

CHAPTER 3-3
CHILD SUPPORT (08/12/2000)

CHILD SUPPORT

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CHILD SUPPORT

§ 1. General Provisions

1.1. Purpose. This Child Support Ordinance (“Ordinance”) establishes judicial procedures governing issuance and enforcement of orders for the financial support of a child.

1.2. Intent. This Ordinance is intended to be construed and applied liberally to assist children in need of financial support. The Forest County Potawatomi Community recognizes that its children are the Community's future, and that parents have the moral and legal obligation to ensure the health, welfare and safety of their children. This Ordinance establishes that parents have the legal duty to financially support their children.

1.3. Definitions.

In this Ordinance:

“Child” means an individual, under the age of majority, who is, or is alleged to be, owed a duty of support by the individual’s parent, or who is, or is alleged to be, the beneficiary of a support order directed to the parent.

“Child support order” means a support order for a child.

“Community” means the Forest Count Potawatomi Community of Wisconsin.

“Duty of support” means an obligation imposed or imposable by law to provide support for a child.

“Income” includes earnings or other periodic entitlements to money from any source.

“Income-withholding order” means an order, notice or other legal process directed to an obligor’s employer or other debtor to withhold support from the income of, or other money owed to, the obligor. An income-withholding order issued by the Tribal Court may be directed to the Forest County Potawatomi Community.

“Initiating state” means a state from which a proceeding is forwarded, or in which a proceeding is filed for forwarding to the Tribal Court under this Ordinance.

“Initiating tribunal” means the authorized tribunal in an initiating state.

“Issuing state” means the state in which a tribunal issues a support order or renders a judgment determining parentage.

“Issuing tribunal” means the tribunal that issues a support order or renders a judgment determining parentage.

“Law” includes decisional and statutory law and rules and regulations having the force of law.

“Obligee” means any of the following:

- (A) An individual to whom a duty of support is, or is alleged to be owed, or in whose favor a support order has been issued, or a judgment determining parentage has been rendered.
- (B) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee.
- (C) An individual seeking a judgment determining parentage of the individual's child.

“Obligor” means an individual, or the estate of a decedent, to whom any of the following applies:

- (D) The individual or decedent owes, or is alleged to owe, a duty of support.
- (E) The individual or decedent is alleged, but has not been adjudicated, to be a parent of a child.
- (F) The individual or decedent is liable under a support order.

“Register” means to file a support order or judgment determining parentage with the Clerk of the Tribal Court.

“Registering tribunal” means a tribunal in which a support order is registered.

“Reservation” means the Forest County Potawatomi Community Reservation, and all lands held in trust by the United States for the benefit of the Community.

“State” means a state of the United States, a federally recognized Indian Tribe, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

“Support enforcement agency” means a public official or agency authorized to seek any of the following:

- (G) Enforcement of support orders or laws relating to the duty of support.
- (H) Establishment of modification of child support.
- (I) Determination of parentage.
- (J) Location of obligors or their assets.

“Support order” means a judgment, decree or order, whether temporary, final or subject to modification, for the benefit of a child that provides for financial support, health care, arrearages or reimbursement, and that may include related costs and fees, interest, income withholding, attorney fees and other relief.

“Tribunal” means a court, administrative agency or quasi-judicial entity authorized under applicable law to establish, enforce or modify support orders, or to determine parentage.

1.4. Remedies Cumulative

Remedies provided by this Ordinance are not exclusive. They are cumulative and do not affect the availability of remedies under other rules, procedures or law.

§ 2. Jurisdiction

2.1. Personal Jurisdiction

In a proceeding under this Ordinance, to establish, enforce or modify a support order, or to determine parentage, the Tribal Court may exercise personal jurisdiction over a resident individual, or the individual's guardian or conservator. Also in a proceeding under this Ordinance, to establish, enforce or modify a support order, or to determine parentage, the Tribal Court may exercise personal jurisdiction over a nonresident individual, or the individual's guardian or conservator, if any of the following applies:

- (A) The individual is personally served with a summons or other notice within the Reservation.
- (B) The individual submits to the jurisdiction of the Tribal Court, by consent, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction.
- (C) The individual resided with the child on the Reservation.
- (D) The individual resided on the Reservation and provided prenatal expenses or support for the child.
- (E) The child resides on the Reservation as a result of the acts or directives of the individual.
- (F) The individual engaged in sexual intercourse on the Reservation, and the child may have been conceived by that act of intercourse.
- (G) The individual asserted parentage in a declaration of paternal interest filed with the Wisconsin Department of Health and Family Services under s. 48.025, or in a statement acknowledging paternity filed with the State Registrar under s.69.15(3)(b) 1 or 3.
- (H) There is any other basis consistent with the Constitution of the United States and Tribal law for the exercise of personal jurisdiction.

2.2. Procedure When Exercising Jurisdiction Over Nonresident

The Tribal Court exercising personal jurisdiction over a nonresident under Section 2.1 may apply Section 3.12 to receive evidence from another state and Section 3.13 to obtain discovery through a tribunal of another state.

2.3. Initiating and Responding

Under this Ordinance, the Tribal Court may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

2.4. Simultaneous Proceedings in Another State

The Tribal Court may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another court, only if all the following apply:

- (A) The petition or comparable pleading in Tribal Court is filed before the expiration of the time allowed in the other court for filing a responsive pleading challenging the exercise of jurisdiction by the other state.
- (B) The contesting party timely challenges the exercise of jurisdiction in the other court.

2.5. Continuing Exclusive Jurisdiction

- (A) The Tribal Court issuing a support order has continuing, exclusive jurisdiction over a child support order for as long as the child is an enrolled member of the community; or for as long-as the Reservation remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, or until each individual party has filed written consent with the Tribal Court for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.
- (B) The Tribal Court shall recognize the continuing, exclusive jurisdiction of a tribunal of another state that has issued a child support order under a law substantially similar to this Ordinance, to the extent the asserted jurisdiction of another state is consistent with the Indian Child Welfare Act and other federal law.
- (C) A temporary support order issued *ex parte* or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

§ 3. Civil Provisions of General Application

3.1. Proceedings Under this Ordinance

- (A) This Ordinance provides for all of the following proceedings:
 - (1) Establishment of an order for child support.
 - (2) Enforcement of a support order and income-withholding order of another state.

- (3) Registration of an order for child support of another state for enforcement.
 - (4) Modification of an order for child support issued by a tribunal of any state.
 - (5) Registration of an order for child support of another state for modification.
 - (6) Determination of parentage.
 - (7) Assertion of jurisdiction over nonresidents.
- (B) An individual petitioner or a support enforcement agency may commence a proceeding authorized under this Ordinance.

3.2. Child Support – Apportionment of Expense

In a proceeding for child support, after considering all relevant factors, but without regard to marital misconduct, the Court may order either or both parents owing a duty of support to any child to pay an amount reasonable or necessary for the support of the child.

3.3. Support Payments – Revenue Allocation Ordinance

When the Tribal Court orders a parent, who is an enrolled member of the Community, to pay for the support of a child, the Court may authorize the Tribal Treasurer, through the Accounting Department, to withhold all or a portion of such member's future payments under the Revenue Allocation Ordinance, as amended, and to deliver such payments the person entitled to receive child support payments or arrears. The Court shall determine the amount to be withheld based on consideration of all relevant facts, including the amount of child support payments in arrears.

3.4. Support Payments – To Whom Paid

The Court may, upon its own motion, or upon motion of either party, order support payments to be made to:

- (A) the person entitled to receive the payments, or
- (B) the appropriate tribal department, or
- (C) the appropriate Wisconsin government support enforcement agency, or
- (D) the Clerk of the Court for remittance to the person entitled to receive the payments.

If payments are made to the Clerk of the Court, the Clerk shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order. The parties affected by the Order shall inform the Clerk of the Court of any change of address, or of other conditions that may affect administration of the Order.

3.5. Action by Minor Parent

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child. The Tribal Court may appoint a guardian ad litem for the minor's child, but the Court need not appoint a guardian ad litem for a minor parent who maintains such a proceeding unless the proceeding is one for the determination of parentage, in which case the court shall appoint a guardian ad litem for a minor parent who maintains such a proceeding or for a minor who is alleged to be a parent.

3.6. Application of Law by the Tribal Court

Except as otherwise provided by this Ordinance, the Tribal Court may, to the extent there is not relevant Tribal law, custom, or procedure on point:

- (A) Apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in Wisconsin State Courts, and may exercise all powers and provide all remedies available in those proceedings.
- (B) Determine the duty of support and the amount payable in accordance with the law and support guidelines of the State of Wisconsin.

3.7. Private Counsel

An individual may employ private counsel to represent the individual in proceedings authorized by this Ordinance.

3.8. Pleadings and Accompanying Documents

- (A) A petitioner seeking to establish or modify a support order, or to determine parentage in a proceeding under this Ordinance, must verify the petition. The petition or accompanying documents must provide, so far as known, the names, residential addresses, social security numbers and dates of birth of the obligor and the obligee, and the name, sex, residential address, social security number and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order that is in effect. The petition may include any other information that may assist in locating or identifying the respondent.
- (B) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

3.9. Nondisclosure of Information in Exceptional Circumstances

Upon a finding, which may be made *ex parte*, that the health, safety or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing

order so provides, the Tribal Court shall order that the address of the child or party, or other identifying information, not be disclosed in a pleading or other document filed in a proceeding under this Ordinance.

3.10. Costs and Fees

- (A) The petitioner may not be required to pay a filing fee or other costs.
- (B) If an obligee prevails, the Tribal Court may assess against an obligor filing fees, reasonable attorney fees, other costs and necessary travel, and other reasonable expenses incurred by the obligee and the obligee's witnesses. The Tribal Court may not assess fees, costs or expenses against the obligee or the support enforcement agency. Attorney fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.
- (C) The Tribal Court shall order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. A hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

3.11. Nonparentage as Defense

A party whose parentage of a child has been previously determined by or under law may not plead nonparentage as a defense to a proceeding under this Ordinance.

3.12. Special Rules of Evidence and Procedures

- (A) The physical presence of the petitioner is not required for the establishment, enforcement or modification of a support order or the rendition of a judgment determining parentage.
- (B) A verified petition, affidavit, document substantially complying with federally-mandated forms, or a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness.
- (C) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record is evidence of facts asserted in it and is admissible to show whether payments were made.
- (D) Copies of bills for testing for parentage, or for prenatal and postnatal health care of the mother and child, or copies of reports of medical assistance payments under for such testing or prenatal and postnatal health care, furnished to the adverse party at least ten (10) days before trial, are admissible in evidence to prove the amount of the charges billed or the amount of the medical assistance paid, and that the charges or payments were reasonable, necessary and customary.

- (E) Documentary evidence transmitted to the Tribal Court by telephone, telecopier, or other means that do not provide an original writing, may not be excluded from evidence on an objection based on the means of transmission.
- (F) The Tribal Court may permit a party or witness residing in another state to be deposed, or to testify by telephone, audiovisual means or other electronic means.
- (G) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.
- (H) A privilege against disclosure of communications between spouses does not apply in a proceeding under this Ordinance.

3.13. Communications Between Tribunals

The Tribal Court may communicate with a tribunal of another state, in writing or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree or order of that tribunal, and the status of a proceeding in the other state. The Tribal Court may furnish similar information by similar means to a tribunal of another state.

3.14. Assistance with Discovery

The Tribal Court may:

- (A) Request a tribunal of another state to assist in obtaining discovery.
- (B) Upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

3.15. Receipt and Disbursement of Payments

A support enforcement agency, its designee or the Tribal Court shall disburse promptly any amounts received under a support order, as directed by the order. The agency, its designee or the Tribal Court shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

§ 4. Enforcement and Modification of Support Order After Registration

4.1. Registration of Order for Enforcement

A support order or an income-withholding order issued by a tribunal of another state may be registered in the Tribal Court.

4.2. Procedure to Register Order for Enforcement

- (A) A support order or income-withholding order of another state may be registered in the Tribal Court by sending all of the following documents and information to the Tribal Court:

- (1) A letter of transmittal requesting registration and enforcement.
 - (2) Two (2) copies, including one certified copy, of all orders to be registered, including any modification of an order.
 - (3) A sworn statement by the party seeking registration, or a certified statement by the custodian of the records showing the amount of any arrearage.
 - (4) The name of the obligor and any of the following that are known:
 - (a) The obligor's address and social security number.
 - (b) The name and address of the obligor's employer and any other source of income of the obligor.
 - (c) A description and the location of property of the obligor in this state not exempt from execution.
 - (5) Except as provided in Section 3.1(I) regarding Nondisclosure of Information in Exceptional Circumstances, the name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.
- (B) On receipt of a request for registration, the Tribal Court shall cause the order to be filed, together with one copy of the documents and information, regardless of their form.
- (C) A petition or comparable pleading seeking a remedy that must be affirmatively sought may be filed at the same time as the request for registration, or later. The pleading must specify the grounds for the remedy sought.

4.3. Effect of Registration for Enforcement

- (A) A support order or income-withholding order issued in another state is registered when the order is filed in the Tribal Court.
- (B) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by the Tribal Court.
- (C) Except as otherwise provided in this Ordinance, the Tribal Court shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

4.4. Choice of Law

- (A) The law of the issuing state governs the nature, extent, amount and duration of current payments and other obligations of support, and the payment of arrearages under the order.
- (B) In a proceeding for arrearages, the statute of limitations under the laws of the State of Wisconsin is incorporated herein and applies.

4.5. Notice of Registration of Order

- (A) Whenever a support order or income-withholding order issued in another state is registered, the Tribal Court shall notify the nonregistering party by personal service or certified mail. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.
- (B) The notice must inform the nonregistering party of all of the following:
 - (1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by the Tribal Court.
 - (2) That a hearing to contest the validity or enforcement of the registered order must be requested within twenty (20) days after the date of mailing or personal service of the notice.
 - (3) That failure to contest the validity of enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted.
 - (4) The amount of any alleged arrearages.

4.6. Procedure to Contest Validity or Enforcement of Registered Order

- (A) A nonregistering party seeking to contest the validity or enforcement of a registered order in the Tribal Court shall request a hearing within twenty (20) days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages.
- (B) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.
- (C) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the Tribal Court shall schedule the matter for hearing and give notice to the parties of the date, time and place of the hearing.

4.7. Contest of Registration or Enforcement

- (A) A party contesting the validity or enforcement of a registered order, or seeking to vacate the registration, has the burden of proving one or more of the following defenses:
 - (1) That the issuing tribunal lacked personal jurisdiction over the contesting party.
 - (2) That the order was obtained by fraud.
 - (3) That the order as been vacated, suspended or modified by a later order.
 - (4) That the issuing tribunal has stayed the order pending appeal.
 - (5) That there is a defense under Tribal law to the remedy sought.
 - (6) That full or partial payment has been made.
- (B) If a party presents evidence establishing a full or partial defense under subsection (1) above, the Tribal Court may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, or issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under Tribal law.
- (C) If the contesting party does not establish a defense under subsection (1) above, to the validity or enforcement of the order, the Tribal Court shall issue an order confirming the order.

4.8. Confirmed Order

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

4.9. Effect of Registration for Modification

The Tribal Court has jurisdiction to enforce and to modify a child support order of another state registered in Tribal Court, in the same manner as if the order had been issued by the Tribal Court, but the registered order may be modified only if the following requirements have been met.

- (A) All the individual parties reside on the Reservation; or
- (B) The child, the individual obligee, and the obligor do not reside in the issuing state; a petitioner who is a nonresident of the Reservation seeks modification; and the respondent is subject to the personal jurisdiction of the Tribal Court.

§ 5. Determination of Parentage

5.1. Proceeding to Determine Parentage

- (A) The Tribal Court may serve as an initiating or responding tribunal in a proceeding brought under this Ordinance or a law similar to this Chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, to determine that the petitioner is a parent of a particular child, or to determine that a respondent is a parent of that child.
- (B) In a proceeding to determine parentage, to the extent not inconsistent with Tribal law, the Tribal Court shall apply the procedural and substantive law of Wisconsin and the rules of Wisconsin on choice of law.

§ 6. Forms

The Tribal Court may from time-to-time adopt forms for use by parties in proceedings under this Ordinance.

Legislative History:

8/12/2000 Enacted by General Council Resolution No. GC 009-2000

References in text:

For Indian Child Welfare Act referenced in Section 2.5(B), see, 25 U.S.C. §§ 1901 et seq.

For Revenue Allocation Ordinance as referenced at Section 3.3, see 5-3 FCPC Code.

For Uniform Reciprocal Enforcement of Support Act or Revised Uniform Reciprocal Enforcement of Support Act referenced in Section 5.1, see Wis. Stats., Chapter 769

For Tribal Court forms, referenced in Section 6, see note below.

Notes:

See 2-1 FCPC Code for Tribal Court Ordinance.

Tribal Court Rules and forms are available through the Tribal Court website:

<http://www.fcpotawatomi.com/index.php/Tribal-Court/court.html>