



HO-CHUNK NATION LEGISLATURE

Governing Body of the Ho-Chunk Nation

45-DAY PUBLIC REVIEW

HO-CHUNK NATION LEGISLATURE AUTHORIZATION TO PLACE THE *CHILD SUPPORT CODE (4 HCC § 7)* OUT FOR FORTY-FIVE DAY PUBLIC COMMENT

RESOLUTION 12-17-24 L

- WHEREAS,** on November 1, 1994, the United States Secretary of the Interior approved a new Constitution for the Ho-Chunk Nation, formerly known as the Wisconsin Winnebago Tribe; and
- WHEREAS,** the Ho-Chunk Nation ("Nation") is a federally recognized Indian Tribe, organized pursuant to the Indian Reorganization Act of 1934; and
- WHEREAS,** Article V, Section 2(a) of the Ho-Chunk Nation Constitution ("Constitution") grants the Ho-Chunk Nation Legislature ("Legislature") the power to make laws, including codes, ordinances, resolutions, and statutes; and
- WHEREAS,** Article V, Section 2(b) of the Constitution grants the Legislature the power to establish Executive Departments, and to delegate legislative powers to the Executive branch to be administered by such Departments, in accordance with the law; any Department established by the Legislature shall be administered by the Executive; the Legislature reserves the power to review any action taken by virtue of such delegated power; and
- WHEREAS,** Article V, Section 2(d) of the Constitution grants the Legislature the power to authorize expenditures by law and appropriate funds to the various Departments in an annual budget; and
- WHEREAS,** 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; and
- WHEREAS,** Article V, Section 2(1) of the Constitution grants the Legislature the power to enact laws to manage, lease, permit, or otherwise deal with the Nation's lands, interests in lands, or other assets; and
- WHEREAS,** 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 Nation; and

Executive Offices

W9814 Airport Road P.O. Box 667 Black River Falls, WI 54615
(715) 284-9343 (800) 294-9343

WHEREAS, Article V, Section 2(x) of the Constitution grants the Legislature the power to enact any other laws, ordinances, resolutions and statutes necessary to exercise its legislative powers delegated by the General Council pursuant to Article III including but not limited to the foregoing list of powers; and

WHEREAS, the Ho-Chunk Nation Legislature passed the LEGISLATIVE ORGANIZATION ACT (2 HCC § 11), which was last amended on June 4, 2024; and

WHEREAS, the LEGISLATIVE ORGANIZATION ACT provides the procedures for enacting or amending a Ho-Chunk Nation law; and


WHEREAS, Section 44, subparagraph d(1)(a) of the LEGISLATIVE ORGANIZATION ACT provides that the Public Review period for consideration of proposed laws or amendments will typically be forty-five (45) days; and

WHEREAS, the Legislature wishes to consider amending the CHILD SUPPORT CODE (4 HCC § 7);

NOW, THEREFORE, BE IT RESOLVED, that the Legislature, pursuant to its Constitutional authority, hereby places the attached proposed amendments to the CHILD SUPPORT CODE (4 HCC § 7) out for forty-five (45) day public comment, to run from the date the proposed law is posted on the Nation's website.

CERTIFICATION

I, the undersigned, as Tribal Secretary of the Ho-Chunk Nation, hereby certifies that the Legislature of the Ho-Chunk Nation, composed of **13 members** of whom **12** constituting a quorum were present at a meeting duly called and convened and held that on the **17th day of December, 2024**, that the foregoing resolution was adopted at said meeting by an affirmative vote of **12 members, 0 opposed, and 0 abstaining**, pursuant to the Article V, Section 2(a) and (x) of the Constitution of the Ho-Chunk Nation approved by the Secretary of the Interior on November 1, 1994, and that the foregoing resolution has not been rescinded or amended in any way. I further certify that this is, a verified copy of said resolution.


Rep. Stephanie Begay, Tribal Secretary

12.17.24
Date

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

ENACTED BY LEGISLATURE: OCTOBER 19, 2004

CITE AS: 4 HCC § 7

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**CHAPTER I
GENERAL PROVISIONS AND DEFINITIONS**

1. Authority.

- a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution (Constitution) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.
- b. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Ho-Chunk 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.

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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 Ho-Chunk Nation.

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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 Ho-Chunk Nation.

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2. General.

a. 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.

b. 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 parents' absence. Grandparents share with their grandchildren the wisdom of their experience and traditional values.

c. In the absence of an administrative remedy, the Ho-Chunk Nation Trial Court is the most appropriate forum for addressing 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.

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d. 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.

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e. 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:

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i. Departments and of the Ho-Chunk Nation.

ii. Ho-Chunk Nation Housing and Community Development Agency.

iii. Ho-Chunk Nation Tribal enterprises.

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- iv. Any person or entity doing business on lands under the jurisdiction of the Ho-Chunk Nation.
- v. The agency is authorized to request information from off-reservation employers, government agencies and other entities, concomitant with its responsibilities as an IV-D agency.
- f. The Child Support Agency is only permitted to provide a draft order to the court as a courtesy. The Trial Court is not permitted to order the agency or Department of Justice Attorneys to draft orders for the court.

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3. Policy.

- a. The Ho-Chunk 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 function, such as, participation in custody and placement proceedings or determinations, except to provide calculations for child support included in temporary and final orders for support. The HCN CSA will make no recommendation as to custody and no representation for the parties as far as custody and placement are concerned.
- b. The Department of Social Services shall implement this Child Support Code.
- c. The Ho-Chunk Nation's MARRIAGE ORDINANCE adopted gender neutral terms to ensure equal access to same - sex couples. It is the express intent of the Legislature to afford all marital couples equal protection and privileges under the law. See MARRIAGE ORDINANCE, 4 HCC § 10, June 5, 2017.
- d. 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.
- e. The Ho-Chunk Nation shall not interfere in the child support arrangements agreed upon by the families when those agreements serve the best interest of the child.
- f. The Ho-Chunk Nation Child Support Agency is authorized to exercise the full extent of administrative capabilities in order to fulfill the duties and mission of this code. This code will be construed liberally in order for the agency to fulfill its

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mission and carry out the important public service of ensuring children are financially supported and parentage is established.

g. This code is intended to replace the RECOGNITION OF FOREIGN CHILD SUPPORT ORDERS ORDINANCE of October 19, 2004. The Ho-Chunk Nation Child Support Agency is hereby automatically intervened in all child support cases that were registered under 4 HCC § 2.

- h. The Ho-Chunk Nation Child Support Agency is authorized to certify and make an administrative determination 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.
 - iv. If a court case already exists in Ho-Chunk Nation Trial Court, the agency may request and the court may hold a closed ex-parte hearing to determine whether good cause exists.

i. The Ho-Chunk Nation Child Support Agency is automatically intervened in every child custody and divorce proceeding with children in order to provide calculations for temporary orders, final orders for support and continuing monitoring of payments.

4. Definitions. When the words listed in this section appear in this code, they shall have the following meaning unless a different meaning is clearly intended. If the "plain language" meaning of a word or section should come into question, the historical use and practice by the child support agency shall be the determining factor.

a. "Ability to Pay" is the standard by which child support determinations are evaluated. Incarceration, unemployment, or disability does not excuse payment of child support if the individual has the ability to pay by or through other means.

b. "Agency Garnishment Form" a document used by the agency to set child support amounts and specify which funding streams will be garnished and at what rate for the enforcement of foreign orders. See also Income Withholding Order (IWO).

c. "Arrears" includes past due child support, missing payments, can be calculated from the date of the filing of a petition.

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d. "Adult" means any person who is either eighteen (18) years of age or older, married, or emancipated.

e. "Agency" (unless the context used herein clearly indicates otherwise) means the Ho-Chunk Nation Child Support Enforcement Agency, an IV-D agency as defined under 45 C.F.R. § 309.

f. "Alleged father" means any male who might be the biological father of a child, including males who are "presumed fathers" under § 7.19(e), except where paternity has already been established by court order or other operation of law.

g. "Best interests of the child" means financial stability for the care of the child, ensuring a noncustodial parent/shared placement parents provide financial support, along with medical support. In paternity cases it is in the best interests of the child to have paternity established, or corrected, unless an exception applies.

h. "Child" means a biological child or adopted child, except that under Chapter III *Paternity*, "child" refers only to a biological child.

i. "Child support" or "child support obligation" means the total dollar amount of child support, including but not limited to payments for current custodial child support, custodial arrears, cash medical support 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.

j. "Clear and convincing evidence" means a medium level of burden of proof which is a more rigorous standard to meet than the preponderance of evidence standard, but a less rigorous standard to meet than proving evidence beyond a reasonable doubt. In order to meet the standard and prove something by clear and convincing evidence, a party must prove that it is substantially more likely than not that it is true.

k. "Code" means the HO-CHUNK NATION CHILD SUPPORT CODE (4 HCC § 7), unless the context used herein clearly indicates otherwise.

l. "Continuing Exclusive Jurisdiction" The doctrine that only one support order should be effective and enforceable between the same parties at any one time and that when a non-Ho-Chunk court/agency has acquired jurisdiction to determine

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child support and custody, it retains authority to amend and modify its orders therein. The Ho-Chunk Nation has continuing exclusive jurisdiction only in cases which it has established and those cases transferred to Ho-Chunk Nation Jurisdiction.

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- m. "Court" means the Ho-Chunk Nation Trial Court, unless otherwise indicated.
- n. "Custodial Parent" means the parent that has primary placement, care and/or control of the child.
- o. "Good faith" means an honest belief or purpose and the lack of intent to mislead or defraud.
- p. "Gross income" means any form of payment due to an individual regardless of source, including, but not limited to:
 - i. Salary and wages;
 - ii. Employee bonuses
 - iii. Interest and investments;
 - iv. Social Security disability and old age insurance (SSDI) benefits under 42 USC 401 to 403 (*cf.* xiv. 7., below);
 - v. Net proceeds resulting from worker's compensation or other personal injury awards intended to replace income;
 - vi. Unemployment compensation;
 - vii. Income continuation benefits;
 - viii. Voluntary deferred compensation and voluntary employee contributions to the following: employee benefit plan, profit-sharing, pensions or retirement accounts;
 - ix. Military allowance and veterans benefits;
 - x. 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;
 - xi. Per capita distribution;
 - xii. Tribal bonuses (Christmas bonus);
 - xiii. Trust fund distribution;
 - xiv. Lease or rental income;
 - xv. Prizes over \$1,000.00; and
 - xvi. 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 share;
6. Public assistance or financial hardship payments paid by a county or tribe; and
7. Supplemental Security Income (SSI) under 42 USC 1381 to 1383(f) and state supplemental payments (*cf.* iii., above).

q. “Guidelines” means the Ho-Chunk Nation Child Support Guidelines and are only used in cases that have continuing exclusive jurisdiction, establishment of support and review. (See 4 HCC §.7.45).

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r. “Guardian *ad Litem*” (GAL) means a person appointed by the court to represent the best interests of a child under this code.

s. “Imputed wage/income” means the amount that a parent could have earned by working forty (40) hours based upon their previous work history. Imputation will take into consideration earning capacity of the payer based upon the individual’s education, training and lack of disability. The base rate for imputed wage will be at the federal minimum wage if the individual lacks work history and education. Imputed income is not a deviation from the guidelines.

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t. “Income Withholding Order (IWO)” an administrative agency generated order using federally required form that is completed and only permitted to be submitted to the Ho-Chunk Nation Department of Treasury or an employer in conjunction with a Ho-Chunk Nation case.

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u. “Indian tribe” means the tribe, band, nation, Alaska Native group recognized by the Secretary of the Interior as eligible for services provided to Indians.

v. “Intact family” means a family in which the child or children and the payer and payee reside in the same household and the payer shares his or her income directly or indirectly with the child or children.

w. “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 as adopted by the court in temporary/final judgements from the parties’ agreement(s).

i. Major decisions may 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.

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x. "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.

y. "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:

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"Non-custodial parent" shall mean the parent of a child who does not hold primary placement, care and/or control of the child.¶

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- i. Being identified as the father on the child's birth certificate; or
- ii. To a court, or through formal paternity proceedings under state or Ho-Chunk Nation law.

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z. "Payer" means the parent or other responsible party who incurs a legal obligation for child support as the result of a judicial or administrative order.

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aa. "Payee" means the parent or legal custodian who is due the child support obligation payment as the result of a judicial or administrative order.

bb. "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.

cc. "Registrar" means a government officer who has the custody and charge of the keeping of a registry or register, whether said registry or register contains physical or electronic records, or both (See 4 HCC § 7.20 and 7.21c).

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dd. "Self-Authenticating Document" means any document that conforms to Federal Rules of Evidence 902. Until such time as the Ho-Chunk Nation should establish another standard.

ee. "Spokesperson" means a person authorized to speak on behalf of a Ho-Chunk person for a specific hearing in Court.

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ff. "Stipulation" or "Stipulated Order" means an order produced by mutual agreement of the parties involved that is also approved by the agency attorney and notarized.

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or if filing in court, an agreement that is notarized and approved by the agency attorney.

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gg. "TANF" means Temporary Assistance for Needy Families program.

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hh. "Underemployed" means not having at least forty (40) hours of paid work or not doing work that makes full use of a person's skills and abilities.

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ii. "Voluntary Paternity Acknowledgment" (VPA) means a form that can create legal fatherhood, but not confer legal rights of visitation and or custody.

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jj. "Zero dollar (\$0) order" means an order typically used in cases where the parents have 50/50 shared custody. Otherwise, it may be implemented if both parties are in agreement. This keeps the child support or health insurance obligation open and facilitates future modification. See 4 HCC §§ 7.32(c)(i), 40a & 45m(2).

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"Treasurer" means the Ho-Chunk Nation Department of Treasury.¶

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CHAPTER II JURISDICTION AND 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 Ho-Chunk 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.

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b. This code vests no jurisdiction in court over tribal enrollment.

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6. Jurisdiction.

a. The Ho-Chunk Nation Child Support Agency shall have jurisdiction over actions to establish, modify, and enforce child support orders brought under this chapter for actions arising under Title IV- D of the Social Security Act, 42 USC 651 et seq., as amended, and the Title IV-D rules and regulations.

b. The Ho-Chunk Nation Trial Court is vested with the fullest jurisdiction permissible under applicable law in the absence of an administrative remedy.

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c. Personal jurisdiction for the agency and court includes, but is not limited to the following:

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- 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 agency or 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 Ho-Chunk Nation lands with a child who is enrolled or eligible to be enrolled with the Ho-Chunk Nation; or
- v. Individuals employed by the Ho-Chunk Nation, for the sole purpose of registering and enforcing Income Withholding Orders (IWO) of foreign jurisdictions.

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7. **Judicial Procedures – General**

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- a. Proceedings under this code are civil actions and are governed by applicable provisions of the Ho-Chunk Nation Rules of Civil Procedure.
- 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 court.

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

- a. The agency and court shall have jurisdiction to register and enforce foreign orders, judgments, and decrees addressing child support.
- b. Properly issued child support orders, agency income withholding orders, judgments or decrees of other Indian tribes, tribal organizations, and states, that relate to child

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support shall be registered and enforced in accordance with the requirements under Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B and 4 HCC § 7.45.

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9. Transfer of Jurisdiction.

a. The agency has the authority to accept electronic transfer of cases from within the State of Wisconsin. The Ho-Chunk Nation Trial Court has the authority to accept transfers of cases from foreign courts or governments for proceedings under this Code. The Ho-Chunk Nation Child Support Agency will work with a foreign jurisdiction for the administrative transfer of cases not already registered with the Ho-Chunk Nation Trial Court.

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b. The Ho-Chunk Nation Trial Court has the authority to accept transfers of cases that are currently registered and enforced by the Ho-Chunk Nation Trial Court.

i. Upon transfer of a child support case to Ho-Chunk Nation jurisdiction, all prior monetary obligations (including interest based) shall be honored, preserved and enforced as authorized by Ho-Chunk Nation's laws.

ii. Any waiver, relinquishment or dismissal of debt shall only be upon mutual agreement of the parties, i.e. stipulation/notarized agreement between the parties (or heirs) and approved by the agency.

iii. Any debt otherwise discharged is an unlawful taking of the payee's property. Any unlawful taking that predates this code will be reinstated administratively and enforced judicially.

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c. The agency or court shall only transfer a case under this code to a foreign court or government if it has no jurisdiction over the case or for compelling reasons determined in a hearing.

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CHAPTER III PATERNITY

10. **General.** This chapter provides a process for the court or Child Support Agency to establish the paternity of a child. Paternity may be established by both court proceedings and/or administrative process.

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 person is presumed to be the biological father and/or legal parent of a child if the person and the biological and legal 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 Ho-Chunk Nation recognizes that determining biological paternity is important for the purpose of tribal membership and the benefits associated with it.
- d. A paternity proceeding under this chapter stands alone as a separate proceeding.
- e. The provisions of this chapter may be applied, as far as is practicable, to the determination of the existence or nonexistence of a mother-child and/or a parent-child relationship.
- f. Confidentiality of Paternity Records. The records filed in a paternity action shall be confidential and all hearings up to the determination of paternity shall be closed. Only parties to the case may obtain copies of the files; in privacy protected actions, disclosure of specific information about any party or by any party may be subject to court-imposed restrictions, the violation of which may be punished by contempt of court.
- g. No Statute of Limitations. An action to establish paternity shall not be subject to a statute of limitations.
- h. The court shall appoint a guardian *ad Litem* for a minor biological mother or minor biological father named in a paternity action. Said guardian *ad Litem* shall represent the best interests of the minor parent until a judgment of paternity has been filed with the court.

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11. Administrative Paternity Process.

- a. An individual or party seeking to establish paternity must submit an agency referral or the individual must complete an interview with the HCN CSA and an Affidavit for Paternity. The affidavit must contain the following:

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b. Complete name of the person requesting the service. This can be any of the following:

- i. Biological mother;
- ii. Alleged father;
- iii. Guardian in care of minor child;
- iv. Ho-Chunk Nation Child Support Agency; or
- v. Adult child whose paternity was never established.

c. The name, date of birth and birth weight of the minor child if known;

d. The conceptive period (generally eight (8) through ten (10) months prior to the birth of the child);

e. Whether or not the biological mother of the child is currently married or was married during the conceptive period;

f. The names of all persons the biological mother had sexual relations (intercourse) with during the conceptive period; and

g. The affidavit must be signed before a notary.

h. A genetic test is then conducted, samples sent in to the laboratory and results are then mailed to the agency. The agency will schedule an appointment with the parties to review the genetic test results and complete the Voluntary Paternity Acknowledgement.

i. If the parents fail to cooperate with the agency processes, then the agency may:

- i. File an administrative paternity order with the State of Wisconsin Vital Statistics;
- ii. File a paternity action with the Ho-Chunk Nation Trial Court to resolve any issues;
- iii. Place an administrative hold on future tribal payments until the part(y)ies cooperate.

12. **Judicial Paternity Actions.**

a. A petition can be filed by the Ho-Chunk Nation Child Support Agency requesting the court to establish paternity on behalf of the following:

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<#>¶
<#>A statement acknowledging paternity that is on file with a federally recognized Indian tribe and/or state registrar shall be conclusive, provided the tribe and/or state recognizes the document as a determination of paternity.¶

<#>¶
<#>For purposes of paragraphs 11. a. & b., above, an electronic or physical copy produced from an Indian tribe's or state registrar's website or other such official electronic files purporting to be a certification of a paternity determination shall be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity. Such a self-authenticating document on the paternity issue requires no extrinsic evidence under Federal Rule 902.¶

<#>¶
<#>If the child was born in a state other than Wisconsin, the parents can check with the other state registrar to determine what form they need to complete to voluntarily acknowledge paternity.¶

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<#>A minor alleged parent lacks the legal capacity to sign a statement acknowledging paternity.

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- 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 biological mother;
- iii. An alleged father of the child;
- iv. Legal parent (a person on a birth certificate or person or agency that has legal custody) of the child; or
- v. A domestic or foreign agency.

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

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- a. Complete name of the person filing this action. This can be any of the following:
 - i. Biological mother;
 - ii. Alleged father;
 - iii. Guardian in care of minor child;
 - iv. Ho-Chunk Nation Child Support Agency; or
 - v. Adult child whose paternity was never established.

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- b. The name, date of birth and birth weight of the minor child if known;

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- c. The conceptive period (generally eight (8) through ten (10) months prior to the birth of the child);

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- d. Whether or not the biological mother of the child is currently married or was married during the conceptive period;

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- e. The names of all persons the biological mother had sexual relations (intercourse) with during the conceptive period; and

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- f. The affidavit must be signed before a notary.

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14. Petition for Paternity.

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- a. The Petition shall state the following information:
 - i. The name, date of birth, address, and tribal affiliation, if any, of the biological mother, the alleged father(s), and of the petitioner.
 - ii. The initials and date of birth of the child;
 - iii. Disclosure of specific information about any or by any party may be subject to court-imposed restrictions in privacy protected actions;

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- 1. A Confidential Addendum shall be completed and filed with the court listing the full legal name, date of birth, **last four digits of the** social security number, tribal enrollment number, and current phone number of the parties and the child at issue. Said document shall be kept confidential by the court.
- iv. Whether biological mother was/is married, to whom, and the dates of marriage, separation and divorce, if any;
- v. Whether there have been any court or administrative **proceedings**, any termination of parental rights or adoption proceedings; and
- vi. Whether or not a name change for the child is requested.

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Deleted: paternity proceedings or state paternity acknowledgements issued or filed concerning the child, and whether there has been

15. Summons. A Summons must be served with the Petition, Affidavit of Paternity, and Notice to Respondent.

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- 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 sufficient 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.

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16. Notice to Respondent – Content At a minimum the Notice to Respondent shall include the following language:

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“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.

You may request a genetic test which will indicate the probability of paternity of the child in question. The Court will order a genetic test upon a 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.

The petitioner has the burden of proving by clear and convincing evidence that you are the biological father of the child. If a genetic test shows that you are not excluded as the biological father and that the statistical probability of your being the father is ninety-nine percent (99.0%) or higher, you shall be presumed to be the father.

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 conceptive period; or
- iii. That another male had sexual intercourse with the mother of the child during the conceptive period.

If you fail to appear at any stage of the proceeding, including a scheduled genetic test, the court may find you in contempt.”

17. Genetic Test.

- a. Genetic test may be ordered by the court or an administrative action.¹
- b. The court may, or at the request of a party shall, require the child, mother and alleged father(s) to submit to genetic testing. 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.
- c. In the event of a deceased or missing father, the court shall require the following parties to be tested;
 - i. Paternal Grandfather of child in question;
 - ii. Alleged father’s biological sibling; and/or
 - iii. Biological child(ren) of alleged father.
- d. 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;

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¹ Administrative action: A the request of, and with the agreement of both parties, in anticipation of signing the Voluntary Paternity Acknowledgment Form, the Child Support Agency carries out the genetic testing process.

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- ii. The biological mother shall notify the Ho-Chunk Nation Child Support Agency at the time of collection 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 Agency shall file the test results with the court and send all parties a copy of the test results by first-class mail; *See Ho-Chunk Nation Rules of Civil Procedure, Rule 5(C)(3)*.
 - iv. Unless a party objects to the results of genetic tests in writing, at least five (5) calendar days before the hearing date, 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.
- e. Good Cause Not to Reveal Father's Identity. A woman may be excused from submitting to genetic testing or from identifying or locating the alleged father of her child when there is good cause not to reveal the alleged father's 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 alleged father is not in the best interest of the child.

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18. 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. All parties addressed in the Petition for Paternity 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.

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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, via first-class mail. *See Ho-Chunk Nation Rules of Civil Procedure, Rule 5(C)(3).*

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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.

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e. Presumption of Paternity Based on Marriage of the Parties.

- i. A person is presumed to be the parent of a child if any of the following apply:
 - 1. An individual and the child's biological mother are/or had been married to each other and the child was conceived or born after the marriage and before the granting of a decree of legal separation, annulment, or divorce between the parties;
 - 2. An individual and the child's biological mother are/or had been married to each other and the child was born within three hundred (300) days after the marriage was dissolved;
 - 3. An individual and the child's biological mother were married to each other after the child was born but the individual and the child's biological mother had a relationship with one another during the period of time within which the child was conceived and no other

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individual 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 may appoint a Guardian *ad Litem* (GAL) to represent the best interests of the child in question. If a GAL is appointed:
- i. The GAL will determine whether or not it is in the best interests of the child that a person other than the spouse of the biological mother be determined to be the biological parent.
 - ii. Upon recommendation of the GAL genetic tests shall be conducted, the GAL will also indicate which individuals must submit to genetic testing. The court shall give great weight to the GAL's reports and recommendations, on whether or not genetic testing should be conducted and on whom, if any, and on whether or not the marital presumption as to the parentage of the child shall be overcome.
 - iii. Once paternity has been adjudicated and the marital presumption has been overcome the spouse is no longer a party to the action.

19. Paternity Orders.

- a. Adjudicated 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. 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 Agency file an amended vital records form with the state registrar, if the child was born in the state of Wisconsin.
 - a. If the child was born outside of the State of Wisconsin, the Ho-Chunk Nation Child Support Agency will provide a certified Ho-Chunk Nation paternity order to the parent to file with the state registrar in which the child was born.
- b. Disestablishment of Paternity. As a matter of policy, the Ho-Chunk Nation Child Support Agency cannot participate in, the disestablishment of paternity except for overcoming a marital presumption of fatherhood.

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¶
Stipulated Paternity Orders. ¶
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:¶
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;¶
The parties must assure that their consent to the proposed agreed order is not the result of coercion, threat, duress, fraud, overreaching, or improper promise on the part of any person;¶
The parties shall initial the waiver of the person's rights to a spokesperson, lay advocate, or attorney;¶
Parties shall initial the waiver of a hearing regarding the burden of proof as to each issue; and¶
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.

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- c. Establishment of Child Support. Child support shall be established in a separate action and the obligation commencement date may be backdated to the date the Petition for Paternity was filed if both of the following exist:
 - i. The parties have not resided together for the duration of the paternity action; and
 - ii. Child support is requested within one (1) year of the adjudication of paternity.

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20. Voluntary Paternity Acknowledgment.

a. Conclusive determination of Paternity. A statement acknowledging paternity that is on file with the State of Wisconsin registrar under Wis. Stat. § 69.15(3)(b)3 or succeeding laws, after the last day on which a person may timely rescind the statement, as specified in Wis. Stat. § 69.15(3m), is conclusive, which shall have the same force and effect as a judgment of paternity.

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b. A statement acknowledging paternity that is on file with a federally recognized Indian tribe and/or state registrar shall be conclusive, provided the tribe and/or state accepts/registers the document as a determination of paternity.

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c. For purposes of paragraphs 11. a. & b., above, an electronic or physical copy produced from an Indian tribe's or state registrar's website or other such official electronic files purporting to be a certification of a paternity determination shall be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity. Such a self-authenticating document on the paternity issue requires no extrinsic evidence under Federal Rule 902.

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d. If the child was born in a state other than Wisconsin, the parents can check with the other state registrar to determine what form they need to complete to voluntarily acknowledge paternity.

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e. A minor alleged parent lacks the legal capacity to sign a statement acknowledging paternity.

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CHAPTER IV
HO-CHUNK NATION EXCLUSIVE JURISDICTION CHILD SUPPORT
ESTABLISHMENT

21. Duty of Care and Support.

- a. Parents have a duty to care for their children. This applies to all biological 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,

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22. Child Support Agency.

- a. The agency operates on a child-centered, agreement based process when possible. The agency shall perform the following duties:
- b. Ensure that assistance is made available to parents in developing agreements for child support and health insurance;
- c. 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 code; and
- d. Represent the interests of the Ho-Chunk Nation in ensuring adequate support for children is provided.

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23. Child/Family Protection Petition and Guardianship Cases. This chapter may serve as a guide for establishment of child support in a child/family protection petition and guardianship cases. However, the HOCAN NATION CHILDREN AND FAMILY CODE shall supersede this chapter to the extent that the two chapters may be inconsistent.

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24. Child Support Establishment Actions.

- a. A petition can be filed by the Ho-Chunk Nation Child Support Agency requesting the court to establish child support on behalf of the following:

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- i. A child, or if the child is under the age of 18, the child's legal guardian;
- ii. The child's biological mother;
- iii. The child's biological father;
- iv. Legal guardian/parent (a person on a birth certificate, and person or agency that has legal custody) of the child; or
- v. A domestic or foreign agency.

25. Child Support Establishment -Family Law Action. The Child Support Agency has no role in custody and placement determinations and hearings other than to submit a temporary order and final calculations for an order. The court must send a referral to the agency in order to receive calculations for a temporary order if the agency has not been served with the initial paperwork for both divorces with children and non-marital custody and placement cases.

- i. A parent must serve the agency with the petition and all attachments for divorce/custody and placement matters. The parent will also sign the HCN CSA Statement of Understanding acknowledging that the attorney for the agency does not represent them in an individual capacity.
 - 1. Divorce or invalidity of marriage; Paternity; or
 - 2. Child custody.
 - a. Due to the lengthy nature of custody proceedings and the delay in support this creates, any request for child support must be determined before any child placement and custody matters can proceed.
 - b. The court shall issue an order for child support at the onset of these proceedings, when requested through the agency. Child Support is ordered as calculated taking into account the present placement of the children, at the onset of the action.
 - c. At the conclusion of any of the above mentioned proceedings the HCN CSA will be provided a copy of the final order so that modifications may be enforced and compliance tracked.

26. Petition for Separate Action for Establishment of Child Support.

- a. A petition for child support shall contain all of the following:
 - i. The name and address for the petitioner, the responding party and the child(ren)'s initials and date of birth for whom support is requested;
 - 1. A confidential addendum shall be filed with the court listing the full legal names, dates of birth, last four digits of the social security number and tribal identification numbers of the parties. Said document shall be confidential and sealed by the court.
 - ii. The relief requested, which may include but is not limited to, the following:

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<#>A legal guardian of a minor child.¶

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1. An order for child support;
 2. An order regarding the provision of health insurance coverage;
 3. An order regarding payment for half of uninsured medical expenses;
 4. An order to determine which parent may claim the child as a dependent for income tax purposes.
 5. An order for payment on arrears collected at the rate of twenty percent (20%) of current support ordered.
 6. An order to perform work searches.
 7. An order to obtain job training/education.
 8. An order for imputation of wages is never a deviation from the guidelines.
- iii. A statement whether child support payments should be made by wage withholding and/or per capita/tribal payment distribution or direct payment to the Wisconsin Support Collections Trust Fund (WISCTF);
1. If the payer is more than one (1) month behind in voluntary payments, child support obligations will automatically be submitted by tribal payment 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. Proceeding requesting a restraining order involving the child or a party.
- v. Financial information such as employment and wages;
1. If a parent is voluntarily unemployed or underemployed without good cause, the agency may impute income to the parent based on the parent's earning capacity and ability to pay.
 2. Incarceration does not excuse a parent from paying child support if they still receive tribal payments as they have the ability to pay.
- vi. A statement that the parties are no longer residing together; and
- vii. Child support orders may be established for future support only, but backdated to the date of the filing of a petition or motion (divorce, custody and placement, child support or paternity) either administratively or judicially, or the date of the substantial change in circumstances which authorized the review, whichever is earlier.
1. This is to ensure that children are not left without support, or one parent is not caused undue burden without any recourse for

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<#>Any future modifications regarding custody and placement shall be addressed in a separate Custody and Placement (CPL) matter.

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reimbursement of expenses incurred during a protracted legal matter or due to the delay of rendering a judicial order.

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27. Agency Affidavit for Establishment of Child Support.

a. 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 (20) days prior to the initial hearing. The affidavit for establishment must contain the following information:

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- i. A statement attesting to the accuracy of the facts given in the petition for establishment;
- ii. Attestation to legal parentage/guardianship;
- iii. The initials and date of birth of each child;
- iv. The legal name of the paying parent and if they are a serial payer;
- v. The amount of child support requested, with the commencement date as well as the termination date;

1. Child support orders may be established for future support only, but backdated to the date of the filing of a petition or motion (petition for divorce, custody and placement, child support or paternity) either administratively or judicially, or the date of the substantial change in circumstances which authorized the review, whichever is earlier.

a. This to ensure that children are not left without support, or one parent is not caused undue burden without any recourse for reimbursement of expenses incurred during a protracted legal matter or delay in the rendering of a judicial order.

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2. If the amount deviates from the guideline amount, there must be an explanation for the deviation.

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3. If the affidavit for establishment contains any non-cash benefits, the affidavit shall state the non-cash benefit and provide a dollar value amount of 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 and /or authorized by law.

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vi. Whether or not one or both parents shall utilize the services available to him/her to obtain and maintain regular employment and/or job training. See 4 HCC § 7.32;

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vii. The amount paid for health insurance for the minor child, if any;

viii. Request for half of uninsured health/medical expenses;

ix. The agency must certify that they reviewed the best known financial information available at the time and its recommendation is based upon that information;

1. ~~In the absence of financial information, the agency will impute wages based on information it independently collects, including but not limited to: work history, absence of disability, education level and skill set of the payer.~~

x. In all cases where children are subject to separate child protection proceedings and are placed in out-of-home care, the agency shall recommend a per child order.

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28. 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.

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29. 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, (20) 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.

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b. Service of Child Support Petition, Affidavit for Establishment and Summons.

i. The Summons shall be issued by the clerk of court and shall be served with a copy of the filed Petition and Affidavit for Establishment attached.

ii. The Petition, Affidavit for Establishment, and Summons must be served using one of the following methods:

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1. Personal Service. Personal service may be effected 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 neither a party to the action nor a member of a party's immediate family, with the exception of those persons acting on behalf of the Ho-Chunk Nation Child Support 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;

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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 court may allow service by publication. The court 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. See *HCNR. Civ. Pro.*, Rule 5C(f).

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.

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c. 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 twenty (20) 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.

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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.

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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.

d. Response.

i. Unless the parties have filed a joint petition, the respondent shall file his or her response with the court, within twenty (20) calendar days after the respondent is served with a copy of the Petition, or within twenty (20) days if service was by publication. The response shall include a completed financial disclosure form as stated below, and authorization for the release of all financial records to the Ho-Chunk Nation Child Support Agency.

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The respondent shall cause a copy of the response to be served upon the petitioner and agency.

e. Notice of Hearing. The date, time and place of the initial hearing shall be contained in the summons. The court shall serve the Notice of Hearing on the parties and the agency.

- 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 Notices of Hearing, issued by the court.

f. Conduct of the Hearing.

- i. When the respondent fails to appear or otherwise defend, the court may enter a Default Child Support Order upon finding the following:
 - 1. The court has jurisdiction over the subject matter of the case and over the respondent;
 - 2. The respondent was given proper service of the petition, summons, and proper notice of the hearing;
 - 3. The petition or the recommendation of the agency with the financial information shall determine the obligation based on calculation of income as provided as well as:
 - a. The ability to pay
 - b. The ability to work
 - 4. Where good cause not to impute income is present, the court shall have the authority to issue a zero dollar (\$0) order.
- ii. Who May Attend. Only those persons the court finds to have a legitimate interest in the proceedings may attend hearings under this chapter.
- iii. 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*. Agency staff shall 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.
- iv. The court shall review the documents filed in the case, hear the testimony of each party, and consider any other evidence presented. The court shall consider and give great weight to the recommendation of the agency.
- v. An agency affidavit is conclusive evidence on an issue and meets the Best Evidence Rule, satisfying the Federal Rules of Evidence.
- vi. 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

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1. The respondent may also file a proposed Parenting Plan.¶

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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:¶
Departments of the Ho-Chunk Nation.¶
Ho-Chunk Nation Housing and Community Development Agency.¶
Ho-Chunk Nation Tribal enterprises.¶
Any person or entity doing business on lands under the jurisdiction of the Ho-Chunk Nation.¶
The Agency is authorized to request information from off-reservation employers, government agencies and other entities, concomitant with its responsibilities as a IV-D agency.¶
¶
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.¶

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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.

- vii. 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.
- viii. The court may continue the case at any point pending referral of the parties to the agency, if appropriate.

30. 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 apply for services with the agency to assist them in developing 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 and Order.
- e. If the Stipulation and Order address some but not all of the required issues, the court may approve any partial agreement.
 - i. A hearing will be scheduled by the court to resolve the remaining issues either *sua sponte* or upon motion of any party.
 - ii. The case will then proceed to a hearing on the remaining issues. Any Stipulated Order terminates when a new order is entered or when the Petition is dismissed.

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31. Establishment of a Child Support Obligation. The court shall establish the child support obligation, including provisions 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.

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b. If the parties have proposed a partial agreed upon order and the agency has not objected, the court may adopt the agreed upon portions as an 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.

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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.

- i. Regardless the actual amount ordered on current support and arrears payments, the amount garnished from per capita/tribal payments will never exceed a sixty percent (60%) cap on garnishment of the per capita disbursement/tribal payments.

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d. The court shall order past child support (arrears) be paid at the rate of twenty percent (20%) of the current support.

- i. Regardless the actual amount ordered on current support and arrears payments, the amount garnished from per capita/tribal payments will never exceed a sixty percent (60%) cap on garnishment of the per capita disbursement/tribal payments.

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e. Regardless of paragraphs (a) through (c), above, the court shall adopt the method of payment (wage withholding, per capita/tribal payments, 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 child support payments, an income withholding order will be entered and filed with the employer, and/or with the Ho-Chunk Nation Department of Treasury for garnishment of per capita/tribal payments distributions.

- i. The default form of payment is garnishment from per capita/tribal payments. The agency will use the standard federal income/agency withholding form to fulfill the required child support obligation and is only permitted to submit this form to an employer or the Ho-Chunk Nation Department of Treasury.

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32. 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:

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- 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 Agency in accordance with the guidelines;
 - i. Good cause not to impute income includes but is not limited to:
 - 1. Total physical disability; and
 - 2. Absolute lack of ability to pay; or
 - 3. Legally barred from working in the United States;
 - The court shall have the authority to issue a zero dollar (\$0) order.
 - ii. The court shall also include an explicit finding that judgment is granted for any arrears to the date of the particular hearing.
 - 1. The court shall order garnishment of income for arrears at the rate of twenty percent (20%) of the ordered current support. As with all amounts ordered, the Ho-Chunk Department of Treasury will not garnish more than sixty percent (60%) of a tribal member's per capita/tribal payment disbursement.
 - iii. The agency will submit a certified arrears statement periodically to the Ho-Chunk Nation Department of Treasury every two years or earlier as needed.
 - iv. The agency is not required to file an updated arrears statement with the court, but may do so of its own accord.
- 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; Child support orders may be established for future support only, but backdated to the date of the filing of a petition or motion (petition for divorce, custody and placement, child support or paternity) either administratively or judicially, or the date of the substantial change in circumstances which authorized the review, whichever is earlier.
 - i. This is to ensure that children are not left without support, or one parent is not caused undue burden without any recourse for reimbursement of expenses incurred during a protracted legal matter or delay in the rendering of a judicial order.

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- g. The frequency of child support payments;
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- 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 petition. Commonly applicable in custody and placement, and divorces filed before the child support petition.
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- 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;
 - 1. If an arrearage exists and current support has ceased, repayment of arrears shall continue at the rate of the previously ordered current support amount plus the twenty percent (20%) of current support arrears rate until all arrearages have been satisfied.
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- j. To whom or to what entity child support payments are to be made;
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- k. In default child support cases, facts supporting service of the Petition, Summons, and Notice to Respondent;
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- l. The extent to which the order differs from the recommendation of the agency;
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- m. The amount of cash payment which is allocated to work related day care or health insurance, if any;
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- n. 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
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- o. 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.
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- p. A statement that if income withholding orders/agency garnishment forms are to be utilized, that such orders/agency garnishment forms will be sent to all applicable employers and the Ho-Chunk Nation Department of Treasury, so as to withhold amounts from all available funding streams.
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- i. The agency shall provide an itemization of amounts to be paid from different or multiple income sources 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. In the event future income withholding orders/agency garnishment forms are required under § 7.35, the funding streams shall be considered regardless of payer's choice of immediate payment method.
 - iv. The ordered amounts may be satisfied with all available funding streams.
- q. A statement that one or both parties shall utilize the services available to them to obtain and maintain regular employment and/or job training.
- r. A statement that failure to comply with a Ho-Chunk Nation child support order may be punishable as contempt of court under § 7.40.
- 33. Funding Stream Withholding.**
- a. The agency shall use a child support order to complete the standard Federal income withholding order (IWO) /agency garnishment form. In the event that the underlying order does not distinguish between funding sources, or the named funding source becomes unavailable or insufficient, all garnishments will be administratively determined and applied in ranked order: per capita, tribal payments and wages.
 - i. The IWO/agency garnishment forms shall include all of the following:
 - 1. The amount to be withheld and frequency of the withholding;
 - 2. A requirement that the employer/ Ho-Chunk Nation Department of Treasury sends the amount to the Wisconsin Support Collections Trust Fund (WI SCTF) within five (5) business days of the date the paying party is paid;
 - 3. A requirement that the employer/ Ho-Chunk Nation Department of Treasury continue to remit the amount withheld until further notice by the agency; and
 - 4. A statement that the employer/Ho-Chunk Nation Department of Treasury shall notify the agency promptly when the paying party terminates employment or funding stream 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 Agency shall mail the IWO/agency garnishment forms to the employer/ Ho-Chunk Nation Department of Treasury.

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iii. A maximum withholding of sixty percent (60%) of the payer's tribal per capita and/or tribal payments may be withheld. An ordered amount is permitted to be more than sixty percent (60%) of an individual's per capita and/or tribal payments, but the Ho-Chunk Nation Department of Treasury will not exceed a garnished amount of sixty percent (60%) of per capita and/or tribal payments.

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1. Only current support and current support arrears are permitted to be garnished from per capita and/or tribal payments.

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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.

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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 an arrearage exists at the time a support order would otherwise terminate, withholding shall continue in effect or may be administratively implemented in an amount equal to the support order until all arrears have been paid in full.

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2. The additional twenty percent (20%) of the monthly child support obligation will continue towards arrears or be administratively added, until all arrears have been paid in full.

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34. Default Child Support Orders.

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a. When the respondent fails to appear or otherwise defend, the court may enter a Default Child Support Order upon finding the following:

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i. The court has jurisdiction over the subject matter of the case and over the respondent;

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ii. The respondent was given proper service of the Petition, Summons, and Notice of Hearing;

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iii. The Petition or the recommendation of the agency shall determine the obligation based on calculation of income and ability to pay/ability to work as provided by the agency.

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CHAPTER V

MODIFICATION OF HO-CHUNK NATION EXCLUSIVE JURISDICTION CHILD SUPPORT ORDERS

35. Modification of Child Support Orders. Ho-Chunk Nation Child Support Orders, Transferred Orders, or instances where the Ho-Chunk Nation obtains continuing exclusive jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act Wis. Stats § 822.

- a. **Modification – Change of Circumstances:** When there has been a substantial change in circumstances, a person may request a review of existing child support orders for potential modification. 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 an updated support amount order;
 - iv. A child must be added to an existing case;
 - v. A child reaches the age of majority or is emancipated.

- b. **Modification – Review:** Every two (2) years the agency shall notify by mail (it is the responsibility of the parties to update the agency and court of any new address) 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. A party must request the review in writing, either on the agency provided form or otherwise;
 - ii. The parties must provide a completed financial disclosure with verification of their income within ten (10) days from the mailing date of the financial disclosure forms ;
 - 1. If the agency does not receive the financial disclosure forms within ten (10) days of mailing the financial disclosure forms, the agency must proceed with the review and independent investigation using the best available information as the basis for the calculations and imputation of income.
 - iii. The review will be conducted by the agency;
 - iv. Upon completion of the review, the agency shall determine whether or not there is a substantial change in circumstances;
 - v. If it is determined that there is a substantial change in circumstances, the agency will file a motion to modify support.

- c. A party may inquire with the agency about a modification of support, or file a Motion for Modification with the Ho-Chunk Nation Trial Court, the party, must provide a copy to the Ho-Chunk Nation Child Support Agency

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- i. The Motion shall include the factual basis for the motion and the modification requested, and serve a copy of that Motion on the Child Support Agency.
- ii. Both parties shall file updated financial information forms to the Child Support Agency at least ten (10) days before the modification hearing, except that:
- iii. In stipulated (agreed upon) modification orders, no financial information need be filed.

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d. Financial Disclosure.

- i. The parties shall provide complete disclosure of financial information, including verification of all income and resources, to the Child Support Agency.
- ii. Financial information shall be shared on forms provided by the agency.
- iii. Failure to provide the 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 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 the agency has certified it, has reviewed the financial information, and its recommendation is based upon that information.

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- e. Child support orders may be modified for future support only, but backdated to the date of the filing of a motion.
- f. Amounts of arrears shall not be modified, except by stipulation of the parties, or waiver of the arrears by the party owed the debt.

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36. Modification Hearings. If the parties are not in agreement with the modified child support amount determined as part of the review process, they may file a Motion for Modification Hearing.

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- a. Who may file.
 - i. Either parent; or
 - ii. Legal guardian; or
 - iii. The Ho-Chunk Nation Child Support Agency.

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- b. What must be filed:

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- i. Affidavit for Modification of child support. The Affidavit for the Modification of support can include the following:
 - 1. The change in circumstances;
 - 2. In cases of shared placement, 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. Documents reviewed and systems implemented in determining the basis for the request
 - a. i.e. determining the legal status of paternity of a child, as neither birth certificates, birth query forms, nor IWOs shall be filed with the court.
 - 5. Proposed changes to the Child Support Order.
- ii. Notice of Motion for Hearing. The Notice must contain the date, time and location of the hearing.
The Notice Motion for Hearing, with the Affidavit must be served on all parties ten (10) days prior to the hearing and be accompanied by a Certificate of Service.

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CHAPTER VI
ENFORCEMENT OF HO-CHUNK NATION EXCLUSIVE JURISDICTION
CHILD SUPPORT ORDERS²

- 37. Enforcement of Child Support Orders.** The Ho-Chunk Nation Child Support Agency will track, review, enforce, and document the progress of a party who is under an obligation to pay child support and has an open case with the agency, for orders established in the Ho-Chunk Nation jurisdiction or transferred to the jurisdiction of the Ho-Chunk Nation. The Ho-Chunk Child Support Agency's full enforcement remedies are reserved for those cases in which the Ho-Chunk Nation has or has obtained continuing exclusive jurisdiction. The agency may enforce a child support order through administrative or judicial processes.
- a. The agency may enforce a child support order through administrative or judicial process.³
 - 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/agency garnishment form will automatically be sent

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² This chapter refers to cases that originated or transferred to the exclusive jurisdiction of the Ho-Chunk Nation.

³ Examples of administrative enforcement remedies are listed under enforcement remedies that may become available such as suspension of licenses. See *Administrative Enforcement Actions* 4 HCC § 7.38.

to the employer/ Ho-Chunk Nation Department of Treasury to garnish available funding streams.

i. The Ho-Chunk Nation will use the standard Federal income withholding order and/or agency garnishment form.

ii. The income withholding order and/or agency garnishment form shall include all of the following:

1. The amount to be withheld and frequency of the withholding;
2. A requirement that the employer/ Ho-Chunk Nation Department of Treasury 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/ Ho-Chunk Nation Department of Treasury continue to remit the amount withheld until further notice by the Ho-Chunk Nation Child Support Agency; and
4. A statement that the employer/Ho-Chunk Nation Department of Treasury shall notify the agency promptly when the paying party terminates employment or funding stream status and provide the paying party's last known address and the name and address of the paying party's new employer, if known.

iii. The Ho-Chunk Nation Child Support Agency shall only mail the income withholding order/agency garnishment form to the employer/ Ho-Chunk Nation Department of Treasury and is not authorized to submit the IWO/agency garnishment form to any other entity.

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 Remedies. Remedies 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.

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1. The notice of delinquency will contain the following information:
 2. The date the delinquency occurred;
 3. The total amount of delinquency;
 4. The enforcement action that may be taken as a result of the delinquency; and
 5. 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 a written objection with the agency presenting good cause why an arrear 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 an account review before any enforcement action is taken.
 1. The account review will be completed by the agency within sixty (60) days and results will be mailed to all parties, to the last known address.
- 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.
 - 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.

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<#>Should the payer default on the alternative payment plan, he/she will be placed on the lien docket.¶

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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 payer'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.

4. Impounded/Set Aside/Capture Upon Release of Funds from Trust Fund or Inheritance. The agency may place a hold/impound/set aside/capture upon release an amount from a tribal member's trust fund or inheritance if there is a child support obligation arrearage, and the 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.

5. The Ho-Chunk Nation Department of Treasury and the trust fund company that manages the trust fund must comply with an order to impound the funds and send the impounded amount to the Wisconsin Support Collections Trust Fund.

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.

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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 a written 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 court determines that the arrears are correct the license will be suspended immediately.
 - b. If the court determines the arrears are incorrect, the agency will meet with the payer to correct any deficiencies.
- g. Seizure of Casino Winnings. If a payer accrues a child support obligation arrearage, and the 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, the agency can place the payer on a casino list/send an IWO for seizure of casino winnings for any Ho-Chunk Nation casino and/or any other reciprocating nation(s).
- h. Casino Banishment. If a payer accrues a child support obligation arrearage, and the 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, the agency may place the payer on a casino banishment list of the Ho-Chunk Nation and/or any other reciprocating nation(s).
- i. 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; and
 2. Information explaining how to interpret the records.
 - iii. Within twenty (20) days after receiving the relevant financial records, the payer may:

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- 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. The financial records are undeliverable due to the efforts to evade receipt of the financial documents or misinformation provided by the payer;
 - 3. No error was found in the financial records of the case; or
 - 4. The arrears exceed the required threshold amount after any errors in the financial record are corrected.
- j. Intercept of Lump Sum Pension Payments, Judgment Settlements and Trust Fund Disbursement. The agency may initiate the interception of lump-sum pension payments, judgments settlements, and/or trust fund disbursement when a payer has been placed on the lien docket.
 - i. When initiating the interception of lump-sum pension payments, judgment settlements and/or trust fund disbursement, the agency shall specify in the notice that the amount withheld from the lump-sum pension payment, judgment settlement, and/or trust fund disbursement may not exceed the payer's ownership interest in the payment.
- k. 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

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- 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.

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- i. 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:

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- i. The federal tax interception amount is zero (\$0).
 - ii. The payer makes a lump-sum payment ~~to pay off the balance of arrears~~
 - iii. The payer has to travel abroad because of a life-or-death situation involving a family member according to Ho-Chunk kinship.
 - iv. The payer was denied a passport in error.

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39. Exclusive Jurisdiction Child Support 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 Ho-Chunk Nation Child Support 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 response motion which includes a recommendation regarding appropriate enforcement action if the initial motion is filed by a parent. If the initial motion is 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. The time, date and place of the hearing; and

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ii. A statement that if the parent owing support fails to attend the hearing, enforcement action will be ordered by default.

e. Service. As required by *Ho-Chunk Nation Rules of Civil Procedure Rule 5*.

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. None of the following are to be considered a deviation from the guidelines:

i. Garnishment of per capita/tribal payments;

1. In the event an initial child support order was not entered addressing per capita/tribal payments, an order to garnish per capita/tribal payments may later be sought as an enforcement measure. An order garnishing per capita/tribal payments shall be provided to the agency to generate an income withholding order using the required federal form or the /agency garnishment form.

2. The agency will then send the tribal order and income withholding order agency garnishment form only to the employer/Ho-Chunk Nation Department of Treasury for garnishment.

ii. Interception of federal tribal 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;

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- 1. This is not a judgment and does not take the place or end/resolve the child support case in the Trial Court.
- v. Complete a minimum of ten (10) or more work searches per month;
- vi. 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:
 - a. How many hours the payer is required to complete; and
 - b. The time frame in which the hours must be completed; and
 - c. The entity that is responsible for monitoring the community service work.

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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 non-custodial 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 non-custodial 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 non-custodial parent has the ability to pay based upon the individual facts of the case.

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- 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.

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- 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 a 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.

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41. Transfer/Assignment of Temporary Assistance to Needy Families (TANF) Recipients' Rights.⁵

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- a. When an agency provides TANF benefits, all rights to child support for dependent child(ren) are transferred (assigned) to that agency limited to the amount ordered as a child support obligation. When child support payments are made on an irregular basis, a family has no financial stability. An agency is providing support for the child during a time period when child support payments should be helping to support the child.

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- b. As a TANF paying tribe, the Ho-Chunk Nation, 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 Ho-Chunk Nation 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.

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- c. When rights are transferred (assigned) pursuant to the Ho-Chunk Nation TANF policy and procedure, they are characterized as temporary or permanent as follows:

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- i. Temporary Transfer/Assignment. This is the transfer of rights to past child support that 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 Ho-Chunk Nation TANF program, but it may not be utilized to reimburse the Ho-Chunk Nation for the child's TANF grant. While it is held by the Ho-Chunk Nation, 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 Ho-Chunk Nation shall be paid to the payee under the child support order.

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⁵ 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.

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ii. Permanent Transfer/Assignment. This is the transfer of rights to past, present, and future child support 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.

d. Use of Payments.

i. Child support payments retained by the Ho-Chunk Nation TANF program under a permanent TANF assignment shall be expended for the benefit of the Ho-Chunk Nation's children and their families.

e. Pass-Through. Money received by the Ho-Chunk 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 Ho-Chunk Nation Legislature for the Ho-Chunk Nation's TANF Program.

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42. Distribution of Child Support Payments.

a. Except as provided in paragraphs b & c, 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. Per capita and tribal payments shall be distributed as follows:

- i. Only current support and principal balance of arrears are permitted to be garnished from per capita and tribal payments.
- ii. Only applied to a case as specified in a Ho-Chunk agency or court Order.

c. 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.
- d. 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.

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¶ 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. ¶

¶ 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.

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43. Termination of Enforcement of Ho-Chunk Nation Exclusive Jurisdiction Support Obligation.

- 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 Ho-Chunk Nation, if no other funding streams are available.
- b. The agency shall promptly terminate income withholding of any kind when there is no longer a current order for support and all allowable arrearage obligations have been satisfied.
- c. The death of the parent obligated to pay support.
- d. Transfer of the case to another jurisdiction.

**CHAPTER VII
REGISTRATION AND ENFORCEMENT OF FOREIGN CHILD SUPPORT
ORDERS**

44. Registration and Enforcement of Foreign Child Support Orders.

- a. Pursuant to § 7,6, the Ho-Chunk Nation Child Support Agency and Trial Court shall have jurisdiction to register 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 registered 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 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 an agency, court, county clerk, or a court seal, is sufficient evidence of authenticity if accompanied by a signature of the individual attesting to the authentication.

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- b. Any person, tribe, state, or foreign jurisdiction that wishes to enforce a child support order against per capita payments, wages, compensation, or other income from the Ho-Chunk Nation, must apply through the Ho-Chunk Nation Child Support Agency.

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- i. An initial transmittal and confidential addendum 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; and
 - 3. Signed certified account statement or affidavit, if arrears are being sought.

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- a. Only current child support and child support arrears are permitted to be garnished from per capita payments.

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- b. The agency must have an account statement that clearly delineates what the arrears are made up of, since only child support and child 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 take place.

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45. Administrative Enforcement of Foreign Orders.

- a. The agency will enforce foreign orders administratively whenever possible:
 - i. Accept, verify and review foreign documents purporting to be valid administrative or judicial orders;
 - ii. Complete the corresponding IWO/agency garnishment form for garnishment of funding stream;
 - iii. Mail out a Notice of Intent to Enforce, notifying the parties (payer and payee) of the pending enforcement and the right to object to enforcement. A party shall have ten (10) days in which to object to enforcement. The

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agency will not review the merits of the underlying foreign order, but may review the following:

1. Whether the foreign court or administrative agency had jurisdiction to enter the child support order.
 2. Whether fraud, duress, or coercion were relied upon in obtaining the Order.
 3. Whether the defendant had due process including proper notice and a fair hearing.
 4. The only issue that may be addressed in contesting an 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 non-custodial parent.
- iv. Upon receipt of an objection, the agency will offer to meet with the parties to clarify any issues of enforcement.
1. In the event that the party that objected fails to appear at the meeting, turns down the meeting, or does not respond to the invitation and scheduled meeting the objection is considered withdrawn and the foreign order will be enforced administratively.
- v. In the event that the meeting does not resolve the issues underlying the objection, the agency will file a Petition with the Ho-Chunk Nation Trial Court.
- vi. Track and document the appropriate garnishment of funding streams and application of amounts on the correct case(s);
- vii. Perform various administrative case management tasks including but not limited to: redirection of support, modify amounts of support obligation upon receipt of updated foreign orders, update case information, update arrears, and terminate or suspend garnishment;
- viii. Cases already registered and enforced through Ho-Chunk Nation Trial Court will remain open until closure is appropriate and/or requested by the agency or upon the natural closure of the case in the tribal court.

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46. Judicial Enforcement of Foreign Orders,

- a. In the absence of an administrative remedy the agency will enforce foreign orders judicially.
 - i. Following an objection to the administrative enforcement of an foreign order has been received by the agency within the ten (10) day timeframe, the Ho-Chunk Nation Child Support Agency will file a Petition to Register a Foreign Judgment or Order for Child Support, and all supporting documents with the Ho-Chunk Nation Trial Court.

1. The custodial parent will receive the documents via first class mail to his/her last known address;
 2. The non-custodial parent will receive the documents via certified mail, return receipt requested.
 3. ~~The court will schedule a hearing to register and enforce the foreign judgment or order for child support. 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 foreign 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 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 non-custodial parent.
 5. If the payer meets his/her burden, the agency will send all information, including the Ho-Chunk Nation Trial Court's Order Denying Registration of a Foreign Judgment or Order for Child Support, to the initiating jurisdiction for correction(s).
 6. If the payer fails to meet his/her burden then the Ho-Chunk Nation Trial Court shall continue to enforce, but may not modify, a registered order.
 7. The Ho-Chunk Nation Trial Court will send the Order (Registration and Enforcement of a Foreign Judgment or Order for Child Support) to the agency.
 8. The agency shall issue an income withholding order and send that, along with the Order (Registration 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 HCN CSA-issued IWO to the foreign jurisdiction for its records.
- ii. A maximum withholding of sixty percent (60%) of the payer's tribal per capita may be withheld.

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 <#>If the payer does not respond to the Notice of Intent to Register within twenty (20) days or does not object to the enforcement of the child support order, the agency will send the appropriate order(s) to be processed by the treasurer as a mandatory deduction from the payer's payroll and/or per capita.¶
 <#>Income withholding order issued by the agency.¶
 <#>Order (Registration of a Foreign Judgment or Order for Child Support) issued by the Ho-Chunk Nation Trial Court.¶
 <#>The agency shall send a copy of the tribal-issued IWO to the foreign jurisdiction.¶
 <#>If an objection is lodged, the agency will proceed to enforce the Order judicially.¶
 <#>If the payer returns the Motion to Object and Request for Hearing Notice within twenty (20) days.

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- 1. Only current support and current support arrears are permitted to be garnished from per capita payments.
- iii. 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.
- iv. When an income withholding order has been issued against a payer's wages, the order to withhold child support shall be administratively suspended ten (10) business days after the payer has terminated employment with the Ho-Chunk Nation.
- v. The agency shall promptly terminate income withholding when there is no longer a current order for support, all arrearages have been satisfied, the case is no longer enforceable for more than six (6) months, or the payer is deceased.

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47. Administrative Enforcement Due to Modification of Foreign Order for Child Support.

- a. If a foreign jurisdiction subsequently modifies its original order, or requests a change in enforcement, then the following procedures must be followed to address that modification within the Ho-Chunk Nation jurisdiction.
 - i. Any person, tribe, state, or foreign jurisdiction that wishes to enforce a modified order in Ho-Chunk Nation jurisdiction, or update/modify the enforcement carried out by the Ho-Chunk Nation, must notify the Ho-Chunk Nation Child Support Agency.
 - ii. A transmittal or other notification, with the following documentation will be needed depending on the modification in enforcement sought:
 - 1. An authenticated copy of the modified foreign court order, or an affidavit of the action sought meeting the authentication requirements set forth above;
 - 2. A corresponding modified income withholding order, if any; and
 - 3. Certified account statement, if arrears or closure is being sought.
 - a. Only current support and current support arrears are permitted to be garnished from per capita payments.
 - b. The Child Support Agency 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.

- iii. The Ho-Chunk Nation Child Support Agency will mail a Notice of Intent to Modify Child Support Withholding to all of the parties at their last known addresses, by first class mail.
- 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 Child Support Agency will issue a notice enforcing the modification (if in accordance with the laws of the Ho-Chunk Nation).
 - 1. The Ho-Chunk Nation Child Support Agency will send the appropriate order agency garnishment form to be processed by the treasurer as a mandatory deduction from his/her payroll and/or per capita/ tribal payments as authorized by law.
 - a. Income Withholding Order issued by the agency.
 - b. An agency garnishment form.
 - 2. The agency shall also send a copy of the tribal-issued IWO to the foreign jurisdiction for its records.

48. Judicial Modification of Ho-Chunk Nation Order Due to Modification of Foreign Order or request by Foreign Jurisdiction.

- a. If an objection is lodged, the agency will proceed to enforce the order judicially.
 - i. The Ho-Chunk Nation Child Support 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.
 - ii. A hearing regarding the registration and enforcement of the modified foreign order will be scheduled ten (10) days after service of said motion.
 - iii. 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.
 - iv. The hearing shall not review the merits of the Order and shall be limited to issues regarding:
 - 1. Whether the foreign court or administrative agency had jurisdiction to enter the child support order.
 - 2. Whether fraud, duress, or coercion were relied upon in obtaining the Order.
 - 3. Whether the defendant had due process including proper notice and a fair hearing.
 - v. The only issue that may be addressed in contesting an "Order" is whether there is any mistake of fact, i.e., error in the amount of current or overdue support or in the identity of the alleged noncustodial parent.
 - vi. If the payer meets his/her burden, then the Ho-Chunk Nation Child Support Agency will send all information, including the tribal Court Order denying

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- registration and enforcement of the modified order, to the initiating jurisdiction for correction.
- vii. If the payer fails to meet his/her burden, or fails to show up entirely, then the Ho-Chunk Nation Trial Court shall registration and enforce, but may not modify, the foreign jurisdiction's modified order.
- viii. The Ho-Chunk Nation Trial Court will send the Order (Granting Motion to Modify Child Support) to the Ho-Chunk Nation Child Support Agency.
- ix. The Ho-Chunk Nation Child Support Agency shall issue an Income Withholding Order and send that, along with the Order (Granting Motion to Modify Child Support), to the Ho-Chunk Nation, Department of Treasury as a mandatory deduction from the payer's payroll and/or per capita.
- x. The agency shall also send a copy of the tribal-issued IWO to the foreign jurisdiction for its records.
- xi. The agency is only permitted to submit an IWO to an employer or the Ho-Chunk Nation Department of Treasury.
- b. A maximum withholding of sixty percent (60%) of the payer's tribal per capita may be withheld.
- i. Only current support and current support arrears are permitted to be garnished from per capita payments.
- c. 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.
- d. 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 Ho-Chunk Nation.
- e. The agency will promptly terminate income withholding when there is no longer a current order for support, all arrearages have been satisfied, the case is no longer enforceable for more than six (6) months, or the payer is deceased.
- f. 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 state or tribe of residence for any party; or
- ii. Both parties have agreed to the Ho-Chunk Nation Trial Court assuming jurisdiction over the modification. In accordance with the Uniform Child Custody Jurisdiction and Enforcement Act Wis. Stats § 822.

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49. Termination of Enforcement of Foreign Orders in Ho-Chunk Nation Jurisdiction.

- 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 Ho-Chunk Nation.
- b. The agency shall promptly terminate income withholding of any kind when there is no longer a current order for support and all allowable arrearage obligations have been satisfied.
- c. The foreign jurisdiction terminates the underlying case or requests or assents to closure of the case in Ho-Chunk Nation jurisdiction.
- d. The agency may close a case that has become unenforceable for greater than six (6) months.
- e. The death of the parent obligated to pay support.

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CHAPTER VIII
TRANSFER OF JUDICIAL CHILD SUPPORT CASE TO HO-CHUNK NATION JURISDICTION

50. Transfer of an existing judicial child support case to the jurisdiction of the Ho-Chunk Nation may be accomplished currently registered foreign orders.

- a. General.
 - i. Who may request a transfer:
 - 1. A party to the case
 - 2. A county or tribal agency with exclusive jurisdiction
 - ii. How to request a transfer:
 - 1. A party must contact their county agency that has exclusive jurisdiction of the child support order and request a transfer under Wisconsin Statute 801.54.
 - 2. A party must contact their tribal agency and request a transfer under the tribal ordinance or procedure.
 - 3. An agency may contact the Ho-Chunk Nation Child Support Agency and request a transfer.
- b. The Ho-Chunk Nation Child Support Agency will negotiate any costs associated with the transfer of case files between the agencies and courts. If the parties are in agreement then the transfer process may begin.
- c. The county or tribal agency with exclusive jurisdiction will send out a letter regarding transfer of the case with the paperwork to request a hearing. This is also sent to the HCN SA with an affidavit of mailing.
 - i. The paperwork must include an opportunity to object to the transfer and provide for a hearing to be scheduled in the state or tribal court.
- d. After the Ho-Chunk Nation Child Support Agency receives the packet of mailings from the county or tribal agency, the Ho-Chunk Nation Child Support Agency

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will file a Motion for Conditional Acceptance of Transfer in the Ho-Chunk Nation Trial Court.

i. A party has ten (10) days to object to the Motion for Conditional Acceptance of Transfer. If any objection is received a hearing will be scheduled in the Ho-Chunk Nation Trial Court.

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e. The Ho-Chunk Nation Trial Court may issue an Order for Conditional Acceptance of Transfer.

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i. If an order is issued, the order will be sent to the parties and the county or tribe by the Ho-Chunk Nation Trial Court.

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f. Upon receipt of the Order for Conditional Acceptance, the county or tribe may submit the county or tribal court can issue an Order for Transfer and provide a certified copy of the order to the Ho-Chunk nation Child Support Agency.

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g. The certified copy of the order is received by the Ho-Chunk Nation Child Support Agency, it will be filed with the Ho-Chunk Nation Trial Court. The Ho-Chunk Nation Trial Court must issue an Order Accepting Transfer.

h. Any costs negotiated between the Ho-Chunk Nation Child Support Agency and the originating jurisdiction incurred for the transfer of the court files will be invoiced to the Ho-Chunk Child Support Agency.

i. The Ho-Chunk Nation trial Court Clerk of Court will make arrangements to pick up the foreign court file from your foreign county or tribal Clerk of Court.

i. The Ho-Chunk Nation Trial Court prefers a physical copy of the file with a certificate of authenticity for the file for the Clerk of Courts.

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1. If only an electronic version of the file is available then an affidavit with the encrypted jump drive is suitable.

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CHAPTER IX

CHILD SUPPORT GUIDELINES

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51. Child Support Guidelines for Ho-Chunk Nation Exclusive Jurisdiction Child Support Cases (Domestic Cases)

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a. General.

i. The Ho-Chunk Nation Child Support Guidelines set forth the rules under which a child support obligation is established for cases in which the Ho-Chunk Nation has exclusive jurisdiction. The Guidelines set a standard of adequate support for children subject to the ability of the parents to pay.

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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.

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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.

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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.

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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.

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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. Ho-Chunk Nation Trial Court. The court will generally enter an agreed order 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

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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.

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c. Establishing a Child Support Obligation. A child support obligation is established under the Guidelines using the following steps:

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i. Calculate the monthly gross income of the party obligated to pay child support.

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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.

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2. Gross income for someone who is unemployed/underemployed. The agency will have discretion to utilize all forms of income verification and income imputation and ability to pay including but not limited to:
- a. Review of two or more years of employment history, taking an average of the past years rates of pay;
 - b. An absence of disability claim validated and honored by a state or federal agency. Absence of disability benefits (Veterans Affairs/Social Security);
 - c. Imputation of federal minimum wage or tribal minimum wage depending on their work history, based upon 40 hour work week;
 - d. Gross income calculation/imputation should also take into account an individual payer's education and skill set.
- 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.

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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.

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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. Equivalent care is defined as a minimum of six (6) consecutive hours in which a meal is served.
- ii. 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.

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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.

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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.

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- 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. Serial Payer Calculation (prior obligations).
- i. When a Party has a legal duty to support 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 has 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

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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 a petition for support, divorce with children, paternity, or non-marital custody and placement.

i. Unless the agency recommends that child support shall commence during the period prior to the filing of the child support petition.

ii. Including but not limited to: establishment cases following a paternity adjudication. In such cases, the date of commencement may be the date that the Petition for Paternity was filed.

iii. Termination.

1. A parent's financial duties last until any of the following events:

a. The death of the child; (once all past due support and arrearages are satisfied.)

b. The death of the parent obligated to pay support;

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 (once all past due support and arrearages are satisfied.)

2. The child support obligation shall be prorated upon termination.

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. The child support shall follow the child and the agency may administratively redirect support as needed.

iii. There shall be no interest charge on past due support for cases initiated in the Ho-Chunk Nation Jurisdiction.

1. Cases transferring into the jurisdiction from a foreign jurisdiction that charged interest will have the interest debt included in as arrears and tracked separately from principle balance arrears (actual past due support). Interest-based arrears will only be garnishable from per capita or tribal payments to the extent authorized by Ho-Chunk Nation law.

iv. 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 any 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.

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- 2. 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.

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- 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 child support order shall indicate 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.

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m. Health Insurance.

- i. Provisions for health insurance coverage shall be included for the child in every child support order.

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- 1. When health insurance is available at a reasonable cost through one or both party's employment, 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.

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- 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 Ho-Chunk 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.

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- 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 agency or court will make a determination. The individuals must track the uninsured expenses and request the enforcement of any order assigning responsibility of these funds through a civil case (CV) before the Ho-Chunk Nation Court or another jurisdiction.

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- 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.

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o. Reimbursement.

- i. Upon presentation of receipts or other proper proof the court may order reimbursement and/or repayment as follows in a separate civil action (CV);
- ii. Reimbursement to the paying party for half of work-related day care expenses paid, but not utilized, by the receiving party for work or work-related activities in separate civil action (CV).
- iii. Repayment to the Ho-Chunk 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 Ho-Chunk Nation, This can be accomplished administratively.

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CHAPTER IX – APPEALS, SUNSET AND SEVERABILITY

52. Judicial Order: Appeal.

- a. Any interested party may appeal a final Ho-Chunk Nation Trial 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 Ho-Chunk Nation Trial Court. Such appeal shall be taken in the same manner in which appeals are taken from judgments or decrees of the Ho-Chunk Nation 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 Ho-Chunk Nation 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.

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53. Sunset and Transition. The Ho-Chunk Nation Child Support Agency is automatically intervened, and a party, in any cases existing in the Ho-Chunk Nation Trial Court in which

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child support is addressed. This code will be effective the date of passage, and any ongoing foreign cases being enforced in the Trial Court will now be resolved by the agency unless the agency files motions or petitions on foreign case issues.

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54. 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.

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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.
- 08/06/13 Legislature places amendments to the Child Support Enforcement Code (4 HCC § 7) out for 45 Day Public Review.
- 10/08/13 Adoption of Amendments to the Child Support Enforcement Code (4 HCC § 7) by Legislative Resolution 10/08/13C.
- 04/08/14 Quick Passage Procedure to Amend the Child Support Enforcement Code (4 HCC § 7) by Legislative Resolution 04/08/14L.
- 07/23/19 Legislature places amendments to the Child Support Enforcement Code (4 HCC § 7) out for 45 Day Public Review.
- 02/18/20 Adoption of Amendments to the Child Support Enforcement Code (4 HCC § 7) by Legislative Resolution 02/18/20A.

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A statement that the employer/income withholder shall notify the agency 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.

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and send it to the Ho-Chunk Nation Child Support Agency to be processed

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An order granting motion to modify issued by the Ho-Chunk Nation Trial Court.

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