

**TITLE III**  
**FAMILY**

**CHAPTER 3-1**  
**CHILDREN'S CODE (05/28/1993)**

**CHILDREN'S CODE**

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## **CHILDREN'S CODE**

### **§ 1. Establishment and Jurisdiction**

#### 1.1. Purpose

The Forest County Potawatomi Community is a federally recognized Tribe of Indians organized under a Constitution adopted on June 5, 1982 and approved by the Secretary of the Interior on July 14, 1982 pursuant to the provisions of the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. ss. 461 et seq., as amended. The Forest County Potawatomi Community recognizes that its children are its most important resource. It is the policy of the Forest County Potawatomi Community to prevent the break-up of families and provide for the specific welfare of its children and the general welfare of the Community pursuant to powers delegated under Article IV, Section 1(d) of the Forest County Potawatomi Community Constitution and By-laws through enactment of this Ordinance.

#### 1.2. Liberal Construction

This Children's Code shall be liberally construed to effect the purposes stated in the "Indian Child Welfare Act of 1976", P.L. 95-608), 25 U.S.C. ss. 1901 et seq.

#### 1.3. Children's Court

- (A) There is established a Children's Court exercising jurisdiction pursuant to this Ordinance.
- (B) The Forest County Potawatomi Community Court shall exercise the powers of the Children's Court in special proceedings designated as;  
  
"In The Interest Of \_\_\_\_\_, a child".
- (C) The Children's Court shall be organized pursuant to the provisions of this Children's Code.

#### 1.4. Interim Provisions

- (A) Until such time as a Forest County Potawatomi Community Tribal Court is established the jurisdiction of the Children's Court pertaining to children in need of care as set forth below in this Section may be exercised by a three-person Child Welfare Board established and appointed by the Tribal Executive Council by resolution.
- (B) The Child Welfare Board shall not have jurisdiction to act on matters involving Adoptions or Termination of Parental Rights except that the Tribal Executive Council may delegate it's authority to make recommendations to other Courts and agencies acting on matters involving Forest County Potawatomi Children and to make foster care placements.

- (C) The resolution establishing the Child Welfare Board may establish rules of procedure for such Board in addition to the procedures set forth in this Children's Code.
- (D) When the Forest County Potawatomi Community Tribal Court is established the Child Welfare Board shall cease to exist unless otherwise provided by resolution of the Tribal Executive Council at that time, which resolution shall specify the Board's responsibilities and procedures from that time forward.

#### 1.5. Jurisdiction of the Children's Court

- (A) The Children's Court shall have exclusive original jurisdiction of all proceedings under the Children's Code in which a child is alleged to be a child in need of care and is recognized by the Community as a Forest County Potawatomi Community child. Such recognition shall be either through a resolution of the Tribal Executive Council or an independent finding of the Children's Court, and shall be final and non-appealable.
- (B) The Children's Court shall have exclusive original jurisdiction of the following proceedings, notwithstanding any other laws relating to same:
  - (1) For the termination of parental rights.
  - (2) For the adoption of a child.
  - (3) To determine the custody of, or to appoint a custodian or a guardian for a child.
  - (4) To determine proper placement for a child determined by the Court as a child in need.
  - (5) For the placement or treatment of a mentally retarded or mentally ill child.
- (C) Jurisdiction obtained by the Children's Court over a child is retained until terminated by any of the following situations:
  - (1) The child becomes an adult.
  - (2) When the Children's Court enters an order terminating jurisdiction.
- (D) The disposition in any proceeding and the evidence given therein shall not be admissible as evidence against the child in any proceeding in another court.

#### 1.6. Court Personnel

- (A) The Juvenile Officer shall represent the Tribe in all proceedings under this Code unless the Tribal Executive Council provides by resolution that the Tribal Attorney shall do so.

- (B) The Children's Court Worker shall carry out the duties and responsibilities set forth in this Code.
- (C) The Judge of the Children's Court shall certify no later than September 1st of each year to the Tribal Executive Council the number and qualifications of Juvenile Officers and Children's Court Workers needed to carry out the objectives of this Code.
- (D) In performing the duties set forth in this Code, all Children's Court personnel shall:
  - (1) Identify and develop resources in the Community calculated to resolve the problems presented in petitions filed in the Children's Court;
  - (2) Identify and develop resources in the Community designed to enhance the Child's potential as a member of the Tribe.
- (E) The Children's Court Worker shall be responsible for maintaining all records of the Children's Court separate from other court records.

#### 1.7. Taking a Child into Custody

- (A) The Court may enter an order directing that a child be taken into custody if a petition is filed with the Court alleging that the child is in need of care and the Court finds probable cause to believe the child is in need of care.
- (B) A child may be taken into custody without a court order by a Tribal Juvenile Officer or Children's Court Worker if there is probable cause to believe that the child is a child in need of care and that the child would be injured or removed or hidden from the jurisdiction of the Children's Court.
- (C) A child may be taken into custody by a Tribal Juvenile Officer or Child Court Worker when he has reasonable grounds to believe that the child has run away from his or her parent, guardian or custodian.
- (D) A person who takes a child into custody pursuant to a court order shall take the child immediately to the Children's Court Officer to screen admissions to detention or shelter care.
- (E) A person who takes a child into custody without a court order shall proceed as follows:
  - (1) Release the child to the child's parent, guardian or relative, unless shelter care or detention is immediately necessary;
  - (2) If the child is not released, take the child immediately to the Children's Court Worker or Juvenile Officer to screen for admissions to shelter care or detention; and

- (a) Prepare and file with the Children's Court Officer a report containing the information required in Section 1.11(A)(1); and
- (b) Make immediate and, if necessary, recurring efforts to notify the child's parent, guardian, or a relative to inform him/her that the child has been taken into custody and to notify the parent, guardian, or relative of his or her right to be present with the child while any investigation necessary to determine the need for shelter care or detention is made.

#### 1.8. Criteria for Detention

Unless ordered by the Court pursuant to the provisions of the Children's Code, a child taken into custody shall not be placed in detention prior to the Court's disposition unless:

- (A) Probable cause exists to believe the child will commit injury to the persons or property of others or cause injury to himself/herself or be subject to injury by others; or
- (B) Probable cause exists to believe the child has no parent, guardian or custodian able or willing to provide adequate supervision, and care for him/her; or
- (C) Probable cause exists to believe the child will run away or be taken away so as to be unavailable for proceedings by the Court.

#### 1.9. Detention Hearing and Shelter Care

- (A) If a child is detained or placed in shelter care, the Court shall hold a detention hearing within 48 hours after the placement in detention as required by the criteria established by the Children's Code.
- (B) If the Child's parent or guardian is not present, the Court shall determine what efforts have been made to notify and to obtain the presence of the parent or guardian. If it appears to the Court that further efforts are likely to produce the parent or guardian, the Court shall recess the case not more than 24 hours and direct the Children's Court Worker or the Juvenile Officer to make continued efforts to obtain the presence of the parents or guardian.
- (C) If counsel has been retained by or for the child by his or her parent or guardian the Court shall determine whether that counsel is acceptable to the child and whether the counsel retained is able to represent the child's interest. If the Court determines that counsel will not represent the interest of the child, the Court may remove retained counsel and appoint new counsel.
- (D) If counsel has not been retained by or for the child, the Court may in its discretion appoint counsel pursuant to Section 1.15(B), of this Code.
- (E) Before proceeding with a detention hearing the Court shall:

- (1) Inform the child of the purpose of the hearing and determine whether the child understands the nature of the charge against him/her and the potential consequences of the hearing.
- (2) Explain the right to counsel substantially as follows; “You have a right to have an attorney represent you at your own expense, or at the expense of your parents or guardian.”

#### 1.10. Initiation of Proceedings by Petition

- (A) Proceedings in the Children’s Court shall be initiated by the filing of a petition signed by the Children’s Court Worker.
- (B) A petition may be initiated upon a report given by any person who has knowledge of the facts alleged or is informed of them and believes that they are true, or by the Juvenile Officer upon information and belief.
- (C) Allegations that a child is a child in need of care shall be referred to the Children’s Court Worker who shall conduct a preliminary inquiry to determine the best interest of the child with regard to any action to be taken. After completion of the preliminary inquiry on a report or allegation, the Children’s Court Worker may file a petition.
- (D) When a child is in detention or custody, and the Children’s Court Worker determines that the petition is not authorized, the child shall be released immediately.

#### 1.11. Petition Content

- (A) Petitions initiating proceedings under the Children’s Code shall be verified and contain the following information:
  - (1) The facts necessary to invoke the jurisdiction of the Court together with a statement that the child is a child in need of care;
  - (2) A plain and concise statement of facts upon which the allegations are based, including the dates, times, and location at which the alleged acts occurred;
  - (3) The child’s name, birth date, and present location;
  - (4) The name and location of the child’s parent or guardian;
  - (5) The name of the Children’s Court Worker or Juvenile Officer who approves the petition and the date of approval;
  - (6) Whether the child is in custody, and if so, the place of detention and the time he/she was taken into custody;



- (7) If any of the matters required to be set forth by this Section are not known, a statement that they are not known.
- (B) If the proceeding involves the termination of parental rights, the petition shall meet the requirements of subsection (A) and shall contain notice of a request to terminate parental rights.

#### 1.12. Filing of Petition

- (A) The petition shall be filed by the Children's Court Worker with the Clerk of Court.
- (B) Responsive pleadings shall be by oral admission or denial at the time set in the summons for appearance before the court.

#### 1.13. Summons; Service

- (A) After a petition is filed, the Court shall fix a time for a hearing and shall direct the issuance of summonses;
- (B) A summons shall be issued to the child's parent or guardian and to the person with whom the child resides requiring them to appear before the Court and requiring the person with whom the child resides to cause the child to appear before the Court; and
- (C) A copy of the petition shall be attached to each summons and the summons shall contain a statement substantially as follows: "To the child and your parents or guardian; You have a right to have an attorney represent you at your own expense".

#### 1.14. Court Intake

- (A) The Children's Court Worker shall receive and investigate reports, complaints and allegations that a child is in need of care within twenty-four (24) hours of the complaint, or shall take a child into protective custody. Upon the basis of this investigation, the Children's Court Officer may:
  - (1) Recommend that no further action be taken; or
  - (2) Make appropriate referrals to other agencies if their assistance appears to be needed or desirable; or
  - (3) Suggest to the family that they appear for an informal conference with the Children's Court Judge and the Children's Court Worker; or
  - (4) File a petition pursuant to Section 1.10, of this Code in the Children's Court to initiate further proceedings. The petition shall be filed within forty-eight (48) hours if the child is in shelter care. If the child has been

returned to his or her parent, guardian or custodian the petition shall be filed within five (5) days.

#### 1.15. Basic Rights

- (A) At all stages of all proceedings the child shall have the right to be represented by counsel, at his or her own expense or at the expense of his or her parent or guardian.
- (B) The Court may in its discretion appoint counsel for an indigent child for the child at the initial hearing if counsel has not been retained.
- (C) At all stages of any proceedings in which a child is alleged to be a child in need of care, the child's parent or guardian shall have the right at their own expense to be represented by counsel, and, if indigent, the Court may in its discretion appoint counsel to represent them.
- (D) In all proceedings the child and the child's parent or guardian shall be entitled to introduce evidence, to be heard in their own behalf, and to examine witnesses.
- (E) In all proceedings the general public shall be excluded, except persons whose presence is requested by a party. A person admitted to a Children's Court proceeding shall not divulge information identifying the child or the family involved in the proceeding, the nature of the proceeding, or the result of the proceeding.

#### 1.16. Discovery

- (A) Upon written request, the respondent shall have the right to inspect, copy and photograph social, psychiatric, psychological, medical, and school reports, and records concerning the child including reports of preliminary inquiries, predisposition studies and supervision records relating to the child which are in the possession of the Juvenile Officer or Children's Court Worker assigned to the case.
- (B) If a request for discovery is refused, application may be made to the Court for an order granting discovery. Motions for discovery shall certify that a request for discovery has been made and refused.
- (C) The Court may deny, in whole or part, otherwise limit or set conditions on the discovery authorized upon showing by a party upon whom request for discovery is made that granting discovery violates a privileged communication.

#### 1.17. Adjudicatory Hearings

- (A) If in a proceeding in which a child is alleged to be a child in need of care, the respondent does not admit the allegations of the petition:

- (1) The Court shall dispose of all pretrial motions that may be brought under this Section and under the rules of procedure applicable to Children's Court cases;
  - (2) The Children's Court Worker shall list the names of witnesses to the alleged abuse, neglect, or abandonment known to him/her and provide notice of those names to the respondent at least five (5) days prior to trial.
- (B) If the Court finds the child to be a child in need of care by clear and convincing evidence, the Court shall hold a dispositional hearing.

#### 1.18. Dispositional Hearing

- (A) Prior to the dispositional hearing the Children's Court Worker shall prepare a written report identifying and describing all reasonably appropriate alternative dispositions. The report shall contain:
- (1) A specific plan for the care of and assistance to the child calculated to resolve the problems presented in the petition;
  - (2) A detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child under the proposed plan; and
  - (3) Specific reasons for not recommending placement of the child with the child's parent or guardian.
- (B) At the dispositional hearing the Court shall consider the predisposition report and all relevant and material evidence presented. Upon motion of the child or the child's parent or guardian, the Court shall require the person who wrote a report or who is quoted in a written or oral report to appear as a witness and be subject to cross-examination.
- (C) After consideration of all evidence offered bearing on disposition, the Court may order a disposition pursuant to Section 1.19, if the child is adjudicated a child in need of care.
- (D) The dispositional order of the Court shall set forth the findings of fact upon which the order is based together with clear and concise reasons for the order.
- (E) Upon petition of a child or a child's parent or guardian who alleges a change of circumstances relating to disposition of the child, the Court shall conduct a hearing to review its dispositional order. Such petitions shall state all changes in circumstances.
- (F) The Court shall review each disposition once a year after the entry of dispositional order. The review can be changed to a hearing upon written request of the child's parent or guardian.

- (G) A hearing to review a dispositional order shall be conducted as follows:
- (1) Notice in writing of the hearing shall be given to the child, his or her counsel, the child's parent or guardian and their counsel not less than 72 hours before the hearing.
  - (2) The Court shall review the actions of the child, the child's parent or guardian, the Children's Court Worker, the Juvenile Officer, and other persons providing assistance to the child and the child's family.
  - (3) If the request for review of disposition is based upon an alleged violation of a court order, the Court shall not modify or extend the dispositional order unless it finds clear and convincing evidence of a violation.

1.19. Disposition of a Child in Need of Care

- (A) If the Court finds that the child is a child in need of care, the Court shall enter an order of disposition pursuant to this Section.
- (B) The Court shall give consideration to the child's physical or mental condition, the child's need for assistance, the manner in which the parent or guardian participated in the abuse, neglect, or abandonment of the child and the evidence received at the dispositional hearing concerning the ability of the child's parent or guardian to provide supervision and care of the child.
- (C) The Court shall give precedence to dispositions in the following sequence:
  - (1) Dismiss the petition.
  - (2) Refer the child and the child's parents if appropriate to an agency for needed assistance and dismiss the petition.
  - (3) Order terms of supervision calculated to assist the child and the child's parent or guardian, which prescribe the manner of supervision and care of the child and which are within the ability of the parent or guardian to perform.
  - (4) Order the Children's Court Worker to assist the child and to assist the child's parent or guardian to secure social and medical services to provide proper supervision and care of the child.
  - (5) Upon a finding that a parent or guardian is not willing to take custody of the child, or that a child is not willing to reside in the custody of the child's parent or guardian, or that a parent or guardian cannot provide necessary supervision and care of the child, the Court may place the child in shelter care. The court shall give precedence to shelter care placements in the following sequence: a relative, a foster home, a group boarding

home, or a child caring institution. The Court shall make a shelter care placement in the child's community when possible.

- (6) Order the initiation of proceedings to terminate parental rights as outlined in Chapter III of this Code.
- (D) If the child is not placed in his or her parent's custody, the Court may require the parent to rectify the conditions that formed the basis for the petition. When the parent fulfills the requirements of the order, the Court shall return the child to the parent's custody.
- (E) An order of disposition made pursuant to this Section shall remain in force for an indeterminate period, but not beyond the child's eighteenth (18th) birthday, subject to the annual review provisions of Section 1.18(F) above.

#### 1.20. Appeals

- (A) Any party may appeal from a judgment of the Children's Court to an Appellate Court established by Tribal Ordinance.
- (B) Any party who has filed notice of appeal shall be furnished with a transcript or a copy of the electronic recording, of the proceedings, or as much of it as is requested, at the expense of the appellant.
- (C) The pendency of an appeal shall not suspend the Children's Court order unless the Appellate Court specifically orders otherwise. If an appeal is not heard within sixty (60) days, the Appellate Court shall hold a hearing to determine whether the Children's Court order should be modified pending the hearing of the appeal.

#### 1.21. Additional Procedural Matters

When it appears during the course of any proceeding under this Code that an issue has been omitted from the petition or motions and it appears from the facts that said issue is appropriately before the Court, the Court may on motion by the Juvenile Officer, Children's Court Worker, Tribal Attorney or counsel for the child, parent or guardian, or upon its own motion, amend the petition or motions, and, provided all necessary parties consent, proceed forthwith to hear and determine the additional issue, as though originally and properly brought; otherwise the Court shall adjourn and reschedule the hearing if necessary.

#### 1.22. Contempt of Court

Any willful disobedience or interference with any order of the Children's Court constitutes contempt of court and is punishable by the imposition of a civil forfeiture of up to \$500 for each offense. The court shall give the person standing in contempt of court an opportunity to purge himself or herself of the contempt before imposing a forfeiture.

### 1.23. Medical Care and Support for Child

At any time, whether or not a child is under the authority of the Children's Court, the Court may authorize medical care when a physician informs the Court that the child would be endangered without medical treatment and a parent or guardian cannot be found after a reasonable effort has been made.

### 1.24. Effect of Proceedings

- (A) Upon the dismissal of a petition or termination of the Court's jurisdiction over a respondent the respondent's case shall be deemed never to have occurred and the respondent may reply accordingly to any inquiry into the matter.
- (B) The record of testimony given and adjudications made in proceedings under this Chapter shall not be admissible as evidence in any other Court proceedings whatsoever.

## **§ 2. Adoption**

### 2.1. Who May Be Adopted

- (A) Any child who is subject to jurisdiction of the Forest County Potawatomi Children's Court, and for whom the jurisdiction of the Children's Court has been invoked, or which is invoked for that purpose, may be adopted.

### 2.2. Who May Adopt

- (A) Any adult who is subject to the jurisdiction of the Tribal Court, is eligible to adopt a child.
- (B) A husband and wife may jointly adopt children but a person may not adopt a child without the approval of the adopting person's spouse, except as is provided in this Chapter.
- (C) In extraordinary circumstances as determined by the Court, when the best interests of the Tribe or the child require, non-member Indians shall be eligible to adopt children, if they subject themselves to the jurisdiction of the Tribal Court.
- (D) In every adoption proceeding under this Chapter, a preference shall be given in the following order:
  - (1) To the child's extended family.
  - (2) To a Forest County Potawatomi home on the reservation where the child resides or has significant contacts.
  - (3) To an Indian home approved by the Children's Court.

- (E) Extended family means any grandparent, aunt or uncle (whether by blood or marriage), brother, sister, brother-in-law, sister-in-law, niece, nephew, first or second cousin, or stepparent, or extended family adopted, as defined by Tribal law or custom, over the age of eighteen (18).

### 2.3. Preadoption Certification: Investigation

- (A) Before any person may adopt a child the person shall be certified by the Court as acceptable to adopt children. Such a certification shall be issued only after an investigation conducted by an officer of the Court or person appointed by the Court.
- (B) The investigation shall consider all relevant and material facts dealing with the prospective adoptive parent's fitness to adopt children, and shall include but not be limited to the following factors concerning that person and the members of his or her family with whom he or she lives:
  - (1) Social history
  - (2) Moral fitness
  - (3) Religious and community background
  - (4) Mental and physical conditions
  - (5) Financial condition
  - (6) All other facts bearing on the issue of the fitness of the prospective adoptive parent and its family members that the Court may deem relevant.
- (C) If the applicant is not a member of the Tribe, the investigation shall also include the reasons the nonmember should be considered suitable to adopt a member of the Tribe.
- (D) As soon as identity of the child to be adopted is known, the investigation shall also include:
  - (1) Whether the natural parents, if living are willing that the child be adopted and the reasons therefor.
  - (2) Whether the natural parents have abandoned the child or are unfit to have custody of the child.
  - (3) Whether the parent-child relationship between the child and its natural parents has been previously terminated by relinquishment or otherwise, and the circumstances thereof.
  - (4) The ancestry of the child, and its mental and physical condition.

- (5) The existing and proposed arrangements for the custody of the child.
  - (6) The adoptability of the child and the suitability of the child's placement with the applicant.
  - (7) The desire of the child if at an age of awareness and comprehension, which shall be at the age of fourteen (14) and above. The child's desire shall be a factor but not controlling.
- (E) At no time shall the investigator or other court official reveal to the prospective parents the identity of the child or its natural parents, and the identity of the prospective adoptive parents, if these facts are not already known. Within ninety (90) days after the original application, the investigator shall file a report with the Court and shall include definite recommendations for or against the placement of the child with the applicant, and reasons therefor.
- (F) The Court, upon receiving an investigation report, shall certify within thirty (30) days whether the applicant is acceptable or non-acceptable to adopt, and the child as being suitable for adoption by an applicant. If the adoption is not ultimately ordered, the certification shall remain in effect for one (1) year from the date of its issuance and may be extended for additional one (1) year periods if after review the Court finds that there have been no material changes in circumstances which would adversely affect the acceptability of the applicant to adopt or the suitability of the child to be adopted by the applicant.
- (G) Prior to final adoption, the Court may require additional investigation if it finds that the welfare of the child would be served thereby.
- (H) Any applicant who has been certified as non-acceptable may petition the Court to review such certification. Notice shall be given to all interested parties and the matter shall be heard by the Court, which may affirm or reverse the certification. Otherwise, if an applicant is certified as non-acceptable, they may not reapply for certification for (1) year.
- (I) The provisions of this Section shall not apply to the placement of a child with a prospective adoptive parent, or parents in the following instances:
- (1) If the person who intends to adopt the child is the spouse of a natural parent of the child.
  - (2) If the person or persons who intend to adopt the child is/are an extended family member.

#### 2.4. Consent to Adoption: Who Shall Adopt: Waiver

- (A) No adoption shall be granted unless consent or relinquishment to adopt has been obtained and filed with the Court from the following;



- (1) From both natural parents if living, except in the following cases;
    - (a) Consent is not necessary from a parent who has been declared incompetent by a court of competent jurisdiction, and it appears to the Children's Court on reliable medical evidence that the incompetency is permanent.
    - (b) Consent is not necessary from a parent whose parental rights have been terminated by a court of competent jurisdiction.
    - (c) Consent is not necessary from the father of a child born out of wedlock, unless the father has acknowledged his or her paternity by a written document filed with the Court, or by subsequent marriage to the mother or unless the father's paternity has been adjudicated by a court of competent jurisdiction.
  - (2) From the guardian of the child or any official appointed by a court of competent jurisdiction and given authority by it to consent to the child's adoption.
  - (3) From an agency which has been given consent to place the child for adoption by the parent or parents whose consent would be necessary under (1) of this Section, or which has been given authority in other legal proceedings to place the child for adoption.
- (B) If the child is fourteen (14) years of age or older, it shall not be adopted without its consent. Such consent shall be given in open court or in such other form as the Court may direct.
- (C) The Court may waive any requirement for the consent of any person, except a natural parent and the child, when after a hearing the Court determines that the interests of the child will be promoted thereby. In such a case, the Court shall make written findings of all facts upon which its orders are founded.

#### 2.5. Consent to Relinquishment or Terminate Parental Rights

- (A) All consents to adopt shall be in writing, signed by the person giving the consent and witnessed by two or more credible witnesses who are at least eighteen (18) years of age and who sign their names in the presence of the person giving consent.
- (B) A consent given less than ten (10) days after the birth of a child is invalid.
- (C) A consent shall have date and hour and shall positively identify the party giving the consent and the child to whose adoption the consent is given.
- (D) The consent shall designate either of the following:

- (1) Any other person authorized by the person giving the consent to place the child for adoption.
  - (2) Any particular person or persons authorized to adopt the child by the person giving the consent.
- (E) A consent by a minor parent to relinquish or terminate parental rights is invalid unless prior written approval from the Court is obtained.

## 2.6. Petition For Adoption: Contents

- (A) A petition for adoption shall be verified by the petitioner and signed also by his or her spouse, and the petition shall specify:
- (1) The full names, ages and place of residence of the petitioner and, if married, the date and place of marriage, or if married by Indian custom and the relationship, if any, to the child to be adopted.
  - (2) The fact that a certificate of acceptability to adopt the child has been issued by Children's Court in favor of the petitioner and the date of its issuance.
  - (3) The date, if applicable, when the petitioner acquired custody of the child and from what person.
  - (4) The name, and date and place of birth of the child if known to the petitioner. If this information is to be held confidential from the petitioner and known to an official or Officer of the Court, it shall be provided to the Court by separate report and preserved as confidential.
  - (5) The adoptive name of the child if a change of name is desired.
  - (6) That it is the desire of the petitioner to adopt the child, and approved by the spouse of the petitioner.
  - (7) A full description and statement of the value of all property owned or possessed by the child, if known by petitioner.
  - (8) Data on consent which has been given or any reason that consent need not be given.
  - (9) Full disclosure of any fees or anything of value given or paid in connection with the adoption of the child.
- (B) Any written consent required by this Chapter may be attached to the petition or may be filed with the Court after or prior to the hearing.

## 2.7. Notice of Hearing on Petition for Adoption: Service

- (A) After a petition to adopt has been filed, the Court shall set a time and place for hearing, and shall cause notice thereof to be given by service as provided by this Code.
- (B) Notice shall be given to:
  - (1) The petitioner.
  - (2) The person having custody of or responsibility for the child, if any.
  - (3) The person conducting the pre-adoptive investigation required by this Chapter.
  - (4) Any person required by this Chapter to give consent, unless such consent has been filed prior to the Court's setting of hearing.

## 2.8. Investigation and Report

Upon the filing of a petition, the court may order additional investigation as it deems necessary, or it may accept the investigation and the certification reports required by this Chapter. If additional investigation is required, the report of it shall become part of the file of the case, and the person making such study shall receive notice of the time and place of hearing.

## 2.9. Probationary Period

The hearing on the petition shall not be held until at least three (3) months after the petition has been filed, during which time the investigation required by this Chapter shall be completed, except said time period may be waived in relative adoptions as defined by Section 2.2, Chapter II.

## 2.10. Hearing

Petitions filed under this Chapter shall be heard by the Court and such hearing shall be informal as the requirements of due process and fairness permit. The petitioner, the spouse of the petitioner and the child to be adopted shall attend unless the Court orders otherwise. Only such other persons shall be admitted to the hearing as the Court shall find to have a direct interest in the case before the Court. Any such person so admitted shall not disclose any information obtained at the hearing. The Court may require the presence of such other witnesses as it deems necessary.

## 2.11. Court Order

If after the hearing and consideration of all the reports and evidence, the Court is satisfied that the requirements of this Chapter have been met and that the adoption is in the best interest of the child, the Court shall make a permanent order granting the adoption. The order may change the name of the child if requested. The order of the Court shall be in writing and shall recite the findings upon which such order is based, including findings

pertaining to the Court's jurisdiction. Such order shall be effective and binding on all persons from the date of entry.

#### 2.12. Rights Under Adoption Decree

- (A) Upon entry of the decree of adoption, the relationship of parent and child and all the legal rights, privileges, duties, obligations and other legal consequences of the natural relationship of child and parent shall thereafter exist between the adopted child and the adoptive parent the same as though the child were born naturally to the adoptive parent.
- (B) The adopted child shall be entitled to inherit real and personal property from and through the adoptive parents. However, if an adopted child or adoptive parent is not a member of the Tribe then said child or parent shall not be eligible to inherit any interest which the deceased Tribal member's estate may have to any Tribal privilege, right, land, or property of any kind.
- (C) Upon entry of the decree of adoption, the relationship of parent and child between the adopted child and any persons other than his or her adoptive parents by that adoption shall be completely terminated and all the legal rights, privileges, duties, obligations and other legal consequences of such relationship shall cease to exist, including the right to inheritance except that when the adoption is by the spouse of the child's parent, the relationship of the child to such parent shall remain unchanged by the decree of adoption.
- (D) Notwithstanding anything in this Section to the contrary, the decree of adoption shall not extinguish any status rights or privileges due to the child's Forest County Potawatomi Indian ancestry, heritage or Tribal membership.

#### 2.13. Withdrawal or Denial of Petition: Custody

In any case in which a petition for adoption is withdrawn or denied, the Court shall order the removal of the child from the proposed adoptive home if the Court finds that such removal is in the child's best interest. If such removal is ordered, the Court shall vest temporary legal custody in a person with the ability to care for the child's welfare, the Court may make such orders for the support of the child and such other orders as may be necessary for the child's welfare.

#### 2.14. Dismissal after Death: Exception

In the event of the death of the petitioner prior to adoption the petition shall be dismissed, except if there are two (2) petitioners, the proceedings shall continue as to the surviving petitioner unless withdrawn by the survivor.

#### 2.15. Irregularities: Curative Period

After one (1) year from the date an adoption decree is entered any irregularity in the proceedings shall be deemed cured and the validity of the decree shall not thereafter be subject to attack on any such ground in any collateral or direct proceedings.

### **§ 3. Termination of Parental Rights**

#### 3.1. Preferred Right of Parents

Before depriving any parent of custody of its child the Court shall give due consideration to the preferred right of parents to the custody of their children, and it shall not transfer custody to another person, unless the Court finds from all the circumstances in the case that the welfare of the child or the child's interest requires it.

#### 3.2. Termination of Parental Rights

The Court may decree a permanent termination of parental rights as provided herein concerning a child for whom the jurisdiction of the Court has been invoked under this Code. The rights of one parent may be terminated without affecting the rights of the other.

#### 3.3. Petition: Who May File: Grounds

Any person who has a legitimate interest in the welfare of a child may file a petition for the termination of the parent-child relationship if one or more of the following grounds exist:

- (A) That the parent or parents have abandoned the child and the parent or parents have made no effort to maintain a parental relationship. It shall be prim facie evidence of abandonment that the parent or parents, although having legal custody of the child, have surrendered physical custody of the child, without adequate provisions for its care, and for a period of six (6) months following such surrender have not manifested by some affirmative act to the child or to the person having the physical custody of the child an intent to resume physical custody or to make arrangements for the care of the child; or
- (B) That a parent receiving services under Chapter I, Section 1.19, of this Code, to assist such parent in caring for the child, has inflicted or attempted to inflict further injury or cruel punishment upon the child or has continued to refuse or neglect provide the child with necessary food, clothing, shelter, medical care or education.
- (C) That a parent subject to an order issued under Chapter I, Section 1.19 of this Code has refused to comply with requirements prescribed by the Court and there is reasonable cause to believe that the parent will not, even if given more time, comply with those requirements.
- (D) That the parent has negligently or willfully subjected the child to sexual or physical abuse.

### 3.4. Contents of Petition

The petition for termination of parental rights filed pursuant to this Chapter shall include to the best information or belief of the petitioner:

- (A) The name and address of the petitioner.
- (B) The name, sex, date and place of birth and location of the child.
- (C) Facts establishing the Court's jurisdiction.
- (D) The relationship of the petitioner to the child.
- (E) The names, addresses and location of the parents, if known.
- (F) The names and addresses of the person(s) having legal custody or guardianship of the child.
- (G) The grounds on which termination of the parent-child relationship is sought.
- (H) A copy of any relinquishment or consent, if any previously executed by the parent(s) shall be included with the petition.

### 3.5. Termination of Parental Rights

- (A) After the petition has been filed the Court shall set time for a hearing to determine whether the rights of a parent to a child should be terminated.
- (B) Notice in writing of the hearing shall be served on the child and the parent(s) in the manner prescribed by Chapter I, Section 1.13 of this Code.
- (C) The hearing shall be conducted in the manner prescribed in Chapter I, Section 1.17 of this Code.
- (D) A record of the proceedings shall be made and the parties shall be advised of their basic rights, including assistance of counsel.

### 3.6. Order Terminating Parental Rights

- (A) Every order terminating the rights of one or both parents shall be in writing and shall recite the facts upon which the Court bases its jurisdiction over the child and shall include the findings upon which the decree is based.
- (B) An order terminating the parent-child relationship shall divest the parent and the child of all legal rights, privileges, duties and obligations with respect to each other except the status of the child as a member of the Tribe and his or her right to Tribal benefits and privileges shall not be affected.

### 3.7. Action of Court After Termination

Upon entry of an order terminating the rights of a parent or parents the Court may either;

- (A) Place the child for adoption under the appropriate proceedings, or
- (B) Place the child under Chapter I, Section 1.19 of this Code, or
- (C) Continue the child in the custody of the remaining parent.

### 3.8. Rights of Non-Terminated Parent

If the rights of only parent have been terminated, the right of the other parent to consent to adoption is not affected by an order placing the child for adoption as provided in the preceding Section.

## § 4. Records

4.1. A record of all hearings held under this Code shall be made and preserved by stenographic, mechanical or electronic recording.

4.2. The official Children's Court file for a proceeding shall include complaints, petitions, motions, memoranda, briefs, reports, findings of the Court, Court orders, and other reports and papers filed in the Children's Court.

4.3. The official Children's Court file shall be open to inspection by the child, the child's parent or guardian, their counsel, and officials of the Children's Court.

4.4. Children's Court files shall not be open to any other person without an order of the Court, which shall be made only upon a satisfactory showing of necessity in the interests of the child. The files shall remain locked and in the custody of the Clerk of Court.

## § 5. Child Protective Services

### 5.1. Definitions

In this Chapter, unless the context otherwise requires;

“Abandoned” means the failure of the parent to provide reasonable support and to maintain regular contact with his or her child when such failure is intended by the parent to continue for an indefinite period in the future. Failure to maintain a parental relationship with the child without just cause for a period of six (6) months shall constitute prima facie evidence of abandonment.

“Abuse” means the infliction of physical or mental injury including the failure to maintain reasonable care and treatment to such an extent that the child's health, morals or emotional well-being are endangered.

“Indian Child Welfare Worker (Children's Court Worker)” means a person who has been hired and confirmed by the Forest County Potawatomi Tribal Executive Council to carry out the provisions of this Chapter.

“Protective Services” means a program of child welfare which seeks to prevent dependency and abuse of children by providing social services to families where unresolved problems have created visible signs of dependency or abuse and the home situation presents actual and potential hazards to the physical or emotional well-being of children.

Nothing contained in this Chapter shall be construed to mean a child is abused, or in need of care or that the health of a child is endangered for the sole reason that his or her parent in good faith selects and provides non-medical remedial treatment rendered in accordance with a recognized Tribal or religious method of healing, in lieu of medical treatment.

## 5.2. Powers and Duties

- (A) Indian Child Welfare Workers may cooperate with State, Federal, and private social services agencies to achieve the purpose of this Code.
- (B) The Indian Child Welfare Worker shall:
  - (1) Be prepared to receive reports of children in need of care and be prepared to provide temporary foster care for such children on a twenty-four (24) hour basis.
  - (2) Receive from any source, oral or written, information regarding a child who may be in need of protective services.
  - (3) Upon receipt of any report pursuant to paragraph 1 or 2 immediately;
    - (a) Notify the Juvenile Officer, and
    - (b) Make a prompt and thorough investigation which shall include a determination of the nature and extent, and cause of any condition which is contrary to the child's best interests and the name, age and condition of other children in the home.
  - (4) Take a child into temporary custody in accordance with Chapter II, Section 1.7. The Juvenile Officer shall cooperate with the Indian Child Welfare Worker to remove a child from the custody of his or her parents, guardian or custodian when necessary.
  - (5) After investigation, evaluate the environment of the child or children in the same home and the risk to such children if they continue to be subjected to the existing home environment, and all other facts or matters found to be pertinent. The Indian Child Welfare Worker shall then determine whether any of the children is a child in need of protective services.
  - (6) Offer to the family of any child found to be a child in need of protective services whatever services appear appropriate in view of the investigation



and evaluation which may include, but not be limited to, child protective services.

- (7) No child shall remain in temporary custody for a period exceeding forty-eight (48) hours, excluding Saturdays, Sundays, and holidays, unless a petition alleging the child is in need of care has been filed.

### 5.3. Limitation of Authority; Duty to Inform

- (A) Before offering protective services to a family, a worker shall make clear that he/she has no legal authority to compel the family to receive such services, and may inform the family of his or her authority to notify the Children's Court the child is in need of care.
- (B) If the family declines to accept or to participate in the offered services, or if the worker otherwise believes that such action would be in the best interests of the child in need of protective services, the worker may file with the Children's Court a report requesting that the child in need of protective services be adjudicated a child in need of care.

### 5.4. Immunity or participants: Nonprivileged Communications

- (A) Any person making a complaint, or providing information pursuant to Chapter V, Section 5.5, or otherwise participating in the program authorized by this Code shall be immune from any civil or criminal liability by reason of such action, unless such person acted with malice and without probable cause or unless such person has been charged with or is suspected of allowing or causing a child to be considered in need of care as defined in Chapter VI, definitions, (B) "Child in need of care".
- (B) The physician-patient privilege, husband-wife privilege, attorney-client privilege, or any privilege provided for by professions, such as the practice of social work or nursing, covered by law or a code of ethics regarding professional client confidences, both as they relate to the competency of the witness and to the exclusion of confidential communications, shall not pertain in any civil or criminal litigation in which a child's status as an abused or abandoned child, or as a child in need of care is an issue nor in any judicial proceeding resulting from a report submitted pursuant to this Code.

### 5.5. Duty to Report Abuse and Neglect of Children

- (A) Any physician, hospital intern or resident, surgeon, religious practitioner, dentist, osteopath, chiropractor, podiatrist, coroner, nurse, psychologist, social worker, school personnel or any other person having responsibility for the care of Tribal children whose observation or examination of any child discloses evidence of injury, sexual molestation, abuse, or physical neglect which appears to have been inflicted upon such child by other than accidental means or which is not explained by the available medical history as being accidental in nature, shall immediately

report or cause reports to be made of such information to Tribal Juvenile Officer or to State law enforcement officials. Such reports shall be made in person or by telephone, and shall be followed by a written report when requested. Such reports shall contain:

- (1) The names and addresses of the child and his or her parents or the person or persons having custody of such child if known.
  - (2) The child's age and the nature and extent of his or her injuries or physical neglect, including any evidence of previous injuries or physical neglect.
  - (3) Any other information that such person believes might be helpful in establishing the cause of the injury or physical neglect.
- (B) When such telephone or in-person reports are received by the Tribal Juvenile Officer or other duly authorized official, they shall immediately notify the Indian Child Welfare Worker of the Tribe and make such information available to them.
- (C) Any person required to make reports pursuant to subsection (A) may take or cause to be taken photographs of the child and the vicinity involved. If medically indicated, further examination, tests, including but not limited to, radiological examinations of the involved child, may be performed.
- (D) Anyone participating in the making of reports required under the provisions of this Section, or anyone participating in a judicial proceeding resulting from such reports, shall be immune from any civil or criminal liability as provided for in Section 5.4 of this Chapter.

## **§ 6. Definitions**

“Child” means a person under the age of eighteen (18) years.

“Child in need of care” means a child:

- (A) Who has no parent, guardian or custodian available and willing to care for him/her, or
- (B) Who has not been provided with adequate food, shelter, clothing, medical care or education necessary for his or her health and well being, or
- (C) Whose parent, guardian or custodian had knowingly, intentionally or negligently subjected the child to cruel and inhumane treatment or placed the child in a situation that seriously endangers his or her life or health, or
- (D) Who is without proper parental care and control or supervision because of the neglect, disappearance or the prolonged absence of his or her parent, guardian or custodian, or

- (E) Whose parents, guardian or custodian are unable to provide for the child because of their incarceration or hospitalization for a physical or mental condition, or
- (F) Who has been sexually abused by his or her parent, guardian or custodian, or
- (G) Who has been placed in custodial care for violation of the law resulting from parental pressure, guidance or approval, or
- (H) Who, being subject to compulsory school attendance, is habitually truant from school, or
- (I) Who habitually disobeys the reasonable and lawful orders of his or her parent, guardian or custodian and is ungovernable and beyond their control.

“Children’s Court” means the Forest County Potawatomi Community Children’s Court when deciding its jurisdiction over children alleged to be children in need of care.

“Children’s Court Worker (Indian Child Welfare Worker)” a person employed by the Forest County Potawatomi Tribal Executive Council to carry out the duties, objectives and provisions of the Children’s Code; but subject to the limitation of the Code the Children’s Court Worker shall have the authority and duty to:

- (A) Receive and examine complaints and allegations that a child is a child in need of care for the purpose of determining the appropriate proceedings under the Children’s Code.
- (B) Make investigative reports and recommendations to the Court.
- (C) Make appropriate referrals of cases to other agencies if their assistance appears to be needed or desirable, except there shall be no referral to a state government without advance approval in writing from the Judge of the Children’s Court.
- (D) Provide child and/or family counseling and any other function designated by the Court.
- (E) Identify and develop resources in the communities designated by the Court.
- (F) Make predisposition reports and recommendations to the Court.
- (G) Supervise and assist a child placed on probation.
- (H) Shall not testify against a child in a proceeding under this Code or in any adjudicatory hearing.
- (I) Shall not be employed as, or perform duties of a prosecutor or a law enforcement official for the community or elsewhere.

“Counsel” means a person who has been recognized by the Children’s Court as qualified to act as an advocate and represent individuals in proceedings before the Children’s Court.

“Custodian” means a person other than a parent or legal guardian, to whom legal custody of the child has been given by order of the Children’s Court.

“Custody or Legal Custody” means the status created by order of the Children’s Court or any other court of competent jurisdiction that vests the following rights and responsibilities:

- (A) The right to have physical custody of the child; if physical custody is not with the person having legal custody, it shall be as determined by the Court.
- (B) The right and the duty to protect, train and discipline the child.
- (C) The responsibility to provide the child with food, shelter, education and ordinary medical care, provided that such rights and responsibilities shall be exercised subject to the powers, rights, duties and responsibilities of the guardian of the person or subject to any existing parental rights and responsibilities if they have not been terminated by judicial decree. In an emergency a custodian shall have the authority to consent to surgery or other medical care.

“Detention” means the temporary placement of a child who requires custody in a facility for the protection of the child or the Community pending court disposition.

“Foster home” means a home licensed by the Executive Council and maintained by any individual or individuals suitable for placement of children when taken into custody or pending court disposition.

“Guardian ad litem” means a person appointed by the Children’s Court to protect the legal interests of the child in a particular case before the Court.

“Guardian” means a person appointed by the Children’s Court to care for and manage the person and estate of the child or an incompetent in a particular case before the Court.

“Guardianship of a person” with respect to a minor means the duty and authority to make important decisions in matters affecting the life of a child including but not necessarily limited either in number or kind to:

- (A) The authority to consent to marriage, to enlistment in the armed forces of the United States and to major medical, psychiatric and surgical treatment, to represent the minor in legal action, and to make other decisions of substantial legal significance concerning the child including but not limited to matters of education and religious and cultural upbringing.
- (B) The authority and duty of reasonable visitation, except to the extent that such right of visitation has been limited by court order.
- (C) The rights and responsibilities of legal custody except where legal custody has been vested in another individual or in an authorized agency.

- (D) When the parent/child relationship has been terminated by judicial decree with respect to the parents, or only living parent, or when there is no living parent, the authority to consent the adoption of the child and to make any other decision concerning the child which the child's parent could make.

“Judge” means a judge of the Children’s Court who shall have the authority and duty to determine a course of action which least restricts the child's freedom and is consistent with the objectives of the Children’s Code; but subject to its limitations, Children’s Court Judges shall have the authority and duty to:

- (A) Advise the child and the parent, guardian or custodian of their rights;
- (B) Appoint counsel for a child, parent, guardian, or custodian if necessary under this Code;
- (C) Order that a child be taken into custody under Section 1.7, Chapter 1;
- (D) Order the Court Officer of the Children’s Court to conduct a preliminary inquiry calculated to identify and resolve problems present in complaints filed in the Children’s Court;
- (E) Cooperate and participate with any federal, state, private or Tribal agency providing rehabilitative or social services designed to assist a child to become a viable adult member of the community.

“Juvenile Officer” means a person appointed employed by the Forest County Potawatomi Community Executive Council to carry out the duties, objectives and provisions of the Children’s Code; but subject to its limitations, Juvenile Officers shall have the authority and duty to perform the duties of a prosecutor and a law enforcement officer on behalf of the Tribe, in regards to this Code.

“Parent” means the natural or adoptive parents of a child whose parental rights have not been terminated. A parent inherently has the powers of a custodian or guardian unless otherwise determined by the Court.

“Parent/child relationship” includes all rights, privileges, duties and obligations existing between parent and child.

“Shelter Care” means the care of a child placed in a foster home or institution maintained by individuals or organizations licensed or approved by the Executive Council to receive and care or control children taken into custody or pending medical examination and court disposition.

“Ward of the Court” means a status declared by the Court in absence of an appointment of a guardian or custodian. The Court shall be possessed with those powers over which a guardian or custodian possess according to this Chapter.

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**Legislative History:**

1/16/1992        Recommended by the Tribal Ordinance Committee  
5/25/1992        Recommended by Tribal Executive Council  
5/28/1993        Adopted by the General Council, Resolution No. GC 005-93

**Notes:**

The Tribe's Petition for Reassumption of Exclusive Jurisdiction was approved by the Bureau of Indian Affairs. 62 Fed. Reg. 1471 (March 11, 1997).

Section 1.4 was rendered moot by establishment of the Tribal Court. 2-1 FCPC Code.

Section 1.3 designates the Tribal Court as the Children's Court.

See 2-1 FCPC Code for Tribal Court Ordinance.

Tribal Court Rules are available through the Tribal Court website, <http://www.fcpotawatomi.com/index.php/Tribal-Court/court.html>

**CHAPTER 3-2**  
**FOSTER HOMES (05/28/1993)**

# FOSTER HOMES

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## **FOSTER HOMES**

### **§ 1. General**

#### **1.1. Authority**

The Forest County Potawatomi Community is a federally recognized Tribe of Indians organized under a Constitution adopted on June 5, 1982 and approved by the Secretary of the Interior on July 14, 1982 pursuant to the provisions of the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. ss. 461 et seq., as amended.

#### **1.2. Policy**

The Forest County Potawatomi Community recognizes that its children are its most important resource. It is the policy of the Forest County Potawatomi Community to preserve the identity and culture of Indian children who must be placed outside of the homes of their natural parents pursuant to powers delegated under Article IV, Section 1(d) of the Forest County Potawatomi Community Constitution and By-laws through enactment of this Ordinance.

#### **1.3. Statement of Intent**

The intent of this Ordinance is to establish standards for the placement of Indian Children in Indian foster homes according to the Indian Child Welfare Act and to provide protection and promote the health, safety and welfare of Indian children in foster homes on or near the Forest County Potawatomi Community in Wisconsin.

#### **1.4. Effect of Rules**

The following rules for licensing foster homes have the full effect and force of law as an ordinance adopted by the Forest County Potawatomi General Council. Persons using these rules should be aware of and familiar with Tribal Sovereignty, Tribal Government, Indian Customs and Indian Culture.

#### **1.5. Exception to Rules**

The Tribal Executive Council may make or may delegate the authority to make any exceptions to any of these rules for licensing foster homes when the Executive Council is assured that granting such exceptions best serves and is not detrimental to the health, safety or welfare of the children involved.

#### **1.6. Definitions**

**Child:** A person under 18 years of age.

**Executive Council:** The Forest County Potawatomi Executive Council.

**Foster Child:** A child who lives in a home required to be licensed under this Ordinance and the Indian Child Welfare Act.

Foster Home: Any facility operated by a person required to be licensed under this Ordinance and the Indian Child Welfare Act.

Foster Parents: A person or persons who operate a facility required to be licensed under this Ordinance and the Indian Child Welfare Act. They shall have the rights of a physical custodian relative to foster children in their care while licensed.

Legal Guardian: The person having the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.

On or Near Reservation: Any lands within a fifty (50) mile radius of the Forest County Potawatomi Community Reservation.

Physical Custodian: The person having the right to the care, custody and control of a child and duty to provide food, clothing, shelter, routine medical care, education and discipline for a child. A legal guardian's decision regarding medical care and educational placement shall take precedence over that of a foster parent or physical custodian.

Relative: A parent, grandparent, brother, sister, uncle, aunt, first cousin, nephew, niece, step-parent, step-brother or step-sister.

Rule: A regulation, standard, statement of policy or general order (including the amendment or repeal of any of the foregoing), of general application and having the effect of law.

## **§ 2. Rights of Applicants and Licensees:**

- 2.1. The right to make application for a license.
- 2.2. The right to be evaluated objectively on the basis of written rules.
- 2.3. The right to receive a license if applicants fully satisfy all requirements.
- 2.4. The right to a written notice and statement of grounds for suspension or revocation of a license.
- 2.5. The right to a hearing before the Executive Council when a license is refused, suspended or revoked.
- 2.6. The right to accept children for care if licensed.

## **§ 3. Foster Parents and Their Families**

- 3.1. Application for License
  - (A) The person or persons seeking a license shall make an application on forms prescribed by the Executive Council. Married couples shall both be parties to the

application. Couples living together shall have their eligibility determined on a case by case basis by the Executive Council.

- (B) Foster parents wishing to continue to be licensed shall file a new application when:
  - (1) Their license will expire within 30-60 days.
  - (2) They plan to move from the address specified on their present license within 30 days or less.
  - (3) Their legal status has changed within the last 30 days.
  - (4) They wish to have conditions which are specified on their present license changed.
  - (5) They plan to move from on or near the Potawatomi Reservation.

### 3.2. Age of Foster Parents

The Executive council shall consider the age of the foster parents on a case by case basis and make a determination of an appropriate age based on the needs of the foster child.

### 3.3. Personal Qualifications Required of Foster Parents

Foster parents shall be responsible, mature individuals of reputable character who exercise sound judgment and display the capacity to provide good care for children. They shall give sufficient information to enable the Executive Council to verify whether or not they meet these requirements.

### 3.4. Health of Foster Family

- (A) The physical and mental health of all members of the foster family household shall be such that it will not adversely affect the health of children placed for care, or the quality and manner of their care.
- (B) All members of the foster family household shall be drug free and not abuse alcohol.
- (C) Foster parents shall have a physical examination at the time of application for a license. Foster parents shall authorize their physician to submit a statement to the Executive Council certifying that a physical examination, including TB test and/or X-ray was completed within the past year and that the foster parents were essentially free from medical conditions which might endanger foster children.
- (D) If the Executive Council has reason to believe that drug use, alcohol abuse, or the physical or mental health of any child or adult member of the foster family household might endanger children in their care, the Executive Council may

require the foster parents, for themselves or on behalf of their own children, or the other adult members of the household in question to obtain and authorize the submission of a statement to the Executive Council from a qualified physician and if required, a psychiatrist, certifying the condition of the person to be healthy, drug free and a non-abuser of alcohol.

### 3.5. Training

Foster parents shall take part in training programs as provided by the Forest County Potawatomi Executive Council, the Forest County Department of Social Services and/or the Division of Community Service.

## **§ 4. Foster Homes**

### 4.1. General Requirements

- (A) The home shall be so constructed, arranged and maintained as to provide adequately for the health and safety of all occupants. It shall be of size and space, and shall have furnishings and equipment to accommodate comfortably both the family and foster children in their care. The Executive Council shall require inspection of the home by fire, health, sanitation or safety officials when in its judgment such expert opinion is needed to assure the safety of the home for the care of foster children.
- (B) Potentially dangerous items such as but not limited to household poisons, medicines, plastic bags, matches, knives, and firearms shall not be kept where they are easily accessible to children. Foster parents shall not permit illegal drugs to be present in the household.

### 4.2. Sleeping Arrangements

- (A) Each foster child shall be provided with a separate bed except that two brothers or two sisters may share a bed. Each bed shall be of such size as to insure comfort of the child, shall have suitable springs in good condition, a clean and comfortable mattress with waterproof covering when necessary and provided with suitable bedding adequate for the season.
- (B) No child ten (10) years or older shall be permitted to share a bedroom with a child of the opposite sex.
- (C) Foster children shall not be permitted to sleep in any building, apartment, or other structure which is separate from the family home; nor shall any child be permitted to sleep in an unfinished basement, or in a hall or any other room which is normally used for other than sleeping purposes.
- (D) At night a responsible adult shall sleep within call of foster children.

#### 4.3. Recreation and Play Space

The home shall have space for indoor play and access to outdoor play space. Foster parents shall provide for the safety of children in recreation and play areas.

### **§ 5. Care of Children**

#### 5.1. Supervision of Children

- (A) Children under the age of twelve (12) years shall not be left without supervision by a responsible person.
- (B) Children twelve (12) years of age and older shall receive responsible supervision appropriate to their age and maturity as might reasonably be provided by a prudent parent in the care of their own children.
- (C) Failure to provide adequate supervision shall be the basis of revocation of a Foster Care License. Complaints of inadequate supervision shall be conducted by the child Welfare Worker and reported to the Executive Council.

#### 5.2. Discipline

- (A) Child training shall be handled with kindness and understanding.
- (B) No child shall be subjected to verbal abuse, derogatory remarks about himself or members of his or her family, or to threats to expel the child from the foster home.
- (C) No child in care shall be subjected to excessive, unusual, severe or cruel punishment.
- (D) No child in care shall be deprived of meals, mail or family visits as a method of discipline.

#### 5.3. Work Performed By Children

Children in care shall have opportunities to assume responsibility for household duties or chores appropriate to their age, sex, health and ability. Such duties shall not interfere with school, sleep, recreation or study.

#### 5.4. Education

Foster parents shall make every reasonable effort to see that children of school age in their care attend school regularly unless otherwise excused by school officials. If foster parents do encounter truancy problems, they shall make contact with the Indian Child Welfare Worker.

#### 5.5. Moral, Religious and Cultural Training

Foster parents shall provide for the moral training of foster children in their care and shall make opportunities available to each foster child for religious and cultural education and attendance at

services and functions. These shall be consistent with the child's religious and cultural heritage and the wishes of the child's legal guardian, if known.

#### 5.6. Nutrition

Food shall be provided to children in sufficient quantities and varieties and shall provide for essential nutritional and dietary needs. In the event of a report of inadequate nutrition or inappropriate diet, there shall be an investigation by the Forest County Potawatomi Health Department and the Indian Child Welfare Worker. Foster parents agree to accept and follow recommendations relative to the dietary and nutritional needs of their foster children.

#### 5.7. Clothing

Foster parents shall see that funds provided for the purchase of clothing are used in such a way that children in their care are comfortably and appropriately clothed within the limits of funds provided, and that children's clothing is kept in a state of suitable repair and cleanliness.

#### 5.8. Responsibilities of Foster Parents

- (A) Foster parents shall be responsible for seeing that they accept children for care only in conformity with the conditions relating to number, age or other limitations specified on the license.
- (B) Foster parents shall notify the Indian Child Welfare Worker within four (4) days after the placement of a child into their home from a source other than the Executive Council. If as a result there is a substantial change in the foster home, the Indian Child Welfare Worker shall notify the Executive Council.
- (C) Foster parents shall keep the Indian Child Welfare Worker and Legal Custodian informed of the child's progress while in their care.
- (D) Foster parents shall notify the Indian Child Welfare Worker and Legal Custodian as soon as possible of emergencies involving a foster child. This includes serious illness or injury requiring medical treatment, unauthorized absence from the home, or other situations where prudence suggests that the Indian Child Welfare Worker and Legal Custodian should be notified. This requirement in no way relieves foster parents from first taking action such as obtaining emergency medical treatment for the child before notifying the Indian Child Welfare Worker and Legal Custodian.
- (E) Foster parents shall allow the Executive Council and Legal Custodian a minimum of 30 days in which to make suitable plans for the child when the foster parents have requested a child's removal from their home.
- (F) Foster parents shall cooperate with the Indian Child Welfare Worker and Legal Custodian in seeing that an appropriate relationship is maintained between the child and his or her relatives. Visits, letters and verbal communications shall be

allowed by the foster parents at reasonable times and places, and will be arranged and supervised by the Indian Child Welfare Worker if necessary.

- (G) Foster parents shall keep confidential all information harmful to children in their care, such as prior medical or family history revealed to the foster parents in confidence as part of the child's placement.

#### 5.9. Enrollment, Rights and Benefits

- (A) Foster parents along with the Executive Council and Legal Custodian shall make every effort to verify and/or obtain enrollment in the appropriate tribe for each Indian foster child. Information shall be sought as may be necessary for the enrollment of an Indian child and to determine any rights or benefits associated with that membership.
- (B) All income and inheritances shall be subject to the control of the foster child's Legal Guardian if known, and if not, to the control of the Executive Council.

#### 5.10. Record to be Maintained by Foster Parents

- (A) Foster parents shall maintain during the time a child is in their care, a record on forms provided by the Executive Council. Such records shall contain the following information:
  - (1) Child's name or alias by which he is known.
  - (2) Child's birth date.
  - (3) Name of the person or agency to be notified in an emergency.
  - (4) Name of physician to be called in an emergency.
  - (5) Dates child received care.
  - (6) Medical information about the child while in their care, such as medical examinations, immunizations, illnesses and accidents including dates of each.
  - (7) Name of dentist and dates child is seen.
  - (8) Name of school and grades attended.
  - (9) Grades and attendance records received from the school.
  - (10) All income and inheritances received by the child while in their care.
- (B) Foster parents shall make available for inspection any records of the children placed with them for care at the request of the Indian Child Welfare Worker or the Legal Guardian.

#### 5.11. Number of Children in Home

The number of children foster parents may receive for care plus the number of their own children who live in the household shall be determined by the Executive Council on a case by case basis.

#### 5.12. Investigation of Applicant, Granting of License

After receipt of application for a license, the Executive Council shall direct the Indian Child Welfare Worker to investigate to determine if the applicant meets all minimum requirements for a license. Upon satisfactory completion of this investigation, the license may be granted by Executive Council action.

#### 5.13. Provisions of License

- (A) Licenses approved by the Executive Council shall be signed by the Tribal Chairman or Vice Chairman.
- (B) Each license shall bear the names of the persons licensed, describe the premises included, and state the maximum number of children to be received specifying age and sex.
- (C) The Executive council may impose special conditions and rules on individual licenses where it is deemed necessary in the best interests of a foster child.

#### 5.14. Expiration and Revocation of Licenses

- (A) All licenses issued by the Executive Council shall be for any term not to exceed one (1) year from the date of issuance and are subject to annual renewal. No license shall be transferable.
- (B) Licenses may be suspended or revoked by the Executive Council for a substantial violation by the licensee of any provision of this Ordinance or of rules of the Executive Council. A license may also be denied or revoked if the licensee fails to meet minimum requirements to obtain such a license.
- (C) The Executive Council shall give the licensee written notice of any proposed revocation and the grounds for revocation. The written notice shall be given at least 10 days prior to any revocation.
- (D) The Executive Council may suspend a foster home license without prior written notification when it is deemed necessary.

#### 5.15. Inspection and Visits

Foster home licensees are deemed to have consented to an inspection of the foster home at reasonable times upon reasonable advance notice. The Executive Council hereby designates the Indian Child Welfare Worker as its representative to visit and inspect each foster home. The Executive Council or the Indian Child Welfare Worker shall be given unrestricted access to the



premises as described by the foster home application. The Indian Child Welfare Worker may also visit a foster home at various times without advance notice, but may not inspect the entire premises during such visits.

**§ 6. Executive Council Decisions Final**

Decisions by the Executive Council on matters of issuance, suspension and revocation of foster home licenses shall be final. However, foster parent applicants or licensed foster parents shall have the right to request and have a hearing before the Executive Council relative to any denial, suspension or revocation of a foster home license. The decision of the Executive Council shall be non-appealable.

**§ 7. Penalties**

Any person holding a license issued by the Forest County Potawatomi Executive Council who violates any of the provisions of this Ordinance or conditions of his or her foster home license may have his or her foster home license revoked by the Executive Council.

**§ 8. Liberal Construction**

This Foster Home Ordinance shall be liberally construed to effect the purposes stated in the “Indian Child Welfare Act of 1976”, P.L. 95-608), 25 U.S.C. ss. 1901 et seq.

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**Legislative History:**

03/12/1992	Recommended by the Tribal Ordinance Committee
05/25/1992	Recommended by the Tribal Executive Council
05/28/1993	Enacted by General Council Resolution No. GC 006-93

**References in text:**

For Indian Child Welfare Act, referenced in Section 1.3, see, 25 U.S.C. §§ 1901 et seq.

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

## CHILD SUPPORT

1. .... General Provisions
2. .... Jurisdiction
3. .... Civil Provisions of General Application
4. .... Enforcement and Modification of Support Order After Registration
5. .... Determination of Parentage
6. .... Forms

## 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.

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### **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>