responsibility of caring for their children, bonding with them, making sure they are safe, and providing for all their basic needs. Aunts, uncles, grandparents and other extended family members assist the parents and their children when they need help by advising the parents in decision-making, showing love to the children, teaching values and respect, and taking over in parentsø absence. Grandparents share with their grandchildren the wisdom of their experience and traditional values. The Ho-Chunk Nation Trial Court is the most appropriate forum for deciding issues related to the well-being of a child who is a member of a Ho-Chunk Nation family. It is the policy of the Ho-Chunk Nation to consider carefully the circumstances of each family and to treat each family individually.

3. Policy.

- a. The Department of Social Services shall implement this Child Support Enforcement Code by establishing a Child Support Enforcement Agency (õAgencyö).
- b. The Ho-Chunk Nation shall promote cooperation and agreement by the parents regarding fulfillment of their duties to their children. It is the experience of the Ho-Chunk Nation that a non-custodial parent is more likely to remain connected with his or her children if he or she has developed an agreement with the other parent on the amount of child support.

- c. The Nation shall not interfere in the child support arrangements agreed upon by the families when those agreements serve the best interest of the child.
 - d. The Ho-Chunk Nation Child Support Enforcement Agency is authorized to certify that there is Good Cause not to establish paternity or child support in the following cases:
 - i. Cases involving domestic violence;
 - ii. Cases involving incest or rape; or
 - iii. Cases where pursuing paternity or child support is not in the best interest of the minor child.
 - e. The Court may hold a closed ex-parte hearing to determine whether "Good Cause" exists.
- 4. Definitions.** When the words listed in this section appear in this title, they shall have the following meaning unless a different meaning is clearly intended.
- a. "Adult" means any person who is either eighteen (18) years of age or older, married, or emancipated.
 - b. "Agency" means the Ho-Chunk Nation Child Support Enforcement Agency.
 - c. "Alleged father" means any man who might be the biological father of a child, including men who are "presumed fathers" under section 19e.
 - d. "Child" means a natural child or adopted child, except that under the Chapter III, Paternity, and "child" refers only to a natural child.
 - e. "Child Support Obligation" means the total dollar amount of child support, including payment of work-related day care expenses and the child's share of health insurance, that the paying party is obligated to pay to meet his or her current financial duty to support his or her child as established through judicial and/or administrative process. It also includes any non-cash services or resources the party is required to provide.
 - f. "Court" means the Ho-Chunk Nation Trial Court.
 - g. "Custodial Parent" means the parent that exercises physical placement of the child pursuant to a court order.
 - h. "Domicile" means permanent home. Home is the location where a person has family, community, cultural, ancestral and historical ties, and the place to which a person intends to return.

- i. "Gross Income" means any form of payment due to an individual regardless of source, including, but not limited to:
 - i. Salary and wages;
 - ii. Interest and investments;
 - iii. Social Security disability and old age insurance benefits under 42 USC 401 to 403;
 - iv. Net proceeds resulting from worker's compensation or other personal injury awards intended to replace income;
 - v. Unemployment compensation;
 - vi. Income continuation benefits;
 - vii. Voluntary deferred compensation and voluntary employee contributions to the following: employee benefit plan, profit-sharing, pensions or retirement accounts;
 - viii. Military allowance and veterans benefits;
 - ix. Undistributed income of a corporation or any partnership which the parent has an ownership interest of the business, unless the income included is an asset;
 - x. Per Capita distribution;
 - xi. Lease or rental income;
 - xii. Prizes over \$1,000.00; and
 - xiii. All other income, whether taxable or not, except that gross income does not include any of the following:
 - 1. Child Support;
 - 2. Foster Care Payments;
 - 3. Kinship Care Payments;
 - 4. Public assistance benefits, except that child care subsidy payments shall be considered income to a child care provider;
 - 5. Food Stamps;
 - 6. Public assistance or financial hardship payments paid by a county or tribe; and
 - 7. Supplemental Security Income under 42 USC 1381 to 1383(f) and state supplemental payments.

- j. "Guidelines" means the Ho-Chunk Nation Child Support Guidelines.

- k. "Indian Tribe" means the tribe, band, nation, Alaska Native group recognized by the Secretary of the Interior as eligible for services provided to Indians.

- l. "Legal Custody" means the right and responsibility to make major decisions concerning the child, except with respect to specific decisions as set forth by the court or the parties in the final judgment.
 - i. Major decisions include, but are not limited to, decisions regarding the right to marry, consent to enter military service, consent to

obtain a motor vehicle operator's license, authorization for non-emergency health care and choice of school or religion.

- m. "Nation" means the Ho-Chunk Nation.
- n. "Non-cash payment" means support provided to a family in the nature of goods and/or services, rather than cash, but which, nonetheless, has a certain and specific dollar value.
- o. "Non-custodial Parent" shall mean the parent of a child who does not hold primary placement, care and/or control of the child.
- p. "Parent" includes biological or adoptive parent, but does not include persons whose parental rights have been terminated. It does not include an unwed father who has not acknowledged or established paternity in one of the following ways:
 - i. Being identified as the father on the child's birth certificate;
 - ii. By acknowledging paternity to the Office of Tribal Enrollment; or
 - iii. To a court, or through formal paternity proceedings under state or Nation law.
- q. "Physical Placement" means the condition under which a person has a right to have a child physically placed with that person and has the right and responsibility to make, during the placement, routine daily decisions regarding the child's care, consistent with the major decisions made by a person having legal custody.
- r. "Spokesperson" means a person authorized to speak on behalf of a Ho-Chunk person for a specific hearing in court.
- s. "TANF" means Temporary Assistance for Needy Families program.

CHAPTER II JURISDICTION AND COURT PROCEDURES

5. Tribal Enrollment Records.

- a. Enrollment of all children eligible for membership in the Ho-Chunk Nation is essential to the survival of the Nation, the furtherance of tribal sovereignty, and rights of future generations of potentially eligible children. In order to encourage acknowledgment of paternity for enrollment purposes, all enrollment records, including birth certificates, are confidential and are not subject to subpoena by any court.
- b. This Code vests no jurisdiction in Court over tribal enrollment.

6. Jurisdiction.

- a. The Ho-Chunk Nation Trial Court is vested with the fullest jurisdiction permissible under applicable law. Personal jurisdiction includes, but is not limited to the following people:
 - i. Members of the Ho-Chunk Nation, or individuals who are eligible to become a member, but are not enrolled as a member;
 - ii. Individuals who are the biological parent or adoptive parent of a child that is an enrolled member or eligible to be an enrolled member with the Ho-Chunk Nation;
 - iii. Individuals who consent to the jurisdiction of the Court by entering a general appearance or filing a responsive document or by participating in the proceeding unless participation is for the purpose of contesting jurisdiction;
 - iv. Individuals who reside on Nation lands with a child who is enrolled or eligible to be enrolled with the Ho-Chunk Nation; or
 - v. Individuals employed by the Nation for the sole purpose of recognizing and enforcing Income Withholding Orders of foreign jurisdictions.
- b. In every action under this Code, the Court shall retain continuing, exclusive jurisdiction over the child to the fullest extent permitted by law.

7. Procedures – General

- a. Proceedings under this Code are civil actions and are governed by applicable provisions of the Ho-Chunk Nation Rules of Civil Procedure, except where this Code provides otherwise.
- b. There is no right to a jury in any proceeding under this Code.
- c. Any Ho-Chunk person appearing in the Court shall have the right, at his/her own expense, to a spokesperson, lay advocate, or attorney, as allowed under the Ho-Chunk Nation Rules of Civil Procedure, or to proceed *pro se*. Any other person shall have the right to an attorney at his/her own expense or may proceed *pro se*.
- d. Unless additional rules are stated in each chapter, rules of evidence and burden of proof shall be the same as those which apply to civil actions before the Ho-Chunk Nation Trial Court.

8. Full Faith and Credit for Foreign Child Support Orders.

- a. The Ho-Chunk Nation Trial Court shall have jurisdiction to recognize and enforce foreign orders, judgments, and decrees addressing child support.

Properly issued child support orders, income withholding orders, judgments or decrees of other Indian tribes, tribal organizations, and states, that relate to child support shall be recognized and enforced in accordance with the requirements under Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B and section 36 of this Code.

9. Transfer of Jurisdiction.

- a. The Agency has the authority to accept electronic transfer of cases from within the State of Wisconsin. The Court has the authority to accept transfers of cases from other courts or governments for proceedings under this Code.
- b. The Court shall only transfer a case under this Code to another court or government if it has no jurisdiction over the case or for compelling reasons determined in a hearing.

CHAPTER III PATERNITY

10. General. This chapter provides a process for the Court to establish the paternity of a child by administrative process or court proceedings.

- a. In the Ho-Chunk Nation, fathers are important role models who teach respect, values, and responsibilities to their children. They care for their children, show them love and point them in the right direction. They support their children in having a safe, secure, healthy, spiritual, happy home life as well as supporting them financially.
- b. A man is presumed to be the natural father of a child if he and the natural mother were married at the time of the child's birth or if the child was born within three hundred (300) days after the marriage was terminated. The presumption can only be overcome by clear and convincing evidence.
- c. The Nation recognizes that determining biological paternity is important for the purpose of tribal membership and the benefits associated with it. This chapter is not intended to take the place of or interfere with the confidential acknowledgments of paternity through the Ho-Chunk Nation Office of Tribal Enrollment.
- d. A paternity proceeding under this chapter may stand alone as a separate proceeding or it may be joined with an action to determine child support at the request of the alleged father, the child's mother or the Nation.
- e. The provisions of this chapter may be applied, as far as practicable, to the determination of the existence or nonexistence of a mother and child relationship.

- f. Confidentiality of Paternity Records. The records filed in a paternity action shall be sealed and all hearings up to the determination of paternity shall be closed. Only parties to the case may obtain copies of the files.
- g. No Statute of Limitations. An action to establish paternity shall not be subject to a statute of limitations.
- h. A minor mother or father named in a paternity action will be appointed a Guardian ad Litem by the Court. Said Guardian ad Litem will assist the minor parent until a Judgment of Paternity has been filed with the Court.

11. Voluntary Acknowledgment of Paternity.

- a. Conclusive determination of Paternity. A statement acknowledging paternity that is on file with the State of Wisconsin registrar under Wis. § 69.15(3)(b)3, after the last day on which a person may timely rescind the statement, as specified in Wis. § 69.15 (3m), is conclusive, which shall have the same effect as a judgment of paternity.
- b. A statement acknowledging paternity that is on file with a Tribe and/or State registrar shall be conclusive, provided the Tribe and/or State recognize the document as a determination of paternity.
- c. The parents can check with the State's registrar to determine what form they need to complete to voluntarily acknowledge paternity, if the child was born in a state other than Wisconsin.
- d. A minor parent may not sign a statement acknowledging paternity.

12. Paternity Actions.

- a. Who May File. A petition requesting the Court to establish paternity may be filed by any of the following:
 - i. A child (including an adult child), or if the child is under the age of 18, the child's legal guardian;
 - ii. The child's natural mother;
 - iii. An alleged father of the child; or
 - iv. The Ho-Chunk Nation Child Support Enforcement Agency.

13. Affidavit of Paternity. The party seeking to establish paternity must complete an Affidavit for Paternity. The affidavit must contain the following:

- a. Complete name of the person filing this action. This can be any of the following:
 - i. Natural Mother;
 - ii. Potential Father;

- iii. Guardian in care of minor child;
 - iv. Ho-Chunk Nation Child Support Agency; or
 - v. Adult child whose paternity was never established.
- b. The name, date of birth and birth weight of the minor child;
 - c. The conceptive period. (Generally eight (8) ó ten (10) months prior to the birth of the child);
 - d. Whether or not the mother of the child is currently married or was married during the conceptive period;
 - e. The names of all parties the natural mother had sexual relations with during the conceptive period; and
 - f. This document must be signed before a notary.

14. Petition for Paternity. A petition to establish paternity shall be prepared on a form approved by the court.

- a. The petition shall state the following information:
 - i. The names, date of birth, addresses, and tribal affiliations, if any, of the natural mother, the alleged father(s), the child, and all others who have legal rights of custody, visitation or support of the child, and of the petitioner;
 - 1. A separate addendum shall be completed and filed with the court listing the name, date of birth and social security number of the parties. Said document shall be confidential and sealed by the court.
 - ii. Whether the natural mother and the alleged father are or were married, to whom, and the dates of marriage, separation and divorce, if any;
 - iii. Whether there has been any court or administrative paternity proceedings or state paternity affidavits concerning the child, and whether there has been any termination of parental rights or adoption proceedings;
 - iv. Whether or not a name change for the child is requested;
 - v. Whether or not child support is requested;
 - vi. Whether or not a request for medical insurance and uninsured expenses shall be addressed;
 - vii. Whether or not the issue of claiming the child as a tax dependent will be addressed;
 - viii. Legal custody; and

ix. Physical placement.

15. Contents for the Summons. A summons must be served with the Petition and Affidavit of Paternity.

- a. The Summons shall contain the hearing date, time and location. The hearing date must be scheduled at least thirty (30) days from the date of service, to allow the respondent enough time to respond to the petition.
- b. The Summons shall provide the address where a response shall be submitted.
- c. The Summons shall notify the respondent that if he/she does not respond to the petition within twenty (20) days from the date of service the court may proceed without the respondent.
- d. In addition to the Petition and Affidavit of Paternity, the following Notice to Respondent shall be included with the Summons.

16. Notice to Respondent

- a. You have been named in a petition alleging paternity. A judgment of paternity would legally designate the child as your child, grant rights to you, create the right of inheritance for the child, obligate you to pay child support and make failure to pay child support punishable as contempt.
- b. You may request a genetic test which will indicate the probability that you are the father of the child. The court will order a genetic test on request from you, a designated tribal agency, or any other party to the case. Any person who refuses to take a court ordered genetic test may be punished for contempt.
- c. The petitioner has the burden of proving by clear and convincing evidence that you are the father. If a genetic test shows that you are not excluded as the father and that the statistical probability of you being the father is ninety-nine percent (99.0%) or higher, you are presumed to be the father.
- d. The following defenses are available to you:
 - i. That you were sterile or impotent at the time of conception;
 - ii. That you did not have sexual intercourse with the mother of the child during the conception period; or
 - iii. That another man did have sexual intercourse with the mother of the child during the conception time period.
- e. If you fail to appear at any stage of the proceeding, including a scheduled genetic test, the Court may find you in contempt.

17. Service of Summons. The natural mother, the child's legal guardian, the adult child, and each man alleged to be the natural father shall be served with a Summons, Petition, Affidavit of Paternity, and Notice to Respondent, by personal service.

- a. The service must be made by a person over the age of eighteen (18) years, who is not a member of the party's immediate family, or a party to the action, with the exception that the Ho-Chunk Child Support Enforcement Agency may serve one or both of the parties.
- b. A certificate of service or acknowledgement of service must be filed with the court as proof that the parties in the case were served with the paternity action.

18. Genetic Test. Genetic test may be ordered by the court or an administrative action.

- a. The Court may, or at the request of a party shall, require the child, mother and alleged father(s) to submit to genetic test. 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. Exceptions to this section are also contained in paragraph c below.
- b. The following requirements apply to genetic testing under this section:
 - i. The test shall be performed by an accredited paternity genetic testing lab approved by the Nation that performs legally and medically acceptable tests;
 - ii. The mother shall notify the genetic testing laboratory if she and any of the alleged fathers have a common ancestor or if there is another possible father who is closely related to the alleged father;
 - iii. The Ho-Chunk Nation Child Support Enforcement Agency shall file the test results with the Court and send all parties a copy of the test results by certified mail, return receipt requested;
 - iv. Unless a party objects to the results of genetic tests in writing, at least five (5) days before the hearing, the tests shall be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity;
 - v. All minor parents shall be required to submit to a genetic test;
 - vi. Failure to submit to genetic testing when required by the Court may constitute contempt of court.
- c. **Good Cause Not to Reveal Father's Identity.** A woman may be excused from submitting to genetic testing or from identifying or locating the father of her child when there is Good Cause not to reveal his identity or location. The Court may hold a closed, ex-parte hearing to determine whether Good Cause exists. "Good Cause" may include, but is not limited to the following:
 - i. Cases involving domestic violence;

- ii. Cases involving incest or rape;
- iii. Cases where identification of the father is not in the best interest of the child.

19. Paternity Hearings.

- a. The Court has jurisdiction to decide the issues before it whether or not all the alleged fathers participate in the hearing.
- b. The following rules apply to paternity hearings:
 - i. Paternity hearings shall be closed unless all parties agree otherwise.
 - ii. The mother of the child and the alleged father(s) may be compelled to testify at the paternity hearing.
 - iii. 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.
 - iv. If the petition contains any other request, the Court shall hear testimony on those issues.
- c. Notice of Hearing.
 - i. Parties receive notice of the initial hearing pursuant to the Summons procedures aforementioned.
 - ii. Parties receive notice of all subsequent hearings through the use of Notice of Hearing, either court issued or on a court approved document.
- d. Evidence and Burden of Proof.
 - i. The burden of proof shall be clear and convincing evidence.
 - ii. The Court may consider the following types of evidence in paternity cases:
 - 1. Genetic test results;
 - 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. Cultural evidence and/or a reputation in the community as to paternity, including Traditional Court findings;

5. 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; or
 6. Any other reliable evidence which is relevant to the issue of paternity of the child.
- e. Presumption of Paternity Based on Marriage of the Parties.
- i. A man is presumed to be the natural father of a child if any of the following applies:
 1. He and the child's natural mother are/or have been married to each other and the child is conceived or born after the marriage and before the granting of a decree of legal separation, annulment, or divorce between the parties; or
 2. He and the child's natural mother were married to each other after the child was born but he and the child's natural mother had a relationship with one another during the period of time within which the child was conceived and no other man has been adjudicated to be the father or presumed to be the father of the child under paragraph 1, above.
- f. To overcome the presumption of a marital child, the Court shall appoint a Guardian ad Litem on behalf of the child in question.
- i. The Guardian ad litem will determine if it is in the best interest of the child to determine if a man other than the husband to be the father.
 - ii. The Guardian ad Litem shall determine if a genetic test shall be conducted.
 1. If requested by the Guardian ad Litem, all parties must submit to genetic testing.
 - iii. The Guardian ad Litem shall present their recommendation to the Court and the Court will make the final determination whether or not the marital presumption shall be overcome.

20. Paternity Orders.

- a. Stipulated Paternity Orders.
 - i. The parties may enter into a stipulated judgment of paternity, at any time after the service of the Petition, Affidavit of Paternity,

Summons and Notice to Respondent. The stipulation may be entered under the following conditions:

1. The parties must be able to understand the proposed agreed order in detail and the consequences of the order and of the person's failure to comply with agreed terms;
 2. The parties must assure that the person's consent to the proposed agreed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person;
 3. The parties shall initial the waiver of the person's rights to a spokesperson, lay advocate, or attorney;
 4. Parties shall initial the waiver of a hearing regarding the burden of proof as to each issue; and
 5. The parties must understand that once the person agrees to the proposed order and it is signed and entered by the Court, it will be too late for the person to change his or her mind.
- b. Temporary Orders. Pending determination of the paternity issue, the Court may make a temporary order regarding, placement, custody and support of the child.
- c. Final Paternity Orders.
- i. The decision of the Court shall be final for the purposes of appeal under the Ho-Chunk Nation Rules of Appellate Procedure.
 - ii. The order determining the existence or nonexistence of the parent-child relationship shall be effective for all purposes. A paternity order may be accompanied by any order, temporary or final, authorized by the provisions of the applicable chapter.
 - iii. Name Change, Amended Birth Certificate.
 1. The Court may authorize that the child's name be changed.
 2. If the finding of paternity or the child's new name varies from the child's birth certificate, the Court shall order the Ho-Chunk Nation Child Support Enforcement Agency file an amended vital records form with the State registrar, in the state where the child was born.
- d. Disestablishment of Paternity. As a matter of policy, the Ho-Chunk Nation discourages the disestablishment of paternity.

CHAPTER IV CHILD SUPPORT

21. Duty of Care and Support.

- a. Parents have a duty to care for their children. This applies to all natural parents whose parental rights have not been terminated and to all adoptive parents. This duty includes providing love, guidance, education, a safe and healthy environment and financial support. Parents also have a duty to ensure that Ho-Chunk children have an opportunity to learn about and participate in the Ho-Chunk Way. This includes access to Ho-Chunk family and participation in Ho-Chunk Nation events.
- b. The purpose of this chapter is to provide a process that ensures that the basic financial needs of children are met when parents do not live together. In the Ho-Chunk Nation, children are cared for by parents, extended family and the community. This chapter focuses on parents' financial duty to their children.
- c. Stepparents do not have a legal duty to support stepchildren but may have a moral and traditional duty to contribute to their support.

22. Child Support Enforcement Agency. The Agency operates on a child-centered, agreement based process. The Agency shall perform the following responsibilities:

- a. Ensure that assistance is made available to parents in developing agreements for child support and health insurance;
- b. Prepare a recommendation about the child support and health insurance obligation for each case, using a form developed by the Agency. In making its recommendation, the Agency shall follow the guidelines as outlined in the Child Support Codes; and
- c. Represent the interests of the Ho-Chunk Nation in ensuring adequate support for children is provided.

23. Child/Family Protection Petition and Guardianship Cases. This chapter may serve as a guide for establishment of child support in Child/Family Protection Petition and Guardianship cases. However, the Hocak Nation Children and Family Code shall supersede this chapter to the extent that the two chapters may be inconsistent.

24. Child Support Establishment Actions.

- a. Who May File.
 - i. A parent may file for establishment of child support under this chapter in connection with any of the following actions:
 1. Divorce or invalidity of marriage;
 2. Paternity; or

3. Child custody.
- ii. The Ho-Chunk Nation Child Support Enforcement Agency.
- iii. A legal guardian of a minor child.

25. Petition for Child Support. A petition for child support shall be prepared on a form approved by the court.

a. A petition for child support shall contain all of the following:

- i. The name, address, tribal affiliation, date and place of birth for the petitioner, the responding party and the child for whom support is requested.
 1. A separate addendum shall be filed with the court listing the name, date of birth and social security number of the parties. Said document shall be confidential and sealed by the Court.
- ii. The relief requested, may include but is not limited to, the following:
 1. An order for child support;
 2. An order regarding custody and placement;
 3. An order regarding health insurance;
 4. An order regarding uninsured expenses;
 5. An order regarding work-related day care expenses;
 - or
 6. An order to determine which parent may claim the child as a dependent for income tax purposes.
- iii. A statement whether child support payments should be made by wage withholding and per capita distribution or by direct payment to the Wisconsin Support Collections Trust Fund.
 1. If the payer is more than one (1) month behind in payments, child support payments will automatically be submitted by wage withholding.
- iv. A Statement whether any of the following proceedings involving the parents or the child are pending or have taken place in any court or administrative agency, and if so, the date, name and place of the Court or agency:
 1. Child custody proceeding;
 2. Child support proceeding;
 3. Paternity establishment;
 4. Proceeding requesting a domestic violence protective order or no-contact order; or
 5. Proceedings requesting a restraining order involving the child or a party.
- v. A statement whether either parent is receiving state or tribal public assistance.
- vi. Financial information such as employment and wages.
- vii. A statement that the parties are no longer residing together.

- viii. A statement whether the parties have entered into any written agreement as to support, legal custody and physical placement of the children: if so, the written agreement shall be attached.

26. Affidavit for Establishment of Child Support. An Affidavit for the Establishment of Child Support shall be filed with the Petition, which along with the Court issued Summons shall be served on the parties twenty-five (25) days prior to the initial hearing.

- a. The Affidavit for Establishment must contain the following information:
 - i. The name and date of birth of each participant;
 - ii. The amount of child support requested, with the commencement date as well as the termination date;
 - 1. If the amount deviates from the guideline amount, there must be an explanation why the amount deviates.
 - 2. If the Affidavit for Establishment contains any non-cash benefits, the Affidavit must state the non-cash benefit and provide a dollar value amount to the non-cash benefit. Benefits may be, but are not limited to:
 - a. Providing child care during work hours;
 - b. Providing groceries and/or other sources of food;
 - c. Providing clothing for school or other functions; or
 - d. Any other benefit that is agreed upon by the parties.
 - iii. The proposed parenting plan, if any, or if placement is shared, the percentage of a year that each parent has physical placement of the child; and
 - iv. The amount paid for medical insurance for the minor child, if any.

27. Documents and Notice to Child Support Agency. The Court shall provide the Agency with a copy of the petition, response, financial information and all other documents filed in a child support case and it shall provide the Agency with notice of all hearings in a child support case.

28. Initial Child Support Hearing.

- a. When the Court receives a Petition and Affidavit for Establishment, it shall set a hearing date which shall not be less than twenty-five (25) days after the service of the Summons, Petition and Affidavit for Establishment. This will allow the respondent twenty (20) days for responding to the Summons.

- b. Notice of Hearing. The date, time and place of the initial hearing shall be contained in the Summons. Notice of the hearing shall be served on the parties and the Agency.
- c. Service of Child Support Petition, Affidavit for Establishment and Summons.
 - i. After a Petition is filed, the petitioner shall cause the respondent to be served with a copy of the Petition and Affidavit for Establishment on a form approved by the Court. The Court must cause the respondent to be served with a Summons indicating the hearing date.
 - ii. The Petition, Affidavit for Establishment, and Summons must be served using one of the following methods:
 - 1. Personal Service. Personal service may be affected by personally delivering a copy of the Petition, Affidavit for Establishment, and Summons to a person of suitable age and discretion at the residence of the person being served, with directions to deliver it to the person to be served. Service must be made by a person over the age of eighteen (18) years, who is not a party to the action nor a member of the party's immediate family, with the exception of the Ho-Chunk Nation Child Support Enforcement Agency;
 - 2. Service by Mail. If the person cannot be found within the Nation's lands, service may be accomplished by certified mail, return receipt requested;
 - 3. Service by Publication. When the respondent cannot be found within the Nation's lands and attempts to serve the respondent by certified mail have failed, the petitioner may ask the judge to allow service by publication. If the request is granted, the petitioner shall follow the following procedures:
 - a. Publish the summons for two (2) consecutive publications of the Hocak Worak or publish for four (4) consecutive weeks in a newspaper of general circulation in the county of residence of the respondent, if known.
 - b. If service by publication is permitted, the Court may permit extended time deadlines for default orders and for hearings in order to provide for fair notice and opportunity for the respondent to respond.

4. The parties may both sign an acknowledgment of service so long as each signature is notarized, and by doing so, waive the requirements of service of summons.

d. Summons.

- i. Content. The Summons prepared on a form approved by the Court shall notify the respondent that if he or she does not appear or respond to the petition within twenty (20) days from the date of service or within sixty (60) days of the date of publication, if service is by publication, the Court may proceed without the respondent and a default judgment may be entered without his or her participation.
- ii. Service.
 1. The person serving the Summons and Petition shall file with the Court certification that he or she has served the respondent, including the date and place of service. If service was made on a person other than the respondent, the certification shall state the name of the person served, the date and place of service, and the instructions given.
 2. In case of service by certified mail, the return receipt shall be filed with the Court and shall constitute the proof of service.
 3. In case of service by publication, an affidavit by the person causing the notice to be published and a copy of the summons as published shall constitute the proof of service.

e. Response.

- i. Unless the parties have filed a joint petition, the respondent shall file his or her response within twenty (20) calendar days after the respondent is served with a copy of the petition, or within sixty (60) days if service was by publication. The response shall include a completed financial disclosure as stated below, and authorization for the release of all financial records to the Ho-Chunk Nation Child Support Enforcement Agency and the Ho-Chunk Nation Court. The respondent may also file a proposed Parenting Plan.
 1. The respondent shall cause the response, including financial information to be mailed to the petitioner and Agency.

f. Notice of Hearing.

- i. Parties receive notice of the initial hearing pursuant to the Summons procedures aforementioned.
 - ii. Parties receive notice of all subsequent hearings through the use of Notice of Hearing, either court issued or on a court approved document.

- g. Financial Disclosure.
 - i. The parties shall provide complete disclosure of financial information, including verification of all income and resources, to the Court and to the Agency.
 - ii. Financial information shall be provided on forms approved by the Court. It shall be submitted with the petition or response.
 - iii. Failure to provide required financial disclosure may result in the Court ordering an amount of support that is greater than the recommended guideline amount.
 - iv. Financial information filed with the Court or provided to the Agency shall be confidential and available only to the parties, the Court and the Agency, for the purpose of establishing, modifying, enforcing or distributing child support.
 - v. A party is not required to provide his or her financial information as part of the Court record, provided the party has made full and complete financial disclosure to the Agency and that the Agency has certified that it has reviewed the financial information and its recommendation is based upon that information.

- h. Limited Statutory Waiver of Confidentiality. The following entities are authorized and required to provide information regarding a party's income, resources, and address to the Agency:
 - i. Departments of the Ho-Chunk Nation.
 - ii. Ho-Chunk Nation Housing and Community Development Agency.
 - iii. Tribal enterprises.
 - iv. Any person or entity doing business on lands under the jurisdiction of the Ho-Chunk Nation.
 - v. Any Temporary Aid to Needy Families (TANF) Program, which shall also provide the following information about the party's TANF assistance:
 - 1. Whether the person receives or has ever received TANF assistance,
 - 2. The names of other people on the person's TANF grant,
 - 3. The dates of assistance.
 - 4. The amount of assistance.
 - vi. The Agency is authorized to request information from off-reservation employers, government agencies and other entities.

- i. Domestic Violence Victim Protection. The Agency and the Court shall take whatever steps are necessary to ensure that the address or location of a victim of domestic violence is kept confidential.

- j. Conduct of the Hearing.
 - i. Who May Attend. Only those persons the Court finds to have a legitimate interest in the proceedings may attend hearings under this chapter. Any Ho-Chunk person appearing in the Court shall have the right, at his/her own expense, to a spokesperson, lay advocate, or attorney, as allowed under Ho-Chunk Nation Rules of Civil Procedure, or to proceed *pro se*. Any other person shall have the right to an attorney at his/her own expense or may proceed *pro se*. The Agency staff may be present at child support hearings. If a party wants a friend, family member, or other person to be present, the Court may allow it.
 - ii. The Court shall review the documents filed in the case, hear the testimony of each party, and consider any other evidence presented. It shall consider and give great weight to the recommendation of the Agency, if any.
 - iii. If an Agency staff person is not available, the Court may either base its decision on the Agency's written recommendation or issue a temporary order and continue the case until Agency staff is available for a hearing. The temporary order terminates when the final order is entered or when the petition is dismissed.
 - iv. If a party believes the Agency's recommendation for the Child Support obligation is inappropriate as applied to him or her, the burden of proof shall rest on that party to prove that the support obligation should be different than the recommended amount.
 - v. The Court may continue the case at any point pending referral of the parties to the Agency, if appropriate.

29. Stipulated Orders.

- a. The parties may enter into a stipulation which resolves some or all of the issues regarding establishment or modification of the child support obligation.

- b. The parties may request the Agency to assist them develop a stipulation and order for the establishment or modification of the child support obligation.

- c. A proposed stipulation and order shall be filed with the Court at or prior to the hearing.

- d. The Court shall approve a completed stipulation and order regarding the establishment or modification of the child support obligation if the parties and the attorney for the Agency have previously approved the stipulation.
- e. If the stipulation and order address some but not all of the required issues, the Court may approve the partial agreement as a temporary order.
 - i. A hearing will be scheduled to resolve the remaining issues. A new affidavit for the establishment will be filed with the court along with a notice of motion and motion for hearing, stating the date and time of the scheduled hearing, and all unresolved issues.
 - ii. The case will then proceed to a hearing on the remaining issues. The temporary order terminates when the final order is entered or when the petition is dismissed.

30. Establishment of a Child Support Obligation. The Court shall establish the child support obligation, including providing for health insurance, as follows:

- a. If the parties have proposed a completed stipulation and the Agency has no objection, the Court shall enter the stipulation as an order.
- b. If the parties have proposed a partial agreed order and the Agency has not objected, the Court may adopt temporary agreed order and, for the remaining issues, it may either:
 - i. Adopt the Agency recommendation, if any; or
 - ii. Hear evidence and establish the child support obligation by applying the guidelines to the circumstances of the parties.
- c. If the Court finds reason not to accept all or part of the recommendation of the Agency, or if there is no such recommendation or proposed agreement, the Court shall hear evidence and establish the child support obligation by applying the guidelines to the circumstances of the parties.
- d. When the paying party owes past child support under a previous child support order, the Court shall order an additional amount of child support to be paid each month on the past child support debt.
- e. Regardless of paragraphs a through c, above, the Court shall adopt the method of payment (wage withholding, per capita, or direct payment) requested by the party who will pay child support; except that if a payer is more than one (1) month behind in support, an income withholding order will be entered and filed with the employer, and/or with the Ho-Chunk Nation Treasury for garnishment of per capita distributions. The tribe will use the standard federal income withholding form to pay the required child support.

31. Findings of Fact and Conclusions of Law. After the hearing, the Court shall enter findings of fact and conclusions of law that contains a child support order. The findings of fact and conclusions of law shall include findings and conclusions regarding:

- a. The Court's subject matter jurisdiction over the case;
- b. The Court's personal jurisdiction over all the parties;
- c. The child support obligation of one or both parties as agreed by the parties or, in the absence of agreement, as calculated using a form recommended by the Ho-Chunk Nation Child Support Enforcement Agency and approved by the Court in accordance with the Guidelines;
 1. Absent income verification, or where good cause not to impute income is present, the Court shall have the authority to issue a zero dollar (\$0) order.
 2. The Court shall also include an explicit finding that judgment is granted for any arrears to the date of the particular hearing.
- d. If the child support obligation deviates from the guidelines for the paying party's income, the amount of support that would have been required must be listed with an explanation as to why that amount deviates from the guidelines;
- e. If the child support obligation is based on shared physical placement, the percentage of the year the child resides with each party;
- f. Date the child support obligation begins;
- g. The frequency of child support payments;
- h. If child support is to be established during the period prior to filing the child support petition, the recommendation of the Agency regarding duration and amount of pre-filing child support;
- i. Circumstances under which the child support obligation will terminate, including a statement that the Agency will promptly terminate income withholding in cases where there is no longer a current order for support and all arrearages have been satisfied;
- j. To whom or to what entity child support payments are to be made;
- k. Paying party's employer's name and address;
- l. Previous child support orders applicable to the paying party of any of the children;

- m. In default child support cases, facts supporting service of the Petition, Summons, and Notice to Respondent;
- n. The extent to which the order differs from the recommendation of the Agency;
- o. The amount of cash payment which is allocated to work related day care or health insurance, if any;
- p. The amount of non-cash services or resources to be provided to the other party, if any, with a specific dollar amount attached to each service; and
- q. A statement that each parent shall notify the Agency of any change of employment or change of address within four (4) days of said change.
- r. A statement that if income withholding orders are to be utilized, that such Orders will be sent to all applicable employers/tribal courts so as to withhold all available income sources.
 - i. The Agency shall provide a breakdown of amounts if multiple income withholding orders would be necessary to ensure full payment, but also to prevent overpayment.
 - ii. These amounts shall be contained within the tribal child support order for use in generating immediate or future income withholding orders.
 - iii. The breakdowns shall be addressed regardless of payer's choice of immediate payment method in the event future income withholding orders are required under section 37.
- s. A statement that one or both parties shall utilize the services available to him/her to obtain and maintain regular employment and/or job training.
- t. A statement that failure to comply with a Ho-Chunk Nation child support order may be punishable as contempt of court under section 40.

32. Income Withholding Orders.

- a. If the payer chooses to have support withheld through wages and/or per capita, the Agency shall use the child support order above to generate income withholding orders with the use of the standard Federal income withholding form.
 - i. The income withholding order shall include all of the following:

1. The amount to be withheld and frequency of the withholding;
 2. A requirement that the employer/income withholder send the amount to the Wisconsin Support Collections Trust Fund within five (5) business days of the date the paying party is paid;
 3. A requirement that the employer/income withholder continue to remit the amount withheld until further notice by the Nation; and
 4. A statement that the employer/income withholder shall notify the Nation promptly when the paying party terminates employment or income status and provide the paying party's last known address and the name and address of the paying party's new employer, if known.
- ii. The Ho-Chunk Nation Child Support Enforcement Agency shall mail the income withholding order to the employer/income withholder with a courtesy copy to the employee/obligor.
 - iii. A maximum withholding of sixty percent (60%) of the payer's tribal per capita may be withheld.
 1. Only current support and current support arrears are permitted to be garnished from per capita payments.
 - iv. Aggregate disposable earnings, other than per capita, will be subjected to the maximum withholding limits set forth by the Federal Consumer Credit Protection Act, 15 U.S.C. § 1673.
 - v. The Agency shall promptly terminate income withholding of any kind when there is no longer a current order for support and all arrearages have been satisfied.
 1. If a party's current obligation for support terminates but the party has arrearages, the amount up to the amount of the initial income withholding before the party's current obligation terminated, shall continue until the arrearage is paid in full.

33. Default Child Support Orders.

- a. When the respondent fails to appear or otherwise defend, the petitioner may file a motion, supported by an affidavit, for a Default Child Support Order. The Court may enter a Default Child Support Order upon finding the following:
 - i. The Court has jurisdiction over the subject matter of the case and over the respondent;
 - ii. The respondent was given proper service of the petition, summons, and proper notice of the hearing;
 - iii. The petition or the recommendation of the Agency with the financial information shall determine the obligation based on calculation of income as provided; and

1. Absent income verification, or where good cause not to impute income is present, the Court shall have the authority to issue a zero dollar (\$0) order.
- iv. Notice of the default order shall be served on the respondent.

CHAPTER V MODIFICATION OF CHILD SUPPORT

34. Modification of Child Support Orders. Ho-Chunk Nation Child Support Orders.

- a. When there has been a substantial change in circumstances, a person may request a review at any time. A substantial change in circumstances may be any of the following:
 - i. The child's placement has changed;
 - ii. Either parent has a significant change in his/her finances that would lead to a change in child support of more than fifteen percent (15%) or fifty dollars (\$50) per month; or
 - iii. The payee is receiving cash assistance that requires a current support amount order.
- b. Every two (2) years the Agency shall notify the non-custodial parent, the custodial parent, and any other interested party of their right to request a review of the current child support order.
 - i. The parties must request the review in writing.
 - ii. The parties must provide a completed financial disclosure with verification of their income.
 - iii. The review will be conducted by the Agency.
- c. Any party may file a motion for a modification of child support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the modification requested.
- d. Both parties shall file updated financial information forms at least ten (10) days before the modification hearing, except that:
 - i. In stipulated modification orders, no financial information need be filed with the Court; and
 - ii. A party is not required to provide his or her financial information as part of the Court record provided the party has made full and complete financial disclosure to the Agency, and the Agency has certified that it has reviewed the financial information and its recommendation is based upon that information.

- e. Child support orders may be modified for future support only. Amounts of past due support shall not be modified.

35. Modification Hearings. If the parties are not in agreement with the modified child support amount, they may file a motion for a hearing.

- a. Who may file.
 - i. Either parent; or
 - ii. The Ho-Chunk Nation Child Support Enforcement Agency.
- b. What must be filed.
 - i. Affidavit for modification of child support. The affidavit for the modification of support must include the following:
 - 1. The change in circumstances;
 - 2. The number of overnights each parent has with the child or the percentage of time the child spends with each parent;
 - 3. The parent's financial information;
 - 4. Proposed changes to the Child Support Order.
 - ii. Notice of Motion to Modify Support and Motion for Hearing. The Notice must contain the date, time and location of the hearing.
 - iii. The Notice of Motion to Modify Support and Motion for Hearing with the Affidavit for Modification of Support must be served on all parties ten (10) days prior to the hearing and be accompanied by a Certificate of Service.

CHAPTER VI ENFORCEMENT OF CHILD SUPPORT

36. Recognition and Enforcement of Foreign Child Support Orders.

- a. Pursuant to section 8, the Ho-Chunk Nation Trial Court shall have jurisdiction to recognize and enforce authenticated foreign orders, judgments, and decrees pertaining to child support under principles of full faith and credit.
 - i. Such orders, judgments, and decrees shall be recognized and enforced in accordance with the requirements of this Code and the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B.
 - ii. A foreign order is authenticated by reasonable proof that the document tendered to the Ho-Chunk Nation Child Support Enforcement Agency 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 court, county clerk or custodian of records, or a court seal, is sufficient evidence of authenticity.

- b. 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 through the Ho-Chunk Nation Child Support Enforcement Agency.
 - i. An application/transmittal with the following documentation will be needed:
 1. An authenticated copy of the foreign court order meeting the authentication requirements set forth above;
 2. A corresponding income withholding order, if any; and
 3. Certified account statement, if arrears are being sought.
 - a. Only current support and current support arrears are permitted to be garnished from per capita payments.
 - b. The Child Support Enforcement Agency and/or the Ho-Chunk Nation Trial Court must have an account statement that clearly delineates what the arrears are made up of, since only current support and current support arrears may be garnished from per capita distributions. If the account statement does not make this clear delineation, withholding from per capita for arrears will not be done.
 - ii. The Ho-Chunk Nation Child Support Enforcement Agency will file a *Petition to Register a Foreign Judgment or Order for Child Support* with the Ho-Chunk Nation Trial Court along with an *Order (Registration of a Foreign Judgment or Order for Child Support)* prepared for judicial signature.
 - iii. Provided the foreign child support order meets the guidelines to evidence authenticity as aforementioned, the Ho-Chunk Nation Trial Court shall sign the *Order (Registration of a Foreign Judgment or Order for Child Support)* within ten (10) days and return to the Ho-Chunk Nation Child Support Enforcement Agency.
 - iv. The Ho-Chunk Nation Child Support Enforcement Agency will mail a notice of intent to recognize and enforce the foreign child support order, along with a copy of the *Order (Registration of a Foreign Judgment or Order for Child Support)* to the payer at his/her last known address, by first class mail.

1. If the payer is the applicant then the Ho-Chunk Nation Child Support Enforcement Agency may proceed with enforcing the order by sending the appropriate orders to be processed by the treasurer as a mandatory deduction from his/her payroll and/or per capita.
 - a. Income Withholding Order issued by the Ho-Chunk Nation Child Support Enforcement Agency.
 - b. *Order (Registration of a Foreign Judgment or Order for Child Support)* issued by the Ho-Chunk Nation Trial Court.
 2. The Agency shall also send a copy of the Petition, tribal Order, and tribal issued IWO to the foreign jurisdiction for their records.
- v. The payer has twenty (20) days to contest the registration of the child support order.
- a. If the payer does not respond to the notice within twenty (20) days or does not object to the enforcement of the child support order, the Ho-Chunk Nation Child Support Enforcement Agency will send the appropriate order(s) to be processed by the treasurer as a mandatory deduction from his/her payroll and/or per capita.
 - i. Income Withholding Order issued by the Ho-Chunk Nation Child Support Enforcement Agency.
 - ii. *Order (Registration of a Foreign Judgment or Order for Child Support)* issued by the Ho-Chunk Nation Trial Court.
 - b. The Agency shall also send a copy of the Petition, tribal Order, tribal issued IWO, and 20 day notice to the foreign jurisdiction for their records.
- vi. If an objection is lodged, the Agency will proceed to enforce the Order judicially.
1. If the payer returns the "Request for Hearing Notice" within twenty (20) days, the CSE Agency will file a *Petition to Recognize and Enforce a Foreign Judgment or Order for Child Support* with the Ho-Chunk Nation Trial Court.
 2. A hearing regarding the registration of the foreign order will be scheduled ten (10) days after service of said *Petition*.
 3. Unless defects in jurisdiction are apparent on the face of the foreign order, the person contesting the enforcement of the order has the burden of showing the order is not valid.

4. 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 fraud, duress, or coercion were relied upon in obtaining the Order.
 - c. Whether the defendant had due process including proper notice and a fair hearing.
 - d. The only issue that may be addressed in contesting an Income Withholding Order is whether there is any mistake of fact, ie., error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.
 5. If the payer meets his/her burden, then the Ho-Chunk Nation Child Support Enforcement Agency will send all information, including the tribal Court Order denying recognition and enforcement, to the initiating jurisdiction for correction.
 6. If the payer fails to meet his/her burden then the Ho-Chunk Nation Trial Court shall recognize and enforce, but may not modify, a registered order.
 7. The Ho-Chunk Nation Trial Court will send the *Order (Recognition and Enforcement of a Foreign Judgment or Order for Child Support)* to the Ho-Chunk Nation Child Support Enforcement Agency.
 8. The Ho-Chunk Nation Child Support Enforcement Agency shall issue an Income Withholding Order and send that, along with the *Order (Recognition and Enforcement of a Foreign Judgment or Order for Child Support)* to be processed by the treasurer as a mandatory deduction from the payer's payroll and/or per capita.
 9. The Agency shall also send a copy of the Petition, tribal Order, tribal issued IWO, and 20 day notice to the foreign jurisdiction for their records.
- vii. A maximum withholding of sixty percent (60%) of the payer's tribal per capita may be withheld.
1. Only current support and current support arrears are permitted to be garnished from per capita payments.
- viii. Aggregate disposable earnings will be subjected to the maximum withholding limits set forth by the Federal Consumer Credit Protection Act, 15 U.S.C. § 1673.

- ix. For "Income Withholding Orders," the order to withhold child support shall be suspended ten (10) business days after the payer has terminated employment with the Nation.
 - x. The Agency shall promptly terminate income withholding of any kind when there is no longer a current order for support and all arrearages have been satisfied.
- c. If a foreign jurisdiction subsequently modifies their original Order then the following procedures must be followed to address that modification within the Ho-Chunk Nation systems. Any person, tribe, state, or foreign jurisdiction that wishes to register and enforce the modified Order must apply through the Ho-Chunk Nation Child Support Enforcement Agency.
- i. An application/transmittal with the following documentation will be needed:
 - 1. An authenticated copy of the modified foreign court order meeting the authentication requirements set forth above;
 - 2. A corresponding modified income withholding order, if any; and
 - 3. Certified account statement, if arrears are being sought.
 - a. Only current support and current support arrears are permitted to be garnished from per capita payments.
 - b. The Child Support Enforcement Agency and/or the Ho-Chunk Nation Trial Court must have an account statement that clearly delineates what the arrears are made up of, since only current support and current support arrears may be garnished from per capita distributions. If the account statement does not make this clear delineation, withholding from per capita for arrears is not permitted.
 - ii. The Ho-Chunk Nation Child Support Enforcement Agency will file a *Motion to Modify* with the Ho-Chunk Nation Trial Court and mail copies to all of the parties at their last known addresses, by first class mail.
 - iii. A hearing will be scheduled in ten (10) days, whereby providing the payer with time to respond or object.
 - iv. If the payer does not respond to the motion within ten (10) days or does not object to the enforcement of the modified child support order, the Ho-Chunk Nation Trial Court will issue *Order (Modification of Order Recognizing and Enforcing a Foreign Judgment or Order for Child Support)* and send it to the Ho-Chunk Nation Child Support Enforcement Agency to be processed.

- a. The Ho-Chunk Nation Child Support Enforcement Agency will send the appropriate order(s) to be processed by the treasurer as a mandatory deduction from his/her payroll and/or per capita.
 - i. Income Withholding Order issued by the Ho-Chunk Nation Child Support Enforcement Agency.
 - ii. *Order (Modification of Order Recognizing and Enforcing a Foreign Judgment or Order for Child Support)* issued by the Ho-Chunk Nation Trial Court.
 - b. The Agency shall also send a copy of the Motion, tribal Order, and tribal issued IWO to the foreign jurisdiction for their records.
- v. If an objection is lodged, the Agency will proceed to enforce the Order judicially.
1. A hearing regarding the recognition and enforcement of the modified foreign order will be scheduled ten (10) days after service of said *Motion*.
 2. Unless defects in jurisdiction are apparent on the face of the foreign order, the person contesting the enforcement of the order has the burden of showing the order is not valid.
 3. 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 fraud, duress, or coercion were relied upon in obtaining the Order.
 - c. Whether the defendant had due process including proper notice and a fair hearing.
 - d. The only issue that may be addressed in contesting an "Income Withholding Order" is whether there is any mistake of fact, ie., error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.
 4. If the payer meets his/her burden, then the Ho-Chunk Nation Child Support Enforcement Agency will send all information, including the tribal Court Order denying recognition and enforcement of the modified order, to the initiating jurisdiction for correction.

5. If the payer fails to meet his/her burden then the Ho-Chunk Nation Trial Court shall recognize and enforce, but may not modify, the foreign jurisdiction's modified order.
 6. The Ho-Chunk Nation Trial Court will send the *Order (Modification of Order Recognizing and Enforcing a Foreign Judgment or Order for Child Support)* to the Ho-Chunk Nation Child Support Enforcement Agency.
 7. The Ho-Chunk Nation Child Support Enforcement Agency shall issue an Income Withholding Order and send that, along with the *Order (Modification of Order Recognizing and Enforcing a Foreign Judgment or Order for Child Support)* to be processed by the treasurer as a mandatory deduction from the payer's payroll and/or per capita.
 8. The Agency shall also send a copy of the Motion, tribal Order, and tribal issued IWO to the foreign jurisdiction for their records.
- vi. A maximum withholding of sixty percent (60%) of the payer's tribal per capita may be withheld.
1. Only current support and current support arrears are permitted to be garnished from per capita payments.
- vii. Aggregate disposable earnings will be subjected to the maximum withholding limits set forth by the Federal Consumer Credit Protection Act, 15 U.S.C. § 1673.
- viii. For "Income Withholding Orders," the order to withhold child support shall be suspended ten (10) business days after the payer has terminated employment with the Nation.
- ix. The Agency shall promptly terminate income withholding of any kind when there is no longer a current order for support and all arrearages have been satisfied.
- d. The Ho-Chunk Nation Trial Court may only modify an order issued by another nation, state, or tribe if the Ho-Chunk Nation Trial Court has jurisdiction to issue a child support order; and
- i. 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

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

37. Enforcement of Child Support Orders. The Ho-Chunk Nation Child Support Enforcement Agency will track and document the progress of a party who is under an obligation to pay child support and has an open case with the Agency.

- a. The Agency may enforce a child support order through the administrative or judicial process.
- b. If a child support obligation is at least thirty (30) days overdue in an amount equal to one month's child support obligation or if there is a history of non-compliance, an income withholding order will automatically be sent to the employer/income withholder to garnish income, except that with regards to tribal per capita the initial order must address tribal per capita or else an enforcement hearing must be requested pursuant to section 39h(i)(1).
 - vi. The Ho-Chunk Nation will use the standard Federal income withholding order.
 - vii. The income withholding order shall include all of the following:
 - 1. The amount to be withheld and frequency of the withholding;
 - 2. A requirement that the employer/income withholder send the amount to the Wisconsin Support Collections Trust Fund within five (5) business days of the date the paying party is paid;
 - 3. A requirement that the employer/income withholder continue to remit the amount withheld until further notice by the Nation; and
 - 4. A statement that the employer/income withholder shall notify the Nation promptly when the paying party terminates employment or income status and provide the paying party's last known address and the name and address of the paying party's new employer, if known.
 - viii. The Ho-Chunk Nation Child Support Enforcement Agency shall mail the income withholding order to the employer/income withholder with a courtesy copy to the employee/obligor.
- c. No employer shall refuse to honor a wage withholding order issued under this chapter. An employer shall begin withholding within seven (7) days after receiving the order. Failure to withhold wages according to the order subjects the employer to liability for the accumulated amount the employer should have withheld.
- d. No employer may discharge, refuse to employ or take disciplinary action against any employee because his or her wages have been subjected to withholding for

child support. Failure to comply with this section subjects the employer to a fine to be determined under Ho-Chunk Nation law.

38. Administrative Enforcement Actions. Enforcement actions may be applied when the payer is no longer in compliance with a child support order and is not making efforts to comply with the order.

- a. Notice of Delinquency. A notice of delinquency will be mailed to a payer if there is no payment received in a calendar month.
 - i. The notice of delinquency will contain the following information:
 1. The date the delinquency occurred;
 2. The total amount of delinquency;
 3. The enforcement action that may be taken as a result of the delinquency; and
 4. A coupon to pay the delinquency in full.
 - ii. The payer has ten (10) business days after the receipt of the delinquency notice to file an objection with the Agency presenting good cause why an arrears payment or other enforcement action should not be implemented. The only allowable objections are:
 1. There is an error in the amount of current or overdue support; or
 2. The identity of the payer is mistaken.
 - iii. If a permissible objection is filed, the payer shall be entitled to a hearing before any enforcement action is taken.
 1. The hearing will be scheduled by the Agency and notices will be mailed to all parties, to the last known address, at the least five (5) business days before the hearing date.
- b. Liens. The Agency shall have the payer placed on the lien docket if the payer owes a debt in one or more of his/her cases equal to or exceeding the monthly amount due plus five hundred dollars (\$500).
 - i. The payer will receive a notice of lien thirty (30) days before the lien is active. The payer has the opportunity to pay the lien balance in full or enter into an alternative payment plan.
 1. An alternative payment plan will be the full monthly current support obligation plus a monthly amount due to the arrears.
 - a. Should the payer default on the alternative payment plan, he/she will be placed on the lien docket.
 - ii. Items that are exempt from liens are as follows:
 1. Items of bona fide religious or cultural significance;
 2. Any real property of the Ho-Chunk Nation lands;

3. A motor vehicle not exceeding two thousand five hundred (\$2,500) in value; and
 4. Tools, equipment, boats, gear, vehicles, instruments and materials used by the person to obtain income, unless the person also has a suspension of his/her professional license.
- c. Account Seizure. The Agency may initiate an account seizure if there is a lien against a payer and the lien amount in the payer's case equals or exceeds 300% of the monthly amount due in the order or \$1,000.00, whichever is greater.
- i. When seizing property, the Agency shall presume that the payer's equity or ownership in the account is an equal pro-rata share of the equity based on the number of individuals with a recorded ownership interest in the account.
 - ii. The Agency may not issue a notice of seizure unless the sum of the funds in all of the payer's financial accounts, minus expected seizure fees and any early withdrawal penalty, exceeds \$500.00. The first \$500.00 of each account shall not be frozen and/or seized.
 1. The maximum amount frozen in an account may not exceed the amount specified by the Agency in the notice.
 2. The maximum amount frozen in an account may not exceed the obligor's ownership interest.
 3. A financial institution is not liable for encumbering or surrendering any assets held by the financial institution in response to instructions from the Agency for the purpose of enforcing a child support order.
- d. Credit Bureau Reporting. The payer's total amount of lien shall be reported to the credit bureau, so long as the lien is fully enforceable and the case is not barred from the credit bureau reporting.
- e. Denial of State Issued Grants and Loans. Wisconsin state agencies may deny grants and loans to a payer who is placed on the lien docket. These grants and loans include student loans and higher education grants, as well as mortgage loans from the Wisconsin Housing and Economic Development Authority (WHEDA).
- f. Suspension of Driving, Recreational or Professional License. Once a person has a lien that is fully enforceable and is at least \$1,000, the Agency has the ability to suspend the payer's driver license, recreational license or professional license.
- i. A notice of intent to suspend the license will be mailed to the payer's last known address sixty (60) days and again thirty (30) days before the license is suspended.
 1. The payer has twenty (20) days from the date of each notice of intent to suspend the license to request a hearing.
 - a. The only allowable objections are:

- i. There is an error in the amount of the lien; or
 - ii. The identity of the payer is mistaken.
 - ii. If permissible objection is filed, the payer shall be entitled to a hearing before any licenses are suspended.
 - 1. The hearing will be scheduled by the Agency and notices will be mailed to the last known address of all the parties at least ten (10) business days before the hearing. All action to suspend the license shall cease until after the hearing.
 - a. If the Judge determines that the arrears are correct and the payer has been offered a reasonable alternative payment plan and defaulted on the plan or objects to the plan, the license will be suspended immediately.
 - b. If the Judge determines that the arrears are correct and the parties enter into an alternative payment plan, the action to suspend the license will cease.
 - c. If the Judge determines the arrears are incorrect, the Agency will meet with the payer to correct any deficiencies.

g. Financial Record Review.

- i. A payer may request a financial record review within ten (10) business days of receiving a notice of lien, to determine the correctness of the financial records in a case. The request shall be made in writing to the Agency.
- ii. Upon receiving a request for financial record review, the Agency shall, at no charge to the payer, provide the payer with:
 - 1. All relevant financial records;
 - 2. Information explaining how to interpret the records;
 - and
 - 3. A form the payer may use to identify any alleged errors in the records.
- iii. Within twenty (20) days after receiving the relevant financial records, the payer may:
 - 1. Request a meeting with the Agency to review the financial records and to discuss any alleged errors; or
 - 2. Provide a statement of alleged error on the documents.
 - a. The Agency shall review the records to determine whether the alleged error is correct and provide a written

determination within sixty (60) days after the payer's request for a financial record review is received as to whether the lien against the payer is in the correct amount.

- iv. The Agency may proceed with the lien if:
 - 1. The payer does not request a meeting with the Agency or provide a statement of alleged error within twenty (20) days after receiving the financial records;
 - 2. No error was found in the financial records of the case; or
 - 3. The arrears exceed the required threshold amount after any errors in the financial record are corrected.

- h. Intercept of Lump Sum Pension Payments, Judgment and Settlements. The Agency may initiate the interception of lump-sum pension payments, judgments and/or settlements when a payer has been placed on the lien docket.
 - i. When initiating the interception of lump-sum pension payments, judgments and/or settlements, the Agency shall specify in the notice that the amount withheld from the lump-sum pension payment, judgment or settlement may not exceed the payer's ownership interest in the payment.

- i. Tax and Lottery Intercepts. The Agency may coordinate with a federal or state agency in order to enforce a child support order through a tax and/or lottery interception. Once a payer has been notified that his/her refund and/or lottery winnings may be intercepted, that notice is valid until all arrears are paid in full.
 - i. The Agency may certify a federal tax intercept when the requirements pertaining to federal tax intercept contained in an agreement between the State and the Tribe have been met.
 - ii. The Agency may certify a Wisconsin state tax intercept when the following requirements are met:
 - 1. The arrears shall be at least \$150; and
 - 2. The arrears shall be at least thirty (30) days old; and
 - 3. The arrears shall be for a minor child or a child who has reached the age of eighteen (18) within the last twenty (20) years.
 - iii. When a case is certified for Wisconsin state tax intercept, it shall also be automatically certified for Wisconsin lottery intercept for lottery winnings of \$1,000 or more.

- j. Passport Denial. If a federal tax intercept is in place and the payer owes \$2,500 or more in arrears a payer may be denied a passport. The arrears must meet the criteria for federal tax intercept in order for passport denial to be used as an

enforcement tool. A payer shall be removed from the passport denial list if any of the following occur:

- i. The federal tax interception amount is zero (\$0).
- ii. The payer makes a lump-sum payment and negotiates a payment plan with the Agency.
- iii. The payer has to travel abroad because of a life-or-death situation involving a family member according to Ho-Chunk Kinships.
- iv. The payer was denied a passport in error.

39. Enforcement Hearings.

- a. Who may file. A motion for an enforcement hearing may be filed by any of the following:
 - i. A parent;
 - ii. The Agency representing the interest of the child receiving child support in any case involving another tribe or state or the Ho-Chunk Nation Child and Family Services; or
 - iii. The Ho-Chunk Nation Child Support Enforcement Agency.
- b. Affidavit. A motion for enforcement shall be supported by an affidavit containing the following:
 - i. Terms of the child support order to be enforced;
 - ii. Length of time the child support obligation has been overdue, which must be at least thirty (30) days, or facts supporting a history of non-compliance;
 - iii. Amount of child support that is overdue, which must be equal to or greater than one month's support obligation.
- c. Agency Recommendation. The Agency shall file a recommendation regarding appropriate enforcement action in every case filed by a parent. In a case filed by the Agency, the recommendation shall be included in the Agency's motion for the enforcement hearing.
- d. Hearing Notice. The notice for the enforcement hearing shall contain the following:
 - i. A copy of the motion and affidavit;
 - ii. The time, date and place of the hearing; and
 - iii. A statement that if the parent owing support fails to attend the hearing, enforcement action will be ordered by default.
- e. Service.

- i. Personal Service. Personal service may be affected by personally delivering a copy of the enforcement motion to a person of suitable age and discretion at the residence of the person being served with directions to deliver it to the person to be served. Service must be made by a person over the age of eighteen (18) years, who is not a party to the action, nor a member of a party's immediate family, with the exception of the Ho-Chunk Nation Child Support Agency.
 - ii. Service by mail. If the payer cannot be found within the Nation's lands, service may be accomplished by certified mail, return receipt requested.
 - iii. Certificate of Service. A Certificate of Service shall be filed with the Court.

- f. Procedures. At the enforcement hearing the Court shall review the affidavit and any supporting documents, hear the testimony of each party, consider any other evidence presented, and consider and give great weight to the recommendation of the Agency, if any.

- g. Burden of Proof.
 - i. If the moving party meets the burden of proof that the child support obligation is at least thirty (30) days overdue in an amount equal to or greater than one month's child support obligation or that the party has a history of non-compliance, the Court may order any number of enforcement methods.
 - ii. If the moving party does not meet the burden of proof, the Court shall dismiss the motion.

- h. Enforcement Methods.
 - i. Garnishment of Tribal Per Capita;
 - 1. In the event an initial child support order was not entered addressing per capita, an Order to garnish Per Capita may later be sought as an enforcement measure. An Order garnishing per capita shall be provided to the Agency to generate an income withholding order using the required federal form.
 - 2. The Agency will then send the tribal order and income withholding order to the Treasury Department for garnishment.
 - ii. Interception of federal payments, such as retirement, travel or expense reimbursement;
 - iii. Referral for assessments and participation in services to address any barrier preventing a parent from making payments toward their child support obligation and/or providing in-kind physical and emotional support.
 - iv. Appearance before the Ho-Chunk Nation Traditional Court (males) or Social Services' Clan Mothers (females) to explain non-compliance with a support order;
 - v. Community Service: The number of hours of work required cannot exceed what would be reasonable considering the amount of arrears the payer owes.

1. The order for community service shall specify how many hours the payer is required to complete; and
2. The time frame in which the hours must be completed; and
3. Who will be responsible for monitoring the community service work.

40. Failure to Comply with Child Support Order.

- a. Contempt. Failure to comply with a Ho-Chunk Nation child support order may be punishable as contempt of court.
 - i. Procedural safeguards to be provided in a civil contempt action for failure to pay child support must include:
 1. Providing notice to the noncustodial parent that ability to pay is a critical issue in the contempt proceeding;
 2. Providing a form (or the equivalent) that can be used to elicit relevant financial information;
 3. Providing an opportunity at the contempt hearing for the noncustodial parent to respond to statements and questions about his/her financial status (e.g., those triggered by his/her responses on the form declaring financial assets); and
 4. Requiring an express finding by the court that the noncustodial parent has the ability to pay based upon the individual facts of the case.
 - b. Bench Warrant. If a parent fails to appear at a contempt hearing to show cause, the court may, upon its own motion or upon the petition of any party interested, issue a bench warrant directed to the appropriate law enforcement agency ordering that the parent be brought before the court to show cause why the parent should not be punished for contempt. The parent may be released upon receiving a new hearing to show cause notice and paying a \$250.00 bond. If the court determines the parent has been willfully neglecting the orders of the court then the \$250.00 may be put towards the child support arrears, otherwise the money will be released to the parent upon successfully appearing at the new hearing to show cause.
 - c. Custody and Visitation Rights. If a party fails to comply with a child support order or a provision in the Parenting Plan the other party's obligations under the Parenting Plan or child support order are not affected. This means that a party cannot withhold visitation if the other party does not pay child support. The other party cannot withhold child support if visitation is being withheld.

41. Transfer/Assignment of TANF Recipients' Rights.

- a. The child support rights of a child who receives tribal TANF are transferred (assigned) to another tribe because the TANF paying tribe is providing support for

the child during a time period when child support payments should be helping to support the child. When child support payments are made on an irregular basis, a family has no financial stability.

- b. The TANF paying tribe can assist the family achieve financial independence by providing reliable, predictable TANF assistance while collecting child support owed to the child. When child support payments are made to the TANF tribe through an assignment, the payments are not counted as income of the TANF recipient and therefore they do not cause fluctuations in his or her TANF grant. The paying party's financial connection with the child is maintained through the child support pass-through, where applicable.
- c. Should the Ho-Chunk Nation establish a TANF program in the future, a child receiving TANF cash assistance will be affected by his or her rights to past, present and future child support. Support will be deemed to be transferred (assigned) to the Ho-Chunk Nation, subject to the limitations set forth in this Code.
- d. When rights are transferred (assigned) to a TANF paying tribe, they are characterized as temporary or permanent as follows;
 - i. Temporary Transfer/Assignment. This is the transfer of rights to past child support became due before the family began receiving TANF cash assistance. The transfer of these rights is temporary, which means that the child support may be collected and held by the TANF paying tribe but it may not be utilized to reimburse the TANF paying tribe for the child's TANF grant. While it is held by the TANF paying tribe, it shall not be considered an asset of the family. This transfer terminates when the child stops receiving TANF cash assistance and any temporarily transferred funds collected by the TANF paying tribe shall be paid to the payee under the child support order.
 - ii. Permanent Transfer/Assignment. This the transfer of rights to past, present, and future child support becomes due while the family is receiving TANF cash assistance. The transfer of these rights is permanent. The amount of this transfer is limited to the amount of TANF cash assistance received for the child covered by the child support obligation or the child support obligation for that child, whichever is less. This transfer terminates when the child stops receiving TANF cash assistance.
- e. Use of Payments.
 - i. Child support payments retained by the TANF paying tribe under a permanent TANF assignment shall be expended for the benefit of the Nation's children and their families.
 - ii. Pass-Through. Money received by the Nation under a TANF recipient's child support transfer of rights may be used to provide a

pass-through payment to that TANF recipient on behalf of the child. Such a pass-through payment shall not be considered income for purposes of TANF eligibility or counted against the amount of the grant. The amount of a uniform pass-through payment to TANF recipients shall be determined by regulation of the Legislature for the Nation's TANF Program.

42. Distribution of Child Support Payments.

- a. Except as provided in paragraph b, below, child support payments made to the Wisconsin Support Collections Trust Fund (WI SCTF) shall be distributed in the following order of preference within each case:
 - i. Payment of current support.
 - ii. Payment of custodian's arrears.
 - iii. Disbursement pursuant to the hierarchy established by the WI SCTF.
- b. Lump-sum payments from the Federal Income Tax Refund Offset shall be distributed in the following order of preference:
 - i. Payment to all state owed arrears, pursuant to the federal tax intercept hierarchy.
 - ii. Payment to the custodian's arrears, pursuant to the federal tax intercepts hierarchy.
- c. Distribution to Multiple Payees. If the person with the child support obligation owes child support on more than one case, distribution shall be as follows:
 - i. Current Support. If there is not enough to pay all current support owed, the available funds shall be pro-rated to each case according to that case's share of the total current support due on all cases.
 - ii. Arrears/Fees. If there is money left over after all current support has been paid, the available funds shall be applied to the arrears due on all cases, pursuant to the established court orders.
 - iii. Arrears. If there are still funds available after all court ordered amounts have been satisfied for the month, the remaining funds shall be applied to the arrears owed on all cases, pro-rated to each case according to that case's share of the total arrears. Within each case, the money is first applied to the arrears owed to the custodian.

43. Termination of Support.

- a. For "Income Withholding Orders," the order to withhold child support shall be suspended ten (10) business days after the payer has terminated employment with the Nation.

- b. The Agency shall promptly terminate income withholding of any kind when there is no longer a current order for support and all arrearages have been satisfied.
 1. If a party's current obligation for support terminates but the party has arrearages, the amount up to the amount of the initial income withholding before the party's current obligation terminated, shall continue until the arrearage is paid in full.

CHAPTER VII CHILD SUPPORT GUIDELINES

44. Child Support Guidelines

- a. General.
 - i. The Ho-Chunk Nation Child Support Guidelines set forth the rules under which a child support obligation is established. The Guidelines set a standard of adequate support for children subject to the ability of the parents to pay.
 - ii. These guidelines are subject to review at least once every four (4) years, with the potential for revision, if deemed appropriate during the review process.
 - iii. The percentage standard is the table of levels of cash child support that correspond to the gross income of the paying party. It is used according to the Guidelines and is intended to provide consistent treatment of individuals in similar circumstances.
 1. The following percentages shall be applied to the portion of a payer's monthly gross income available for child support that is less than or equal to \$7,000:
 - a. 17% for one (1) child;
 - b. 25% for two (2) children;
 - c. 29% for three (3) children;
 - d. 31% for four (4) children;
 - e. 34% for five (5) or more children.
 2. The following percentages shall be applied to the portion of the payer's monthly gross income that is greater than \$7,000 and less than or equal to \$12,500:
 - a. 14% for one (1) child;
 - b. 20% for two (2) children;
 - c. 23% for three (3) children;
 - d. 25% for four (4) children;
 - e. 27% for five (5) or more children.

3. The following percentages shall be applied to the portion of the payer's monthly gross income that is greater than \$12,500:
 - a. 10% for one (1) child;
 - b. 15% for two (2) children;
 - c. 17% for three (3) children;
 - d. 19% for four (4) children;
 - e. 20% for five (5) or more children.
- b. Application. The Guidelines are to be applied as follows:
- i. Parties. The parties may use the Guidelines in reaching an agreement.
 - ii. Agency. The Agency shall be guided by the Guidelines in assisting the parties to reach an agreement. When the parties are not in full agreement on the amount of child support, the Agency shall be guided by the Guidelines in making its recommendation to the Court.
 - iii. Court. The Court will generally enter an agreed order, as provided in Section 29 or adopt the Agency's recommendations. In those cases in which the Court does not do so, it shall apply the Guidelines to the circumstances of the parties.
 - iv. Upon request by a party, the court may deviate from the amount of child support payments determined by the percentage guidelines if, after considering the following factors, the Court finds the greater weight of the credible evidence that use of the percentage guidelines is unfair to the child or to any of the parties:
 1. The financial resources of the child;
 2. The financial resources of the parents;
 3. Maintenance received by either party;
 4. The needs of each party in order to support himself or herself at a level equal to or greater than that established under 42 USC 9902(2);
 5. The needs of any person, other than the child, whom either party is legally obligated to support;
 6. The standard of living the child would have enjoyed if his or her parents were living together;
 7. The desirability that the custodial parent remain in the home as a fulltime parent;
 8. The cost of day care if the custodial parent works outside the home, or the value of custodial services performed by the custodian if the custodian remains in the home;
 9. The award of substantial periods of physical placement to the parents;

10. Extraordinary travel expenses incurred in exercising the right to periods of physical placement;
 11. The physical, mental, and emotional health needs of the child, including any cost for health insurance;
 12. The child's educational needs;
 13. The tax consequences to each party;
 14. The best interest of the child;
 15. The earning capacity of each parent, based on each parent's education, training and work experience and the availability of work in or near the parent's community;
 16. Any other factors which the Court in each case determines are relevant.
- c. Establishing a Child Support Obligation. A child support obligation is established under the Guidelines using the following steps:
- i. Calculate the monthly gross income of the party obligated to pay child support.
 1. Gross income for a person that is self-employed shall be determined using the gross income less expenses necessary to operate the business, to be determined by the court, unless agreed upon by the parties.
 - ii. Determine the total number of children to whom the parties have a duty to support. Using the percentage guidelines as stated above, calculate the monthly child support obligation.
 - iii. Determine non-cash contributions in appropriate circumstances. Although consistent with Ho-Chunk Nation culture and tradition, non-cash services and resources are difficult to monitor and guarantee. The primary purpose for their use in connection with cash payment is to strengthen the bond between the child and the non-custodial parent. Non-cash payments may be used to satisfy part or all of a child support obligation under the following circumstances:
 1. When the parties agree;
 2. When the non-custodial parent's income is below the minimum income level for ordering cash child support;
 3. When the non-custodial parent's income is insufficient to cover the obligation(s) for the total number of children from all relationships;
 4. When the non-custodial parent is a teenager in school; or
 5. When the non-cash services and resources are regular and reliable so that the obligation can be established at a lower rate.

- iv. If non-cash payments are allowed, the order shall include the following:
 - 1. The specific dollar amount of support obligation;
 - 2. The maximum amount, in dollars, of non-cash payments the payee will accept;
 - 3. Describe the type of non-cash payment that is permitted; and
 - 4. Provide the dollar amount assigned to the non-cash payment.
 - 5. Provide that non-cash payments cannot be used to satisfy assigned child support obligations.
- v. Non-Cash services and resources may include, but are not limited to, the following:
 - 1. Help with extra sports and school activities or expenses;
 - 2. Day care provided by the non-custodial parent;
 - 3. School clothes;
 - 4. Car or home maintenance or repair;
 - 5. Firewood, fish, shellfish, game, or berries, but only by agreement of the parties;
 - 6. Tutoring or volunteering at the child's school;
 - 7. Transportation to the child's activities;
 - 8. Pow Wow regalia;
 - 9. Teaching treaty skills or cultural knowledge; or
 - 10. Any other resource agreed upon by the parties.
- d. Establishment of child support obligation when there is shared physical placement. If both parents have periods of physical placement of at least 25% or ninety-two (92) days each year, the period of placement for each parent shall be determined by calculating the number of overnights or equivalent care ordered to be provided by the parent and dividing that number by 365. The combined periods of placement for both parents shall equal 100%.
 - i. Each parent is ordered to assume the child's basic support costs in proportion to the time that the parent has the placement of the child.
- e. The child support obligation for parents who meet the requirements for shared placement shall be determined using the following formula:
 - i. Determine each parent's monthly income.
 - ii. Multiply each parent's monthly income by the appropriate percentage guideline amount.
 - iii. Multiply the results of line 2 by 150% (1.5).
 - iv. Multiply the results of line 3 by the percentage of the time that child spends with the other parent.

- v. Determine the difference by offsetting the amounts. This is the amount of support paid by the parent with the greater amount.
- f. Calculating child support for split placement arrangements. When there are two (2) or more children and each parent has primary placement of one (1) or more child, the support shall be calculated as follows:
- i. Determine each parent's monthly income.
 - ii. Determine the correct percentage under the guidelines and divide by the number of children to get a per child percent amount.
 - iii. Multiply the parent's income by the per child percent amount to get a monthly amount of support.
 - iv. Offset the results. The parent with the higher order will be the paying parent.
- g. Calculation of Income in Default Cases. In the absence of financial information from the defaulting parent, his or her income shall be based on information provided by the Agency.
- h. Calculation of Child Support when there are Children from other Relationships.
- i. When a Party has a legal duty to pay child support for children from other relationships, you must determine the date of adjudication of each child.
 - 1. For a marital child, the adjudication of paternity is the date of birth.
 - ii. Determine the adjusted monthly gross income of the paying parent. The monthly gross income is adjusted by subtracting out any prior obligations the paying party for children from other relationships.
 - 1. If the paying parent has their children residing with him/her, you must adjust the gross income by the percentage amount that the parent would be paying should the child reside outside of the home.
- i. Modifications to the Child Support Obligation.
- i. Work-related Day Care. The obligation may be adjusted upward to cover the reasonable cost of work-related day care of the custodial parent. This obligation shall terminate if work-related day care is terminated or it shall be reduced proportionately if the child is in work-related day care for a reduced period of time.
 - ii. Seasonal Income. If the paying party's income is seasonal, the obligation may be set on a schedule that varies the amount at different times of the year.

- iii. Extraordinary Medical Expenses for the Child. The obligation may be adjusted upward to cover extraordinary medical expenses for the child not covered by health insurance.
 - iv. Possession of Wealth. The obligation may be set higher when the parent owing support possesses an abundance of valuable material possessions, resources, money, or has the ability to generate a stream of income that is greater than monthly expenses or even slightly above expenses and purchase whatever material possession the parent may want or need. Luxury items that may equate to the abundance of possessions may include, but are not limited to, expensive homes, cars, boats, all-terrain vehicles, sports equipment, recreational vehicles, camping trailers, vacation homes, additional land/property, and multi-annual vacations.
- j. Period of obligation. Child support obligation shall commence no earlier than the date of the filing of the petition.
- i. Termination.
 - 1. A parent's financial duties last until any of the following events:
 - a. The death of the child;
 - b. The death of the parent obligated to pay support; or
 - c. The child reaches the age of eighteen (18) or, if the child is still in high school, until graduation or the child turns nineteen (19), whichever is earlier.
 - 2. The child support obligation terminates at the end of the month in which the financial duty terminates.
- k. Payment.
- i. The payment of a child support obligation shall be made to the Wisconsin Support Collections Trust Fund (WI SCTF) for distribution to the appropriate recipient.
 - ii. There shall be no interest charge on past due support.
 - iii. If the Agency becomes aware that a child is no longer living with the person receiving child support on behalf of the child the Agency or the paying party may request a review hearing to determine to whom the child support payments will be disbursed for the benefit of the child.
 - 1. All payments will be placed on hold until after the review hearing.
 - iv. The Agency will promptly refund amounts which have been improperly withheld.
 - v. There may be circumstances when payment to the Registry of a state or another tribe would be appropriate. The Agency will

identify those circumstances, if applicable, and funds will be redirected accordingly.

- l. Credit for Benefits. When a child receives benefits such as social security, veterans, or the like, as a result of contributions made by the party with the child support obligation credit shall be given to offset all or part of the child support obligation in the amount of the payment. The Court shall indicate in the child support order the total child support obligation and the amount that shall be covered by benefit payments made directly to the child. In no case may this adjustment require the payee to reimburse the payer for any portion of the child's benefit.
- m. Health Insurance.
 - i. The Agency shall make a recommendation as to the best health insurance coverage for the child. The Court shall include provisions of health insurance for the child in every child support order.
 1. When health insurance is available at a reasonable cost through one or both party's employment or union, that party (or both parties) shall provide coverage. "Reasonable cost" is defined as less than or equal to 5% of the person's gross income for the coverage of the child's portion of the health insurance premium.
 2. If health insurance is not available to either party at reasonable cost, a \$0 health insurance order shall be entered. If the child is eligible for health care services through the Nation, another tribe or the Indian Health Service, one or both parties shall be ordered to cooperate with the appropriate entity to obtain services for the child.
 3. Responsibility for uninsured expenses shall be determined as agreed upon by the parties. If the parties cannot agree on the terms for paying uninsured expenses, the Court will make a determination.
- n. Payment for Extraordinary Medical Expenses. The Court may order the paying party to make payments in addition to the regular child support payments upon presentation of receipts or other proper proof that the child has had extraordinary medical expenses as provided in a civil judgment that was ordered by the Court.
- o. Reimbursement.

- i. Upon presentation of receipts or other proper proof the Court may order reimbursement and/or repayment as follows;
 - 1. Reimbursement to the paying party for work-related day care expenses paid but not utilized by the receiving party for work or work-related activities. Repayment to the Nation by the party who received child support on behalf of a child who stopped residing for a month or longer with that party, if payment was originally made by the Nation.

45. Court Appeals.

- a. Any interested party may appeal a final Court order on a specific legal issue.
- b. Procedure. An appeal to the Ho-Chunk Nation’s Supreme Court may be taken from any order, decree, or judgment of the Trial Court. Such appeal shall be taken in the same manner in which appeals are taken from judgments or decrees of the Trial Court. The notice of appeal must be in writing and taken within sixty (60) days from the entry of the order, decree, or judgment appealed from.
- c. Record for Purpose of Appeal. A record of proceedings shall be made available to the child, his/her parent, guardian, or custodian, the child’s counsel, and others upon Trial Court order. Costs of obtaining this record shall be paid by the party seeking the appeal.
- d. Stay Pending Appeal. The pendency of an appeal shall not stay the order or decree appealed from in a child’s case. Where the order or decree appealed from directs a change of legal custody of a child the appearance shall be heard and decided at the earliest practicable time. The name of the child shall not appear on the record of appeal.

46. Severability. If any provision or provisions of this Act in the future be declared invalid by the Judiciary the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

Legislative History:

8/17/04	Legislature places draft Child Support Program Code (4 HCC § 7) out for 45-Day Public Review.
10/19/04	Enacted as Child Support Enforcement Code (4 HCC § 7) by Legislative Resolution 10/19/04C.
11/27/12	Legislature places amendments to the Child Support Enforcement Code (4 HCC § 7) out for 45-Day Public Review.
04/08/13	Amended & Restated as Child Support Enforcement Code (4 HCC § 7) by Legislative Resolution 04/08/13A.

04/08/14 Legislature amends Child Support Enforcement Code (4 HCC § 7) by Quick Passage Resolution 04/08/14L.