

**Title 7. Children, Elders and Family - Chapter 704**  
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*They watch over the children*  
**CHILD SUPPORT**

704.1. Purpose and Policy	704.10. Modification of a Child Support Order
704.2. Adoption, Amendment, Repeal	704.11. Modification of a Child Support Order for an Incarcerated Parent
704.3. Definitions	704.12. Compliance Plan
704.4. Jurisdiction	704.13. Enforcement of an Order
704.5. Initiating an Action for Child Support	704.14. Alternative Payment Plans
704.6. Child Support Hearing Procedures	704.15. Administrative Enforcement Action
704.7. Determining the Child Support Obligation	704.16. Family Court Contempt Action
704.8. Determining the Child Support Obligation in Special Circumstances	704.17. Full Faith and Credit for Foreign Child Support Orders
704.9. Child Support Order	704.18. Right of Appeal

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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-01-08-20-C.

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 This law may be amended or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.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) “Contempt” means a willful disregard of the authority of a court or disobedience to its lawful orders.
- (k) “Current six (6) month treasury bill rate” means the yield of a U.S. government security with a term of six (6) months.
- (l) “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.
- (m) “Employer” means any individual, business, government, institution, or other entity paying wages to one or more employees.
- (n) “Equity” means the fair market value of property minus the liens on that property with priority over the child support lien.
- (o) “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.

(p) “Family Court” means the branch of the Nation’s Judiciary that is designated to handle all matters related to the family and/or children.

(q) “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.

(r) “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.

(s) “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.

(t) “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.

- (u) “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.
- (v) “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.
- (w) “Lien amount” means the difference between the monthly amount of support due and the arrears in a case.
- (x) “Lien docket” means the registry kept by the State of Wisconsin containing the names of people who owe past-due child support.
- (y) “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.
- (z) “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.
- (aa) “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).
- (bb) “Nation” means the Oneida Nation.
- (cc) “Non-custodial parent” means the parent of a child who does not hold primary care, custody and/or control of a child.
- (dd) “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.
- (ee) “Obligee” means the person or entity to whom child support is owed.
- (ff) “Obligor” means the person who is obliged to pay child support to the obligee.
- (gg) “Ownership interest” means any personal financial interest.
- (hh) “Parent” means the biological or adoptive parent of the child.
- (ii) “Payor” means a person or entity with a legal obligation, as an employer, buyer of goods, debtor, or otherwise, to pay an obligor.
- (jj) “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.
- (kk) “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.

(ll) “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.

(mm) “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.

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

(oo) “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.

(pp) “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.

(qq) “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 Interstate Family Support Act as referred to in 42 U.S.C. §666.

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.

(c) 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.

(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.

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 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.

(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.

704.7-9. *Past-due and Arrears obligations.*

- (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, 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 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.

**704.8-3. *Determining the Child Support Obligations of Split-Placement Parents.***

(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.

**704.8-4. *Determining the Child Support Obligation of a Low-Income 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.

704.9-7. *Collection and Distribution of Child Support.* The Agency shall collect and distribute child support monies pursuant to regulations set forth in the Social Security Act 45 CFR 309.115.

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.

704.9-9. *Non-Cash Payments.*

(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; 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.

#### **704.10. 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.

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 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.

#### **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. Alternative Payment Plans**

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.

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.

(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.

(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 due to a substantial change of circumstances since the plan was agreed to by the Agency and the obligor.

(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.

704.14-4. *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. *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.

704.14-6. *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 which makes the plan unreasonable.

(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 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 Family Court. During a contempt proceeding the Family Court may order any of the enforcement actions the Agency is authorized to implement, in addition to the contempt actions described in this section.

704.16-2. *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 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) *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.
- (d) *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.
- (e) *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.

### **704.17. 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.*

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Emergency Adopted - BC-06-30-08-C (Expired)  
Emergency Extended - BC-12-10-08-H (Expired)  
Permanently Adopted- BC-06-24-09-B  
Emergency Amended - BC-10-28-09-E  
Amended - BC-02-24-10-G  
Amended - BC-06-22-11-K  
Amended - BC-10-10-12-C  
Amended - BC-08-13-14-E  
Amended - BC-01-08-20-C