



**HO-CHUNK NATION CODE (HCC)  
TITLE 4 – CHILDREN, FAMILY, AND ELDER WELFARE CODE  
SECTION 18 – CUSTODY AND PLACEMENT ORDINANCE**

**ENACTED BY LEGISLATURE: January 23, 2024**

**CITE AS: 4 HCC § 18**

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**1. Authority.**

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

b. Article V, Section 2(e) of the Constitution grants the Legislature the power to raise revenue, including the power to levy and collect taxes and license fees.

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c. Article V, Section 2(p) of the Constitution grants the Legislature the power to enact laws to create and regulate a system of property including but not limited to use, title, deed, estate, inheritance, transfer, conveyance, and devise.

d. 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.

e. 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.

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. Purpose and Construction.** It is the purpose of this Custody Ordinance to secure for each child coming before the Court such care, guidance, and control, as will serve the child's welfare and advance the interests of the Hoocąk Nation; to preserve and strengthen family ties whenever possible; and to preserve and strengthen the child's cultural and Tribal identity wherever possible. To this end, this Act shall be liberally construed to fulfill the following purposes:

a. To ensure that minor children have regularly occurring, meaningful periods of physical placement with each parent that maximizes the amount of time the children may spend with each parent who has shown the ability to act in the best interests of their children. To encourage parents to share equally in the rights and responsibilities of rearing their children after the parents have separated or dissolved a marriage. To effectuate this policy, the Court shall provide substantially equal access to the minor children to both parents, unless the Court finds that such shared parenting would be detrimental and not in the children's best interests, while taking into account geographic separation and accommodations for different households. See §§ 11.e; 12.

b. To take such actions as may be necessary and feasible to prevent the abuse, neglect, or abandonment of children.

c. To recognize and acknowledge the customs and traditions of the Hoocąk Nation with regard to raising a child.

d. To adhere to the laws of the Hoocąk Nation including, but not limited to; 4 HCC § 3, and 4 HCC § 7 and any subsequent amendments. Any conflicting laws shall be interpreted solely in favor of the tribal member's interests.

e. To preserve the sovereignty of the Hoocąk Nation, no Judge who is unfamiliar with Hoocąk law and tradition shall be permitted to preside over a case where custody and placement shall be decided. The Judiciary shall implement guidelines to ensure that all Judges, including Pro Tempore Judges, are trained in Hoocąk law.

**3. Definitions.**

- a. “Adult” means a person eighteen (18) years of age or older, or otherwise emancipated by order of a court of competent jurisdiction.
- b. “Child” means a person under the age of majority and who is not married. Child does not include a fetus.
- c. “Court” means the Ho-Chunk Nation Trial Court.
- d. “Domestic Abuse” means one or more of the following acts, but does not include acts of self-defense by the victim:
  - (1) Attempting to cause or causing physical harm, bodily injury, or assault on a family or household member.
  - (2) Placing a family member or household member in fear of the infliction of emotional, financial, physical harm, bodily injury or assault.
  - (3) Causing a family member or household member to engage in involuntary financial or sexual activity by force, threat of force, or duress.
- e. “Guardian Ad Litem” means a person appointed by the Court to represent the best interest of the child before the Court.
- f. “Ho-Chunk Child” means any unmarried person who is under the age of eighteen (18) and is either an enrolled Ho-Chunk Tribal Member, is eligible for membership, or is the biological child of a Ho-Chunk Tribal Member.
- g. “Joint Legal Custody” means that both parents have equal rights and responsibilities, including the right to participate in major decisions determining the child’s upbringing, including education, health care, and religious training.
- h. “Legal Custody” means the authority to make those major life decisions, such as the right to consent to marriage, to enlist in the Armed Forces, and to consent to major medical, surgical, or psychiatric treatment, and as may otherwise be granted by the Court.
- i. “Nation” means the Hoocąk (Ho-Chunk) Nation.
- j. “Parent” means a biological, Traditional, or adoptive parent, or any person who has assumed responsibility for the care, custody, or control of a child or upon whom there is a legal duty for such care.
- k. “Physical Custody” means the physical custody and responsibility for the care of a child including the rights and duties to provide him/her with food, clothing, shelter, education, transportation and emergency medical care.

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- l. “Physical Placement” means the condition under which a party has the right to have a child physically placed with that party and has the right and responsibility to make, during that placement, routine decisions regarding the child’s care, consistent with major decisions made by a person having legal custody.
- m. “Traditional Relatives” means those people within the child’s *wazoki* (intrinsic familial network) according to Hoocąk tradition.

**4. Jurisdiction.**

a. General Jurisdiction.

(1) The Court shall have jurisdiction over enrolled members of the Ho-Chunk Nation.

(2) The Court shall have jurisdiction over those who are eligible for enrollment and under the age of eighteen (18) years.

(3) The Court shall have jurisdiction over the children of enrolled members of the Ho-Chunk Nation, including adopted children.

(4) The Court shall have jurisdiction over the parents of all Ho-Chunk children.

(5) The Court shall have jurisdiction over the Traditional Relatives of all Ho-Chunk children.

**5. Ho-Chunk Nation Child Support Agency Involvement.**

a. The Nation’s Tribal IV-D Child Support Agency is established pursuant to 45 C.F.R. § 309. The Child Support Agency cannot participate in any non-IV-D functions, such as, custody and placement proceedings or determinations.

b. In order for the Nation’s Tribal IV-D Child Support Agency to participate in an action brought under this Ordinance, for the purpose of addressing IV-D functions such as paternity or child support, an application shall be filed with the Agency prior to the Court addressing custody and placement.

(1) If there is a Tribal IV-D application on file, or an open child support matter, the Nation’s Child Support Agency shall have an interest in participating in only those divorce and custody and placement hearings where paternity may be ordered or child support will be addressed. All other non-IV-D hearings shall not require Child Support Agency participation.

**6. Petition and Response.**

a. Except as otherwise provided, in a custody and placement action the Petition shall state:

(1) The name, address, phone number, date of birth, social security number, occupation, place of employment, and tribal enrollment number (if applicable) of both parents.

(2) The name, birth date, social security number, and tribal enrollment number (if applicable).

(3) That an application for services has been filed with the Ho-Chunk Nation Child Support Agency or that there is currently an open child support case. An affidavit, developed and approved by the Agency, shall be obtained from the Agency verifying an application is on file or a child support case is open. Such affidavit shall accompany the petition at the time of filing.

(4) Whether or not an action for legal custody and placement by either of the parties was or has been at any time commenced, or is pending in any other court or before any judge, in the state of Wisconsin, in another tribal court, or any other state.

(5) Whether the parties have entered into any written agreement as to support, legal custody and physical placement of the children, and if so, the written Agreement shall be attached.

(6) The Petitioner shall file a Proposed Parenting Plan with the Petition for Custody and Placement.

(7) That during the pendency of the action, the parties are prohibited from, and may be held in contempt of court for, harassing, intimidating, physically abusing or imposing any restraint on the person, liberty of the other party, or a minor child of either party.

(8) That during the pendency of the action, the parties are prohibited from, and may be held in contempt of court for, doing any of the following without the consent of the other party or an order of the Court:

(a) Establishing a residence with a minor child of the parties outside the state of where the child resides at the time the case is initiated or more than 150 miles from the residence of the other party within the state.

(b) Removing a minor child of the parties from the state of where the child resides at the time the case is initiated for more than 90 consecutive days at any point after the filing of the petition.

b. Either or both parent may initiate the action. The party initiating the action or his or her attorneys or advocates shall sign the petition. Both parties or their respective attorneys or advocates shall sign a joint petition if the parties are filing together.

c. The summons shall be in the form of a regular summons used by the Trial Court for civil cases.

d. Service shall be made in accordance with regular court procedures. If only one party initiates the action, the other party may serve a response and/or counterclaim within 20 business days after the date of service.

#### **7. Prohibited Acts During the Pendency of a Custody and Placement Case.**

a. In an action for custody and placement, the petitioner upon filing the petition, the joint petitioners upon filing the joint petition and the respondent upon service of the petition are prohibited from doing any of the following:

(1) Harassing, intimidating, physically abusing or imposing any restraint on the personal liberty of the other party or a minor child of either of the parties.

(2) Without the consent of the other party or an order of the Court:

(a) Establishing a residence with a minor child of the parties outside the state where the child resides at the time the case initiates, or

(b) Establishing a residence with a minor child of the parties more than 150 miles from the residence of the other party within the child's state of residence, or

(c) Removing a minor child of the parties from the state where the child resides at the time the case initiates for more than 90 consecutive days.

b. The prohibitions listed in this section shall apply until the action is dismissed, until a final judgment in the action is entered or until the Court orders otherwise.

c. Any person violating the provisions of this section will be subject to the regular contempt provision in the Ho-Chunk Nation.

#### **8. Temporary Hearing and Orders.**

a. In an action for custody and placement, either or both parents may motion for a temporary hearing, which shall occur within fifteen (15) days of filing.

b. Motion for Temporary Custody and Placement Order. The motion may be served at the time the action is commenced or at any time after commencement.

c. The purpose of the temporary custody and placement hearing is to address any one or more of the following issues in an expeditious manner:

(1) Requiring paternity testing to be performed.

- (a) At the request of either party, or the Ho-Chunk Nation Child Support Agency, when no paternity has been established.
- (b) At the request of either party when martial presumption is being requested to be overcome.
- (c) As a matter of public policy, the Ho-Chunk Nation discourages the disestablishment of paternity. See Ho-Chunk Nation CHILD SUPPORT CODE, 4 HCC § 7.20c.

(2) Granting legal custody of the minor children to the parties jointly, to one party solely, or to the Department of Social Services under § 14f, below. An order under this paragraph is not binding on a final custody determination.

(3) Granting periods of physical placement to a party in a manner consistent with the best interests of the minor children. See § 11e, below. If the Court grants physical placement to one parent for less than 25 percent of the time, the Court shall enter specific findings of fact as to the reasons that a greater allocation of physical placement with that parent is not in the best interests of the child.

(4) Granting periods of electronic communication to a party in a manner consistent with the best interest of the minor children. See § 11e, below.

(5) Prohibiting the removal of minor children from the jurisdiction of the court.

(6) Allowing a party to relocate and reside with a child pending a final hearing.

(7) Requiring either party to make payments for the support of minor children, with the payment amounts being expressed as a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the payer's income. The Court shall utilize the standards set forth within the Ho-Chunk Nation CHILD SUPPORT CODE (4 HCC § 7) in establishing the sum or allowance of any deviation from such sum. Child support shall be established as of the date of the filing of the petition, unless there is already a child support petition filed or child support case open.

(8) Requiring counseling of either party or both parties.

(9) Requiring either party or both parties to maintain minor children as beneficiaries on a health insurance policy or plan.

(10) Requiring parties to share in the costs of uninsured medical expenses.

d. The Court shall consider Section 12 domestic abuse issues before making any decisions regarding custody and placement.

e. A temporary Order may be based upon a written stipulation of the parties and subject

to the approval of the Court.

(1) If stipulated child support deviates from the standards established within the

Ho-Chunk Nation CHILD SUPPORT CODE (4 HCC § 7), the Court shall set forth appropriate findings for the allowance of such deviation.

(a) If the parties stipulate to any child support obligation, and the agency has no objection, the stipulation must be reviewed and approved by the attorney for the Child Support Agency, which may be evidenced by the signature of the attorney. See CHILD SUPPORT CODE, 4 HCC § 7.29d; 30a-b.

f. A temporary Order shall be issued within twenty (20) days of the temporary custody and placement hearing, with the availability of an immediate Minute Order to ensure rights of and understanding by the parties.

**9. Peacemaking Circle.** The Court may refer a Custody and Placement case to the Peacemaking Circle when it believes the parties would benefit from that process. The Court shall consider issues of domestic abuse when considering the appropriateness of a referral to the Peacemaking Circle. The Circle is a completely voluntary process and both parties would have to agree to participate before a case could be transferred.

#### **10. Guardian ad Litem.**

a. If the Court has reason for special concern for the welfare of a minor child, the Court may appoint a *Guardian ad Litem*, at the expense of the parents, to represent the best interests of the minor child(ren).

#### **11. Hearing Procedures.**

a. Time of Hearing. A Custody and Placement Hearing shall be held within forty-five (45) days of the filing of a Petition.

b. Purpose of Hearing. The Court shall conduct the hearing to determine what custody and placement arrangement is in the best interest of the minor child(ren).

c. Rights of Parties. During the hearing the Court shall advise the parties of the following basic rights:

(1) The reason for the hearing.

(2) Right to counsel at their own expense. The Court shall permit one continuance to secure counsel, unless reasonable efforts are shown to the Court that the parties are actively seeking counsel.

(3) Right to confront and cross-examine those appearing against them.



(4) Right to present and subpoena witnesses.

(5) Right to substitution of judge. The parties shall be notified that a request for a substitution of judge must be made before the end of the first hearing or this right will be deemed waived unless good cause is shown at a later point in the proceedings.

(a) If it becomes necessary to appoint a *pro tempore* judge in a case under this ordinance, the Court shall make every effort to first appoint a judge who is Ho-Chunk. If a Ho-Chunk *pro tempore* judge cannot be appointed, the appointed judge shall consult with members of the Traditional Court and the Clan Mothers to ensure that they honor Ho-Chunk tradition and custom when making their decision.

d. Burden of Proof. The petitioner maintains the burden of proving their proposed parenting plan is in the best interest of the minor child(ren).

(1) There is a rebuttable presumption that having substantially equal periods of physical placement is in the best interests of the child. The burden of proof that such shared parenting would be detrimental to such child and not in the child's best interests shall be upon the parent requesting primary or substantially more placement and the reason for such determination shall be documented in the court record. See §§ 11.e; 12, below.

e. Evidence and Testimony. In determining the best interest of the child(ren) the Court shall examine the following:

(1) The ability of each parent to meet the cultural, spiritual, physical, emotional, and other needs of a Tribal Member Child(ren);

(2) Whether either party has physically or otherwise abused the minor Child(ren);

(3) Whether either party has physically or otherwise abused each other;

(4) The wishes of the minor Child(ren), communicated by the minor Child(ren), if of an appropriate age, or the minor Child(ren)'s guardian ad litem, if one has been appointed by the Tribal Court;

(5) The amount of quality time each parent has spent with the minor Child(ren) in the past, any necessary changes to the parents' custodial roles, and any reasonable life-style changes that a parent proposes to make to be able to spend time with the minor Child(ren) in the future;

(6) Any special medical, mental health, or educational needs that the Child(ren) may have that may require special parenting arrangements or access to recommended services;

(7) The minor Child(ren)'s adjustment to the home, school, religion, culture, and community;

(8) The minor Child(ren)'s age and the minor Child(ren)'s development, cultural and educational needs at different ages;

(9) The mental, emotional, and physical health of the parties, including whether either party has had a problem with alcohol or drug abuse, and the mental, emotional, and physical health of the minor Child(ren) and other persons living in the proposed custodial household;

(10) The need for predictability and stability in the minor Child(ren)'s Physical Placement;

(11) Except in cases where domestic abuse has occurred, the parties' ability or lack of ability to cooperate and communicate, especially with respect to the needs of the minor Child(ren);

(12) The availability of public or private Child(ren) care services to either parent;

(13) Except in cases where domestic abuse has occurred, whether each party is willing to facilitate a positive and meaningful relationship between the other party and the minor Child(ren), and to maintain continuing contact and visits between the minor Child(ren) with the other party, or whether either party is likely to unreasonably interfere with the minor Child's development of a positive and meaningful relationship and/or contact and visits with the other party;

(14) Any relevant testimony from Traditional Relatives;

(15) Any reports of professionals regarding the placement and admitted by the Tribal Court into evidence; and

(16) Any other factors the Tribal Court deems relevant to determining what is in the best interest of the minor Child.

## **12. Domestic Abuse.**

a. If the Court, or another Court of competent jurisdiction, finds or has found that Domestic Abuse has occurred the Court shall look to the DOMESTIC ABUSE ACT OF 2000, 4 HCC § 5. There shall be a rebuttable presumption that it is detrimental to the child and not in the best interest of the child to be placed in either the sole custody or joint custody of the perpetrator of domestic abuse, and that periods of physical placement- if any- shall be restricted in a manner that takes into account the child's safety and wellbeing.

b. The perpetrator of domestic abuse shall bear the burden of overcoming the rebuttable presumption by a preponderance of the evidence that their continued involvement in the minor child(ren)'s lives no longer goes against the above enumerated best interest factors.

**13. Judgment for Custody and Placement.** the Court shall have the power to impose judgment as follows:

a. Custody.

(1) For the future legal custody and physical placement and care of the minor children of the marriage or relationship as may be in the best interest of the children.

(2) Approve any agreement between the parties as to the legal custody and physical placement and care of minor children if deemed by the Court to be in the best interests of the children.

(3) Absent a quantifiable reason, the Judge shall conduct an in camera interview with the minor children aged twelve (12) or older and may conduct an in camera interview with children under the age of twelve (12). The children shall be entitled to choose a support individual to accompany them. The Judge shall retain discretion to determine what weight to give the children's statements when making their decision.

b. Placement.

(1) There is a rebuttable presumption that having substantially equal periods of physical placement is in the best interests of the child. See §§ 2.a; § 11.d(1), above. If the Court grants physical placement to one parent for less than 25 percent of the time, the Court shall enter specific findings of fact as to the reasons that a greater allocation of physical placement with that parent is not in the best interests of the child. See §§ 11.e; 12 above.

(2) In an order for physical placement, the Court shall specify the right of each party to the physical control of the child in sufficient detail to enable a party deprived of that control to implement any law providing relief for interference with custody or parental rights.

c. Requiring either party to make payments for the support of the minor children, with the payment amounts being expressed as a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the payer's income. The Court shall utilize the standards set forth within the Ho-Chunk Nation CHILD SUPPORT CODE (4 HCC § 7) in establishing the sum or allowance of any deviation from such sum. Child support shall be established as of the date of the filing of the petition, unless there is already a child support petition filed or child support case open.

(1) If there is stipulated child support, and it deviates from the standards established within the Ho-Chunk Nation CHILD SUPPORT CODE (4 HCC § 7), the Court shall set forth appropriate findings for the allowance of such deviation.

(a) If the parties stipulate to any child support obligation, and the Child Support Agency has no objection, the stipulation must be reviewed and approved by the attorney for the Child Support Agency, which may be evidenced by the signature of the attorney. See CHILD SUPPORT CODE, 4 HCC § 7.29d; 30a-b.

d. No party awarded joint legal custody may take any action inconsistent with any applicable physical placement order, unless the Court expressly authorizes that action.

**14. Revision of Legal Custody and Physical Placement Order.** The following provisions are applicable to modifications of legal custody and physical placement orders:

a. Substantial Modifications.

(1) Within 2 Years After Initial Order. Except as provided under paragraph b., below, a Court may not modify any of the following orders before 2 years after the initial order is entered, unless a party seeking the modification, upon petition, motion, or order to show cause shows by substantial evidence that the modification is necessary because the current custodial conditions are physically or emotionally harmful to the best interest of the child. See § 11.e, above; 4 HCC § 3; and 4 HCC § 5.

(a) An order of legal custody.

(b) An order of physical placement if the modification would substantially alter the time a parent may spend with his or her child.

(2) After 2-Year Period.

(a) Except as provided under paragraph (1), above, and paragraph b., below, upon petition, motion or order to show cause by a party, a court may modify an order of legal custody or an order of physical placement where the modification would substantially alter the time a parent may spend with his or her child if the Court finds all the other following:

1. The modification is in the best interest of the child. See § 11.e, above.

2. There has been a substantial change of circumstances since the entry of the last order affecting legal custody or the last order substantially affecting physical placement.

(b) With respect to paragraph (a), above, there is a rebuttable presumption that:

1. Continuing the current allocation of decision-making under a legal custody order is in the best interest of the child. See § 11.e, above.

2. Continuing the child's physical placement with the parent with whom the child resides for the greater period of time is in the best interest of the child. See § 11.e, above.

(c) A change in the economic circumstances or marital status of either party is not sufficient to meet the standards for modification under paragraph (a), above.

b. Modification of Substantially Equal Physical Placement Orders. Notwithstanding paragraph a., above.

(1) If the parties have substantially equal periods of physical placement pursuant to a court order and circumstances make it impractical for the parties to continue to have substantially equal physical placement, a court, upon petition, motion or order to show cause by a party, may modify such an order if it is in the best interest of the child. See § 11.e, above.

(2) In any case in which paragraph (1), above, does not apply and in which the parties have substantially equal periods of physical placement pursuant to a court order, a Court, upon petition, motion or order to show cause of a party may modify such an order based on the appropriate standard under paragraph a., above. However, there is a rebuttable presumption that having substantially equal periods of physical placement is in the best interests of the child. See §§ 2.a; 11.d(1). The burden of proof that such shared parenting would be detrimental to such child and not in the child's best interests shall be upon the parent requesting primary or substantially more placement and the reason for such determination shall be documented in the court record. See §§ 11.e; 12, above.

c. Modifications of Other Physical Placement Order. Except as provided under paragraphs a. and b., above, upon petition, motion or order to show cause by a party, a court may modify an order of physical placement which does not substantially alter the amount of time a parent may spend with his or her child if the Court finds that the modification is in the best interest of the child. See § 11.e, above.

d. Reasons for Modification. If either party opposes modification or termination of a legal custody or physical placement order under this section the Court shall state, in writing, its reasons or the modification or termination.

e. Notice. No court may enter an order for modification under this section until notice of the petition, motion or order to show cause requesting modification has been given to the child's parents, if they can be found, and to any relative or agency having custody of the child.

f. Transfer to the Department of Social Services. If the interest of any child demands it, and if the court finds that neither parent is able to care for the child adequately or that neither parent is fit and proper to have the care and custody of the child, the court may declare the child to be in need of protection or services and transfer legal custody of the child to the Department of Social Services only if that department

agrees to accept custody based on the HOCOK NATION CHILDREN AND FAMILY CODE (4 HCC § 3).

**15. Effect of Judgment.**

a. In any action affecting the family under this Ordinance, if the court orders maintenance payment or other allowances for a party or children or retains jurisdiction in

such matters, the written judgment shall include a provision that disobedience of the court order with respect to the same is punishable in accordance with the Ho-Chunk Nation CHILD SUPPORT CODE (4 HCC § 7) until such judgment is complied with.

b. The Court has the power to vacate or modify the judgment of sufficient cause shown upon its own motion, or upon the application of both parties to the action, at any time within six (6) months from the granting of such judgment. If the judgment is vacated it shall restore the parties to the custodial arrangement that existed prior to the Court's judgment.

**16. Visitation Rights of Certain Persons.** Upon petition by a grandparent, great-grandparent, stepparent or person who has maintained a relationship similar to a parent-child relationship with the child, the Court may grant reasonable visitation rights to that person if the parents have notice of the hearing and if the Court determined that visitation is in the best interest of the child. Whenever possible, in making a determination under this section, the Court shall consider the wishes of the child.

**17. Fees.** The filing fee for a petition for custody and placement shall be set by the Court.

**18. Severability.** If any provision or provisions of this Code shall in the future be declared invalid by the Ho-Chunk Nation Judiciary, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

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Legislative History:

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| 8/17/04  | Legislature places draft Divorce and Custody Ordinance (4 HCC § 9) out for 45-Day Public Review.   |
| 10/19/04 | Enacted as Divorce and Custody Ordinance (4 HCC § 9) by Legislative Resolution 10-19-04E.  |
| 11/21/23 | Legislature places draft Custody and Placement Ordinance (4 HCC § 18) out for 45-Day Public Comment by Legislative Resolution 11-21-23P. |
| 01/23/24 | Legislature adopts to the Custody and Placement Ordinance (4 HCC § 18).  |