



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

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CHAPTER I
GENERAL PROVISIONS AND DEFINITIONS

1. Authority.

a. Article V, Section 2(a) of the Ho-Chunk Nation Constitution (“Constitution”) grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct, and imposing penalties upon all persons within the jurisdiction of the Nation.

c. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

d. Article V, Section 2(s) of the Constitution grants the Legislature the power to promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Ho-Chunk Nation.

e. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.

f. Article V, Section 2(u) of the Constitution grants the Legislature the power to enact laws to regulate domestic relations of persons within the jurisdiction of the Nation.

2. General. Ho-Chunk Nation parents have a responsibility for caring for their children, bonding with them, making sure they are safe, and providing for all their basic needs. Aunts, uncles, grandparents and other extended family members help parents and their

children when they need help by advising the parents in decision-making, showing love to the children, teaching values and respect, and taking over in parents' absence. Grandparents share with their grandchildren the wisdom of their experience and traditional values. The Ho-Chunk Nation Trial Court is the most appropriate forum for deciding issues related to the well-being of a child who is a member of a Ho-Chunk Nation family. It is the policy of the Ho-Chunk Nation to consider carefully the circumstances of each family and to treat each family individually.

3. Policy.

a. The Department of Health and Social Services shall implement this Child Support Enforcement Code by establishing a Child Support Enforcement Agency (Agency).

b. The Ho-Chunk Nation shall promote cooperation and agreement by the parents regarding fulfillment of their duties to their children. It is the experience of the Ho-Chunk Nation that a non-custodial parent is more likely to remain connected with his or her children if he or she has developed an agreement with the other parent on the amount of child support.

c. The Nation shall not interfere in child support arrangements agreed upon by families when those agreements serve the best interests of the child.

d. The Ho-Chunk Nation Child Support Enforcement Agency is authorized to certify that there is good cause not to establish paternity or child support in cases in which it is not in the best interests of the child to do so.

4. Definitions. When the words listed in this section appear in this title, they shall have the following meaning unless a different meaning is clearly intended.

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

b. "Agency" means the Ho-Chunk Nation Child Support Enforcement Agency.

c. "Alleged father" means any man who might be the biological father of a child, including men who are "presumed fathers" under paragraph (18d).

d. "Child" means a natural child or an adopted child, except that under Chapter III, Paternity, "child" refers only to a natural child.

e. "Child Support Obligation" means the total dollar amount of child support, including payment of work-related day care expenses and the child's share of health insurance, that the paying party is obliged to pay to meet his or her current financial duty to support his or her child. It also includes any non-cash services or resources the party is required to provide.

f. "Court" means the Ho-Chunk Nation Trial Court.

g. "Domicile" means permanent home. Home is the location where a person has family, community, cultural, ancestral and historical ties and the place to which a person intends to return.

h. "Extended Family" does not have a precise definition. Under Ho-Chunk custom, there are formal and informal ties which bind the community. Extended family ties are based on blood lines, marriage, friendship, and caring. All women in the community become "auntie" or "grandma" when they become a certain age, regardless of blood relationship. Although grandparents (including great and great-great), aunts, uncles, siblings, cousins, in-laws, and step relations are all extended family, any member of the Nation who is reliable, responsible, loving and willing to care for a child may be considered extended family.

i. "Guidelines" mean the Ho-Chunk Nation Child Support Guidelines.

j. "Indian Tribe" means any tribe, band, nation, Alaska Native group recognized by the Secretary of the Interior as eligible for services provided to Indians.

k. "Nation" means the Ho-Chunk Nation.

l. "Parent" includes biological or adoptive parent, but does not include persons whose parental rights have been terminated. It does not include an unwed father who has not acknowledged or established paternity in one the following ways: being identified as the father on the child's birth certificate, by acknowledging paternity to the Office of Tribal Enrollment or to a court, or through formal paternity proceedings under state or Nation law.

m. "Schedule" means the Ho-Chunk Nation Child Support Schedule.

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

o. "TANF" means Temporary Assistance for Needy Families Program.

CHAPTER II

JURISDICTION AND COURT PROCEDURES

5. Tribal Enrollment Records.

a. Enrollment of all children eligible for membership in the Ho-Chunk Nation is essential to the survival of the Tribe, the furtherance of tribal sovereignty, and rights of future generations of potentially eligible children. In order to encourage

acknowledgement of paternity for enrollment purposes, all enrollment records, including birth certificates, are confidential and are not subject to subpoena by any court.

b. This Code vests no jurisdiction in the Court over tribal enrollment, but DNA test results and paternity findings which result in a need for correction of Ho-Chunk Nation enrollment records may be forwarded to the Office of Tribal Enrollment and Committee on Tribal Enrollment as necessary.

6. Jurisdiction.

a. The Ho-Chunk Nation Trial Court is vested with the fullest jurisdiction permissible under applicable law. Personal jurisdiction includes, but is not limited to the following people.

(1) Members of the Ho-Chunk Nation.

(2) Individuals personally served with a summons on the Nation's lands.

(3) Individuals who consent to the jurisdiction of the Court by entering a general appearance or filing a responsive document or by participating in the proceeding unless participation is for the purpose of contesting jurisdiction.

(4) Individuals who resided on Nation lands with a child who is the subject of the proceeding.

(5) Individuals who engaged in sexual intercourse on Tribal land during which a child who is subject of the proceeding may have been conceived.

(6) Any individual who had a duty to, and failed to, support a child who:

(a) Resides on Nation land; or

(b) Is a member of a Ho-Chunk family.

b. In every action under this Code, the Court shall retain continuing, exclusive jurisdiction over the child to the fullest extent permitted by law.

7. Procedures - General.

a. Proceedings under this Code are civil actions and are governed by applicable provisions of the Ho-Chunk Nation Rules of Civil Procedure, except where this Code provides otherwise.

b. There is no right to a jury in any proceeding under this Code.

c. Any Ho-Chunk person appearing in the Court shall have the right, at his own expense, to a spokesperson, lay advocate, or attorney, as allowed under Ho-Chunk Nation Rules of Civil Procedure, or to proceed *pro se*. Any other person shall have the right to an attorney at his own expense or may proceed *pro se*.

d. Filing Fee.

(1) A filing fee of \$25.00 shall be submitted with a petition.

(2) When one case involves proceedings under more than one chapter of this Code, there shall be only one filing fee.

(3) The filing fee may be waived by the Court in its discretion upon good cause shown.

e. Petition.

(1) Petitions shall be prepared on forms approved by the Court.

(2) The parties may both sign a petition so long as each signature is notarized, and by doing so, waive the requirements of service of summons.

8. Summons.

a. Service of Summons. After a petition is filed, the petitioner shall cause the respondent to be served with a copy of the petition on a form approved by the Court. The Court must cause the respondent to be served with a summons indicating the hearing date.

(1) Personal Service. Personal service may be effected by personally delivering a copy of the complaint to a person of suitable age and discretion at the residence of the person to be served, with directions to deliver it to the person to be served. Service must be made by a person over the age of eighteen (18) years, who is not a party to the action, nor a member of a party's immediate family.

(2) Service by Mail. If the person cannot be found within the Nation's lands, service may be accomplished by certified mail, return receipt requested.

(3) Service by Publication.

(a) When the respondent cannot be found within the Nation's lands and attempts to serve the respondent by certified mail have failed, the petitioner may ask the judge to allow service by publication. If the request is granted, the petitioner shall follow the following procedures.

1 Publish the summons for two consecutive publications of the Hocak Worak or publish for four consecutive weeks in a newspaper of general circulation in the county of residence of the respondent, if known.

(b) If service by publication is permitted, the Court may permit extended time deadlines for default orders and for hearings in order to provide for fair notice and opportunity for the respondent to respond.

b. Content.

(1) The summons shall notify the respondent that if he does not appear or responds to the petition within twenty (20) days from the date of service (or within sixty (60) days of the date of publication if service is by publication) the Court may proceed without the respondent.

(2) The summons shall contain notice of the date of the hearing.

c. Proof of Service.

(1) The person serving the summons and petition shall file with the Court certification that he has served the respondent, including the date and place of service. If service was made on a person other than the respondent, the certification shall state the name of the person served, the date and place of service, the instructions given, and the signature of the person receiving the summons.

(2) In case of service by certified mail, the return receipt shall be filed with the Court and shall constitute the proof of service.

(3) In case of service by publication, an affidavit by the publisher and a copy of the summons as published shall constitute the proof of service.

d. Response. Except for joint petitions, within twenty (20) calendar days after the respondent is served with a copy of the petition (or within sixty (60) days if service was by publication), the respondent shall either:

(1) File a written response or contact the Court and state whether he or she will appear in Court to respond to the petition; or

(2) File his or her own response on a form approved by the Court.

9. Hearings.

a. Initial Hearing. When the Court receives a petition, it shall set a hearing date which shall not be more than thirty-five (35) calendar days after the petition was filed, unless otherwise provided in this Code or unless continued for good cause.

b. Notice. The Court shall issue notices of hearing to all parties.

(1) Initial Hearing. Notice shall be given at least twenty (20) calendar days before the hearing. This notice shall be contained in the summons and served with the petition.

(2) Hearings for Temporary Orders. Notice shall be given at least five (5) calendar days before the hearing or such time as the Court feels is necessary to respond to the motion.

(3) Hearings for Emergency Restraining Orders. No notice is required before a hearing for emergency restraining orders under this Code.

(4) Other Hearings. Notice shall be given at least twenty (20) calendar days before the hearing, except that the Court may shorten the time for responding if justice so requires.

10. Service of Documents Other than Summons and Petition. Except as otherwise provided in this Code, every document which is required or allowed to be served on a person shall be given by any of the following:

a. Personal service in the same manner provided in paragraph 8a for service of the petition.

b. Certified mail with return receipt requested, first class U.S. mail or interoffice mail.

c. Any other method approved by the Court.

11. Evidence and Burden of Proof. Unless additional rules are stated in each chapter, rules of evidence and burden of proof shall be the same as those which apply to civil actions before the Ho-Chunk Nation Trial Court.

12. Recognition and Enforcement of Other Courts' Orders.

a. See *Recognition of Foreign Child Support Orders Ordinance (4 HCC § 2)*.

b. The Court may give recognition to the court or administrative orders, judgments or decrees of other Indian nations and tribes, states or federal agencies as a matter of comity (courtesy).

c. Certified foreign orders may be given recognition provided that:

(1) The order does not violate the Indian Child Welfare Act;

(2) The court granting the order had jurisdiction over the case and the parties;

- (3) The parties were afforded due process of law; and
 - (4) The order does not violate the public policy of the Ho-Chunk Nation.
- d. A maximum withholding of 60% of the payor's income may be withheld.

13. Transfer of Jurisdiction.

- a. The Agency has the authority to accept electronic transfers of cases from within the state of Wisconsin. The Court has the authority to accept transfers of cases from other courts or governments for proceedings under this Code.
- b. The Court shall only transfer a case under this Code to another court or government if it has no jurisdiction over the case or for compelling reasons determined in a hearing.

CHAPTER III
PATERNITY

14. General. This chapter provides a process for the Court to establish the paternity of a child.

- a. In the Ho-Chunk Nation, fathers are important role models who teach respect, values, and responsibilities to their children. They care for their children, show them love and point them in the right direction. They support their children in having a safe, secure, healthy, spiritual, happy home life as well as supporting them financially.
- b. The Nation recognizes that determining biological paternity is important for purposes of tribal membership and the benefits associated with it. This chapter is not intended to take the place of or interfere with confidential acknowledgments of paternity through the Ho-Chunk Nation Office of Tribal Enrollment.
- c. A paternity proceeding under this chapter may stand alone as a separate proceeding or it may be joined with an action to determine child support at the request of the alleged father or the child's mother.
- d. The provisions of this chapter may be applied, as far as practicable, to the determination of the existence or nonexistence of a mother and child relationship.
- e. Confidentiality of Paternity Records. The records filed in a paternity action shall be sealed. Only parties to the case may obtain copies.
- f. No Statute of Limitations. An action to establish paternity shall not be subject to a statute of limitations.

15. Foreign Paternity Orders and Affidavits.

a. A court paternity order from another jurisdiction which established paternity will only be recognized by the Ho-Chunk Nation Trial Court if it meets the requirements of Section 12. Paternity orders entered by default shall not be recognized.

b. The Court shall not recognize a state affidavit of paternity if:

(1) It was signed by a minor who did not understand the consequences of signing the affidavit; or

(2) There is evidence of duress, mistake, or unfair procedure.

c. A petition for establishment of paternity may be filed in the Ho-Chunk Nation Trial Court even if a state paternity affidavit has been signed or an order regarding paternity has been issued by another court when the petitioner believes that the other process was unfair.

16. Paternity Petitions.

a. Who May File. A petition requesting the Court to establish paternity may be filed by any of the following.

(1) A child (including an adult "child"), or if the child is under the age of 18, the child's legal guardian.

(2) The child's natural mother.

(3) An alleged father of the child.

(4) The Ho-Chunk Nation Enrollment Committee, when it has reason to believe that the child's birth certificate or affidavit of paternity is irregular or unreliable.

b. Contents. A petition to establish paternity, prepared on a form approved by the Court, shall state the following information.

(1) The names, ages, addresses, and tribal affiliations, if any, of the natural mother, the alleged father(s), the child, all others who have legal rights of custody, visitation or support of the child, and of the petitioner.

(2) Whether the natural mother and the alleged father are or were married, and the dates of marriage, separation and divorce, if any.

(3) Whether the natural mother and alleged father agree that the alleged father is the natural father of the child.

(4) Whether there have been any other court or administrative paternity proceedings or state paternity affidavits concerning the child, and whether there have been any termination of parental rights or adoption proceedings.

(5) A certified copy of the child's birth certificate shall be attached to the petition.

(6) Whether or not a name change for the child is requested.

c. Service of Summons. The natural mother, the child's legal guardian, the adult child, and each man alleged to be the natural father shall be served with a summons and the petition in accordance with paragraph 8a and be notified of all hearings in accordance with Section 9 and provided the opportunity to respond.

17. Genetic Test.

a. The Court may, or at the request of a party shall, require the child, mother and alleged father(s) to submit to genetic tests. An alleged father may be excused from the requirement of genetic tests if the Court determines that there is no reasonable possibility that sexual contact occurred at or near the time of conception. Exceptions to this section are also contained in paragraph c, below.

b. The following requirements apply to genetic testing under this section.

(1) The tests shall be performed by an accredited paternity genetic testing lab, approved by the Nation, that performs legally and medically acceptable tests.

(2) The mother shall notify the genetic testing laboratory if she and any of the alleged fathers have a common ancestor or if there is another possible father who is closely related to the alleged father.

(3) The party receiving the copy of the genetic test results from the expert shall file them with the Court who shall send all parties a copy of the test results by certified mail, return receipt requested.

(4) Unless a party objects to the results of genetic tests in writing at least five (5) days before the hearing, the tests shall be admitted as evidence of paternity without the need for foundation testimony or other proof of authenticity.

(5) The results of genetic tests must be accompanied by an affidavit from the expert describing the expert's qualifications and analyzing and interpreting the results as well as documentation of the chain of custody of the genetic samples.

(6) Failure to submit to genetic tests when required by the Court may constitute contempt of court.

c. Good Cause Not to Reveal Father's Identity. A woman may be excused from submitting to genetic testing or from identifying or locating the father of her child when there is good cause not to reveal his identity or location. The Court may hold a closed, ex-parte hearing to determine whether good cause exists. "Good cause" may include, but is not limited to the following.

- (1) Cases involving domestic violence.
- (2) Cases involving incest or rape.
- (3) Cases where identification of the father is not in the best interest of child.

18. Paternity Hearings.

a. The Court has jurisdiction to decide the issues before it whether or not all the alleged fathers participate in the hearing.

b. The following rules apply to paternity hearings.

- (1) Paternity hearings shall be closed unless all parties agree otherwise.
- (2) The mother of the child and the alleged father(s) may be compelled to testify at the paternity hearing.
- (3) Testimony of a health care provider concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged for purposes of admitting this evidence at the paternity hearing.
- (4) If the Petition contains a request that the child's name be changed, the Court shall hear testimony on this issue.
- (5) The parties shall provide testimony on how the costs of paternity testing shall be paid. If the testing was paid by the Nation, it may waive all or part of the costs or request reimbursement.

c. Evidence and Burden of Proof.

(1) The burden of proof shall be the same as that applied to civil actions before the Ho-Chunk Nation Trial Court (clear and convincing).

(2) The Court may consider the following types of evidence in paternity cases.

- (a) Genetic test results.
- (b) Evidence of sexual intercourse between the mother and an alleged father(s) at any possible time of conception.

(c) An expert's opinion concerning the statistical probability of an alleged father's paternity, based upon the duration of the mother's pregnancy.

(d) Medical or anthropological evidence relating to an alleged father's paternity of the child based on tests which may be ordered by the Court and performed by experts.

(e) Reputation in the community as to paternity.

(f) Any other reliable evidence which is relevant to the issue of paternity of the child, except that confidential Ho-Chunk Nation enrollment affidavits of paternity shall only be admissible when offered by the man who signed the affidavit. If the father is deceased, the Enrollment Committee may file a confidential enrollment affidavit of paternity with the Court if the Committee, in its sole discretion, deems it to be in the child's best interest.

d. Presumptions. The following are conclusive presumptions in paternity cases that can be overcome only by clear and convincing evidence.

(1) Presumption as to Whether a Child is Marital or Non-Marital. Genetic testing which establishes a ninety-nine percent (99%) or greater probability of paternity.

(2) Presumption of Paternity Based on Acknowledgment. A man is presumed to be the natural father of a child if he and the mother have acknowledged, by affidavit, paternity and no other man is presumed to be the father.

(3) Presumption as to Time of Conception. In any paternity proceeding, in the absence of a valid birth certificate indicating the birth weight, the mother shall be competent to testify as to the birth weight of the child whose paternity is at issue, and where the child whose paternity is at issue weighed 5 1/2 pounds or more at the time of its birth, the testimony of the mother as to the weight shall be presumptive evidence that the child was a full term child, unless competent evidence to the contrary is presented to the Court. The conception of the child shall be presumed to have occurred within a span of time extending from 240 days to 300 days before the date of its birth, unless competent evidence to the contrary is presented to the Court.

(4) Presumption of Paternity Based on Marriage of the Parties.

(a) A man is presumed to be the natural father of a child if any of the following applies:

1 He and the child's natural mother are or have been married to each other and the child is conceived or born after marriage and before the granting of a decree of legal separation, annulment or divorce between the parties.

2 He and the child's natural mother were married to each other after the child was born but he and the child's natural mother had a relationship with one another during the period of time within which the child was conceived and no other man has been adjudicated to be the father or presumed to be the father of the child under paragraph (a), above.

(b) In a legal action or proceeding, a presumption under paragraph (a), above, is rebutted by results of a genetic test that show that a man other than the man presumed to be the father under paragraph (a), above, is not excluded as the father of the child and that the statistical probability of the man's parentage is 99.0% or higher, even if the man presumed to be the father under paragraph (a), above, is unavailable to submit to genetic tests.

19. Paternity Orders.

a. Default Orders.

(1) Paternity orders entered by default are against the public policy of the Ho-Chunk Nation.

(2) Reimbursement of Child Support Paid Erroneously. When a man has paid child support as the father of a child and the paternity of a different man is established later by the Court based on genetic testing, the Court may order reimbursement of the child support that was paid erroneously only if:

(a) The child support payments were retained by a state or tribal government under a permanent assignment of public assistance benefits;

(b) Notice of the hearing has been served on the appropriate government agency;

(c) The government agency that received and retained the payment is the party ordered to make the reimbursement; and

(d) Reimbursement extends back to the date the man can prove he attempted to contest the child support obligation or eighteen months, whichever is longer.

b. Agreed Paternity Order.

(1) The parties may submit an agreed order establishing the paternity of a child. Before deciding whether to approve the agreed order, the judge shall hold an in-chambers, ex-parte discussion individually with each party to:

(a) Explain the proposed agreed order in detail and the consequences of the order and of the person's failure to comply with agreed terms;

(b) Assure that the person's consent to the proposed agreed order is not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person;

(c) Explain the person's right to a spokesperson, lay advocate, or attorney;

(d) Explain the burden of proof as to each issue; and

(e) Explain that once the person agrees to the proposed order and it is signed and entered by the Court, it will be too late for the person to change his or her mind.

(2) The in-chambers conversation need not be recorded. If the party wants a friend, family member or other person to be present, the judge shall allow it after first speaking alone with the party. If the Court finds that any consent was not truly voluntary, the agreed order shall not be entered and the case shall proceed to a hearing.

c. Proceedings Involving Another Jurisdiction.

(1) If the Court cannot obtain personal jurisdiction over the natural mother or an alleged father and finds that it cannot make a determination of paternity without that person, the Court may take any of the following actions.

(a) Request the Agency to have another tribe or state require the person to submit to genetic tests performed by an expert in paternity genetic testing.

(b) Request a tribunal of another tribe or state to require the person to respond to an order by the Court the person to submit to genetic tests performed by an expert in paternity genetic testing.

(c) Forward the case to a tribunal of another tribe or state for the sole purpose of determining paternity.

(2) The Court shall retain exclusive, continuing jurisdiction over the case for custody, visitation, child support and all other issues to the fullest extent permissible under applicable law.

(3) Temporary Orders. Pending determination of the paternity issue, the Court may make a temporary order regarding custody and support of the child.

d. Final Paternity Order.

(1) The decision of the Court shall be final for purposes of appeal under the Ho-Chunk Nation Rules of Appellate Procedure.

(2) The order determining the existence or nonexistence of the parent-child relationship shall be effective for all purposes. The Court shall provide the Office of

Tribal Enrollment with a copy of the paternity order if necessary. A paternity order may be accompanied by any order, temporary or final, authorized by the provisions of the applicable chapter.

(3) Name Change, Amended Birth Certificate.

(a) The Court may authorize that the child's name be changed.

(b) If the finding of paternity or the child's new name varies from the child's birth certificate, the Court shall order that an amended birth certificate be issued.

e. Disestablishment of Paternity. As a matter of policy, the Ho-Chunk Nation discourages the disestablishment of paternity.

(1) The proceedings in this Chapter may be used to disestablish paternity. The limits on who may file an action as stated in paragraph 16a apply to disestablishment proceedings.

(2) The Court shall require the party challenging a paternity which has been legally acknowledged to show that it is in the best interests of the child to change the status quo, prior to Court orders or permits genetic testing. Except, that if it is the Ho-Chunk Nation Committee on Tribal Enrollment that is the party challenging a paternity that has been legally acknowledged, the Committee must show it is in the best interest of the Tribe to change the status quo.

CHAPTER IV

CHILD SUPPORT

20. Duty of Care and Support.

a. Parents have a duty to care for their children. This applies to all natural parents whose parental rights have not been terminated and to all adoptive parents. This duty includes providing love, guidance, education, a safe and healthy environment and financial support. Parents also have a duty to ensure that Ho-Chunk children have an opportunity to learn about and participate in the Ho-Chunk Way. This includes access to Ho-Chunk family and participation in Ho-Chunk Nation events.

b. The purpose of this chapter is to provide a process that ensures that the basic financial needs of children are met when their parents do not live together. In the Ho-Chunk Nation, children are cared for by parents, extended family and the community. This chapter focuses on parents' financial duty to their children.

c. Stepparents do not have a legal duty to support stepchildren but may have a moral and traditional duty to contribute to their support.

21. Child Support Enforcement Agency. The Agency operates on a child-centered, agreement-based process. The Agency shall perform the following responsibilities:

a. Ensure that assistance is made available to parents in developing agreements for child support and health insurance. Parents may obtain these services before they file a petition or they may be referred by the Court.

b. Prepare a recommendation about the child support and health insurance obligation for each case, using a form developed by the Agency. In making its recommendation, the Agency shall be guided by the Child Support Guidelines (Guidelines) (Section 36) and the Ho-Chunk Nation Child Support Schedule (Schedule) (Section 37). The Agency's recommendation shall be filed with the petition whenever possible; and

c. May represent the interests of the child in child support enforcement proceedings, as provided in paragraph 32b(1).

22. Child/Family Protection Petition and Guardianship Cases. This chapter may serve as a guide for establishment of child support in Child/Family Protection Petition and Guardianship cases. In guardianship cases in the Court, however, the policies and procedures of the Hocak Nation Children and Family Code supersede this chapter to the extent that the two chapters may be inconsistent.

23. Petition for Child Support.

a. Who May File.

(1) A parent may file a petition for establishment of child support under this chapter. The petition shall be prepared on a form approved by the Court. The child support petition may be filed as a separate proceeding or in connection with any of the following petitions.

(a) Divorce or invalidity of marriage.

(b) Paternity.

(c) Child custody.

b. Contents. A petition for establishment of child support shall contain all of the following:

(1) The name, address, tribal affiliation, date and place of birth, and social security number of the petitioner, the responding party and the child for whom support is requested.

(2) The child support obligation requested or agreed upon.

- (3) The proposed provision of health insurance for the child.
- (4) Any proposed work-related day care or extraordinary medical expenses.
- (5) The date proposed for the child support obligation to begin and when it is proposed to terminate.
- (6) The proposed frequency of payment.
- (7) A statement whether child support payments should be made by wage withholding and per capita distribution, or by direct payment, and to whom payments should be made if not the Agency.
- (8) A proposed Parenting Plan (See Section 767.24(1m), Wisconsin Statutes, for guidelines for preparing a Parenting Plan), if any, or, if custody is shared, the percentage of a year that each parent has physical custody of the child.
- (9) A statement that the petitioner swears that he or she believes that the male party is the father of the child; or a statement that the parties agree that the male party is the father of the child.
- (10) A statement whether any of the following proceedings involving the parents or the child are pending or have taken place in any court or administrative agency, and if so, the date, name and place of the Court or agency.
 - (a) Child custody proceeding.
 - (b) Child support proceeding.
 - (c) Paternity establishment or disestablishment proceeding.
 - (d) Proceeding requesting a domestic violence protective order or no-contact order.
 - (e) Proceeding requesting a restraining order involving the child or a party.
- (11) A statement whether either parent has ever received state or tribal public assistance, and if so, the date(s) and name of the state or tribe providing assistance.
- (12) Financial information, as provided in paragraph 25e.
- (13) Authorization for the release of all financial records to the Ho-Chunk Nation Court and the Agency.
- (14) A statement of which parent should be allowed to claim the child as a dependent for income tax purposes.

(15) The recommendation of the Agency regarding child support and health insurance coverage.

24. Documents and Notice to Child Support Agency. The Court shall provide the Agency with a copy of the petition, response, financial information and all other documents filed in a child support case and it shall provide the Agency with notice of all hearings in a child support case.

25. Initial Child Support Hearing.

a. When the Court receives a petition, it shall set a hearing date which shall not be more than thirty five (35) calendar days after the petition was received, unless continued for good cause.

b. Notice of Hearing. The date, time and place of the initial hearing shall be contained in the Summons. Notice of the hearing shall be served on the parties and the Agency.

c. Service of Child Support Petition and Summons.

(1) After a petition is filed, the petitioner shall cause the respondent to be served with a copy of the petition on a form approved by the Court. The Court must cause the respondent to be served with a summons indicating the hearing date.

(2) The petition and summons shall be served as provided in paragraph 8a.

(3) The parties may both sign a petition so long as each signature is notarized, and by doing so, waive the requirements of service of summons.

(4) Summons.

(a) Content. The summons prepared on a form approved by the Court shall notify the respondent that if he or she does not appear or respond to the petition within twenty (20) days from the date of service or within sixty (60) days of the date of publication, if service is by publication, the Court may proceed without the respondent and a default judgment may be entered without his or her participation.

(b) Service.

1 The person serving the summons and petition shall file with the Court certification that he or she has served the respondent, including the date and place of service. If service was made on a person other than the respondent, the certification shall state the name of the person served, the date and place of service, and the instructions given.

2 In case of service by certified mail, the return receipt shall be filed with the Court and shall constitute the proof of service. In case of service by publication, an affidavit by the person causing the notice to be published and a copy of the summons as published shall constitute the proof of service.

d. Response.

(1) Unless the parties have filed a joint petition, the respondent shall file his or her response within twenty (20) calendar days after the respondent is served with a copy of the petition, or within sixty (60) days if service was by publication. The response shall include financial information as provided in paragraph 25e and authorization for the release of all financial records to the Ho-Chunk Nation Child Support Enforcement Agency and the Ho-Chunk Nation Court. The respondent may also file a proposed Parenting Plan.

(2) The respondent shall cause the response, including financial information, to be served on the petitioner as provided in paragraph 8d.

(3) Paternity at Issue.

(a) If the respondent disagrees or is unsure that he is the father of the child, he shall state this fact in his response.

(b) If the parties do not agree about paternity, either party may request that paternity be established. Upon the request of either party, the Court shall continue the child support proceeding pending establishment of paternity, as provided in Chapter III. If the parties do not agree about paternity and neither party requests paternity establishment, the Court shall dismiss the child support petition.

e. Financial Disclosure.

(1) The parties shall provide complete disclosure of financial information, including verification of all income and resources, to the Court and to the Agency.

(2) Financial information shall be provided on forms approved by the Court. It shall be submitted with the petition or response.

(3) Penalty. Failure to provide required financial disclosure may be grounds for contempt of court.

(4) Financial Disclosure Confidentiality. Financial information filed with the Court or provided to the Agency and information shall be confidential and available only to the parties, the Court and the Agency, and solely for the purpose of establishing paternity, or establishing, modifying, enforcing or distributing child support.

(5) A party is not required to provide his or her financial information as part of the Court record, provided the party has made full and complete financial disclosure to the Agency and that the Agency has certified that it has reviewed the financial information and its recommendation is based upon that information.

f. Limited Statutory Waiver of Confidentiality. The following entities are authorized and required to provide information regarding a party's income, resources and address to the Agency:

(1) Departments of the Ho-Chunk Nation.

(2) Ho-Chunk Nation Housing and Community Development Agency.

(3) Tribal enterprises.

(4) Any person or entity doing business on lands under the jurisdiction of the Ho-Chunk Nation.

(5) Any Temporary Aid to Needy Families (TANF) Program, which shall also provide the following information about a party's TANF assistance:

(a) Whether the person receives or has ever received TANF assistance.

(b) The names of other people on the person's TANF grant.

(c) The dates of the assistance.

(d) The amount of assistance.

g. Domestic Violence Victim Protection.

(1) The Agency is authorized to request information from off-reservation employers, government agencies and other entities.

(2) The Agency and the Court shall take whatever steps are necessary to ensure that the address or location of a victim of domestic violence is kept confidential.

i. Conduct of the Hearing.

(1) Who May Attend. Only those persons the Court finds to have a legitimate interest in the proceedings may attend hearings under this chapter. Any Ho-Chunk person appearing in the Court shall have the right, at his own expense, to a spokesperson, lay advocate, or attorney, as allowed under Ho-Chunk Nation Rules of Civil Procedure, or to proceed *pro se*. Any other person shall have the right to an attorney at his own expense or may proceed *pro se*. The Agency staff may be present at child support

hearings. If a party wants a friend, family member, or other person to be present, the Court may allow it.

(2) The Court shall review the documents filed in the case, hear the testimony of each party, and consider any other evidence presented. It shall consider and give great weight to the recommendation of the Agency, if any.

(3) If an Agency staff person is not available, the Court may either base its decision on the Agency's written recommendation or issue a temporary order and continue the case until Agency staff is available for a hearing. The temporary order terminates when the final order is entered or when the petition is dismissed.

(4) If a party believes the Agency's recommendation or the Child Support Schedule (Section 37) is inappropriate as applied to him or her, the burden of proof shall rest on that party to prove that the support obligation should be different than the recommendation or the Schedule.

(5) The Court may continue the case at any point pending referral of the parties to the Agency, if appropriate.

26. Proposed Agreed Orders.

a. General.

(1) The parties may agree to a proposed order which resolves some or all of the issues regarding establishment or modification of the child support obligation. The parties may agree that the male party is the father of the child.

(2) The parties may request the Agency to assist them to develop an agreed order.

(3) A proposed agreed order shall be filed with the Court at or prior to the hearing.

b. Hearing for Proposed Agreed Order.

(1) The Court shall approve a complete agreed order if the Agency does not object, the Court has reason to believe the agreement was truly voluntary, and the agreed order contains all the provisions required by Sections 28 and 29.

(2) Temporary Order. If the agreed order addresses some but not all of the required issues, the Court may approve the partial agreement and, if sufficient information is available, consider the remaining issues. If a complete order cannot be issued with the information available, the case shall be continued. The parties may be ordered to meet with the Agency, if appropriate. The Court shall establish a time frame for the filing of the remainder of each party's proposal and the Agency's additional recommendation. The Court may enter a temporary order based on the Ho-Chunk Nation

Child Support Guidelines (Section 36) and the Schedule. The case will then proceed to a hearing on the remaining issues. The temporary order terminates when the final order is entered or when the petition is dismissed.

(3) The Court may hold in-chambers, ex parte discussions with each party to insure that they understand the proposed agreed order and to assure that each party's consent to the proposed agreement was not the result of coercion, threat, duress, fraud, over-reaching, or improper promise on the part of any person. If a party wants a friend, family member, or other person to be present, the Court shall allow it after first speaking alone with the party.

(4) If the Court finds that the agreement was not truly voluntary, the case shall be continued and the parties shall be ordered to meet separately with the Agency. The Court shall establish a time frame for the filing of each party's proposal and the Agency's recommendation. The Court may enter a temporary order based on the Guidelines and Schedule. The case will then proceed to a full hearing on the issues. The temporary order terminates when the final order is entered or when the petition is dismissed.

27. Establishment of Child Support Obligation. The Court shall establish the child support obligation, including providing for health insurance, as follows:

a. If the parties have proposed a complete agreed order and the Agency has not objected, the Court shall enter the agreed order.

b. If the parties have proposed a partial agreed order and the Agency has not objected, the Court may adopt temporary agreed order and, for the remaining issues, it may either:

(1) Adopt the Agency recommendation, if any; or

(2) Hear evidence and establish the child support obligation by applying the Guidelines and Schedule to the circumstances of the parties.

c. If the Court finds reason not to accept all or part of the recommendation of the Agency, or if there is no such recommendation or proposed agreement, the Court shall hear evidence and establish the child support obligation by applying the Guidelines and Schedule to the circumstances of the parties.

d. When the paying party owes past child support under a previous child support order, the Court shall order an additional amount of child support to be paid each month on the past child support debt. The total monthly amount ordered shall not exceed the upper limit of the Schedule's range for the paying party's income, unless the parties agree.

e. Regardless of paragraphs a through c, above, the Court shall adopt the method of payment (wage withholding, per capita, or direct payment) requested by the party who will pay child support; except that if evidence is presented that the paying party has a

history of non-payment of child support, the Court may order wage withholding or require the party to request his or her employer to withhold wages to pay the required child support.

f. If a party requests that child support payments be made directly to a parent, the Court shall take testimony on how the parties intend to keep records of the direct payments so that the paying parent is credited with making each payment.

28. Findings of Fact and Conclusions of Law. After the hearing, the Court shall enter findings of fact and conclusions of law and a separate child support order. The findings of fact and conclusions of law shall include findings and conclusions regarding:

a. The Court's subject matter jurisdiction over the case.

b. The Court's personal jurisdiction over all the parties.

c. The paternity of the child.

d. The child support obligation of one or both parties, as agreed by the parties or, in the absence of agreement, as calculated using a form recommended by the Ho-Chunk Nation Child Support Enforcement Agency and approved by the Court in accordance with the Guidelines and Schedule.

e. If the child support obligation deviates from the scheduled range for the paying party's income, the amount of support that would have been required and a justification as to why that amount is unjust or inappropriate.

f. If the child support obligation is based on shared physical custody, the percentage of the year the child resides with each party.

g. Date the child support obligation begins.

h. The frequency of child support payments.

i. If child support is to be established during the period prior to filing the child support petition, the recommendation of the Agency regarding duration and amount of pre-filing child support.

j. Circumstances under which the child support obligation will terminate.

k. To whom or to what entity child support payments are to be made.

l. How records will be kept of child support payments received if payment is not made to the Agency.

m. How child support payments may be enforced if necessary, and the following information.

(1) Paying party's employer's name and address.

(2) Assets which could be attached if necessary for enforcement.

(3) Whether there is a spouse entitled to protection in case of Federal Income Tax Refund Offset.

n. Previous child support orders applicable to the paying party or any of the children.

o. The amount of any previous child support owed.

p. In default child support cases, facts supporting service of the petition, summons and notice to respondent.

q. The extent to which the order differs from the recommendation of the Agency.

29. Child Support Order. The child support order shall include the following.

a. A statement that the Court has jurisdiction over the case.

b. A statement that the Court shall have continuing, exclusive jurisdiction over the welfare of the child, including child support and modification of the order.

c. A statement that the male party is the legal father of the child, if the parties so agree and paternity has not been previously established. If paternity has been previously established, the child support order does not need to address paternity. The Nation does not recognize default paternity orders.

d. The child support obligation of one or both parties, to include the following.

(1) The amount of cash to be paid to the other party.

(2) The amount of the cash payment which is allocated to work related day care or health insurance, if any.

(3) The amount of non-cash services or resources to be provided to the other party, if any.

(4) The amount to be paid to third parties for day care, health insurance or extraordinary expenses, if any.

e. The date the child support obligation begins.

- f. The frequency of child support payments.
- g. The duration and amount of any pre-filing child support obligation, as provided in paragraph 36h.
- h. A statement regarding the circumstances under which the child support obligation will terminate, as provided in paragraph 36i.
- i. A statement whether child support payments will be made by wage withholding, per capita, or by direct payment to the Agency or other entity, as provided in paragraph 36i, and a provision for record keeping if payment is not made to the Agency.
- j. The amount of any credit against the child support obligation for benefits paid directly to the child, as provided in paragraph 36j.
- k. The amount of past child support owing on a previous child support order, if any, and provision for making payment of that debt, as provided in paragraph 27d.
- l. A statement that each parent shall notify the Agency of any change of employer or change of address within ten (10) days of the change.
- m. The date for a review hearings three (3) months after the order is issued and a statement that thereafter review hearings shall be scheduled every twelve (12) months after the order is issued, as provided in Section 38.
- n. A detailed description of the enforcement actions that may be taken in the event the parent owing child support fails to comply with the order.
- o. The child support order is final for purposes of appeal.

30. Default Child Support Orders.

a. When the respondent fails to appear or otherwise defend, the petitioner may file a motion, supported by an affidavit, for a default child support order. The Court does not have the authority to enter a default order of paternity. The Court may enter a default child support order upon finding the following:

(1) The Court has jurisdiction over the subject matter of the case and over the respondent.

(2) The respondent was given proper service of the petition and summons and proper notice of the hearing.

(3) The petitioner has stated, under oath, that he or she believes that the male party is the father of the child.

(4) The petition or the recommendation of the Agency or the financial information, support establishment of respondent's obligation at the amount provided for in the default judgment. The amount shall be determined under the Guidelines and Schedule based on calculation of income as provided in paragraph 36d.

b. Notice of the default order shall be served on the respondent.

c. The Court may set aside a default child support order upon a showing of good cause.

31. Modification of Foreign Court Child Support Orders.

a. Ho-Chunk Nation Child Support Orders.

(1) When there has been a substantial change in the income of the paying party or other factors that determined the original child support obligation, a party may request, by motion, modification of a Court child support order.

(2) A motion for a modification of child support shall be accompanied by an affidavit setting forth the factual basis for the motion and the modification requested.

(3) Both parties shall file updated financial information forms at least ten (10) days before the modification hearing, except that:

(a) In agreed modification orders no financial information need be filed with the Court; and

(b) A party is not required to provide his or her financial information as part of the Court record provided the party has made full and complete financial disclosure to the Agency has certified that it has reviewed the financial information and its recommendation is based upon that information.

(4) Child support orders may be modified for future support only. Amounts of past due support shall not be modified except as provided in Section 35.

b. Foreign Child Support Orders. See Section 7, *Recognition of Foreign Child Support Orders Ordinance* (4 HCC § 2).

c. Foreign Child Support Administrative Orders.

(1) A child support order of the Ho-Chunk Nation Trial Court supersedes an administrative order of another nation, state or tribe.

(2) If a party wishes to have a Ho-Chunk Nation Trial Court child support order replace a foreign administrative child support order, he or she may file a child support

petition including all the information set forth in Section 23, as well as a copy of the foreign administrative order.

(3) The Ho-Chunk Nation child support order shall address all time periods covered by the foreign administrative order.

32. Enforcement of Child Support Orders.

a. The Court may enforce a child support order by ordering wage withholding or other means of enforcement at the following hearings:

(1) An Enforcement Hearing if a child support obligation is at least thirty (30) days overdue in an amount equal to one month's child support obligation or if there is a history of non-compliance; or

(2) A regularly scheduled Review Hearing if child support is overdue at the time of the review hearing or if there is a history of noncompliance with the order. See Section 38.

b. Enforcement Hearings.

(1) Filing. A motion for an enforcement hearing may be filed only by either:

(a) A parent; or

(b) The Agency, representing the interests of the child in receiving child support, in any case involving another tribe or state or the Ho-Chunk Nation Indian Child Welfare Program.

(2) Affidavit. The motion shall be supported by an affidavit containing the following:

(a) Terms of the child support order to be enforced.

(b) Length of time the child support obligation has been overdue, which must be at least 30 days or facts supporting a history of non-compliance.

(c) Amount of child support that is overdue, which must be equal to one month's child support obligation.

(3) Agency Recommendation. The Agency shall file a recommendation regarding appropriate enforcement action in every case filed by a parent. In a case filed by the Agency, the recommendation shall be included in the Agency's motion for the enforcement hearing.

(4) Hearing Notice. The notice for the enforcement hearing shall be served as provided in paragraph 8d and Sections 9 and 24, and shall contain the following information.

(a) Copy of the motion and affidavit.

(b) The time and date of the hearing.

(c) Notice that if the parent owing support fails to attend the hearing, wage withholding or other enforcement action will be ordered.

(5) Procedures. At the enforcement hearing the Court shall review the affidavit and any supporting documents, hear the testimony of each party, consider any other evidence presented, and consider and give great weight to the recommendation of the Agency, if any.

(6) Burden of Proof.

(a) If the moving party meets the burden of proving that the child support obligation is at least 30 days overdue in an amount equal to one month's child support obligation or that the party has a history of non-compliance, the Court shall order wage withholding, as provided in paragraph 32c, or other means of enforcement, as provided in paragraph 32d.

(b) If the moving party does not meet the burden of proof, the Court shall dismiss the motion.

c. Wage Withholding.

(1) At a Review Hearing or at an Enforcement Hearing, wage withholding shall be the primary means of enforcement of a child support order where a parent receives wages, unless:

(a) The parties agree in writing to alternate arrangements which the Court approves;

(b) The party owing child support works for a Tribe or a tribal enterprise that has not waived its sovereign immunity for that purpose, in which case the Court shall order that party to arrange wage withholding of child support with his or her employer;

(c) The parent owing child support demonstrates good cause not to require immediate wage withholding; or

(d) The Court finds that another means of enforcement would be more effective.

(2) Wage Withholding Order or Request.

(a) A wage withholding order shall not exceed the upper limit of the Ho-Chunk Nation Child Support Schedule's range for the paying party's income, unless the parties agree. The Court shall order that an additional amount be withheld each month to be applied to past payments owed.

(b) The wage withholding order or request shall include all of the following:

1 The amount to be withheld and the frequency of the withholding.

2 A requirement that the employer send the amount to the Nation within seven (7) business days of the date the paying party is paid.

3 A requirement that the employer report to the Agency the date on which the amount was withheld.

4 A requirement that the employer remit the amount withheld to the Nation until further notice by the Nation.

5 A statement that the employer shall notify the Nation promptly when the paying party terminates employment and provide the paying party's last known address and the name and address of the paying party's new employer, if known.

(3) Procedure. The Court shall serve the wage withholding order or the party's wage withholding request on the employer or other payer. The Court is authorized to approve wage withholding forms recommended by the Agency.

(4) Release from Withholding. The wage withholding order or request shall be effective until the Court or the Agency issues a release or authorizes the party to issue a release.

(5) Employer Obligations.

(a) No employer shall refuse to honor a wage withholding order or a party's wage withholding request issued under this chapter. An employer shall begin withholding within seven days after service of the order or request. Failure to withhold wages according to the order or request subjects the employer to liability for the accumulated amount the employer should have withheld.

(b) No employer may discharge, refuse to employ or take disciplinary action against any employee because his or her wages have been subjected to withholding for child support. Failure to comply with this section subjects the employer to a fine to be determined under Ho-Chunk law.

d. Other Means of Child Support Enforcement. At a Review Hearing or an Enforcement Hearing, the Court may order any of the following actions in addition to or instead of wage withholding:

(1) A Federal Income Tax Refund Offset may be obtained by the Agency as provided in paragraph 32e(2).

(2) Attachment of assets through utilization of the Lien Docket, except that the federal Order to Withhold and Deliver form shall be used where applicable.

(3) Interception of federal payments, such as retirement, travel or expense reimbursement.

(4) Appearance before a Ho-Chunk Nation Elders Panel to explain non-payment.

d. Exemptions from Enforcement Actions. In the enforcement of any child support order, the following shall be exempt from execution except as specifically provided as follows:

(1) Unemployment compensation, TANF benefits, SSI or other Social Security benefits.

(2) All wearing apparel of every person in the family except that only \$500 in value in furs, jewelry, beadwork, and personal ornaments for the person owing the child support obligation.

(3) Items of bona fide religious or cultural significance.

(4) Tools, equipment, boats, gear, vehicles, instruments and materials used by the person to obtain income.

(5) Provisions and fuel for the comfortable maintenance of the home for three months.

(6) Any real property on Ho-Chunk Nation lands.

(7) A motor vehicle not exceeding \$2,500 in value.

e. Authority of the Child Support Enforcement Agency.

(1) Implementation. The Agency has the sole authority to arrange for implementation of a child support enforcement order, including wage withholding and other means of enforcement.

(2) Federal Income Tax Refund Offset.

(a) The Agency has sole authority for the following actions:

1 Receive funds certified by a state under the Federal Income Tax Refund Offset Program and owed on a Ho-Chunk Nation child support case.

2 Request that a state certify a Ho-Chunk Nation child support case to the Federal Income Tax Refund Offset Program.

3 Certify a Ho-Chunk Nation child support case to the Federal Income Tax Refund Offset Program to receive funds for that case.

(b) The Agency may offer assistance to help Ho-Chunk Nation families file "injured spouse" claims with the Federal Income Tax Refund Offset Program when appropriate.

f. Failure to Comply with Child Support Order. Failure to comply with a Ho-Chunk Nation child support order, including a wage withholding order and a court order to request wage withholding, may be punishable as contempt of court.

g. Custody and Visitation Rights. If a party fails to comply with a child support order or a provision in a Parenting Plan, the other party's obligations under the Parenting Plan or child support order are not affected. This means that a party cannot withhold visitation if the other party doesn't pay child support.

33. Transfer/Assignment of TANF Recipients' Rights.

a. The child support rights of a child who receives tribal TANF are transferred (assigned) to another tribe because the TANF paying tribe is providing support for the child during a time period when child support payments should be helping to support the child. When child support payments are made on an irregular basis, a family has no financial stability.

b. The TANF paying tribe can assist the family achieve financial independence by providing reliable, predictable TANF assistance while collecting child support owed to the child. When child support payments are made to the TANF tribe through an assignment, the payments are not counted as income of the TANF recipient and therefore they do not cause fluctuations in his or her TANF grant. The paying party's financial connection with the child is maintained through the child support pass-through, where applicable.

c. Should the Ho-Chunk Nation establish a TANF program in the future, a child receiving TANF cash assistance will be affected by his or her rights to past, present and future child support. Support will be deemed to be transferred (assigned) to the Ho-Chunk Nation, subject to the limitations set forth in this Code.

d. When rights are transferred (assigned) to a TANF paying tribe, they are characterized as temporary or permanent as follows.

(1) Temporary Transfer/Assignment. This is the transfer of rights to past child support became due before the family began receiving TANF cash assistance. The transfer of these rights is temporary, which means that the child support may be collected and held by the TANF paying tribe but it may not be utilized to reimburse the TANF paying tribe for the child's TANF grant. While it is held by the TANF paying tribe, it shall not be considered an asset of the family. This transfer terminates when the child stops receiving TANF cash assistance and any temporarily transferred funds collected by the TANF paying tribe shall be paid to the payee under the child support order.

(2) Permanent Transfer/Assignment. This the transfer of rights to past, present, and future child support becomes due while the family is receiving TANF cash assistance. The transfer of these rights is permanent. The amount of this transfer is limited to the amount of TANF cash assistance received for the child covered by the child support obligation or the child support obligation for that child, whichever is less. This transfer terminates when the child stops receiving TANF cash assistance.

e. Use of Payments.

(1) Child support payments retained by the TANF paying tribe under a permanent TANF assignment shall be expended for the benefit of the Nation's children and their families.

(2) Pass-Through. Money received by the Nation under a TANF recipient's child support transfer of rights may be used to provide a pass-through payment to that TANF recipient on behalf of the child. Such a pass-through payment shall not be considered income for purposes of TANF eligibility or counted against the amount of the grant. The amount of a uniform pass-through payment to TANF recipients shall be determined by regulation of the Legislature for the Nation's TANF Program.

34. Distribution of Child Support Payments.

a. Except as provided in paragraph b, below, child support payments made to the Nation shall be distributed in the following order of preference within each case:

- (1) Payment of current support.
- (2) Payment of the custodian's arrears.
- (3) Payment of transferred/assigned arrears.

b. Lump-sum payments from Federal Income Tax Refund Offsets shall be distributed in the following order of preference:

(1) Payment as pass-through to a custodial party receiving Tribal TANF cash assistance, if there is no current child support payment to apply to the pass-through. These payments shall be credited against arrears assigned to the TANF paying tribe.

(2) Payment of transferred (assigned) arrears.

(3) Payment of the custodian's arrears.

c. Distribution to Multiple Payees. If the person with the child support obligation owes child support on more than one case, distribution shall be as follows:

(1) Current Support. If there is not enough to pay all current support owing, the available funds shall be pro-rated to each case according to that case's share of the total current support owing on all cases.

(2) Arrears. If there is money left over after all current support has been paid, the available funds shall be applied to the arrears owing on all cases, pro-rated to each case according to that case's share of the total arrears owed on all cases. Within each case, the money is first applied to any arrears owed the custodian and next to TANF arrears.

35. Reduction of Past Child Support Owed. This section allows the Court to forgive back unpaid child support under certain circumstances. The child support policies of outside governments have frequently created hardship for Ho-Chunk children and their families; for example, when income is imputed and creates large back debts, when the child's parents reunite and collection action on the past debt takes away resources from the child, when collection action is taken against individuals who are caring for their adult children and grandchildren, and other actions which offend Ho-Chunk values of fairness and due process.

a. Types of Debt Defined.

(1) Debt to Parent or Custodian. A debt of past child support owed to the parent or custodian on behalf of the child may be reduced only by agreement of the parties.

(2) Debt to Tribe or State. A debt of past child support owed to a government for reimbursement for public assistance may be reduced or eliminated as provided in this Code.

b. Petition. A party who wishes to reduce a debt for past child support may file a petition for Reduction of Past Child Support Debt. The petition shall be prepared on a form approved by the Court and it shall contain the following information:

(1) The name, address, tribal affiliation, date and place of birth and social security number of the petitioner and the child for whose benefit the child support was ordered.

(2) The name, address, tribal affiliation, date and place of birth and social security number of the person to whom the child support is owed or was originally owed.

(3) If the debt is owed to a government for reimbursement for public assistance, the name and address of the appropriate government agency.

(4) A copy of the child support order under which the debt accumulated.

(5) The total amount of the past child support debt.

(6) The amount of proposed reduction of the past child support debt.

(7) The reason why the past child support debt should be reduced or eliminated.

(8) Financial information, as provided in paragraph 25e.

(9) The recommendation of the Agency.

c. Procedure.

(1) Hearing Date. When the Court receives a petition, it shall set a hearing date which shall not be more than thirty-five (35) calendar days after the petition was received, unless continued for good cause.

(2) Notice of Hearing. The date, time and place of the hearing shall be contained in the summons.

(3) Service of Petition and Summons. After a petition is filed, the petitioner shall cause the respondent to be served with a copy of the petition and a summons. The petition and summons shall be served as provided in paragraph 7e. The parties may sign a petition and by doing so, waive the requirements of service of the petition and summons

(a) Summons. The summons, prepared on a form approved by the Court, shall notify the respondent that if he or she does not appear or respond to the petition within twenty (20) days from the date of service or within 60 days of the date of publication if service is by publication, the Court may proceed without the respondent.

(b) Proof of Service. The person serving the summons and petition shall file with the Court certification that he or she has served the respondent, including the date and place of service. If service was made on a person other than the respondent, the certification shall state the name of the person served, the date and place of service, and the instructions given. In case of service by certified mail, the return receipt shall be filed with the Court and shall constitute the proof of service. In case of service by publication, an affidavit by the person causing publication and a copy of the summons as published shall constitute the proof of service.

(4) Response. Unless the parties have filed a joint petition, the respondent shall file his or her response within twenty (20) calendar days after the respondent is served with a copy of the petition, or within sixty (60) days if service was by publication. The respondent shall cause the response to be served on the petitioner as provided in paragraph 9b.

(5) Notice to Agency. If the past child support debt is owed to a government, notice shall be served on the appropriate agency of that government. The person who assigned the child support rights to the government need not be a party to the hearing if the entire child support debt is owed to the government.

(6) Hearing.

(a) The Court shall review the documents filed in the case, hear the testimony of each party, and consider any other evidence presented. It shall consider and give great weight to the recommendation of the Agency, if any.

(b) The burden of proof shall rest on the moving party to prove that the support obligation should be reduced, as provided in paragraph 35d.

(c) If the parties have proposed an agreed order and the Agency has not objected, the Court shall enter the agreed order.

d. Reduction of Past Support Owed to a Tribe or State. The Court may grant a reduction or complete forgiveness of past support owed to a tribe or state when the past debt was not based on the paying parent's actual income or when payment of the past debt would create substantial hardship.

(1) Substantial hardship shall include either of the following circumstances:

(a) The child on whose behalf the past debt accumulated is now living with and being supported by both parents who are reunited.

(b) The child on whose behalf the past debt accumulated is now living with and being supported by the party owing the past support debt.

(2) Substantial hardship may include any of the following circumstances:

(a) The party owing the past support debt is complying with the current child support obligation for the child on whose behalf the past debt accumulated and he or she has insufficient resources to pay both current and past support.

(b) The party owing the past support debt is currently supporting other children, grandchildren or elders and payment of the past support debt would prevent him/her from adequately supporting him/herself and the others.

(c) The child on whose behalf the past debt accumulated is over 18 years old and payment of the debt would significantly burden the party's ability to support him/herself.

e. Reduction of Past Child Support Owed to a Parent.

(1) When a parent agrees to a reduction or complete forgiveness of past child support owed to him or her, the Court may hold an in-chambers, ex-parte (individual) discussion with this parent to ensure that he or she understands and consents to the proposed agreed order and that the proposed agreement was not the result of coercion, threat, duress, fraud, overreaching, or improper promise.

(2) If the parent wants a friend, family member, or other person to be present, the Court shall allow it, after first speaking alone with the party. If a party is unavailable or chooses not to be at the hearing, he or she may submit an affidavit verifying the agreement.

f. Findings and Conclusions. After the hearing, the Court shall enter findings of fact and conclusions of law and a separate Reduction of Past Child Support Owed Order. The findings of fact and conclusions of law shall address the following:

- (1) Subject matter jurisdiction.
- (2) Personal jurisdiction over all the parties.
- (3) The total amount of past child support owed and to whom it is owed.
- (4) The basis for the decision, including the agreement of the person to whom the child support debt is owed, if a parent.
- (5) The amount of reduction of past child support, if any.
- (6) The conditions, if any, upon which reduction of the past child support debt is contingent.

g. Order.

(1) The Agency may recommend, and the Court may fashion an order, making the reduction of past support contingent upon making timely payments of current support as well as timely payments on the arrears not forgiven. It is Ho-Chunk Nation policy to attempt to create orders for the reduction of past child support which are most likely to be carried out successfully.

(2) The Reduction of Past Child Support Owed Order shall include the following:

- (a) A statement that the Court has jurisdiction over the case.

(b) The total amount of the child support debt.

(c) The amount of reduction of the child support debt.

(d) The conditions, if any, upon which reduction of the past child support debt is contingent.

36. Child Support Guidelines. Wisconsin Administrative Code, Chapter DWD 40, Child Support Percentage of Income Standard, shall apply.

a. General.

(1) The Ho-Chunk Nation Child Support Guidelines set forth the rules under which a child support obligation is established. They set a standard of adequate support for children subject to the ability of the parents to pay.

(2) The Schedule is the table of levels of cash child support that correspond to the income of the paying party. It is used according to the Guidelines and is intended to provide consistent treatment of individuals in similar circumstances.

b. Application. The Guidelines and Schedule are to be applied as follows:

(1) Parties. The parties may use the Guidelines and Schedule in reaching an agreement.

(2) Agency. The Agency shall be guided by the Guidelines and Schedule in assisting the parties to reach agreement. When the parties are not in full agreement on the amount of child support, the Agency shall be guided by the Guidelines and Schedule in making its recommendation to the Court.

(3) Court. The Court will generally enter an agreed order, as provided in Section 26 or adopt the Agency's recommendations. In those cases in which the Court does not do so, it shall apply the Guidelines and Schedule to the circumstances of the parties.

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

(1) Calculate the monthly income of the party obliged to pay child support and subtract the allowable deductions.

(2) Determine the total number of children to whom the party has a duty to support, as provided in paragraph f, below, and find the range in the Schedule which corresponds to the party's income and number of children.

(3) Determine the amount within the range that is appropriate to the circumstances of the family, based on the factors listed in paragraph g, below, except for health insurance.

(4) Determine any amount of extra child support obligation for months when seasonal income is received, as provided in paragraph g(3), below.

(5) Add any additional amount required for health insurance as provided in paragraph l, below, not to exceed the upper limit within the appropriate range.

(6) Determine non-cash contributions in appropriate circumstances, as provided in paragraph k, below.

(7) Establishment of child support obligation when there is shared physical custody. In the absence of an agreement as to the amount of child support, when the parties each provide a home for the children and the children will spend a significant percentage of the year in each home, the Court may pro-rate the child support obligation between the parties.

d. Calculation of Income as Basis for Child Support Obligation. The non-custodial party's obligation shall be based on his or her monthly income less allowable deductions.

(1) Income means revenue from any source including but not limited to:

- (a) Salaries, wages, tips, commissions, and regular overtime.
- (b) Business income such as sales of goods, services and products, whether legal or illegal.
- (c) Deferred compensation.
- (d) Income from second jobs.
- (e) Predictable, non-recurring income of over \$500 per quarter.
- (f) Regular bonuses.
- (g) Treaty payments.
- (h) Per capita distribution payments.
- (i) Lease or rental income.
- (j) Compensation received under a contract.
- (k) Dividends.
- (l) Severance pay.
- (m) Pensions.
- (n) Interest, trust income, annuities, and capital gains.
- (o) Workers compensation benefits and unemployment insurance benefits.

(2) Allowable deductions from income include:

- (a) Tribal taxes and stumpage fees.
- (b) Federal and state income taxes.
- (c) Social security (FICA) deductions.

- (d) Mandatory pension plan payments.
- (e) Union or professional dues.
- (f) State industrial insurance premiums.
- (g) Normal business expenses allowable under IRS rules.
- (h) Normal treaty income business expenses, determined by:
 - 1 The standard treaty income business expense deduction developed by the applicable tribe; or
 - 2 The IRS rules applicable to normal non-treaty business expenses.
- (i) Self-employment taxes for self-employed persons.

(3) Disclosure required for the following, although not included as income:

- (a) Social security benefits.
- (b) Disability insurance benefits.
- (c) Income from a second spouse or other adult in the household.
- (d) TANF cash assistance, general assistance benefits, SSI, food stamps or other means-based benefits.
- (e) Child support received by a parent for the support of other children.

(4) Calculation of Income in Default Cases. In the absence of financial information from the defaulting parent, his or her income shall be based on information provided by the Agency.

e. Calculation of Child Support When There Are Children From Other Relationships.

(1) When a party has a legal duty to pay child support for children from other relationships, calculation of the amount of the child support per child shall be based on the total number of children from all relationships.

(a) If possible, at the time an order is entered, the Court shall modify any existing orders so that they are based on the total number of children from all relationships that the parent has a duty to support.

(b) If an existing order cannot be modified at the time the order is entered, the child support obligation for the child before the Court shall be established based on the number of children before the Court, but the monthly obligation for the first six (6) months shall be reduced so that the total child support paid to all persons during that period does not exceed the scheduled amount for the total number of children from all relationships. During this six (6) month period, the Agency shall assist the party to modify the previous child support order(s). The six (6) month period may be continued for good cause. Upon modification of the previous order(s), the Court shall modify its order based on the total number of children from all relationships.

(c) If a previous child support order for children from another relationship cannot be modified, the Court shall adjust the child support obligation for the child before

the Court so that the total child support paid to all persons does not exceed the scheduled amount for the total number of children from all relationships.

(2) The provisions of this paragraph e, apply only to the extent that the child support obligations for children from other relationships are actually paid.

f. Adjustments Within Schedule Ranges. A child support obligation established under these Guidelines shall be set within the range provided in the Schedule for the income level of the paying party. In determining the appropriate amount within the range, the factors in this section shall guide the parties' agreement, the Agency and the Court.

(1) Age of Child. The obligation shall be set higher in the range for children 12 years old and older and closer to the lower end of the range for younger children.

(2) Work-related Day Care. The obligation may be set higher in the range to cover the reasonable cost of work-related day care of the custodial parent. This obligation shall terminate if work-related day care is terminated or it shall be reduced proportionately if the child is in work-related day care for a reduced period of time.

(3) Seasonal Income. If the paying party's income is seasonal, the obligation may be set on a schedule that varies the amount at different times of the year.

(4) Extraordinary Medical Expenses for the Child. The obligation may be set higher in the range to cover extraordinary medical expenses for the child, not covered by health insurance.

(5) Extraordinary Debt Not Voluntarily Incurred. The obligation may be set lower in the range when the party owing support makes payments on extraordinary debt not voluntarily incurred such as court fines.

(6) Use of Non-Cash Services or Resources. The obligation may be set lower in the range when non-cash services or resources are regularly and reliably provided, as set forth in paragraph k, below.

(7) Possession of Wealth. The obligation may be set higher when the parent owing support possesses an abundance of valuable material possessions, resources, money, or has the ability to generate a stream of income that is greater than monthly expenses or even slightly above expenses and purchase whatever material possession the parent may want or need. Luxury items that may equate to the abundance of possessions may include, but are not limited to, expensive homes, cars, boats, all-terrain vehicles, sports equipment, recreational vehicles, camping trailers, vacation homes, additional land/property, and multi-annual vacations.

g. Period of Obligation.

(1) Prior to Filing.

(a) Establishing a child support obligation for a period prior to the date of filing the case in Court is disfavored by the Ho-Chunk Nation. This is due to the difficulty in obtaining accurate past financial information and because of the burden on the paying party if the party is also paying current support.

(b) There are some circumstances when it is appropriate to have a \$0 or default order for the period before filing.

(c) In every case where child support is ordered for any period before filing, there must be a recommendation by the Agency regarding the duration and amount of pre-filing child support.

(2) Termination.

(a) A parent's financial duties last until any of the following events:

1 The death of the child.

2 The death of the parent obliged to pay support.

3 The child reaches the age of eighteen years old or, if the child is still in high school, until graduation or the child turns nineteen, whichever is earlier.

(b) The child support obligation terminates at the end of the month in which the financial duty terminates.

h. Payment.

(1) Payment of a child support obligation shall be made to the Agency for distribution to the appropriate recipient, as provided in Section 34.

(2) If the Agency becomes aware that a child is no longer living with the person receiving child support on behalf of the child, the Agency or the paying party may request a review hearing to determine to whom the child support payments will be disbursed for the benefit of the child.

(3) If the parties agree or the Court finds it to be in the best interests of the child, it may order:

(a) Allowance to Child. A portion of the cash support to be disbursed to the child as an allowance; or

(b) Trust or Savings Account. A portion of the cash support to be deposited into a trust or savings account for the benefit of the child under such terms as the Court deems just.

(4) There may be circumstances when payment to the Registry of a state or another tribe would be appropriate. The Agency will identify those circumstances, if applicable.

i. Credit for Benefits. When a child receives benefit payments such as social security, veterans, or the like, as a result of contributions made by the party with the child support obligation, credit shall be given to offset all or part of the child support obligation, in the amount of the payment. The Court shall indicate in the child support order the total child support obligation and the amount that shall be covered by benefit payments made directly to the child. If the benefit payment is more than the current child support obligation, the difference shall be credited against any arrears that the custodian has not assigned to a government.

j. Non-Cash Services and Resources. Although consistent with Ho-Chunk Nation culture and tradition, non-cash services and resources are difficult to monitor and guarantee. The primary purpose for their use in connection with cash child support is to strengthen the bond between the child and the non-custodial parent. Non-cash services and resources are not a substitute for cash child support obligation.

(1) The non-custodial parent may be ordered to provide non-cash services and resources in connection with the child support obligation under the following circumstances:

(a) When the parties agree.

(b) When the non-custodial parent's income is below the minimum income level for ordering cash child support in the Child Support Schedule.

(c) When the non-custodial parent's income is insufficient to cover the obligation(s) for the total number of children from all relationships.

(d) When the non-custodial parent is a teenager in school.

(e) When the non-cash services and resources are regular and reliable so that the obligation may be established lower in the range.

(2) The child support order shall specify the quantity, quality, condition and frequency of the non-cash services and resources.

(3) Members of the non-custodial parent's extended family are welcome to contribute non-cash services and resources. They may be credited to the non-custodial parent's obligation if they meet the court's requirements.

- (4) Non-cash services and resources may include, but are not limited to:
- (a) Help with extra sports and school activities or expenses.
 - (b) Day care provided by the non-custodial parent.
 - (c) School clothes.
 - (d) Car or home maintenance or repair.
 - (e) Firewood, fish, shellfish, game, or berries, but only by agreement of the parties.
 - (f) Tutoring or volunteering at the child's school.
 - (g) Transportation to the child's activities.
 - (h) Pow Wow regalia.
 - (i) Teaching treaty skills or cultural knowledge.

k. Health Insurance.

(1) The Agency shall make a recommendation as to the best health insurance coverage for the child. The Court shall include provision of health insurance for the child in every child support order.

(a) When health insurance is available at reasonable cost through one or both party's employment or union, that party (or both parties) shall provide coverage. "Reasonable cost" for the parent with the child support obligation means that when the child's portion of the health insurance premium is added to the basic child support obligation, the total obligation does not exceed the upper limit of the range.

(b) If health insurance is not available to either party at reasonable cost, a \$0 health insurance order shall be entered. If the child is eligible for health care services through the Nation, another tribe or the Indian Health Service, one or both parties shall be ordered to cooperate with the appropriate entity to obtain services for the child.

(c) Routine medical expenses are included within the Schedule.

(2) The Agency may make arrangements to enroll a child in a health insurance plan, consistent with a court order on health insurance.

37. Child Support Schedule.

a. The Child Support Schedule is based on the following:

(1) Specific descriptive and numeric criteria and results in a computation of an amount of child support, which is sufficient to meet the basic needs of a child for housing, clothing, food, education, health care, recreation, and goods and services required by physical or mental disability.

(2) The income of the non-custodial parent and the number of children there is a duty to support.

b. The Schedule provides for a range of payment levels for each income category. The level shall be adjusted to the circumstances of each case according to the factors set forth in paragraph 36f.

c. Review Requirement. The Schedule shall be reviewed by the Agency every three years and any recommendations for amendment shall be provided to the Legislature.

d. Child Support Schedule. The Ho-Chunk Nation adopts the State of Wisconsin Child Support Schedule on an interim basis.

e. Deviation from Schedule.

(1) It is against Nation policy to establish or enforce a non-voluntary child support order outside the range in the Ho-Chunk Nation Child Support Schedule that corresponds with the paying party's income level.

(2) The Agency may recommend and the Court may order a child support obligation set under the guidelines which is outside the range in the schedule only if the obligation is supported by agreement of the parties. If the child support order deviates from the range in the schedule, the Court shall enter a written finding stating the amount of support that would have been required under the schedule and justification as to why that amount would be unjust or inappropriate. [For example, it is intended that if the top of the range is \$250 and the parties agree to \$300, the order shall state this.]

38. Child Support Review Hearings.

a. Purpose. The primary purpose of a child support review hearing is to give the parties and the Court an opportunity to ensure that child support payments are being made as provided in the order. Either party shall have the opportunity to:

(1) Raise questions or concerns they have about a Parenting Plan;

(2) Move for modification of the child support order; or

(3) Request payments as provided in paragraphs f and g, below.

b. Timing. A mandatory Review Hearing shall be scheduled three (3) months after the child support order was issued. Thereafter, Review Hearings shall be scheduled every twelve months after the child support order was issued. The date for the first Review Hearing shall be set by the Court at the time the order is issued and no further notice of that hearing is necessary. The Agency shall notify the Court when it is time to schedule the annual Review Hearing for each case. The Court may order additional Review Hearings if it is necessary.

c. Waiver. Except for the first, mandatory review hearing, a review hearing may be waived if both parties file a request to waive the hearing and the Agency agrees to the waiver.

d. Enforcement of Child Support Order. If child support payments have not been made as required by the order, the Agency shall make a recommendation to the Court regarding appropriate enforcement of the child support order. In any case which involves Nation TANF or another tribe or a state, the Agency has the sole authority to raise enforcement issues and represent the interests of the child in receiving child support. If the Court finds that a child support obligation is overdue or if there is a history of non-compliance with the order, the Court shall order wage withholding or other means of enforcement, as provided in paragraphs 36c and 36d.

e. Modification of Child Support Order. Review hearings are not intended to be annual modification hearings. However, a party may file a motion for modification, as provided in Section 31 prior to the review hearing and, if timely filed, the Court may schedule a hearing on modification at the same time as the review hearing.

f. Payment for Extraordinary Medical Expenses. The Court may order the paying party to make payments in addition to the regular child support payments upon presentation of receipts or other proper proof that the child has had extraordinary medical expenses as provided in paragraph 36f(4). Adjustments may be added to future payments, provided that no total monthly payment may exceed the upper limit of the scheduled range for the income of the paying party.

g. Reimbursement.

(1) Upon presentation of receipts or other proper proof, the Court may order reimbursement and/or repayment as follows.

(a) Reimbursement to the paying party for work-related day care expenses paid but not utilized by the receiving party for work or work-related activities.

(b) Repayment to the Nation by the party who received child support on behalf of a child who stopped residing for a month or longer with the that party, if payment was originally made to the Nation.

(2) Overpayment reimbursement shall be applied first to arrears owed. If no arrears are owed, the reimbursement may be paid directly or applied as a credit against future support.

39. Court Appeals.

a. Any interested party to the Court hearing may appeal a final Court order on a specific legal issue.

b. Procedure. An appeal to the Nation's Appellate Court may be taken from any order, decree, or judgment of the Court. Such appeal shall be taken in the same manner in which appeals are taken from judgments or decrees of the Court. The notice of appeal must be in writing and taken within thirty (30) month from the entry of the order, decree, or judgment appealed from.

c. Record For purpose of appeal, a record of proceedings shall be made available to the child, his parent, guardian, or custodian, the child's counsel, and others upon Court order. Costs of obtaining this record shall be paid by the party seeking the appeal.

d. Stay Pending Appeal. The pendency of an appeal shall not stay the order or decree appealed from in a child's case. Where the order or decree appealed from directs a change of legal custody of a child, the appeal shall be heard and decided at the earliest practicable time. The name of the child shall not appear on the record of appeal.

40. Severability. If any provision or provisions of this Act in the future be declared invalid by the Judiciary, the invalid provision or provisions shall be severed and the remaining provisions shall continue in full force and effect.

Legislative History:

8/17/04 Legislature places draft Child Support Program Code (4 HCC § 7) out for 45-Day Public Review.
10/19/04 Enacted as Child Support Enforcement Code (4 HCC § 7) by Legislative Resolution 10/19/04C.