

# ONEIDA NATION PUBLIC MEETING NOTICE

**Thursday, October 17, 2019, 12:00 pm**

Norbert Hill Center-Business Committee Conference Room  
N7210 Seminary Rd., Oneida, Wisconsin

**Find Public Meeting Materials at**

[Oneida-nsn.gov/government/register/public meetings](http://Oneida-nsn.gov/government/register/public%20meetings)

**Send Public Comments to**

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920-869-4312



## CHILD SUPPORT LAW AMENDMENTS

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.

### The amendments to the Child Support law will:

1. Create a process to suspend or modify child support orders for parents incarcerated for one hundred and eighty (180) days or more.
2. Update 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.
3. Clarify how the Family Court may redact addresses and identifying information from court documents to ensure the safety of a party.
4. Make updates to how child support obligations are calculated in certain special circumstances involving shared-placement parents, split-placement parents, and a serial family obligor.
5. Repeal 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.
6. Make additional updates and clarify language throughout the law.


## PUBLIC COMMENTS PERIOD CLOSES THURSDAY, OCTOBER 24, 2019


During the Public Comment Period, anyone may submit written comments. Comments may be submitted to the Oneida Nation Secretary's Office or the Legislative Reference Office in person, by U.S. mail, interoffice mail, or e-mail.

### PROVIDING EFFECTIVE PUBLIC COMMENTS

Providing public comment is an important way to make your voice heard in decision making. Public comments can strengthen a decision or provide different perspectives. The Legislative Operating Committee wants to hear from you!



 **READ THE PUBLIC MEETING MATERIALS:** Before you provide comments familiarize yourself with the legislation. A public meeting packet is made for every public meeting and they include 1) a notice with the date, time, location, 2) a draft of the proposed legislation, and 3) a plain language review of the legislation and its impact on the Oneida Nation.

 **PREPARE YOUR COMMENTS:** When you are familiar with the legislation, start to prepare comments. The LOC is responsible for reviewing every comment received. To get your message across effectively, frame your comment clearly and concisely. Here is an example of how to create an effective comment:

Least Effective Comment	More Effective Comment	Most Effective Comment
This law isn't fair for parents in the community.	We need better enforcement for those parents who do not pay their child support.	Section 704.15-3(a)(1) should be amended to allow money to be seized from an account that has less than \$500 dollars.



**shakoti?nukú·lale? latiksashúha?**  
*They watch over the children*  
**AMENDMENTS TO CHILD SUPPORT LAW**  
**LEGISLATIVE ANALYSIS**

**SECTION 1. EXECUTIVE SUMMARY**

<b>REQUESTER:</b> Oneida Child Support Agency	<b>SPONSOR:</b> David P. Jordan	<b>DRAFTER:</b> Clorissa N. Santiago	<b>ANALYST:</b> Brandon Wisneski
<b>Intent of the Amendments</b>	<p>To create a process to suspend or modify child support orders for parents incarcerated for one hundred and eighty (180) days or more;</p> <p>To update notice requirements and timelines for initiating an action by the Agency, sending letters of noncompliance, sending notice of delinquency, sending notice of enforcement action, and sending income withholding orders;</p> <p>To clarify how the Family Court may redact addresses and identifying information from court documents to ensure safety of a party;</p> <p>To make updates to how child support obligations are calculated in certain special circumstances, such as:</p> <ul style="list-style-type: none"> <li>▪ updating how overnights and equivalent care are calculated for shared-placement parents;</li> <li>▪ updating the formula for calculating child support obligations of split-placement parents;</li> <li>▪ updating the date when legal obligation for child support is incurred for a non-marital child of a serial family obligor;</li> </ul> <p>To update what constitutes a “substantial change in circumstance” that warrants a modification of a child support order;</p> <p>To repeal Child Support Rule #1 Deviation from Child Support and Rule #2 Enforcement Tools and move the contents of the rules into the body of the law itself;</p> <p>To make additional updates and clarify language throughout the law.</p>		
<b>Purpose</b>	<p>The purpose of this law is to establish the legal responsibility of parents to provide financially for their children’s general well-being; 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 efficiency of child support establishment and enforcement [7 O.C. 704.1-1].</p>		
<b>Affected Entities</b>	<p>Oneida Child Support Agency, Oneida Family Court, Oneida Court of Appeals, Oneida license-issuing agencies such as Oneida Licensing and Oneida Conservation, and any individuals with child support cases that fall under the jurisdiction of the Oneida Family Court [7 O.C. 704.4].</p>		
<b>Public Meeting</b>	<p>A public meeting has not yet been held.</p>		
<b>Fiscal Impact</b>	<p>A fiscal impact statement prepared in accordance with the Legislative Procedures Act has not yet been requested.</p>		

### What Is Child Support?

“When parents separate, they still have shared rights and responsibilities as to their children. The most basic of these responsibilities is supporting their children so they have food, clothing, shelter and health care. Child support is a payment made by one parent to another for the support of a child. The amount of the payment is based on a percentage, determined by law, of the paying parent’s income.” *Source: Oneida Child Support Agency FAQ.*

“Child support is the financial support paid by parents to support a child or children of whom they do not have full custody. Child support can be entered into voluntarily, by court order or by an administrative agency (the process depends on the state or tribe). The noncustodial parent or obligor—the parent who does not have primary care, custody, or control of the child or children—often has an obligation to the custodial parent or obligee—the parent who has primary care, custody and control of the child or children.” *Source: National Association of State Legislatures (NCSL).*

## SECTION 2. LEGISLATIVE DEVELOPMENT

- A. The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 gave tribal nations the authority to establish child support agencies. Wisconsin (WI) Statute 801.54 allows WI circuit courts to transfer civil actions to tribal courts in matters where tribal nations have concurrent jurisdiction, such as child support cases.
- B. The Oneida Child Support Agency was established by the Oneida Business Committee on June 20, 2007. Oneida Nation’s application for a child support services grant was approved by the U.S. Department of Health and Human Services on April 4, 2008.
- C. The Oneida Nation’s Child Support law was first adopted by emergency amendment on June 30, 2008 and permanently adopted on June 24, 2009 by the Oneida Business Committee. It was most recently amended on August 13, 2014.
- D. At the end of 2008, the Oneida Child Support Agency had 482 cases. As of 2018, the Oneida Child Support Agency now handles over 3,050 cases and has completed case transfers from Brown and Outagamie counties.
- E. On February 28, 2018, the Oneida Child Support Agency submitted a request to amend the Oneida Child Support law. The LOC added the Child Support Law amendments to the Active Files List on March 7, 2018. Since that time, the LOC has worked with Child Support Agency to review the law and develop potential amendments.

## SECTION 3. CONSULTATION AND OUTREACH

- A. Representatives from the following departments or entities participated in the development of this law and legislative analysis: Oneida Child Support Agency, Oneida Law Office, Oneida Police Department, and Oneida Judiciary Family Court.
- B. The following laws were reviewed in the drafting of this analysis: Administrative Rulemaking law; Paternity law; Per Capita law; Oneida Judiciary Rules of Civil Procedure; Rules of Appellate Procedure; Workers Compensation law; Garnishment law; Family Court law; Family Court Rules; Per Capita law; Children’s Code; Divorce, Annulment and Legal Separation; Child Custody, Placement and Visitation law. In addition, the following laws from other tribal nations and the state of Wisconsin were reviewed:
  - Ho Chunk Nation - Child Support Code 4HCC7
  - Forest County Potawatomi - Child Support Law
  - Lac Du Flambeau - Child Support Law Ch 31

- Menominee Nation – Financial Support of Children Law
  - Stockbridge Munsee Child Support Law
  - White Earth Child Support Act
  - State of Wisconsin Child Support Administrative Enforcement – Chapters DCF 150 & 152.
- C. In addition, the following documents or articles were reviewed in the drafting of this analysis:
- Child Support Enforcement: Tribal Programs – Congressional Research Service Report. July 5, 2016.
  - Final Rule: Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, Federal Register, Volume 81, Number 244. December 20, 2016.
  - Child Support Final Rule Fact Sheet: Flexibility, Efficiency and Modernization in Child Support Enforcement Programs. Office of Child Support Enforcement, Administration for Children and Families, Dept. of Health and Human Services. January 5, 2017. DCL-17-01.

## **SECTION 4. PROCESS**

- A. Thus far, amendments to this law have followed the process set forth in the Legislative Procedures Act (LPA).
- B. The law was added to the Active Files List on March 7, 2018.
- C. At the time this legislative analysis was developed, a total of twenty-six (26) work meetings were held regarding the development of this law and legislative analysis:
- April 5, 2018: Work meeting with Child Support.
  - April 18, 2018: Work meeting with LOC.
  - May 17, 2018: Work meeting with Child Support.
  - June 8, 2018: Work meeting with Child Support.
  - June 22, 2018: Work meeting with Child Support.
  - July 13, 2018: Work meeting with Child Support.
  - August 9, 2018: Work meeting with Child Support, Family Court and Oneida Police Department.
  - August 17, 2018: Work meeting with Child Support.
  - September 18, 2018: Work meeting with Child Support.
  - October 12, 2018: Work meeting with Child Support.
  - October 26, 2018: Work meeting with Child Support.
  - October 31, 2018: Work meeting with LOC and Child Support.
  - November 9, 2018: Work meeting with Child Support.
  - December 6, 2018: Work meeting with Child Support.
  - December 10, 2018: Work meeting with Child Support and Oneida Police Department.
  - December 19, 2018: Work meeting with LOC.
  - January 4, 2019: Work meeting with Child Support.
  - February 1, 2019: Work meeting with Child Support.
  - March 3, 2019: Work meeting with Child Support.
  - April 4, 2019: Work meeting with Child Support.
  - April 30, 2019: Work meeting with Child Support.
  - May 16, 2019: Work meeting with Child Support & Law Office.
  - July 17, 2019: Work meeting with LOC.
  - July 18, 2019: Work meeting with LOC.
  - July 25, 2019: Work meeting with LOC.
  - August 21, 2019: Work meeting with LOC and Child Support.

## SECTION 5. CONTENTS OF THE LEGISLATION

*The following provides a summary of the changes proposed in the amendments to the Child Support Law:*

- A. *Moving Child Support Rules into the Law.*** The Child Support Law currently includes two (2) rules: Rule #1 Deviation from Child Support and Rule #2 Enforcement Tools. Both rules became effective June 24, 2009, prior the adoption of the Nation's Administrative Rulemaking law [1 O.C. 106]. The proposed amendments delete the rules and move the contents of both Rule #1 and Rule #2 into the body of the law itself.
- *Rule #1 Deviation from Child Support.* The information from Rule #1 Deviation from Child Support, unless otherwise noted in this analysis, has been moved to the following sections:
    - 704.7 Determining Child Support Obligation
    - 704.8 Determining the Child Support Obligation in Special Circumstances
    - 704.9 Child Support Order
  - *Rule #2 Enforcement Tools.* The information from Rule #2 Enforcement Tools, unless otherwise noted in this analysis, has been moved to the following sections:
    - 704.12 Compliance Plan
    - 704.13 Enforcement of an Order
    - 704.14 Alternative Payment Plans
    - 704.15 Administrative Enforcement Action
    - 704.16 Family Court Enforcement Action
  - *Deleted Examples.* Rule #1 contained example calculations and scenarios to illustrate how to determine child support in special circumstances. These examples have been deleted. Such examples could be provided in a separate document or worksheet by the Agency.
- B. *Notice for Initiation of Action by Oneida Child Support Agency.***
- *Requesting Services.* When the Oneida Child Support Agency receives an application or referral for services, the Agency is required to send notice to the non-custodial parent. The non-custodial parent is the parent who does not hold primary care, custody or control of the child.
  - *Current Notice Requirements.* Within five (5) business days of receiving a referral or application, the Agency is currently required to send two (2) letters to the non-custodial parent before initiating a hearing in the Family Court. The purpose of the letters is to request information and attempt to negotiate a stipulation, or voluntary agreement, between the parents. If the non-custodial parent does not respond to the letters, then the Agency will initiate a hearing in the Family Court.
  - *Changes to Notice Requirements.* [7 O.C. 704.5-2].
    - *Meeting with Custodial Parent Prior to Sending Notice.* The Agency will now be required to meet with the custodial parent (the parent who has primary custody of the child) within thirty (30) days of receiving a referral or application. Only after meeting with the custodial parent will the Agency send the notice letter to the non-custodial parent.
      - *Effect.* This change reflects the Agency's current practice. The Agency reports that most child support cases begin as referrals from other agencies rather than an application from the custodial parent. The Agency reports that meeting with the custodial parent first ensures that the Agency has the information it needs before contacting the non-custodial parent and/or initiating an action.
    - *Deadline for Agency to Send Letter.* The Agency will now have seven (7) business days rather than five (5) business days to send the Letter of Request for Support and Financial Disclosure form to the non-custodial parent.
    - *Number of Letters.* Rather than sending two (2) letters, the Agency is now only required to send one (1) letter before initiating a hearing. This will allow for child support hearings to be scheduled more quickly. Rather than waiting at least fifteen (15) days as the law currently requires, the Agency can now request a hearing after ten (10) days.

Chart 1. Current Notice Requirements – Initiating an Action by Child Support Agency.

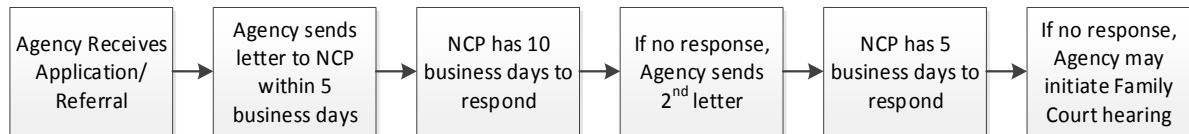
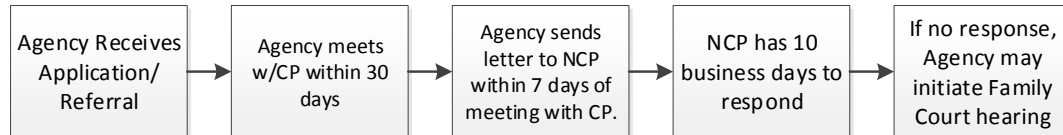


Chart 2. Proposed Notice Requirements – Initiating an Action by Child Support Agency.



\*CP = Custodial Parent. NCP = Non-Custodial Parent.

**C. Requirements of the Petition.** If the parents do not enter into a voluntary agreement, then a petition to establish child support may be filed with the Family Court. Currently, the petition only requires the name, date of birth and address of the petitioner and respondent and a separate form with the child's identifying information. These new amendments require more detailed information to be included on the petition. This was added at the request of the Child Support Agency to reflect current petition forms [7 O.C. 704.5-5(a)].

- **New Information Required on Petition:** Name, date of birth, address and tribal affiliation of the petitioner and respondent; with whom the child currently resides; when and how paternity was established; information regarding other children of the parties and the child support obligation for those children; information about any state or tribal benefits either party receives; whether any other action to determine child support is pending or has been entered by another court; financial information such as the parties' income; the relief the petitioner is requesting; and a separate confidential form that includes the child's identifying information.

**D. Nondisclosure of Information in Protected Cases.** A new provision has been added giving the Family Court judge authority to limit access to the child or party's address or other identifying information [7 O.C. 704.5-5(b)(1)(B)].

- **Limiting Address or Identifying Information.** The Family Court may limit disclosure if the health, safety or liberty of a child or party would be unreasonably put at risk. This change was made to address safety concerns for individuals who do not wish to have their address included in court documents.

**E. Child Support Hearings.**

- **Factual Determinations at Hearings.** Currently, factual determinations made at child support hearings are limited to "the income and expense information necessary to determine the appropriate level of support" in accordance with the law. These amendments remove this limitation. Now, factual determinations at child support hearings shall include, "but not be limited to," income and expense information [7 O.C. 704.6-1].

- **Effect.** The Family Court may make factual determinations on issues other than income and expenses during a Child Support hearing. This is an expansion of the Family Court's authority during these particular hearings.

- **Closed Hearings and Records for Child Support Cases.** The current Child Support law already states that Child Support Hearings in the Family Court are closed to anyone other than those necessary to the action or proceeding. A new provision has been added stating that the records of child support proceedings will also be kept confidential [7 O.C. 704.6-6].

- *Confidential Case Records.* Records may only be viewed by the parties, legal guardians, the parties' attorney or advocate, guardian ad litem, Judges and staff assigned to the case, and those with written authorization from a party to view the material in the record.
  - *Existing Law.* The Nation's Rules of Civil Procedure already state: "At the request of any party or on its own motion, the Court may seal any part of a case file, preventing public disclosure. A file or part of a file may only be sealed where the safety of a party, witness or other individual may be in jeopardy if the material is not placed under seal" [8 O.C. 803.32-2(b)(3)]. Now, rather than being optional, the court will automatically keep records of child support cases confidential.
- F. Authority of Family Court to Order Parent to Search for a Job or Participate in Job Training Program.** Typically, a child support order is based on a percentage of a parent's income. When a parent's income is less than their earning capacity or unknown, the court may "impute," or "estimate" the parent's earning capacity based on available evidence.
- *Order Parent to Search for Job or Participate in Job Training.* For these cases, a new provision has been added allowing the Family Court to order a parent to search for a job or participate in a work experience or job training program [7 O.C. 704.7-4(b)].
  - *Comparison to WI.* This language is similar to updates made to Wisconsin (WI) regulations utilized by county child support agencies. However, unlike WI, Oneida's Family Court may order a job search or job training program "in addition to" imputed income, rather than as "an alternative" to.
- G. Formula for Determining Child Support Obligations When the Child Receives Social Security Benefits.** The Nation's current Child Support law includes a provision to account for a child's social security benefits when calculating a parent's child support obligation.
- *Updates to Formula.* These amendments add a new formula to specifically address shared-placement parents whose child receives social security benefits. The intent of this new formula is to ensure that Child Support orders accurately take this income into account in these unique cases [7 O.C. 704.7-6(a)].
  - *Comparison to WI.* This updated formula mirrors recent updates to Wisconsin regulations.
- H. Claiming Children for Tax Purposes.** A provision from Child Support Rule #1 regarding the "dependency exemption" for federal tax purposes [1.3-7] is deleted. The dependency exemption was eliminated by Congress as a result of the Tax Cuts and Jobs Act of 2017, also known as the "tax reform bill." In its place, these amendments add a new provision regarding claiming children for tax purposes [7 O.C. 704.7-7].
- *New provision.* This new provision gives the Family Court authority to address who may claim a child for tax purposes. It also gives the Family Court authority to accept a stipulation entered into by the parties regarding children and taxes. This change was recommended by the Family Court and Child Support Agency Attorney.
- I. Determining Child Support for Serial Family Obligor.** When one parent has multiple children in separate families, that parent is known as a "serial family obligor." In these cases, the court must determine the order of the parent's child support obligations, because the order determines how much support is owed for each child.
- *New Date for Non-Marital Children.* For a non-marital child, the legal obligation for child support will now be incurred on the date that paternity was legally established rather than the date that the child support order is entered [7 O.C. 704.8-1(b)(2)]. This change was recommended by the Agency to reflect their current practice and mirror Wisconsin regulations.
- J. Determining Child Support for Shared-Placement Parents.**
- *Changes to Overnights and Equivalent Care.* At the recommendation of the Agency, changes have been made to how overnights and periods of equivalent care calculated. These changes now give more consideration to periods of time a parent cares for the child that is not technically an overnight, but where the court determines that a parent is still assuming basic support costs that are equivalent

to what a parent would spend to care for that child overnight. These changes are consistent with updates to Wisconsin regulations [7 O.C. 704.3-1(n) and 704.8-2(a)(1)].

- *Effect.* The number of overnights and periods of equivalent care are important in determining the percentage of time each parent is caring for the child. That information is one of the factors used by the Court to determine the amount of child support ordered for shared placement parents.
- *Change in Variable Costs.* A new provision has been added that states that a change in the child's variable costs will not, in and of itself, be considered a "substantial change in circumstances" to justify a modification of a child support order. These changes are consistent with updates to Wisconsin regulations [7 O.C. 704.8-2(b)(7)].
  - *What are Variable Costs?* "Variable costs" are the reasonable costs above basic support costs incurred by or on behalf of a child, such as the cost of child care, tuition, special needs or other activities [7 O.C. 704.3(mm)].
  - *Effect.* In other words, a change to a child's variable costs (such as child care) will not, by itself, justify modifying the amount of a child support order. Ultimately, the decision as to whether a change in circumstances justify modification of an order will be up to the Family Court.

**K. *Determining Child Support Obligations of Split-Placement Parents.*** The formula for calculating child support obligation for a split-placement parent has been clarified. The split-placement formula may be applied when parents have two (2) or more children and each parent has placement of at least one, but not all, of the children.

- *Change to Formula.* The Agency reported that the wording of the formula in the current rule [1.4-3] is unclear, resulting in different interpretations of how to calculate support in these cases. These changes were recommended by the Agency to clarify the formula so that support is calculated correctly and uniformly. [7 O.C. 704.8-3(b)].

**L. *Expression of Ordered Support.*** The Child Support amount must be expressed as a fixed sum. This means that the child support order must include the specific dollar amount the parent is required to pay. [7 O.C. 704.9-1].

- *Option to Agree to Percentage Deleted.* Previously, parents had the option to agree to a percentage of the obligor's income instead of a specific dollar amount if both parties agreed through a stipulation. This option has been deleted. Oneida Child Support Agency reports that ordering a specific dollar amount is the standard practice for child support orders.
- *Modifying an Order.* If the fixed sum in the child support order needs to be modified due to a change in circumstances (for example, a change in income), the parties may request to modify the child support order in accordance with the process included in this law [7 O.C. 704.10].

**M. *How to Send Income-Withholding Orders.*** After an order to withhold income has been issued, the Child Support Agency is required to send a copy of the order to the obligor's payor (typically their employer) within three (3) business days. This notifies the payor to start withholding a portion of the obligor's income for child support.

- *Method for Sending Orders.* Previously, the law stated the order could be sent "by any business method acceptable to the payor" and that the order is binding upon notice through service by personal delivery or certified mail. Now the order can be sent "by mail, fax or electronic means." [7 O.C. 704.9-3(a)].
- *Comparison to Other Agencies.* Agencies in the state of Wisconsin send income withholding notices by mail, fax or through the Electronic Income Withholding system known as "e-IWO."

**N. *Non-Cash Payment Options.*** The current law states that non-cash payment options may be used to satisfy part or all of a child support order if both parties and the Family Court agree to allow non-cash payments. Examples of non-cash payments include clothing, groceries, child care, deer/venison, wood, transportation and skilled trades and services. The list of non-cash options has been updated to add "gift cards" at the recommendation of the Child Support Agency [7 O.C. 704.9-9(b)].



- 278       ▪ *Comparison.* The Agency reports that tribal nations, such as Oneida, have the option to issue non-  
279       cash support orders while county agencies in Wisconsin cannot.
- 280   **O. *Modification of Child Support Order.*** The language in this section has been clarified at the request of  
281   the Agency to clearly state when and how a modification of a child support order may occur. There are  
282   two ways that a Child Support order may be modified: [7 O.C. 704.10-2].
- 283       ▪ *Modification Sought by Agency.* Every two (2) years, the Oneida Child Support Agency will  
284       conduct a review of each child support order. If there is a substantial change in circumstances, the  
285       Agency will request an order from the Family Court to modify the child support order.
- 286           ○ *Comparison to WI.* WI Child Support agencies review child support orders every 33  
287           months. Oneida Child Support Agency reviews more often in an effort to ensure accurate  
288           child support orders.
- 289       ▪ *Modification Sought by Parties.* In addition to the two-year reviews automatically conducted by  
290       the Agency, either parent may file a motion for modification of a child support order at any time if  
291       there has been a substantial change in circumstances.
- 292   **P. *Substantial Change in Circumstance.*** In order to modify a child support order, there must be a  
293   “substantial change in circumstance.” The law includes several examples of what qualifies as a  
294   substantial change of circumstance, including a “significant change in finances” [7 O.C. 704.10-2].
- 295       ▪ *Change to “Significant Change in Finances” Definition.*
- 296           ○ *Current Definition.* The current law states that “a significant change in finances” that  
297           would lead to a change in child support is “more than fifteen percent (15%) or fifty dollars  
298           (\$50.00) per month.”
- 299           ○ *Proposed Definition.* In the amendments, this has been changed to “more than fifteen  
300           percent (15%) and fifty dollars (\$50.00) per month.” [704.10-2(b) and 704.3-1(nn)].
- 301       ▪ *Effect.* This change sets a higher threshold to modify a child support order. This means that small  
302       changes in finances that do not meet both thresholds will not justify changing a child support order.  
303       This change was requested by the Oneida Child Support Agency.
- 304   **Q. *Modification of Child Support for Incarcerated Parent.*** A new section regarding incarcerated parents  
305   has been added to the law. This new provision allows for the temporary suspension or modification of  
306   a child support order for an incarcerated parent who has been sentenced to at least one hundred and  
307   eighty (180) days in jail or prison. In other words, the incarcerated parent will not be required to make  
308   child support payments (or may make smaller child support payments) while they are serving time in  
309   jail or prison [7 O.C. 704.11].
- 310       ▪ ***Who Qualifies for Modification of Child Support Order?*** An obligor who has been sentenced to  
311       180 days or more in jail or prison. The obligor must notify the Agency of his or her incarceration.  
312       The obligor’s income level while incarcerated will determine whether the order is suspended or  
313       modified [7 O.C. 704.11-1]:
- 314           ○ *Temporary Suspension:* If the obligor has an income of less than \$200 dollars per month,  
315           the Child Support order may be temporarily suspended.
- 316           ○ *Temporary Modification:* If the obligor has an income of \$200 per month or more, the  
317           Child Support order may be temporarily modified based on the obligor’s income.
- 318               • *Example:* An obligor who continues to receive large per capita payments while  
319               incarcerated or who participates in a work release program.
- 320           ○ *Exceptions.* Child Support orders will not be suspended for individuals incarcerated for the  
321           following crimes, regardless of the length of sentence or monthly income:
- 322               • Felony failure to pay support;
- 323               • Crime against a child; or
- 324               • Crime against the obligee (i.e., the other parent).
- 325           ○ *Past Due Arrears.* Past due child support debt or arrears will not be suspended or reduced  
326           without stipulation (agreement) by both parties. In other words, incarceration does not wipe  
327           out any previous child support debt incurred before being sentenced to jail or prison.

## Why Modify Child Support Orders for Incarcerated Parents?

Incarcerated parents have little or no ability to earn income during their sentence. This results in accumulation of high levels of child support debt. The Office of Child Support Enforcement (OFCSE) reports that incarcerated parents leave prison with an average of \$20,000 or more in unpaid child support with no means to pay upon release. “This accumulated child support debt is rarely paid.”

The goal of child support is to increase consistent child support payments for children by setting realistic orders based on the parent’s ability to pay. OFCSE reports that “setting and modifying realistic child support obligations for incarcerated parents can improve their ability to provide consistent support for their children upon release from prison... Formerly incarcerated parents will be more likely to meet their child support obligations, benefitting their children by improving child support compliance and reliability.”

In addition, setting realistic child support orders may also reduce “underground employment activity” and increase contact between children and their parents. According to the Office of Child Support Enforcement, “children do not benefit when their parents engage in a cycle of nonpayment, underground income generation, and re-incarceration.”

On December 20, 2016, the OFCSE issued federal rule AT-16-06, “Flexibility, Efficiency, and Modernization in Child Support Enforcement Actions,” which created a standard process for the suspension or modification of child support orders for incarcerated parents. Since then, child support agencies and courts nationwide have implemented this rule.

The Oneida Family Court already modifies child support orders for incarcerated parents. The Oneida Child Support Agency supports incorporating this process into Oneida Nation’s Child Support Law. The intent of adding a standard process to the Nation’s Child Support law is to ensure that all incarcerated parents and impacted parties are treated uniformly.

*Source: Final Rule Fact Sheets: Flexibility, Efficiency and Modernization in Child Support Enforcement Programs. Office of Child Support Enforcement, Administration for Children and Families, U.S. Dept. of Health and Human Services. January 5, 2017. DCL-17-01. [https://www.acf.hhs.gov/sites/default/files/programs/css/fem\\_final\\_rule\\_incarceration.pdf](https://www.acf.hhs.gov/sites/default/files/programs/css/fem_final_rule_incarceration.pdf)*

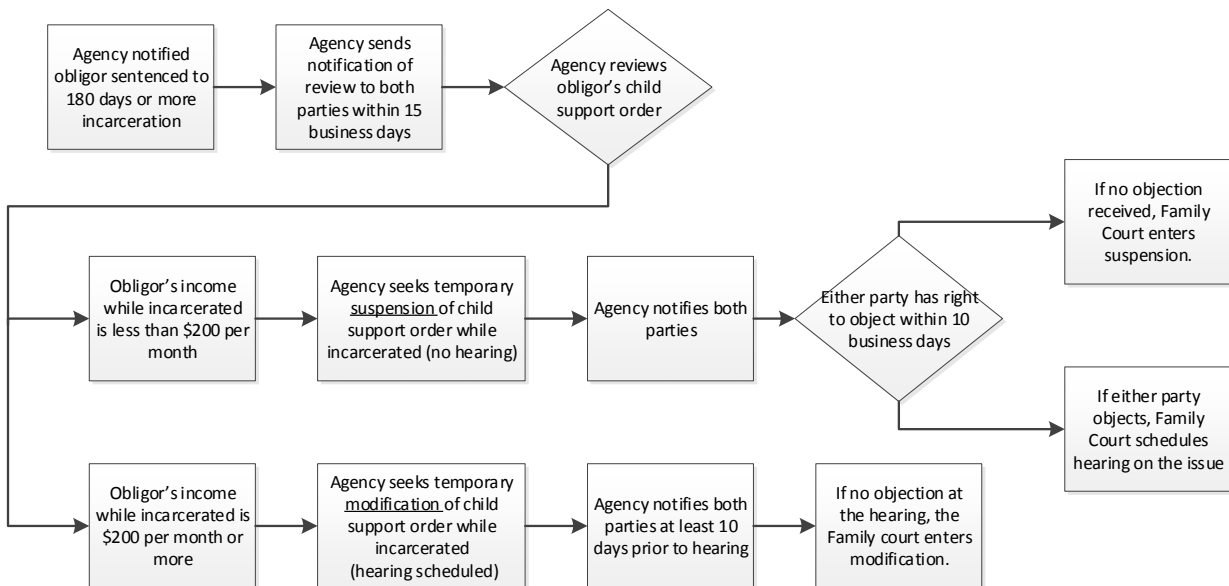
- **What is the Process to Suspend or Modify the Order?** The Agency will use the following process:
  - *Notice to Both Parties.* Within fifteen (15) business days of receiving verification of the obligor’s incarceration, the Agency will send notice to both parties informing them of the obligor’s right to have his or her child support obligation reviewed, and the Agency’s intent to review the order [7 O.C. 704.11-2].
  - *Agency Review.* The agency will review the incarcerated obligor’s child support order and determine whether the obligor’s monthly income is less than or greater than \$200 per month while incarcerated [7 O.C. 704.11-3].
  - *Suspension of Order by Agency.* If the obligor is sentenced to 180 days or greater with an income of less than \$200 per month, the Agency will file a motion and order to suspend with the Family Court without a request for a hearing [7 O.C. 704.11-4].
    - *Notice & Right to Object.* Notice shall be sent to all parties. Either party may file written objection with the Family Court within ten (10) business days. If no

objection is received, the Family Court will enter the order as proposed. If an objection is received, the Family Court will hold a hearing on the issue.

- *Modification of Order by Agency.* If the obligor is sentenced to 180 days or greater with an income of \$200 per month or more, the Agency will file a motion with the Family Court to modify the child support order [7 O.C. 704.11-5].

- *Notice & Right to Object.* The Family Court will schedule a hearing and the Agency will provide notice to all parties at least ten (10) business days prior to the hearing. be sent to all parties. If no objection is received at the hearing, the Family Court will enter the order as proposed.

Chart 3. Modifying or Suspending Child Support Order for Incarcerated Parent



- ***How is the Original Child Support Order Reinstated after the Incarcerated Parent is Released?*** Sixty (60) days after the obligor is released from jail or prison, the original child support order prior to the individual's incarceration will be reinstated by the Agency. [7 O.C. 704.11-8].
- ***What Happens if the Obligor's Probation or Extended Supervision is Revoked?*** If the obligor is released from incarceration and is later sentenced to another one hundred and eighty (180) days or more in jail or prison, the Agency will use the provisions of this section to determine if another suspension or modification of the child support order is appropriate [7 O.C. 704.11-9].

**R. Compliance Plans.** At any point when the Agency believes an obligor is or may become non-compliant with their child support payments, the Agency can work with the obligor to develop a compliance plan.

- *Purpose of Compliance Plan.* The purpose of a compliance plan is to address barriers to making regular payments so that a parent can once again make regular payments and meet their child support obligations [7 O.C. 704.12].
- *Components of Compliance Plan.* A compliance plan may include requirements to participate in employment and training programs, social service and mental health services, physical and learning disability programs, tribal traditions and customs, and family counseling. The agency may suspend enforcement actions if the party successfully completes the compliance plan. Failure to complete the compliance plan will result in enforcement action [7 O.C. 704.12-2(c)].

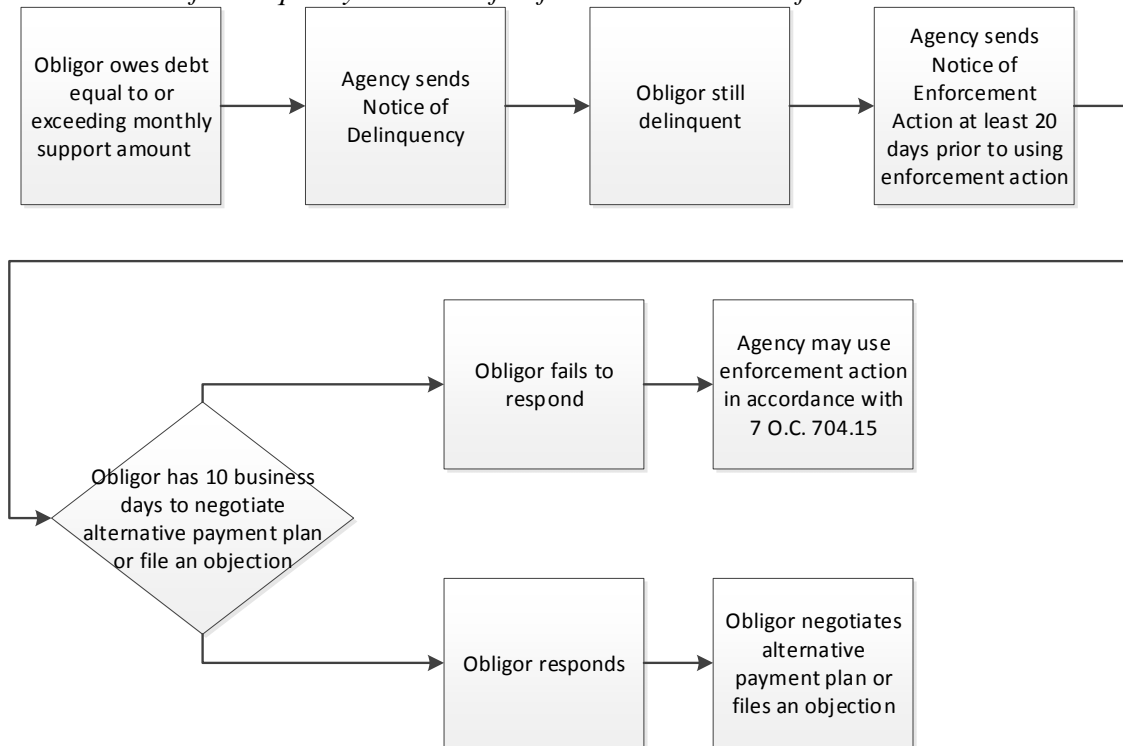
- *New Components.* These amendments add parenting programs and “any other programs deemed necessary” to the list of acceptable programs that can be included in a compliance plan. The intent is to increase flexibility for the Oneida Child Support Agency to address unique needs of each obligor.
- *Changes to Timelines and Notice Letters.* The following changes have been made to more accurately reflect the Child Support Agency’s practices regarding notices and timelines for initiating compliance plans [7 O.C. 704.12].

*Chart 4. Notice and Timelines for Compliance Plans.*

	<b>Current Law</b>	<b>Proposed Amendments</b>
<i>When is first letter sent?</i>	Within five (5) days of learning of the obligor’s failure to pay.	At any time deemed appropriate, but at least thirty (30) days prior to initiating any enforcement action.
<i>How many days to respond to first letter?</i>	Five (5) days.	Five (5) days.
<i>Agency required to send a 2<sup>nd</sup> letter?</i>	Yes, agency must send a 2 <sup>nd</sup> letter regarding the compliance plan.	No, agency not required to send a 2 <sup>nd</sup> letter regarding the compliance plan.

- S. *Notice of Delinquency and Notice of Enforcement.*** When an obligor fails to make their ordered child support payments, the Agency is required to send notices to the obligor informing them that they are delinquent. The Oneida Child Support Agency uses a state software system known as “KIDS” to monitor child support payments and arrears. This system allows the Agency to track and send notices to delinquent obligors. The Agency suggested the following changes to the notices to more accurately reflect their practices and ensure compliance:
- *Notice of Delinquency:* The Agency will send this notice to an obligor in the event that the obligor owes a debt equal to or exceeding the monthly amount. In other words, if the obligor is a month behind on their payments. This notice will include the total amount of the delinquency and the enforcement action that may be taken if they do not pay [7 O.C. 704.13-3].
  - *Notice of Enforcement Action.* The Agency will send this notice after the “Notice of Delinquency” and at least twenty (20) days prior to an enforcement action being used against an obligor. This notice is more detailed, and will include the total amount of the delinquency, the enforcement action that may be taken, notice that the obligor may request to negotiate an alternative payment plan within ten (10) business days in order to stay an enforcement action, and notice that the obligor has ten (10) business days to file an objection [7 O.C. 704.13-4].
  - *Use of Mail for Notices.* The Agency is required to send notices to the last known-mailing address provided by the obligor. If notice to that address is returned undeliverable, the Agency must send notice to the current employer’s mailing address provided by the obligor. If that notice is also returned, the Agency is then required to use all resources available to identify the obligor’s current mailing address before they can proceed with an enforcement action [7 O.C. 704.13-5].
    - *Time frame.* Currently, Agency must spend at least sixty (60) days attempting to identify an obligor’s current mailing address before they can proceed with an enforcement action [2.4-3 in Rule #2]. These amendments shorten this timeframe to thirty (30) days. This means that the Agency will be able to use enforcement actions more quickly in cases where the obligor’s address cannot be determined.

Chart 5. Notice of Delinquency & Notice of Enforcement Prior to Enforcement Action.



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

- *Obligors with Cases in Multiple Jurisdictions.* A provision in the law regarding obligors that negotiate alternative payment plans in other jurisdictions (i.e., other County or Tribal child support agencies) has been deleted. This provision informs the reader of requirements of other agencies. The Law Office advises that this is unnecessary within the law and can be incorporated into the Child Support Agency’s internal processes [2.9-10 in Rule #2].
- *Amount of Payment Required to Suspend Enforcement Action.* Currently, the law states that if an obligor makes a “full” arrear payment, an administrative enforcement action will be suspended. This has been changed to “an arrear payment agreeable to the Agency.” The Agency does not require a “full” arrear payment, as this may be tens of thousands of dollars. The Agency may suspend enforcement action in cases where partial payments are made and may work with obligors in arrears to establish alternative payment plans [7 O.C. 704.14-6(a)].

#### U. *Administrative Enforcement Actions.* The current Child Support law contains enforcement actions the Agency has the authority to use if the obligor is at least one (1) month delinquent in paying his or her child support obligations. These enforcement actions are listed below, with any changes noted: [7 O.C. 704.15].

- *Liens.* The Agency will place the obligor on the lien docket if the obligor owes a debt equal to or exceeding the monthly amount due or five hundred (\$500) dollars, whichever is greater [7 O.C. 704.15-2].
- *Seizure of Property.* The Agency has the authority to seizure property, including accounts and personal property. The Agency may initiate account seizure if the lien amount in the obligor’s case equal or exceeds 300% of the monthly amount due or one thousand dollars (\$1000), whichever is greater. The Agency may initiate seizure of personal property if the lien amount equals or exceeds 600% of the monthly amount due [7 O.C. 704.15-3].

- *Attachment of Per Capita Payments.* The Agency may initiate the attachment 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].
- *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 300% of the monthly amount due or one thousand dollars (\$1000), whichever is greater [7 O.C. 704.15-5].
  - *Types of licenses:* The types of licenses that the Agency may initiate suspension or denial of include, but are not limited to, vendor, professional, occupational, hunting, fishing, recreational and/or motor vehicle licenses.
  - *Change to License Suspension as Last Resort:* A provision stating that "suspension of an occupational and/or motor vehicle license shall be pursued only as a last resort" has been deleted [2-7(2)(a) in Rule #2]. This will give the Agency the ability to pursue license suspension more readily.
- *Lump-Sum Pension Payments, Judgments and Settlement 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 [7 O.C. 704.15-6].
- *Tax and Lottery Intercepts.* The Agency may coordinate with federal or state agencies to enforce a child support order through tax or lottery intercept [7 O.C. 704.15-7].
- *Passport Denial.* If a federal tax intercept is in place and the obligor owes \$2500 or more in arrears, an obligor may be denied a passport [7 O.C. 704.15-8].
  - *Change to Threshold.* The threshold for denying a passport has been lowered from \$5,000 to \$2,500 to be consistent with recent changes to this threshold by the federal government. This allows this enforcement tool to be used more readily.
- *Denial of State Issued Grants and Loans.*
  - *Deleted Provision.* A provision stating that Wisconsin state agencies may deny state-issued grants and loans has been deleted. The Law Office recommended deleting this item as it was unnecessary, as it is informing the reader of what the State of Wisconsin, not Oneida Nation, may do [2.5-6 in Rule #2].

**V. Family Court Enforcement Actions.** In addition to the administrative actions listed above, the current child Support Law also gives the Family Court authority to order the following enforcement actions. [7 O.C. 704.16].

- *Bonds and Other Guarantees.* The Family Court may require an obligor to provide a surety, bond or guarantee to secure the payment of arrears [7 O.C. 704.16-2].
- *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 [7 O.C. 704.16-3].

**W. Contempt.** An obligor who disobeys a lawful child support order shall be subject to punishment for contempt of court. The following enforcement actions already appear in the current law but have been moved under the "Contempt" section. The intent is to clarify that the obligor must first be found in contempt by the Family Court before proceeding with these particular enforcement actions:

- *Community Service.* The Family Court may order an obligor to perform community service [7 O.C. 704.16-4(a)].
- *Fines.* An obligor found in contempt of court may be fined no more than \$1,000 per act of contempt, not to exceed \$5,000 in total [7 O.C. 704.16-4(b)].
- *Incarceration.* The Family Court may order an obligor to be incarcerated. 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 [7 O.C. 704.16-4(c)].
  - *Current Practice.* The current law allows for the Family Court to order an obligor to be incarcerated. However, in practice, the Family Court has never sentenced an obligor to jail because the Oneida Nation has no jail and does not have agreements in place with other

jails to house individuals sentenced under this law. For more information see Section 9  
“Other Considerations.”

- *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. The Agency reports that criminal non-support is rarely used in Brown and Outagamie counties [7 O.C. 704.16-4(d)].

**X. Minor Drafting Changes.** Minor drafting and formatting changes have been made throughout the law for clarity.

## SECTION 6. RELATED LEGISLATION

**A. References to Other Laws.** The following laws of the Nation are referenced in the Child Support law. These amendments do not conflict with any of the referenced laws.

- *Per Capita law*. The Child Support Agency may initiate the attachment or/seizure of per capita payments of members of the Nation in accordance with the Per Capita law [7 O.C. 704.15-4].
- *Oneida Judiciary Rules of Civil Procedure*. 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 [7 O.C. 704.6-2].
- *Rules of Appellate Procedure*. A party may appeal a Family Court decision, other than the decision of the Family Court in regard to administrative enforcement action, 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 original decision of the Family Court [7 O.C. 704.18].

**B. Other Laws that Reference Child Support.** The following laws of the Nation reference child support. These amendments do not conflict with any of the referenced laws, except for one potential discrepancy in the Family Court law.

- *Family Court law*. The Family Court law states that proceedings of the Court shall be closed to the public, except that divorce, child support and post-divorce matters may be attended by members of the general public. However, in any case where the presiding Judge determines that there are safety or confidentiality concerns, the Judge may exclude from the proceedings all individuals not necessarily present as parties or witnesses [8 O.C. 806.4-3].
  - *Comparison to Child Support law*. The Family Court law states that child support matters may be attended by members of the general public, unless the presiding judge determines that there are safety or confidentiality concerns. However, the current Child Support law (and the proposed amendments) state that Child Support proceedings shall be closed to any person other than those necessary to the action or proceeding [7 O.C. 704.6-5 in current Child Support law]. The Family Court law was adopted by the OBC on May 8<sup>th</sup>, 2013, while the current Child Support law was adopted more recently, on August 13, 2014.
  - *Current Practice*. The Family Court reports that child support hearings are currently closed in accordance with the Child Support law.
  - *Conclusion*: In reviewing amendments to this law, the LOC has expressed that they wish to protect the privacy of matters involving children. Given the inconsistent language between the two laws, the LOC may wish to amend the Family Court law to match the hearing provisions in the Child Support law and the Family Court’s current practice. Since the Family Court law is not currently on the LOC’s Active Files List, the LOC could direct the Legislative Reference Office to make note of this discrepancy the next time the Family Court law comes up for amendments.
- *Family Court Rules*.
  - *Family Court Rule #5 – Paternity Procedure*. If genetic testing results establish an alleged father as the biological father, the Family Court may address the issue of Child Support at a final paternity hearing [8 O.C. 807].

- *Family Court Rule #12 – Foreign Child Support orders.* Requests, motions or petitions seeking recognition and enforcement of a foreign child support order is governed by this rule when filed under the Nation’s Child Support Law or Garnishment law. The rule outlines the process for sending notice of the filing, filing objections, requesting a hearing, and authenticating the foreign order [8 O.C. 807].
- *Workers Compensation Law.* Workers compensation awards are subject to child support income withholding and other remedies available for the support of a child support order. The maximum amount that may be withheld is one-half of the compensation award. [2 O.C. 203.7-4].
- *Garnishment Law.*
  - *Garnishment Amount.* In calculating the amount of the garnishment per pay period, the judge may not include amounts garnished pursuant to child support orders when calculating twenty (20%) of the debtor’s disposable earnings [2 O.C. 205.5-6(c)(1) and 205.6-4(a)(2)].
  - *Recognition and Enforcement of Child Support Orders.* The Judiciary shall recognize and enforce child support orders against any employee, provided that the order has been issued from a court of competent jurisdiction. [2 O.C. 204.7].
- *Paternity Law.* The Paternity law outlines the process to establish paternity of Oneida children and other children in order to protect the best interest of these children. The duties and responsibilities of the Child Support Agency in the establishment of paternity through order of the Oneida Family Court are outlined in the Paternity law. The Child Support Agency, when required by federal law, may file a petition requesting the court to establish paternity or other related orders. The Child Support Agency may also assist a party who is filing a petition to establish the paternity of a child [see 7 O.C. 703.6].
  - *Commencing a Custody Proceeding.* A child custody proceeding is commenced by a parent by filing a petition to: (a) seek custody of a child, (b) establish the paternity of a child; (c) establish a child support order...” [see 7 O.C. 705.6-1]
  - *Peacemaking and Mediation.* Child support shall not be considered during mediation unless child support is directly related to the legal custody or physical placement of the child and the parties agree, in writing, to consider child support. [see 7 O.C. 705.7-3(b)].
- *Per Capita Law.* Per capita payments may be attached for child support arrears ordered by a court of competent jurisdiction, such as the Oneida Family Court. The Per Capita law includes a process for how child support attachments are handled by the Agency and Trust Enrollment Department. [1 O.C. 123.4-9(a)(1) and 1 O.C. 123.4-9(c)].
- *Children’s Code.* At the time this analysis was drafted, the Nation’s Children’s Code was not scheduled to become effective until October 1, 2019.
  - *Indian Child Welfare Department Duties.* One of the duties of the Indian Child Welfare Department is to enter into memorandums of understanding and/or agreements with appropriate departments, including the Oneida Child Support Agency, in order to carry out the provisions of the Children’s Code. [7 O.C. 708.7-2(e)].
  - *Referrals to Oneida Child Support.* The Family Court or Indian Child Welfare Department may refer matters to the Oneida Child Support Agency at any time. [7 O.C. 708.13-3 & 13-4].
  - *Indian Child Welfare Disposition Report.* If the ICW Department recommends out-of-home placement, the ICW Department must include in its disposition report a recommendation as to whether the Family Court should establish child support obligation for the parents. [7 O.C. 708.21-2(b)].
  - *Termination of Parental Rights.* The Family Court may dismiss a petition if it finds the evidence does not warrant the termination of parental rights or if the Court finds that a parent is attempting to voluntarily terminate their parental rights for the sole purpose of avoiding a child support obligation. [7 O.C. 708.40-2(a)].
- *Divorce, Annulment and Legal Separation.*



- *Petitions*. Petitions for divorce, annulment or legal separation must state whether the parties have entered into any written agreement as to child support, and if so, the written agreement must be attached [7 O.C. 702.5-1(g)].
- *Legal Separation and Divorce*. After an action for an annulment, legal separation or divorce is initiated, the Family Court shall make any necessary temporary order concerning child support. Final orders concerning child support shall be made at the time the annulment, legal separation or divorce is granted. [7 O.C. 702.8-4].
- *Child Custody, Placement and Visitation*.
  - *Commencement of Proceeding*. A child custody proceeding may be commenced under the Child Custody, Placement and Visitation play by a parent filing a petition to seek custody of a child, establish the paternity of a child, or establish a child support order. [7 O.C. 705.6-1].
  - *Mediation*. If parties agree to mediation under the Child Custody, Placement and Visitation law, child support shall not be considered during mediation unless child support is directly related to legal custody or physical placement of the child and the parties agree, in writing, to consider child support. [7 O.C. 705.7-3(b)].

## SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS

- A. *New Rights and Privileges for Incarcerated Parents*. Parents sentenced to incarceration for greater than one hundred and eighty (180) days will now have the right to have their child support orders modified or suspended under certain circumstances. Parties have the right to object to modification or suspension of an order and request a hearing on the matter [7 O.C. 704.11].

## SECTION 8. ENFORCEMENT AND ACCOUNTABILITY

- A. *Enforcement Tools*. Under the current Child Support law, the Oneida Child Support Agency and Oneida Family Court have a number of administrative and judicial enforcement tools to enforce child support orders. These include:
- *Administrative (Agency) Enforcement Tools*: Liens, Seizure of Property including account seizure and personal property, attachment of per capita payments, license suspension, pension, judgment and settlement intercepts, tax and lottery intercepts and passport denial [7 O.C. 704.15].
  - *Judicial Enforcement Tools*: Bonds and other guarantees, claims against estates, contempt, community service, , incarceration and criminal non-support [7 O.C. 704.16].

## SECTION 9. OTHER CONSIDERATIONS

- A. *Child Support Collection Rates by Agency*. The following provides examples of collection rates for country and tribal child support agencies as of July 2018:

Chart 6. Child Support Collection Rates by Agency:

County or Tribal Agency	Court Cases with Current Support Ordered	Court Cases with Current Support Payments	Collection Rate
Oneida Nation	937	471	50.27%
Lac du Flambeau	256	78	30.47%
Menominee Nation	493	229	46.45%
Ashland County	622	375	60.29%
Brown County	6169	4545	73.67%
Calumet County	1019	828	81.26%

<b>Ho Chunk Nation</b>	145	130	89.66%
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Source: Oneida Child Support Agency, August 2018.

- B. *Repeal Child Support Rules.*** Since the two Child Support Rules have been incorporated into the body of the law itself, the two rules should be repealed upon adoption of these amendments as they will become redundant.
- *Recommendation:* The repeal of the rules should be included in the adopting resolution for these amendments.
- C. *Paternity Law.*** During the development of these amendments, the Oneida Child Support Agency noted that updates to the Nation’s Paternity law may be needed. The establishment of paternity is an important step in setting child support orders. The Nation’s Paternity law was last amended by the Oneida Business Committee in 2014.
- *Recommendation:* If the Oneida Child Support Agency wishes to request amendments to the Paternity law, it is recommended that the agency submit an Active Files Request for the LOC’s consideration.
- D. *Potential Enforcement Tools Considered and Not Added.*** During the development of these amendments, the LOC and Child Support Agency researched potential new enforcement tools to increase collection of child support orders. After reviewing the research and feedback from departments, the LOC decided not to move forward with adding these new tools to the law. The potential enforcement tools considered included:
- *Immobilization of Vehicles.* Authorizing the Family Court or Child Support Agency to direct Oneida Police Department to place a “boot” or “wheel lock” on an obligor’s vehicle to immobilize it. The obligor would then have to contact the Agency to make a payment or negotiate a plan to have the “boot” removed.
  - *“Pocket Pulls.”* Ordering an obligor to empty his or her pockets while in Oneida Nation’s court.
  - *“Till Taps.”* Seizing money from an obligor’s business if it is located on the Reservation.
- E. *Incarceration.*** The current Child Support law already allows the Family Court to sentence individuals to jail. However, this provision has never been used by the Family Court. This is because unlike Wisconsin counties or tribal nations like Menominee Nation, the Oneida Nation has no jail facilities.
- *Incarceration as Tool to Encourage Compliance.* While the goal of the Agency is not to send people to jail, the threat of jail time may motivate obligors to make payments in the most egregious of cases. For example, delinquent obligors can be ordered to make a partial payment or meet with the Child Support Agency to develop an alternative payment plan within a certain number of days or else be sentenced to jail [7 O.C. 704.16-4(c)]. The Agency reports that obligors with cases in the Oneida Child Support system are aware that, unlike other courts, Oneida Nation’s courts cannot send them to jail for failing to pay.
  - *Agreement for Housing Inmates:* The Family Court reports that it will not sentence individuals to jail without an agreement in place with another jail to house our inmates. Therefore, in order for the Family Court to utilize incarceration as an enforcement tool for delinquent child support cases, agreements must be developed between the Nation and Brown and/or Outagamie counties to utilize their jail facilities. The Oneida Business Committee established a work group, including Intergovernmental Affairs and the Law Office, to pursue potential agreements with these counties.
  - *Sentencing Guidelines.* In addition, the LOC may wish to add guidelines for the Family Court judges to follow regarding length of sentence and when incarceration may be used. For example, “incarceration shall only be used as a last resort” or “a sentence shall not to exceed \_\_\_\_ days.” A review of other child support laws indicates that sentencing guidelines are not typically included in child support laws themselves.
  - *Conclusion:* The Child Support Law already authorizes the use of incarceration for Child Support cases. However, this feature of the law cannot be used unless an agreement is developed to utilize

677 a jail. Whether to develop sentencing guidelines and direct a work team to pursue an agreement  
678 with the counties to utilize their jail(s) is a policy decision for the LOC and/or Oneida Business  
679 Committee. Such a directive could be included in the adopting resolution of this law or in a  
680 memorandum.

681

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

### ~~CHILD SUPPORT~~

shakoti'nukú·lale? latiksashúha?

*They watch over the children*

### CHILD SUPPORT

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

#### 704.1. Purpose and Policy

704.1-1. *Purpose.* The purposes of this law ~~are~~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 ~~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~~ 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, ~~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 ~~Tribe of~~ Nation ~~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~~ means the Oneida ~~Nation Tribe~~ Nation Child Support Agency established to administer and supervise the ~~Nation’s Tribe’s~~ Nation’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~~ means 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~~ 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.

~~(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~~ 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” ~~shall mean~~ 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” 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.

- (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” shall mean 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 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.
- (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” shall mean 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” shall mean 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 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.
- (dd) “Obligee” shall mean means the person or entity to whom child support is owed.
- (ee) “Obligor” shall mean 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 natural or adoptive parent of the child.
- (hh) “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.
- ~~(i) “Relative” means any person connected with a child by blood, marriage or adoption.~~
- (ii) “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.
- (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.
- (ll) “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 relebatn point.~~
- ~~(nnnn) “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.~~
- ~~(oooo) “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.~~
- ~~(oooo) “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.~~
- ~~(t) “Tribe” or “Tribal” shall mean the Oneida Tribe of Indians of Wisconsin.~~
- ~~(u) “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~~ the child that is enrolled or is eligible for enrollment with the ~~Tribe~~ 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.

704.4-23. 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 USC Section 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 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 (530)~~ business days of receiving a completed application for services or a referral, the Agency shall ~~send the non-~~ meet with the 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.

~~(b) 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:

(1a) a custodial parent;

(2b) a child's mother;

(3c) a child's father;

269 (4d) a child's guardian ad litem;  
270 (5e) a child's non-legally responsible relative; or  
271 (6f) a legally incompetent adult's guardian ad litem; or  
272 704.5-34. Voluntary Agreement Stipulation. (a) The parties may enter into a stipulation ~~voluntary~~  
273 ~~agreement~~ at any time as to the level of the child support obligation.  
274 (a) The Agency shall assist parties in reaching a stipulation ~~voluntary agreement~~ upon  
275 request or when the parties are referred to the Agency by an entitlement program. Parties  
276 may also submit a stipulation ~~voluntary agreement~~ to the Family Court for approval without  
277 the Agency's assistance.  
278 (b) In order for a stipulation ~~voluntary agreement~~ to be valid the following conditions shall  
279 be met:  
280 (1) The stipulation ~~agreement~~ shall be in writing, signed, and notarized;  
281 (2) If the parties deviate from the percentage standards, the stipulation ~~agreement~~  
282 shall state the amount of support that would have been ordered by the percentage  
283 standards and the reasons for deviating from the percentage standards;  
284 (3) All parties shall sign the stipulation ~~agreement~~ free of duress and coercion; and  
285 (4) The Family Court shall make written findings that the stipulation ~~agreement~~ is  
286 appropriate, using the criteria for deviating from standard percentages ~~under 704.7-~~  
287 ~~3~~ as a guideline, if applicable.  
288 (c) After the stipulation ~~agreement~~ is approved and filed by the Family Court, it shall have  
289 the same force and effect as an order issued by the Family Court. The obligation of the  
290 obligor to pay child support shall commence on the date specified in the stipulation  
291 ~~agreement~~, but no later than the date the agreement is approved and filed by the Family  
292 Court.  
293 704.5-45. Initiating a Hearing Petition to Establish Child Support. If the parties do not enter into  
294 a stipulation ~~voluntary agreement~~, then ~~any of the following may initiate an action for the~~  
295 ~~establishment of a petition to establish~~ child support ~~by filing a petition~~ may be filed with the  
296 Family Court.  
297 (a) ~~a custodial parent;~~  
298 (b) ~~a child's natural mother;~~  
299 (c) ~~a child's father;~~  
300 (d) ~~a child's guardian ad litem;~~  
301 (e) ~~a child's non-legally responsible relative;~~  
302 (f) ~~a legally incompetent adult's guardian ad litem; or~~  
303 (g) ~~the Agency when required by federal law.~~  
304 704.5-5. Petition. The petition to establish child support may be filed as a separate proceeding or  
305 in connection with a petition for child custody. ~~The petition to establish child support shall include~~  
306 ~~the following~~:  
307 (a) Requirements of the Petition. The petition to establish child support shall include the  
308 following:  
309 (1) The name, date of birth, and address, and tribal affiliation of the petitioner, and  
310 respondent, and child for whom support is requested;  
311 (+A) If the address of the respondent is unknown, other Tribal departments  
312 of the Nation shall cooperate with the Family Court, at the Family Court's  
313 request, to provide the Family Court with the respondent's address. Any  
314 such Family Court requests shall be made in such a way which protects the  
315 privacy rights of all parties and children who are involved in proceedings or  
316 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;

~~(b2)~~ Confidential Petition Addendum. The confidential petition addendum is a ~~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~~ 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.

~~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 ~~N-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 use~~ ask the Family Court to direct the Agency to provide use service by publication. ~~If the request is granted, the Agency~~ The publication shall be ~~publish the petition~~ in the Kalihwisaks Nation's newspaper or a newspaper of general circulation in the county of

residence of the respondent, if known. ~~The P~~publication shall be designated as a Legal Notice and any confidential information shall be redacted.

(~~1~~i) If service by publication is ~~used~~permitted and there is insufficient time for notice and answer pursuant to this ~~L~~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~~1) 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~~2) That a child support order may require the ~~respondent~~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);

(~~e~~3) That the ~~respondent's~~ 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~~4) That the ~~respondent's~~ person found to be the obligor's employer or others with evidence of ~~the respondent's~~ his or her income may be subpoenaed to provide the Family Court with records of his or her earnings;

(~~e~~5) That if the ~~respondent~~ person found to be the obligor is unemployed, ~~he or she will~~ it shall still be ~~imputed to be~~ determined that he or she is able to provide some degree of child support and an order of support ~~will~~ shall be calculated according to this law unless the Family Court makes written findings ordering otherwise; and

(~~f~~6) 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~~ be 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 his or her ~~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 ~~these~~ 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 704.7-38 shall be complied with.

704.6-~~45~~. *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-~~56~~. *Hearings and Records Closed.* Child ~~S~~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, T~~he 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. ~~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.

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.

- (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 ~~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 ~~that~~ 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 ~~eustodian-custodial parent~~ works outside the home, or the value of custodial services performed by the ~~eustodian-custodial parent~~ if the ~~eustodian-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) ~~An~~ 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. ~~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~~) *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~~) *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:

(aA) 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

(bB) 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 ~~under (4)~~.;

(7) 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.;

(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.

704.8-2. ~~1.4-2.~~ *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 ~~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.

(b) *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.~~

~~704.8-4. 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. Child Support Order Enforcement of Order**

~~704.9-1. 1-3-5- 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.~~

~~704.9-42. Interest on Arrears. The Tribe-Nation shall not charge a party an obligor ordered to pay child support interest on any arrears.~~

~~704.9-23. Income Wage Withholding. The child support order shall provide for immediate wage income 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:~~

~~(a1) 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~~

790 (2B) The identity of the obligor is mistaken.  
791 (b2) The parties reach a written agreement which provides for an alternative  
792 arrangement that is approved by the Family Court.  
793 (bd) No payor shall refuse to honor ~~a wage~~ an income withholding order executed pursuant  
794 to this law. A payor shall begin withholding income immediately after notice~~service~~ of a  
795 ~~wage~~ an income withholding order made pursuant to this law. Within five (5) business  
796 days after the payor pays the obligor, the payor shall send the amount withheld to the  
797 Agency-Wisconsin Support Collections Trust Fund.  
798 (ee) A payor shall be liable for one hundred percent (100%) of the child support order, or  
799 the amount of money that should have been withheld from the obligor's earnings,  
800 whichever is the lesser amount, if the payor:  
801 (1) Fails or refuses, after being noticed of~~served with~~ an income withholding order,  
802 to deduct or promptly remit the amounts of money required in the order; ~~or~~  
803 (2) Fails or refuses to submit an answer to the notice of ~~wage~~ income withholding  
804 after being noticed~~served~~; or  
805 (3) Is unwilling to comply with the other requirements of this law.  
806 (df) A payor shall not discharge from employment, refuse to employ, or otherwise take  
807 disciplinary action against any obligor solely because he or she is subject to ~~wage~~ income  
808 withholding.  
809 (1) When the Family Court finds that a payor has taken any of these actions, the  
810 payor shall be liable for a civil penalty. Any payor who violates any provision of  
811 this paragraph shall be liable in a civil action for reasonable damages suffered by  
812 an obligor as a result of the violation, and an obligor discharged or demoted in  
813 violation of this paragraph shall be entitled to be reinstated to his or her former  
814 position.  
815 (2) The statute of limitations for actions under this section shall be one (1) year.  
816 (eg) A payor who repeatedly fails to comply with ~~a wage~~ an income withholding order as  
817 required by this law may be subject to a fine, not to exceed five hundred dollars (\$500), or  
818 have its Oneida vendor license revoked or suspended, if applicable, until compliance with  
819 this law is assured.  
820 (1) The vendor license issuing agency shall comply with the Family Court order to  
821 revoke or suspend a vendor license.  
822 (fh) If ~~wage~~ income withholding is inapplicable, ineffective or insufficient to ensure  
823 payment of child support, the Family Court may require the obligor to establish an account  
824 for the purpose of transferring child support payments.  
825 (gi) The total amount withheld under an income withholding order shall not exceed the  
826 maximum amount permitted under section 303(b) of the Consumer Credit Protection Act  
827 (15 U.S.C. §1673(b)).  
828 (hj) Non-Indian off-reservation payors shall be subject to income withholding under 28  
829 U.S.C. §1738B.  
830 704.9-4.704.8-2. Conditions of the Order. The Family Court may require a party, or both parties,  
831 to use the services available to him or her to obtain and maintain regular employment and/or job  
832 training.  
833 704.9-5. Support Order Notice Requirements. Each order for child support shall include:  
834 (a) ~~a~~An order that the obligor and obligee notify the Agency of any change of address or  
835 name change within ten (10) business days of such change; and  
836 (b) ~~Each order for child support shall also include a~~ An order that the obligor notify the  
837 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.

704.9-6. 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. 4-3-6 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.

704.7-49-9. 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(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~~ 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 ~~an order 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~~ 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-~~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~~ 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 ~~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** ~~Full Faith and 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. 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. 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.

(c) 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.

704.12-2. If the Family Court conducts a hearing under this law, a party may, within thirty (30) calendar days after the date that the Family Court makes a decision, appeal that decision to the Court of Appeals of the Judiciary. The appellate body review shall be based on the record and the original decision of the Family Court.

### **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. ~~704.9-1.~~ 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 Rrefunding 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~~
- ~~(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;~~
- ~~(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. 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.

~~704.13-7. 2.4-5.~~ *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. 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.

~~704.14-2. 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.

(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  
(3e) 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. 2.5-1 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) 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.

(b) 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.

(c) 2.5-4 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) (a) Property subject to a lien includes personal property in which the obligor has a recorded ownership interest.

(e) Effect on a Good Faith Purchaser. ~~(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.

(f) 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).

(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;

~~(1A)~~ 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) ~~2.5-8~~ 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.



(a) ~~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:

(1A) 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.

(b) ~~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.~~ ~~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 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 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, 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 a~~ 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 ~~folloing~~ 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~~ 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.

704.17-2. 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 order.

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, be appealed to the Family Court. 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. 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 made the decision, appeal that decision to the Court of Appeals of the Judiciary. The appellate body review of the Court of Appeals shall be based on the record and the original decision of the Family Court.

*End.*

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-\_\_-\_\_-\_\_

#### **Rule CS-1**

#### **DEVIATION FROM CHILD SUPPORT PERCENTAGE STANDARDS**

<u>1.1. Introduction</u>	<u>1.3. Support Orders</u>
<u>1.2. Definitions</u>	<u>1.4. Determining the Child Support Obligation in</u>
	<u>Special Circumstances</u>

#### **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.

~~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.~~

~~(o) "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.~~

~~(p) "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 acknowledgement 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) (divorcee)~~
- ~~• 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.~~

- ~~The first legal obligation is subject to an existing monthly support order (divorcee) \$450.~~
- ~~Adjust the monthly income \$3000—450~~
- ~~First adjusted monthly income \$2550~~
- ~~Determine support for the second legal obligation (intact family)  $\$2550 \times .25$  \$637.50~~
- ~~Adjust the first adjusted monthly income \$2550—637.50~~
- ~~Second adjusted monthly income \$1912.50~~
- ~~Determine support for the third legal obligation (paternity)  $\$1912.50 \times .17$  \$ 325.12~~

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%

	Parent A	Parent B
1. Monthly income	\$2,000	\$3,000
2. Monthly income X percentage standard for two children	$\$2,000 \times 25\% = \$500$	$\$3,000 \times 25\% = \$750$
3. Amount in 2. X 150%.	$\$500 \times 150\% = \$750$	$\$750 \times 150\% = \$1,125$
4. Amount in 3. X the proportion of time that the child spends with the other parent	$\$750 \times 40\% = \$300$	$\$1,125 \times 60\% = \$675$
5. Offset	$\$675 - \$300 = \$375$	
6. Family Court also assigns responsibility for payment of the child's variable costs:	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.	

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  $\$3,000 \times 25\% = 750$
- Parent B's child support obligation is  $\$1,500 \times 17\% = 255$
- 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.~~

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## Rule CS-2

### ENFORCEMENT TOOLS

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2.1. Purpose and Effective Date	2.6. Seizure of Property
2.2 Definition	2.7. Other Enforcement Tools
2.3. Compliance Plan	2.8. Family Court Enforcement Action
2.4. Notice of Enforcement Actions	2.9. Alternative Payment Plans
2.5. Liens	

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#### **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 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.~~

## **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.~~  
~~(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.~~  
~~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~~



2120 ~~sentence is imposed, the Family Court may provide other conditions that require a certain~~  
2121 ~~amount of money be paid or action be taken for an obligor to avoid incarceration.~~

2122 ~~2.8-3. Criminal Non-Support. A criminal non-support action may be initiated, in the appropriate~~  
2123 ~~county, against an obligor who has the ability to pay child support and willfully or intentionally~~  
2124 ~~failed to pay and the obligor knew or reasonably should have known he or she was legally obligated~~  
2125 ~~to provide.~~

## 2126 **2.9. Alternative Payment Plans**

2127 ~~2.9-1. Applicability of Alternative Payment Plans. When an obligor is subject to administrative~~  
2128 ~~enforcement action, he or she may negotiate an alternative payment plan with the Agency.~~

2129 ~~2.9-2. Negotiation of an Alternative Payment Plan After Receiving Notice of an Enforcement~~  
2130 ~~Action.~~

2131 ~~(a) In order to negotiate an alternative payment plan, an obligor shall submit a written~~  
2132 ~~request to the Agency. A written request to negotiate an alternative payment plan received~~  
2133 ~~by the Agency within ten (10) business days after the date of notice shall stay any~~  
2134 ~~administrative enforcement action. If a written request to negotiate an alternative payment~~  
2135 ~~plan is received by the Agency more than ten (10) business days after the date of notice,~~  
2136 ~~administrative enforcement action may be taken, as long as the requirements of 2.9-3 and~~  
2137 ~~2.9-4 are met.~~

2138 ~~(b) An obligor may negotiate a plan with the Agency to have a license issued or renewed~~  
2139 ~~after it has been restricted, limited, suspended or refused.~~

2140 ~~(c) The obligor may submit a written request for a hearing on the reasonableness of the~~  
2141 ~~plan within ten (10) business days after the terms of the plan are agreed upon.~~

2142 ~~(d) If the Agency and the obligor are unable to reach agreement on the terms of a plan, a~~  
2143 ~~hearing may be conducted. The Family Court may order a plan by setting payments in the~~  
2144 ~~amounts and at the times it considers reasonable.~~

2145 ~~2.9-3. Staying Administrative Enforcement Actions. Administrative enforcement actions shall be~~  
2146 ~~stayed by the Agency while the obligor and the Agency are negotiating a plan, or, if a hearing is~~  
2147 ~~requested, until the Family Court determination has been made. To stay an administrative~~  
2148 ~~enforcement action means the following:~~

2149 ~~(a) The obligor shall not be certified for denial, nonrenewal, restriction, or suspension of~~  
2150 ~~professional, occupational, fishing, recreational, motor vehicle and/or Oneida issued~~  
2151 ~~licenses.~~

2152 ~~(b) Any frozen financial accounts shall remain frozen and shall not be seized.~~

2153 ~~(c) Personal property that has been seized shall not be sold.~~

2154 ~~2.9-4. Suspension of Administrative Enforcement Actions.~~

2155 ~~(a) When a plan has been negotiated between the obligor and the Agency, or the Family~~  
2156 ~~Court has determined that a plan is reasonable or has ordered a plan, the Agency shall~~  
2157 ~~suspend administrative enforcement actions as long as the obligor complies with the plan.~~

2158 ~~(b) If an obligor makes a full arrears payment, the administrative enforcement action shall~~  
2159 ~~be suspended.~~

2160 ~~2.9-5. Proceeding with Administrative Enforcement Actions. The Agency may continue with the~~  
2161 ~~administrative enforcement action if:~~

2162 ~~(a) the obligor and the Agency are unable to negotiate a plan.~~

2163 ~~(b) the Family Court determines that the plan is not reasonable.~~

2164 ~~(c) the Family Court does not order a plan.~~

2165 ~~2.9-6. Disclosure of Income and Assets. The request to negotiate a plan shall include an agreement~~  
2166 ~~by the obligor to provide the Agency with a full disclosure of income and assets available. The~~  
2167

~~obligor shall provide complete income and assets 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.~~

~~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 02-23-11 E~~

~~Amended BC 06-22-11 K~~

~~Amended BC 10-10-12 C~~

~~Amended BC 08-13-14 E~~



**Title 7. Children, Elders and Family - Chapter 704**  
**shakoti'nukú'lale? latiksashúha?**  
*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 Enforcement 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

**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.

(ll) “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 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.
- (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.



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

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

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

277 (2) With whom the child currently resides;

278 (3) When and how paternity was established;

279 (4) Name and date of birth of other children of the parties, and the child support  
280 obligation for those children, if applicable;

281 (5) Whether either party is receiving state or tribal benefits, and if so, what benefits;

282 (6) Whether any other action to determine child support has been commenced or  
283 is pending in a court of another jurisdiction and whether a child support order has  
284 been entered by another court;

285 (7) Financial information such as the parties' income;

286 (8) The relief the petitioner is requesting, which shall include, but is not limited to,  
287 establishment of support, request for support back to date of filing, and/or any other  
288 relief the court may deem just and equitable;

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

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

301 (c) *Hearing Date.* Upon receipt of a petition, the Family Court shall schedule a hearing to  
302 determine child support to be held at a time after the filing of the petition and consistent  
303 with the manner of service.

304 (d) *Summons.* All parties shall be notified of the petition and of all hearings, and shall be  
305 given an opportunity to be heard.

306 (1) *Service of the Summons.* The summons, which notices the initiation of an  
307 action, shall be served by certified mail (return receipt requested) or in person  
308 within fifteen (15) calendar days after the petition is filed with the Family Court.  
309 The summons shall include the Family Court clerk's return address, with a notice  
310 to file an answer to that address. Any notice after the summons shall be served by  
311 first-class mail to the recently verified last-known address of the party.

312 (A) *Certified mail.* Certified mail sent to a party's most recently verified  
313 last-known address but returned because it was unclaimed or refused shall  
314 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.

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.

(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

925 (b) The enforcement action that may be taken as a result of the delinquency.  
926 704.13-4. *Notice to the Obligor of Enforcement Action.* After the obligor has been noticed of his  
927 or her delinquency, and at least twenty (20) days prior to an enforcement being used against an  
928 obligor, the Agency shall send a notice of enforcement action to the obligor.

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

- 930 (1) The total amount of the delinquency;  
931 (2) The enforcement action that may be taken as a result of the delinquency;  
932 (3) The obligor may request, in writing to the Agency, to negotiate an alternative  
933 payment plan with the Agency within ten (10) business days after the notice in order  
934 to stay any enforcement action;  
935 (4) The obligor has ten (10) business days after the notice of enforcement action to  
936 file an objection with the Agency presenting good cause why an arrears payment  
937 or other enforcement action should not be implemented. The only allowable  
938 objections are:

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

940 (B) The identity of the obligor is mistaken.

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

- 943 (1) the enforcement action shall be taken; and/or  
944 (2) an income withholding order, or revised order if one is already in place, shall  
945 be imposed on the payor. No more than an additional twenty percent (20%) of the  
946 current support payment order can be withheld to satisfy the delinquency provided  
947 that the total amount withheld does not exceed forty percent (40%) of the obligor's  
948 monthly income.

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

951 704.13-5. *Use of Mail for Notices.* The Agency shall send notices related to the delinquency of  
952 an obligor and enforcement of a child support order by mail to the last-known mailing address  
953 provided by the obligor.

954 (a) If the notice is returned, the Agency shall send notice to the obligor using the current  
955 employer mailing address provided by the obligor.

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

959 (c) If those resources are used for a period of thirty (30) days and a verified mailing address  
960 has not been identified, the Agency may proceed with the administrative enforcement  
961 action.

962 704.13-6. *Notice to the Obligee of Enforcement Proceedings.* The Agency shall provide written  
963 notice to the obligee when an enforcement action has been initiated against the obligor or when  
964 the obligor requests a hearing and the hearing has been scheduled. The notice to the obligee shall  
965 be sent at the same time notice is sent to the obligor.

966 704.13-7. *Notice to Individuals Other Than the Obligor with a Recorded Ownership Interest in*  
967 *Property.* The Agency shall provide notice related to the seizure of property to any individual,  
968 other than the obligor, with a recorded ownership interest in property subject to seizure. The  
969 individual may request a hearing for a determination of the proportion of the value of the property  
970 that is attributable to his or her net contribution to the property. The hearing shall be requested  
971 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, 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.

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.

(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.



1112 (4) The Agency may proceed with the lien if:

1113 (A) the obligor does not request a meeting with the Agency or provide a  
1114 statement of alleged error within twenty (20) days after receiving the  
1115 financial records;

1116 (B) no errors are found in the financial records of the case; or

1117 (C) the arrears exceed the required threshold amount after any errors in the  
1118 financial records are corrected.

1119 704.15-3. *Seizure of Property*. The Agency shall have the authority to seize property, whether an  
1120 account or personal property, of an obligor. The Agency shall presume that an obligor's equity or  
1121 ownership in the property is an equal pro-rata share of the equity or ownership based on the number  
1122 of individuals with a recorded ownership interest in the property.

1123 (a) *Account Seizure*. Once a lien is placed against an obligor, the Agency may initiate an  
1124 account seizure if the lien amount in the obligor's case equals or exceeds three hundred  
1125 percent (300%) of the monthly amount due in the order, or one thousand dollars (\$1,000),  
1126 whichever is greater.

1127 (1) The Agency may not issue a notice of seizure unless the sum of the funds in all  
1128 of the obligor's financial accounts, minus expected seizure fees and any early  
1129 withdrawal penalty, exceeds five hundred dollars (\$500). The first five hundred  
1130 dollars (\$500) of each account shall not be frozen and/or seized.

1131 (2) The notice issued by the Agency shall instruct the financial institution of the  
1132 following:

1133 (A) The maximum amount frozen in an account may not exceed the amount  
1134 specified by the Agency in the notice.

1135 (B) The maximum amount frozen in an account may not exceed the  
1136 obligor's ownership interest.

1137 (C) A financial institution is not liable for encumbering or surrendering any  
1138 assets held by the financial institution in response to instructions from the  
1139 Agency for the purpose of enforcing a child support order.

1140 (b) *Seizure of Personal Property*. Once a lien is placed against an obligor, the Agency  
1141 may initiate the seizure of personal property if the lien amount equals or exceeds six  
1142 hundred percent (600%) of the monthly amount due in the order.

1143 (1) The Agency may seize personal property if the obligor's equity in the property,  
1144 minus expected seizure fees, exceeds five hundred dollars (\$500) per item total.

1145 (2) Ceremonial or religious property and/or real property are exempt and shall not  
1146 be seized by the Agency.

1147 (3) *Process for Seizing Property*. The Agency shall follow the following process  
1148 for seizing personal property:

1149 (A) The Agency shall notify the obligor of the intent to request the Family  
1150 Court to issue an order of execution for the seizure of property.

1151 (B) The Agency shall request the Family Court to grant a written order of  
1152 execution for the seizure of property. The Agency shall provide the Family  
1153 Court an affidavit that notice of this request has been provided to the  
1154 obligor.

1155 (C) Upon issuance of a written order of execution by the Family Court,  
1156 non-exempt personal property may be seized and sold in a reasonable  
1157 manner.

1158 704.15-4. *Attachment of Per Capita Payments.* The Agency may initiate the attachment and/or  
1159 seizure of per capita payments of members of the Nation in accordance with applicable laws of the  
1160 Nation.

1161 704.15-5. *License Suspension.* The Agency may initiate the suspension or denial of both State  
1162 and Oneida issued licenses if there is a lien against an obligor that equals or exceeds three hundred  
1163 percent (300%) of the monthly amount due in the child support order, or one thousand dollars  
1164 (\$1000), whichever is greater.

1165 (a) The types of State or Oneida issued licenses that the Agency may initiate the suspension  
1166 or denial of include, but are not limited to, vendor, professional, occupational, hunting,  
1167 fishing, recreational, and/or motor vehicle licenses.

1168 (b) The Agency shall not initiate the suspension of an occupational and/or motor vehicle  
1169 license if:

1170 (1) there is an order in place that prohibits the suspension of the license;

1171 (2) the obligor has filed for bankruptcy; or

1172 (3) action has already been taken to suspend the license.

1173 (c) When an Oneida-issued license is suspended, that suspension shall be binding on and  
1174 given effect by the license issuing agencies. Orders affecting licenses issued by other  
1175 governmental agencies shall be sent to such agencies for enforcement.

1176 704.15-6. *Lump-Sum Pension Payments, Judgments, and Settlements Intercepts.* Once an obligor  
1177 has been placed on the lien docket the Agency may initiate the intercept of lump-sum pension  
1178 payments, judgments and/or settlements.

1179 (a) When initiating the intercept of lump-sum pension payments, judgments and/or  
1180 settlements, the Agency shall specify in the notice that the amount withheld from the lump-  
1181 sum pension payment, judgment or settlement may not exceed the obligor's ownership  
1182 interest in the payment.

1183 704.15-7. *Tax and Lottery Intercepts.* The Agency may coordinate with a federal or state agency  
1184 in order to enforce a child support order through a tax and/or lottery intercept. Once an obligor  
1185 has been notified that his or her tax refund and/or lottery winnings may be intercepted, that notice  
1186 is valid until all arrears are paid in full.

1187 (a) *Federal Tax Intercept.* The Agency may certify a federal tax intercept when the  
1188 requirements pertaining to federal tax intercept contained in an agreement between the  
1189 State and the Nation have been met.

1190 (b) *Wisconsin State Tax and/or Lottery Intercept.* The Agency may certify a Wisconsin  
1191 state tax intercept and/or a Wisconsin state lottery intercept, when the lottery winnings are  
1192 one thousand dollars (\$1,000) or more, when the following requirements are met:

1193 (1) The arrears shall be at least one hundred and fifty dollars (\$150);

1194 (2) The arrears shall be at least thirty (30) days old; and

1195 (3) The arrears shall be for a minor child or a child who has reached the age of  
1196 eighteen (18) within the last twenty (20) year.

1197 704.15-8. *Passport Denial.* If a federal tax intercept is in place and the obligor owes two thousand  
1198 five hundred dollars (\$2,500) or more in arrears, an obligor may be denied a passport. The arrears  
1199 must meet the criteria for federal tax intercept in order for passport denial to be used as an  
1200 enforcement tool. An obligor shall be removed from the passport denial list if:

1201 (a) The federal tax intercept certification amount is zero (0);

1202 (b) The obligor makes a lump-sum payment and/or negotiates a payment plan with the  
1203 Agency;

1204 (c) The obligor has to travel abroad because of a life-or-death situation involving an  
1205 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.*

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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

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Amended - BC-10-10-12-C

Amended - BC-08-13-14-E

Amended - BC-\_\_-\_\_-\_\_-\_\_