**LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA**

Business Committee Conference Room-2nd Floor Norbert Hill Center  
November 6, 2019  
9:00 a.m.

I. Call to Order and Approval of the Agenda

II. Minutes to be Approved
   October 16, 2019 LOC Meeting Minutes (pg. 2)

III. Current Business
   1. Child Support Amendments (pg. 4)
   2. Indian Preference in Contracting Amendments (pg. 111)

IV. New Submissions

V. Additions

VI. Administrative Updates
   1. FY 19 Fourth Quarterly LOC Report (pg. 152)

VII. Executive Session

VIII. Recess/Adjourn
LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Oneida Business Committee Executive Conference Room-2nd Floor Norbert Hill Center
October 16, 2019
9:00 a.m.

Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Jennifer Webster
Excused: Ernest Stevens III
Others Present: Maureen Perkins, Brandon Wisneski, Clorissa Santiago, Jennifer Falck, Kristen Hooker, Rae Skenandore, JoAnne House, Lee Cornelius, Leyne Orosco

I. Call to Order and Approval of the Agenda
   David P. Jordan called the October 16, 2019, Legislative Operating Committee meeting to order at 9:00 a.m.

   Motion by Jennifer Webster to adopt the agenda; seconded by Daniel Guzman King. Motion carried unanimously.

II. Minutes to be Approved
   Motion by Jennifer Webster to approve the October 02, 2019, Legislative Operating Committee meeting minutes and forward to the Business Committee for consideration; seconded by Kirby Metoxen. Motion carried unanimously.

III. Current Business
   1. Citations Law (1:05-3:17)
      Motion by Jennifer Webster to approve the public meeting packet, with the updated draft and analysis, and forward the Citation Law to a public meeting to be held on November 22, 2019; seconded by Daniel Guzman King. Motion carried unanimously.

   2. Oneida Environmental Resources Board Bylaws Amendments (3:19-6:33)
      Motion by Kirby Metoxen to accept the Oneida Environmental Resources Board Bylaws Amendments and forward to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.

   3. Oneida Personnel Commission Bylaws Amendments (6:34-8:08)
      Motion by Jennifer Webster to accept the Oneida Personnel Commission Bylaws Amendments and forward to the Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.

   4. Oneida Land Claims Commission Bylaws Amendments (8:09-10:26)
      Motion by Kirby Metoxen to accept the Oneida Land Claims Commission Bylaws Amendments and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.

A good mind. A good heart. A strong fire. ~
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IV. New Submissions

V. Additions

VI. Administrative Items
      Motion by Kirby Metoxen to accept the eighth and final Children’s Code
      Implementation Plan Quarterly Update and forward to the Oneida Business Committee;
      seconded by Jennifer Webster. Motion carried unanimously.

VII. Executive Session

VIII. Adjourn
      Motion by Jennifer Webster to adjourn the October 16, 2019, Legislative Operating
      Committee meeting at 9:14 a.m.; seconded by Kirby Metoxen. Motion carried
      unanimously.
Legislative Operating Committee
November 6, 2019

Child Support Law Amendments

<table>
<thead>
<tr>
<th>Submission Date: 3/7/18</th>
<th>Public Meeting: 10/17/19</th>
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<tbody>
<tr>
<td>LOC Sponsor: David P. Jordan</td>
<td>Emergency Enacted: n/a</td>
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Summary: This item was submitted to the LOC by the Child Support Agency’s attorney. Currently the Child Support Law is accompanied by two rules. The Child Support Agency want to create more rules and proposed amending the law to include expanded rulemaking authority.

3/7/18 LOC: Motion by Kirby Metoxen to add the Child Support Amendments to the active files list as a high priority and assign David P. Jordan as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

4/5/18: Work Meeting. Present: Trina Schuyler, Lisa Peck, Clorissa Santiago, Brandon Wisneski, Michelle Gordon. The purpose of this work meeting was to review potential amendments to the Child Support law.

4/18/18: Work Meeting. Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Laura Laitinen-Warren. The purpose of this work meeting was to discuss the Child Support Department’s request for amendments, and determine if administrative rulemaking should be utilized. The drafting attorney will schedule a meeting with the LOC and the Child Support Department to begin discussing policy.

5/17/18: Work Meeting. Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck, Michelle Gordon. The purpose of this work meeting was to discuss and determine specific policy amendments the Child Support Department is seeking, and to discuss and determine a plan to move this legislative item forward.

6/8/18: Work Meeting. Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck, Michelle Gordon, Hon. Marcus Zielinski. The purpose of this work meeting was to begin discussing the reality of implementing bench warrants and other enforcement mechanisms.

Work Meeting. Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck, Michelle Gordon. The purpose of this work meeting is to begin discussing the potential amendments the Child Support Department wants the LOC to consider.

6/22/18: Work Meeting. Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck. The purpose of this work meeting was to continue discussing potential amendments to the Child Support law.

7/13/18: Work Meeting. Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck, Mike Hoeft. The purpose of this work meeting was to continue discussing potential amendments to the Child Support law.
8/9/18:  
**Work Meeting.** Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck, Michelle Gordon, Hon. Marcus Zielinski, Hon. Robert Collins III, Rich Vanboxtel, Eric Boulanger. The purpose of this work meeting was to discuss the potential of utilizing bench warrants in regard to child support matters.

8/17/18:  
**Work Meeting.** Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck, Michelle Gordon. The purpose of this work meeting was to continue discussing potential amendments to the review, review requested data regarding enforcement of child support, and determine next steps to moving this legislative item forward.

9/18/18:  
**Work Meeting.** Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck. The purpose of this work meeting was to continue discussing potential amendments to the law.

10/12/18:  
**Work Meeting:** Present: Brandon Wisneski, Trina Schuyler. The purpose of this work meeting was to prepare for and discuss an upcoming work meeting with the LOC.

10/26/18:  
**Work Meeting.** Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch. The purpose of this work meeting was to review the power point and handouts for the upcoming meeting with the LOC.

10/31/18:  
**Work Meeting.** Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Trina Schuyler. During this work meeting Trina gave PowerPoint presentation on Oneida’s Child Support Department. The LOC was then presented with policy considerations for proposed amendments regarding enforcement tools and modification of a child support order for an incarcerated parent. The LOC considered the proposed ideas, and directed the LRO to move forward pursuing research and drafting.

11/9/18:  
**Work Meeting.** Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch. The purpose of this work meeting was to discuss the LOC’s decisions regarding potential amendments, plan the next steps for moving forward, and plan an upcoming meeting with OPD.

12/6/18:  
**Work Meeting.** Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon. The purpose of this work meeting was to review drafted enforcement tools language and determine what information needs to be discussed with OPD in an upcoming work meeting scheduled for 12/10/18.

12/10/18:  
**Work Meeting.** Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon, Eric Boulanger. The purpose of this work meeting was to review drafted enforcement tools language and determine what information needs to be included in the Law. The LRO staff will bring the information collected during this work meeting to the LOC for their consideration.

12/19/18:  
**Work Meeting.** Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski. The purpose of this work meeting was to discuss the 12/10/18 work meeting with Child Support and OPD, and reconsider policy considerations regarding enforcement tools.

1/4/19:  
**Work Meeting.** Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon. The purpose of this work meeting was to discuss the LOC’s recent decision to not pursue the addition of proposed enforcement tools, and to begin reviewing the draft from the beginning to discuss other potential amendments.
2/1/19: Work Meeting. Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon. The purpose of this work meeting was to continue reviewing the law line by line to discuss potential amendments.

3/1/19: Work Meeting. Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon, Porsche Skenandore-Wheelock. The purpose of this work meeting was to finish reviewing the law line by line to discuss potential amendments. LRO will update the draft with all the proposed revisions.

4/5/19: Work Meeting. Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Porsche Skenandore-Wheelock. The purpose of this work meeting was to review the updated draft to ensure it adequately reflects decisions that were made regarding proposed amendments to the law.

4/30/19: Work Meeting. Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Porsche Skenandore-Wheelock. The purpose of this work meeting was to continue reviewing the updated draft to ensure it adequately reflects the decisions and recommendations that were made regarding the proposed amendments to the law. Department will continue to review the proposed language for compliance, and we will finish the review of the last portion of the draft during the next meeting.

5/16/19: Work Meeting. Present: Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon, JoAnne House, Tsyoashaht Delgado. The purpose of this work meeting was to complete the review of the updated draft to ensure it adequately reflects the decisions and recommendations that were made regarding the proposed amendments to the law. LRO will now update the draft and bring it to the LOC for review and consideration.

7/17/19: Work Meeting. Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to begin reviewing and making decisions to the proposed amendments to the Law.

7/18/19: Work Meeting. Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to continue reviewing and making decisions as to the proposed amendments to the Law.

7/25/19: Work Meeting. Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to continue reviewing and making decisions as to the proposed amendments to the Law.

8/7/19 LOC: Motion by Ernest Stevens III to have one more work session between the Legislative Operating Committee, Legislative Reference Office and the Child Support Agency; seconded by Kirby Metoxen. Motion carried unanimously.

8/20/19: OBC Work Session. Present: Tehassi Hill, Patricia King, David P. Jordan, Kirby Metoxen, Ernest Stevens III, Jo Anne House, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Melinda Danforth, Candice Skenandore, Lisa Liggins, Brian Doxtator. The purpose of this meeting was to discuss potential use of incarceration for child support. OBC designated a team to include representatives from Self Governance, Intergovernmental Affairs, Oneida Police Department, Oneida Law Office, and the Judiciary to work on this issue and report to the OBC during OBC work sessions every three months.
**8/21/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon. The purpose of this work meeting was to fulfill the August 7, 2019 directive and allow the Agency one final work meeting to discuss potential amendments.

**9/18/19 LOC:** Motion by Jennifer Webster to approve the updated draft and legislative analysis; seconded by Ernest Stevens III. Motion carried unanimously.

Motion by Ernest Stevens III to approve public meeting and forward to the Child Support law to a public meeting to be held on October 17, 2019; seconded by Jennifer Webster. Motion carried unanimously.

**10/17/19:** *Public Meeting Held.* Present: Jennifer Webster, Daniel Guzman King, Clorissa N. Santiago, Brandon Wisneski, Lee Cornelius, Rae Skenandore, Michelle Gordon, Trina Schuyler, Tami Bush, Bonnie Pigman. Two (2) individuals gave public comment during this public meeting.

**10/24/19:** *Public Comment Period Closed.* One (1) person submitted written comments during this public comment period.

Next Steps:
- Accept the public comments and public comment review memorandum and forward to a work meeting for further consideration.
TO: Legislative Operating Committee (LOC)  
FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney  
DATE: November 6, 2019  
RE: Child Support Law Amendments: Public Meeting Comment Review

On October 17, 2019, a public meeting was held regarding the proposed amendments to the Child Support law ("the Law"). The public comment period was then held open until October 24, 2019. This memorandum is submitted as a review of the oral and written comments received within the public meeting and public comment period.

The public meeting draft, public meeting transcript, and written comments received are attached to this memorandum for review.

Comment 1 – Definition for Contempt:

Michelle Gordon (oral): Attorney Michelle Gordon with the Law Office. I am the attorney that is assigned to the Child Support Department. As you know we held a work meeting with the department and the LRO and the LOC and when reviewing the draft we caught just a couple of things that we thought we agreed upon but weren’t changing the law, so we just wanted to go through those to maybe go back and look at those.

So, the first thing in the definitions we thought we had agreed upon adding a definition of contempt and that is not in there, so if the LOC reviews that and decides to put in a definition, we think that would be helpful.

Response

The commenter requests the Legislative Operating Committee consider including a definition for the term “contempt.”

Typically, words that are used within their ordinary and everyday sense are not provided a definition in a law. What terms to include definitions for within a law is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee may determine:

1. The Law should remain as currently drafted, a definition for the term “contempt” is not necessary to be added.
2. The Law should be amended to include a definition for the term “contempt.” If the Legislative Operating Committee makes this decision, then the following revision should be made to the Law:

   704.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.
   
   (j) “Contempt” means a willful disregard of the authority of a court or disobedience to its lawful orders.
Comment 2 – Clarifying Initiation of Action by the Agency:

704.5-2. *Initiation of Action by the Agency.* For assistance in initiating a child support order a party may request the services of the Agency or may be referred to the Agency from an entitlement program.

(a) Within thirty (30) days of receiving a completed application for services or a referral, the Agency shall meet with the custodial parent.

(b) Within seven (7) business days of the meeting with the custodial parent, the Agency shall send a Letter of Request for Support and Financial Disclosure form to the non-custodial parent.

(b) If the non-custodial parent fails to respond to or take action on the Letter of Request for Support and Financial Disclosure form within ten (10) business days the Agency may initiate a hearing in accordance with this law.

(c) If the non-custodial parent responds within the required time period after receiving a Letter of Request for Support and Financial Disclosure form, the parties shall attempt to enter into a stipulation.

Michelle Gordon (oral): And I am going through the redline that is, so when I call out line numbers it is going to be through the redline that was in the packet. So, the first one is line 258 on page 6 of the redline. We had, so it says within ten (10) business days, the custodial parent, or the Agency when required by federal law, may initiate a hearing, but this section is initiation of action by the Agency, so the reference to the custodial parent should be removed, because their section comes later and then we also agreed that when required by federal law would be removed. So, the wording the “custodial parent” should be struck and the wording “when required by federal law” should be struck.

Response

The commenter is requesting an amendment based on the redline draft of the Law that was included in the public meeting packet. The redline draft contained an error and did not demonstrate the revision that was made to section 704.5-2 of the Law. This revision was included in the clean draft of the proposed amendments included in the public meeting packet.

The Law provides that “If the non-custodial parent fails to respond to or take action on the Letter of Request for Support and Financial Disclosure form within ten (10) business days the Agency may initiate a hearing in accordance with this law.” [7 O.C. 704.5-2(b)]. Therefore, no revision to the Law is needed based on this comment.
Comment 3 – Requirement to Include an Address on the Petition:

704.5-5. Petition to Establish Child Support. If the parties do not enter into a stipulation, then a petition to establish child support may be filed with the Family Court. The petition to establish child support may be filed as a separate proceeding or in connection with a petition for child custody.

(a) Requirements of the Petition. The petition to establish child support shall include the following:

1. The name, date of birth, address, and tribal affiliation of the petitioner, respondent, and child for whom support is requested;

(b) Nondisclosure of Information in Protected Cases. Upon a finding, which may be made ex parte, that the health, safety or welfare of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, the Family Court shall order that the address of the child or party, or other identifying information, not be disclosed in a pleading or other document filed in a proceeding under this law.

Michelle Gordon (oral): Then page 7, Line 309 of the redline, and this is actually something that I am not sure we did bring up, we can’t remember. It might have been something we forgot, but the requirement of the petition does require the address and we are asking that the requirement for the address be removed and that is for the safety of the parties. We do have a lot of cases where there is domestic violence. There is on the next page a section that was added for nondisclosure of information in protected cases. It says upon a finding which may be made ex parte if the court found it would be unreasonable to include, the court could order, but that just adds an additional step for the department and so that means every time we file a case where we find out that the parties are a protected person, if the address is required to be included in the petition, that means every time before we could file we would have to send something to the court to get that ex parte order, asking for permission not to include the address in the petition. There is a requirement for a confidential petition addendum, which is again on the next page. That is required to be included in all cases. We would like to add that the address be included in the confidential petition addendum instead of the petition.

Response

The commenter is requesting that the requirement that the address of the petitioner, respondent, and child be removed from the petition. The Agency handles cases involving domestic violence and the requirement to request a nondisclosure of information from the Family Court would require the Agency to take additional action to protect the address of the party in those cases.
The Legislative Operating Committee discussed this matter at length during the development of amendments to the Law. The Legislative Operating Committee was tasked with finding a balancing point between ensuring that protections exist for those cases involving domestic violence, but also ensuring that the due process rights of all parties are not infringed upon.

Although the Legislative Operating Committee understands that in most cases the Agency is involved in the initiation of an action, a party not the Agency may initiate an action for the establishment of child support at any time by filing a petition with the Family Court. [7 O.C. 704.5-3]. The Legislative Operating Committee was concerned that if a petition did not include an address for the petitioner, then a respondent may have difficulties serving an answer on the petitioner within twenty (20) calendar days of the date of service of the petition as required by the Law. [7 O.C. 704.5-5(e)].

In an effort to address those cases involving domestic violence, the Legislative Operating Committee did include section 704.5-5(b) which addresses the nondisclosure of information in protected cases. This allows the Family Court to find that the health, safety, or welfare of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, the Family Court shall order that the address of the child or party, or other identifying information, not be disclosed in a pleading or other document filed in a proceeding under this law. [7 O.C. 704.5-5(b)]. This allows the Family Court to protect information from being disclosed in those cases that may involve domestic violence.

The Legislative Operating Committee determined that allowing a party to request that a case be protected ensures that a party’s information can be protected in situations involving domestic violence, without unduly infringing on the due process rights of a respondent in cases where domestic violence does not exist.

Due to the fact that section 704.5-5(b) allows for the nondisclosure of information in protected cases there is no recommended revision based on this comment.

**LOC Consideration**

<Comment 4 – Access to the Confidential Petition Addendum>

704.5-5. *Petition to Establish Child Support.* If the parties do not enter into a stipulation, then a petition to establish child support may be filed with the Family Court. The petition to establish child support may be filed as a separate proceeding or in connection with a petition for child custody.

(a) *Requirements of the Petition.* The petition to establish child support shall include the following:
(9) Confidential Petition Addendum. The confidential petition addendum is a separate form which has the parties and the child's name, date of birth and social security number. This form shall be kept separate from the petition and shall be maintained in a confidential file. The form shall be available only to the parties, the parties' attorneys or advocates, the Agency, or any person authorized by the Family Court to have access to the form.

(b) Nondisclosure of Information in Protected Cases. Upon a finding, which may be made ex parte, that the health, safety or welfare of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, the Family Court shall order that the address of the child or party, or other identifying information, not be disclosed in a pleading or other document filed in a proceeding under this law.

Michelle Gordon (oral): We would also like to add at the end of the confidential petition addendum that the court could refuse access to that confidential petition addendum in these types of protected cases, because right now it is available to all parties to the action and we think the court should have the right to refuse access in case it is a protected case. When we send these documents over to the court, we do specify when the cases are protected, so the court would know when we file the confidential petition addendum that it is a protected case, so they would know if someone made a request that they could deny that if the court allows them to deny access to that confidential petition addendum.

Response

The commenter is requesting that the Family Court be allowed to refuse access to the confidential petition addendum in protected cases.

A petition to establish child support is required to contain a confidential petition addendum which is a separate form from the petition, that is maintained in a confidential file, that contains the parties and the child's name, date of birth, and social security number. [7 O.C. 704.5-5(a)(9)]. The form is only available to the parties, the parties' attorneys or advocates, the Agency, or any person authorized by the Family Court to have access to the form. [7 O.C. 704.5-5(a)(9)].

The Law currently does allow for the non-disclosure of information in protected cases. The Family Court can order that the address of the child or party, or other identifying information such as what is contained in the confidential petition addendum, not be disclosed in a pleading or other document filed in a proceeding under this Law. [7 O.C. 704.5-5(b)]. This means that in those protected cases the Family Court would be able to protect the information contained in the confidential petition addendum and ensure it is not disclosed in any pleadings or documents.

Due to the fact that section 704.5-5(b) allows for the nondisclosure of information in protected cases there is no recommended revision based on this comment.

LOC Consideration
Comment 5 – Notice by Publication:

704.5-5(d)(1)(B) Publication. When a responding party cannot be found for personal service after diligent attempts and attempts to serve the responding party by certified mail have failed, the petitioner may use service by publication. The publication shall be in the Nation’s newspaper or a newspaper of general circulation in the county of residence of the respondent, if known. The publication shall be designated as a Legal Notice and any confidential information shall be redacted.

Michelle Gordon (oral): Then also on page 8, line 360, this talks about notice, it deals with the summons. Up above it talks about serving the summons by Certified Mail. This section is about publication and it says, “When a responding party cannot be found for personal service after diligent attempts and attempts to serve the responding party by certified mail have failed, the petitioner may use service by publication.” “May” needs to be changed to “shall” because they have to be served in some form and so how it’s done is if you can’t serve by mail, you have to serve by publication and that’s a requirement that the court makes, so the word “may” we’re asking to be changed to “shall”.

Response

The commenter is requesting that the term “may” in section 704.5-5(d)(1)(B) be changed to shall.

The following revision is recommended based on this comment:

704.5-5(d)(1)(B) Publication. When a responding party cannot be found for personal service after diligent attempts and attempts to serve the responding party by certified mail have failed, the petitioner may- shall use service by publication. The publication shall be in the Nation’s newspaper or a newspaper of general circulation in the county of residence of the respondent, if known. The publication shall be designated as a Legal Notice and any confidential information shall be redacted.

LOC Consideration

Comment 6 – Monthly Income:

704.3. Definitions
704.3-1. This section shall govern the definitions of words and phrases used within this law. All
words not defined herein shall be used in their ordinary and everyday sense.

(z) "Monthly income" means the obligor’s annual gross income or, if applicable, the obligor’s annual income modified for business expenses; plus the obligor’s annual income imputed based on earning capacity; plus the obligor’s annual income imputed from assets; divided by twelve (12).

704.7. Determining the Child Support Obligation
704.7-1. The Family Court shall determine child support payments by using the percentage standards established in section 704.7-2 of this law, except as provided elsewhere in this law. The obligor’s monthly income shall be considered in determining his or her child support obligation.

Michelle Gordon (oral): Page 10 of the redline, at lines 449, it’s determining child support obligation. It simply says right now that the obligor’s monthly income shall be considered and then when the next section percentage standards, it just talks about the portion of the obligor’s monthly income, it needs to say, “gross monthly income”. That helps to explain to parties when they come in we can point to the law that it says, because a lot of times we get the argument why are you going off my gross, not my net, I don’t make that much, but the law in staying consistent and how we’ve been doing it, it is based on gross monthly income and so we are asking for that clarification in that section that it say gross monthly income. Sorry I’m trying to go through my pages here.

Response

The commenter requests that references to the obligor’s “monthly income” in section 704.7-1 be changed to “gross monthly income.”

There is no revision recommended based on this comment, as it would be unnecessary to revise references to “monthly income” to “gross monthly income” as the definition for “monthly income” already qualifies that it is the gross income that is used. The definition for “monthly income” is the obligor’s annual gross income divided by twelve (12).

LOC Consideration

Comment 7 – Modification of Order by the Agency:

704.11-5. Modification of Order by the Agency. If the Agency determines the obligor’s income is two hundred dollars ($200) per month or more while incarcerated, the Agency shall file with the Family Court a Motion to Modify.
(a) The Family Court shall schedule a hearing on the motion with the Agency providing notice to all parties with the proposed modification to the child support order by first class mail at least ten (10) business days prior to the hearing.
(b) If no objection to the modification is received at the hearing, the Family Court shall enter the order as proposed.

Michelle Gordon (oral): Page 21 of the redline, line 975. So, this is for modification of order by the agency. This is going to require a hearing and the way it’s worded right now it says, “shall file with the Family Court a Motion and Order to Modify.” It needs to say just a “Motion to Modify”, because a motion and order to modify means we don’t have to have a hearing. We send over the motion with an order and if there is no objection to the order then the court just signs the order. So, this needs to have “an Order to Modify” removed and I believe that was in the discussion we had in the work meeting.

Response

The commenter is requesting a change based on the redline draft of the Law that was included in the public meeting packet. The redline draft contained an error and did not demonstrate the revision that was made to section 704.11-5 of the Law. This revision was included in the clean draft of the proposed amendments that was included in the public meeting packet.

The Law provides that if the Agency determines the obligor’s income is two hundred dollars ($200) per month or more while incarcerated, the Agency shall file with the Family Court a Motion to Modify. [7 O.C. 704.11-5].

LOC Consideration

Comment 8 – Entering an Order Based on a Request for Modification of Order by the Agency:

704.11-5. Modification of Order by the Agency. If the Agency determines the obligor’s income is two hundred dollars ($200) per month or more while incarcerated, the Agency shall file with the Family Court a Motion to Modify.
   (a) The Family Court shall schedule a hearing on the motion with the Agency providing notice to all parties with the proposed modification to the child support order by first class mail at least ten (10) business days prior to the hearing.
   (b) If no objection to the modification is received at the hearing, the Family Court shall enter the order as proposed.

Michelle Gordon (oral): And then also lines 979 on the next page again this is requiring a hearing but line 979 which is “b.” needs to be removed because it says, “If no objection to the modification
is received at the hearing, the Family Court shall enter the order as proposed.”, but that’s tying the court, I mean the court should have discretion to make an order that they see as appropriate so they may not agree with the agency and so they should have that discretion and I think that’s just confusion about the motion and order we had talked about with the objection, so we would like that section be removed.

Response

The commenter requests that section 704.11-5(b) be removed, so that the Family Court is not required to enter an order as proposed by the Agency, and instead can have the discretion to enter an order the Family Court finds appropriate.

In an effort to ensure the Family Court has the proper discretion when entering orders, the following revision is recommended based on this comment:

704.11-5. Modification of Order by the Agency. If the Agency determines the obligor’s income is two hundred dollars ($200) per month or more while incarcerated, the Agency shall file with the Family Court a Motion to Modify.
   (a) The Family Court shall schedule a hearing on the motion with the Agency providing notice to all parties with the proposed modification to the child support order by first class mail at least ten (10) business days prior to the hearing.
   (b) If no objection to the modification is received at the hearing, the Family Court shall enter the order as proposed.

LOC Consideration

Comment 9 – Responses to a Compliance Plan Appointment Letter:

704.12. Compliance Plan

704.12-2. An Appointment Letter may be sent by the Agency at any time deemed appropriate, but the Agency shall send out the Appointment Letter at least thirty (30) days prior to the initiation of any enforcement action.
   (a) The Letter shall request the party meet with the Agency to discuss barriers to payment and how to avoid future enforcement action.
   (b) If the party does not respond to the Letter within five (5) business days after receipt of the letter, the Agency may proceed with appropriate enforcement action.
   (c) If the obligor responds to the Letter, the Agency shall interview the party to determine the reasons and barriers for the non-compliance and create a compliance plan. The compliance plan may include an increase in payment and/or any activity that is necessary to assist in payment, including programs that focus on:
      (1) Employment and training;
      (2) Social service and mental health;
(3) Physical and learning disabilities;
(4) Tribal traditions and customs;
(5) Family counseling and parenting; and
(6) Any other program deemed necessary.

(d) If the party successfully completes the compliance plan, no further enforcement action is necessary. However, if the party fails to complete the compliance plan, the Agency shall proceed with appropriate enforcement action.

Michelle Gordon (oral): The next one is page 23, line 1033 of the redline. This is 704.12-2, subsection c., it says “If the obligor responds to the Letter”, but we had thought, our notes say that, we had specifically said that it would be when the obligor actually meets with the agency, not just responds in writing to the agency, then the agency shall interview the party.

Response

The commenter is requesting that the language of “If the obligor responds to the Letter, the Agency shall interview the party” found in section 704.12-2(c) be revised to read “If the obligor meets with the Agency, the Agency shall interview the party.”

This section of the Law details the use of a compliance plan by the Agency. If at any time the obligor is, or may become, non-compliant with his or her child support order by failing to pay support as ordered or meeting a required obligation or action, the Agency is required to meet with the obligor to develop a compliance plan. [7 O.C. 704.12-1]. The Agency can send out an Appointment Letter to request the party meet with the Agency to discuss barriers to payment and how to avoid future enforcement action, at any time deemed appropriate but at least thirty (30) days prior to the initiation of any enforcement action. [7 O.C. 704.12-2]. Once a party receives an Appointment Letter the party has five (5) business days to respond, and if no response is made by the party then the Agency can proceed with the appropriate enforcement action. [7 O.C. 704.12-2(b)]. If the party does respond to the Letter, then the Agency can proceed with interviewing the party to determine the reasons and barriers for the non-compliance and create a compliance plan. [7 O.C. 704.12-2(c)].

The Law references a “response to the Letter” instead of “meeting with the Agency” because there is a five (5) business day period of time in which the party has the opportunity to decide they wish to seek a compliance plan with the Agency before the Agency moves forward with seeking enforcement action. This response to the letter allows the Agency more flexibility in scheduling a meeting with the party to have the interview with the party to determine the reasons and barriers for the non-compliance and create a compliance plan, since the actual meeting does not have to occur within the five (5) business day period, just a response by the party to the Agency has to be made.

In an effort to provide the most flexibility in scheduling compliance plan meetings, there is no recommended revision based on this comment.

LOC Consideration
Comment 10 – Completion of the Compliance Plan:

704.12. Compliance Plan
704.12-2. An Appointment Letter may be sent by the Agency at any time deemed appropriate, but the Agency shall send out the Appointment Letter at least thirty (30) days prior to the initiation of any enforcement action.

(a) The Letter shall request the party meet with the Agency to discuss barriers to payment and how to avoid future enforcement action.
(b) If the party does not respond to the Letter within five (5) business days after receipt of the letter, the Agency may proceed with appropriate enforcement action.
(c) If the obligor responds to the Letter, the Agency shall interview the party to determine the reasons and barriers for the non-compliance and create a compliance plan. The compliance plan may include an increase in payment and/or any activity that is necessary to assist in payment, including programs that focus on:
   (1) Employment and training;
   (2) Social service and mental health;
   (3) Physical and learning disabilities;
   (4) Tribal traditions and customs;
   (5) Family counseling and parenting; and
   (6) Any other program deemed necessary.
(d) If the party successfully completes the compliance plan, no further enforcement action is necessary. However, if the party fails to complete the compliance plan, the Agency shall proceed with appropriate enforcement action.

Michelle Gordon (oral): Line 1043, it says “If the party successfully completes the compliance plan,” we believe it should say “completes the terms of the compliance plan” because there is a list of terms that are included.

Response

The commenter requests that the phrase “if the party successfully completes the compliance plan” be revised to state “if the party successfully completes the terms of the compliance plan.”

The requested revision does not affect the content or meaning of this provision. Therefore, whether to make this requested revision is a policy determination for the Legislative Operating Committee to make. The Legislative Operating Committee may determine:
1. The Law should remain as currently drafted and state, “if the party successfully completes the compliance plan.”
2. The Law should be amended to state, “if the party successfully completes the terms of the compliance plan.” If the Legislative Operating Committee makes this determination the following revision is recommended.
(d) If the party successfully completes the terms of the compliance plan, no further enforcement action is necessary. However, if the party fails to complete the compliance plan, the Agency shall proceed with appropriate enforcement action.

**LOC Consideration**

**Comment 11 – Negotiations of an Alternative Payment Plan:**


**704.14-2. Negotiation of an Alternative Payment Plan After Receiving Notice of an Enforcement Action.**

(a) In order to negotiate an alternative payment plan, an obligor shall submit a written request to the Agency.

(1) A written request to negotiate an alternative payment plan received by the Agency within ten (10) business days after the date of notice shall stay any administrative enforcement action.

(2) If a written request to negotiate an alternative payment plan is received by the Agency more than ten (10) business days after the date of notice, administrative enforcement action may be taken, as long as the requirements for staying or suspension of administrative enforcement actions are met.

Michelle Gordon (oral): The next is at page 25 under the “Alternative Payment Plans” section, line 1150. Our notes say that this sentence should end at enforcement action may be taken period and the remainder of that sentence should be removed. There also should be a paragraph 3. I do note that in my discussions with Clarissa from the Legislative Reference Office, she had stated that that additional sentence, I didn’t get to her, she must have not caught it at the meeting and then I didn’t get it to her in time to be included in the packet, but she does intend to bring it to the Committee, but I thought for safety purposes I would just put it on the record today.

So, subsection 3 would be “If the Agency agrees to negotiate an alternative payment plan after the ten (10) business days after the date of notice, the Agency and obligor may agree to stay or suspend the administrative enforcement action.” So that would be an additional subsection 3.

**Response**

The commenter requests that section 704.14-2(a)(2) be amended to address what would happen if the Agency receives a request to negotiate an alternative payment plan more than ten (10) business days after the date of notice.

In an effort to provide the Agency the most flexibility with the decision to enter into a negotiation plan with a party, the following revision is recommended:


(a) In order to negotiate an alternative payment plan, an obligor shall submit a written request to the Agency.

(1) A written request to negotiate an alternative payment plan received by the Agency within ten (10) business days after the date of notice shall stay any administrative enforcement action.

(2) If a written request to negotiate an alternative payment plan is received by the Agency more than ten (10) business days after the date of notice, administrative enforcement action may be taken, as long as the requirements for staying or suspension of administrative enforcement actions are met.

(3) If the Agency agrees to negotiate an alternative payment plan after the ten (10) business days after the date of notice, the Agency and obligor may agree to stay or suspend the administrative enforcement action.

LOC Consideration

Comment 12 – Hearing on the Reasonableness of an Alternative Payment Plan:


(c) Hearings for Negotiations of an Alternative Payment Plan. The obligor may submit a written request for a hearing with the Family Court regarding negotiations of an alternative payment plan in the following circumstances:

(1) The obligor and the Agency have agreed to terms of a plan, but the obligor wants the Family Court to consider the reasonableness of the plan.

(A) The obligor may submit this written request for a hearing on the reasonableness of the plan within ten (10) business days after the terms of the plan are agreed upon.

(2) The obligor and the Agency are unable to reach agreement on the terms of a plan.

(A) The Family Court may order a plan by setting conditions and/or payments in the amounts and at the times it considers reasonable.

Michelle Gordon (oral): Then line 1158, we also thought that we had agreed to add this additional language after the end of that sentence, so it would end with “reasonableness of the plan due to a change of circumstances since the plan was agreed to by the Agency and the obligor. Because right now it allows the obligor to challenge the reasonableness of the plan, but they entered into the plan, so for us wouldn’t it make sense that they entered into the plan because the plan was
reasonable. They wouldn’t have entered into the plan if they didn’t feel it was reasonable and so they’ve entered into the plan and now they are objecting to it later, so we’re just requesting that this change of circumstances is now making it unreasonable.

Response

The commenter is requesting that section 704.14-2 be amended to provide that the obligor can request a hearing with the Family Court only if the obligor wants the Family Court to consider the reasonableness of the plan due to a change of circumstances since the plan was agreed to by the Agency and the obligor.

The Law currently provides that the obligor may submit a written request for a hearing with the Family Court regarding negotiations of an alternative payment plan when the obligor and the Agency have agreed to terms of a plan, but the obligor wants the Family Court to consider the reasonableness of the plan. [7 O.C. 704.14-2(c)(1)]. The Law does not qualify why the obligor may want the Family Court to consider the reasonableness of the plan.

Whether or not to limit when an obligor can request the Family Court to consider the reasonableness of the plan is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee may determine:

1. The Law should remain as currently drafted, and not limit the circumstances for when an obligor can request the Family Court to consider the reasonableness of the plan that was negotiated with the Agency.

2. The Law should be amended to clarify that the obligor can only request the Family Court to consider the reasonableness of a plan that has been negotiated with the Agency when there has been a change in circumstances since when the plan was agreed to. If the Legislative Operating Committee makes this decision then the following revision is recommended:


(c) Hearings for Negotiations of an Alternative Payment Plan. The obligor may submit a written request for a hearing with the Family Court regarding negotiations of an alternative payment plan in the following circumstances:

(A) The obligor and the Agency have agreed to terms of a plan, but the obligor wants the Family Court to consider the reasonableness of the plan due to a substantial change of circumstances since the plan was agreed to by the Agency and the obligor.

(B) The obligor may submit this written request for a hearing on the reasonableness of the plan within ten (10) business days after the terms of the plan are agreed upon.

LOC Consideration
Comment 13 – Suspending Administrative Enforcement Actions Due to a Substantial Change in Circumstances:

   (a) When a plan has been negotiated between the obligor and the Agency, or the Family Court has determined that a plan is reasonable or has ordered a plan, the Agency shall suspend administrative enforcement actions as long as the obligor complies with the plan or requests a hearing because of a substantial change in circumstances.
   (b) If an obligor makes an arrears payment agreeable to the Agency, the administrative enforcement action shall be suspended.

Michelle Gordon (oral): Page 26, line 1202. This kind of goes to the same issue. It ends with "or requests a hearing because of a substantial change in circumstances.", we would like the wording "which makes the plan unreasonable" added to that to clarify.

Response

The commenter is requesting that section 704.14-6(a) be amended to provide that the Agency shall suspend administrative enforcement actions as long as the obligor complies with the plan or requests a hearing because of a substantial change in circumstances which makes the plan unreasonable.

The Law currently provides that the Agency shall suspend administrative enforcement actions as long as the obligor complies with the plan or requests a hearing because of a substantial change in circumstances. [7 O.C. 704.14-6(a)]. The Law does not qualify what the substantial change in circumstances has to be based on, or if it has to affect the reasonableness of the alternative payment plan.

Whether or not to limit when an obligor can request a hearing because of a substantial change in circumstances is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee may determine:
1. The Law should remain as currently drafted, and not limit when an obligor can request a hearing because of a substantial change in circumstances in order to suspend administrative enforcement action.
2. The Law should be amended to clarify that an obligor can only request a hearing because of a substantial change in circumstances when the substantial change of circumstances makes the plan unreasonable. If the Legislative Operating Committee makes this decision the following revision is recommended:
   (a) When a plan has been negotiated between the obligor and the Agency, or the Family Court has determined that a plan is reasonable or has ordered a plan, the Agency shall suspend administrative enforcement actions as long as the obligor complies with the plan...
or requests a hearing because of a substantial change in circumstances which makes the plan unreasonable.

**LOC Consideration**

**Comment 14 – Family Court Enforcement Action:**

704.16. Family Court Enforcement Action

704.16-1. If the Agency does not have the authority to conduct the appropriate enforcement action, or the obligor is unresponsive to the enforcement actions being imposed by the Agency, the case shall be referred to the Family Court for enforcement. The Family Court may order any of the enforcement actions the Agency is authorized to implement, in addition to the enforcement actions described in this section.

704.16-2. Bonds and Other Guarantees. The Family Court may require an obligor to provide a surety, bond or guarantee to secure the payment of arrears, if income withholding is not applicable, practical, or feasible to secure payment of arrears.

704.16-3. Claims Against Estates. The Family Court may approve a claim for past and future support against an obligor’s estate. The Family Court may issue a restraining order against an estate from which an obligor will inherit.

704.16-4. Contempt. The Family Court may hold an obligor who fails to comply with a lawful child support order in contempt. An obligor found to be in contempt shall be subject to the following punishments:

(a) Community Service. The Family Court may order an obligor to perform community service. The number of hours of work required may not exceed what would be reasonable considering the amount of arrears the obligor owes. The obligor shall be provided a written statement of the terms of the community service order and that the community service order is monitored. The order shall specify:

1. how many hours of community service the obligor is required to complete;
2. the time frame in which the hours must be completed;
3. how the obligor will report his or her hours; and
4. any other information the Family Court determines is relevant.

(b) Fines. An obligor found in contempt of court may be fined in an amount not to exceed one thousand dollars ($1,000.00) per act of contempt and may not exceed five thousand dollars ($5,000.00) in total. In instances of continuing contempt, each day shall constitute a separate act of contempt.

(c) Incarceration. The Family Court may order an obligor be incarcerated. Before a jail sentence is imposed, the Family Court shall provide other conditions that require a certain amount of money be paid or action be taken for an obligor to avoid incarceration.

(d) Criminal Non-Support. A criminal non-support action may be initiated, in the appropriate county, against an obligor who has the ability to pay child support and
willfully or intentionally failed to pay and the obligor knew or reasonably should have known he or she was legally obligated to provide.

Michelle Gordon (oral): And then lastly, it is the end which deals with Family Enforcement Action, page 30, line 1379, and when we had our meeting, we thought that we had agreed that we would create a contempt section and that this section would be retitled “Contempt”, because we needed to be stronger on our contempt issues. So, this is a lot, so 704.16-1, that whole section would be struck except for, it would read “The Family Court may order the following as a part of a contempt order.” Then prior to that at line 1418 is a section on contempt that says “The Family Court may hold an obligor who fails to comply with a lawful child support order in contempt. An obligor found to be in contempt shall be subject to following punishments.”, or we feel that that should be moved to the top. So that should be your start of this section entitled “Contempt”. And then everything underneath, the bonds and other guarantees, the claims against estates, all of that would then be part of the Contempt, so you would just name those a., b., so Bonds and Other Guarantees would be subsection a., Claims Against Estates would be subsection b., Community Service would be subsection c., Fines would be subsection d., Incarceration would be subsection e., and Criminal Non-support would be subsection f.

So that is all of my comments in regards to the law that we thought we had in regards to our work meeting. Thank you.

Response

The commenter requests reorganization of section 704.16 so that all the Family Court’s enforcement action is listed as actions that can be issued as part of a contempt order. The commenter makes this request in an effort to strengthen contempt issues.

All of the current types of enforcement actions contained in the Law are available to be used by the Family Court during contempt proceedings. Revising this section of the Law will clarify that the Family Court utilizes its enforcement actions through contempt proceedings.

Therefore, in an effort to clarify that the Family Court uses its enforcement actions through contempt proceedings the following revisions are recommended based on this comment:

704.16. Family Court Enforcement Contempt Action

704.16-1. If the Agency does not have the authority to conduct the appropriate enforcement action, or the obligor is unresponsive to the enforcement actions being imposed by the Agency, the Agency shall file a motion for contempt with the case shall be referred to the Family Court for enforcement. During a contempt proceeding the Family Court may order any of the enforcement actions the Agency is authorized to implement, in addition to the enforcement—contempt actions described in this section.

704.16-2. Bonds and Other Guarantees. The Family Court may require an obligor to provide a surety, bond or guarantee to secure the payment of arrears, if income withholding is not applicable, practical, or feasible to secure payment of arrears.

704.16-3. Claims Against Estates. The Family Court may approve a claim for past and future support against an obligor’s estate. The Family Court may issue a restraining order against an estate from which an obligor will inherit.
Contempt. The Family Court may hold an obligor who fails to comply with a lawful child support order in contempt. An obligor found to be in contempt shall be subject to the any of the following punishments:

(a) **Community Service.** The Family Court may order an obligor to perform community service. The number of hours of work required may not exceed what would be reasonable considering the amount of arrears the obligor owes. The obligor shall be provided a written statement of the terms of the community service order and that the community service order is monitored. The order shall specify:

1. how many hours of community service the obligor is required to complete;
2. the time frame in which the hours must be completed;
3. how the obligor will report his or her hours; and
4. any other information the Family Court determines is relevant.

(b) **Fines.** An obligor found in contempt of court may be fined in an amount not to exceed one thousand dollars ($1,000.00) per act of contempt and may not exceed five thousand dollars ($5,000.00) in total. In instances of continuing contempt, each day shall constitute a separate act of contempt.

(c) **Incarceration.** The Family Court may order an obligor be incarcerated. Before a jail sentence is imposed, the Family Court shall provide other conditions that require a certain amount of money be paid or action be taken for an obligor to avoid incarceration.

(d) **Criminal Non-Support.** A criminal non-support action may be initiated, in the appropriate county, against an obligor who has the ability to pay child support and willfully or intentionally failed to pay and the obligor knew or reasonably should have known he or she was legally obligated to provide.

(e) **Bonds and Other Guarantees.** The Family Court may require an obligor to provide a surety, bond or guarantee to secure the payment of arrears, if income withholding is not applicable, practical, or feasible to secure payment of arrears.

(f) **Claims Against Estates.** The Family Court may approve a claim for past and future support against an obligor’s estate. The Family Court may issue a restraining order against an estate from which an obligor will inherit.

**LOC Consideration**

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**Comment 15 – Attachment of Per Capita Payments of a Deceased Member:**

704.15. Administrative Enforcement Action

704.15-4. **Attachment of Per Capita Payments.** The Agency may initiate the attachment and/or seizure of per capita payments of members of the Nation in accordance with applicable laws of the Nation.

**Bonnie Pigman (oral):** So, I’m curious in regards to Per Capita Law in regards to when a person becomes deceased and child support can or cannot be taken, it’s not clear in that law written in
regards to whether or not by virtue of the attachment process that an attachment can or cannot be applied. The department, Trust and Enrollment Department has taken, has gotten legal reviews, however, in my opinion it’s still not clear because the law is not clearly written to truly define about a deceased person’s per capita being allowed to be taken as an attachment and so like I said it’s just not clear in that law. So if it’s not clear in that law I don’t know what the child support process in this law how that’s coming together, how those two documents are going to meld together, because in one hand the attachment section of the Per Capita law says that they don’t even have to submit anything, but yet you have a deceased person and we’re now paying deceased people, there seems to be a conflict in that law, how we should be handling those individuals because on one hand they become deceased and yes they can be attached or two that they did claim the form before they passed, but then they died before the distribution occurred and yet we’re still taking the distribution on that deceased person. So, I think that that law, those two laws, that Per Capita law needs to be, I think it needs to be, something needs to happen between these two laws that make that clearly definable regarding those, that particular situation. Thank you.

Response

The commenter questions the application of attaching a deceased person’s per capita for child support arrears.

The Law simply provides that the Agency may initiate the attachment and/or seizure of per capita payments of members of the Nation in accordance with the Nation’s Per Capita law. [7 O.C. 704.15-4].

For more information on how a per capita payment is attached for child support arrears one must review the Nation’s Per Capita law. The Per Capita law provides that a per capita payment may be attached for child support arrears ordered by a court of competent jurisdiction. [1 O.C. 123.4-9(a)(1)]. The Per Capita law then provides the specific process for how requests for attachments for child support arrears is handled by the Nation’s Child Support Agency. [1 O.C. 123.4-9(c)(1)-(4)].

The Per Capita law also provides that members of the Nation are eligible to receive a per capita payment so long as the member has complied with the distribution document and/or distribution rule(s) requirements. [1 O.C. 123.5-3(a)]. This means that even if a member becomes deceased after submitting the required distribution form, but before the distribution date, the Trust Enrollment Department shall continue to issue the distribution in the name of the deceased member. [1 O.C. 123.5-3(a)].

Therefore, if a per capita payment will be distributed for a member, it can be presumed that the per capita payment is still eligible to be attached for child support arrears as long as the requirements of section 123.4-9(c)(1)-(4) are met.

There is no revision to this law recommended based on this comment, as this comment refers to provisions found in the Per Capita law and not the Child Support law.

LOC Consideration
Comment 16 – Subpoenas Requiring Production of Evidence:

704.6. Child Support Hearing Procedures

704.6-2. The Family Court may utilize discovery procedures and contempt powers, as authorized by any law, policy, or rule of the Nation to obtain information relevant to the establishment or enforcement of child support. These procedures may include the following:

(a) Issue subpoenas requiring necessary and relevant parties to appear in person and provide testimony;
(b) Issue subpoenas requiring the production of evidence;
(c) Obtain information about property or assets to assess its value or funding source for lien or seizure actions;
(d) Obtain information about the income of any party to the action; and/or
(e) Issue contempt findings for failure to comply with the lawful order of the Family Court.

Jennifer J. Jordan (written): Lines 366 thru 368 regarding the obligor's employer. What will happen if the obligor's employer is subpoenaed to provide the family court with a record of the obligor's earning and cannot produce that information as the obligor is paid in cash and does not pay taxes?

Response

The commenter questions what happens if the Family Court issues a subpoena to an obligor's employer to provide a record of the obligor's earnings, but the employer cannot produce that information as the obligor is paid in cash and does not pay taxes.

If the obligor cannot produce information on his or her income, or the obligor's income is less than his or her earning capacity, the Family Court may impute income to the obligor at an amount that represents the parent's ability to earn. [7 O.C. 704.7-4]. The obligor's ability to earn may be based on his or hers:

- education, training, and recent work experience;
- earnings during previous periods;
- current physical and mental health;
- history of child care responsibilities as the parent with primary physical placement; and
- the availability of work in or near the obligor's community. [7 O.C. 704.7-4(a)].

The Law also provides that if evidence is presented that due diligence has been exercised to ascertain information on the obligor's actual income or ability to earn and that information is unavailable, the Family Court may impute to the obligor the income that a person would earn by working thirty-five (35) hours per week for the federal minimum hourly wage. [7 O.C. 704.7-
In addition to imputed income, the Family Court may order the parent to search for a job or participate in a work experience and job training program. [7 O.C. 704.7-4(b)].

An employer of an obligor should be able to produce information on the obligor’s earnings as the Law provides that when a child support order is issued by the Family Court the order shall provide for immediate income withholding. [7 O.C. 704.9-3]. A copy of the Family Court’s income withholding order is then sent by the Agency to the obligor’s employer within three (3) business days of the entry of the order by the Family Court. [7 O.C. 704.9-3(a)]. No employer of an obligor shall refuse to honor an income withholding order executed pursuant to this law. [7 O.C. 704.9-3(d)]. The employer has (5) business days after paying the obligor to send the amount withheld to the Wisconsin Support Collections Trust Fund. [7 O.C. 704.9-3(d)].

Any employer who fails or refuses to deduct or promptly remit the amounts of money required in the order or otherwise is unwilling to comply with the requirements of this law shall be liable for one hundred percent (100%) of the child support order, or the amount of money that should have been withheld from the obligor’s earnings, whichever is the lesser amount. [7 O.C. 704.9-3(e)]. Additionally, an employer who repeatedly fails to comply with an income withholding order as required by this law may be subject to a fine, not to exceed five hundred dollars ($500), or have its Oneida vendor license revoked or suspended, if applicable, until compliance with this law is assured. [7 O.C. 704.9-3(g)]. If the employer is a non-Indian off-reservation employer then the employer is still subject to income withholding, just under requirements of federal law. [7 O.C. 704.9-3(j)].

The provisions of the Law that address a situation where the obligor’s income is less than his or her earning capacity or unknown, as well as a situation where an employer refuses to comply with an income withholding order address the commenter’s question. There is no revision to the Law recommended based on this comment.

**LOC Consideration**
Title 7. Children, Elders and Family - Chapter 704
CHILD SUPPORT

shakoti\nukú\'ale\? latikşashúha?
They watch over the children
CHILD SUPPORT

704.1. Purpose and Policy
704.1-1. Purpose. The purposes of this law are to:
   (a) Establish the legal responsibility of parents to provide financially for their children’s general well-being;
   (b) Make support payments more equitable by ensuring consistent treatment of persons in similar circumstances;
   (c) Make support payments based on the real earning capability of parents; and
   (d) Improve the efficiency of child support establishment and enforcement.
704.1-2. Policy. It is the policy of this law to:
   (a) establish an adequate standard of support for children whose paternity has been established or acknowledged;
   (b) encourage the use of voluntary agreements stipulations to resolve disputes over child support obligations; and
   (c) limit the use and disclosure of personal information received or maintained by the Nation’s Family Court and/or the Oneida Tribe Child Support Agency in order to protect the privacy rights of all parties and children who are involved in proceedings or actions under this law.

704.2. Adoption, Amendment, Repeal, Other Laws and Agency Rules
704.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-24-09-B and amended by resolutions BC-02-24-10-G, BC-02-23-11-E, BC-06-22-11-K, BC-10-10-12-C, and BC-08-13-14-E, and BC-__-__-__.
704.2-2. This law may be amended pursuant to the procedures set out in the Oneida Administrative Procedures Act or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.
704.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.
704.2-4. In the event of a conflict between a provision of this law and a provision of another law, ordinance, policy, regulation, rule, resolution, or motion, the provisions of this law shall control.
Provided that, nothing in this law is intended to repeal or modify any existing law, ordinance, policy, regulation, rule, resolution or motion.

704.2-5. This law is adopted under authority of the Constitution of the Oneida Nation Tribe of Indians of Wisconsin.

704.2-6. Any Agency requirements which would affect individuals outside the Agency and do not relate to the internal management of the Agency shall require Oneida Business Committee approval in the form of a law or rule.

704.3. Definitions

704.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Administrative enforcement action” means enforcement actions taken by the Oneida Nation Child Support Agency authorized by federal regulations which are taken to enforce a child support order without obtaining an order from the Family Court.

(b) “Agency” shall mean the Oneida Nation Tribe Child Support Agency established to administer and supervise the Nation’s Tribe’s child support enforcement program.

(c) “Alternative payment plan” or “plan” means a negotiated agreement between the Agency and an obligor, or an order set by the Family Court, to establish terms and conditions for the payment of arrears.

(d) “Basic support costs” means food, shelter, clothing, transportation, personal care, and incidental recreational costs.

(e) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

(f) “Child” shall mean a biological natural or adopted child of the obligor under the age of eighteen (18), or any person who is less than nineteen (19) years old if he or she is pursuing a high school diploma or its equivalent from an accredited course of instruction.

(g) “Child support” means the total financial obligation a parent has towards his or her child as established through judicial and/or administrative processes.

(h) “Child Support Obligation of Low-Income Payers Schedule” means the Wisconsin Department of Children and Families Child Support Obligation of Low-Income Payers at the Federal Poverty Guidelines, found in DCF 150 Appendix C.

(i) “Child support order” shall mean a judgment of the Family Court or a court of competent jurisdiction ordering payment of child support which provides monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorney’s fees and other relief.

(e) “Clerk” shall mean the designated clerk in the Family Court who is identified to carry out certain provisions in this law.

(j) “Current six (6) month treasury bill rate” means the yield of a U.S. government security with a term of six (6) months.

(k) “Custodial parent” shall mean the parent who exercises physical custody of the child pursuant to a custody order, on the basis of agreement between the parents or in the absence of one parent. A legal guardian with primary physical custody of the child or children and standing in the position of the parent shall have the same rights to child support as a custodial parent.

(l) “Employer” shall mean any individual, business, government, institution, or other entity paying wages to one or more employees.
(m) “Equity” means the fair market value of property minus the liens on that property with priority over the child support lien.

(n) “Equivalent care” means a period of time during which the parent cares for the child that is not overnight, but is determined by the court to require the parent to assume the basic support costs that are substantially equivalent to what the parent would spend to care for the child overnight. Blocks of time with the child of at least six (6) hours may be considered the equivalent of a half-day if a meal is provided during that time period. Two (2) half-day blocks may be considered the equivalent of an overnight.

(o) “Family Court” shall mean means the judicial arm branch of the Tribe Nation’s Judiciary that is designated to handle all matters under this Law related to the family and/or children.

(p) “Gross income” shall mean means any form of payment due to an individual regardless of source, including, but not limited to:
   (1) Salary and wages, including overtime pay;
   (2) Interest and investment income;
   (3) Social Security disability and old age insurance benefits under 42 U.S.C. §401 to 433;
   (4) Net proceeds resulting from worker’s compensation or other personal injury awards intended to replace income;
   (5) Unemployment insurance;
   (6) Income continuation benefits;
   (7) Voluntary deferred compensation and voluntary employee contributions to the following: employee benefit plan, profit-sharing, pension or retirement account;
   (8) Military allowances and veterans disability compensation benefits;
   (9) Undistributed income of a corporation or any partnership in which the parent has an ownership interest sufficient to individually exercise control or to access the earnings of the business, unless the income included is an asset;
   (10) Per capita distribution payments;
   (11) Lease or rental income;
   (12) Prizes over one thousand dollars ($1,000); and
   (13) All other income, whether taxable or not, except that gross income does not include any of the following:
      (A) Child support;
      (B) Foster care payments;
      (C) Kinship care payments;
      (D) Public assistance benefits, except that child care subsidy payments shall be considered income to a child care provider;
      (E) Food stamps;
      (F) Public assistance or financial hardship payments paid by a county or a tribe Nation;
      (G) Supplemental Security Income under 42 U.S.C. §1381 to 1383(f) and state supplemental payments; or
      (H) Payments made for social services.

(q) “Guardian ad litem” means a person appointed by the Family Court to appear at any peacemaking, mediation, or hearing and tasked with representing the best interest of the person appointed for.
“Immediate family member” means an individual’s husband, wife, mother, father, step-
mother, step-father, son, daughter, step-son, step-daughter, brother, sister, step-brother,
step-sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-
law, brother-in-law or sister-in-law and any of the these relations attained through legal
adoption.

“Income withholding” means the process whereby a court order, Family Court order,
or voluntary wage assignment directs an employer, bank, or agent holding monies or
property of an obligor, to make payments or deliver property to satisfy a child support
obligation.

“Intact family” means a family in which the child or children and the obligor reside in
the same household and the obligor shares his or her income directly with the child or
children and has a legal obligation to support the child or children.

“Legally incompetent adult” shall mean a person at least eighteen (18) years old
who has been declared incompetent by a court of competent jurisdiction because he or she
is temporarily or permanently impaired to the extent that the person lacks sufficient
understanding to make or communicate responsible personal decisions.

“Lien amount” means the difference between the monthly amount of support due and
the arrears in a case.

“Lien docket” means the registry kept by the State of Wisconsin containing the names
of people who owe past-due child support.

“Low-income obligor” means an obligor for whom the Family Court uses the monthly
support amount provided in the schedule in Appendix A the Child Support Obligation of
Low-Income Payers Schedule based on the Family Court’s determination that the obligor’s
total economic circumstances limit his or her ability to pay support at the level provided
under 704.7-2(a) standard percentages and the obligor’s income is at a level set forth in the
schedule in Appendix A the Child Support Obligation of Low-Income Payers Schedule.

“Marital child” means a child born during the marriage of his or her parents. In
addition, if the father and mother of a non-marital child enter into a lawful marriage or a
marriage which appears and they believe is lawful, except where the parental rights of the
mother were terminated before either of these circumstances, the child becomes a marital
child and shall enjoy all of the rights and privileges of a marital child as if he or she had
been born during the marriage of the parents. The children of all marriages declared void
under the law are nevertheless marital children.

“Monthly Income” shall mean the obligor’s annual gross income or, if
applicable, the obligor’s annual income modified for business expenses; plus the obligor’s
annual income imputed based on earning capacity; plus the obligor’s annual income
imputed from assets; divided by twelve (12).

“Nation” means the Oneida Nation.

“Non-c Custodial p Parent” shall mean the parent of a child who does not hold
primary care, custody and/or control of a child.

“Non-legally responsible relative” means a relative person connected with a child by
blood, marriage, or adoption who assumes responsibility for the care of a child without
legal custody, but is not in violation of a court order. A “Non-legally responsible relative”
does not include a relative who has physical custody of a child during a court-ordered
visitation period.

“Obligee” shall mean the person or entity to whom child support is owed.

“Obligor” shall mean the person who is obliged to pay child support to the
obligee.
“Ownership interest” means any personal financial interest.

“Parent” means the biological, natural or adoptive parent of the child.

“Payor” shall mean means a person or entity with a legal obligation, as an employer, buyer of goods, debtor, or otherwise, to pay an obligor.

“Relative” means any person connected with a child by blood, marriage or adoption.

“Reservation” shall mean means all lands within the exterior boundaries of the Reservation of the Oneida Nation Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

“Serial family obligor” means an obligor with an existing legal obligation for child support who incurs an additional legal obligation for child support in a subsequent family as a result of a child support order.

“Shared-placement obligor” means a parent who has an ordered period of placement of at least twenty-five percent (25%), is ordered by the Family Court to assume the child’s basic support costs in proportion to the time that the parent has placement of the child and is determined to owe a greater support amount than the other parent.

“Split-placement obligor” means an obligor who has two (2) or more children and who has physical placement of one (1) or more children but not all of the children.

“Stipulation” means a voluntary agreement between parties concerning some related point.

“Substantial change of income” means the obligor has a significant change in his or her finances that would lead to a change in child support of more than fifteen percent (15%) and fifty dollars ($50.00) per month.

“Variable costs” means the reasonable costs above basic support costs incurred by or on behalf of a child, including but not limited to, the cost of child care, tuition, a child’s special needs, and other activities that involve substantial cost.

“Threshold” means an amount, expressed as either a percentage of the monthly amount due, a fixed dollar amount, or both, that the lien amount must equal or exceed before an administrative enforcement action may be used to enforce a child support order.

“Tribe” or “Tribal” shall mean the Oneida Tribe of Indians of Wisconsin.

“Wage Withholding” shall mean the process whereby a court order, Family Court order or voluntary wage assignment directs an employer, bank or agent holding monies or property of an obligor, to make payments or deliver property to satisfy a child support obligation.

### 704.4. Jurisdiction

#### 704.4-1. The Family Court has jurisdiction over any action brought under this law.

#### 704.4-2. Personal Jurisdiction

Personal jurisdiction over an individual under this law may be established where one party or a child of the parties is any of the following:

(a) a member of the Tribe; or Nation;

(b) a resident of the Reservation who is also a member of an Indian tribe, band or community which is recognized by a State or the federal government;

(c) a resident of the Reservation who is also the biological parent of a child that is enrolled or is eligible for enrollment with the Tribe; or

(d) an individual who consents to the jurisdiction of the Family Court by one (1) of the following means:

(1) Filing an action with the Family Court;
(2) Knowingly and voluntarily giving written consent to the jurisdiction of the Family Court;

(3) Entering a notice of appearance before the Family Court in an action without concurrently preserving the defense of lack of personal jurisdiction or filing a motion to dismiss for lack of personal jurisdiction within thirty (30) days of entering the notice of appearance; or

(4) Appearing in an action before the Family Court without asserting the defense of lack of personal jurisdiction.

704.4-23. Personal jurisdiction over the other party may be established using any method provided by law, including long-arm jurisdiction procedures as provided for in Section 201 of the Uniform Interstate Family Support Act as referred to in 42 U.S.C. §666.

704.4-34. Transfer of Cases from Other Courts. If personal jurisdiction over the parties has been established under 704.4-1 or 704.4-2 of this law, the Family Court has jurisdiction over any action transferred to the Family Court from any court of competent jurisdiction.

704.5. Initiating an Action for Child Support Orders

704.5-1. Every parent has a duty to support each and every child of that parent. A child support order may be obtained from the Family Court by either submitting a voluntary agreement to the Family Court for approval or by filing a petition for child support with the Family Court.

(a) If a party to the action is a minor or is a legally incompetent adult, the Family Court may appoint a guardian ad litem to represent such party in the action in accordance with section 705.8 of the Child Custody, Placement and Visitation law.

704.5-2. A party may request the services of the Agency or may be referred to the Agency from an entitlement program.

704.5-2. Initiation of Action by the Agency. For assistance in initiating a child support order a party may request the services of the Agency or may be referred to the Agency from an entitlement program.

(a) Within thirty-five (30) business days of receiving a completed application for services or a referral, the Agency shall send the non-custodial parent a Letter of Request for Support and Financial Disclosure form.

(b) Within seven (7) business days of the meeting with the custodial parent, the Agency shall send a Letter of Request for Support and Financial Disclosure form to the non-custodial parent.

(bc) If the non-custodial parent fails to respond to or take action on the Letter within ten (10) business days, a second Letter of Request for Support and Financial Disclosure form shall be sent.

(c) If the non-custodial parent fails to respond to or take action on the second Letter within five (5) within ten (10) business days, the custodial parent, or the Agency when required by federal law, may initiate a hearing in accordance with this law.

(d) If the non-custodial parent responds within the required time period after receiving a Letter of Request for Support and Financial Disclosure form, the parties shall attempt to enter into a stipulation/voluntary agreement.

704.5-3. Initiation of Action by a Party Not the Agency. Any of the following individuals may initiate an action for the establishment of child support at any time by filing a petition with the Family Court:

(4a) a custodial parent;

(2b) a child’s mother;

(3c) a child’s father;
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(4d) a child’s guardian ad litem;
(5e) a child’s non-legally responsible relative; or
(6f) a legally incompetent adult’s guardian ad litem; or

704.5-34. Voluntary Agreement Stipulation. (a) The parties may enter into a stipulation voluntary agreement at any time as to the level of the child support obligation.

(a) The Agency shall assist parties in reaching a stipulation voluntary agreement upon request or when the parties are referred to the Agency by an entitlement program. Parties may also submit a stipulation voluntary agreement to the Family Court for approval without the Agency’s assistance.

(b) In order for a stipulation voluntary agreement to be valid the following conditions shall be met:

1. The stipulation agreement shall be in writing, signed, and notarized;
2. If the parties deviate from the percentage standards, the stipulation agreement shall state the amount of support that would have been ordered by the percentage standards and the reasons for deviating from the percentage standards;
3. All parties shall sign the stipulation agreement free of duress and coercion; and
4. The Family Court shall make written findings that the stipulation agreement is appropriate, using the criteria for deviating from standard percentages under 704.7-3 as a guideline, if applicable.

(c) After the stipulation agreement is approved and filed by the Family Court, it shall have the same force and effect as an order issued by the Family Court. The obligation of the obligor to pay child support shall commence on the date specified in the stipulation agreement, but no later than the date the agreement is approved and filed by the Family Court.

704.5-45. Initiating a Hearing Petition to Establish Child Support. If the parties do not enter into a stipulation voluntary agreement, then any of the following may initiate an action for the establishment of a petition to establish child support by filing a petition may be filed with the Family Court.

(a) a custodial parent;
(b) a child’s natural mother;
(c) a child’s father;
(d) a child’s guardian ad litem;
(e) a child’s non-legally responsible relative;
(f) a legally incompetent adult’s guardian ad litem; or
(g) the Agency when required by federal law.

704.5-5. Petition. The petition to establish child support may be filed as a separate proceeding or in connection with a petition for child custody. The petition to establish child support shall include the following:

(a) Requirements of the Petition. The petition to establish child support shall include the following:

1. The name, date of birth, and address, and tribal affiliation of the petitioner, and respondent, and child for whom support is requested;

(A) If the address of the respondent is unknown, other Tribal departments of the Nation shall cooperate with the Family Court, at the Family Court’s request, to provide the Family Court with the respondent’s address. Any such Family Court requests shall be made in such a way which protects the privacy rights of all parties and children who are involved in proceedings or actions under this law.

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(2) With whom the child currently resides;
(3) When and how paternity was established;
(4) Name and date of birth of other children of the parties, and the child support obligation for those children, if applicable;
(5) Whether either party is receiving state or tribal benefits, and if so, what benefits;
(6) Whether any other action to determine child support has been commenced or is pending in a court of another jurisdiction and whether a child support order has been entered by another court;
(7) Financial information such as the parties’ income;
(8) The relief the petitioner is requesting, which shall include, but is not limited to, establishment of support, request for support back to date of filing, and/or any other relief the court may deem just and equitable;
(b2) Confidential Petition Addendum. The confidential petition addendum is a separate form which has the parties and the child’s name, date of birth and social security number. This form shall be kept separate from the petition and shall be maintained in a confidential file. The form shall be available only to the parties, their attorneys or advocates, the Agency, or any person authorized by the Family Court to have access to the form.
(b) Nondisclosure of Information in Protected Cases. Upon a finding, which may be made ex parte, that the health, safety or welfare of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, the Family Court shall order that the address of the child or party, or other identifying information, not be disclosed in a pleading or other document filed in a proceeding under this law.
704.5-6. (c) Hearing Date. Upon receipt of a petition, the Family Court shall schedule a hearing to determine child support to be held at a time after the filing of the petition and consistent with the manner of service.
704.5-7. (d) Notice Summons. All parties shall be notified of the petition and of all hearings, and shall be given an opportunity to be heard.
(1) Service of the Summons. The summons, which notices the initiation of an action shall be served by certified mail (return receipt requested) or in person within fifteen (15) calendar days after the petition is filed with the Family Court. All mailing of notice The summons shall include the Family Court clerk’s return address, with a notice request to file an answer to that address. Subsequent Any notice after the summons shall be served by first-class mail to the recently verified last-known address of the party.
(aA) Certified mail. Certified mail sent to a party’s most recently verified last-known address but returned because it was unclaimed or refused shall constitute constructive service. Certified mail returned for other reasons shall require service by other methods pursuant to the Oneida Judiciary Rules of Civil Procedure.
(bB) Publication. When a responding party cannot be found for personal service after diligent attempts and attempts to serve the responding party by certified mail have failed, the petitioner may ask the Family Court to direct the Agency to provide service by publication. If the request is granted, the Agency The publication shall be published in the Kalihwisaks Nation’s newspaper or a newspaper of general circulation in the county of
residence of the respondent, if known. The publication shall be designated as a Legal Notice and any confidential information shall be redacted.

(1) If service by publication is permitted and there is insufficient time for notice and answer pursuant to this law, the Family Court shall re-schedule the hearing appropriately and may permit extended time deadlines for default orders and for hearings in order to provide for fair notice and opportunity for the party to respond.

704.5-8 (2) Requirements of the Summons and Petition. The summons to be served on the respondent(s), along with the petition, shall include the following notice, in addition to providing a time, place, and date for appearance:

(a) That if he or she chooses not to appear at the hearing or enter a defense to the petition challenging the authority of the Family Court to hear the matter by the date of the hearing, the hearing shall proceed on the basis of the petitioner’s evidence;

(b) That a child support order may require the person found to be the obligor to pay child support until the child reaches eighteen (18) years of age or until the child graduates from high school, or its equivalent, up to age nineteen (19);

(c) That the person found to be the obligor may have his or her license(s) may be suspended or denied for failure to pay child support, in addition to other enforcement actions;

(d) That the person found to be the obligor’s employer or others with evidence of the person’s income may be subpoenaed to provide the Family Court with records of his or her earnings;

(e) That if the person found to be the obligor is unemployed, he or she will be imputed to be able to provide some degree of child support and an order of support shall be calculated according to this law unless the Family Court makes written findings ordering otherwise; and

(f) That any answer to the petition shall be filed with the Family Court within twenty (20) calendar days of the date of service of the petition, and a copy served on the other party.

704.5-9 (e) Answers. Answers shall be filed with the Family Court and served on the petitioner within twenty (20) calendar days of the date of service of the petition in accordance with the Nation’s laws and policies governing civil procedure.

704.5-10 (f) Subpoenas. Upon request of either party, the Family Court shall issue subpoenas to any person in possession of relevant information to appear or produce documents to the Family Court. Failure to comply with such a subpoena may be punishable as contempt.

704.5-11. Temporary Orders. At any time after a child’s parentage has been established, the Family Court may make a temporary order for the payment of child support and the child’s health care expenses. Before making a temporary order, the Family Court shall consider those factors that the Family Court is required to consider when granting a final child support order. If the Family Court makes a temporary child support order that deviates from the amount of support that would be required by using the percentage standard, the requirements of section 704.7-38 shall be complied with.
704.6. **Child Support Hearing Procedures**

704.6-1. The factual determinations made at a hearing shall include, but is not limited to, the income and expense information necessary to determine the appropriate level of support according to this law.

704.6-2. The Family Court may utilize discovery procedures and contempt powers, as authorized by any Tribal law, policy, or rule of the Nation to obtain information relevant to the establishment or enforcement of child support. These procedures may include the following:

(a) Issue subpoenas requiring necessary and relevant parties to appear in person and provide testimony;
(b) Issue subpoenas requiring the production of evidence;
(c) Obtain information about property or assets to assess its value or funding source for lien or seizure actions;
(d) Obtain information about the income of any party to the action; and/or
(e) Issue contempt findings for failure to comply with the lawful order of the Family Court.

704.6-3. Both parties have the right to representation by an attorney and/or advocate at their own expense. The Tribe Nation shall not be required to pay for any fees and/or expenses incurred by any party in connection with proceedings under this law.

704.6-4. **Temporary Orders.** At any time after a child’s parentage has been established, the Family Court may make a temporary order for the payment of child support and the child’s health care expenses. Before making a temporary order, the Family Court shall consider those factors that the Family Court is required to consider when granting a final child support order. If the Family Court makes a temporary child support order that deviates from the amount of support that would be required by using the percentage standard, the requirements of section 704.7-3 shall be complied with.

704.6-5. **Default.** If the respondent fails to appear at the hearing upon a showing of valid service and the petitioner presents evidence of the obligation by the absent party, a child support order shall be entered pursuant to the evidence.

704.6-6. **Hearings and Records Closed.** Child support proceedings shall be closed to any person other than those necessary to the action or proceeding. Records of child support cases shall remain confidential and shall only be viewed by the parties, the legal guardian of a party who is a minor, the parties’ attorney or advocate, guardian ad litem, Judges and staff assigned to the case, and those other persons who first obtain a written release from a party to view material contained in the record.

704.7. **Determining the Child Support Determination Obligation**

704.7-1. Except as provided elsewhere in this law, the Family Court shall determine child support payments by using the percentage standards established in section 704.7-2 of this law, except as provided elsewhere in this law. The obligor’s monthly income shall be considered in determining his or her child support obligation.

704.7-2. **Percentage Standards to Determine the Amount of Child Support.**

(a) The following percentages shall be applied to the portion of an obligor’s monthly income available for child support that is less than seven thousand dollars (57,000):
   (1) seventeen percent (17%) for one (1) child;
   (2) twenty-five percent (25%) for two (2) children;
   (3) twenty-nine percent (29%) for three (3) children;
   (4) thirty-one percent (31%) for four (4) children; and
   (5) thirty-four percent (34%) for five (5) or more children.
(b) The following percentages shall be applied to the portion of an obligor’s monthly income available for child support that is greater than or equal to seven thousand dollars ($7,000) and less than or equal to twelve thousand five hundred dollars ($12,500):

1. fourteen percent (14%) for one (1) child;
2. twenty percent (20%) for two (2) children;
3. twenty-three percent (23%) for three (3) children;
4. twenty-five percent (25%) for four (4) children; and
5. twenty-seven percent (27%) for five (5) or more children.

(c) The following percentages shall be applied to the portion of an obligor’s monthly income available for child support that is greater than twelve thousand five hundred dollars ($12,500):

1. ten percent (10%) for one (1) child;
2. fifteen percent (15%) for two (2) children;
3. seventeen percent (17%) for three (3) children;
4. nineteen percent (19%) for four (4) children; and
5. twenty percent (20%) for five (5) or more children.

704.7-3. Determining Income Modified for Business Expenses. In determining a parent’s monthly income, the Family Court may adjust a parent’s gross income as follows:

(a) Adding wages paid to dependent household members.
(b) Adding undistributed income that the Family Court determines is not reasonably necessary for the growth of the business. The parent shall have the burden of proof to show that any undistributed income is reasonably necessary for the growth of the business.
(c) Reducing gross income by the business expenses that the Family Court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.

704.7-4. Determining Income Imputed Based on Earning Capacity. When a parent’s income is less than the parent’s earning capacity or is unknown, the Family Court may impute income to the parent at an amount that represents the parent’s ability to earn.

(a) The parent’s ability to earn may be based on the parent’s:

1. education, training, and recent work experience;
2. earnings during previous periods;
3. current physical and mental health;
4. history of child care responsibilities as the parent with primary physical placement; and
5. the availability of work in or near the obligor’s community.

(b) If evidence is presented that due diligence has been exercised to ascertain information on the parent’s actual income or ability to earn and that information is unavailable, the Family Court may impute to the parent the income that a person would earn by working thirty-five (35) hours per week for the federal minimum hourly wage under 29 USC 206(a)(1). In addition to imputed income, the Family Court may order the parent to search for a job or participate in a work experience and job training program.

(c) If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent’s earning capacity and the parent’s gross income or income modified for business expenses.

704.7-5. Determining Income Imputed from Assets. The Family Court may impute a reasonable earning potential to a parent’s assets if the Family Court finds both of the following:
(1) The parent has ownership and control over any real or personal property, including but not limited to, life insurance, cash and deposit accounts, stocks and bonds, business interests, net proceeds resulting from worker’s compensation or other personal injury awards not intended to replace income, and cash and corporate income in a corporation in which the obligor has an ownership interest sufficient to individually exercise control and the cash or corporate income is not included as gross income.

(2) The parent’s assets are underproductive and at least one (1) of the following applies:

   (A) The parent has diverted income into assets to avoid paying child support.
   (B) Income from the parent’s assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents.

(b) The Family Court shall impute income to assets by multiplying the total net value of the assets by the current six (6) month treasury bill rate or any other rate that the Family Court determines is reasonable and subtracting the actual income from the assets that were included as gross income.

704.7-6. Adjustment for Child’s Social Security Benefits. The Family Court may include consider benefits received by a child under 42 U.S.C. §402(d) based on a parent’s entitlement to federal disability or old-age insurance benefits under 42 U.S.C. §401 to 433 in the parent’s gross income and adjust an obligor’s child support obligation by subtracting the amount of the child’s benefit. In no case may this adjustment require the obligee to reimburse the obligor for any portion of the child’s benefit. If the obligor is receiving the child’s benefit, the support amount is either the percentage standard applied to the obligor’s income or the amount of the child’s benefit, whichever is greater.

(a) Determining the Child Support Obligations of Shared-Placement Parent when the Child Receives Social Security Benefits. If the shared-placement guidelines under section 704.8-2 apply, the child’s benefit is split between the parents in proportion to the amount of time the child spends with each parent. Add the proportion of the child’s benefit that represents the proportion of time the child spends with the parent not receiving the benefit to the support obligation of the parent who is receiving the child’s benefit. Child support shall be determined as follows:

(1) Determine each parent’s monthly income available for child support under section 704.7-2. If a parent has one (1) or more previous child support obligations, determine the parent’s monthly income available for child support adjusted for the previous obligations as provided in section 704.8-1. Include the parent’s federal disability or old age insurance benefits under 42 U.S.C. §401 to 433 in that parent’s income, but do not include the child’s benefit under 42 U.S.C. §402 (d) in either parent’s income.

(2) Multiply each parent’s monthly income available for child support by the appropriate percentage standard under section 704.7-2.

(3) Multiply each amount determined under section 704.7-6(a)(2) by one hundred and fifty percent (150%).

(4) Multiply the amount determined for each parent in section 704.7-6(a)(3) by the proportion of time that the child spends with the other parent.

(5) Multiply the amount of the child’s benefit by the proportion of the time the child spends with the parent who is not receiving the child’s benefit.
(6) Add the amount in section 704.7-6(a)(5) to the child support obligation calculated in section 704.7-6(a)(4) for the parent who is receiving the child’s benefit.

(7) Offset the resulting amounts against each other. The parent with the greater child support obligation is the shared-placement obligor. The shared-placement obligor shall pay either the greater of the amount determined in this subsection or the amount determined using the appropriate percentage standard under section 704.7-2.

704.7-7. Claiming Children for Tax Purposes. The Family Court may address who may claim the child for tax purposes or accept a stipulation entered into by the parties regarding children and taxes.

704.7-38. Deviation from Standard Factors the Percentage Standards. Upon request by a party, the Family Court may modify the amount of child support payments determined by the percentage standards if, after considering the following factors, the Family Court finds by the greater weight of the credible evidence that use of the percentage standards is unfair to the child or to any of the parties:

(a) The financial resources of the child;
(b) The financial resources of both parents;
(c) Maintenance received by either party;
(d) The needs of each party in order to support himself or herself at a level equal to or greater than the federal poverty line as established under 42 U.S.C. §9902 (2);
(e) The needs of any person, other than the child, whom either party is legally obligated to support;
(f) The standard of living the child would have enjoyed if his or her parents were living together;
(g) The desirability that the custodial parent remain in the home as a full-time parent;
(h) The cost of day care if the custodial parent works outside the home, or the value of custodial services performed by the custodial parent if the custodial parent remains in the home;
(i) The award of substantial periods of physical placement to both parents;
(j) Extraordinary travel expenses incurred in exercising the right to periods of physical placement;
(k) The physical, mental, and emotional health needs of the child, including any costs for health insurance;
(l) The child’s educational needs;
(m) The tax consequences to each party;
(n) The best interests of the child;
(o) 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; and
(p) Any other factors which the Family Court in each case determines are relevant.

Cross-reference: See also Rule CS 1 CHILD SUPPORT PERCENTAGE OF INCOME STANDARD.

704.7-59. Past-due and Arrears obligations.

(a) A party may request payment of arrears or past-due child support as follows:

(1) In an action pursuant to Chapter 703, Paternity, regarding paternity, back to the date of birth of the child or date of application, whichever is later;
(2) In a child support establishment or modification pursuant to this law, back to the date of application, review, or referral; or
(3) In an establishment or modification of placement pursuant to Chapter 702 or Chapter 705, an action regarding divorce, annulment and legal separation or child custody, placement, and visitation, back to the date of filing, or as otherwise ordered by the Family Court.

(b) A payment for arrears or a past-due payment shall be set based on the amount due and the income available to pay current support.

(c) Once current child support is ended in any manner prescribed by law, child support shall continue to be paid at the same rate, until all arrears or past due child support is paid in full.

704.8. Determining the Child Support Obligation in Special Circumstances Content and Effect of Order

704.8-1.4-1. Determining the Child Support Obligation of a Serial-Family Obligor.

(a) Applicability. This subsection applies only if the additional support obligation incurred by the obligor is the result of a child support order and the support obligation being calculated is for children from a subsequent family or subsequent paternity judgment or acknowledgment. An obligor may not use the provisions of this section as a basis for seeking modification of an existing order based on a subsequently incurred legal obligation for child support.

(b) Determination. For a serial-family obligor, the child support obligation incurred for a marital or non-marital child in a subsequent family as a result of a child support order may be determined as follows:

1. Determine the obligor’s monthly income.
2. Determine the order of the obligor’s legal obligations for child support by listing them according to the date each obligation is incurred.
   (A) For a marital child, the legal obligation for child support is incurred on the child’s date of birth.
   (B) For a non-marital child, the legal obligation for child support is incurred on the date of the child support order that paternity is legally established.
   (C) For a non-marital paternal child in an intact family, it is incurred on the date of adoption or the date of the filing of an acknowledgement of paternity that paternity is legally established.
   (D) For a non-marital maternal child in an intact family, it is incurred on the child’s date of birth.

3. Determine the first child support obligation as follows:
   (a) If the obligor is subject to an existing support order for that legal obligation, except a shared-placement order, the support for that obligation is the monthly amount of that order; or
   (b) If the obligor is in an intact family, has primary placement of another child, or is subject to a shared-placement order, the support is determined by multiplying the appropriate percentage for that number of children by the obligor’s monthly income.

4. Adjust the monthly income by subtracting the support for the first legal obligation under (3) from the obligor’s monthly income under (1).

5. Determine the second child support obligation as follows:
If the obligor is subject to an existing support order for that legal obligation, except a shared-placement order, the support for that obligation is the monthly amount of that order; or

If the obligor is in an intact family or is subject to a shared-placement order, the support is determined by multiplying the appropriate percentage for that number of children by the obligor’s monthly income.

Adjust the monthly income a second time by subtracting the support for the second legal obligation determined under (5) from the first adjusted monthly income under (4).

Repeat the procedure under (5) and (6) for determining the child support obligation and adjusting the monthly income for each additional legal obligation for child support the serial family obligor has incurred.

Multiply the appropriate percentage for the number of children subject to the new order by the final adjusted monthly income determined in either (6) or (7) to determine the new child support obligation.

**Determining the Child Support Obligations of Shared-Placement Parents.**

Applicability. The shared-placement formula may be applied when both of the following conditions are met:

1. Both parents have periods of placement of at least twenty-five percent (25%) or ninety-two (92) days a year. When calculating periods of placement based on equivalent care, the total number of overnights may exceed three hundred and sixty-five (365). 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 total number of overnights in a year. The combined periods of placement for both parents shall equal one hundred percent (100%).

2. Each parent is ordered by the Family Court to assume the child’s basic support costs in proportion to the time that the parent has placement of the child.

Determination. The child support obligations for parents who meet the requirements of (a) for the shared-placement formula may be determined as follows:

1. Determine each parent’s monthly income.

   A. In determining whether to impute income based on earning capacity for an unemployed parent or a parent employed less than full time under 1.3-2, the Family Court shall consider benefits to the child of having a parent remain in the home during periods of placement and the additional variable day care costs that would be incurred if the parent worked more.

2. Multiply each parent’s monthly income by the appropriate percentage standard under 704.7.

3. Multiply each amount determined under (2) section 704.8-2(b)(2) by one hundred and fifty percent (150%).

4. Multiply the amount determined for each parent under (3) section 704.8-2(b)(3) by the proportion of the time that the child spends with the other parent to determine each parent’s child support obligation.

5. Offset resulting amounts under (4) section 704.8-2(b)(4) against each other. The parent with a greater child support obligation is the shared-placement obligor. The shared-placement obligor shall pay the lesser of the amount determined under this section or the amount determined using the appropriate percentage standard under 704.7. If the shared-placement obligor is also a low-income obligor, the child
support obligation may be the lesser of the amount determined under this section
or—under 1.4-4—the shared placement determination or the low-income
determination.

(6) In addition to the child support obligation determined under (5) section 704.8-
2(b)(5), the Family Court shall assign responsibility for payment of the child’s
variable costs in proportion to each parent’s share of physical placement, with due
consideration to a disparity in the parents’ incomes.

(A) The Family Court shall direct the manner of payment of a variable cost
order to be either between the parents or from a parent to a third-party
service provider.

(B) The Family Court shall not direct payment of variable costs to be made
to the Agency or the Agency’s designee, except as incorporated in the fixed
sum or percentage expressed child support order.

(7) A change in the child’s variable costs shall not in and of itself be considered a
substantial change in circumstances sufficient to justify a modification of a
judgment or order under section 704.10.

704.8-3.1.4-3. Determining the Child Support Obligations of Split-Placement Parents.
(a) Applicability. The split-placement formula may be applied when for parents who have
two (2) or more children and each parent has placement of one (1) or more but not all of
the children, the child support obligations may be determined as follows:

(b) Determination. The child support obligation for a split-placement parent may be
determined as follows:

(a1) Determine each parent’s monthly income.

(b2) Multiply each parent’s monthly income by the appropriate percentage for the
number of children placed with the other parent to determine each parent’s child
support obligation. Determine the appropriate percentage standard for the number
of total children.

(3) Divide the appropriate percentage standard for the number of total children by
the total number of children.

(4) Multiply the number calculated in section 704.8-3(b)(3) by the number of
children placed with each parent.

(5) Multiply each parent’s monthly income by the number calculated in 704.8-
3(b)(4) based on the number of children placed with the other parent to determine
each parent’s child support obligation; and

(e6) Offset resulting amounts under (b) section 704.8-3(b)(5) against each other.
The parent with a greater child support obligation is the split-placement obligor.

704.8-4.1.4-4. Determining the Child Support Obligation of a Low-Income Obligor.
(a) Applicability. If an the-obligor’s total economic circumstances limit his or her ability
to pay support at the level determined under 704.7 by the standard percentage standards,
then the low-income obligor standards found in the Child Support Obligation of Low-
Income Payers Schedule may be used.

(b) Determination. The Family Court may use the monthly support amount provided in
the schedule in Appendix A Child Support Obligation of Low-Income Payers Schedule as
the support amount for an obligor with a monthly income at a level set forth in the schedule
if the obligor’s total economic circumstances limit his or her ability to pay support at the
level determined under 704.7.

(1) If an obligor’s monthly income is below the lowest income level in Appendix
A the Child Support Obligation of Low-Income Payers Schedule, the Family Court
may set an order at an amount appropriate for the obligor’s total economic circumstances. This amount may be lower than the lowest support amount in Appendix A the Child Support Obligation of Low-Income Payers Schedule. (b) The Agency shall revise the schedule in Appendix A at least once every four (4) years. The revision shall be based on changes in the federal poverty guidelines since the schedule was last revised.

704.8-1. The child support order shall provide for immediate wage withholding. An order to withhold income shall be binding against future payors upon actual notice of the order through service by personal delivery or certified mail upon the payor. Wages shall not be subject to withholding only where:

(a) One of the parties demonstrates and the Family Court finds that there is good cause not to require wage withholding due to one of the following:

(1) There is an error in the amount of current or overdue support; or
(2) The identity of the obligor is mistaken.

(b) The parties reach a written agreement which provides for an alternative arrangement and is approved by the Family Court.

704.8-2. The Family Court may require a party, or both parties, to utilize the services available to him or her to obtain and maintain regular employment and/or job training.

704.8-3. Support Order Notice Requirements. Each order for child support shall include an order that the obligor and obligee notify the Agency of any change of address or name change within ten (10) business days of such change. Each order for child support shall also include an order that the obligor notify the Agency and the obligee of any change of employer or substantial change of income within ten (10) business days of the change. A “substantial change of income” means the obligor has a significant change in his or her finances that would lead to a change in child support of either more than fifteen percent (15%) or fifty dollars ($50.00) per month. An order under this section is enforceable as contempt.


704.9. Child Support Order Enforcement of Order

704.9-1. Expression of Ordered Support. The child support amount shall be expressed as a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the obligor’s income and the stipulation requirements of Chapter 704 are satisfied.

704.9-2. Interest on Arrears. The Tribe Nation shall not charge a party an obligor ordered to pay child support interest on any arrears.

704.9-3. Income Wage Withholding. The child support order shall provide for immediate wage withholding.

(a) A copy of the Family Court’s wage-income withholding order shall be sent by the Agency to a payor within three (3) business days of the entry of the order of the Family Court by any business method acceptable to the payor mail, fax, or electronic means.

(b) An order to withhold income shall be binding against future payors upon actual notice of the income withholding order through service notice by mail, fax, or electronic means, personal delivery or certified mail upon the payor.

(c) Income wages shall not be subject to withholding only where:

(1) One of the parties demonstrates, and the Family Court finds, that there is good cause not to require income wage withholding due to one of the following:
(1A) There is an error in the amount of current or overdue support; or
(2B) The identity of the obligor is mistaken.

(b2) The parties reach a written agreement which provides for an alternative arrangement that is approved by the Family Court.

(bd) No payor shall refuse to honor a wage an income withholding order executed pursuant to this law. A payor shall begin withholding income immediately after notice service of a wage an income withholding order made pursuant to this law. Within five (5) business days after the payor pays the obligor, the payor shall send the amount withheld to the Agency Wisconsin Support Collections Trust Fund.

(eg) A payor shall be liable for one hundred percent (100%) of the child support order, or the amount of money that should have been withheld from the obligor’s earnings, whichever is the lesser amount, if the payor:

1. Fails or refuses, after being noticed served with an income withholding order, to deduct or promptly remit the amounts of money required in the order; or
2. Fails or refuses to submit an answer to the notice of wage income withholding after being noticed served; or
3. Is unwilling to comply with the other requirements of this law.

(df) A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any obligor solely because he or she is subject to wage income withholding.

(1) When the Family Court finds that a payor has taken any of these actions, the payor shall be liable for a civil penalty. Any payor who violates any provision of this paragraph shall be liable in a civil action for reasonable damages suffered by an obligor as a result of the violation, and an obligor discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his or her former position.

(2) The statute of limitations for actions under this section shall be one (1) year.

(eg) A payor who repeatedly fails to comply with a wage an income withholding order as required by this law may be subject to a fine, not to exceed five hundred dollars ($500), or have its Oneida vendor license revoked or suspended, if applicable, until compliance with this law is assured.

(1) The vendor license issuing agency shall comply with the Family Court order to revoke or suspend a vendor license.

(gh) If wage income withholding is inapplicable, ineffective or insufficient to ensure payment of child support, the Family Court may require the obligor to establish an account for the purpose of transferring child support payments.

(gi) The total amount withheld under an income withholding order shall not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b)).

(gh) Non-Indian off-reservation payors shall be subject to income withholding under 28 U.S.C. §1738B.

704.9-5. Support Order Notice Requirements. Each order for child support shall include:

(a) An order that the obligor and obligee notify the Agency of any change of address or name change within ten (10) business days of such change; and

(b) Each order for child support shall also include a An order that the obligor notify the Agency and the obligee of any change of employer or substantial change of income within

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ten (10) business days of the change. A “substantial change of income” means the obligor has a significant change in his or her finances that would lead to a change in child support of either more than fifteen percent (15%) or fifty dollars ($50.00) per month. An order under this section is enforceable as contempt.

704.9-6. Enforcement of Order. A child support order under this section is enforceable as contempt.


704.9-8. Trust. The Family Court may protect and promote the best interests of the minor children by setting aside a portion of the child support that either party is ordered to pay in a separate fund or trust for the support, education, and welfare of such children.


(a) Non-cash payments may be used to satisfy part or all of a child support order if the parties and the Family Court agree to allow non-cash payments. Non-cash payments shall not be used to fulfill arrears. If non-cash payments are allowed, the order shall:

(1) state the specific dollar amount of the support obligation;
(2) state the maximum amount (in dollars) of non-cash payment that the obligee will accept;
(3) describe the type(s) of non-cash payment that is permitted;
(4) provide that non-cash payment cannot be used to satisfy assigned child support obligations.

(b) When both parents are in agreement that non-cash payments may be used to satisfy a child support obligation, the non-cash payment may include, but is not limited, to the following:

(1) Clothing;
(2) Groceries;
(3) Child Care;
(4) Deer/Venison;
(5) Wood;
(6) Transportation;
(7) Skilled trades or services, such as car repairs, lawn care and snow removal; and/or
(8) Gift cards.

(c) When a non-cash payment is used to satisfy part or all of a child support order, the obligor and obligee shall submit any forms required by the Agency within the month that the non-cash payment is made. If there are less than five (5) business days left in the month when a non-cash payment is made, the obligor and obligee have five (5) business days to submit any required forms to the Agency. The Agency shall be responsible for applying the non-cash payment towards the child support order during the appropriate month.

704.9-3. In the event that an obligor is at least one (1) month delinquent in paying his or her child support obligation, he or she may be subject to the following enforcement actions:

(a) increase in amount of wages withheld
(b) placement on lien docket;
(c) credit bureau reporting;
(d) intercept of income and/or other payments;
(e) seizure of personal property;
(f) suspension of licenses;
(g) denial of passport;
(h) commitment to jail;
(i) charge of contempt;
(j) referral for criminal charges;
(k) any other enforcement action included in this law or in a rule that is established under
this law.

Cross-reference: See also Rule CS 2 ENFORCEMENT TOOLS.

704.10. Modification of a Child Support Order

704.10-1. Review of the Child Support Order. Every two (2) years, the Agency shall conduct a
review of the child support order. The Agency shall notify the non-custodial parent, custodial
parent, and any interested party that a review of their child support order will be conducted.

704.10-2. Modification of Child Support Sought by the Agency. After the two (2) year review is
conducted by the Agency, the Agency shall seek an order to modify the child support obligation if
there is a substantial change in circumstances, unless otherwise stipulated by the parties.
To update the child support obligation will be sought by the Agency if there is a substantial change
in circumstances. A substantial change in circumstance means includes, but is not limited to:

(a) the child’s placement is changed;
(b) either parent or the child has a significant change in his or her finances that would lead
to a change in child support of either more than fifteen percent (15%) or fifty dollars
($50.00) per month;
(c) the obligee is receiving public assistance benefits and is required to have a current
support order in place;
(d) it has been twenty-four (24) months since the date of the last child support order or
revision to the child support order, unless the child support amount is expressed as a
percentage; or
(e) a change has occurred and if the current circumstances had been in place at the time
the order was issued, a significantly different order would have been issued.

704.10-23. Modification of Child Support Sought by the Parties. Either party, not including the
Agency, may file a motion for a modification of a child support order at any time based upon a
substantial change of circumstances supported by affidavit.

(a) Such motion shall state why the previous decision should be prospectively modified.
(b) The motion and affidavit shall be served by the moving party on the responding party
by first-class mail to the recently verified last-known address, or by any method provided
by law.
(c) A hearing date shall be scheduled no sooner than ten (10) calendar days after the date
of service.

704.10-34. An obligor shall not raise a substantial change in circumstances as a reason not to pay
a past due reward current child support order or arrears. If a child support award becomes
unjust due to a substantial change in circumstances of the obligor, the obligor has the duty to file
a petition or motion with the Family Court for a changed-award modification to the child support
order at that time. He or she may not raise that change in circumstances as a reason not to pay a
past due award.

704.10-4. A change in the percentages shall constitute a substantial change in circumstances and
shall justify prospective modification of a child support order.
704.11. Modification of a Child Support Order for an Incarcerated Parent

Credit for Foreign Child Support Orders

704.11-1. In the event an obligor is incarcerated for one hundred and eighty (180) days or more, the obligor shall have the right to have the Agency review his or her child support order to determine if modification or suspension of the child support order is appropriate. The obligor shall notice the Agency of his or her incarceration.

(a) An ordered child support obligation shall be suspended for an incarcerated obligor who has been sentenced to one hundred and eighty (180) days or more and has an income of less than two hundred dollars ($200) per month.

(b) If while incarcerated the obligor’s income is two hundred dollars ($200) or more per month the Agency shall review the order and seek temporary modification of the child support order based on the incarcerated obligor’s income, if necessary.

(c) Child support obligations shall not be suspended or modified for an obligor who is incarcerated for a criminal offense which includes:

(1) felony failure to pay support;
(2) a crime against a child; and/or
(3) a crime against the obligee.

(d) Past due child support related debt and/or arrears shall not be suspended or reduced as a result of the obligor’s incarceration without stipulation by the parties.

704.11-2. Notification of Review. Within fifteen (15) business days of the receipt by the Agency of verification of the obligor’s incarceration, the Agency shall send out a letter to the parties of the case informing them of the obligor’s right to have his or her child support obligation reviewed, and of the Agency’s intent to review the current child support order.

704.11-3. Agency Review of Order. The Agency shall review the obligor’s child support order and make one of the following determinations:

(a) that the obligor’s income while incarcerated is two hundred dollars ($200) or more per month, and the Agency shall seek temporary modification of the obligor’s child support order based on the incarcerated obligor’s income, if necessary; or
(b) that the obligor’s income while incarcerated is less than two hundred dollars ($200) per month, and the Agency shall seek temporary suspension of the obligor’s child support order while incarcerated.

704.11-4. Suspension of Order by the Agency. If the Agency determines the obligor’s income is less than two hundred dollars ($200) per month while incarcerated, the Agency shall file with the Family Court a Motion and Order to Suspend without a request for a hearing with notice to all parties that the child support order shall be suspended.

(a) Either party shall have the right to object to the suspension of the order within ten (10) business days of the date of the notice by filing such objection with the Family Court and providing a copy of the objection to the Agency.

(b) If no objection to the suspension is received, the Family Court shall enter the order as proposed.

(c) Upon receipt of an objection from either party, the Family Court shall schedule a hearing on the issue.

704.11-5. Modification of Order by the Agency. If the Agency determines the obligor’s income is two hundred dollars ($200) per month or more while incarcerated, the Agency shall file with the Family Court a Motion and Order to Modify.
(a) The Family Court shall schedule a hearing on the motion. The Agency shall provide notice to all parties with the proposed modification to the child support order by first class mail at least ten (10) business days prior to the hearing.

(b) If no objection to the modification is received at the hearing, the Family Court shall enter the order as proposed.

704.11-6. Modification of the Order by the Incarcerated Parent. The incarcerated parent may seek modification of his or her own child support order by filing a motion to modify with the Family Court in accordance with section 704.10-3.

704.11-7. If during the term of incarceration, the Agency receives notification of a change in the obligor’s employment and/or income, the Agency shall review the obligor’s order and determine if the obligor’s income is two hundred dollars ($200) or more per month, and whether it is necessary to temporarily modify or suspend the obligor’s child support order.

(a) If the Agency determines that suspension of the obligor’s order is necessary, then the procedure for filing a Motion and Order to Suspend without a request for a hearing described in section 704.11-4 shall be followed.

(b) If the Agency determines that modification of the obligor’s order is necessary, then the procedure for filing a Motion to Modify described in section 704.11-5 shall be followed.

704.11-8. Reinstatement of Prior Order. Sixty (60) days after the obligor’s release from incarceration, the child support order shall be administratively reinstated by the Agency to the previous child support order in effect before the suspension or modification of the order based on the obligor’s incarceration.

(a) The Agency shall send notice to both parties of the obligor’s release from incarceration and the intent of the Agency to reinstate the original order.

704.11-1. Properly issued child support orders, and judgments or decrees of other Indian tribes, tribal organizations and states, that relate to child support shall be recognized and modified in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B.

704.11-2. A foreign order is authenticated by reasonable proof that the document tendered to the Family Court is a true copy of the foreign order as it is recorded in the agency or court of the issuing jurisdiction. An authentication stamp issued by a court clerk or custodian of records, or a court seal, is sufficient evidence of authenticity.

704.11-3. Unless defects in jurisdiction are apparent on the face of the foreign order, the person contesting enforcement of the order has the burden of showing the order is not valid. Upon a failure to respond to notice of the order and to timely contest it, the Family Court shall enforce it as a Family Court order.

704.11-4. If a foreign order is brought before the Family Court solely for an interpretation of the terms of the order, and the order has been recognized and given full faith and credit by the Family Court, the Family Court shall interpret the order by applying the law of the forum that issued the foreign order.

704.12. Compliance Plan - Right of Appeal

704.12-1. The Agency shall attempt to meet with a party who is found to be subject to enforcement action as soon as possible by sending a Letter of Non-Compliance within five (5) business days of being informed of a party’s failure to either pay support as ordered or to meet a required obligation or action. If at any time an obligor is, or may become, non-compliant with his or her child support order by failing to pay support as ordered or meeting a required obligation or action, the Agency shall meet with the obligor to develop a compliance plan.
704.12-2. An Appointment Letter may be sent by the Agency at any time deemed appropriate, but the Agency shall send out the Appointment Letter at least thirty (30) days prior to the initiation of any enforcement action.

(a) The Letter of Non-Compliance shall set out the conditions the party has failed to comply with, outline the enforcement actions that may be taken, and request the party meet with the Agency to discuss barriers to payment and how to avoid future enforcement action.

(b) If the party does not respond to the Letter within five (5) business days after receipt of the letter, the Agency shall send a second Letter.

(c) If the party fails to respond to the second Letter within five (5) business days after receipt of the letter, the Agency may proceed with appropriate enforcement action.

(d) If the party obligor responds to the Letter, the Agency shall interview the party to determine the reasons and barriers for the non-compliance and create a compliance plan. The compliance plan may include an increase in payment and/or any activity that is necessary to ensure assist in payment, including programs that focus on:

1. Employment and training;
2. Social service and mental health;
3. Physical and learning disabilities;
4. Tribal traditions and customs;
5. Family counseling and parenting; and
6. Any other program deemed necessary.

(d) If the party successfully completes the compliance plan, no further enforcement action is necessary. However, if the party fails to complete the compliance plan, the Agency shall proceed with appropriate enforcement action.

704.12-1. Any enforcement action implemented by the Agency may, within thirty (30) calendar days after the date that the action is enforced, be appealed to the Family Court. The decision of the Family Court shall be final.

704.13. Enforcement of an Order

704.13-1. An obligor may be subject to enforcement actions when the obligor is at least one (1) month delinquent in paying his or her child support obligation. Enforcement actions may include administrative enforcement action by the Agency and enforcement action by the Family Court.

(a) An obligor shall be provided with notice of an enforcement action of at least thirty (30) days before an enforcement action is used, unless another timeline is specified.

(b) An enforcement action shall be stayed and/or suspended after notice is given to the obligor if the obligor pays the debt in full or enters into, and maintains, an alternative payment plan and/or a compliance plan with the Agency.

704.13-2. Agency Responsibilities in the Enforcement of an Order. The Agency shall have the following responsibilities in the enforcement of an order:

(a) Track and document the progress of an obligor who is under an enforcement action;

(b) Take additional enforcement action when an obligor fails to comply with a previous enforcement action;

(c) Document the reasons why an enforcement action is not taken, when such action would have been appropriate under the circumstances; and
(d) Assist in refunding amounts that were improperly withheld, terminate income withholding when appropriate, and allocate amounts across multiple cases.

704.13-3. 2.4-2 Notice to the Obligor of Delinquency. In the event that an obligor owes a debt equal to or exceeding the monthly amount due, the Agency shall send a notice of delinquency to the obligor. (a) The notice of delinquency shall inform the obligor of the following:

(1) The dates that the delinquency accrued;

(2a) The total amount of the delinquency; and

(2) Any prior agreement or showing of good cause to not wage withhold may be terminated and the obligor may be subject to wage withholding;

(4b) The enforcement action that may be taken as a result of the delinquency.

(5) The obligor may request, in writing to the Agency, to negotiate an alternative payment plan with the Agency within ten (10) business days after the service of notice in order to stay any enforcement action;

(6) The obligor has ten (10) business days after the service of the notice of delinquency to file an objection with the Agency presenting good cause why an arrears payment or other enforcement action should not be implemented. The only allowable objections are:

(A) There is an error in the amount of current or overdue support; or

(B) The identity of the obligor is mistaken.

704.13-4. Notice to the Obligor of Enforcement Action. After the obligor has been noticed of his or her delinquency, and at least twenty (20) days prior to an enforcement being used against an obligor, the Agency shall send a notice of enforcement action to the obligor.

(a) The notice of enforcement action shall inform the obligor of the following:

(1) The total amount of the delinquency;

(2) The enforcement action that may be taken as a result of the delinquency;

(3) The obligor may request, in writing to the Agency, to negotiate an alternative payment plan with the Agency within ten (10) business days after the notice in order to stay any enforcement action;

(4) The obligor has ten (10) business days after the notice of enforcement action to file an objection with the Agency presenting good cause why an arrears payment or other enforcement action should not be implemented. The only allowable objections are:

(A) There is an error in the amount of current or overdue support; or

(B) The identity of the obligor is mistaken.

(b) If the obligor does not file an objection or request to negotiate an alternative payment plan:

(1) the enforcement action shall be taken; and/or

(2) an income wage withholding order, or revised order if one is already in place, shall be imposed on the payor. No more than an additional twenty percent (20%) of the current support payment order can be withheld to satisfy the delinquency provided that the total amount withheld does not exceed forty percent (40%) of the obligor’s monthly income.

(c) If a permissible objection is filed, the obligor shall be entitled to a hearing before any enforcement action is taken.

704.13-5. 2.4-3 Use of Mail for Notices. The Agency shall send notices related to the delinquency of an obligor and enforcement of a child support order by mail to the last-known mailing address provided by the obligor.
(a) If the notice is returned, the Agency shall send notice to the obligor using the current employer mailing address provided by the obligor.

(b) If the notice to the obligor mailed to the obligor’s employer is returned, the Agency shall use all appropriate tribal, federal, state and local resources to ascertain an obligor’s current mailing address.

(c) If those resources are used for a period of sixty thirty (630) days and a verified mailing address has not been identified, the Agency may proceed with the administrative enforcement action.

704.13-6. Notice to the Obligee of Enforcement Proceedings. The Agency shall provide written notice to the obligee when an enforcement action has been initiated against the obligor or when the obligor requests a hearing and the hearing has been scheduled. The notice to the obligee shall be sent at the same time notice is sent to the obligor.

704.13-7. Notice to Individuals Other Than the Obligor with a Recorded Ownership Interest in Property. The Agency shall provide notice related to the seizure of property to any individual, other than the obligor, with a recorded ownership interest in property subject to seizure. The individual may request a hearing for a determination of the proportion of the value of the property that is attributable to his or her net contribution to the property. The hearing shall be requested within thirty (30) days after the notice was received by the individual.


704.14-1. Applicability of Alternative Payment Plans. When an obligor is subject to administrative enforcement action, he or she may negotiate an alternative payment plan with the Agency.


(a) In order to negotiate an alternative payment plan, an obligor shall submit a written request to the Agency.

(1) A written request to negotiate an alternative payment plan received by the Agency within ten (10) business days after the date of notice shall stay any administrative enforcement action.

(2) If a written request to negotiate an alternative payment plan is received by the Agency more than ten (10) business days after the date of notice, administrative enforcement action may be taken, as long as the requirements of 2.9-3 and 2.9-4 for staying or suspension of administrative enforcement actions are met.

(b) An obligor may negotiate a plan with the Agency to have a license suspension lifted issued or renewed after it has been restricted, limited, suspended or refused.

(c) Hearings for Negotiations of an Alternative Payment Plan. The obligor may submit a written request for a hearing on the reasonableness of the plan within ten (10) business days after the terms of the plan are agreed upon with the Family Court regarding negotiations of an alternative payment plan in the following circumstances:

(1) The obligor and the Agency have agreed to terms of a plan, but the obligor wants the Family Court to consider the reasonableness of the plan.

(A) The the-obligor may submit this a written request for a hearing on the reasonableness of the plan within ten (10) business days after the terms of the plan are agreed upon.

(2) If the Agency and the obligor The obligor and the Agency are unable to reach agreement on the terms of a plan a hearing may be conducted.
(A) The Family Court may order a plan by setting conditions and/or payments in the amounts and at the times it considers reasonable.

(d) 2.9-5. Proceeding with Administrative Enforcement Actions. The Agency may continue with the administrative enforcement action if:

(1a) the obligor and the Agency are unable to negotiate a plan;

(2b) the Family Court determines that the plan is not reasonable; and/or

(3c) the Family Court does not order a plan.

704.14-3. 2.9-6 Disclosure of Income and Assets. The request to negotiate a plan shall include an agreement by the obligor to provide the Agency with a full disclosure of income and assets available. The obligor shall provide complete income and assets information to the Agency within five (5) business days of the request to negotiate a plan.

704.14-4. 2.9-7 Terms of an Alternative Payment Plan.

(a) An alternative payment plan may include a lump-sum payment, or periodic payments on the arrears, or both, subject to the following standards:

(1) The sum of any periodic payment established under the plan and any other payment of support ordered by the Family Court, when subtracted from the obligor’s gross income, may not leave the obligor below one hundred percent (100%) of the poverty line established under 42 U.S.C. §9902 (2) unless the obligor agrees otherwise.

(2) When establishing an alternative payment plan, the Agency shall consider the factors used by the Family Court in determining whether the use of the percentage standard is unfair to the child or any of the parties.

(b) Periodic payments under the plan may be made through income withholding in amounts in addition to the amount ordered in the child support order that is in effect.

704.14-5. 2.9-3. Staying Administrative Enforcement Actions. Administrative enforcement actions shall be stayed by the Agency while the obligor and the Agency are negotiating a plan, or, if a hearing is requested because an agreement cannot be reached or the reasonableness of the plan is questioned, until the Family Court determination has been made. To stay an administrative enforcement action means the following:

(a) The obligor shall not be certified for denial, nonrenewal, restriction, or suspension of professional, occupational, fishing, recreational, motor vehicle and/or Oneida-issued Licenses any State or Oneida-issued licenses;

(b) Any frozen financial accounts shall remain frozen and shall not be seized; and

(c) Personal property that has been seized shall not be sold.

704.14-6. 2.9-4. Suspension of Administrative Enforcement Actions.

(a) When a plan has been negotiated between the obligor and the Agency, or the Family Court has determined that a plan is reasonable or has ordered a plan, the Agency shall suspend administrative enforcement actions as long as the obligor complies with the plan or requests a hearing because of a substantial change in circumstances.

(b) If an obligor makes an full arrears payment agreeable to the Agency, the administrative enforcement action shall be suspended.

704.14-7. 2.9-8. Default on an Alternative Payment Plan. In the event that the obligor defaults on the plan, the Agency shall notify the obligor in writing that an administrative enforcement action shall be implemented unless the child support lien is paid in full.

704.14-8. 2.9-9. Renegotiation of an Alternative Payment Plan. After the entry of an alternative payment plan, the plan may be renegotiated upon the written request of the obligor or Agency if the requesting party can show a substantial change in circumstances. A substantial change in circumstances includes any of the following:
(a) A change in the obligor’s income or assets, including the sale or purchase of real or personal property;
(b) A change in the obligor’s earning capacity; and/or
(c) Any other factor that the Agency determines is relevant.

2.9-10. Obligors with Cases in Multiple Jurisdictions.
(a) When multiple child support agencies initiate administrative enforcement actions against the same obligor, and the obligor negotiates an alternative payment plan with one of the agencies, the plan does not preclude any other child support agency from proceeding with its administrative enforcement action.
(b) If a child support agency which has a lien against property of an obligor negotiates an alternative payment plan with the obligor, the agency may receive proceeds from the sale of the obligor’s personal property under the lien including, but not limited to, proceeds from administrative enforcement actions taken by other child support agencies.

704.15. Administrative Enforcement Action
704.15-1. The Agency shall have the authority to use administrative enforcement actions to enforce a child support order without obtaining an order from the Family Court in the event that an obligor is at least one (1) month delinquent in paying his or her child support obligations.

704.15-2. Liens. The Agency shall have an obligor placed on the lien docket if the obligor owes a debt in one or more of the obligor’s cases equal to or exceeding the monthly amount due or five hundred dollars ($500.00), whichever is greater.

(a) Lien Amount. The lien amount on the lien docket shall equal the sum of lien amounts from the cases in which the lien amount meets or exceeds the lien threshold.
(b) Filing Date. The filing date on the lien docket is the date that a lien is first docketed and delivered to the register of deeds. The filing date is the effective date of the lien. The effective date does not change if the lien amount is adjusted up or down within five (5) years after the date that the lien is first docketed.
(c) Lien Priority. The child support lien shall have priority over all other liens on property except:

(1) tax and special assessment liens;
(2) purchase money mortgages;
(3) construction liens;
(4) environmental liens;
(5) liens that are filed or recorded before the child support lien becomes effective; and
(6) any other lien given priority under the law.

(d) Property subject to a lien includes personal property in which the obligor has a recorded ownership interest.

(e) Effect on a Good Faith Purchaser. A child support lien is not effective against a good faith purchaser of titled personal property unless the lien is recorded on the title.

(f) Credit Bureau Reporting. The Agency may report the total amount of an obligor’s liens to the credit bureau, so long as the lien is fully enforceable and the case is not barred from credit bureau reporting.

2.5-6. Denial of State-issued Grants and Loans. Wisconsin state agencies may deny grants and loans to an obligor 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).
(g) **Agency Lien Responsibilities.** 2.5.7 The Agency shall, either on its own or in conjunction with the State, be responsible for:

(a1) updating the lien docket periodically;
(b2) providing a copy of the lien docket to the appropriate register of deeds;
(e3) responding to inquiries concerning information recorded on the lien docket;
(d4) ensuring the satisfaction of a lien is recorded on the lien docket;
(e5) renewing a lien if the lien amount equals or exceeds the lien threshold at the end of the five (5) year effective period;

(A) When a lien is renewed, the date on which the lien is renewed shall become the effective date of the lien, and a new five (5) year period shall commence.

(f6) sending the obligor a notice when a lien has been renewed; and

(g7) developing procedures for releasing a lien and releasing specific property from a lien.

(h) **Financial Record Review.**

(a1) An obligor may request a financial record review, in writing to the Agency within ten (10) business days of the date of notice of a lien, to determine the correctness of the financial records in a case. The request shall be made in writing to the Agency.

(b2) Upon receiving a request for a financial record review, the Agency shall, at no charge to the obligor, provide the obligor with:

(1A) all relevant financial records;
(2B) information explaining how to interpret the records; and
(3C) a form the obligor may use to identify any alleged errors in the records.

(e3) Within twenty (20) days after receiving the relevant financial records, the obligor may:

(1A) request a meeting with the Agency to review the financial records and to discuss any alleged errors; and/or
(2B) provide a statement of alleged error on the documents.

(Ai) 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 obligor’s request for a financial record review is received as to whether the lien against the obligor is in the correct amount.

(d4) The Agency may proceed with the lien if:

(1A) the obligor does not request a meeting with the Agency or provide a statement of alleged error within twenty (20) days after receiving the financial records; or
(2B) no errors are found in the financial records of the case; or
(3C) the arrears exceed the required threshold amount after any errors in the financial records are corrected.

704.15-3. **Seizure of Property.** 2.6.1 When seizing property, The Agency shall have the authority to seize property, whether an account or personal property, of an obligor. The Agency shall presume that an obligor’s equity or ownership in the property is an equal pro-rata share of the equity or ownership based on the number of individuals with a recorded ownership interest in the property.
2.6-2 Account Seizure. Once a lien is placed against an obligor, the Agency may initiate an account seizure if there is a lien against an obligor and the lien amount in the obligor’s case equals or exceeds three hundred percent (300%) of the monthly amount due in the order, or one thousand dollars ($1,000), whichever is greater.

   (a1) The Agency may not issue a notice of seizure unless the sum of the funds in all of the obligor’s financial accounts, minus expected seizure fees and any early withdrawal penalty, exceeds five hundred dollars ($500). The first five hundred dollars ($500) of each account shall not be frozen and/or seized.

   (b2) The notice issued by the Agency shall instruct the financial institution of the following:

      (4A) The maximum amount frozen in an account may not exceed the amount specified by the Agency in the notice.

      (2B) The maximum amount frozen in an account may not exceed the obligor’s ownership interest.

      (3C) 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.

2.6-3 Seizure of Personal Property—Other than Financial Accounts. In addition to the requirements under (a) and (b) below. Once a lien is placed against an obligor, the Agency may initiate the seizure of personal property if there is a lien against an obligor and the lien amount equals or exceeds six hundred percent (600%) of the monthly amount due in the order. Upon issuance of a written order of execution, non-exempt personal property may be seized and sold in a reasonable manner after notice to the owner in payment of a child support obligation that has been adjudicated delinquent by the Family Court. Ceremonial or religious property and real property are exempt from such writs of execution.

   (a1) Personal Property. The Agency may seize personal property if the obligor’s equity in the property, minus expected seizure fees, exceeds five hundred dollars ($500) per item total.

   (b) The Tribe’s “Disposition of Excess Tribal Property Policy” shall not apply to any property seized under this law.

   (2) Ceremonial or religious property and/or real property are exempt and shall not be seized by the Agency.

   (3) Process for Seizing Property. The Agency shall follow the following process for seizing personal property:

      (A) The Agency shall notify the obligor of the intent to request the Family Court to issue an order of execution for the seizure of property.

      (B) The Agency shall request the Family Court to grant a written order of execution for the seizure of property. The Agency shall provide the Family Court an affidavit that notice of this request has been provided to the obligor.

      (C) Upon issuance of a written order of execution by the Family Court, non-exempt personal property may be seized and sold in a reasonable manner.

704.15-4 Attachment of Per Capita Payments. The Agency may initiate the attachment and/or seizure of per capita payments of tribal members of the Nation in accordance with applicable laws of the Nation.

704.15-5 License Suspension. (a) The Agency may initiate the suspension or denial of occupational, fishing, recreational, motor vehicle and/or Oneida issued licenses both State and
Oneida issued licenses if there is a lien against an obligor that equals or exceeds three hundred percent (300%) of the monthly amount due in the child support order, or one thousand dollars ($1000), whichever is greater.

(a) The types of State or Oneida issued licenses that the Agency may initiate the suspension or denial of include, but are not limited to, vendor, professional, occupational, hunting, fishing, recreational, and/or motor vehicle licenses.

(b) Suspension of an occupational and/or motor vehicle license shall be pursued only as a last resort and the Agency shall not initiate the suspension of an occupational and/or motor vehicle license(s) if:

(1) there is an order in place that prohibits the suspension of the license(s);
(2) the obligor has filed for bankruptcy; or
(3) action has already been taken to suspend the license.

(bc) When an Oneida-issued license is suspended, that suspension shall be binding on and given effect by the license issuing agencies. Orders affecting licenses issued by other governmental agencies shall be sent to such agencies for enforcement.

704.15-6. Intercept of Lump-Sum Pension Payments, Judgments, and Settlements Intercepts. Once an obligor has been placed on the lien docket the Agency may initiate the intercept of lump-sum pension payments, judgments and/or settlements when an obligor has been placed on the lien docket.

(a) When initiating the intercept of lump-sum pension payments, judgments and/or settlements, the Agency shall specify in the notice that the amount withheld from the lump-sum pension payment, judgment or settlement may not exceed the obligor’s ownership interest in the payment.

704.15-7. 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 intercept. Once an obligor has been notified that his or her tax refund and/or lottery winnings may be intercepted, that notice is valid until all arrears are paid in full.

(a) Federal Tax Intercept. 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 Nation have been met.

(b) Wisconsin State Tax and/or Lottery Intercept. The Agency may certify a Wisconsin state tax intercept and/or a Wisconsin state lottery intercept, when the lottery winnings are one thousand dollars ($1,000) or more, when the following requirements are met:

(1) The arrears shall be at least one hundred and fifty dollars ($150);
(2) The arrears shall be at least thirty (30) days old; and
(3) The arrears shall be for a minor child or a child who has reached the age of eighteen (18) within the last twenty (20) year.

(c) Wisconsin Lottery Intercept. When a case is certified for Wisconsin state tax intercept, it shall also be automatically certified for Wisconsin lottery intercept for lottery winnings of one thousand dollars ($1,000) or more.

704.15-8. 2.7-5 Passport Denial. If a federal tax intercept is in place and the obligor owes five two thousand five hundred dollars ($25,500) or more in arrears, an obligor 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. An obligor shall be removed from the passport denial list if:

(a) The federal tax intercept certification amount is zero (0);
(b) The obligor makes a lump-sum payment and/or negates a payment plan with the Agency;
(c) The obligor has to travel abroad because of a life-or-death situation involving an immediate family member, such as the obligor’s parent, guardian, step parent, child, stepchild, grandparent, sibling, step sibling, aunt, uncle or spouse; or
(d) The obligor was denied a passport in error.

704.16. Family Court Enforcement Action

704.16-1. 2.8-1.  If the Agency does not have the authority to conduct the appropriate enforcement action, or the obligor is unresponsive to the enforcement actions being imposed by the Agency, the case shall be referred to the Family Court for enforcement. 2.8-2. The Family Court may order any of the enforcement actions the Agency is authorized to implement, in addition to the enforcement actions described in this section. In addition, the Family Court may order the following to enforce a child support order:

704.16-2. 2.8-2(a) Bonds and Other Guarantees. The Family Court may require an obligor to provide a surety, bond or guarantee to secure the payment of arrears, if wage income withholding is not applicable, practical, or feasible to secure payment of arrears.

704.16-3. 2.8-2(b) Claims Against Estates. (1) The Family Court may approve a claim for past and future support against an obligor’s estate. (2) The Family Court may issue a restraining order against an estate from which an obligor will inherit.

704.16-4. 2.8-2(d) Contempt. The Family Court may hold an obligor who disobeys a fails to comply with a lawful child support order in contempt. An obligor found to be in contempt shall be subject to following punishments: for contempt of court.

(a) 2.8-2(e) Community Service. The Family Court may order an obligor to perform community service. The number of hours of work required may not exceed what would be reasonable considering the amount of arrears the obligor owes. The obligor shall be provided a written statement of the terms of the community service order and that the community service order is monitored. The order shall specify:

(1) how many hours of community service the obligor is required to complete;
(2) the time frame in which the hours must be completed;
(3) how the obligor will report his or her hours; and
(4) any other information the Family Court determines is relevant.

(b) Fines. An obligor found in contempt of court may be fined in an amount not to exceed one thousand dollars ($1,000.00) per act of contempt and may not exceed five thousand dollars ($5,000.00) in total. In instances of continuing contempt, each day shall constitute a separate act of contempt.

(c) 2.8-2(e) Incarceration. The Family Court may order an obligor be incarcerated, contingent on the agreements necessary to enable the Tribe to incarcerate individuals. Before a jail sentence is imposed, the Family Court may provide other conditions that require a certain amount of money be paid or action be taken for an obligor to avoid incarceration.

(d) 2.8-3 Criminal Non-Support. A criminal non-support action may be initiated, in the appropriate county, against an obligor who has the ability to pay child support and willfully or intentionally failed to pay and the obligor knew or reasonably should have known he or she was legally obligated to provide.

704.17. Full Faith and Credit for Foreign Child Support Orders

704.17-1. Properly issued child support orders, and judgments, or decrees of other Indian federally recognized tribes, tribal organizations, and states, that relate to child support shall be
recognized and modified in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B.

704.1117-2. A foreign order is authenticated by reasonable proof that the document tendered to the Family Court is a true certified copy of the foreign order as it is recorded in the agency or court of the issuing jurisdiction. An authentication stamp issued by a court clerk or custodian of records, or a court seal, is sufficient evidence of authenticity.

704.1117-3. Unless defects in jurisdiction are apparent on the face of the foreign order, the person contesting enforcement of the order has the burden of showing the order is not valid. Upon a failure to respond to notice of the order and to timely contest it, the Family Court shall enforce it as an order of the Family Court order.

704.1117-4. If a foreign order is brought before the Family Court solely for an interpretation of the terms of the order, and the order has been recognized and given full faith and credit by the Family Court, the Family Court shall interpret the order by applying the law of the forum that issued the foreign order.

704.18. Right of Appeal

704.128-1. Appeals of Administrative Enforcement Action. Any enforcement action implemented by the Agency may be appealed to the Family Court within thirty (30) calendar days after the date that the action is enforced. The decision of the Family Court as to the Agency’s administrative enforcement action shall be final and non-appealable.

704.128-2. Appeals of Family Court Decisions. If the Family Court conducts a hearing under this law, a party may appeal a Family Court decision, other than the decision of the Family Court in regard to administrative enforcement action as referenced in section 704.18-1, to the Nation’s Court of Appeals within thirty (30) calendar days after the date that the Family Court makes a decision. The decision of the Family Court in regard to administrative enforcement action shall be based on the record and the original decision of the Family Court.

Rule CS 1

DEVIATION FROM CHILD SUPPORT PERCENTAGE STANDARDS

1.1. Introduction

1.1.1. Purpose. This rule is promulgated for the purpose of determining child support when circumstances require a deviation from the percentage standards in Chapter 704.

1.1.2. Applicability. This rule applies to any child support order or child support order modification implemented under Chapter 704.

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1.1-3. Effect of Rule Change. A modification of any provision in this rule shall not in and of itself be considered a substantial change in circumstances sufficient to justify a revision of a judgment or order under Chapter 704. A modification of any provision in this rule shall apply to orders established after the effective date of the modification.

1.1-4. This rule shall be effective June 24, 2009.

1.2. Definitions

1.2-1. In this rule:

(a) “Adjusted monthly income” means the monthly income at which child support is determined for serial family obligors, which is the obligor’s monthly income less the amount of any existing legal obligation for child support.

(b) “Agency” means the Oneida Tribe Child Support Agency.

(c) “Basic support costs” means food, shelter, clothing, transportation, personal care, and incidental recreational costs.

(d) “Child” means a person under the age of eighteen (18), or any person who is less than nineteen (19) years old if he or she is pursuing a high school diploma or its equivalent from an accredited course of instruction.

(e) “Child support” means the total financial obligation a parent has towards his or her child as established through judicial and/or administrative processes.

(f) “Child Support Order” means a judgment of the Family Court or a court of competent jurisdiction ordering payment of child support which provides monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, income withholding, attorneys’ fees and other relief.

(g) “Current 6 month treasury bill rate” means the yield of a U.S. government security with a term of 6 months.

(h) “Dependent household member” means a person for whom a taxpayer is entitled to an exemption for the taxable year under 26 USC 151.

(i) “Family Court” shall mean the judicial arm of the Tribe that is designated to handle all matters under this Law.

(j) “Federal dependency exemption” means the deduction allowed in computing taxable income pursuant to 26 USC 151 for a child of the taxpayer who has not attained the age of nineteen (19) or who is a student.

(k) “Gross income” means any form of payment due to an individual regardless of source, including, but not limited to:

(1) Salary and wages, including overtime pay.

(2) Interest and investment income.

(3) Social Security disability and old age insurance benefits under 42 USC 401 to 433.

(4) Net proceeds resulting from worker’s compensation or other personal injury awards intended to replace income.

(5) Unemployment insurance.

(6) Income continuation benefits.

(7) Voluntary deferred compensation and voluntary employee contributions to the following: employee benefit plan, profit-sharing, pension or retirement account.

(8) Military allowances and veterans benefits.

(9) Undistributed income of a corporation or any partnership in which the parent has an ownership interest sufficient to individually exercise control or to access the earnings of the business, unless the income included is an asset.
(10) Per capita distribution payments.

(11) Lease or rental income.

(12) Prizes over $1,000.00.

(13) All other income, whether taxable or not, except that gross income does not include any of the following:

(A) Child support.

(B) Foster care payments.

(C) Kinship care payments.

(D) Public assistance benefits, except that child care subsidy payments shall be considered income to a child care provider.

(E) Food-stamps.

(F) Public assistance or financial hardship payments paid by a county or a tribe.

(G) Supplemental Security Income under 42 USC 1381 to 1383(f) and state supplemental payments.

(H) Payments made for social services.

(l) “Income imputed based on earning capacity” means the amount of income that exceeds the parent’s actual income and represents the parent’s ability to earn, based on the parent’s education, training and recent work experience, earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary physical placement, and the availability of work in or near the parent’s community.

(m) “Income imputed from assets” means the amount of income ascribed to assets that are unproductive and to which income has been diverted to avoid paying child support or from which income is necessary to maintain the child or children at the standard of living they would have if they were living with both parents, and that exceeds the actual income from the assets.

(n) “Income modified for business expenses” means the amount of income after adding wages paid to dependent household members, adding undistributed income that the Family Court determines is not reasonably necessary for the growth of the business, and subtracting business expenses that the Family Court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.

(p) “Intact family” means a family in which the child or children and the obligor reside in the same household and the obligor shares his or her income directly with the child or children and has a legal obligation to support the child or children.

(q) “Low income obligor” means an obligor for whom the Family Court uses the monthly support amount provided in the schedule in Appendix A based on the Family Court’s determination that the obligor’s total economic circumstances limit his or her ability to pay support at the level provided under 704.7-2(a) and the obligor’s income is at a level set forth in the schedule in Appendix A.

(q) “Marital child” means a child born during the marriage of his or her parents. In addition, if the father and mother of a non-marital child enter into a lawful marriage or a marriage which appears and they believe is lawful, except where the parental rights of the mother were terminated before either of these circumstances, the child becomes a marital child and shall enjoy all of the rights and privileges of a marital child as if he or she had been born during the marriage of the parents. The children of all marriages declared void under the law are nevertheless marital children.
(r) “Monthly income” means the obligor’s income available for child support and is the obligor’s annual gross income or, if applicable, the obligor’s annual income modified for business expenses; plus the obligor’s annual income imputed based on earning capacity; plus the obligor’s annual income imputed from assets; divided by twelve (12).

(s) “Parent” means the natural or adoptive parent of the child.

(t) “Obligee” means the person or entity to whom child support is owed.

(u) “Obligor” means the person who is obliged to pay child support to the obligee.

(v) “Serial family obligor” means an obligor with an existing legal obligation for child support who incurs an additional legal obligation for child support in a subsequent family as a result of a child support order.

(w) “Shared-placement obligor” means a parent who has an ordered period of placement of at least twenty-five percent (25%), is ordered by the Family Court to assume the child’s basic support costs in proportion to the time that the parent has placement of the child and is determined to owe a greater support amount than the other parent.

(x) “Split-placement obligor” means a obligor who has two (2) or more children and who has physical placement of one (1) or more but not all of the children.

(y) “Variable costs” means the reasonable costs above basic support costs incurred by or on behalf of a child, including but not limited to, the cost of child care, tuition, a child’s special needs, and other activities that involve substantial cost.

### 1.3. Support Orders

#### 1.3.1. Determining Income Modified for Business Expenses

In determining a parent’s monthly income, the Family Court may adjust a parent’s gross income as follows:

(a) Adding wages paid to dependent household members.

(b) Adding undistributed income that the Family Court determines is not reasonably necessary for the growth of the business. The parent shall have the burden of proof to show that any undistributed income is reasonably necessary for the growth of the business.

(c) Reducing gross income by the business expenses that the Family Court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.

#### 1.3.2. Determining Income Imputed Based on Earning Capacity

When a parent’s income is less than the parent’s earning capacity or is unknown, the Family Court may impute income to the parent at an amount that represents the parent’s ability to earn, based on the parent’s education, training and recent work experience, earnings during previous periods, current physical and mental health, history of child care responsibilities as the parent with primary physical placement and the availability of work in or near the parent’s community. If evidence is presented that due diligence has been exercised to ascertain information on the parent’s actual income or ability to earn and that information is unavailable, the Family Court may impute to the parent the income that a person would earn by working thirty-five (35) hours per week for the federal minimum hourly wage under 29 USC 206 (a)(1). If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent’s earning capacity and the parent’s gross income or income modified for business expenses.

#### 1.3.3. Determining Income Imputed From Assets

(a) The Family Court may impute a reasonable earning potential to a parent’s assets if the Family Court finds both of the following:

(1) The parent has ownership and control over any real or personal property, including but not limited to, life insurance, cash and deposit accounts, stocks and
bonds, business interests, net proceeds resulting from worker’s compensation or
other personal injury awards not intended to replace income, and cash and corporate
income in a corporation in which the parent has an ownership interest sufficient to
individually exercise control and the cash or corporate income is not included as
gross income.
(2) The parent’s assets are underproductive and at least one (1) of the following
applies:
(a) The parent has diverted income into assets to avoid paying child
support.
(b) Income from the parent’s assets is necessary to maintain the child or
children at the standard of living they would have had if they were living
with both parents.
(b) The Family Court shall impute income to assets by multiplying the total net value of
the assets by the current 6-month treasury bill rate or any other rate that the Family Court
determines is reasonable and subtracting the actual income from the assets that were
included as gross income.
1.3-4. Adjustment for Child’s Social Security. The Family Court may include benefits received
by a child under 42 USC 402(d) based on a parent’s entitlement to federal disability or old-age
insurance benefits under 42 USC 401 to 433 in the parent’s gross income and adjust a parent’s
child support obligation by subtracting the amount of the child’s social security benefit. In no case
may this adjustment require the obligee to reimburse the obligor for any portion of the child’s
benefit.
1.3-5. Expression of Ordered Support. The support amount shall be expressed as a fixed sum
unless the parties have stipulated to expressing the amount as a percentage of the obligor’s income
and the stipulation requirements of Chapter 704 are satisfied.
1.3-6. Trust. The Family Court may protect and promote the best interests of the minor children
by setting aside a portion of the child support that either party is ordered to pay in a separate fund
or trust for the support, education, and welfare of such children.
1.3-7. Dependency Exemption. The Family Court may order the obligee to waive the federal
dependency exemption provided that the obligee’s execution of the exemption waiver is made
contingent on the receipt of child support payments.

1.4. Determining the Child Support Obligation in Special Circumstances
1.4-1. Determining the Child Support Obligation of a Serial-Family Obligor.
(a) Applicability. This subsection applies only if the additional child support obligation
incurred by an obligor is the result of a child support order and the support obligation being
calculated is for children from a subsequent family or subsequent paternity judgment or
acknowledgment. An obligor may not use the provisions of this section as a basis for
seeking modification of an existing order based on a subsequently incurred legal obligation
for child support.
(b) Determination. For a serial-family obligor, the child support obligation incurred for a
marital or nonmarital child in a subsequent family as a result of a child support order may
be determined as follows:
(1) Determine the obligor’s monthly income;
(2) Determine the order of the obligor’s legal obligations for child support by
listing them according to the date each obligation is incurred. For a marital child,
the legal obligation for child support is incurred on the child’s date of birth. For a
nonmarital child, the legal obligation for child support is incurred on the date of the
child support order. For a nonmarital child in an intact family, it is incurred on the
date of adoption or the date of the filing of an acknowledgment of paternity. For
a nonmarital maternal child in an intact family, it is incurred on the child’s date of
birth:
(3) Determine the first child support obligation as follows:
(a) If the obligor is subject to an existing support order for that legal
obligation, except a shared-placement order, the support for that obligation
is the monthly amount of that order; or
(b) If the obligor is in an intact family or is subject to a shared-placement
order, the support is determined by multiplying the appropriate percentage
for that number of children by the obligor’s monthly income;
(4) Adjust the monthly income by subtracting the support for the first legal
obligation under (3) from the obligor’s monthly income under (1);
(5) Determine the second child support obligation as follows:
(a) If the obligor is subject to an existing support order for that legal
obligation, except a shared-placement order, the support for that obligation
is the monthly amount of that order; or
(b) If the obligor is in an intact family or is subject to a shared-placement
order, the support is determined by multiplying the appropriate percentage
for that number of children by the obligor’s monthly income;
(6) Adjust the monthly income a second time by subtracting the support for the
second legal obligation determined under (5) from the first adjusted monthly
income determined under (4);
(7) Repeat the procedure under (5) and (6) for each additional legal obligation for
child support the serial family obligor has incurred;
(8) Multiply the appropriate percentage for the number of children subject to the
new order by the final adjusted monthly income determined in either (6) or (7) to
determine the new child support obligation.

Note: The following example shows how the child support obligation is determined for a serial-
family obligor whose additional child support obligation has been incurred for a subsequent
family.
Assumptions:
• Parent A’s current monthly income is $3000.
• Parent A and Parent B were married, had a child in 1990 and divorced in 1991. Parent
  A is subject to an existing support order of $450 per month.
• Parent A remarries and has two children, one born in 1996 and the other in 1997, and
  remains an intact family.
• Parent A was adjudicated the father in 1998 for a child born in 1995. Child support
  needs to be established for this child.

Order of parent A’s legal obligation for child support:
• First legal obligation: one child (1990) (divorce)
• Second legal obligation: 2 children (1996 and 1997) (intact family)
• Third legal obligation: one child (1998) (paternity)

Calculation:
• Parent A’s current monthly income $3000.
1.4-2. Determining the Child Support Obligations of Shared-Placement Parents.

(a) The shared-placement formula may be applied when both of the following conditions are met:

(1) Both parents have periods of placement of at least twenty-five percent (25%) or ninety-two (92) days a 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%.

(2) Each parent is ordered by the Family Court to assume the child’s basic support costs in proportion to the time that the parent has placement of the child.

(b) The child support obligations for parents who meet the requirements of (a) may be determined as follows:

(1) Determine each parent’s monthly income. In determining whether to impute income based on earning capacity for an unemployed parent or a parent employed less than full time under 1.3-2, the Family Court shall consider benefits to the child of having a parent remain in the home during periods of placement and the additional variable day care costs that would be incurred if the parent worked more.

(2) Multiply each parent’s monthly income by the appropriate percentage standard under 704.7.

(3) Multiply each amount determined under (2) by 150%.

(4) Multiply the amount determined for each parent under (3) by the proportion of the time that the child spends with the other parent to determine each parent’s child support obligation.

(5) Offset resulting amounts under (4) against each other. The parent with a greater child support obligation is the shared-placement obligor. The shared-placement obligor shall pay the lesser of the amount determined under this section or the amount determined using the appropriate percentage standard under 704.7. If the shared-placement obligor is also a low-income obligor, the child support obligation may be the lesser of the amount determined under this section or under 1.4-4.

(6) In addition to the child support obligation determined under (5), the Family Court shall assign responsibility for payment of the child’s variable costs in proportion to each parent’s share of physical placement, with due consideration to a disparity in the parents’ incomes. The Family Court shall direct the manner of payment of a variable cost order to be either between the parents or from a parent to a third party service provider. The Family Court shall not direct payment of variable costs to be made to the Agency or the Agency’s designee, except as incorporated in the fixed sum or percentage expressed child support order.

Note: The following example shows how to calculate the child support obligations of shared-placement parents.
Number of children: Two
Parent A: $2,000 monthly income
Ordered placement of the child for 219 days a year or 60%
Parent B: $3,000 monthly income
Ordered placement of the child for 146 days a year or 40%

<table>
<thead>
<tr>
<th>Parent A</th>
<th>Parent B</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Monthly income</td>
<td>$2,000</td>
</tr>
<tr>
<td>2. Monthly income X percentage standard for two children</td>
<td>$2,000 X 25% = $500</td>
</tr>
<tr>
<td>3. Amount in 2. X 150%</td>
<td>$500 X 150% = $750</td>
</tr>
<tr>
<td>4. Amount in 3. X the proportion of time that the child spends with the other parent</td>
<td>$750 X 40% = $300</td>
</tr>
<tr>
<td>5. Offset</td>
<td>$675 - $300 = $375</td>
</tr>
<tr>
<td>6. Family Court also assigns responsibility for payment of the child’s variable costs.</td>
<td>Manner of payment is between the parents or from a parent to a third party service provider, except as incorporated in the fixed sum or percentage expressed child support order.</td>
</tr>
</tbody>
</table>

1.4-3. Determining the Child Support Obligations of Split-Placement Parents. For parents who have two (2) or more children and each parent has placement of one (1) or more but not all of the children, the child support obligations may be determined as follows:
(a) Determine each parent’s monthly income.
(b) Multiply each parent’s monthly income by the appropriate percentage for the number of children placed with the other parent to determine each parent’s child support obligation.
(c) Offset resulting amounts under (b) against each other. The parent with a greater child support obligation is the split-placement obligor.
Note: The following example shows how to calculate the amount of child support for split-placement parents:
Assumptions:
- Parent A and B have 3 children.
- Parent A has placement of one child and Parent B has placement of 2 children.
- Parent A’s monthly income is $3,000.
- Parent B’s monthly income is $1,500.
Calculation:
- Parent A’s child support obligation is $3,000 X 25% = 750
- Parent B’s child support obligation is $1,500 X 17% = 255
- Parent A owes Parent B 750 - 255 = $495

1.4-4. Determining the Child Support Obligation of a Low-Income Obligor.
(a) The Family Court may use the monthly support amount provided in the schedule in Appendix A as the support amount for an obligor with a monthly income at a level set forth in the schedule if the obligor’s total economic circumstances limit his or her ability to pay support at the level determined under 704.7. If an obligor’s monthly income is below the lowest income level in Appendix A, the Family Court may set an order at an amount appropriate for the obligor’s total
economic circumstances. This amount may be lower than the lowest support amount in Appendix A.

(b) The Agency shall revise the schedule in Appendix A at least once every four (4) years. The revision shall be based on changes in the federal poverty guidelines since the schedule was last revised.

Note: The schedule in Appendix A provides reduced percentage rates that may be used to determine the child support obligation for obligors with an income below approximately 125% of the federal poverty guidelines. If an obligor’s monthly income is below approximately 75% of the federal poverty guidelines, the Family Court may order an amount appropriate for the obligor’s total economic circumstances. For monthly income amount for child support between approximately 75% and 125% of the federal poverty guidelines, the percentage rates in the schedule gradually increase as income increases. The percentage rates used in 704.7 apply to obligors with income greater than or equal to approximately 125% of the federal poverty guidelines.

end.
Rule CS-2
ENFORCEMENT TOOLS

2.1. Purpose and Effective Date
2.2. Definitions
2.3. Compliance Plan
2.4. Notice of Enforcement Actions
2.5. Liens

2.1. Purpose and Effective Date
2.1-1. This rule is promulgated for the purpose of establishing the enforcement tools that may be used when an obligor is no longer paying the amount required by a child support order.
2.1-2. This rule shall be effective June 24, 2009.

2.2. Definitions
2.2-1. In this rule:
(a) “Administrative enforcement actions” means actions authorized by federal regulations which are taken to enforce a child support order without obtaining an order from the Family Court.
(b) “Agency” means the Oneida Tribe Child Support Agency.
(c) “Alternative payment plan” or “plan” means a negotiated agreement between the Agency and an obligor, or an order set by the Family Court, to establish terms for the payment of arrears.
(d) “Equity” means the fair market value of property minus the liens on that property with priority over the child support lien.
(e) “Lien amount” means the difference between the monthly amount of support due and the arrears in a case.
(f) “Lien docket” means the registry kept by the State of Wisconsin containing the names of people who owe past due child support.
(g) “Monthly amount due” means the sum of court-ordered provisions for periodic payments due in one (1) month, including any arrears payment.
(h) “Obligee” means the person or entity to whom child support is owed.
(i) “Obligor” means the person who is obliged to pay child support to the obligee.
(j) “Ownership interest” means any personal financial interest.
(k) “Qualified child” means an individual who is no longer a minor but who, while still a minor, was determined to be disabled under Title II or Title XVI of the Social Security Act.
(l) “Threshold” means an amount, expressed as either a percentage of the monthly amount due, a fixed dollar amount, or both, that the lien amount must equal or exceed before an administrative enforcement action may be used to enforce a child support order.

2.3. Compliance Plan
2.3-1. The Agency shall attempt to meet with a party who is found to be subject to enforcement action as soon as possible by sending a Letter of Non-Compliance within five (5) business days of being informed of a party’s failure to either pay support as ordered or to meet a required obligation or action.
(a) The Letter shall set out the conditions the party has failed to comply with, outline the enforcement actions that may be taken and request the party meet with the Agency.
(b) If the party does not respond to the Letter within five (5) business days after receipt of the letter, the Agency shall send a second Letter.
(c) If the party fails to respond to the second Letter within five (5) business days after receipt of the letter, the Agency shall proceed with appropriate enforcement action.

(d) If the party responds to the Letter, the Agency shall interview the party to determine the reasons and barriers for the non-compliance and create a Compliance Plan. The Compliance Plan may include an increase in payment and/or any activity that is necessary to ensure payment, including programs that focus on:

1. Employment and training;
2. Social service and mental health;
3. Physical and learning disabilities;
4. Tribal traditions and customs;
5. Family counseling.

(e) If the party successfully completes the Compliance Plan, no further enforcement action is necessary. However, if the party fails to complete the Compliance Plan, the Agency shall proceed with appropriate enforcement action.

2.4. Notice of Enforcement Actions

2.4-1. The enforcement actions in this rule may be applied when an obligor is no longer in compliance with a child support order and is not making efforts to comply with the order. An obligor shall be provided with at least thirty (30) days notice before an enforcement action is utilized, unless another time line is specified within this rule. An enforcement action shall be stayed and/or suspended after notice is given to the obligor if the obligor pays the debt in full or enters into, and maintains, an alternative payment plan.

2.4-2. Notice of Delinquency. In the event that an obligor owes a debt equal to or exceeding the monthly amount due, the Agency shall send a notice of delinquency to the obligor.

(a) The notice shall inform the obligor of the following:

1. The dates that the delinquency accrued;
2. The total amount of the delinquency;
3. Any prior agreement or showing of good cause to not wage withhold may be terminated and the obligor may be subject to wage withholding;
4. The enforcement action that may be taken as a result of the delinquency;
5. The obligor may request, in writing to the Agency, to negotiate an alternative payment plan with the Agency within ten (10) business days after the service of notice in order to stay any enforcement action;
6. The obligor has ten (10) business days after the service of the notice of delinquency to file an objection with the Agency presenting good cause why an arrears payment or other enforcement action should not be implemented. The only allowable objections are:
   (A) There is an error in the amount of current or overdue support; or
   (B) The identity of the obligor is mistaken.

(b) If the obligor does not file an objection or request to negotiate an alternative payment plan:

1. the enforcement action shall be taken; and/or
2. a wage withholding order, or revised order if one is already in place, shall be imposed on the payor. No more than an additional twenty percent (20%) of the current support payment order can be withheld to satisfy the delinquency provided that the total amount withheld does not exceed forty percent (40%) of the obligor’s monthly income.
(c) If a permissible objection is filed, the obligor shall be entitled to a hearing before any enforcement action is taken.

2.4-3. Use of Mail. The Agency shall send notices related to the enforcement of a child support order by mail to the last known mailing address provided by the obligor. If the notice is returned, the Agency shall send notice to the obligor using the current employer mailing address provided by the obligor. If the notice to the obligor mailed to the obligor’s employer is returned, the Agency shall use all appropriate tribal, federal, state and local resources to ascertain an obligor’s current mailing address. If those resources are used for a period of sixty (60) days and a verified mailing address has not been identified, the Agency may proceed with the administrative enforcement action.

2.4-4. Notice to the Obligee of Enforcement Proceedings. The Agency shall provide written notice to the obligee when an enforcement action has been initiated against the obligor or when the obligor requests a hearing and the hearing has been scheduled. The notice to the obligee shall be sent at the same time notice is sent to the obligor.

2.4-5. Notice to Individuals Other Than the Obligee with a Recorded Ownership Interest in Property. The Agency shall provide notice related to the seizure of property to any individual, other than the obligor, with a recorded ownership interest in property subject to seizure. The individual may request a hearing for a determination of the proportion of the value of the property that is attributable to his or her net contribution to the property. The hearing shall be requested within thirty (30) days after the notice was received by the individual.

2.5. Liens

2.5-1. The Agency shall have an obligor placed on the lien docket if the obligor owes a debt in one or more of the obligor’s cases equal to or exceeding the monthly amount due or $500.00, whichever is greater.

2.5-2. Lien Amount. The lien amount on the lien docket shall equal the sum of lien amounts from the cases in which the lien amount meets or exceeds the lien threshold.

2.5-3. Filing Date. The filing date on the lien docket is the date that a lien is first docketed and delivered to the register of deeds. The filing date is the effective date of the lien. The effective date does not change if the lien amount is adjusted up or down within five (5) years after the date that the lien is first docketed.

2.5-4. Lien Priority. The child support lien shall have priority over all other liens on property except tax and special assessment liens, purchase money mortgages, construction liens, environmental liens, liens that are filed or recorded before the child support lien becomes effective and any other lien given priority under the law.

(a) Property subject to a lien includes personal property in which the obligor has a recorded ownership interest.

(b) A child support lien is not effective against a good faith purchaser of titled personal property unless the lien is recorded on the title.

2.5-5. Credit Bureau Reporting. The Agency may report the total amount of an obligor’s liens to the credit bureau, so long as the lien is fully enforceable and the case is not barred from credit bureau reporting.

2.5-6. Denial of State-issued Grants and Loans. Wisconsin state agencies may deny grants and loans to an obligor 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).

2.5-7. The Agency shall, either on its own or in conjunction with the State, be responsible for:

(a) updating the lien docket periodically.
(b) providing a copy of the lien docket to the appropriate register of deeds,
(c) responding to inquiries concerning information recorded on the lien docket,
(d) ensuring the satisfaction of a lien is recorded on the lien docket,
(e) renewing a lien if the lien amount equals or exceeds the lien threshold at the end of the
five (5) year effective period.
   (1) When a lien is renewed, the date on which the lien is renewed shall become the
effective date of the lien, and a new five (5) year period shall commence.
(f) sending the obligor a notice when a lien has been renewed.
(g) developing procedures for releasing a lien and releasing specific property from a lien.

2.5.8. Financial Record Review:
(a) An obligor may request a financial record review, within ten (10) business days of
receiving a notice of a lien, to determine the correctness of the financial records in a case.
The request shall be made in writing to the Agency.
(b) Upon receiving a request for a financial record review, the Agency shall, at no charge
to the obligor, provide the obligor with:
   (1) all relevant financial records;
   (2) information explaining how to interpret the records;
   (3) a form the obligor may use to identify any alleged errors in the records.
(c) Within twenty (20) days after receiving the relevant financial records, the obligor may:
   (1) request a meeting with the Agency to review the financial records and to discuss
any alleged errors;
   (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 obligor’s request for a financial record review is received as to
whether the lien against the obligor is in the correct amount.
(d) The Agency may proceed with the lien if:
   (1) the obligor does not request a meeting with the Agency or provide a statement
of alleged error within twenty (20) days after receiving the financial records; or
   (2) no errors are found in the financial records of the case; or
   (3) the arrears exceed the required threshold amount after any errors in the financial
records are corrected.

2.6. Seizure of Property
2.6.1. When seizing property, the Agency shall presume that an obligor’s equity or ownership in
the property, whether an account or personal property, is an equal pro rata share of the equity or
ownership based on the number of individuals with a recorded ownership interest in the property.
2.6.2. Account Seizure. The Agency may initiate an account seizure if there is a lien against an
obligor and the lien amount in the obligor’s case equals or exceeds 300% of the monthly amount
due in the order or $1,000, whichever is greater.
(a) The Agency may not issue a notice of seizure unless the sum of the funds in all of the
obligor’s financial accounts, minus expected seizure fees and any early withdrawal penalty,
exceeds $500. The first $500 of each account shall not be frozen and/or seized.
(b) The notice shall instruct the financial institution of the following:
   (1) The maximum amount frozen in an account may not exceed the amount
specified by the Agency in the notice;
   (2) The maximum amount frozen in an account may not exceed the obligor’s
ownership interest.
(3) A financial institution is not liable for encumbering or surrendering any assets held by the financial institution in response to instructions from the Agency for the purpose of enforcing a child support order.

2.6.3 Seizure of Personal Property Other than Financial Accounts. In addition to the requirements under (a) and (b) below, the Agency may initiate the seizure of personal property if there is a lien against an obligor and the lien amount equals or exceeds 600% of the monthly amount due in the order. Upon issuance of a written order of execution, non-exempt personal property may be seized and sold in a reasonable manner after notice to the owner in payment of a child support obligation that has been adjudicated delinquent by the Family Court. Ceremonial or religious property and real property are exempt from such writs of execution.

(a) Personal Property. The Agency may seize personal property if the obligor’s equity in the property, minus expected seizure fees, exceeds $500 per item total.

(b) The Tribe’s “Disposition of Excess Tribal Property Policy” shall not apply to any property seized under this law.

2.7 Other Enforcement Tools

2.7.1 Attachment of Per Capita Payments. The Agency may initiate the attachment and/or seizure of per capita payments of tribal members in accordance with applicable law.

2.7.2 License Suspension

(a) The Agency may initiate the suspension or denial of occupational, fishing, recreational, motor vehicle and/or Oneida issued licenses if there is a lien against an obligor that equals or exceeds 300% of the monthly amount due in the child support order, or $1000, whichever is greater. Suspension of an occupational and/or motor vehicle license shall be pursued only as a last resort and the Agency shall not initiate the suspension of a license(s) if:

(1) there is an order in place that prohibits the suspension of the license(s);

(2) the obligor has filed for bankruptcy; or

(3) action has already been taken to suspend the license.

(b) When an Oneida issued license is suspended, that suspension shall be binding on and given effect by the license issuing agencies. Orders affecting licenses issued by other governmental agencies shall be sent to such agencies for enforcement.

2.7.3 Intercept of Lump-Sum Pension Payments, Judgments and Settlements. The Agency may initiate the intercept of lump-sum pension payments, judgments and/or settlements when an obligor has been placed on the lien docket.

(a) When initiating the intercept of lump-sum pension payments, judgments and/or settlements, the Agency shall specify in the notice that the amount withheld from the lump-sum pension payment, judgment or settlement may not exceed the obligor’s ownership interest in the payment.

2.7.4 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 intercept. Once an obligor has been notified that his or her tax refund and/or lottery winnings may be intercepted, that notice is valid until all arrears are paid in full.

(a) Federal Tax Intercept. 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.

(b) Wisconsin State Tax Intercept. The Agency may certify a Wisconsin state tax intercept when the following requirements are met:

(1) The arrears shall be at least one hundred fifty dollars ($150).
(2) The arrears shall be at least thirty (30) days old.

(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.

(e) Wisconsin Lottery Intercept. When a case is certified for Wisconsin state tax intercept, it shall also be automatically certified for Wisconsin lottery intercept for lottery winnings of one thousand dollars ($1,000) or more.

2.7-5. Passport Denial. If a federal tax intercept is in place and the obligor owes five thousand dollars ($5,000) or more in arrears, an obligor 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.

An obligor shall be removed from the passport denial list if:

(a) The federal tax intercept certification amount is zero (0);

(b) The obligor makes a lump-sum payment and/or negotiates a payment plan with the Agency;

(c) The obligor has to travel abroad because of a life-or-death situation involving an immediate family member, such as the obligor’s parent, guardian, step-parent, child, step-child, grandparent, sibling, step-sibling, aunt, uncle or spouse; or

(d) The obligor was denied a passport in error.

2.8. Family Court Enforcement Action

2.8-1. If the Agency does not have the authority to conduct the appropriate enforcement action, or the obligor is unresponsive to the enforcement actions being imposed by the Agency, the case shall be referred to the Family Court for enforcement.

2.8-2. The Family Court may order any of the enforcement actions the Agency is authorized to implement. In addition, the Family Court may order the following to enforce a child support order:

(a) Bonds and Other Guarantees. The Family Court may require an obligor to provide a surety, bond or guarantee to secure the payment of arrears, if wage withholding is not applicable, practical or feasible to secure payment of arrears;

(b) Claims Against Estates:

(1) The Family Court may approve a claim for past and future support against an obligor’s estate;

(2) The Family Court may issue a restraining order against an estate from which an obligor will inherit.

(c) Community Service. The Family Court may order an obligor to perform community service. The number of hours of work required may not exceed what would be reasonable considering the amount of arrears the obligor owes. The obligor shall be provided a written statement of the terms of the community service order and that the community service order is monitored. The order shall specify:

(1) how many hours of community service the obligor is required to complete;

(2) the time frame in which the hours must be completed;

(3) how the obligor will report his or her hours; and

(4) any other information the Family Court determines is relevant.

(d) Contempt. An obligor who disobeys a lawful child support order shall be subject to punishment for contempt of court. An obligor found in contempt of court may be fined in an amount not to exceed one thousand dollars ($1,000.00) per act of contempt and may not exceed five thousand dollars ($5,000.00) in total. In instances of continuing contempt, each day shall constitute a separate act of contempt.

(e) Incarceration. The Family Court may order an obligor be incarcerated, contingent on the agreements necessary to enable the Tribe to incarcerate individuals. Before a jail
sentence is imposed, the Family Court may provide other conditions that require a certain
amount of money be paid or action be taken for an obligor to avoid incarceration.

2.8.3. Criminal Non-Support. A criminal non-support action may be initiated, in the appropriate
county, against an obligor who has the ability to pay child support and willfully or intentionally
failed to pay and the obligor knew or reasonably should have known he or she was legally obligated
to provide.

2.9. Alternative Payment Plans

2.9.1. Applicability of Alternative Payment Plans. When an obligor is subject to administrative
enforcement action, he or she may negotiate an alternative payment plan with the Agency.

2.9.2. Negotiation of an Alternative Payment Plan After Receiving Notice of an Enforcement
Action.

(a) In order to negotiate an alternative payment plan, an obligor shall submit a written
request to the Agency. A written request to negotiate an alternative payment plan received
by the Agency within ten (10) business days after the date of notice shall stay any
administrative enforcement action. If a written request to negotiate an alternative payment
plan is received by the Agency more than ten (10) business days after the date of notice,
administrative enforcement action may be taken, as long as the requirements of 2.9-3 and
2.9-4 are met.

(b) An obligor may negotiate a plan with the Agency to have a license issued or renewed
after it has been restricted, limited, suspended or refused.

(c) The obligor may submit a written request for a hearing on the reasonableness of the
plan within ten (10) business days after the terms of the plan are agreed upon.

(d) If the Agency and the obligor are unable to reach agreement on the terms of a plan, a
hearing may be conducted. The Family Court may order a plan by setting payments in the
amounts and at the times it considers reasonable.

2.9.3. Staying Administrative Enforcement Actions. Administrative enforcement actions shall be
stayed by the Agency while the obligor and the Agency are negotiating a plan, or, if a hearing is
requested, until the Family Court determination has been made. To stay an administrative
enforcement action means the following:

(a) The obligor shall not be certified for denial, nonrenewal, restriction, or suspension of
professional, occupational, fishing, recreational, motor vehicle and/or Oneida-issued
licenses.

(b) Any frozen financial accounts shall remain frozen and shall not be seized.

(c) Personal property that has been seized shall not be sold.

2.9.4. Suspension of Administrative Enforcement Actions.

(a) When a plan has been negotiated between the obligor and the Agency, or the Family
Court has determined that a plan is reasonable or has ordered a plan, the Agency shall
suspend administrative enforcement actions as long as the obligor complies with the plan.

(b) If an obligor makes a full arrears payment, the administrative enforcement action shall
be suspended.

2.9.5. Proceeding with Administrative Enforcement Actions. The Agency may continue with the
administrative enforcement action if:

(a) the obligor and the Agency are unable to negotiate a plan.

(b) the Family Court determines that the plan is not reasonable.

(c) the Family Court does not order a plan.

2.9.6. Disclosure of Income and Assets. The request to negotiate a plan shall include an agreement
by the obligor to provide the Agency with a full disclosure of income and assets available. The
obligor shall provide complete income and asset information to the Agency within five (5) business days of the request to negotiate a payment plan.

2.9-7. Terms of an Alternative Payment Plan.

(a) An alternative payment plan may include a lump sum payment, or periodic payments on the arrears, or both, subject to the following standards:

(1) The sum of any periodic payment established under the plan and any other payment of support ordered by the Family Court, when subtracted from the obligor’s gross income, may not leave the obligor below 100% of the poverty line established under 42 USC 9902 (2) unless the obligor agrees otherwise.

(2) When establishing an alternative payment plan, the Agency shall consider the factors used by the Family Court in determining whether the use of the percentage standard is unfair to the child or any of the parties.

(b) Periodic payments under the plan may be made through wage withholding in amounts in addition to the amount ordered in the child support order that is in effect.

2.9-8. Default on an Alternative Payment Plan. In the event that the obligor defaults on the plan, the Agency shall notify the obligor in writing that an administrative enforcement action shall be implemented unless the lien is paid in full.

2.9-9. Renegotiation of an Alternative Payment Plan. After the entry of an alternative payment plan, the plan may be renegotiated upon the written request of the obligor or Agency if the requesting party can show a substantial change in circumstances. A substantial change in circumstances includes any of the following:

(a) A change in the obligor’s income or assets, including the sale or purchase of real or personal property.

(b) A change in the obligor’s earning capacity.

(c) Any other factor that the Agency determines is relevant.

2.9-10. Obligors with Cases in Multiple Jurisdictions.

(a) When multiple child support agencies initiate administrative enforcement actions against the same obligor, and the obligor negotiates an alternative payment plan with one of the agencies, the plan does not preclude any other child support agency from proceeding with its administrative enforcement action.

(b) If a child support agency which has a lien against property of an obligor negotiates an alternative payment plan with the obligor, the agency may receive proceeds from the sale of the obligor’s personal property under the lien including, but not limited to, proceeds from administrative enforcement actions taken by other child support agencies.

End.
Title 7. Children, Elders and Family - Chapter 704

They watch over the children

CHILD SUPPORT

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**704.1. Purpose and Policy**

704.1-1. **Purpose.** The purpose of this law is to:

(a) Establish the legal responsibility of parents to provide financially for their children’s general well-being;

(b) Make support payments more equitable by ensuring consistent treatment of persons in similar circumstances;

(c) Make support payments based on the real earning capability of parents; and

(d) Improve the efficiency of child support establishment and enforcement.

704.1-2. **Policy.** It is the policy of this law to:

(a) establish an adequate standard of support for children whose paternity has been established or acknowledged;

(b) encourage the use of stipulations to resolve disputes over child support obligations; and

(c) limit the use and disclosure of personal information received or maintained by the Nation’s Family Court and/or the Oneida Nation Child Support Agency in order to protect the privacy rights of all parties and children who are involved in proceedings or actions under this law.

**704.2. Adoption, Amendment, Repeal**

704.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-24-09-B and amended by resolutions BC-02-24-10-G, BC-02-23-11-E, BC-06-22-11-K, BC-10-10-12-C, BC-08-13-14-E, and BC-__-__-___.

704.2-2. This law may be amended or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

704.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

704.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

704.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.
704.3. Definitions

704.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Administrative enforcement action” means enforcement action taken by the Oneida Nation Child Support Agency to enforce a child support order without obtaining an order from the Family Court.

(b) “Agency” means the Oneida Nation Child Support Agency established to administer and supervise the Nation’s child support enforcement program.

(c) “Alternative payment plan” means a negotiated agreement between the Agency and an obligor, or an order set by the Family Court, to establish terms and conditions for the payment of arrears.

(d) “Basic support costs” means food, shelter, clothing, transportation, personal care, and incidental recreational costs.

(e) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

(f) “Child” means a biological or adopted child of the obligor under the age of eighteen (18), or any person who is less than nineteen (19) years old if he or she is pursuing a high school diploma or its equivalent from an accredited course of instruction.

(g) “Child support” means the total financial obligation a parent has towards his or her child as established through judicial and/or administrative processes.

(h) “Child Support Obligation of Low-Income Payers Schedule” means the Wisconsin Department of Children and Families Child Support Obligation of Low-Income Payers at the Federal Poverty Guidelines, found in DCF 150 Appendix C.

(i) “Child support order” means a judgment of the Family Court or a court of competent jurisdiction ordering payment of child support which provides monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorney’s fees and other relief.

(j) “Current six (6) month treasury bill rate” means the yield of a U.S. government security with a term of six (6) months.

(k) “Custodial parent” means the parent who exercises physical custody of the child pursuant to a custody order, on the basis of agreement between the parents or in the absence of one parent. A legal guardian with primary physical custody of the child or children and standing in the position of the parent shall have the same rights to child support as a custodial parent.

(l) “Employer” means any individual, business, government, institution, or other entity paying wages to one or more employees.

(m) “Equity” means the fair market value of property minus the liens on that property with priority over the child support lien.

(n) “Equivalent care” means a period of time during which the parent cares for the child that is not overnight, but is determined by the court to require the parent to assume the basic support costs that are substantially equivalent to what the parent would spend to care for the child overnight. Blocks of time with the child of at least six (6) hours may be considered the equivalent of a half-day if a meal is provided during that time period. Two (2) half-day blocks may be considered the equivalent of an overnight.

(o) “Family Court” means the branch of the Nation’s Judiciary that is designated to handle all matters related to the family and/or children.
(p) "Gross income" means any form of payment due to an individual regardless of source, including, but not limited to:

(1) Salary and wages, including overtime pay;
(2) Interest and investment income;
(3) Social Security disability and old age insurance benefits under 42 U.S.C. §401 to 433;
(4) Net proceeds resulting from worker’s compensation or other personal injury awards intended to replace income;
(5) Unemployment insurance;
(6) Income continuation benefits;
(7) Voluntary deferred compensation and employee contributions to the following: employee benefit plan, profit-sharing, pension or retirement account;
(8) Military allowances and veterans disability compensation benefits;
(9) Undistributed income of a corporation or any partnership in which the parent has an ownership interest sufficient to individually exercise control or to access the earnings of the business, unless the income included is an asset;
(10) Per capita distribution payments;
(11) Lease or rental income;
(12) Prizes over one thousand dollars ($1,000); and
(13) All other income, whether taxable or not, except that gross income does not include any of the following:

(A) Child support;
(B) Foster care payments;
(C) Kinship care payments;
(D) Public assistance benefits, except that child care subsidy payments shall be considered income to a child care provider;
(E) Food stamps;
(F) Public assistance or financial hardship payments paid by a county or a Nation;
(G) Supplemental Security Income under 42 U.S.C. §1381 to 1383(f) and state supplemental payments; or
(H) Payments made for social services.

(q) "Guardian ad litem" means a person appointed by the Family Court to appear at any peacemaking, mediation, or hearing and tasked with representing the best interest of the person appointed for.

(r) "Immediate family member" means an individual’s husband, wife, mother, father, step-mother, step-father, son, daughter, step-son, step-daughter, brother, sister, step-brother, step-sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-law, brother-in-law or sister-in-law and any of the these relations attained through legal adoption.

(s) "Income withholding" means the process whereby a court order, Family Court order, or voluntary wage assignment directs an employer, bank, or agent holding monies or property of an obligor, to make payments or deliver property to satisfy a child support obligation.

(t) "Intact family" means a family in which the child or children and the obligor reside in the same household and the obligor shares his or her income directly with the child or children and has a legal obligation to support the child or children.
(u) “Legally incompetent adult” means a person at least eighteen (18) years old who has been declared incompetent by a court of competent jurisdiction because he or she is temporarily or permanently impaired to the extent that the person lacks sufficient understanding to make or communicate responsible personal decisions.

(v) “Lien amount” means the difference between the monthly amount of support due and the arrears in a case.

(w) “Lien docket” means the registry kept by the State of Wisconsin containing the names of people who owe past-due child support.

(x) “Low-income obligor” means an obligor for whom the Family Court uses the monthly support amount provided in the schedule in the Child Support Obligation of Low-Income Payers Schedule based on the Family Court’s determination that the obligor’s total economic circumstances limit his or her ability to pay support at standard percentages and the obligor’s income is at a level set forth in the schedule in the Child Support Obligation of Low-Income Payers Schedule.

(y) “Marital child” means a child born during the marriage of his or her parents. In addition, if the father and mother of a non-marital child enter into a lawful marriage or a marriage which appears and they believe is lawful, except where the parental rights of the mother were terminated before either of these circumstances, the child becomes a marital child and shall enjoy all of the rights and privileges of a marital child as if he or she had been born during the marriage of the parents. The children of all marriages declared void under the law are nevertheless marital children.

(z) “Monthly income” means the obligor’s annual gross income or, if applicable, the obligor’s annual income modified for business expenses; plus the obligor’s annual income imputed based on earning capacity; plus the obligor’s annual income imputed from assets; divided by twelve (12).

(aa) “Nation” means the Oneida Nation.

(bb) “Non-custodial parent” means the parent of a child who does not hold primary care, custody and/or control of a child.

(cc) “Non-legally responsible relative” means a person connected with a child by blood, marriage, or adoption who assumes responsibility for the care of a child without legal custody, but is not in violation of a court order. A non-legally responsible relative does not include a relative who has physical custody of a child during a court-ordered visitation period.

(dd) “Obligee” means the person or entity to whom child support is owed.

(ee) “Obligor” means the person who is obliged to pay child support to the obligee.

(ff) “Ownership interest” means any personal financial interest.

(gg) “Parent” means the biological or adoptive parent of the child.

(hh) “Payor” means a person or entity with a legal obligation, as an employer, buyer of goods, debtor, or otherwise, to pay an obligor.

(ii) “Reservation” means all lands within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

(jj) “Serial family obligor” means an obligor with an existing legal obligation for child support who incurs an additional legal obligation for child support in a subsequent family as a result of a child support order.

(kk) “Shared-placement obligor” means a parent who has an ordered period of placement of at least twenty-five percent (25%), is ordered by the Family Court to assume the child’s
basic support costs in proportion to the time that the parent has placement of the child and
is determined to owe a greater support amount than the other parent.

(II) “Split-placement obligor” means an obligor who has two (2) or more children and who
has physical placement of one (1) or more children but not all of the children.

(mm) “Stipulation” means a voluntary agreement between parties concerning some
relevant point.

(nn) “Substantial change of income” means the obligor has a significant change in his or
her finances that would lead to a change in child support of more than fifteen percent (15%) and fifty dollars ($50.00) per month.

(oo) “Variable costs” means the reasonable costs above basic support costs incurred by or
on behalf of a child, including but not limited to, the cost of child care, tuition, a child’s
special needs, and other activities that involve substantial cost.

(pp) “Threshold” means an amount, expressed as either a percentage of the monthly
amount due, a fixed dollar amount, or both, that the lien amount must equal or exceed
before an administrative enforcement action may be used to enforce a child support order.

704.4. Jurisdiction

704.4-1. The Family Court has jurisdiction over any action brought under this law.

704.4-2. Personal Jurisdiction. Personal jurisdiction over an individual under this law may be
established where one party or a child of the parties is any of the following:

(a) a member of the Nation;

(b) a resident of the Reservation who is also a member of an Indian tribe, band or
community which is recognized by a State or the federal government;

(c) a resident of the Reservation who is also the biological parent of the child that is
enrolled or is eligible for enrollment with the Nation; or

(d) an individual who consents to the jurisdiction of the Family Court by one (1) of the
following means:

(1) Filing an action with the Family Court;

(2) Knowingly and voluntarily giving written consent to the jurisdiction of the
Family Court;

(3) Entering a notice of appearance before the Family Court in an action without
concurrently preserving the defense of lack of personal jurisdiction or filing a
motion to dismiss for lack of personal jurisdiction within thirty (30) days of entering
the notice of appearance; or

(4) Appearing in an action before the Family Court without asserting the defense
of lack of personal jurisdiction.

704.4-3. Personal jurisdiction over the other party may be established using any method provided
by law, including long-arm jurisdiction procedures as provided for in Section 201 of the Uniform

704.4-4. Transfer of Cases from Other Courts. If personal jurisdiction over the parties has been
established under this law, the Family Court has jurisdiction over any action transferred to the
Family Court from any court of competent jurisdiction.

704.5. Initiating an Action for Child Support

704.5-1. Every parent has a duty to support each and every child of that parent. A child support
order may be obtained from the Family Court by either submitting a stipulation to the Family Court
for approval or by filing a petition for child support with the Family Court.
(a) If a party to the action is a minor or is a legally incompetent adult, the Family Court may appoint a guardian ad litem to represent such party in the action.

704.5-2. *Initiation of Action by the Agency.* For assistance in initiating a child support order a party may request the services of the Agency or may be referred to the Agency from an entitlement program.

(a) Within thirty (30) days of receiving a completed application for services or a referral, the Agency shall meet with the custodial parent.

(b) Within seven (7) business days of the meeting with the custodial parent, the Agency shall send a Letter of Request for Support and Financial Disclosure form to the non-custodial parent.

(b) If the non-custodial parent fails to respond to or take action on the Letter of Request for Support and Financial Disclosure form within ten (10) business days the Agency may initiate a hearing in accordance with this law.

(c) If the non-custodial parent responds within the required time period after receiving a Letter of Request for Support and Financial Disclosure form, the parties shall attempt to enter into a stipulation.

704.5-3. *Initiation of Action by a Party Not the Agency.* Any of the following individuals may initiate an action for the establishment of child support at any time by filing a petition with the Family Court:

(a) a custodial parent;
(b) a child’s mother;
(c) a child’s father;
(d) a child’s guardian ad litem;
(e) a child’s non-legally responsible relative; or
(f) a legally incompetent adult’s guardian ad litem.

704.5-4. *Stipulation.* The parties may enter into a stipulation at any time as to the level of the child support obligation.

(a) The Agency shall assist parties in reaching a stipulation upon request or when the parties are referred to the Agency by an entitlement program. Parties may also submit a stipulation to the Family Court for approval without the Agency’s assistance.

(b) In order for a stipulation to be valid the following conditions shall be met:

1. The stipulation shall be in writing, signed, and notarized;
2. If the parties deviate from the percentage standards, the stipulation shall state the amount of support that would have been ordered by the percentage standards and the reasons for deviating from the percentage standards;
3. All parties shall sign the stipulation free of duress and coercion; and
4. The Family Court shall make written findings that the stipulation is appropriate, using the criteria for deviating from standard percentages as a guideline, if applicable.

(c) After the stipulation is approved and filed by the Family Court, it shall have the same force and effect as an order issued by the Family Court. The obligation of the obligor to pay child support shall commence on the date specified in the agreement, but no later than the date the stipulation is approved and filed by the Family Court.

704.5-5. *Petition to Establish Child Support.* If the parties do not enter into a stipulation, then a petition to establish child support may be filed with the Family Court. The petition to establish child support may be filed as a separate proceeding or in connection with a petition for child custody.
(a) **Requirements of the Petition.** The petition to establish child support shall include the following:

1. The name, date of birth, address, and tribal affiliation of the petitioner, respondent, and child for whom support is requested;
   
   (A) If the address of the respondent is unknown, other departments of the Nation shall cooperate with the Family Court, at the Family Court’s request, to provide the Family Court with the respondent’s address. Any such Family Court requests shall be made in such a way which protects the privacy rights of all parties and children who are involved in proceedings or actions under this law.

2. With whom the child currently resides;

3. When and how paternity was established;

4. Name and date of birth of other children of the parties, and the child support obligation for those children, if applicable;

5. Whether either party is receiving state or tribal benefits, and if so, what benefits;

6. Whether any other action to determine child support has been commenced or is pending in a court of another jurisdiction and whether a child support order has been entered by another court;

7. Financial information such as the parties’ income;

8. The relief the petitioner is requesting, which shall include, but is not limited to, establishment of support, request for support back to date of filing, and/or any other relief the court may deem just and equitable;

9. **Confidential Petition Addendum.** The confidential petition addendum is a separate form which has the parties and the child’s name, date of birth and social security number. This form shall be kept separate from the petition and shall be maintained in a confidential file. The form shall be available only to the parties, the parties’ attorneys or advocates, the Agency, or any person authorized by the Family Court to have access to the form.

(b) **Nondisclosure of Information in Protected Cases.** Upon a finding, which may be made ex parte, that the health, safety or welfare of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, the Family Court shall order that the address of the child or party, or other identifying information, not be disclosed in a pleading or other document filed in a proceeding under this law.

(c) **Hearing Date.** Upon receipt of a petition, the Family Court shall schedule a hearing to determine child support to be held at a time after the filing of the petition and consistent with the manner of service.

(d) **Summons.** All parties shall be notified of the petition and of all hearings, and shall be given an opportunity to be heard.

1. **Service of the Summons.** The summons, which notices the initiation of an action, shall be served by certified mail (return receipt requested) or in person within fifteen (15) calendar days after the petition is filed with the Family Court. The summons shall include the Family Court clerk’s return address, with a notice to file an answer to that address. Any notice after the summons shall be served by first-class mail to the recently verified last-known address of the party.

   (A) **Certified mail.** Certified mail sent to a party’s most recently verified last-known address but returned because it was unclaimed or refused shall constitute constructive service. Certified mail returned for other reasons...
shall require service by other methods pursuant to the Oneida Judiciary Rules of Civil Procedure.

(B) **Publication.** When a responding party cannot be found for personal service after diligent attempts and attempts to serve the responding party by certified mail have failed, the petitioner may use service by publication. The publication shall be in the Nation’s newspaper or a newspaper of general circulation in the county of residence of the respondent, if known. The publication shall be designated as a Legal Notice and any confidential information shall be redacted.

(i) If service by publication is used and there is insufficient time for notice and answer pursuant to this law, the Family Court shall re-schedule the hearing appropriately and may permit extended time deadlines for default orders and for hearings in order to provide for fair notice and opportunity for the party to respond.

(2) **Requirements of the Summons.** The summons to be served on the respondent(s), along with the petition, shall include the following notice, in addition to providing a time, place, and date for appearance:

(A) That if he or she chooses not to appear at the hearing or enter a defense to the petition challenging the authority of the Family Court to hear the matter by the date of the hearing, the hearing shall proceed on the basis of the petitioner’s evidence;

(B) That a child support order may require the person found to be the obligor to pay child support until the child reaches eighteen (18) years of age or until the child graduates from high school, or its equivalent, up to age nineteen (19);

(C) That the person found to be the obligor may have his or her license(s) suspended or denied for failure to pay child support, in addition to other enforcement actions;

(D) That the person found to be the obligor’s employer or others with evidence of the his or her income may be subpoenaed to provide the Family Court with records of his or her earnings;

(E) That if the person found to be the obligor is unemployed, it shall still be determined that he or she is able to provide some degree of child support and an order of support shall be calculated according to this law unless the Family Court makes written findings ordering otherwise; and

(F) That any answer to the petition shall be filed with the Family Court within twenty (20) calendar days of the date of service of the petition, and a copy served on the other party.

(e) **Answers.** Answers shall be filed with the Family Court and served on the petitioner within twenty (20) calendar days of the date of service of the petition in accordance with the Nation’s laws and policies governing civil procedure.

(f) **Subpoenas.** Upon request of either party, the Family Court shall issue subpoenas to any person in possession of relevant information to appear or produce documents to the Family Court. Failure to comply with such a subpoena may be punishable as contempt.
704.6. Child Support Hearing Procedures

704.6-1. The factual determinations made at a hearing shall include, but is not limited to, the income and expense information necessary to determine the appropriate level of support according to this law.

704.6-2. The Family Court may utilize discovery procedures and contempt powers, as authorized by any law, policy, or rule of the Nation to obtain information relevant to the establishment or enforcement of child support. These procedures may include the following:

(a) Issue subpoenas requiring necessary and relevant parties to appear in person and provide testimony;
(b) Issue subpoenas requiring the production of evidence;
(c) Obtain information about property or assets to assess its value or funding source for lien or seizure actions;
(d) Obtain information about the income of any party to the action; and/or
(e) Issue contempt findings for failure to comply with the lawful order of the Family Court.

704.6-3. Both parties have the right to representation by an attorney and/or advocate at his or her own expense. The Nation shall not be required to pay for any fees and/or expenses incurred by any party in connection with proceedings under this law.

704.6-4. Temporary Orders. At any time after a child’s parentage has been established, the Family Court may make a temporary order for the payment of child support and the child’s health care expenses. Before making a temporary order, the Family Court shall consider all factors that the Family Court is required to consider when granting a final child support order. If the Family Court makes a temporary child support order that deviates from the amount of support that would be required by using the percentage standard, the requirements of section 704.7-8 shall be complied with.

704.6-5. Default. If the respondent fails to appear at the hearing upon a showing of valid service and the petitioner presents evidence of the obligation by the absent party, a child support order shall be entered pursuant to the evidence.

704.6-6. Hearings and Records Closed. Child support proceedings shall be closed to any person other than those necessary to the action or proceeding. Records of child support cases shall remain confidential and shall only be viewed by the parties, the legal guardian of a party who is a minor, the parties’ attorney or advocate, guardian ad litem, Judges and staff assigned to the case, and those other persons who first obtain a written release from a party to view material contained in the record.

704.7. Determining the Child Support Obligation

704.7-1. The Family Court shall determine child support payments by using the percentage standards established in section 704.7-2 of this law, except as provided elsewhere in this law. The obligor’s monthly income shall be considered in determining his or her child support obligation.

704.7-2. Percentage Standards to Determine the Amount of Child Support.

(a) The following percentages shall be applied to the portion of an obligor’s monthly income available for child support that is less than seven thousand dollars ($7,000):

1. seventeen percent (17%) for one (1) child;
2. twenty-five percent (25%) for two (2) children;
3. twenty-nine percent (29%) for three (3) children;
4. thirty-one percent (31%) for four (4) children; and
5. thirty-four percent (34%) for five (5) or more children.
(b) The following percentages shall be applied to the portion of an obligor’s monthly income available for child support that is greater than or equal to seven thousand dollars ($7,000) and less than or equal to twelve thousand five hundred dollars ($12,500):

(1) fourteen percent (14%) for one (1) child;
(2) twenty percent (20%) for two (2) children;
(3) twenty-three percent (23%) for three (3) children;
(4) twenty-five percent (25%) for four (4) children; and
(5) twenty-seven percent (27%) for five (5) or more children.

(c) The following percentages shall be applied to the portion of an obligor’s monthly income available for child support that is greater than twelve thousand five hundred dollars ($12,500):

(1) ten percent (10%) for one (1) child;
(2) fifteen percent (15%) for two (2) children;
(3) seventeen percent (17%) for three (3) children;
(4) nineteen percent (19%) for four (4) children; and
(5) twenty percent (20%) for five (5) or more children.

704.7-3. Determining Income Modified for Business Expenses. In determining an parent’s monthly income, the Family Court may adjust an parent’s gross income as follows:

(a) Adding wages paid to dependent household members.
(b) Adding undistributed income that the Family Court determines is not reasonably necessary for the growth of the business. The parent shall have the burden of proof to show that any undistributed income is reasonably necessary for the growth of the business.
(c) Reducing gross income by the business expenses that the Family Court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.

704.7-4. Determining Income Imputed Based on Earning Capacity. When a parent’s income is less than the parent’s earning capacity or is unknown, the Family Court may impute income to the parent at an amount that represents the parent’s ability to earn.

(a) The parent’s ability to earn may be based on the parent’s:

(1) education, training, and recent work experience;
(2) earnings during previous periods;
(3) current physical and mental health;
(4) history of child care responsibilities as the parent with primary physical placement; and
(5) the availability of work in or near the obligor’s community.

(b) If evidence is presented that due diligence has been exercised to ascertain information on the parent’s actual income or ability to earn and that information is unavailable, the Family Court may impute to the parent the income that a person would earn by working thirty-five (35) hours per week for the federal minimum hourly wage. In addition to imputed income, the Family Court may order the parent to search for a job or participate in a work experience and job training program.

(c) If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent’s earning capacity and the parent’s gross income or income modified for business expenses.

704.7-5. Determining Income Imputed from Assets.

(a) The Family Court may impute a reasonable earning potential to a parent’s assets if the Family Court finds both of the following:
(1) The parent has ownership and control over any real or personal property, including but not limited to, life insurance, cash and deposit accounts, stocks and bonds, business interests, net proceeds resulting from worker’s compensation or other personal injury awards not intended to replace income, and cash and corporate income in a corporation in which the obligor has an ownership interest sufficient to individually exercise control and the cash or corporate income is not included as gross income.

(2) The parent’s assets are underproductive and at least one (1) of the following applies:

(A) The parent has diverted income into assets to avoid paying child support.

(B) Income from the parent’s assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents.

(b) The Family Court shall impute income to assets by multiplying the total net value of the assets by the current six (6) month treasury bill rate or any other rate that the Family Court determines is reasonable and subtracting the actual income from the assets that were included as gross income.

704.7-6. Adjustment for Child’s Social Security Benefits. The Family Court may consider benefits received by a child under 42 U.S.C. §402(d) based on a parent’s entitlement to federal disability or old-age insurance benefits under 42 U.S.C. §401 to 433 and adjust an obligor’s child support obligation by subtracting the amount of the child’s benefit. In no case may this adjustment require the obligee to reimburse the obligor for any portion of the child’s benefit. If the obligor is receiving the child’s benefit, the support amount is either the percentage standard applied to the obligor’s income or the amount of the child’s benefit, whichever is greater.

(a) Determining the Child Support Obligations of Shared-Placement Parent when the Child Receives Social Security Benefits. If the shared-placement guidelines under section 704.8-2 apply, the child’s benefit is split between the parents in proportion to the amount of time the child spends with each parent. Add the proportion of the child’s benefit that represents the proportion of time the child spends with the parent not receiving the benefit to the support obligation of the parent who is receiving the child’s benefit. Child support shall be determined as follows:

(1) Determine each parent’s monthly income available for child support under section 704.7-2. If a parent has one (1) or more previous child support obligations, determine the parent’s monthly income available for child support adjusted for the previous obligations as provided in section 704.8-1. Include the parent’s federal disability or old age insurance benefits under 42 U.S.C. §401 to 433 in that parent’s income, but do not include the child’s benefit under 42 U.S.C. §402 (d) in either parent’s income.

(2) Multiply each parent’s monthly income available for child support by the appropriate percentage standard under section 704.7-2.

(3) Multiply each amount determined under section 704.7-6(a)(2) by one hundred and fifty percent (150%).

(4) Multiply the amount determined for each parent in section 704.7-6(a)(3) by the proportion of time that the child spends with the other parent.

(5) Multiply the amount of the child’s benefit by the proportion of the time the child spends with the parent who is not receiving the child’s benefit.
(6) Add the amount in section 704.7-6(a)(5) to the child support obligation calculated in section 704.7-6(a)(4) for the parent who is receiving the child’s benefit.

(7) Offset the resulting amounts against each other. The parent with the greater child support obligation is the shared-placement obligor. The shared-placement obligor shall pay either the greater of the amount determined in this subsection or the amount determined using the appropriate percentage standard under section 704.7-2.

704.7-7. Claiming Children for Tax Purposes. The Family Court may address who may claim the child for tax purposes or accept a stipulation entered into by the parties regarding children and taxes.

704.7-8. Deviation from the Percentage Standards. Upon request by a party, the Family Court may modify the amount of child support payments determined by the percentage standards if, after considering the following factors, the Family Court finds by the greater weight of the credible evidence that use of the percentage standards is unfair to the child or to any of the parties:

(a) The financial resources of the child;
(b) The financial resources of both parents;
(c) Maintenance received by either party;
(d) The needs of each party in order to support himself or herself at a level equal to or greater than the federal poverty line as established under 42 U.S.C. §9902(2);
(e) The needs of any person, other than the child, whom either party is legally obligated to support;
(f) The standard of living the child would have enjoyed if his or her parents were living together;
(g) The desirability that the custodial parent remain in the home as a full-time parent;
(h) The cost of day care if the custodial parent works outside the home, or the value of custodial services performed by the custodial parent if the custodial parent remains in the home;
(i) The award of substantial periods of physical placement to both parents;
(j) Extraordinary travel expenses incurred in exercising the right to periods of physical placement;
(k) The physical, mental, and emotional health needs of the child, including any costs for health insurance;
(l) The child’s educational needs;
(m) The tax consequences to each party;
(n) The best interests of the child;
(o) 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; and
(p) Any other factors which the Family Court in each case determines are relevant.


(a) A party may request payment of arrears or past-due child support as follows:

(1) In an action regarding paternity, back to the date of birth of the child or date of application, whichever is later;
(2) In a child support establishment or modification pursuant to this law, back to the date of application, review, or referral; or
(3) In an establishment or modification of placement pursuant to an action regarding divorce, annulment and legal separation or child custody, placement, and visitation, back to the date of filing, or as otherwise ordered by the Family Court.
(b) A payment for arrears or a past-due payment shall be set based on the amount due and the income available to pay current support.

(c) Once current child support is ended in any manner prescribed by law, child support shall continue to be paid at the same rate, until all arrears or past due child support is paid in full.

704.8. Determining the Child Support Obligation in Special Circumstances

704.8-1. Determining the Child Support Obligation of a Serial-Family Obligor.

(a) Applicability. This applies only if the support obligation being calculated is for children from a subsequent family or subsequent paternity judgment or acknowledgment. An obligor may not use the provisions of this section as a basis for seeking modification of an existing order based on a subsequently incurred legal obligation for child support.

(b) Determination. For a serial-family obligor, the child support obligation incurred for a marital or non-marital child in a subsequent family as a result of a child support order may be determined as follows:

(1) Determine the obligor’s monthly income.

(2) Determine the order of the obligor’s legal obligations for child support by listing them according to the date each obligation is incurred.

   (A) For a marital child, the legal obligation for child support is incurred on the child’s date of birth.

   (B) For a non-marital child, the legal obligation for child support is incurred on the date that paternity is legally established.

   (C) For a non-marital paternal child in an intact family, it is incurred on the date of adoption or the date that paternity is legally established.

   (D) For a non-marital maternal child in an intact family, it is incurred on the child’s date of birth.

(3) Determine the first child support obligation as follows:

   (A) If the obligor is subject to an existing support order for that legal obligation, except a shared-placement order, the support for that obligation is the monthly amount of that order; or

   (B) If the obligor is in an intact family or is subject to a shared-placement order, the support is determined by multiplying the appropriate percentage for that number of children by the obligor’s monthly income.

(4) Adjust the monthly income by subtracting the support for the first legal obligation from the obligor’s monthly income.

(5) Determine the second child support obligation as follows:

   (A) If the obligor is subject to an existing support order for that legal obligation, except a shared-placement order, the support for that obligation is the monthly amount of that order; or

   (B) If the obligor is in an intact family or is subject to a shared-placement order, the support is determined by multiplying the appropriate percentage for that number of children by the obligor’s monthly income.

(6) Adjust the monthly income a second time by subtracting the support for the second legal obligation from the first adjusted monthly income.
(7) Repeat the procedure for determining the child support obligation and adjusting
the monthly income for each additional legal obligation for child support the serial
family obligor has incurred.
(8) Multiply the appropriate percentage for the number of children subject to the
new order by the final adjusted monthly income to determine the new child support
obligation.

704.8-2. Determining the Child Support Obligations of Shared-Placement Parents.

(a) Applicability. The shared-placement formula may be applied when both of the
following conditions are met:

(1) Both parents have periods of placement of at least twenty-five percent (25%)
or ninety-two (92) days a year. When calculating periods of placement based on
equivalent care, the total number of overnights may exceed three hundred and sixty-
five (365). 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 the total number of overnights in a year.
The combined periods of placement for both parents shall equal one hundred
percent (100%).

(2) Each parent is ordered by the Family Court to assume the child’s basic support
costs in proportion to the time that the parent has placement of the child.

(b) Determination. The child support obligations for parents who meet the requirements
for the shared-placement formula may be determined as follows:

(1) Determine each parent’s monthly income.

(A) In determining whether to impute income based on earning capacity
for an unemployed parent or a parent employed less than full time, the
Family Court shall consider benefits to the child of having a parent remain
in the home during periods of placement and the additional variable day
care costs that would be incurred if the parent worked more.

(2) Multiply each parent’s monthly income by the appropriate percentage standard.

(3) Multiply each amount determined under section 704.8-2(b)(2) by one hundred
and fifty percent (150%).

(4) Multiply the amount determined for each parent under section 704.8-2(b)(3) by
the proportion of the time that the child spends with the other parent to determine
each parent’s child support obligation.

(5) Offset resulting amounts under section 704.8-2(b)(4) against each other. The
parent with a greater child support obligation is the shared-placement obligor. The
shared-placement obligor shall pay the lesser of the amount determined under this
section or the amount determined using the appropriate percentage standard. If the
shared-placement obligor is also a low-income obligor, the child support obligation
may be the lesser of the amount determined under the shared placement
determination or the low-income determination.

(6) In addition to the child support obligation determined under section 704.8-
2(b)(5), the Family Court shall assign responsibility for payment of the child’s
variable costs in proportion to each parent’s share of physical placement, with due
consideration to a disparity in the parents’ incomes.

(A) The Family Court shall direct the manner of payment of a variable cost
order to be either between the parents or from a parent to a third-party
service provider.
(B) The Family Court shall not direct payment of variable costs to be made to the Agency or the Agency’s designee, except as incorporated in the child support order.

(7) A change in the child’s variable costs shall not in and of itself be considered a substantial change in circumstances sufficient to justify a modification of a judgment or order under section 704.10.


(a) Applicability. The split-placement formula may be applied when parents have two (2) or more children and each parent has placement of one (1) or more but not all of the children.

(b) Determination. The child support obligation for a split-placement parent may be determined as follows:

(1) Determine each parent’s monthly income.

(2) Determine the appropriate percentage standard for the number of total children.

(3) Divide the appropriate percentage standard for the number of total children by the total number of children.

(4) Multiply the number calculated in section 704.8-3(b)(3) by the number of children placed with each parent.

(5) Multiply each parent’s monthly income by the number calculated in 704.8-3(b)(4) based on the number of children placed with the other parent to determine each parent’s child support obligation; and

(6) Offset resulting amounts under section 704.8-3(b)(5) against each other. The parent with a greater child support obligation is the split-placement obligor.


(a) Applicability. If an obligor’s total economic circumstances limit his or her ability to pay support at the level determined by the standard percentage standards, then the low-income obligor standards found in the Child Support Obligation of Low-Income Payers Schedule may be used.

(b) Determination. The Family Court may use the monthly support amount provided in the Child Support Obligation of Low-Income Payers Schedule as the support amount for an obligor with a monthly income at a level set forth in the schedule.

(1) If an obligor’s monthly income is below the lowest income level in the Child Support Obligation of Low-Income Payers Schedule, the Family Court may set an order at an amount appropriate for the obligor’s total economic circumstances. This amount may be lower than the lowest support amount in the Child Support Obligation of Low-Income Payers Schedule.

704.9. Child Support Order

704.9-1. Expression of Ordered Support. The child support amount shall be expressed as a fixed sum.

704.9-2. Interest on Arrears. The Nation shall not charge an obligor ordered to pay child support interest on any arrears.

704.9-3. Income Withholding. The child support order shall provide for immediate income withholding.

(a) A copy of the Family Court’s income withholding order shall be sent by the Agency to a payor within three (3) business days of the entry of the order of the Family Court by mail, fax, or electronic means.
(b) An order to withhold income shall be binding against future payors upon actual notice of the income withholding order through notice by mail, fax, or electronic means.

(c) Income shall not be subject to withholding only where:

(1) One of the parties demonstrates, and the Family Court finds, that there is good cause not to require income withholding due to one of the following:

   (A) There is an error in the amount of current or overdue support; or

   (B) The identity of the obligor is mistaken.

(2) The parties reach a written agreement which provides for an alternative arrangement that is approved by the Family Court.

(d) No payor shall refuse to honor an income withholding order executed pursuant to this law. A payor shall begin withholding income immediately after notice of an income withholding order made pursuant to this law. Within five (5) business days after the payor pays the obligor, the payor shall send the amount withheld to the Wisconsin Support Collections Trust Fund.

(e) A payor shall be liable for one hundred percent (100%) of the child support order, or the amount of money that should have been withheld from the obligor’s earnings, whichever is the lesser amount, if the payor:

(1) Fails or refuses, after being noticed of an income withholding order, to deduct or promptly remit the amounts of money required in the order;

(2) Fails or refuses to submit an answer to the notice of income withholding after being noticed; or

(3) Is unwilling to comply with the other requirements of this law.

(f) A payor shall not discharge from employment, refuse to employ, or otherwise take disciplinary action against any obligor solely because he or she is subject to income withholding.

(1) When the Family Court finds that a payor has taken any of these actions, the payor shall be liable for a civil penalty. Any payor who violates any provision of this paragraph shall be liable in a civil action for reasonable damages suffered by an obligor as a result of the violation, and an obligor discharged or demoted in violation of this paragraph shall be entitled to be reinstated to his or her former position.

(2) The statute of limitations for actions under this section shall be one (1) year.

(g) A payor who repeatedly fails to comply with an income withholding order as required by this law may be subject to a fine, not to exceed five hundred dollars ($500), or have its Oneida vendor license revoked or suspended, if applicable, until compliance with this law is assured.

(1) The vendor license issuing agency shall comply with the Family Court order to revoke or suspend a vendor license.

(h) If income withholding is inapplicable, ineffective or insufficient to ensure payment of child support, the Family Court may require the obligor to establish an account for the purpose of transferring child support payments.

(i) The total amount withheld under an income withholding order shall not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b)).

(j) Non-Indian off-reservation payors shall be subject to income withholding under 28 U.S.C. §1738B.

704.9-4. Conditions of the Order. The Family Court may require a party, or both parties, to use the services available to him or her to obtain and maintain regular employment and/or job training.
704.9-5. Support Order Notice Requirements. Each order for child support shall include:

(a) An order that the obligor and obligee notify the Agency of any change of address or name change within ten (10) business days of such change; and

(b) An order that the obligor notify the Agency and the obligee of any change of employer or substantial change of income within ten (10) business days of the change.

704.9-6. Enforcement of Order. A child support order under this section is enforceable as contempt.


704.9-8. Trust. The Family Court may protect and promote the best interests of the minor children by setting aside a portion of the child support that either party is ordered to pay in a separate fund or trust for the support, education, and welfare of such children.


(a) Non-cash payments may be used to satisfy part or all of a child support order if the parties and the Family Court agree to allow non-cash payments. Non-cash payments shall not be used to fulfill arrears. If non-cash payments are allowed, the order shall:

1. state the specific dollar amount of the support obligation;
2. state the maximum amount (in dollars) of non-cash payment that the obligee will accept;
3. describe the type of non-cash payment that is permitted;
4. provide that non-cash payment cannot be used to satisfy assigned child support obligations.

(b) When both parents are in agreement that non-cash payments may be used to satisfy a child support obligation, the non-cash payment may include, but is not limited, to the following:

1. Clothing;
2. Groceries;
3. Child Care;
4. Deer/Venison;
5. Wood;
6. Transportation;
7. Skilled trades or services, such as car repairs, lawn care and snow removal;
8. Gift cards.

(c) When a non-cash payment is used to satisfy part or all of a child support order, the obligor and obligee shall submit any forms required by the Agency within the month that the non-cash payment is made. If there are less than five (5) business days left in the month when a non-cash payment is made, the obligor and obligee have five (5) business days to submit any required forms to the Agency. The Agency shall be responsible for applying the non-cash payment towards the child support order during the appropriate month.

704.10. Modification of a Child Support Order

704.10-1. Review of the Child Support Order. Every two (2) years, the Agency shall conduct a review of the child support order. The Agency shall notify the non-custodial parent, custodial parent, and any interested party that a review of their child support order shall be conducted.

704.10-2. Modification of Child Support Sought by the Agency. After the two (2) year review is conducted by the Agency, the Agency shall seek an order to modify the child support obligation if
there is a substantial change in circumstances, unless otherwise stipulated by the parties. A substantial change in circumstances includes, but is not limited to:

(a) the child’s placement is changed;
(b) either parent or the child has a significant change in his or her finances that would lead to a change in child support of more than fifteen percent (15%) and fifty dollars ($50.00) per month;
(c) the obligee is receiving public assistance benefits and is required to have a current support order in place;
(d) it has been twenty-four (24) months since the date of the last child support order or revision to the child support order, unless the child support amount is expressed as a percentage; or
(e) a change has occurred and if the current circumstances had been in place at the time the order was issued, a significantly different order would have been issued.

704.10-3. Modification of Child Support Sought by the Parties. Either party, not including the Agency, may file a motion for a modification of a child support order at any time based upon a substantial change of circumstances supported by affidavit.

(a) Such motion shall state why the previous decision should be prospectively modified.
(b) The motion and affidavit shall be served by the moving party on the responding party by first-class mail to the recently verified last-known address, or by any method provided by law.
(c) A hearing date shall be scheduled no sooner than ten (10) calendar days after the date of service.

704.10-4. An obligor shall not raise a substantial change in circumstances as a reason not to pay a current child support order or arrears. If a child support order becomes unjust due to a substantial change in circumstances of the obligor, the obligor has the duty to file a petition or motion with the Family Court for a modification to the child support order at that time.

704.11. Modification of a Child Support Order for an Incarcerated Parent

704.11-1. In the event an obligor is incarcerated for one hundred and eighty (180) days or more, the obligor shall have the right to have the Agency review his or her child support order to determine if modification or suspension of the child support order is appropriate. The obligor shall notice the Agency of his or her incarceration.

(a) An ordered child support obligation shall be suspended for an incarcerated obligor who has been sentenced to one hundred and eighty (180) days or more and has an income of less than two hundred dollars ($200) per month.
(b) If while incarcerated the obligor’s income is two hundred dollars ($200) or more per month the Agency shall review the order and seek temporary modification of the child support order based on the incarcerated obligor’s income, if necessary.
(c) Child support obligations shall not be suspended or modified for an obligor who is incarcerated for a criminal offense which includes:

(1) felony failure to pay support;
(2) a crime against a child; and/or
(3) a crime against the obligee.
(d) Past due child support related debt and/or arrears shall not be suspended or reduced as a result of the obligor’s incarceration without stipulation by the parties.

704.11-2. Notification of Review. Within fifteen (15) business days of the receipt by the Agency of verification of the obligor’s incarceration, the Agency shall send out a letter to the parties of the
case informing them of the obligor’s right to have his or her child support obligation reviewed, and of the Agency’s intent to review the current child support order.

704.11-3. **Agency Review of Order.** The Agency shall review the obligor’s child support order and make one of the following determinations:

(a) that the obligor’s income while incarcerated is two hundred dollars ($200) or more per month, and the Agency shall seek temporary modification of the obligor’s child support order based on the incarcerated obligor’s income, if necessary; or

(b) that the obligor’s income while incarcerated is less than two hundred dollars ($200) per month, and the Agency shall seek temporary suspension of the obligor’s child support order while incarcerated.

704.11-4. **Suspension of Order by the Agency.** If the Agency determines the obligor’s income is less than two hundred dollars ($200) per month while incarcerated, the Agency shall file with the Family Court a Motion and Order to Suspend without a request for a hearing with notice to all parties that the child support order shall be suspended.

(a) Either party shall have the right to object to the suspension of the order within ten (10) business days of the date of the notice by filing such objection with the Family Court and providing a copy of the objection to the Agency.

(b) If no objection to the suspension is received, the Family Court shall enter the order as proposed.

(c) Upon receipt of an objection from either party, the Family Court shall schedule a hearing on the issue.

704.11-5. **Modification of Order by the Agency.** If the Agency determines the obligor’s income is two hundred dollars ($200) per month or more while incarcerated, the Agency shall file with the Family Court a Motion to Modify.

(a) The Family Court shall schedule a hearing on the motion with the Agency providing notice to all parties with the proposed modification to the child support order by first class mail at least ten (10) business days prior to the hearing.

(b) If no objection to the modification is received at the hearing, the Family Court shall enter the order as proposed.

704.11-6. **Modification of the Order by the Incarcerated Parent.** The incarcerated parent may seek modification of his or her own child support order by filing a motion to modify with the Family Court in accordance with section 704.10-3.

704.11-7. If during the term of incarceration, the Agency receives notification of a change in the obligor’s employment and/or income, the Agency shall review the obligor’s order and determine if the obligor’s income is two hundred dollars ($200) or more per month, and whether it is necessary to temporarily modify or suspend the obligor’s child support order.

(a) If the Agency determines that suspension of the obligor’s order is necessary, then the procedure for filing a Motion and Order to Suspend without a request for a hearing described in section 704.11-4 shall be followed.

(b) If the Agency determines that modification of the obligor’s order is necessary, then the procedure for filing a Motion to Modify described in section 704.11-5 shall be followed.

704.11-8. **Reinstatement of Prior Order.** Sixty (60) days after the obligor’s release from incarceration, the child support order shall be administratively reinstated by the Agency to the previous child support order in effect before the suspension or modification of the order based on the obligor’s incarceration.

(a) The Agency shall send notice to both parties of the obligor’s release from incarceration and the intent of the Agency to reinstate the original order.
704.12. Compliance Plan

704.12-1. If at any time the obligor is, or may become, non-compliant with his or her child support order by failing to pay support as ordered or meeting a required obligation or action, the Agency shall meet with the obligor to develop a compliance plan.

704.12-2. An Appointment Letter may be sent by the Agency at any time deemed appropriate, but the Agency shall send out the Appointment Letter at least thirty (30) days prior to the initiation of any enforcement action.

(a) The Letter shall request the party meet with the Agency to discuss barriers to payment and how to avoid future enforcement action.

(b) If the party does not respond to the Letter within five (5) business days after receipt of the letter, the Agency may proceed with appropriate enforcement action.

(c) If the obligor responds to the Letter, the Agency shall interview the party to determine the reasons and barriers for the non-compliance and create a compliance plan. The compliance plan may include an increase in payment and/or any activity that is necessary to assist in payment, including programs that focus on:

(1) Employment and training;
(2) Social service and mental health;
(3) Physical and learning disabilities;
(4) Tribal traditions and customs;
(5) Family counseling and parenting; and
(6) Any other program deemed necessary.

(d) If the party successfully completes the compliance plan, no further enforcement action is necessary. However, if the party fails to complete the compliance plan, the Agency shall proceed with appropriate enforcement action.

704.13. Enforcement of an Order

704.13-1. An obligor may be subject to enforcement actions when the obligor is at least one (1) month delinquent in paying his or her child support obligation. Enforcement actions may include administrative enforcement action by the Agency and enforcement action by the Family Court.

(a) An obligor shall be provided with notice of an enforcement action of at least thirty (30) days before an enforcement action is used, unless another timeline is specified.

(b) An enforcement action shall be stayed and/or suspended after notice is given to the obligor if the obligor pays the debt in full or enters into, and maintains, an alternative payment plan and/or a compliance plan with the Agency.

704.13-2. Agency Responsibilities in the Enforcement of an Order. The Agency shall have the following responsibilities in the enforcement of an order:

(a) Track and document the progress of an obligor who is under an enforcement action;

(b) Take additional enforcement action when an obligor fails to comply with a previous enforcement action;

(c) Document the reasons why an enforcement action is not taken, when such action would have been appropriate under the circumstances; and

(d) Assist in refunding amounts that were improperly withheld, terminate income withholding when appropriate, and allocate amounts across multiple cases.

704.13-3. Notice to the Obligor of Delinquency. In the event that an obligor owes a debt equal to or exceeding the monthly amount due, the Agency shall send a notice of delinquency to the obligor. The notice of delinquency shall inform the obligor of the following:

(a) The total amount of the delinquency; and
(b) The enforcement action that may be taken as a result of the delinquency.

704.13-4. Notice to the Obligor of Enforcement Action. After the obligor has been noticed of his or her delinquency, and at least twenty (20) days prior to an enforcement being used against an obligor, the Agency shall send a notice of enforcement action to the obligor.

(a) The notice of enforcement action shall inform the obligor of the following:

(1) The total amount of the delinquency;
(2) The enforcement action that may be taken as a result of the delinquency;
(3) The obligor may request, in writing to the Agency, to negotiate an alternative payment plan with the Agency within ten (10) business days after the notice in order to stay any enforcement action;
(4) The obligor has ten (10) business days after the notice of enforcement action to file an objection with the Agency presenting good cause why an arrears payment or other enforcement action should not be implemented. The only allowable objections are:

(A) There is an error in the amount of current or overdue support; or
(B) The identity of the obligor is mistaken.

(b) If the obligor does not file an objection or request to negotiate an alternative payment plan:

(1) the enforcement action shall be taken; and/or
(2) an income withholding order, or revised order if one is already in place, shall be imposed on the payor. No more than an additional twenty percent (20%) of the current support payment order can be withheld to satisfy the delinquency provided that the total amount withheld does not exceed forty percent (40%) of the obligor’s monthly income.

(c) If a permissible objection is filed, the obligor shall be entitled to a hearing before any enforcement action is taken.

704.13-5. Use of Mail for Notices. The Agency shall send notices related to the delinquency of an obligor and enforcement of a child support order by mail to the last-known mailing address provided by the obligor.

(a) If the notice is returned, the Agency shall send notice to the obligor using the current employer mailing address provided by the obligor.
(b) If the notice to the obligor mailed to the obligor’s employer is returned, the Agency shall use all appropriate tribal, federal, state and local resources to ascertain an obligor’s current mailing address.
(c) If those resources are used for a period of thirty (30) days and a verified mailing address has not been identified, the Agency may proceed with the administrative enforcement action.

704.13-6. Notice to the Obligee of Enforcement Proceedings. The Agency shall provide written notice to the obligee when an enforcement action has been initiated against the obligor or when the obligor requests a hearing and the hearing has been scheduled. The notice to the obligee shall be sent at the same time notice is sent to the obligor.

704.13-7. Notice to Individuals Other Than the Obligor with a Recorded Ownership Interest in Property. The Agency shall provide notice related to the seizure of property to any individual, other than the obligor, with a recorded ownership interest in property subject to seizure. The individual may request a hearing for a determination of the proportion of the value of the property that is attributable to his or her net contribution to the property. The hearing shall be requested within thirty (30) days after the notice was received by the individual.

704.14-1. Applicability of Alternative Payment Plans. When an obligor is subject to administrative enforcement action, he or she may negotiate an alternative payment plan with the Agency.


(a) In order to negotiate an alternative payment plan, an obligor shall submit a written request to the Agency.

(1) A written request to negotiate an alternative payment plan received by the Agency within ten (10) business days after the date of notice shall stay any administrative enforcement action.

(2) If a written request to negotiate an alternative payment plan is received by the Agency more than ten (10) business days after the date of notice, administrative enforcement action may be taken, as long as the requirements for staying or suspension of administrative enforcement actions are met.

(b) An obligor may negotiate a plan with the Agency to have a license suspension lifted.

(c) Hearings for Negotiations of an Alternative Payment Plan. The obligor may submit a written request for a hearing with the Family Court regarding negotiations of an alternative payment plan in the following circumstances:

(1) The obligor and the Agency have agreed to terms of a plan, but the obligor wants the Family Court to consider the reasonableness of the plan.

(A) The obligor may submit this written request for a hearing on the reasonableness of the plan within ten (10) business days after the terms of the plan are agreed upon.

(2) The obligor and the Agency are unable to reach agreement on the terms of a plan.

(A) The Family Court may order a plan by setting conditions and/or payments in the amounts and at the times it considers reasonable.

(d) Proceeding with Administrative Enforcement Actions. The Agency may continue with the administrative enforcement action if:

(1) the obligor and the Agency are unable to negotiate a plan;

(2) the Family Court determines that the plan is not reasonable; and/or

(3) the Family Court does not order a plan.

704.14-3. Disclosure of Income and Assets. The request to negotiate a plan shall include an agreement by the obligor to provide the Agency with a full disclosure of income and assets available. The obligor shall provide complete income and assets information to the Agency within five (5) business days of the request to negotiate a plan.


(a) An alternative payment plan may include a lump-sum payment, or periodic payments on the arrears, or both, subject to the following standards:

(1) The sum of any periodic payment established under the plan and any other payment of support ordered by the Family Court, when subtracted from the obligor’s gross income, may not leave the obligor below one hundred percent (100%) of the poverty line established under 42 U.S.C. §9902 (2) unless the obligor agrees otherwise.
(2) When establishing an alternative payment plan, the Agency shall consider the factors used by the Family Court in determining whether the use of the percentage standard is unfair to the child or any of the parties.

(b) Periodic payments under the plan may be made through income withholding in amounts in addition to the amount ordered in the child support order that is in effect.

704.14-5. Staying Administrative Enforcement Actions. Administrative enforcement actions shall be stayed by the Agency while the obligor and the Agency are negotiating a plan, or, if a hearing is requested because an agreement cannot be reached or the reasonableness of the plan is questioned, until the Family Court determination has been made. To stay an administrative enforcement action means the following:

(a) The obligor shall not be certified for denial, nonrenewal, restriction, or suspension of any State or Oneida-issued licenses;
(b) Any frozen financial accounts shall remain frozen and shall not be seized; and
(c) Personal property that has been seized shall not be sold.


(a) When a plan has been negotiated between the obligor and the Agency, or the Family Court has determined that a plan is reasonable or has ordered a plan, the Agency shall suspend administrative enforcement actions as long as the obligor complies with the plan or requests a hearing because of a substantial change in circumstances.

(b) If an obligor makes an arrears payment agreeable to the Agency, the administrative enforcement action shall be suspended.

704.14-7. Default on an Alternative Payment Plan. In the event that the obligor defaults on the plan, the Agency shall notify the obligor in writing that an administrative enforcement action shall be implemented unless the child support lien is paid in full.

704.14-8. Renegotiation of an Alternative Payment Plan. After the entry of an alternative payment plan, the plan may be renegotiated upon the written request of the obligor or Agency if the requesting party can show a substantial change in circumstances. A substantial change in circumstances includes any of the following:

(a) A change in the obligor’s income or assets, including the sale or purchase of real or personal property;
(b) A change in the obligor’s earning capacity; and/or
(c) Any other factor that the Agency determines is relevant.

704.15. Administrative Enforcement Action

704.15-1. The Agency shall have the authority to use administrative enforcement actions to enforce a child support order without obtaining an order from the Family Court in the event that an obligor is at least one (1) month delinquent in paying his or her child support obligations.

704.15-2. Liens. The Agency shall have an obligor placed on the lien docket if the obligor owes a debt in one or more of the obligor’s cases equal to or exceeding the monthly amount due or five hundred dollars ($500.00), whichever is greater.

(a) Lien Amount. The lien amount on the lien docket shall equal the sum of lien amounts from the cases in which the lien amount meets or exceeds the lien threshold.
(b) Filing Date. The filing date on the lien docket is the date that a lien is first docketed and delivered to the register of deeds. The filing date is the effective date of the lien. The effective date does not change if the lien amount is adjusted up or down within five (5) years after the date that the lien is first docketed.
(c) **Lien Priority.** The child support lien shall have priority over all other liens on property except:

1. tax and special assessment liens;
2. purchase money mortgages;
3. construction liens;
4. environmental liens;
5. liens that are filed or recorded before the child support lien becomes effective; and
6. any other lien given priority under the law.

(d) Property subject to a lien includes personal property in which the obligor has a recorded ownership interest.

(e) **Effect on a Good Faith Purchaser.** A child support lien is not effective against a good faith purchaser of titled personal property unless the lien is recorded on the title.

(f) **Credit Bureau Reporting.** The Agency may report the total amount of an obligor’s liens to the credit bureau, so long as the lien is fully enforceable and the case is not barred from credit bureau reporting.

(g) **Agency Lien Responsibilities.** The Agency shall be responsible for:

1. updating the lien docket periodically;
2. providing a copy of the lien docket to the appropriate register of deeds;
3. responding to inquiries concerning information recorded on the lien docket;
4. ensuring the satisfaction of a lien is recorded on the lien docket;
5. renewing a lien if the lien amount equals or exceeds the lien threshold at the end of the five (5) year effective period;
   (A) When a lien is renewed, the date on which the lien is renewed shall become the effective date of the lien, and a new five (5) year period shall commence.
6. sending the obligor a notice when a lien has been renewed; and
7. developing procedures for releasing a lien and releasing specific property from a lien.

(h) **Financial Record Review.**

1. An obligor may request a financial record review in writing to the Agency within ten (10) business days of the date of notice of a lien, to determine the correctness of the financial records in a case.
2. Upon receiving a request for a financial record review, the Agency shall, at no charge to the obligor, provide the obligor with:
   (A) all relevant financial records;
   (B) information explaining how to interpret the records; and
   (C) a form the obligor may use to identify any alleged errors in the records.
3. Within twenty (20) days after receiving the relevant financial records, the obligor may:
   (A) request a meeting with the Agency to review the financial records and to discuss any alleged errors; and/or
   (B) provide a statement of alleged error on the documents.
   (i) 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 obligor’s request for a financial record review is received as to whether the lien against the obligor is in the correct amount.
(4) The Agency may proceed with the lien if:

(A) the obligor does not request a meeting with the Agency or provide a
statement of alleged error within twenty (20) days after receiving the
financial records;
(B) no errors are found in the financial records of the case; or
(C) the arrears exceed the required threshold amount after any errors in the
financial records are corrected.

704.15-3. Seizure of Property. The Agency shall have the authority to seize property, whether an
account or personal property, of an obligor. The Agency shall presume that an obligor’s equity or
ownership in the property is an equal pro-rata share of the equity or ownership based on the number
of individuals with a recorded ownership interest in the property.

(a) Account Seizure. Once a lien is placed against an obligor, the Agency may initiate an
account seizure if the lien amount in the obligor’s case equals or exceeds three hundred
percent (300%) of the monthly amount due in the order, or one thousand dollars ($1,000),
whichever is greater.

(1) The Agency may not issue a notice of seizure unless the sum of the funds in all
of the obligor’s financial accounts, minus expected seizure fees and any early
withdrawal penalty, exceeds five hundred dollars ($500). The first five hundred
dollars ($500) of each account shall not be frozen and/or seized.

(2) The notice issued by the Agency shall instruct the financial institution of the
following:

(A) The maximum amount frozen in an account may not exceed the amount
specified by the Agency in the notice.
(B) The maximum amount frozen in an account may not exceed the
obligor’s ownership interest.
(C) 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.

(b) Seizure of Personal Property. Once a lien is placed against an obligor, the Agency
may initiate the seizure of personal property if the lien amount equals or exceeds six
hundred percent (600%) of the monthly amount due in the order.

(1) The Agency may seize personal property if the obligor’s equity in the property,
minus expected seizure fees, exceeds five hundred dollars ($500) per item total.

(2) Ceremonial or religious property and/or real property are exempt and shall not
be seized by the Agency.

(3) Process for Seizing Property. The Agency shall follow the following process
for seizing personal property:

(A) The Agency shall notify the obligor of the intent to request the Family
Court to issue an order of execution for the seizure of property.
(B) The Agency shall request the Family Court to grant a written order of
execution for the seizure of property. The Agency shall provide the Family
Court an affidavit that notice of this request has been provided to the
obligor.
(C) Upon issuance of a written order of execution by the Family Court,
non-exempt personal property may be seized and sold in a reasonable
manner.
704.15-4. Attachment of Per Capita Payments. The Agency may initiate the attachment and/or seizure of per capita payments of members of the Nation in accordance with applicable laws of the Nation.

704.15-5. License Suspension. The Agency may initiate the suspension or denial of both State and Oneida issued licenses if there is a lien against an obligor that equals or exceeds three hundred percent (300%) of the monthly amount due in the child support order, or one thousand dollars ($1000), whichever is greater.

(a) The types of State or Oneida issued licenses that the Agency may initiate the suspension or denial of include, but are not limited to, vendor, professional, occupational, hunting, fishing, recreational, and/or motor vehicle licenses.

(b) The Agency shall not initiate the suspension of an occupational and/or motor vehicle license if:

(1) there is an order in place that prohibits the suspension of the license;

(2) the obligor has filed for bankruptcy; or

(3) action has already been taken to suspend the license.

(c) When an Oneida-issued license is suspended, that suspension shall be binding on and given effect by the license issuing agencies. Orders affecting licenses issued by other governmental agencies shall be sent to such agencies for enforcement.

704.15-6. Lump-Sum Pension Payments, Judgments, and Settlements Intercepts. Once an obligor has been placed on the lien docket the Agency may initiate the intercept of lump-sum pension payments, judgments and/or settlements.

(a) When initiating the intercept of lump-sum pension payments, judgments and/or settlements, the Agency shall specify in the notice that the amount withheld from the lump-sum pension payment, judgment or settlement may not exceed the obligor’s ownership interest in the payment.

704.15-7. 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 intercept. Once an obligor has been notified that his or her tax refund and/or lottery winnings may be intercepted, that notice is valid until all arrears are paid in full.

(a) Federal Tax Intercept. 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 Nation have been met.

(b) Wisconsin State Tax and/or Lottery Intercept. The Agency may certify a Wisconsin state tax intercept and/or a Wisconsin state lottery intercept, when the lottery winnings are one thousand dollars ($1,000) or more, when the following requirements are met:

(1) The arrears shall be at least one hundred and fifty dollars ($150);

(2) The arrears shall be at least thirty (30) days old; and

(3) The arrears shall be for a minor child or a child who has reached the age of eighteen (18) within the last twenty (20) year.

704.15-8. Passport Denial. If a federal tax intercept is in place and the obligor owes two thousand five hundred dollars ($2,500) or more in arrears, an obligor 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. An obligor shall be removed from the passport denial list if:

(a) The federal tax intercept certification amount is zero (0);

(b) The obligor makes a lump-sum payment and/or negotiates a payment plan with the Agency;

(c) The obligor has to travel abroad because of a life-or-death situation involving an immediate family member; or
(d) The obligor was denied a passport in error.

704.16. Family Court Enforcement Action

704.16-1. If the Agency does not have the authority to conduct the appropriate enforcement action, or the obligor is unresponsive to the enforcement actions being imposed by the Agency, the case shall be referred to the Family Court for enforcement. The Family Court may order any of the enforcement actions the Agency is authorized to implement, in addition to the enforcement actions described in this section.

704.16-2. Bonds and Other Guarantees. The Family Court may require an obligor to provide a surety, bond or guarantee to secure the payment of arrears, if income withholding is not applicable, practical, or feasible to secure payment of arrears.

704.16-3. Claims Against Estates. The Family Court may approve a claim for past and future support against an obligor’s estate. The Family Court may issue a restraining order against an estate from which an obligor will inherit.

704.16-4. Contempt. The Family Court may hold an obligor who fails to comply with a lawful child support order in contempt. An obligor found to be in contempt shall be subject to the following punishments:

(a) Community Service. The Family Court may order an obligor to perform community service. The number of hours of work required may not exceed what would be reasonable considering the amount of arrears the obligor owes. The obligor shall be provided a written statement of the terms of the community service order and that the community service order is monitored. The order shall specify:

(1) how many hours of community service the obligor is required to complete;
(2) the time frame in which the hours must be completed;
(3) how the obligor will report his or her hours; and
(4) any other information the Family Court determines is relevant.

(b) Fines. An obligor found in contempt of court may be fined in an amount not to exceed one thousand dollars ($1,000.00) per act of contempt and may not exceed five thousand dollars ($5,000.00) in total. In instances of continuing contempt, each day shall constitute a separate act of contempt.

(c) Incarceration. The Family Court may order an obligor be incarcerated. Before a jail sentence is imposed, the Family Court shall provide other conditions that require a certain amount of money be paid or action be taken for an obligor to avoid incarceration.

(d) Criminal Non-Support. A criminal non-support action may be initiated, in the appropriate county, against an obligor who has the ability to pay child support and willfully or intentionally failed to pay and the obligor knew or reasonably should have known he or she was legally obligated to provide.

704.17. Full Faith and Credit for Foreign Child Support Orders

704.17-1. Child support orders, judgments, or decrees of other federally recognized tribes, and states that relate to child support shall be recognized and modified in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B.

704.17-2. A foreign order is authenticated by reasonable proof that the document tendered to the Family Court is a true certified copy of the foreign order as it is recorded in the agency or court of the issuing jurisdiction. An authentication stamp issued by a court clerk or custodian of records, or a court seal, is sufficient evidence of authenticity.
704.17-3. Unless defects in jurisdiction are apparent on the face of the foreign order, the person contesting enforcement of the order has the burden of showing the order is not valid. Upon a failure to respond to notice of the order and to timely contest it, the Family Court shall enforce it as an order of the Family Court.

704.17-4. If a foreign order is brought before the Family Court solely for an interpretation of the terms of the order, and the order has been recognized and given full faith and credit by the Family Court, the Family Court shall interpret the order by applying the law of the forum that issued the foreign order.

704.18. Right of Appeal

704.18-1. Appeals of Administrative Enforcement Action. Any enforcement action implemented by the Agency may be appealed to the Family Court within thirty (30) calendar days after the date that the action is enforced. The decision of the Family Court as to the Agency’s administrative enforcement action shall be final and non-appealable.

704.18-2. Appeals of Family Court Decisions. A party may appeal a Family Court decision, other than the decision of the Family Court in regard to administrative enforcement action as referenced in section 704.18-1, to the Nation’s Court of Appeals within thirty (30) calendar days after the date the Family Court made the decision. The review of the Court of Appeals shall be based on the record and the original decision of the Family Court.

End.
LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING
Child Support Law Amendments
Business Committee Conference Room-2nd Floor Norbert Hill Center
October 17, 2019 12:00 p.m.

Present: Jennifer Webster, Daniel Guzman King, Clorissa N. Santiago, Brandon Wisneski, Michelle Gordon, Bonnie Pigman, Trina Schuyler, Tami Bush, Rae Skenandore.

Jennifer Webster: Good Afternoon. The time is 12:00 p.m. and today’s date is Thursday, October 17, 2019. I will now call to order the public meeting for the proposed amendments to the Child Support law.

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community. The public meeting is not a question and answer period. The LOC will review and consider all comments received during the public comment period. The LOC will respond to all comments received in a memorandum, which will be submitted in the meeting materials at a future LOC meeting.

All persons who wish to present oral testimony need to register on the sign-in sheet at the back of the room. If you leave an e-mail address on the sign-in sheet, we can ensure you receive a copy of the memorandum.

Additionally, written comments may be submitted to the Nation’s Secretary’s Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business day on Thursday October 24, 2019.

In attendance from the LOC is myself Jenny Webster, and Daniel Guzman King

The LOC may impose a time limit for all speakers pursuant to Section 109.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons.

We will now begin today’s public meeting for the proposed amendments to the Child Support law. The purpose of this law is to establish the legal responsibility of parents to provide financially for their children’s well-being, as well as to make support payments more equitable by ensuring consistent treatment of persons in similar circumstances; make support payments based on real earning capability of parents; and improve the efficiency of child support establishment and enforcement.

Those who wish to speak please come to the microphone.
Michelle Gordan: Attorney Michelle Gordon with the Law Office. I am the attorney that is assigned to the Child Support Department. As you know we held a work meeting with the department and the LRO and the LOC and when reviewing the draft we caught just a couple of things that we thought we agreed upon but weren’t changing the law, so we just wanted to go through those to maybe go back and look at those.

So, the first thing in the definitions we thought we had agreed upon adding a definition of contempt and that is not in there, so if the LOC reviews that and decides to put in a definition, we think that would be helpful. And I am going through the redline that is, so when I call out line numbers it is going to be through the redline that was in the packet.

So, the first one is line 258 on page 6 of the redline. We had, so it says within ten (10) business days, the custodial parent, or the Agency when required by federal law, may initiate a hearing, but this section is initiation of action by the Agency, so the reference to the custodial parent should be removed, because their section comes later and then we also agreed that when required by federal law would be removed. So, the wording the “custodial parent” should be struck and the wording “when required by federal law” should be struck.

Then page 7, Line 309 of the redline, and this is actually something that I am not sure we did bring up, we can’t remember. It might have been something we forgot, but the requirement of the petition does require the address and we are asking that the requirement for the address be removed and that is for the safety of the parties. We do have a lot of cases where there is domestic violence. There is on the next page a section that was added for nondisclosure of information in protected cases. It says upon a finding which may be made ex parte if the court found it would be unreasonable to include, the court could order, but that just adds an additional step for the department and so that means every time we have a case where we find out that the parties are a protected person, if the address is required to be included in the petition, that means every time before we could file we would have to send something to the court to get that ex parte order, asking for permission not to include the address in the petition. There is a requirement for a confidential petition addendum, which is again on the next page. That is required to be included in all cases. We would like to add that the address be included in the confidential petition addendum instead of the petition. We would also like to add at the end of the confidential petition addendum that the court could refuse access to that confidential petition addendum in these types of protected cases, because right now it is available to all parties to the action and we think the court should have the right to refuse access in case it is a protected case. When we send these documents over to the court, we do specify when the cases are protected, so the court would know when we file the confidential petition addendum that it is a protected case, so they would know if someone made a request that they could deny that if the court allows them to deny access to that confidential petition addendum.

Then also on page 8, line 360, this talks about notice, it deals with the summons. Up above it talks about serving the summons by Certified Mail. This section is about publication and it says, “When a responding party cannot be found for personal service after diligent attempts and attempts to serve the responding party by certified mail have failed, the petitioner may use service by publication.” “May” needs to be changed to “shall” because they have to be served in some form.
and so how it’s done is if you can’t serve by mail, you have to serve by publication and that’s a requirement that the court makes, so the word “may” we’re asking to be changed to “shall”.

Page 10 of the redline, at lines 449, it’s determining child support obligation. It simply says right now that the obligor’s monthly income shall be considered and then when the next section percentage standards, it just talks about the portion of the obligor’s monthly income, it needs to say, “gross monthly income”. That helps to explain to parties when they come in we can point to the law that it says, because a lot of times we get the argument why are you going off my gross, not my net, I don’t make that much, but the law in staying consistent and how we’ve been doing it, it is based on gross monthly income and so we are asking for that clarification in that section that it say gross monthly income. Sorry I’m trying to go through my pages here.

Page 21 of the redline, line 975. So, this is for modification of order by the agency. This is going to require a hearing and the way it’s worded right now it says, “shall file with the Family Court a Motion and Order to Modify.” It needs to say just a “Motion to Modify”, because a motion and order to modify means we don’t have to have a hearing. We send over the motion with an order and if there is no objection to the order then the court just signs the order. So, this needs to have “an Order to Modify” removed and I believe that was in the discussion we had in the work meeting. And then also lines 979 on the next page again this is requiring a hearing but line 979 which is “b.” needs to be removed because it says, “If no objection to the modification is received at the hearing, the Family Court shall enter the order as proposed.”, but that’s tying the court, I mean the court should have discretion to make an order that they see as appropriate so they may not agree with the agency and so they should have that discretion and I think that’s just confusion about the motion and order we had talked about with the objection, so we would like that section be removed.

The next one is page 23, line 1033 of the redline. This is 704.12-2, subsection c., it says “If the obligor responds to the Letter”, but we had thought, our notes say that, we had specifically said that it would be when the obligor actually meets with the agency, not just responds in writing to the agency, then the agency shall interview the party.

Line 1043, it says “If the party successfully completes the compliance plan,” we believe it should say “completes the terms of the compliance plan” because there is a list of terms that are included.

The next is at page 25 under the “Alternative Payment Plans” section, line 1150. Our notes say that this sentence should end at enforcement action may be taken period and the remainder of that sentence should be removed. There also should be a paragraph 3. I do note that in my discussions with Clorissa from the Legislative Reference Office, she had stated that that additional sentence, I didn’t get to her, she must have not caught it at the meeting and then I didn’t get it to her in time to be included in the packet, but she does intend to bring it to the Committee, but I thought for safety purposes I would just put it on the record today.

Jennifer Webster: Okay

Michelle Gordon: So, subsection 3 would be “If the Agency agrees to negotiate an alternative payment plan after the ten (10) business days after the date of notice, the Agency and obligor may
agree to stay or suspend the administrative enforcement action.” So that would be an additional subsection 3.

Then line 1158, we also thought that we had agreed to add this additional language after the end of that sentence, so it would end with “reasonableness of the plan due to a change of circumstances since the plan was agreed to by the Agency and the obligor. Because right now it allows the obligor to challenge the reasonableness of the plan, but they entered into the plan, so for us wouldn’t it make sense that they entered into the plan because the plan was reasonable. They wouldn’t have entered into the plan if they didn’t feel it was reasonable and so they’ve entered into the plan and now they are objecting to it later, so we’re just requesting that this change of circumstances is now making it unreasonable.

Page 26, line 1202. This kind of goes to the same issue. It ends with “or requests a hearing because of a substantial change in circumstances.”, we would like the wording “which makes the plan unreasonable” added to that to clarify.

And then lastly, it is the end which deals with Family Enforcement Action, page 30, line 1379, and when we had our meeting, we thought that we had agreed that we would create a contempt section and that this section would be retitled “Contempt”, because we needed to be stronger on our contempt issues. So, this is a lot, so 704.16-1, that whole section would be struck except for, it would read “The Family Court may order the following as a part of a contempt order.” Then prior to that at line 1418 is a section on contempt that says “The Family Court may hold an obligor who fails to comply with a lawful child support order in contempt. An obligor found to be in contempt shall be subject to following punishments.”, or we feel that that should be moved to the top. So that should be your start of this section entitled “Contempt”. And then everything underneath, the bonds and other guarantees, the claims against estates, all of that would then be part of the Contempt, so you would just name those a., b., so Bonds and Other Guarantees would be subsection a., Claims Against Estates would be subsection b., Community Service would be subsection c., Fines would be subsection d., Incarceration would be subsection e., and Criminal Non-support would be subsection f.

So that is all of my comments in regards to the law that we thought we had in regards to our work meeting. Thank you.

**Jennifer Webster:** Thank you. Is there anybody else that would like to give comments today? Did you sign in in the back Bonnie? Bonnie did you sign in in the back?

**Bonnie Pigman:** Yes

**Jennifer Webster:** Okay. Thanks.

**Bonnie Pigman:** So, I’m curious in regards to Per Capita Law in regards to when a person becomes deceased and child support can or cannot be taken, it’s not clear in that law written in regards to whether or not by virtue of the attachment process that an attachment can or cannot be applied. The department, Trust and Enrollment Department has taken, has gotten legal reviews, however, in my opinion it’s still not clear because the law is not clearly written to truly define
about a deceased person’s per capita being allowed to be taken as an attachment and so like I said it’s just not clear in that law. So if it’s not clear in that law I don’t know what the child support process in this law how that’s coming together, how those two documents are going to meld together, because in one hand the attachment section of the Per Capita law says that they don’t even have to submit anything, but yet you have a deceased person and we’re now paying deceased people, there seems to be a conflict on how we should be handling those individuals because on one hand they become deceased and yes they can be attached or two that they did claim the form before they passed, but then they died before the distribution occurred and yet we’re still taking the distribution on that deceased person. So, I think that that law, those two laws, that Per Capita law needs to be, I think it needs to be, something needs to happen between these two laws that make that clearly definable regarding those, that particular situation. Thank you.

**Jennifer Webster:** Thank you. Is there anybody else that would like to speak this morning?

With there no other speakers registered, the public meeting for the amendments to the Child Support is now closed at 12:19 p.m. Thank you.

Written comments may be submitted until close of business day on Thursday, October 24, 2019. Thank you for coming.

-End of Meeting-
Lines 366 thru 368 regarding the obligor’s employer.

1. What will happen if the obligor’s employer is subpoenaed to provide the family court with a record of the obligor’s earning and cannot produce that information as the obligor is paid in cash and does not pay taxes?

Yaw^ko.

Jennifer J. Jordan, Ph.D.
Indian Preference in Contracting Law
Amendments

<table>
<thead>
<tr>
<th>Submission Date: 4/17/19</th>
<th>Public Meeting: n/a</th>
</tr>
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<tbody>
<tr>
<td>LOC Sponsor: Ernest Stevens III</td>
<td>Emergency Enacted: n/a</td>
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</table>

Summary: The purpose of the amendments to this Law is to complete an overview of any amendments and updates that might be needed for this law.

4/17/19 LOC: Motion by Jennifer Webster to add the Indian Preference in Contracting law to the active files list with a medium priority and Ernest Stevens III as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

5/20/19: Work Meeting. Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Kirby Metoxen, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Paul Stensloff, Jeff House, Cathy Bachhuber. The purpose of this work meeting was to discuss why the law was added to the AFL and what portions of the law needed to be addressed through amendments. The group identified potential areas for amendments and policy considerations for the LOC. Discussed that the notes from the meeting will be compiled and the LOC will begin making policy considerations – additional meetings to have further discussions of those considerations and the law in general will be scheduled.

6/5/19: Work Meeting. Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to begin considering potential amendments to the Law – based on the discussion and suggestions from the last work meeting. The LOC did not complete an initial review of the beginning policy considerations so an additional work meeting will be scheduled this week.

6/6/19: Work Meeting. Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to continue the discussion and consideration of potential amendments to the Law from the June 6 LOC work session – based on the discussion and suggestions for potential amendments from the May 20 LOC work meeting.

7/25/19: Work Meeting. Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Patricia Garvey, Travis Wallenfang, Patrick Stensloff. The purpose of this work meeting was to review the law line-by-line and discuss potential amendments, as well as to review and confirm prior issues the LOC decided to support and not support so we can move forward with amendments to this law.

9/26/19: Work Meeting. Present: Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Kirby Metoxen, Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Patrick Stensloff, Paul
Witek, Jameson Wilson. The purpose of this work meeting was for Indian Preference, Purchasing, and Community Economic Development Divisions Engineering to educate and discuss with the LOC on the internal spreadsheets that are used for scoring, SOPs, and a proposed fine schedule.

10/21/19:  
*Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Paul Witek. The purpose of this work meeting was to review the draft of the proposed amendments and the fine and penalty resolution with the affected entities.

10/24/19:  
*Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was for the LOC to review the draft of the proposed amendments to the law.

**Next Steps:**
- Approve draft and legislative analysis.
Title 5. Business - Chapter 502

Indian Preference in Contracting

Yukwat'nhas Ukweh'we Kayanl'hsla

Laws concerning the hiring of the Oneida People

502.1. Purpose and Policy
502.2. Adoption, Amendment, Conflicts
502.3. Definitions
502.4. Jurisdiction
502.5. Indian Preference Office
502.6. Certification of Entities
502.7. Application of Indian Preference
502.8. Skills Bank and Qualified Trades Workers
502.9. Compliance Agreements
502.10. Office Investigations and Enforcement

INDIAN PREFERENCE IN CONTRACTING

502.1. Purpose and Policy

502.1-1. Purpose. The purpose of this law is to establish an Indian Preference Office and increase economic benefits for the TribeNation and Tribal members of the Nation by providing for the maximum utilization of Indian workers and businesses on Tribal projects of the Nation which occur on or near the Reservation.

502.1-2. Policy. It is the policy of the Tribe:

(a) To ensure that Indian preference provisions are applied fairly in all situations and in such a way that reflects the intent of this law; and

(b) To undertake reasonable efforts to ensure that all entities that enter into contracts with or on behalf of the TribeNation utilize the labor force of Indian workers and businesses by applying Indian preference in all aspects of fulfilling that contract, including but not limited to: hiring, training, business opportunities, labor and/or professional services, and the supply of materials.

502.2. Adoption, Amendment, Conflicts

502.2-1. This law is adopted by the Oneida Business Committee by Resolution BC-03-27-13-B and shall be effective immediately. amended by resolution BC-__-__-___.

502.2-2. This law may be amended pursuant to the procedures set out in Tribal law or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

502.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

502.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. However, this law specifically supersedes the following:

(a) BC-04-03-96-A – Indian Preference Policy Rider I
(b) BC-05-22-96-A – Technical Amendments to Rider I Policy
(c) BC-06-10-98-D – Amendment to Resolution 5-22-96-A
(d) BC-07-29-96-B – Indian Preference Law
502.2-5. This law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

502.2-6. Adoption and enforcement of this law does not waive the sovereign immunity of the Oneida Tribe of Indians of Wisconsin Nation.

502.3. Definitions

502.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Agent” means one who acts relative to a fiduciary relationship to another; a person authorized to negotiate and/or transact business on behalf of an entity.

(b) “Bid” means an offer to execute a specified job or jobs within a prescribed time and not exceeding a proposed amount, and includes both offers that become legally binding upon acceptance, and nonbinding or informal quotes.

(c) “Bid shopping” means the practice of divulging a contractor’s or subcontractor’s bid to other prospective bidders before the award of a contract, in order to secure a lower bid.

(d) “Broker” means an intermediary; an independent contractor employed to negotiate business between a buyer and seller for compensation.

(e) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

(f) “Certification” means verification by the Indian Preference Office that an entity meets all the requirements necessary to qualify for Indian preference in accordance with this law.

(g) Certified entity. See Entity, Certified entity.

(h) “Compliance agreement” means a binding agreement, negotiated between the Indian Preference Office and a contractor, identifying specific Indian preference-related requirements for a Tribal project.

(i) “Construction contract” means any contract issued to build, repair or remodel structures, and includes subcontracts and other construction agreements.

(j) “Contractor” means one who enters into a contract.

(k) “Core work crew” means the minimum amount of the contractor’s key employees that are essential to start up and continue work on a Tribal project.

(l) “Days” means calendar days, except as otherwise provided.

(m) “Employee” means any person that performs services and/or labor for an employer in exchange for compensation.

(n) “Employer” means any entity, except the Oneida Tribe of Indians of Wisconsin, that controls and directs an employee under an express or implied contract of employment and is obligated to pay salary or wages in compensation.

(o) “Entity” means any person, sole proprietor, partnership, corporation, franchise, governmental enterprise, or any other natural or artificial person or organization. The term is intended to be as broad and encompassing as possible to ensure this law covers all employment and contract activities within the jurisdiction of the Tribe.

(g) “Certified entity” means an entity that has received certification as an Indian-owned business from the Indian Preference Office.
“Tribal” (h) “Compliance agreement” means a binding agreement, negotiated between the Indian Preference Office and a contractor identifying specific Indian preference-related requirements for a project.

(i) “Construction contract” means any contract issued to build, repair, or remodel structures, and includes subcontracts and other construction agreements.

(j) “Contractor” means one who enters into a contract.

(k) “Core work crew” means the minimum amount of the contractor’s key employees, who perform a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unfamiliar with and/or untrained in the employer’s procedures and routines, that are essential to start up and continue work on a project.

(l) “Employee” means any person that performs services and/or labor for an employer in exchange for compensation.

(m) “Employer” means any entity except the Nation, that controls and directs an employee under an express or implied contract of employment and is obligated to pay salary or wages in compensation.

(n) “Enterprise” means any internal operation owned and operated by the Nation that generates revenues through its core business functions, including but not limited to, Oneida Gaming, Oneida Retail, and Oneida Printing.

(o) “Entity” means any person, sole proprietor, partnership, corporation, franchise, governmental body, or any other natural or artificial person or organization. The term is intended to be as broad and encompassing as possible to ensure this law covers all Tribal employment and contract activities within the jurisdiction of the Nation.

(p) “Entities of the Nation” means all programs, departments, boards, committees, commissions and similar business units of the Nation, but shall not mean Tribal corporations, such as Oneida Seven Generations Corporation or Oneida Tribal Integrated Enterprises.

(q) “Front” means a business entity that is strategically structured, financed, operated or staffed such as to unfairly take advantage of Indian preference as granted under this law.

(r) “Indian” means an enrolled member of any federally-recognized Indian tribe.

(s) “Indian-owned business” means an entity which is majority owned and managed by an Indian.

(t) “Indian preference” means preference for Indians, regardless of tribal affiliation, in all aspects of employment and contracting.

(u) “Internal service” means any service provided for free or at cost for the Tribe Nation and includes but is not limited to such services as certain types of advocacy or representation, mail delivery and pick up, grant writing or assistance, tourism initiatives, Human Resource assistance and technical support.

(v) “Joint venture” means an entity that is fifty percent (50%) owned and managed by an Indian.

(w) “Key employee” means a one who performs a critical function such that an employer would risk likely financial damage-time grouping of two (2) or loss if that task were assigned to a person unfamiliar with and/or untrained more entities in the employer’s procedures and routines a business undertaking.

(x) “Lowest responsible bidder” means a bidder who, after any Indian preference discounts are applied, submits the lowest bid and is considered to be fully responsible and qualified to perform the work for which the bid is submitted.

(y) “Office” means the Indian Preference Office or its designee.

(z) “Oneida” means the Oneida Tribe of Indians of Wisconsin。“Nation.”
“Outsource(y) “Non-construction contract” means to obtain goods or any contract other than a service from a third party, instead of having construction contract, and includes subcontracts and other agreements.

(z) “Project” means any effort whereby the Nation or an entity of the Nation contracts for labor and/or goods or services be provided from within the Tribe by a Tribal entity or Tribal enterprise that will support or benefit any aspect of the Nation’s government, holdings, infrastructure, workplace, economy or community.

(aa) “Qualified trades worker” means a skilled worker qualified to perform services for the trade in which the person is trained, and includes general laborers.

(b) “Reservation” means all the lands within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

(bb) “Skills Bank” means the services provided by the Office, whereby listings of qualified trades workers are maintained and made available for those required to comply with this law.

(cc) “Subcontractor” means a trade contractor, who is awarded a contract for the supply of services pursuant to a construction agreement, or a junior or secondary contractor who performs some or all of the prime contractor’s contractual obligations.

(dd) “Trade contractor” means an entity that is awarded a contract for the supply of services pursuant to a construction agreement, including all entities that enter into any subcontracts.

(ee) “Tribal” or “Tribe” means the Oneida Tribe of Indians of Wisconsin.

(ff) “Tribal corporation” means a corporation chartered and/or wholly owned by the Oneida Tribe of Indians of Wisconsin Nation pursuant to the Constitution and Bylaws of the Oneida Tribe-Nation.

(gg) “Tribal enterprise” means any internal operation owned and operated by the Tribe that generates revenues through its core business functions, including but not limited to: Oneida Gaming, Oneida Retail, Oneida Farm, and Oneida Printing.

(hh) “Tribal project” means any effort whereby the Tribe or a Tribal entity contracts for labor and/or goods or services that will support or benefit any aspect of the Tribal government, holdings, infrastructure, workplace, economy or community.

502.4. Jurisdiction

502.4-1. The Indian Preference Office shall have authority over matters relating to the interpretation, implement, monitor, and enforcement of this law as set out within this law and other applicable laws and policies relating to Indian preference.

502.4-2. The Tribe’s judicial system Trial Court shall have exclusive jurisdiction over all other matters related to the interpretation and enforcement of this law.

502.4-23. The Indian Preference Office and the Tribe’s judicial system Trial Court shall have jurisdiction over all parties to any contract, subcontract, or compliance agreement to which this law applies, as well as jurisdiction over all subcontractors, employees, or other entities working with, for, or on behalf of such a party in fulfilling such contract, subcontract or compliance agreement.
502.5. **Indian Preference Office**

502.5-1. An Indian Preference Office is hereby created for the purpose of implementing, monitoring and enforcing this law and other applicable laws and policies relating to Indian preference.

502.5-2. The Office shall have the following duties, along with other responsibilities as may be listed throughout this law.

(a) **Certification of Entities**

502.5-1. (1) Verify information provided by entities seeking **Criteria for Certification as an Indian-Owned Business**. In order to seek certification and make determination of eligibility.

(2) Issue certification.

(b) **Skills Bank.** Establish and maintain a Skills Bank and actively recruit qualified trades workers for listing in the Skills Bank.

(1) Identify, initiate, and sponsor training, internship and apprenticeship opportunities necessary in order to increase the pool of qualified trades workers and to assist Indians in becoming qualified in the various job classifications used by employers.

(2) Cooperate with other Tribal programs to provide counseling and support to assist Indians in retaining employment.

(c) **Negotiations.** Negotiate compliance agreements that include, but are not limited to the following:

(1) Numerical hiring goals and timetables that specify the minimum number of Indians that must be utilized per Tribal contract dollar.

(2) Compensation of qualified trades workers including wage scale, salaries and other benefits. Compensation shall be determined based on the prevailing federal, state and/or Tribal wage scales.

(d) **Monitoring.**

(1) Perform on-site inspections to verify compliance with this law.

(2) Require and review weekly workforce reports.

(3) Establish a mandatory training process for Tribal entities that do contracting or bidding as a regular function of their duties.

(4) Provide training to assist certified entities with understanding their rights and abilities under this law.

(5) Receive feedback from contractors regarding the performance of any certified entity or qualified trades worker.

(e) **Investigations.** Investigate written complaints and respond to inquiries.

(f) **Enforcement.**

(1) Enforce compliance agreements and the provisions of this law.

(2) Create internal procedures to implement and carry out the provisions of this law.

(3) Suspend or revoke certification of entities or remove trades workers from the Skills Bank.

(4) Issue Notices of Nonecompliance.

(5) Represent the interests of the Tribe in bringing or defending Indian preference-related actions before the Tribe’s judicial system relating to noncompliance with
this law, a compliance agreement, or regulations or policies issued pursuant to this law.

(6) Establish a schedule of fines in accordance with 502.10-3, and impose such fines in accordance with 502.10-4.

502.5-3. Records. Any records created and maintained by the Office shall be made available in accordance with applicable Tribal and federal law.

502.5-4. Within the scope of authority defined in this law, the Office may enter into cooperative agreements with federal and state agencies, subject to the approval of the Oneida Business Committee.

502.5-5. Prior to the posting or announcement of a contract for any Tribal project, the specifications for such project shall be submitted to the Office.

(a) The Office shall, with experts identified from other Tribal entities, review the specifications, including bidding requirements, to ensure that there are no unnecessary and unjustifiable restrictions that may:

(1) preclude certified entities from bidding or being eligible to fulfill the contract or subcontract;
(2) disqualify qualified trades workers from employment opportunities created under such contract or subcontract; or
(3) create conditions that would make bidding, compliance, or employment unduly burdensome for qualified trades workers or certified entities.

(b) Unbundling a Contract. The Office may require that specific portions of a contract be outsourced to internal services, Tribal enterprises, certified entities and/or qualified trades workers, even if a single entity is capable of providing all of the goods and/or services required under the contract. Provided that, such outsourcing shall not cause undue hardship, unnecessary delay or additional expenses in completing the Tribal project.

502.6. Certification of Entities

502.6-1. Applicants seeking certification of an Indian-owned business shall submit a completed and signed application to the Office, along with any documentation required under 502.6-4.

502.6-2. The Office may interview the applicant(s) and/or request additional information as may be necessary to make a determination regarding certification.

502.6-3. Within thirty (30) days of receiving the application and any additional requested information, the Office shall inform the applicant of a determination to:

(a) grant the certification; or
(b) deny the certification, including a full written explanation of the reason for the denial; or
(c) grant probationary certification for a period of up to one (1) year, if so determined by the Office for reasonable and just cause as identified and set out in regulations. During the probationary period, the applicant shall satisfy any conditions imposed by the Office, and the Office shall monitor the activities of the applicant, and may request and receive such information as necessary to ensure compliance with this law. The Office shall either grant or deny full certification at the end of the probationary period, or upon petition by the applicant, whichever occurs first.

502.6-4. Certification may be granted to entities that qualify in accordance with the criteria listed in this law. In order to receive certification, an applicant entity shall provide proof of:

(a) There is Indian financial ownership, control and management of at least fifty-one percent (51%) of the entity. Evidence of both financial ownership and control shall be
embodied in the entity’s organizational documents, including, but not limited to the
documents of incorporation, stock ownership, or a partnership agreement.

(1) Indian Financial Ownership. Indian financial ownership is established where
the Tribe, Tribal Nation, members of the Nation and/or other Indians own fifty-one
percent (51%) or more of the assets and equipment, receive fifty-one percent (51%)
or more of distributed net profits, and would receive fifty-one percent (51%) or
more of the entity’s assets upon dissolution.

(2) Indian Control. Indian control is established where the Tribe, Tribal Nation,
member of the Nation and/or other Indian owner(s) maintain a minimum of fifty-
one percent (51%) of voting rights or other controlling decisional authority.

(3) Indian Management. Indian Management is established where an Indian
owner(s) is directly involved in the entity’s management, this can be shown where:

(A) at least one (1) Indian owner is directly involved in the daily operations
of the entity on a full-time basis and in a senior-level position; or
(B) at least one (1) Indian owner is responsible for the oversight of
operations, even though the daily operations are conducted by non-owner
employees.

(b) Financial The entity can demonstrate financial responsibility, including but not
limited to, evidence of an adequate line of credit, contributions of sufficient working
capital, applicable required bonding and insurance, materials and/or equipment necessary
to perform applicable work.

(c) All The entity can provide past and current licensing or certifications, including any
penalties, or other punitive actions or debarments taken by any licensing body within the
past ten (10) years.

502.6-5-2. Application. The applicant entity shall submit a completed and signed application to
the Indian Preference Office, along with any documentation proving the entity meets the criteria
for certification of an Indian-owned business.

(a) Upon receiving an application, the Indian Preference Office may interview the
applicant and/or request additional information as may be necessary to make a
determination regarding certification.

502.5-3. Certification Determination. Within thirty (30) days of receiving the application and any
additional requested information, the Indian Preference Office shall inform the applicant of a
determination to:

(a) grant the certification;
(b) deny the certification, including a full written explanation of the reason for the denial;
or
(c) grant probationary certification for a period of up to one (1) year, if so determined by
the Indian Preference Office for reasonable and just cause.

(1) During the probationary period, the applicant shall satisfy any conditions
imposed by the Indian Preference Office.
(2) The Indian Preference Office shall monitor the activities of the applicant, and
may request and receive such information as necessary to ensure compliance with
this law.
(3) The Indian Preference Office shall either grant or deny full certification at the
end of the probationary period, or upon petition by the applicant, whichever occurs
first.

502.5-4. Once an applicant entity has been granted certification, the Indian Preference Office shall
mail a certificate to the entity.—Granting an entity certification does not convey any comment
regarding the ability of the entity to perform any work nor does it guarantee that an entity has met all the qualifications to obtain work under any particular contract where Indian preference may be applied.

\[502.6-6.5-5.\] Notification Requirements. A certified entity shall report the following to the Indian Preference Office within ten (10) business days of such an occurrence:

(a) changes in the ownership or control status of the entity; and/or

(b) suspension, revocation, lapse or loss of any licensing, certification, insurance, bonding, or credit lines; and/or

(c) any other changes that could:

1. affect an entity’s eligibility for certification;
2. affect the financial liability of any entity, contracting party or the Tribe, Nation; and/or
3. alter the status of the qualifications of the entity.

[502.5-6-7.] Certification Renewal. Certification is granted on an annual basis, and shall lapse after one (1) year unless renewed.

(a) To apply for a renewal certification, each certified entity shall complete and return a renewal application and annual reporting form so that the Indian Preference Office may update its records.

(b) Annual renewal notices, applications and reporting forms shall be mailed to each certified entity at least thirty (30) days prior to the expiration of an entity’s certification; however, the responsibility for renewal is upon the entity.

[502.6-85-7.] Open Records. In accordance with the Open Records Nation’s laws and Open Meetings law policies governing open records, general, non-proprietary and non-private information provided for the purposes of acquiring certification shall be considered open records and available for public inspection. Provided further, that, all information given for purposes of receiving certification, including financial information, is subject to internal audit of the Tribe, Nation.

[502.6-95-8.] Joint Ventures. Joint ventures shall not be certified seeking certification as eligible for Indian preference even though one equal fifty percent (50%) partner is an Indian that shares in equal financial ownership, control and direct involvement with an owned business shall submit documentation of the business arrangements of the joint venture in addition to the required documentation for certification.

(a) Certification for a joint venture shall be issued on a project specific basis.

[502.6-105-9.] Brokers, Agents and Franchises.

(a) Brokers. Brokers shall be certified as an Indian-owned business only if they are dealers who own, operate or maintain a store, warehouse or other establishment in which the commodities being supplied are bought, kept in stock and sold to the public in the usual course of business; provided that this requirement shall not apply where the applicant demonstrates that it is not customary and usual in the area of the trade in question for a broker to maintain an establishment and to keep commodities in stock.

1. To qualify as an Indian-owned business, the broker shall provide conclusive evidence that the broker is an independent contractor and not an agent of a non-Indian owned business.

2. The broker shall also provide proof that he owes no fiduciary responsibility nor has a fixed or permanent relationship to any one company. A broker shall hold himself or herself out for employment to the public generally and that the employment is not that of being a special agent for a single client.
(b) *Agents.* Agents who are employees of a non-Indian-owned business or who merely represent a company, such as an insurance agent or real estate agent for a non-Indian-owned business, shall not be certified as an Indian-owned business.

(c) *Franchises.* A franchise may be certified as an Indian-owned business if the franchisee does not pay the franchisor a share or percentage of revenue or profits, but only compensates the franchisor through licensing, royalty and franchise fees as set out by contract, and/or for services provided, such as training and advising.

### §502.6-115-10. Fronts Are Prohibited

Entities shall be disqualified from certification as an Indian preference eligibility-owned business in all situations where the entity operates as a front in order to unfairly take advantage of Indian preference granted under this law to Indian-owned businesses.

(a) The Indian Preference Office shall not certify entities that operate solely as fronts.

(b) No entity shall manipulate its business structure or misrepresent the roles of Indian individuals or entities in such a way as to become eligible for Indian preference in a manner inconsistent with the purpose and intent of this law.

(c) Examples of fronts include but are not limited to:

1. Entities that represent that they are exercising management control of a Tribal project in order to qualify for Indian preference when in fact such management control is exercised by a non-Indian entity.
2. Entities where Indians have senior management titles without the correlating responsibilities, control, or knowledge of operations; where the entity only qualifies for certification because an Indian holds that senior management role.
3. Entities, not including legitimate brokers, that derive profit only by providing goods or services at an increased cost, where such goods or services could be acquired directly on the open market and/or from the entity’s source without paying a marked-up cost; and/or
4. Any other situation where the Indian Preference Office determines that the application of Indian preference would in fact predominantly or substantially benefit non-Indians or non-Indian-owned businesses; or where Indians or Indian-owned businesses only benefit by assisting the non-Indian or non-Indian-owned business with receiving the contract.

### §502.76. Application of Indian Preference to Contracts

#### §502.76-1. Application of the Law

Except where prohibited or limited by law or grant funding requirements, this law shall apply to all contracts over one thousand five hundred dollars ($1,500.00) that meet the requirements of (a) and/or (b) below:

(a) This law shall apply to:

1. All contracts, subcontracts, and compliance agreements to which the Tribe Nation is a party, and all contracts, subcontracts and compliance agreements that are entered into on behalf of, or for the benefit of the Tribe Nation, whereby goods and services are provided on or near the Reservation; and
2. All subcontractors, employees, or other entities working with, on behalf of a party to a contract, subcontract or compliance agreement as identified in (1), in fulfilling such contract, subcontract, or compliance agreement.

(b) *Tribal Corporations.* This law shall apply to Tribal corporations to the extent such corporations enter into contracts with the Tribe Nation.

#### §502.76-2. Non-Applicability of the Law

(a) *Tribal Indian Preference in Hiring of Employees of the Nation.* The standards set out in this law shall not apply to preference as applicable to Tribal employees hired through
the Oneida Nation’s Human Resources Department or pursuant to an employment contract.

(b) Internal Services and Tribal Enterprises. The application of Indian preference shall be superseded in specific situations in accordance with the following:

(1) The Tribe shall exclusively utilize internal services and Tribal enterprises whenever an internal service of the Tribe or Tribal enterprise could or does provide the necessary goods and services in the ordinary course of business.

(2) If an internal service or Tribal enterprise is unable to fulfill some or all of the requirements of a contract, then the provisions of this law shall apply to any outsourcing conducted by the internal service or Tribal enterprise.

502.6-3. Contract Specifications Review. Prior to the posting or announcement of a contract for any project of the Nation, the specifications for such project shall be submitted to the Indian Preference Office.

(a) Within five (5) business days of receiving the specifications of the project the Indian Preference Office shall, with experts identified from other entities of the Nation, review the specifications, including bidding requirements, to ensure that there are no unnecessary and/or unjustifiable restrictions that may:

502.7-3. (1) preclude certified entities from bidding or being eligible to fulfill the contract or subcontract;

(2) disqualify qualified trades workers from employment opportunities created under such contract or subcontract; and/or

(3) create conditions that would make bidding, compliance, or employment unduly burdensome for qualified trades workers or certified entities.

(b) Unbundling a Contract. The Indian Preference Office may require that specific portions of a contract be outsourced to internal services, enterprises, certified entities and/or qualified trades workers, even if a single entity is capable of providing all of the goods and/or services required under the contract. Provided that, such outsourcing shall not cause undue hardship, unnecessary delay or additional expenses in completing the project.

502.6-4. In soliciting bids, the entity offering the contract shall indicate that Indian preference shall be applied in accordance with this law.

502.7-4-6-5. Cooperative Agreements. Within the scope of authority defined in this law, the Indian Preference Office may enter into cooperative agreements with federal and state agencies, subject to the approval of the Oneida Business Committee.

502.6-6. Cultural Setting of Contracts. All parties to a contract to which this law applies shall recognize that any operations are taking place within a unique cultural setting within the community of the Tribe Nation. Every contractor shall make reasonable accommodations to the customs and beliefs of all Indian workers so as to promote rather than hinder the employment of Indians.

(a) If an Indian worker wishes to attend any traditional cultural activities or ceremonies, the worker shall provide reasonable advance notice to the contractor in requesting such time off.

(b) Where attendance at traditional cultural activities or ceremonies requires a worker to take time off from a regularly scheduled shift or workday, such time may be paid or unpaid, at the discretion of the employer or as established by contract or compliance agreement.

502.6-7-5. Tribal Employees of the Nation. In the execution of employment duties and in accordance with the Tribe’s Personnel Policies, Nation’s laws and Procedures, Tribal Policies
governing employment, employees of the Nation shall follow this law in following contracting
and bidding procedures for the Tribe Nation or Tribal entities of the Nation.

(a) The Indian Preference Office shall establish a training process for entities of the Nation
that do contracting or bidding as a regular function of their duties.

502.7-6-8. Contracts and Attachments. All contracts this law applies to shall:

(a) Stipulate that compliance with this law is required, and that violation of any portion of
this law or applicable compliance agreement may be deemed a material and substantial
breach of contract, enforceable:

(1) As set forth by the terms of the original contract for a breach of contract; and

(2) In accordance with the provisions of this law.

(b) Reference this law, and shall contain an Acknowledgment Clause acknowledgment
clause, whereby the contractor shall agree to the following:

(1) The contractor has read and understands the provisions of this law.:;

(2) The contractor understands how this law affects the contractor’s rights and
responsibilities.; and

(3) The contractor agrees that the provisions of this law shall govern the
performance of the parties.

(c) Reference Chapter 56 of the Oneida Code of Laws, Oneida Vendor Licensing Nation’s
laws governing vendor licensing, and provide the contracting parties with directions on
how to access that document.

502.6-9. Applying Indian Preference to Non-Construction Contracts. Where more than one (1)
bid is received for a non-construction contract, an Indian preference percentage discount of five
percent (5%) shall be applied to all bids received from certified Indian-owned businesses.

502.6-10. Applying Indian Preference to Construction Contracts. Where more than one (1) bid
is received for a construction contract, the discount applied to bids from certified Indian-owned
businesses shall be:

502.7-7. In the event that a dispute may arise regarding this law or a compliance agreement, all
affected parties shall cooperate in good faith with the Office toward a mutually satisfactory
resolution.

(a) ten percent (10%) of the first fifty thousand dollar ($50,000) segment of a bid;

(b) plus nine percent (9%) of the next fifty thousand dollar ($50,000) segment of a bid;

(c) plus eight percent (8%) of the next one hundred thousand dollar ($100,000) segment
of a bid;

(d) plus seven percent (7%) of the next one hundred thousand dollar ($100,000) segment
of a bid;

(e) plus six percent (6%) of the next one hundred thousand dollar ($100,000) segment of
a bid;

(f) plus five percent (5%) of the next one hundred thousand dollar ($100,000) segment of
a bid;

(g) plus four percent (4%) of the next five hundred thousand dollar ($500,000) segment of
a bid;

(h) plus two percent (2%) of the next one million dollar ($1,000,000) segment of a bid;

and

(i) plus one percent (1%) of any amount over two million dollars ($2,000,000).

502.7-86-11. Awarding the Contract. After the appropriate discount has been subtracted from
preferred bids, the following shall be used to determine which bidder is awarded the contract:

(a) If a bid from a certified entity is less than the total of the apparent low bid after Indian
preference is applied, then the contract shall be awarded to the certified entity.
(b) If none of the certified entity bids are less than the total of the apparent low bid after the Indian preference discount is applied, the contract shall be awarded to the lowest responsible bidder.

502.7-9. Applying Indian Preference to Non-Construction Contracts. Where more than one (1) bid is received for a non-construction contract, an Indian preference percentage discount of five percent (5%) shall be applied to all bids received from certified Indian-owned businesses.

502.7-10. Applying Indian Preference to Construction Contracts. Where more than one (1) bid is received for a construction contract, the discount applied to bids from certified Indian-owned businesses shall be:

(a) ten percent (10%) of the first $50,000 segment of a bid.
(b) plus nine percent (9%) of the next $50,000 segment of a bid.
(c) plus eight percent (8%) of the next $100,000 segment of a bid.
(d) plus seven percent (7%) of the next $100,000 segment of a bid.
(e) plus six percent (6%) of the next $100,000 segment of a bid.
(f) plus five percent (5%) of the next $100,000 segment of a bid.
(g) plus four percent (4%) of the next $500,000 segment of a bid.
(h) plus two percent (2%) of the next $1,000,000 segment of a bid.
(i) plus one percent (1%) of any amount over $2,000,000.

502.7-11. Bid shopping is prohibited.

502.8. Skills Bank and Qualified Trades Workers

502.8-1. The Monitoring the Contract. Once a contract is awarded to an entity, the Indian Preference Office shall establish perform the following monitoring duties:

(a) Perform on-site inspections to verify compliance with this law;
(b) Require and administer a Skills Bank review weekly workforce reports;
(c) Provide training to assist with providing Indians and first generation descendants of certified entities with employment opportunities. The goal is understanding their rights and abilities under this law; and
(d) Receive feedback from contractors regarding the performance of the Tribe to achieve one hundred percent (100%) participation of any certified entity or qualified trades workers on Tribal projects.

502.8-2. The Skills Bank shall be the exclusive referral source under this law, representing the official compilation of qualified trades workers eligible for Indian preference in accordance with this law. Skills Bank listings shall include the names and qualifications of the qualified trades workers.

502.8-3. The Office shall regularly update the Skills Bank listings.

502.8-4. Entities required to fill positions in accordance with 502.6-13. In the event that a dispute may arise regarding this law and/or a compliance agreement under 502.9, all affected parties shall contact cooperate in good faith with the Indian Preference Office prior to the commencement of any work toward a mutually satisfactory resolution.

(a) Except where prohibited by law or grant funding requirements, the entity shall hire qualified trades workers from the Skills Bank in the following order of priority:

(1) Members of the Oneida Tribe,
(2) First generation descendants of Oneida Tribal members,
(3) Members of other federally recognized Indian tribes.

(b) If a law or grant funding requirements prohibit the hiring of qualified trades workers in accordance with 502.8-4(a), qualified trades workers shall be hired in accordance with the requirements of said law or grant.
(c) If the necessary labor cannot be acquired from the Skills Bank, then a limited waiver may be granted in accordance with 502.8-3.

502.8-5. In order to be added to the Skills Bank, an applicant shall submit a completed application and documentation of the following:

(a) proof of enrollment or proof that the individual is a first generation descendant of the Oneida Tribe.
(b) education; including degrees, diplomas, apprenticeships, internships or continuing education training related to the field.
(c) if applicable, proof of a driver license, including any endorsements.
(d) if the worker is seeking to be listed as a qualified trades worker for a specific trade, then the worker shall provide specific information related to that trade, including:
   (1) past and current licensing, credentials and certifications, including information related to penalties or punitive actions taken by any licensing body within the past ten (10) years; and
   (2) any required or possessed insurance and/or bonding.

502.8-6. Placing an applicant in the Skills Bank as a qualified trades worker confers recognition that he or she is eligible to receive Indian preference in accordance with this law. A qualified trades worker shall be qualified for Indian preference for employment for a particular skill or trade if he or she meets the minimum qualifications for a particular skill or trade.

502.8-7. Wage and Hour Standards, Layoffs and Terminations, Call-Backs, Promotions, Unions.

(a) Every contractor utilizing qualified trades workers shall ensure that such workers receive equal compensation, including overtime pay, and shall have equal work standards, that are provided to other employees. Contractors that hire qualified trades workers in order to comply with this law, but do not utilize those workers in a manner similar to other employees are not maintaining equal work standards.

(b) In making any layoffs or terminations, all contractors shall notify the Office prior to laying off or terminating a qualified trades worker:

   (1) No qualified trades worker with at least minimum qualifications for the job classification shall be terminated or laid off so long as a non-Indian employee in the same craft with similar skills remains employed. If the contractor lays off by crews, qualified trades workers shall be transferred to any crew that will be retained, as long as there are non-Indian employees in the same craft employed elsewhere under the same contract.
   (2) No contractor shall terminate or lay off any qualified trades worker pursuant to this law, without documented good cause. The contractor shall promptly replace the qualified trades worker with another qualified trades worker.
   (3) When a contractor begins to call back laid-off employees, that contractor shall notify the Office and shall call back qualified trades workers before bringing back other employees.

(c) Qualified trades workers and certified entities shall not be required to affiliate with organized labor for employment under this law. The mere absence of affiliation with organized labor shall not disqualify a qualified trades worker from employment or contracting where that worker is otherwise qualified. A qualified trades worker shall not be guaranteed to receive the benefits of a union contract, other than wage scales, unless the worker elects to join the union.

502.8-8. Construction Contracts: Core Work Crew. As a condition of a construction contract award, the contractor shall identify its core work crew, including those core work crew employees utilized by known subcontractors. If such employees are approved by the Office, they may be
employed on the Tribal project without regard to Indian preference. Provided that, core work crew employees shall at no time displace qualified trades workers and/or potential qualified trades workers by performing work outside their trade or skill.

(a) For the purposes of employment on a Tribal project, the Office and the contractor, and any subcontractor, shall negotiate the designated members of the contractor’s core work crew.

(b) Any contractor that fills vacant positions immediately prior to undertaking work pursuant to a contract to which this section applies shall provide evidence acceptable to the Office that such actions were not intended to circumvent the provisions of this law.

(c) A contractor shall not use extraneous qualification criteria or other personnel requirements that prevent qualified trades workers from being employed, unless the contractor is able to demonstrate that such criteria or requirements are required by regulatory compliance.

502.9. Compliance Agreements

502.7-1. Compliance Agreements. All contractors and subcontractors shall comply with the terms of any compliance agreement executed in accordance with this law. Once a bid has been accepted, but before work commences on any portion of a contract or subcontract, each contractor shall meet with the Indian Preference Office to negotiate and execute a compliance agreement. All contractors and subcontractors shall comply with the terms of any compliance agreement executed in accordance with this law.

502.7-2. Contents of a Compliance Agreement. A compliance agreement shall include, but is not limited to, the following information:

(a) Numerical hiring goals and timetables that specify the minimum number of Indians that must be utilized per contract dollar; and

(b) Compensation of qualified trades workers including wage scale, salaries and other benefits. Compensation shall be determined based on the prevailing wage scales of the Nation and/or federal or state governments.

502.7-3. Term of a Compliance Agreement. Where a contract lasts for more than one (1) year, compliance agreements shall be reviewed annually and revised as necessary to reflect changes in hiring plans or the number of certified entities available.

502.9-4. Unless prior written consent of the Indian Preference Office has been received, a contractor shall not deviate from an executed compliance agreement by adding or removing any subcontracts, subcontractors or positions filled by qualified trades workers or certified entities, or by filling a vacancy with a non-qualified trades worker or a non-certified entity.

502.9-5. Limited Waivers. The Indian Preference Office shall establish standard operating procedures to provide for emergency conditions and situations whereby a limited waiver of compliance may be authorized, in situations where a contractor has made a significant and documented good faith effort to achieve compliance, or can demonstrate that compliance is not practical for reasons other than pricing.

502.8. Skills Bank and Qualified Trades Workers

502.8-1. The Indian Preference Office shall establish and administer a Skills Bank to assist with providing Indians and first-generation descendants with employment opportunities. The goal of the Nation is to achieve one hundred percent (100%) participation of qualified trades workers on projects.
(a) The Indian Preference Office shall identify, initiate, and sponsor training, internship, and apprenticeship opportunities necessary in order to increase the pool of qualified trades workers and to assist Indians in becoming qualified in the various job classifications used by employers.

(b) The Indian Preference Office shall cooperate with other programs of the Nation to provide counseling and support to assist Indians in retaining employment.

502.8-2. The Skills Bank shall be the exclusive referral source under this law, representing the official compilation of qualified trades workers eligible for Indian preference in accordance with this law. Skills Bank listings shall include the names and qualifications of the qualified trades workers.

502.10. The Indian Preference Office shall regularly update the Skills Bank listings.

502.8-3. Entities required to fill positions in accordance with this law and/or a compliance agreement under section 502.7, shall contact the Indian Preference Office prior to the commencement of any work.

(a) Except where prohibited by law or grant funding requirements, the entity shall hire qualified trades workers from the Skills Bank in the following order of priority:

(1) Members of the Nation;
(2) First generation descendants of the Nation; and then
(3) Members of other federally-recognized Indian tribes.

(b) If a law or grant funding requirement prohibits the hiring of qualified trades workers in accordance with section 502.8-3(a), qualified trades workers shall be hired in accordance with the requirements of said law or grant.

(c) If the necessary labor cannot be acquired from the Skills Bank, then a limited waiver may be granted by the Indian Preference Office.

502.8-4. In order to be added to the Skills Bank, an applicant shall submit a completed application and documentation of the following:

(a) proof of enrollment or proof that the individual is a first-generation descendant of the Nation;
(b) education; including degrees, diplomas, apprenticeships, internships or continuing education training related to the field;
(c) proof of a driver’s license, including any endorsements, if applicable;
(d) if the worker is seeking to be listed as a qualified trades worker for a specific trade, then the worker shall provide specific information related to that trade, including:

(1) past and current licensing;
(2) credentials and certifications; and
(3) information related to penalties or punitive actions taken by any licensing body within the past ten (10) years.

502.8-5. Placing an applicant in the Skills Bank as a qualified trades worker confers recognition that he or she is eligible to receive Indian preference in accordance with this law. A qualified trades worker shall be qualified for Indian preference for employment for a particular skill or trade if he or she meets the minimum qualifications for a particular skill or trade.

502.8-6. Wage and Hour Standards, Layoffs and Terminations, Call-Backs, Promotions, Unions.

(a) Every contractor utilizing qualified trades workers shall ensure that such workers receive equal compensation, including overtime pay, and shall have equal work standards, that are provided to other employees. Contractors that hire qualified trades workers in order to comply with this law, but do not utilize those workers in a manner similar to other employees are not maintaining equal work standards.
(b) In making any layoffs or terminations, all contractors shall notify the Indian Preference Office prior to laying off or terminating a qualified trades worker.

1. No qualified trades worker with at least minimum qualifications for the job classification shall be terminated or laid off so long as a non-Indian employee in the same craft with similar skills remains employed. If the contractor lays off by crews, qualified trades workers shall be transferred to any crew that will be retained, as long as there are non-Indian employees in the same craft employed elsewhere under the same contract.

2. No contractor shall terminate or lay off any qualified trades worker pursuant to this law, without documented good cause. The contractor shall promptly replace the qualified trades worker with another qualified trades worker.

3. When a contractor begins to call back laid-off employees, that contractor shall notify the Indian Preference Office and shall call back qualified trades workers before bringing back other employees.

(c) Qualified trades workers and certified entities shall not be required to affiliate with organized labor for employment under this law. The mere absence of affiliation with organized labor shall not disqualify a qualified trades worker from employment or contracting where that worker is otherwise qualified. A qualified trades worker shall not be guaranteed to receive the benefits of a union contract, other than wage scales, unless the worker elects to join the union.

502.8-7. Construction Contracts: Core Work Crew. As a condition of a construction contract award, the contractor shall identify its core work crew, including those core work crew employees utilized by known subcontractors. If such employees are approved by the Indian Preference Office, they may be employed on the project without regard to Indian preference. Provided that, core work crew employees shall at no time displace qualified trades workers and/or potential qualified trades workers by performing work outside their trade or skill.

(a) For the purposes of employment on a project, the Indian Preference Office and the contractor, and any subcontractor, shall negotiate the designated members of the contractor’s core work crew.

(b) Any contractor that fills vacant positions immediately prior to undertaking work pursuant to a contract to which this section applies shall provide evidence acceptable to the Indian Preference Office that such actions were not intended to circumvent the provisions of this law.

(c) A contractor shall not use extraneous qualification criteria or other personnel requirements that prevent qualified trades workers from being employed, unless the contractor is able to demonstrate that such criteria or requirements are required by regulatory compliance.

502.9. Investigations and Enforcement

502.109-1. Office Investigations. Any Complaints. An individual or entity may file a written complaint with the Indian Preference Office if aggrieved by an act of noncompliance with:

(a) this law;

(b) a compliance agreement; and/or

(c) any standard operating procedure issued pursuant to this law, who wishes to complain shall file a written complaint with the Office.

502.9-2. Contents of the Complaint. A complaint shall include information that will reasonably enable the Indian Preference Office to understand the general nature of the complaint
and carry out an investigation. Wherever possible, the complainant shall provide the Office with, such as evidence of any discriminatory practices, alleged misconduct, or other non-compliance.

(502.9-3. Complaint Investigation) Upon receipt of a complaint or after witnessing non-compliance with this law while conducting its monitoring duties, the Indian Preference Office shall conduct an investigation.

(1) If the Office receives a complaint or information that an entity is operating in a manner that is harmful to the health, safety, or welfare of the Tribe or community, the Office shall immediately refer the complaint or information to the appropriate Tribal department or authority for investigation. The Office may also independently investigate such complaint or information for purposes of ensuring compliance with this law, and shall have the authority to review the results of any other investigation conducted by another Tribal department or authority in accordance with the Open Records and Open Meetings Law.

(2a) In conducting an investigation to determine if the complaint has merit, the Indian Preference Office shall be authorized to:

(1) inspect and copy all relevant records;
(2) interview and shall have the right to speak to workers; and to
(3) conduct inspections of the job site(s).

(3b) Information collected during an Indian Preference Office investigation shall be kept confidential unless disclosure is necessary or required as part of any judicial or administrative proceeding or in accordance with Tribal law. Provided that, any report or recommendation prepared by the Office for use in a hearing shall be promptly released to the complainant and alleged violator.

(4a) Any report or recommendation prepared by the Indian Preference Office for use at a hearing shall be promptly released to the complainant and alleged violator.

(c) If, after conducting the Indian Preference Office receives a complaint or information that an entity is operating in a manner that is harmful to the health, safety, or welfare of the Nation or community, the Indian Preference Office shall immediately refer the complaint or information to the appropriate department or authority of the Nation for investigation under.

(1) The referral of a complaint does not prohibit the Indian Preference Office from its independent investigation of such complaint or information for purposes of ensuring compliance with this section, the law.
(2) The Indian Preference Office shall have the authority to review the results of any other investigation conducted by another department or authority of the Nation in accordance with the Nation’s laws and policies governing open records.

502.9-4. Alleged Violation Has No Merit. If the Indian Preference Office determines that the alleged violation has no merit, the Indian Preference Office shall notify all parties in writing that the issue will be closed. A

(a) The complainant may appeal a complaint to contest this decision with the Tribe’s judicial system Nation’s Trial Court within ten (10) business days after issuance of such notice.

(b) The Trial Court shall then conduct an in-camera inspection of the investigation completed by the Indian Preference Office. During an in-camera inspection, only a judge(s) may review the information obtained by the Indian Preference Office during the investigation, as this information is confidential and disclosure is not necessary.
(2) If, after reviewing the Office’s investigation, the Tribe’s judicial system determines that there is sufficient evidence of a genuine and material issue of noncompliance, the Tribe’s judicial system shall order the Office to take action in accordance with 502.10-4 and/or 502.10-5, as if the Office’s original investigation had determined that sufficient evidence of a genuine and material issue of noncompliance existed.

(3) If, after reviewing the Indian Preference Office’s investigation, the Tribe’s judicial system Trial Court determines the alleged violation has no merit, the Tribe’s judicial system Trial Court shall notify all parties in writing that the issue matter will be closed dismissed and no further appeals of the matter will be accepted.

502.10-2. Retaliatory Action Prohibited. No entity shall punish, terminate, harass or take any other adverse personnel or hiring action in retaliation for a party’s exercise of Indian preference rights under this law. However, this section shall not prohibit action that can be reasonably justified as taken in good faith based on documented employee performance.

502.10-3. Fines and Fees.

(a) The Office shall establish, and the Oneida Business Committee shall approve:

(1) a schedule of fines that may be imposed upon any person or entity violating provisions of this law. Each offense shall result in a fine of no less than one hundred dollars ($100) nor more than one thousand dollars ($1,000); and a separate offense shall be deemed committed on each day during which a violation occurs or continues.

(2) a schedule of penalty fees that may be imposed upon any person or entity on all amounts due on monetary judgments not paid within at least thirty (30) days of the initial judgment.

(b) No fines or penalty fees may be assessed against the Tribe, the Office or other Tribal departments, or employees engaged in their official duties under this law.

502.10-4. (d) If, after reviewing the Indian Preference Office’s investigation under 502.10-1, the Office reasonably believes Trial Court determines that there is sufficient evidence of a genuine and material issue of noncompliance, the Trial Court shall order the Indian Preference Office to take action in accordance with section 502.9-5.

502.9-5. Alleged Violation Has Merit. If the Indian Preference Office determines that the alleged violation has merit and there is sufficient evidence of a genuine and material issue of noncompliance, the Indian Preference Office may take action to resolve the complaint.

(a) The Indian Preference Office may take any of the following actions to resolve the complaint:

(a1) Attempt to reach an informal or formal resolution of the alleged noncompliance.

(A) If a formal resolution is reached, any agreement shall be in writing and signed by all parties. The issue shall then remain in abeyance for the term of the contract during which time all parties shall comply with the terms of the written agreement. Breach of the terms of the written agreement may be a cause of action for litigation before the Tribe’s judicial system Trial Court.

(b2) Issue a Notice of Noncompliance to the entity by certified mail.

(A) The Notice shall state the specific violation(s) alleged, the requirements that must be met to ensure compliance with this law, and shall provide a reasonable amount of time, not to exceed thirty (30) days, wherein
the entity shall provide evidence that it has taken the steps necessary to come into compliance.

(c3) Place the entity’s certification in probationary status for a period not to exceed six (6) months; or suspend, revoke, or deny renewal of the entity’s certification.

(A) Once certification is revoked, an entity shall not be eligible to re-apply for re-certification until one (1) year has passed from the effective date of the revocation.

(B) At any time that certification is suspended, revoked, or has lapsed, a formerly certified entity shall not qualify for Indian preference. Where a certified entity loses certification:

(C) Where a certified entity loses certification:

(i) the contractor may be required to replace that entity with another certified entity if the work has not begun or performance under a contract has not commenced, unless replacement is impossible or would cause undue hardship; or

(ii) the Indian Preference Office may authorize the contractor to continue to utilize that entity without regard to Indian preference if work has already begun or performance under a contract has commenced.

(d4) Issue a fine;

(A) The Indian Preference Office shall be delegated authority to develop a fine and penalty schedule that may be imposed upon any person or entity violating provisions of this law. The fine and penalty schedule shall be adopted by the Oneida Business Committee through resolution.

(B) No fines as established or penalties may be assessed against the Nation, the Indian Preference Office, or other department of the Nation, or employees engaged in their official duties under 502.10-3 this law.

(e5) Re-negotiate a compliance agreement with the contractor to include additional opportunities for qualified trades workers or certified entities; and/or

(f6) Request the appropriate entity withdraw any licensing issued by the Tribe.

(b) An individual or entity may contest an action taken by the Indian Preference Office by filing a complaint with the Trial Court within ten (10) business days after the date of issuance of the Indian Preference Office’s decision.

502.40-5.9-6. Additional Enforcement Measures. If the Indian Preference Office is unable to facilitate a satisfactory resolution, and a Notice of Noncompliance or action against a certified entity’s certification has not resulted in a successful resolution, the Indian Preference Office may file an action with the Tribe’s judicial system, seeking appropriate relief, including but not limited to:

(a) An injunction;

(b) Specific performance, including but not limited to:

(1) reinstatement of a qualified trades worker at the previous wage;

(2) immediate removal of employees hired in violation of this law; and/or

(3) employment, promotion or additional training for Indian preference-eligible parties injured by a violation;

(c) Payment of back pay, damages, and/or costs associated with the enforcement of an order issued by the Tribe’s judicial system, including but not limited to filing fees, attorney fees, and/or costs incurred by the Indian Preference Office in bringing an
action. Provided that, no money damages may be claimed in any suit against the Tribe Nation, the Indian Preference Office or other Tribal departments of the Nation, or Tribal officials of the Nation or employees engaged in their official duties under this law;

and/or

d) Other Any other action the Tribe’s judicial system Trial Court deems lawful, equitable, and necessary to ensure compliance with this law and to alleviate or remedy any harm caused by noncompliance non-compliance.

502.10-69-7. Although relief granted by the Tribe’s judicial system under 502.10-5 Trial Court may benefit an individual qualified trades worker, certified Indian preference entity, or other individual or entity, neither the Indian Preference Office nor the Tribe Nation represents those individuals and/or entities in any action for non-compliance with this law.

502.10-79-8. Cease-and-Desist Orders. The Oneida Tribal Police Department is hereby expressly authorized and directed to enforce such cease-and-desist or related orders as may from time to time be properly issued by the Tribe’s judicial system. Trial Court. Such orders shall require a decree or order to render them enforceable. The Oneida Tribal Police Department shall not be civilly liable for enforcing such orders so long as the Commission Trial Court signs the order.


(a) Any appeal from an action taken by the Office shall be filed with the Tribe’s judicial system within ten (10) business days after the date of issuance of the Office’s decision. Any decision not appealed within the required time frame shall become final.

(b) Except as otherwise stated in this law, a party may appeal orders, rulings and judgments of the Tribe’s judicial system in accordance with the applicable rules of appellate procedure.

502.9-9. Retaliatory Action Prohibited. No entity shall punish, terminate, harass or take any other adverse personnel or hiring action in retaliation for a party’s exercise of Indian preference rights under this law. However, this section shall not prohibit action that can be reasonably justified as taken in good faith based on documented employee performance.

End.

Adopted BC-03-27-13-B
Amended BC- - - -
Title 5. Business - Chapter 502
Yukwatánhas Ukwehu'wé Kayanlúhsla
Laws concerning the hiring of the Oneida People
INDIAN PREFERENCE IN CONTRACTING

502.1. Purpose and Policy
502.2. Adoption, Amendment, Conflicts
502.3. Definitions
502.4. Jurisdiction
502.5. Certification of Entities

502.6. Application of Indian Preference to Contracts
502.7. Compliance Agreements
502.8. Skills Bank and Qualified Trades Workers
502.9. Investigations and Enforcement

502.1. Purpose and Policy

502.1-1. Purpose. The purpose of this law is to establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation.

502.1-2. Policy. It is the policy of the Nation to ensure that Indian preference provisions are applied fairly in all situations and in such a way that reflects the intent of this law; and to undertake reasonable efforts to ensure that all entities that enter into contracts with or on behalf of the Nation utilize the labor force of Indian workers and businesses by applying Indian preference in all aspects of fulfilling that contract, including but not limited to: hiring, training, business opportunities, labor and/or professional services, and the supply of materials.

502.2. Adoption, Amendment, Conflicts

502.2-1. This law is adopted by the Oneida Business Committee by Resolution BC-03-27-13-B and amended by resolution BC-___-___-___.

502.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

502.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

502.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

502.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

502.3. Definitions

502.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Agent” means one who acts relative to a fiduciary relationship to another; a person authorized to negotiate and/or transact business on behalf of an entity.

(b) “Bid” means an offer to execute a specified job or jobs within a prescribed time and not exceeding a proposed amount, and includes both offers that become legally binding upon acceptance, and nonbinding or informal quotes.

(c) “Bid shopping” means the practice of divulging a contractor’s or subcontractor’s bid to other prospective bidders before the award of a contract, in order to secure a lower bid.

(d) “Broker” means an intermediary; an independent contractor employed to negotiate business between a buyer and seller for compensation.
(e) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

(f) “Certification” means verification by the Indian Preference Office that an entity meets all the requirements necessary to qualify for Indian preference in accordance with this law.

(g) “Certified entity” means an entity that has received certification as an Indian-owned business from the Indian Preference Office.

(h) “Compliance agreement” means a binding agreement, negotiated between the Indian Preference Office and a contractor identifying specific Indian preference-related requirements for a project.

(i) “Construction contract” means any contract issued to build, repair, or remodel structures, and includes subcontracts and other construction agreements.

(j) “Contractor” means one who enters into a contract.

(k) “Core work crew” means the minimum amount of the contractor’s key employees, who perform a critical function such that an employer would risk likely financial damage or loss if that task were assigned to a person unfamiliar with and/or untrained in the employer’s procedures and routines, that are essential to start up and continue work on a project.

(l) “Employee” means any person that performs services and/or labor for an employer in exchange for compensation.

(m) “Employer” means any entity, except the Nation, that controls and directs an employee under an express or implied contract of employment and is obligated to pay salary or wages in compensation.

(n) “Enterprise” means any internal operation owned and operated by the Nation that generates revenues through its core business functions, including but not limited to, Oneida Gaming, Oneida Retail, and Oneida Printing.

(o) “Entity” means any person, sole proprietor, partnership, corporation, franchise, governmental body, or any other natural or artificial person or organization. The term is intended to be as broad and encompassing as possible to ensure this law covers all employment and contract activities within the jurisdiction of the Nation.

(p) “Entities of the Nation” means all programs, departments, boards, committees, commissions and similar business units of the Nation, but shall not mean Tribal corporations.

(q) “Front” means a business entity that is strategically structured, financed, operated or staffed such as to unfairly take advantage of Indian preference as granted under this law.

(r) “Indian” means an enrolled member of any federally-recognized Indian tribe.

(s) “Indian-owned business” means an entity which is majority owned and managed by an Indian.

(t) “Indian preference” means preference for Indians, regardless of tribal affiliation, in all aspects of employment and contracting.

(u) “Internal service” means any service provided for free or at cost for the Nation and includes but is not limited to such services as certain types of advocacy or representation, mail delivery and pick up, grant writing or assistance, tourism initiatives, Human Resource assistance and technical support.

(v) “Joint venture” means a one-time grouping of two (2) or more entities in a business undertaking.
(w) “Lowest responsible bidder” means a bidder who, after any Indian preference discounts are applied, submits the lowest bid and is considered to be fully responsible and qualified to perform the work for which the bid is submitted.

(x) “Nation” means the Oneida Nation.

(y) “Non-construction contract” means any contract other than a construction contract, and includes subcontracts and other agreements.

(z) “Project” means any effort whereby the Nation or an entity of the Nation contracts for labor and/or goods or services that will support or benefit any aspect of the Nation’s government, holdings, infrastructure, workplace, economy or community.

(aa) “Qualified trades worker” means a skilled worker qualified to perform services for the trade in which the person is trained, and includes general laborers.

(bb) “Reservation” means all the lands within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

(cc) “Subcontractor” means a trade contractor, who is awarded a contract for the supply of services pursuant to a construction agreement, or a junior or secondary contractor who performs some or all of the prime contractor’s contractual obligations.

(dd) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

(ee) “Tribal corporation” means a corporation chartered and/or wholly owned by the Nation pursuant to the Constitution and Bylaws of the Oneida Nation.

502.4. Jurisdiction

502.4-1. The Indian Preference Office shall implement, monitor, and enforce this law and other applicable laws and policies relating to Indian preference.

502.4-2. The Trial Court shall have jurisdiction over all matters related to the interpretation and enforcement of this law.

502.4-3. The Indian Preference Office and Trial Court shall have jurisdiction over all parties to any contract, subcontract, or compliance agreement to which this law applies, as well as jurisdiction over all subcontractors, employees, or other entities working with, for, or on behalf of such a party in fulfilling such contract, subcontract or compliance agreement.

502.5. Certification of Entities

502.5-1. Criteria for Certification as an Indian-Owned Business. In order to seek certification as an Indian-owned business the following criteria shall be met by the applicant entity:

(a) There is Indian financial ownership, control and management of at least fifty-one percent (51%) of the entity. Evidence of both financial ownership and control shall be embodied in the entity’s organizational documents, including, but not limited to the documents of incorporation, stock ownership, or a partnership agreement.

(1) Indian Financial Ownership. Indian financial ownership is established where the Nation, members of the Nation and/or other Indians own fifty-one percent (51%) or more of the assets and equipment, receive fifty-one percent (51%) or more of distributed net profits, and would receive fifty-one percent (51%) or more of the entity’s assets upon dissolution.
(2) **Indian Control.** Indian control is established where the Nation, member of
the Nation and/or other Indian owner(s) maintain a minimum of fifty-one percent
(51%) of voting rights or other controlling decisional authority.

(3) **Indian Management.** Indian Management is established where an Indian
owner(s) is directly involved in the entity’s management, this can be shown
where:

(A) at least one (1) Indian owner is directly involved in the daily
operations of the entity on a full-time basis and in a senior-level position;
or

(B) at least one (1) Indian owner is responsible for the oversight of
operations, even though the daily operations are conducted by non-owner
employees.

(b) The entity can demonstrate financial responsibility, including but not limited to,
evidence of an adequate line of credit, contributions of sufficient working capital,
applicable required bonding and insurance, materials and/or equipment necessary to
perform applicable work.

(c) The entity can provide past and current licensing or certifications, including any
penalties, or other punitive actions or debarments taken by any licensing body within the
past ten (10) years.

502.5-2. **Application.** The applicant entity shall submit a completed and signed application to
the Indian Preference Office, along with any documentation proving the entity meets the criteria
for certification of an Indian-owned business.

(a) Upon receiving an application, the Indian Preference Office may interview the
applicant and/or request additional information as may be necessary to make a
determination regarding certification.

502.5-3. **Certification Determination.** Within thirty (30) days of receiving the application and
any additional requested information, the Indian Preference Office shall inform the applicant of a
determination to:

(a) grant the certification;

(b) deny the certification, including a full written explanation of the reason for the
denial; or

(c) grant probationary certification for a period of up to one (1) year, if so determined by
the Indian Preference Office for reasonable and just cause.

(1) During the probationary period, the applicant shall satisfy any conditions
imposed by the Indian Preference Office.

(2) The Indian Preference Office shall monitor the activities of the applicant, and
may request and receive such information as necessary to ensure compliance with
this law.

(3) The Indian Preference Office shall either grant or deny full certification at the
end of the probationary period, or upon petition by the applicant, whichever
occurs first.

502.5-4. Once an applicant entity has been granted certification, the Indian Preference Office
shall mail a certificate to the entity. Granting an entity certification does not convey any
comment regarding the ability of the entity to perform any work nor does it guarantee that an
entity has met all the qualifications to obtain work under any particular contract where Indian
preference may be applied.

502.5-5. **Notification Requirements.** A certified entity shall report the following to the Indian
Preference Office within ten (10) business days of such an occurrence:

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(a) changes in the ownership or control status of the entity;
(b) suspension, revocation, lapse or loss of any licensing, certification, insurance, bonding, or credit lines; and/or
(c) any other changes that could:
   (1) affect an entity’s eligibility for certification;
   (2) affect the financial liability of any entity, contracting party or the Nation; and/or
   (3) alter the status of the qualifications of the entity.

502.5-6. Certification Renewal. Certification is granted on an annual basis and shall lapse after one (1) year unless renewed.
(a) To apply for a renewal certification, each certified entity shall complete and return a renewal application and annual reporting form so that the Indian Preference Office may update its records.
(b) Annual renewal notices, applications and reporting forms shall be mailed to each certified entity at least thirty (30) days prior to the expiration of an entity’s certification; however, the responsibility for renewal is upon the entity.

502.5-7. Open Records. In accordance with the Nation’s laws and policies governing open records, general, non-proprietary and non-private information provided for the purposes of acquiring certification shall be considered open records and available for public inspection. Provided that, all information given for purposes of receiving certification, including financial information, is subject to internal audit of the Nation.

502.5-8. Joint Ventures. All joint ventures seeking certification as an Indian-owned business shall submit documentation of the business arrangements of the joint venture in addition to the required documentation for certification.
(a) Certification for a joint venture shall be issued on a project specific basis.

(a) Brokers. Brokers shall be certified as an Indian-owned business only if they are dealers who own, operate or maintain a store, warehouse or other establishment in which the commodities being supplied are bought, kept in stock and sold to the public in the usual course of business; provided that this requirement shall not apply where the applicant demonstrates that it is not customary and usual in the area of the trade in question for a broker to maintain an establishment and to keep commodities in stock.
   (1) To qualify as an Indian-owned business, the broker shall provide conclusive evidence that the broker is an independent contractor and not an agent of a non-Indian owned business.
   (2) The broker shall also provide proof that he owes no fiduciary responsibility nor has a fixed or permanent relationship to any one company. A broker shall hold himself or herself out for employment to the public generally and that the employment is not that of being a special agent for a single client.
(b) Agents. Agents who are employees of a non-Indian-owned business or who merely represent a company, such as an insurance agent or real estate agent for a non-Indian-owned business, shall not be certified as an Indian-owned business.
(c) Franchises. A franchise may be certified as an Indian-owned business if the franchisee does not pay the franchisor a share or percentage of revenue or profits, but only compensates the franchisor through licensing, royalty and franchise fees as set out by contract, and/or for services provided, such as training and advising.
502.5-10. Fronts are Prohibited. Entities shall be disqualified from certification as an Indian-owned business in all situations where the entity operates as a front in order to unfairly take advantage of Indian preference granted under this law to Indian-owned businesses.

(a) The Indian Preference Office shall not certify entities that operate solely as fronts.

(b) No entity shall manipulate its business structure or misrepresent the roles of Indian individuals or entities in such a way as to become eligible for Indian preference in a manner inconsistent with the purpose and intent of this law.

(c) Examples of fronts include but are not limited to:

(1) Entities that represent that they are exercising management control of a project in order to qualify for Indian preference when in fact such management control is exercised by a non-Indian entity;

(2) Entities where Indians have senior management titles without the correlating responsibilities, control, or knowledge of operations; where the entity only qualifies for certification because an Indian holds that senior management role;

(3) Entities, not including legitimate brokers, that derive profit only by providing goods or services at an increased cost, where such goods or services could be acquired directly on the open market and/or from the entity’s source without paying a marked-up cost; and/or

(4) Any other situation where the Indian Preference Office determines that the application of Indian preference would in fact predominantly or substantially benefit non-Indians or non-Indian-owned businesses; or where Indians or Indian-owned businesses only benefit by assisting the non-Indian or non-Indian-owned business with receiving the contract.

502.6. Application of Indian Preference to Contracts

502.6-1. Application of the Law. Except where prohibited or limited by law or grant funding requirements, this law shall apply to all contracts over three thousand dollars ($3,000) that meet the requirements of (a) and/or (b) below:

(a) This law shall apply to:

(1) all contracts, subcontracts, and compliance agreements to which the Nation is a party, and all contracts, subcontracts and compliance agreements that are entered into on behalf of, or for the benefit of the Nation, whereby goods and services are provided on or near the Reservation; and

(2) all subcontractors, employees, or other entities working with, for, on behalf of a party to a contract, subcontract or compliance agreement as identified in (1), in fulfilling such contract, subcontract, or compliance agreement.

(b) Tribal Corporations. This law shall apply to Tribal corporations to the extent such corporations enter into contracts with the Nation.


(a) Indian Preference in Hiring of Employees of the Nation. The standards set out in this law shall not apply to preference as applicable to employees hired through the Nation’s Human Resources Department or pursuant to an employment contract.

(b) Internal Services and Enterprises. The application of Indian preference shall be superseded in specific situations in accordance with the following:

(1) The Nation shall exclusively utilize internal services and enterprises whenever an internal service of the Nation or enterprise could or does provide the necessary goods and services in the ordinary course of business.
(2) If an internal service or enterprise is unable to fulfill some or all of the requirements of a contract, then the provisions of this law shall apply to any outsourcing conducted by the internal service or enterprise.

502.6-3. Contract Specifications Review. Prior to the posting or announcement of a contract for any project of the Nation, the specifications for such project shall be submitted to the Indian Preference Office.

(a) Within five (5) business days of receiving the specifications of the project the Indian Preference Office shall, with experts identified from other entities of the Nation, review the specifications, including bidding requirements, to ensure that there are no unnecessary and/or unjustifiable restrictions that may:

(1) preclude certified entities from bidding or being eligible to fulfill the contract or subcontract;

(2) disqualify qualified trades workers from employment opportunities created under such contract or subcontract; and/or

(3) create conditions that would make bidding, compliance, or employment unduly burdensome for qualified trades workers or certified entities.

(b) Unbundling a Contract. The Indian Preference Office may require that specific portions of a contract be outsourced to internal services, enterprises, certified entities and/or qualified trades workers, even if a single entity is capable of providing all of the goods and/or services required under the contract. Provided that, such outsourcing shall not cause undue hardship, unnecessary delay or additional expenses in completing the project.

502.6-4. In soliciting bids, the entity offering the contract shall indicate that Indian preference shall be applied in accordance with this law.

502.6-5. Cooperative Agreements. Within the scope of authority defined in this law, the Indian Preference Office may enter into cooperative agreements with federal and state agencies, subject to the approval of the Oneida Business Committee.

502.6-6. Cultural Setting of Contracts. All parties to a contract to which this law applies shall recognize that any operations are taking place within a unique cultural setting within the Nation. Every contractor shall make reasonable accommodations to the customs and beliefs of all Indian workers so as to promote rather than hinder the employment of Indians.

(a) If an Indian worker wishes to attend any traditional cultural activities or ceremonies, the worker shall provide reasonable advance notice to the contractor in requesting such time off.

(b) Where attendance at traditional cultural activities or ceremonies requires a worker to take time off from a regularly scheduled shift or workday, such time may be paid or unpaid, at the discretion of the employer or as established by contract or compliance agreement.

502.6-7. Employees of the Nation. In the execution of employment duties and in accordance with the Nation’s laws and policies governing employment, employees of the Nation shall follow this law in following contracting and bidding procedures for the Nation or entities of the Nation.

(a) The Indian Preference Office shall establish a training process for entities of the Nation that do contracting or bidding as a regular function of their duties.

502.6-8. Contracts and Attachments. All contracts this law applies to shall:

(a) Stipulate that compliance with this law is required, and that violation of any portion of this law or applicable compliance agreement may be deemed a material and substantial breach of contract, enforceable:

(1) As set forth by the terms of the original contract for a breach of contract; and
(2) In accordance with the provisions of this law.

(b) Reference this law, and shall contain an acknowledgment clause, whereby the contractor shall agree to the following:

(1) The contractor has read and understands the provisions of this law;
(2) The contractor understands how this law affects the contractor’s rights and responsibilities; and
(3) The contractor agrees that the provisions of this law shall govern the performance of the parties.

(c) Reference the Nation’s laws governing vendor licensing, and provide the contracting parties with directions on how to access that document.

502.6-9. Applying Indian Preference to Non-Construction Contracts. Where more than one (1) bid is received for a non-construction contract, an Indian preference percentage discount of five percent (5%) shall be applied to all bids received from certified Indian-owned businesses.

502.6-10. Applying Indian Preference to Construction Contracts. Where more than one (1) bid is received for a construction contract, the discount applied to bids from certified Indian-owned businesses shall be:

(a) ten percent (10%) of the first fifty thousand dollar ($50,000) segment of a bid;
(b) plus nine percent (9%) of the next fifty thousand dollar ($50,000) segment of a bid;
(c) plus eight percent (8%) of the next one hundred thousand dollar ($100,000) segment of a bid;
(d) plus seven percent (7%) of the next one hundred thousand dollar ($100,000) segment of a bid;
(e) plus six percent (6%) of the next one hundred thousand dollar ($100,000) segment of a bid;
(f) plus five percent (5%) of the next one hundred thousand dollar ($100,000) segment of a bid;
(g) plus four percent (4%) of the next five hundred thousand dollar ($500,000) segment of a bid;
(h) plus two percent (2%) of the next one million dollar ($1,000,000) segment of a bid; and

(i) plus one percent (1%) of any amount over two million dollars ($2,000,000).

502.6-11. Awarding the Contract. After the appropriate discount has been subtracted from preferred bids, the following shall be used to determine which bidder is awarded the contract:

(a) If a bid from a certified entity is less than the total of the apparent low bid after Indian preference is applied, then the contract shall be awarded to the certified entity.
(b) If none of the certified entity bids are less than the total of the apparent low bid after the Indian preference discount is applied, the contract shall be awarded to the lowest responsible bidder.
(c) Bid shopping is prohibited.

502.6-12. Monitoring the Contract. Once a contract is awarded to an entity, the Indian Preference Office shall perform the following monitoring duties:

(a) Perform on-site inspections to verify compliance with this law;
(b) Require and review weekly workforce reports;
(c) Provide training to assist certified entities with understanding their rights and abilities under this law; and
(d) Receive feedback from contractors regarding the performance of any certified entity or qualified trades worker.
502.6-13. In the event that a dispute may arise regarding this law or a compliance agreement, all affected parties shall cooperate in good faith with the Indian Preference Office toward a mutually satisfactory resolution.

502.7. Compliance Agreements

502.7-1. Compliance Agreements. Once a bid has been accepted, but before work commences on any portion of a contract or subcontract, each contractor shall meet with the Indian Preference Office to negotiate and execute a compliance agreement. All contractors and subcontractors shall comply with the terms of any compliance agreement executed in accordance with this law.

502.7-2. Contents of a Compliance Agreement. A compliance agreement shall include, but is not limited to, the following information:

   (a) Numerical hiring goals and timetables that specify the minimum number of Indians that must be utilized per contract dollar; and
   (b) Compensation of qualified trades workers including wage scale, salaries and other benefits. Compensation shall be determined based on the prevailing wage scales of the Nation and/or federal or state governments.

502.7-3. Term of a Compliance Agreement. Where a contract lasts for more than one (1) year, compliance agreements shall be reviewed annually and revised as necessary to reflect changes in hiring plans or the number of certified entities available.

502.7-4. Unless prior written consent of the Indian Preference Office has been received, a contractor shall not deviate from an executed compliance agreement by adding or removing any subcontracts, subcontractors or positions filled by qualified trades workers or certified entities, or by filling a vacancy with a non-qualified trades worker or a non-certified entity.

502.7-5. Limited Waivers. The Indian Preference Office shall establish standard operating procedures to provide for emergency conditions and situations whereby a limited waiver of compliance may be authorized, in situations where a contractor has made a significant and documented good faith effort to achieve compliance, or can demonstrate that compliance is not practical for reasons other than pricing.

502.8. Skills Bank and Qualified Trades Workers

502.8-1. The Indian Preference Office shall establish and administer a Skills Bank to assist with providing Indians and first-generation descendants with employment opportunities. The goal of the Nation is to achieve one hundred percent (100%) participation of qualified trades workers on projects.

   (a) The Indian Preference Office shall identify, initiate, and sponsor training, internship, and apprenticeship opportunities necessary in order to increase the pool of qualified trades workers and to assist Indians in becoming qualified in the various job classifications used by employers.
   (b) The Indian Preference Office shall cooperate with other programs of the Nation to provide counseling and support to assist Indians in retaining employment.

502.8-2. The Skills Bank shall be the exclusive referral source under this law, representing the official compilation of qualified trades workers eligible for Indian preference in accordance with this law. Skills Bank listings shall include the names and qualifications of the qualified trades workers. The Indian Preference Office shall regularly update the Skills Bank listings.

502.8-3. Entities required to fill positions in accordance with this law and/or a compliance agreement under section 502.7, shall contact the Indian Preference Office prior to the commencement of any work.
(a) Except where prohibited by law or grant funding requirements, the entity shall hire qualified trades workers from the Skills Bank in the following order of priority:

(1) Members of the Nation;
(2) First generation descendants of the Nation; and then
(3) Members of other federally-recognized Indian tribes.

(b) If a law or grant funding requirement prohibits the hiring of qualified trades workers in accordance with section 502.8-3(a), qualified trades workers shall be hired in accordance with the requirements of said law or grant.

(c) If the necessary labor cannot be acquired from the Skills Bank, then a limited waiver may be granted by the Indian Preference Office.

502.8-4. In order to be added to the Skills Bank, an applicant shall submit a completed application and documentation of the following:

(a) proof of enrollment or proof that the individual is a first-generation descendant of the Nation;
(b) education; including degrees, diplomas, apprenticeships, internships or continuing education training related to the field;
(c) proof of a driver’s license, including any endorsements, if applicable;
(d) if the worker is seeking to be listed as a qualified trades worker for a specific trade, then the worker shall provide specific information related to that trade, including:

(1) past and current licensing;
(2) credentials and certifications; and
(3) information related to penalties or punitive actions taken by any licensing body within the past ten (10) years.

502.8-5. Placing an applicant in the Skills Bank as a qualified trades worker confers recognition that he or she is eligible to receive Indian preference in accordance with this law. A qualified trades worker shall be qualified for Indian preference for employment for a particular skill or trade if he or she meets the minimum qualifications for a particular skill or trade.

502.8-6. Wage and Hour Standards, Layoffs and Terminations, Call-Backs, Promotions, Unions.

(a) Every contractor utilizing qualified trades workers shall ensure that such workers receive equal compensation, including overtime pay, and shall have equal work standards, that are provided to other employees. Contractors that hire qualified trades workers in order to comply with this law, but do not utilize those workers in a manner similar to other employees are not maintaining equal work standards.

(b) In making any layoffs or terminations, all contractors shall notify the Indian Preference Office prior to laying off or terminating a qualified trades worker.

(1) No qualified trades worker with at least minimum qualifications for the job classification shall be terminated or laid off so long as a non-Indian employee in the same craft with similar skills remains employed. If the contractor lays off by crews, qualified trades workers shall be transferred to any crew that will be retained, as long as there are non-Indian employees in the same craft employed elsewhere under the same contract.

(2) No contractor shall terminate or lay off any qualified trades worker pursuant to this law, without documented good cause. The contractor shall promptly replace the qualified trades worker with another qualified trades worker.

(3) When a contractor begins to call back laid-off employees, that contractor shall notify the Indian Preference Office and shall call back qualified trades workers before bringing back other employees.
(c) Qualified trades workers and certified entities shall not be required to affiliate with organized labor for employment under this law. The mere absence of affiliation with organized labor shall not disqualify a qualified trades worker from employment or contracting where that worker is otherwise qualified. A qualified trades worker shall not be guaranteed to receive the benefits of a union contract, other than wage scales, unless the worker elects to join the union.

502.8-7. Construction Contracts: Core Work Crew. As a condition of a construction contract award, the contractor shall identify its core work crew, including those core work crew employees utilized by known subcontractors. If such employees are approved by the Indian Preference Office, they may be employed on the project without regard to Indian preference. Provided that, core work crew employees shall at no time displace qualified trades workers and/or potential qualified trades workers by performing work outside their trade or skill.

(a) For the purposes of employment on a project, the Indian Preference Office and the contractor, and any subcontractor, shall negotiate the designated members of the contractor’s core work crew.

(b) Any contractor that fills vacant positions immediately prior to undertaking work pursuant to a contract to which this section applies shall provide evidence acceptable to the Indian Preference Office that such actions were not intended to circumvent the provisions of this law.

(c) A contractor shall not use extraneous qualification criteria or other personnel requirements that prevent qualified trades workers from being employed, unless the contractor is able to demonstrate that such criteria or requirements are required by regulatory compliance.

502.9. Investigations and Enforcement

502.9-1. Complaints. An individual or entity may file a written complaint with the Indian Preference Office if aggrieved by an act of non-compliance with:

(a) this law;

(b) a compliance agreement; and/or

(c) any standard operating procedure issued pursuant to this law.

502.9-2. Contents of the Complaint. A complaint shall include information that will reasonably enable the Indian Preference Office to understand the general nature of the complaint and carry out an investigation, such as evidence of any discriminatory practices, alleged misconduct, or other non-compliance.

502.9-3. Complaint Investigation. Upon receipt of a complaint or after witnessing non-compliance with this law while conducting its monitoring duties, the Indian Preference Office shall conduct an investigation.

(a) In conducting an investigation to determine if the complaint has merit, the Indian Preference Office shall be authorized to:

(1) inspect and copy all relevant records;

(2) interview and speak to workers; and

(3) conduct inspections of the job site.

(b) Information collected during an Indian Preference Office investigation shall be kept confidential unless disclosure is necessary or required as part of any judicial or administrative proceeding or in accordance with a law of the Nation.

(1) Any report or recommendation prepared by the Indian Preference Office for use at a hearing shall be promptly released to the complainant and alleged violator.
(c) If the Indian Preference Office receives a complaint or information that an entity is operating in a manner that is harmful to the health, safety, or welfare of the Nation or community, the Indian Preference Office shall immediately refer the complaint or information to the appropriate department or authority of the Nation for investigation.

(1) The referral of a complaint does not prohibit the Indian Preference Office from its independent investigation of such complaint or information for purposes of ensuring compliance with this law.

(2) The Indian Preference Office shall have the authority to review the results of any other investigation conducted by another department or authority of the Nation in accordance with the Nation’s laws and policies governing open records.

502.9-4. *Alleged Violation Has No Merit.* If the Indian Preference Office determines that the alleged violation has no merit, the Indian Preference Office shall notify all parties in writing that the complaint shall be closed.

(a) The complainant may file a complaint to contest this decision with the Nation’s Trial Court within ten (10) business days after issuance of such notice.

(b) The Trial Court shall then conduct an in-camera inspection of the investigation completed by the Indian Preference Office. During an in-camera inspection only a judge may review the information obtained by the Indian Preference Office during the investigation as this information is confidential and disclosure is not necessary.

(c) If after reviewing the Indian Preference Office’s investigation, the Trial Court determines the alleged violation has no merit, the Trial Court shall notify all parties in writing that the matter will be dismissed and no further appeals of the matter will be accepted.

(d) If after reviewing the Indian Preference Office’s investigation the Trial Court determines that there is sufficient evidence of a genuine and material issue of non-compliance, the Trial Court shall order the Indian Preference Office to take action in accordance with section 502.9-5.

502.9-5. *Alleged Violation Has Merit.* If the Indian Preference Office determines that the alleged violation has merit and there is sufficient evidence of a genuine and material issue of non-compliance, the Indian Preference Office may take action to resolve the complaint.

(a) The Indian Preference Office may take any of the following actions to resolve the complaint:

(1) Attempt to reach an informal or formal resolution of the alleged non-compliance;

(A) If a formal resolution is reached, any agreement shall be in writing and signed by all parties. The issue shall then remain in abeyance for the term of the contract during which time all parties shall comply with the terms of the written agreement. Breach of the terms of the written agreement may be a cause of action for litigation before the Trial Court.

(2) Issue a notice of non-compliance to the entity by certified mail;

(A) The notice shall state the specific violation(s) alleged, the requirements that must be met to ensure compliance with this law, and shall provide a reasonable amount of time, not to exceed thirty (30) days, wherein the entity shall provide evidence that it has taken the steps necessary to come into compliance.

(3) Place the entity’s certification in probationary status for a period not to exceed six (6) months; or suspend, revoke, or deny renewal of the entity’s certification;
(A) Once certification is revoked, an entity shall not be eligible to apply for re-certification until one (1) year has passed from the effective date of the revocation.

(B) At any time that certification is suspended, revoked, or has lapsed, a formerly certified entity shall not qualify for Indian preference.

(C) Where a certified entity loses certification:
   (i) the contractor may be required to replace that entity with another certified entity if the work has not begun or performance under a contract has not commenced, unless replacement is impossible or would cause undue hardship; or
   (ii) the Indian Preference Office may authorize the contractor to continue to utilize that entity without regard to Indian preference if work has already begun or performance under a contract has commenced.

(4) Issue a fine;

   (A) The Indian Preference Office shall be delegated authority to develop a fine and penalty schedule that may be imposed upon any person or entity violating provisions of this law. The fine and penalty schedule shall be adopted by the Oneida Business Committee through resolution.
   (B) No fines or penalties may be assessed against the Nation, the Indian Preference Office, or other department of the Nation, or employees engaged in their official duties under this law.

(5) Re-negotiate a compliance agreement with the contractor to include additional opportunities for qualified trades workers or certified entities; and/or

(6) Request the appropriate entity withdraw any licensing issued by the Nation.

(b) An individual or entity may contest an action taken by the Indian Preference Office by filing a complaint with the Trial Court within ten (10) business days after the date of issuance of the Indian Preference Office’s decision.

502.9-6. Additional Enforcement Measures. If the Indian Preference Office is unable to facilitate a satisfactory resolution, and a notice of non-compliance or action against a certified entity’s certification has not resulted in a successful resolution, the Indian Preference Office may file an action with the Trial Court, seeking appropriate relief, including but not limited to:

(a) An injunction;

(b) Specific performance, including but not limited to:
   (1) reinstatement of a qualified trades worker at the previous wage;
   (2) immediate removal of employees hired in violation of this law; and/or
   (3) employment, promotion or additional training for Indian preference-eligible parties injured by a violation;

(c) Payment of back pay, damages, and/or costs associated with the enforcement of an order issued by the Trial Court, including but not limited to filing fees, attorney fees, and/or costs incurred by the Indian Preference Office in bringing an action. Provided that, no money damages may be claimed in any suit against the Nation, the Indian Preference Office or other departments of the Nation, or officials of the Nation or employees engaged in their official duties under this law; and/or

(d) Any other action the Trial Court deems lawful, equitable, and necessary to ensure compliance with this law and to alleviate or remedy any harm caused by non-compliance.

502.9-7. Although relief granted by the Trial Court may benefit an individual qualified trades worker, certified Indian preference entity, or other individual or entity, neither the Indian
Preference Office nor the Nation represents those individuals and/or entities in any action for non-compliance with this law.

502.9-8. *Cease-and-Desist Orders.* The Oneida Police Department is hereby expressly authorized and directed to enforce such cease-and-desist or related orders as may from time to time be properly issued by the Trial Court. Such orders shall require a decree or order to render them enforceable. The Oneida Police Department shall not be civilly liable for enforcing such orders so long as the Trial Court signs the order.

502.9-9. *Retaliatory Action Prohibited.* No entity shall punish, terminate, harass or take any other adverse personnel or hiring action in retaliation for a party’s exercise of Indian preference rights under this law. However, this section shall not prohibit action that can be reasonably justified as taken in good faith based on documented employee performance.

End.

Adopted BC-03-27-13-B
Amended BC-__-__-__-__
SECTION 1. EXECUTIVE SUMMARY

<table>
<thead>
<tr>
<th>REQUESTER:</th>
<th>SPONSOR:</th>
<th>DRAFTER:</th>
<th>ANALYST:</th>
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</thead>
<tbody>
<tr>
<td>Ernie Stevens III</td>
<td>Ernie Stevens III</td>
<td>Clorissa N. Santiago</td>
<td>Brandon Wisneski</td>
</tr>
</tbody>
</table>

**Intent of the Amendments**
- To update the definition of tribal corporation to include any corporation chartered and/or wholly owned by the Nation;
- To raise the threshold to apply Indian Preference from one thousand five hundred dollars ($1,500) to three-thousand dollars ($3,000) for any contracts entered into by the Nation;
- To permit joint ventures to qualify for Indian Preference on a project-specific basis;
- Set a new timeline for Indian Preference Office to review contracts;
- Clarify the Indian Preference Office’s authority to develop a fine and penalty schedule for violations of this law, to be approved by the Oneida Business Committee by resolution.

**Purpose**
To establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation [5 O.C. 502.1-1].

**Affected Entities**
Indian Preference Office, Purchasing Department, Oneida Judiciary, Oneida Police Department, Oneida Licensing Department, Corporations chartered and/or wholly owned by the Nation, and any department or entity of the Nation that enters into projects or contracts greater than $3,000.

**Related Legislation**
Open Records and Open Meetings law, Vendor Licensing law, Personnel Policies and Procedures; Independent Contractor Policy, Travel and Expense Policy.

**Public Meeting**
A public meeting has not yet been held.

**Fiscal Impact**
A fiscal impact statement has not yet been requested.

SECTION 2. LEGISLATIVE DEVELOPMENT

A. The Nation’s Indian Preference in Contracting law was adopted on July 29, 1998 and most recently amended on March 27, 2013. The purpose of this law is to increase economic benefits for the Nation and members of the Nation by providing maximum utilization of Indian workers and businesses on projects of the Nation. The Nation’s Indian Preference Office is responsible for monitoring and enforcing Indian Preference in contracting.

B. This law was added to the LOC’s Active file List on April 17, 2019 at the request of Councilmember Ernie Stevens III. The original intent of the amendments was to update the definition of “tribal entity.” Since that time, a work group of representatives from relevant entities and departments have met to review the law. Many of the proposed amendments reflect the feedback and suggestions of this work group.
SECTION 3. CONSULTATION AND OUTREACH

A. Representatives from the following departments or entities of the Nation participated in the development of this law and legislative analysis: Indian Preference Office, Purchasing Department, Law Office, Community and Economic Development Division, and Oneida ESC Group.

B. The following laws of the Nation were reviewed in drafting this analysis: Open Meetings and Open Records law, Vendor Licensing law, Personnel Policies and Procedures, Independent Contractor Policy, Travel and Expense Policy, Layoff Policy, Furlough Policy, Oneida Nation Law Enforcement Ordinance.

SECTION 4. PROCESS

A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).

B. The law was added to the Active Files List on April 17, 2019.

C. At the time this legislative analysis was developed, the following work meetings had been held regarding developments of these amendments and legislative analysis:

- June 5, 2019 Work Meeting: LOC.
- June 6, 2019 Work Meeting: LOC.
- September 26, 2019 Work Meeting: LOC, Indian Preference, Purchasing, Community Economic Development.
- October 21, 2019 Work Meeting: Indian Preference, Community Economic Development.
- October 24, 2019 Work Meeting: LOC.

SECTION 5. CONTENTS OF THE LEGISLATION

A. Definition of Tribal Corporation. The Indian Preference law applies to tribal corporations to the extent that those corporations enter into contracts with the Oneida Nation [5 O.C. 502.6-1(b)]. Previously, the definition of tribal corporation was “a corporation chartered by the Oneida Tribe of Indians of Wisconsin pursuant to the Constitution and Bylaws of the Oneida Tribe.” This definition has been updated to “a corporation chartered and/or wholly owned by the Nation pursuant to the Constitution and Bylaws of the Oneida Nation” [5 O.C. 502.3-1(ee)].

- Effect. Some of the corporations owned by the Nation are chartered in other states. For example, Oneida ESC Group is incorporated in the state of Nevada, but wholly owned by the Oneida Nation. This updated definition clarifies that this law will apply to all of the Nation’s corporations regardless of where they are chartered, organized or incorporated.

<table>
<thead>
<tr>
<th>Tribal Corporation</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oneida Airport Hotel Corporation</td>
<td>Chartered by Oneida Nation.</td>
</tr>
<tr>
<td>Bay Bancorporation</td>
<td>Incorporated under WI Business Corporation law. Wholly owned by Oneida Nation.</td>
</tr>
<tr>
<td>Oneida ESC Group, LLC</td>
<td>Limited liability company (LLC) organized under Nevada law. Wholly owned by Oneida Nation.</td>
</tr>
<tr>
<td>Oneida Golf Course Enterprise Corporation</td>
<td>Chartered by Oneida Nation.</td>
</tr>
<tr>
<td>Oneida Seven Generations Corporation</td>
<td>Chartered by Oneida Nation. Currently in the process of being dissolved.</td>
</tr>
</tbody>
</table>
B. **Joint Ventures.** Joint ventures will now qualify for Indian Preference on a project-specific basis.

- **What is a Joint Venture?** A “joint venture” is a one-time grouping of two (2) or more entities in a business undertaking [5 O.C. 502.3-1(v)]. A joint venture is a short-term partnership where each party jointly undertakes a transaction for mutual profit. Each member of the joint venture contributes assets and shares risk ([Cornell Law Legal Information Institute (LII)]). For example, two companies may form a joint venture to bid on a construction project that they otherwise would be unable to complete on their own.

- **Joint Ventures Now Eligible for Indian Preference.** Previously, joint ventures were not eligible to receive Indian Preference. These amendments will permit joint ventures to receive Indian Preference on a project-specific basis [5 O.C. 502.5-8]. In other words, the joint venture will only receive Indian Preference for the specific project they are bidding on. Because joint ventures are typically a short-term partnership, any future joint venture will need to reapply for Indian Preference each time they bid on a project.

- **Effect.** Entities that form joint ventures to bid on projects will now qualify for Indian Preference assuming they meet all other requirements of this law.

C. **Threshold to Apply Indian Preference.** Currently, the Indian Preference law applies to all of the Nation’s contracts over $1,500 except where prohibited by law or grant funding requirements. These amendments raise this threshold. Now, the Indian Preference will only apply to the Nation’s contracts over $3,000 [5 O.C. 502.6-1].

- **Justification.** This change was made at the recommendation of the Purchasing Department to match the Nation’s current procurement threshold. The Nation’s procurement policy requires three bids for any contract or purchase over $3,000. Setting both the Indian Preference and three-bid thresholds at $3,000 will make both policies easier to implement for the Nation. Purchasing also explained that most Indian Preference vendors bid on projects above $3,000, such as construction projects. Therefore, Purchasing Department predicts that the higher threshold will have minimal impact on most Indian Preference vendors.

- **Effect.** Indian Preference will only apply to contracts greater than $3,000. Any vendors bidding on projects between $1,500 and $2,999 will no longer receive Indian Preference.

D. **New Timeline for Indian Preference Office to Review Contracts.** The current Indian Preference law already requires that projects must be submitted to the Indian Preference Office for review before being posted or announced for bids. However, the current law does not include a timeframe for the Indian Preference office to complete this review.

- **New Timeline.** These amendments add a new timeline for when the Indian Preference office must complete this review. Now, the Indian Preference Office must complete their review within five (5) business days [5 O.C. 502.6-4]. The intent is to ensure that projects can be posted in a timely manner.

E. **Fine and Penalty Schedule for Indian Preference Violations.** The current Indian Preference law already authorizes the Indian Preference Office to develop and the Business Committee to approve a fine and penalty schedule for violations of this law. However, no fine and penalty schedule has been adopted.

- **Changes.** Previously, this law stated that fine amounts must be no less than $100 and no more than $1,000. These amendments remove this limitation. In addition, the amendments also specify that the fine amounts will be adopted by the Business Committee by resolution. [5 O.C. 502.9-5(a)(4)].
F. **Minor Drafting Changes.** Minor drafting changes have been made throughout the law, such as changing “Tribe” to “Nation” or moving the order of existing sections.

**SECTION 6. EFFECT ON EXISTING LEGISLATION**

A. **References to the Other Laws of the Nation:** The following laws of the Nation are referenced in this law. These amendments do not conflict with any of the referenced laws.

- **Open Records and Open Meetings law.** In accordance with the Nation’s laws and policies governing open records, general, non-proprietary and non-private information provided for the purposes of acquiring certification shall be considered open records and available for public inspection. [5 O.C. 502.5-7 and 502.9-3(c)(2)].

- **Personnel Policies and Procedures.** In the execution of employment duties and in accordance with the Nation’s laws and policies governing employment, employees of the Nation shall follow this law in following contracting and bidding procedures for the Nation or entities of the Nation [5 O.C. 502.6-7].

- **Vendor Licensing.** All contracts this law applies to must include reference to the Nation’s laws governing vendor licensing and provide the contracting parties with directions on how to access that document [5 O.C. 502.6-8(c)].

B. **Other Laws that Reference Indian Preference in Contracting:** The following laws of the Nation reference Indian Preference in Contracting. These amendments do not conflict with any of the referenced laws.

- **Independent Contractor Policy.** “It is... the policy of the Tribe that the order of preference, as set out in the Tribe’s Indian Preference law, be used in the selection of independent contractors” [5 O.C. 503.1-2(b)].

- **Travel and Expense Policy.** In regard to business expenses, “Considerations should be given to patronizing tribally owned business and Indian Preference vendors certified by the Compliance division” [2 O.C. 219.9-4(f)].

- **Judiciary Canons of Judicial Conduct.** “Nothing in these canons shall be construed as prohibiting a Judge from affiliating with, using the facilities of, or attending events sponsored by organizations that support Native American issues, exercise tribal or Indian Preference...” [8 O.C. 802.3.2.2].

C. **Other Laws that Reference Indian Preference in Hiring:** The following laws of the Nation reference Indian Preference as it relates to the Nation’s hiring process. The standards set in this law do not apply to preference “as applicable to employees hired through the Nation’s HRD or pursuant to an employment contract” [5 O.C. 502.6-2(a)]. The Nation’s Indian preference in hiring process is located in Section III of the Nation’s Personnel Policies and Procedures. These amendments do not conflict with any of the referenced laws.

- **Layoff Policy.** “The Oneida Tribe recognizes Indian preference in the development of layoff SOPs. Indian preference as used in this policy shall mean a preference granted to retain the Oneida member employee when all other things being equal with non-member employees. Provided that, a manager may identify critical positions within the business unit which shall not be subject to Indian Preference” [2 O.C. 207.4-1].

- **Furlough Policy.** “Indian preference may not be used as a consideration in identifying employees to be furloughed” [2 O.C. 205.5-4].

- **Oneida Nation Law Enforcement Ordinance.** “The following positions shall be held only by members of the Oneida Tribe: Police Chief, Assistant Chief, Police Lieutenant or Sergeant,
Conservation Director, Assistant Conservation Director… All other positions and appointments shall be subject to the Indian Preference rules of the Oneida Tribe” [3 O.C. 301.5-3(d)].

SECTION 7. ENFORCEMENT AND ACCOUNTABILITY

A. Enforcement. The Nation’s Indian Preference Office is authorized to enforce this law [5 O.C. 502.4-1 502.9-5]. In addition, the Oneida Police Department is authorized to enforce orders issued by the Trial Court, such as cease-and-desist orders [5 O.C. 502.9-8].

SECTION 8. OTHER CONSIDERATIONS

A. Fine and Penalty Schedule. At the time this analysis was drafted, the Indian Preference Office is developing a fine and penalty schedule for consideration by the Oneida Business Committee. The LOC intends to bring a proposed fine and penalty resolution to the Business Committee at the time these amendments are up for adoption.

B. Fiscal Impact. A fiscal impact statement has not yet been requested.

- Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except emergency legislation [1 O.C. 109.6-1].

- A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee and may be prepared by any agency who may receive funding if the legislation is enacted; who may administer a program if the legislation is enacted; who may have financial information concerning the subject matter of the legislation; or by the Finance Office, upon request of the Legislative Operating Committee [1 O.C. 109.6-1(a and b)].
Executive Summary
The Legislative Operating Committee (LOC) focused on the following items in the fourth quarter; amendments to all the boards, committee’s and commissions bylaws, adoption of a Curfew law, community outreach for the draft Sanctions & Penalties law, amendments to the Vehicle Driver and Fleet Management law, and a Citations law. A brief summary of each of these items;

- **Bylaws Amendments**
  The OBC adopted the Boards, Committees, and Commissions Law in September of 2018. As a result, all the Nation’s boards, committees, and commissions were required to amend their bylaws to become compliant with the law. The LOC has been working with the entities to complete this project. All bylaws amendments should be approved by the OBC be the end of the first quarter of FY20.

- **Curfew law**
  The LOC began work on this law in December of 2018. This legislation was a recommendation from the Tribal Action Plan Policy and Law Sub-Committee. The legislation is designed to contribute to drug prevention efforts. The LOC hopes the OBC will consider its adoption on October 2019. *(Update: this law was adopted and became effective on October 23, 2019.)*

- **Sanctions & Penalties law**
  The LOC continues to provide community outreach regarding the proposed Sanctions & Penalties Law, per the General Tribal Council directive.

- **Vehicle Driver & Fleet Management Amendments**
  The LOC is working on simplifying this law and providing more clarity. This law applies to Oneida Nation employees, elected and appointed officials, and volunteers who drive vehicles as part of their job duties.

- **Citations law**
  The LOC has been working on this since May of 2019. This will set a process for how citations are processed through the Oneida Judiciary. There are several laws that allow for citations including; Domestic Animals, Oneida Food Service Code, and the Hunting, Fishing, Trapping Law. A Citations Law will streamline and clarify the citations process that the Judiciary uses.
Updates to the Active Files List
The active files list is the list of legislation that the LOC is working on. During the fourth quarter, the LOC added the Children’s Burial Fund Policy Amendments to the active files list, upon request from the Trust Enrollment Department. Work will begin on these amendments in the first quarter of FY20. Table 1. illustrates the status of each legislative item the LOC was working on as of October 15, 2019. Attachment A. includes a list of the legislation that has been completed in the 2017-2020 term (Since August 2017), along with a brief description of the legislation.

Table 1. Current Active Files List
*Notes an item that the LOC intends to finish by July 2020 (end of the 2017-2020 term).
• This item has been completed and the LOC is no longer working on it.

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<thead>
<tr>
<th>Name of Legislation</th>
<th>Drafting</th>
<th>Public Meeting</th>
<th>BC/GTC Consideration or Adoption</th>
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<td>Election Amendments -Rejected by GTC 7/11/19</td>
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<td>*Sanctions &amp; Penalties -Deferred by GTC 3/17/19</td>
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<td>GTC Petition Process -Rejected by GTC 7/11/19</td>
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<td>Domestic Animals Amendments</td>
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<td>*Oneida Food Service Code Amendments</td>
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<td>Curfew</td>
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<td>*Industrial Hemp</td>
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<td>*Indian Preference in Contracting Amendments</td>
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<td>*Vehicle Driver Certification &amp; Fleet Management</td>
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<td>*Citations Law</td>
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<td>*Recycling &amp; Solid Waste Law Amendments</td>
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<td>*Children’s Burial Fund</td>
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<td>*Environmental Review Law</td>
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<td>Guardianship</td>
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<tr>
<td>Uniform Commercial Code</td>
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<tr>
<td>Personnel Policies &amp; Procedures Amendments</td>
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<tr>
<td>Investigative Leave Policy Amendments</td>
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<tr>
<td>Workplace Violence Amendments</td>
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</tbody>
</table>
**Completed Legislation in 2017-2020 Term**

Chart 1. Illustrates what legislation has been completed since August 2017 and it indicates which General Tribal Council’s priorities each piece of legislation is tied to. Attachment A. provides further details of the completed legislation, as well as a brief description of the legislation.

**Chart 1. Completed Legislation and GTC Priorities**

Most of the adopted legislation completed so far in this term have addressed **Government Administration**, **Human Services**, and **Housing** priorities.

### Government Administration
- Membership Ordinance Rule #1
- Membership Ordinance Rule #2
- Rules of Civil Procedures Amendments and Recision
- Whistleblower Protection
- Legal Resource Center Rule #1
- Election Amendments
- Boards, Committees, and Commissions Law
- 17 sets of boards, committees, and commissions bylaws amendments
- Family Court Rule #1
- Judiciary Law Rule #1

### Human Services
- Legal Resource Center Law
- Community Support Fund Rule Handbook
- Legal Resource Center Rule #1
- Employee Protection Amendments and Recision
- Military Service Employee Protection Amendments and Recision
- Personnel Policies and Procedures Amendments and Recision
- Children’s Code

### Housing
- Leasing Law
- Leasing Law Rule #1
- Leasing Law Rule #2
- Leasing Law Rule #3
- Landlord Tenant Rule #1
- Landlord-Tenant Amendments

### Building & Property Maintenance
- Oneida Nation Seal & Flag Law

### Public Safety
- Domestic Animals Law Rule #1
- Domestic Animals Amendments
- Curfew Law
Table 2. Meetings held by the Legislative Operating Committee in Fourth Quarter

<table>
<thead>
<tr>
<th>Legislative Operating Committee Meetings</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>July 3, 2019</td>
<td>Regular LOC meeting cancelled</td>
</tr>
<tr>
<td>July 17, 2019</td>
<td>Regular LOC meeting</td>
</tr>
<tr>
<td>August 7, 2019</td>
<td>Regular LOC meeting</td>
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<tr>
<td>August 21, 2019</td>
<td>Regular LOC meeting cancelled</td>
</tr>
<tr>
<td>September 4, 2019</td>
<td>Regular LOC meeting</td>
</tr>
<tr>
<td>September 18, 2019</td>
<td>Regular LOC meeting</td>
</tr>
</tbody>
</table>

Fourth Quarter Legislative Highlights

Boards, Committees, and Commission Bylaws Amendments
All the Nation’s boards, committees, and commissions are required to amend their bylaws as a result of the adoption of the Boards, Committees, and Commissions law (formerly known as the Comprehensive Policy Governing Boards, Committees, and Commissions). The LOC has been assisting the entities with this project and the Oneida Business Committee approved six sets of bylaws amendments in the fourth quarter;

- Oneida Police Commission
- Anna John Resident Centered Care Community Board
- Oneida Election Board
- Oneida Community Library Board
- Oneida Powwow Committee
- Oneida Nation Veteran Affairs Committee

Administrative Rulemaking
The LOC certified and the Oneida Business Committee subsequently approved two rules in the fourth quarter; the Judiciary Rule No. 1- Oneida Trial Court Rules and the Family Court Law Rule No. 1- Family Court Rule. The purpose of the rules is to supplement the Oneida Judiciary Rules of Civil Procedure and other laws governing the Trial Court and the Family Court.

Community Outreach: Proposed Sanctions and Penalties Law
This law would increase accountability among elected and appointed officials of the Nation. This proposed law creates a formal complaint process and allows for corrective actions against officials who engage in misconduct. The legislation is designed to establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties.

The LOC hosted a community pot luck to discuss the legislation on May 3, 2018 and sixteen (16) people attended. The public meeting was held on October 10, 2018 and seven (7) people attended. Approximately 115 comments were collected for this legislation.

At the March 17, 2019 General Tribal Council Meeting, the GTC discussed the proposed Sanctions & Penalties law and took the following actions:
Motion by Cathy L. Metoxen to table this item for sixty (60) days. Motion ruled out of order by Vice-Chairman Brandon Stevens; all the materials are available today in order to make a decision.

Motion by Becky Webster to adopt the resolution entitled Sanctions and Penalties Law on pages 5 and 6 of the meeting packet; with the amendment to the law to limit those who have standing to file a complaint to Tribal Members only. Seconded by Jamie Willis. Motion not voted on; item deferred, see amendment.

Amendment to the main motion by Mike Debraska to defer item IV.A. for at least sixty (60) days for GTC to have additional time to consider it and have input. Seconded by Tina Danforth. Motion carried by show of hands.

Since March 17, the LOC has been holding outreach events, in an effort to meet the directive that the GTC have more time to consider the legislation. These events will provide the community opportunities to learn more about the legislation and have additional input on the legislation. The dates and times of these events:

July 11, 2019, 5:00-6:00 pm, just prior to the General Tribal Council Meeting, Radisson Hotel and Conference Center
July 17, 2019, 12:00-1:00 pm, Norbert Hill Center Business Committee Conference Room
August 9, 2019, 8:00-9:00 am, Oneida Veteran’s Breakfast, Vets Office, Riverdale Dr., Oneida
August 15, 2019, 12:00-3:00 pm, Oneida Farmer’s Market, Water Circle Place, Oneida
October 7, 2019, 12:00 pm-1:00 pm, Elder Congregate Meal Site
October 18, 2019, 11:00 am-1:00 pm, SEOTS Building, Milwaukee, WI.
FY20 First Quarter Plans

Bylaws Amendments
The LOC’s goal is to present the remaining bylaws to the OBC and have them approved in the first quarter. *(Update: The OBC did adopt the remaining bylaws amendments by October 23. There are two sets that will come back to the OBC in the future).

Curfew law
The LOC’s goal is that the OBC consider adoption of the Curfew law and that it is implemented in the first quarter. *(Update: The OBC did adopt this law on October 9, and it became effective on October 23, 2019).

Industrial Hemp law
The LOC is waiting for the U.S Department of Agriculture (USDA) to release its hemp rules. The rules will provide the LOC with guidance on drafting an Industrial Hemp law that will provide a structure for the Oneida Nation to regulate and license hemp production on the Oneida Reservation. The goal is to regulate industrial hemp growers on the reservation as an exercise in sovereignty. The USDA has indicated that the rules will be released in the fall of 2019. *(Update: The USDA published the Industrial Hemp Rules on October 31, 2019 and the LOC will continue to work on this item).

Child Support Amendments- The LOC will hold a public meeting in October, and the LOC hopes to present these amendments to the Oneida Business Committee in January of 2020. The purpose of this law is to establish the legal responsibility of parents to provide financially for their children’s general well-being, as well as to make support payments more equitable by ensuring consistent treatment of persons in similar circumstances; make support payments based on the real earning capability of parents; and improve the efficiency of child support establishment and enforcement. Currently the draft amendments include;

- Creating a process to suspend or modify child support orders for parents incarcerated for one hundred and eighty (180) days or more.
- Updating notice requirements and timelines for initiating an action by the Agency, as well as sending appointment letters, notices of delinquency, notices of enforcement action, and income withholding orders.
- Clarifying how the Family Court may redact addresses and identifying information from court documents to ensure the safety of a party.
- Making updates to how child support obligations are calculated in certain special circumstances involving shared-placement parents, split-placement parents, and a serial family obligor.
- Repealing Child Support Rule No.1- Deviation from Child Support and Rule No. 2 - Enforcement Tools and move the contents of the rules into the body of the law itself.
- Making additional updates and clarify language throughout the law.
Legislative Reference Office Update

In addition to working on the LOC’s priorities, the LRO staff attended the Haudenosaunee Nation Re-building Workshop in August. In September LRO staff attended and facilitated discussion panels at the Oneida Food Sovereignty Summit with regard to Food Code legislation. Staff completed thirty-one (31) Statements of Effect for various departments. Statements of Effect accompany resolutions adopted by the Oneida Business Committee or the General Tribal Council. They are meant to indicate if and how the resolution may conflict with tribal law. In the FY20 first quarter the LRO will also update some technology and begin working on a plan to move the office from its current location.

Yaw^ko

Legislative Operating Committee Contact Information
Feel free to contact the LOC with questions or comments;

- David Jordan, LOC Chairperson, djordan1@oneidanation.org
- Kirby Metoxen, LOC Vice Chairperson, kmetox@oneidanation.org
- Jennifer Webster, LOC member, jwebste1@oneidanation.org
- Daniel King-Guzman, LOC Member, dguzman@oneidanation.org
- Ernest Stevens III, LOC Member, esteven4@oneidanation.org
- LOC@oneidanation.org
Attachment A. Legislative Operating Committee
Summary of Work Completed in 2017-2020 Term

<table>
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<tr>
<th>General Tribal Council Priorities</th>
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<tr>
<td>Building &amp; Property Maintenance= 1</td>
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<td>Public Safety= 3</td>
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Laws, Amendments, and Rules Adopted

Legal Resource Center Law
BC-09-13-17-L
On 11/14/17 the GTC directed the OBC to establish a legal office consisting of advocates and an advising attorney for the GTC. This law provides the framework for the office.

Oneida Nation Seal & Flag Rule #1- Placement, Maintenance, & Authorized Use
Approved by the OBC 09-13-17
This rule governs the placement, maintenance, and authorized use of the official Oneida Nation Seal under the Oneida Nation Seal & Flag Law.

Landlord-Tenant Law Amendments
BC-12-13-17-D
Extended the length of a rental agreement for tenants in the rent to own program.

Membership Ordinance Rule #1- Enrollment Rule
Approved by OBC 01-10-18
This rule creates enrollment procedures for carrying out the responsibility delegated to the Oneida Trust Enrollment Committee by the Membership Ordinance.

Community Support Fund-Rule Handbook
Approved by OBC-01-24-18
This rule handbook provides guidance on how the Community Support Fund is used so that the Nation can assist the greatest number of members of the Nation who apply for assistance to the Fund in times of a catastrophic event, illness, injury, or emergency event when no other resources for assistance exist.

Membership Ordinance Rule #2-Voiding Unlawful Membership
Approved by OBC 02-14-18
This rule creates a process by which the Oneida Nation may void the membership of a tribal member who no longer qualifies for enrollment pursuant to the Membership Ordinance under limited circumstances.

Domestic Animals law Rule #1- Licensing, Fees, & Penalties Emergency Adoption
Approved by OBC 04-25-18
This rule sets the licensing, fees, and penalties for the Domestic Animals law.

Leasing Law Rule #2- Agriculture Leases
Approved by OBC 05-16-18
This rule codifies the existing standard operating procedure regarding agricultural leases, allowing the Nation to lease agricultural land in the best interest of the Nation.

Leasing Law
Adopted BC-10-26-16-C
Became Effective BC-05-19-18
The federal HEARTH Act enables tribes to approve individual surface leases for their own
trust lands- provided that the tribe has adopted a tribal leasing regulations that are approved by the Secretary of the Interior. This law was adopted on 10/26/16 and became effective on 5/19/18.

Leasing Law Rule #3- Commercial Leases  
Approved by OBC 06-16-18  
This rule codifies the existing standard operating procedures regarding commercial leases, allowing the Nation to lease in a manner that is fair and equitable for tribal fee and trust lands that are used for commercial purposes.

Legal Resource Center Rule #1- Application for Services  
Approved by OBC on 07-25-18  
This rule created a procedure for individuals to apply for services from the Legal Resource Center.

Leasing Law Rule #1-Residential Leasing-Emergency Adoption  
Approved by OBC on 08-22-18  
This rule expands upon information provided in the Leasing Law regarding eligibility, administration, inheritability, and enforcement related to residential leases.

Boards, Committees, and Commissions Law  
BC-09-26-18-C  
The Comprehensive Policy Governing Boards, Committees, and Commissions was updated regarding; creation of an entity, application, vacancies, appointments, oaths, reporting, stipends, dissolution, and enforcement. It was also renamed.

Employee Protection Emergency Amendments and Rescission  
BC-09-26-18-F (Rescission)  
The OBC dissolved the Oneida Personnel Commission by Resolution BC-04-11-18-A and directed the LOC to identify which laws would need emergency amendments in response to the dissolution. The Employee Protection Policy included responsibilities that would be completed by the Oneida Personnel Commission. These amendments removed that responsibility.

Then, on August 27, 2018 the GTC motioned to rescind the OBC’s actions as they related to the Oneida Personnel Commission. The OBC then adopted resolution BC09-26-18-F which formally repealed the emergency amendments to the Employee Protection Policy.

*Note: this law was on the active files list prior to the dissolution of the Oneida Personnel Commission. After the rescissions, it remained on the active files list and was amended in February 2019. See Whistleblower Law on page 2.

Landlord-Tenant Rule #1- General Renter Program Eligibility, Selection, and other Requirements  
Approved by OBC 10-24-18  
These amendments provide eligibility requirements, selection procedures, & general requirements that govern the Comprehensive Housing Division’s general rental programs that are not reserved for elders or low-income tribal members.

Military Service Protection Emergency Amendments  
BC-09-26-18-F (Rescission)  
See Employee Protection Emergency Amendments and Rescission explanation above.

Personnel, Policies, & Procedures Emergency Amendments & Rescission
**BC-09-26-18-F (Rescission)**
See Employee Protection Emergency Amendments and Rescission explanation above.

**Rules of Civil Procedure Emergency Amendments and Rescission**
*BC-09-26-18-F (Rescission)*
See Employee Protection Emergency Amendments and Rescission explanation above.

**Whistleblower Protection Law**
*BC-02-12-19-B*
This law, formerly known as the Employee Protection Policy was eventually amended for reason not related to the dissolution of the Oneida Personnel Commission. The law was renamed the Whistleblower Protection Law.

**Domestic Animals Amendments**
*BC-05-08-19-C*
These amendments eliminated rulemaking authority, reduced the space requirements for dog kennels, provided guidelines for tethering animals, reduced the number of pets allowed in residential homes, and simplified the dangerous animal declaration process.

**Election Amendments**
*Rejected by General Tribal Council 07-11-19*
On November 12, 2017, the General Tribal Council (GTC) directed the OBC to identify amendments for the Election Law. The LOC drafted amendments and brought the item back to the GTC on 10/28/18, where it was deferred. The amendments came back to the GTC on 1/21/19 and they were tabled. Finally, on 7/11/19, the GTC voted to reject the amendments.

**Children’s Code**
*BC-07-26-17-J*
This purpose of this law is to provide for the welfare, care, and protection of Oneida children through the preservation of the family unit, while recognizing that in some cases it may be in a child’s best interest not to be reunited with his or her family. This law was adopted 7/26/17, and included a 15 month implementation plan. Resolution BC-10-24-18-A delayed implementation until October 1, 2019. The Children’s Code has been effective since that date.

**Family Court Rule #1- Family Court Rules**
*Approved by OBC 9-11-19*
The amendments to this Rule supplement the Oneida Judiciary Rules of Civil Procedure and other laws governing the Family Court.

**Judiciary Law Rule #1-Oneida Trial Court Rules**
*Approved by OBC 9-25-19*
This rule supplements the Oneida Judiciary Rules of Civil Procedure and other laws governing the Trial Court.

**Curfew Law**
*BC-10-09-19-G*
The purpose of this new law is to protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors during certain hours. The curfew hours are similar to other local curfews-10:00 pm- 6:00 am, and there are many exemptions to the curfew including school events, athletics, travelling to and from a job, cultural events, etc.

**Boards, Committees, and Commissions Bylaws Amendments- 17 sets**
The OBC adopted the Boards, Committees, and Commissions Law on 09-26-18. That law
resulted in all the Nations boards, committees, and commissions having to amend their bylaws in order to be compliant with the law. The LOC assisted all seventeen entities, and the process took approximately one year.

- Environmental Resources Board
- Oneida Nation Commission on Aging
- Oneida Gaming Commission
- Oneida Land Claims Commission
- Oneida Land Commission
- Oneida Nation Arts Board
- Oneida Personnel Commission
- Pardon & Forgiveness Screening Committee
- Southeastern Wisconsin Oneida Tribal Services
- Trust Enrollment Committee
- Anna John Resident Centered Care Center
- Oneida Community Library
- Oneida Election Board
- Oneida Police Commission
- Oneida Powwow Committee
- Oneida Nation Veterans Affairs Committee
- Oneida Nation School Board

**Other Projects Completed**

There were other projects that the LOC worked on that were not legislation per se but took a significant amount of time.

**General Tribal Council Petitions Statements of Effect**

A statement of effect is an analysis of whether a General Tribal Council Petition or any resolution conflict with existing laws. Since August of 2017, the LOC has developed one hundred fifty two (152) statements of effect. The GTC Petition statements of effect are listed below:

- Petition: Delgado- Trust Land Distribution
- Petition: Dodge- Law Firm for GTC
- Petition: G. Dallas- $5,000 Payment Within 90 Days
- Petition: Gladys Dallas- Special Per Capita Payment and/or Options Payment
- Petition: G. Dallas- $5k Per Capita
- Petition: Graham- 2017 General Election
- Petition: G. Powlless- Banishment Law Resolution
- Petition: G. Powlless- Oneida Personnel Commission Dissolution
- Petition: G. Powlless- Rescinding the Removal Law
- Petition: Linda Dallas- Medicare Part B Premium Payment
- Petition: Metivier- Treatment Center
- Petition: Powlless, Debra- 2017 Tri-Annual General Election
- Petition: Scott Kosbab- Creating a Term Limits Law
- Petition: Vandehei- E-poll Process
- Petition: C. Metoxen- Oneida Youth Leadership Institute
# November 2019

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**3rd of November, 2019**

- 1:30pm Vehicle Driver Certification and Fleet Management Law Amendments (BC_Exec_Conf_Room) - LOC
- 9:00am LOC Meeting (BC_Conf_Room) - LOC
- 9:00am LOC Meeting (BC_Conf_Room) - Clorissa N. Santiago

**10th of November, 2019**

- 9:00am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago

**17th of November, 2019**

- 9:00am LOC Meeting (BCCR) - LOC

**24th of November, 2019**

- 12:00pm PUBLIC MEETING: Citations Law (BC_Conf_Room) - Clorissa N. Santiago
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