



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA
Business Committee Conference Room-2nd Floor Norbert Hill Center
November 6, 2019
9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be Approved**
October 16, 2019 LOC Meeting Minutes (pg. 2)
- III. Current Business**
 1. Child Support Amendments (pg. 4)
 2. Indian Preference in Contracting Amendments (pg. 111)
- IV. New Submissions**
- V. Additions**
- VI. Administrative Updates**
 1. FY 19 Fourth Quarterly LOC Report (pg. 152)
- VII. Executive Session**
- VIII. Recess/Adjourn**



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES

Oneida Business Committee Executive Conference Room-2nd Floor Norbert Hill Center
October 16, 2019
9:00 a.m.

Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Jennifer Webster

Excused: Ernest Stevens III

Others Present: Maureen Perkins, Brandon Wisneski, Clorissa Santiago, Jennifer Falck, Kristen Hooker, Rae Skenandore, JoAnne House, Lee Cornelius, Leyne Orosco

I. Call to Order and Approval of the Agenda

David P. Jordan called the October 16, 2019, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jennifer Webster to adopt the agenda; seconded by Daniel Guzman King. Motion carried unanimously.

II. Minutes to be Approved

Motion by Jennifer Webster to approve the October 02, 2019, Legislative Operating Committee meeting minutes and forward to the Business Committee for consideration; seconded by Kirby Metoxen. Motion carried unanimously.

III. Current Business

1. Citations Law (1:05-3:17)

Motion by Jennifer Webster to approve the public meeting packet, with the updated draft and analysis, and forward the Citation Law to a public meeting to be held on November 22, 2019; seconded by Daniel Guzman King. Motion carried unanimously.

2. Oneida Environmental Resources Board Bylaws Amendments (3:19-6:33)

Motion by Kirby Metoxen to accept the Oneida Environmental Resources Board Bylaws Amendments and forward to the Oneida Business Committee for consideration; seconded by Jennifer Webster. Motion carried unanimously.

3. Oneida Personnel Commission Bylaws Amendments (6:34-8:08)

Motion by Jennifer Webster to accept the Oneida Personnel Commission Bylaws Amendments and forward to the Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.

4. Oneida Land Claims Commission Bylaws Amendments (8:09-10:26)

Motion by Kirby Metoxen to accept the Oneida Land Claims Commission Bylaws Amendments and forward to the Oneida Business Committee for consideration; seconded by Daniel Guzman King. Motion carried unanimously.



IV. New Submissions

V. Additions

VI. Administrative Items

1. Children's Code Update (10:29-13:39)

Motion by Kirby Metoxen to accept the eighth and final Children's Code Implementation Plan Quarterly Update and forward to the Oneida Business Committee; seconded by Jennifer Webster. Motion carried unanimously.

VII. Executive Session

VIII. Adjourn

Motion by Jennifer Webster to adjourn the October 16, 2019, Legislative Operating Committee meeting at 9:14 a.m.; seconded by Kirby Metoxen. Motion carried unanimously.



Legislative Operating Committee
November 6, 2019

Child Support Law Amendments

Submission Date: 3/7/18	Public Meeting: 10/17/19
LOC Sponsor: David P. Jordan	Emergency Enacted: n/a

Summary: *This item was submitted to the LOC by the Child Support Agency’s attorney. Currently the Child Support Law is accompanied by two rules. The Child Support Agency want to create more rules and proposed amending the law to include expanded rulemaking authority.*

3/7/18LOC: Motion by Kirby Metoxen to add the Child Support Amendments to the active files list as a high priority and assign David P. Jordan as the sponsor; seconded by Daniel Guzman King. Motion carried unanimously.

4/5/18: *Work Meeting.* Present: Trina Schuyler, Lisa Peck, Clorissa Santiago, Brandon Wisneski, Michelle Gordon. The purpose of this work meeting was to review potential amendments to the Child Support law.

4/18/18: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Laura Laitinen-Warren. The purpose of this work meeting was to discuss the Child Support Department’s request for amendments, and determine if administrative rulemaking should be utilized. The drafting attorney will schedule a meeting with the LOC and the Child Support Department to begin discussing policy.

5/17/18: *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck, Michelle Gordon. The purpose of this work meeting was to discuss and determine specific policy amendments the Child Support Department is seeking, and to discuss and determine a plan to move this legislative item forward.

6/8/18: *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck, Michelle Gordon, Hon. Marcus Zielinski. The purpose of this work meeting was to begin discussing the reality of implementing bench warrants and other enforcement mechanisms.

Work Meeting. Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck, Michelle Gordon. The purpose of this work meeting is to begin discussing the potential amendments the Child Support Department wants the LOC to consider.

6/22/18: *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck. The purpose of this work meeting was to continue discussing potential amendments to the Child Support law.

7/13/18: *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck, Mike Hoelt. The purpose of this work meeting was to continue discussing potential amendments to the Child Support law.

- 8/9/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck, Michelle Gordon, Hon. Marcus Zielinski, Hon. Robert Collins III, Rich Vanboxtel, Eric Boulanger. The purpose of this work meeting was to discuss the potential of utilizing bench warrants in regard to child support matters.
- 8/17/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck, Michelle Gordon. The purpose of this work meeting was to continue discussing potential amendments to the review, review requested data regarding enforcement of child support, and determine next steps to moving this legislative item forward.
- 9/18/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Lisa Peck. The purpose of this work meeting was to continue discussing potential amendments to the law.
- 10/12/18:** *Work Meeting:* Present: Brandon Wisneski, Trina Schuyler. The purpose of this work meeting was to prepare for and discuss an upcoming work meeting with the LOC.
- 10/26/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch. The purpose of this work meeting was to review the power point and handouts for the upcoming meeting with the LOC.
- 10/31/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman, Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Trina Schuyler. During this work meeting Trina gave PowerPoint presentation on Oneida's Child Support Department. The LOC was then presented with policy considerations for proposed amendments regarding enforcement tools and modification of a child support order for an incarcerated parent. The LOC considered the proposed ideas, and directed the LRO to move forward pursuing research and drafting.
- 11/9/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch. The purpose of this work meeting was to discuss the LOC's decisions regarding potential amendments, plan the next steps for moving forward, and plan an upcoming meeting with OPD.
- 12/6/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon. The purpose of this work meeting was to review drafted enforcement tools language and determine what information needs to be discussed with OPD in an upcoming work meeting scheduled for 12/10/18.
- 12/10/18:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon, Eric Boulanger. The purpose of this work meeting was to review drafted enforcement tools language and determine what information needs to be included in the Law. The LRO staff will bring the information collected during this work meeting to the LOC for their consideration.
- 12/19/18:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Ernest Stevens III, Jennifer Falck, Clorissa Santiago, Brandon Wisneski. The purpose of this work meeting was to discuss the 12/10/18 work meeting with Child Support and OPD, and reconsider policy considerations regarding enforcement tools.
- 1/4/19:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon. The purpose of this work meeting was to discuss the LOC's recent decision to not pursue the addition of proposed enforcement tools, and to begin reviewing the draft from the beginning to discuss other potential amendments.

- 2/1/19:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon. The purpose of this work meeting was to continue reviewing the law line by line to discuss potential amendments.
- 3/1/19:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon, Porsche Skenandore-Wheelock. The purpose of this work meeting was to finish reviewing the law line by line to discuss potential amendments. LRO will update the draft with all the proposed revisions.
- 4/5/19:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Porsche Skenandore-Wheelock. The purpose of this work meeting was to review the updated draft to ensure it adequately reflects decisions that were made regarding proposed amendments to the law.
- 4/30/19:** *Work Meeting.* Present: Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Porsche Skenandore-Wheelock. The purpose of this work meeting was to continue reviewing the updated draft to ensure it adequately reflects the decisions and recommendations that were made regarding the proposed amendments to the law. Department will continue to review the proposed language for compliance, and we will finish the review of the last portion of the draft during the next meeting.
- 5/16/19:** *Work Meeting.* Present: Jennifer Falck, Clorissa Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon, JoAnne House, Tsyoshaht Delgado. The purpose of this work meeting was to complete the review of the updated draft to ensure it adequately reflects the decisions and recommendations that were made regarding the proposed amendments to the law. LRO will now update the draft and bring it to the LOC for review and consideration.
- 7/17/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to begin reviewing and making decisions to the proposed amendments to the Law.
- 7/18/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to continue reviewing and making decisions as to the proposed amendments to the Law.
- 7/25/19:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to continue reviewing and making decisions as to the proposed amendments to the Law.
- 8/7/19 LOC:** Motion by Ernest Stevens III to have one more work session between the Legislative Operating Committee, Legislative Reference Office and the Child Support Agency; seconded by Kirby Metoxen. Motion carried unanimously.
- 8/20/19:** *OBC Work Session.* Present: Tehassi Hill, Patricia King, David P. Jordan, Kirby Metoxen, Ernest Stevens III, Jo Anne House, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Melinda Danforth, Candice Skenandore, Lisa Liggins, Brian Doxtator. The purpose of this meeting was to discuss potential use of incarceration for child support. OBC designated a team to include representatives from Self Governance, Intergovernmental Affairs, Oneida Police Department, Oneida Law Office, and the Judiciary to work on this issue and report to the OBC during OBC work sessions every three months.

8/21/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Ernest Stevens III, Jennifer Webster, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Trina Schuyler, Tami Busch, Michelle Gordon. The purpose of this work meeting was to fulfill the August 7, 2019 directive and allow the Agency one final work meeting to discuss potential amendments.

9/18/19 LOC: Motion by Jennifer Webster to approve the updated draft and legislative analysis; seconded by Ernest Stevens III. Motion carried unanimously.

Motion by Ernest Stevens III to approve public meeting and forward to the Child Support law to a public meeting to be held on October 17, 2019; seconded by Jennifer Webster. Motion carried unanimously.

10/17/19: *Public Meeting Held.* Present: Jennifer Webster, Daniel Guzman King, Clorissa N. Santiago, Brandon Wisneski, Lee Cornelius, Rae Skenandore, Michelle Gordon, Trina Schuyler, Tami Bush, Bonnie Pigman. Two (2) individuals gave public comment during this public meeting.

10/24/19: *Public Comment Period Closed.* One (1) person submitted written comments during this public comment period.

Next Steps:

- Accept the public comments and public comment review memorandum and forward to a work meeting for further consideration.



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney **CNS**
DATE: November 6, 2019
RE: Child Support Law Amendments: Public Meeting Comment Review

On October 17, 2019, a public meeting was held regarding the proposed amendments to the Child Support law (“the Law”). The public comment period was then held open until October 24, 2019. This memorandum is submitted as a review of the oral and written comments received within the public meeting and public comment period.

The public meeting draft, public meeting transcript, and written comments received are attached to this memorandum for review.

Comment 1 – Definition for Contempt:

Michelle Gordon (oral): Attorney Michelle Gordon with the Law Office. I am the attorney that is assigned to the Child Support Department. As you know we held a work meeting with the department and the LRO and the LOC and when reviewing the draft we caught just a couple of things that we thought we agreed upon but weren’t changing the law, so we just wanted to go through those to maybe go back and look at those.

So, the first thing in the definitions we thought we had agreed upon adding a definition of contempt and that is not in there, so if the LOC reviews that and decides to put in a definition, we think that would be helpful.

Response

The commenter requests the Legislative Operating Committee consider including a definition for the term “contempt.”

Typically, words that are used within their ordinary and everyday sense are not provided a definition in a law. What terms to include definitions for within a law is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee may determine:

1. The Law should remain as currently drafted, a definition for the term “contempt” is not necessary to be added.
2. The Law should be amended to include a definition for the term “contempt.” If the Legislative Operating Committee makes this decision, then the following revision should be made to the Law:

704.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(j) “Contempt” means a willful disregard of the authority of a court or disobedience to its lawful orders.

*LOC Consideration***Comment 2 – Clarifying Initiation of Action by the Agency:**

704.5-2. *Initiation of Action by the Agency.* For assistance in initiating a child support order a party may request the services of the Agency or may be referred to the Agency from an entitlement program.

- (a) Within thirty (30) days of receiving a completed application for services or a referral, the Agency shall meet with the custodial parent.**
- (b) Within seven (7) business days of the meeting with the custodial parent, the Agency shall send a Letter of Request for Support and Financial Disclosure form to the non-custodial parent.**
- (b) If the non-custodial parent fails to respond to or take action on the Letter of Request for Support and Financial Disclosure form within ten (10) business days the Agency may initiate a hearing in accordance with this law.**
- (c) If the non-custodial parent responds within the required time period after receiving a Letter of Request for Support and Financial Disclosure form, the parties shall attempt to enter into a stipulation.**

Michelle Gordon (oral): And I am going through the redline that is, so when I call out line numbers it is going to be through the redline that was in the packet. So, the first one is line 258 on page 6 of the redline. We had, so it says within ten (10) business days, the custodial parent, or the Agency when required by federal law, may initiate a hearing, but this section is initiation of action by the Agency, so the reference to the custodial parent should be removed, because their section comes later and then we also agreed that when required by federal law would be removed. So, the wording the “custodial parent” should be struck and the wording “when required by federal law” should be struck.

Response

The commenter is requesting an amendment based on the redline draft of the Law that was included in the public meeting packet. The redline draft contained an error and did not demonstrate the revision that was made to section 704.5-2 of the Law. This revision was included in the clean draft of the proposed amendments included in the public meeting packet.

The Law provides that “If the non-custodial parent fails to respond to or take action on the Letter of Request for Support and Financial Disclosure form within ten (10) business days the Agency may initiate a hearing in accordance with this law.” [7 O.C. 704.5-2(b)]. Therefore, no revision to the Law is needed based on this comment.

*LOC Consideration***Comment 3 – Requirement to Include an Address on the Petition:**

704.5-5. *Petition to Establish Child Support.* If the parties do not enter into a stipulation, then a petition to establish child support may be filed with the Family Court. The petition to establish child support may be filed as a separate proceeding or in connection with a petition for child custody.

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

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

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

Michelle Gordon (oral): Then page 7, Line 309 of the redline, and this is actually something that I am not sure we did bring up, we can't remember. It might have been something we forgot, but the requirement of the petition does require the address and we are asking that the requirement for the address be removed and that is for the safety of the parties. We do have a lot of cases where there is domestic violence. There is on the next page a section that was added for nondisclosure of information in protected cases. It says upon a finding which may be made *ex parte* if the court found it would be unreasonable to include, the court could order, but that just adds an additional step for the department and so that means every time we have a case where we find out that the parties are a protected person, if the address is required to be included in the petition, that means every time before we could file we would have to send something to the court to get that *ex parte* order, asking for permission not to include the address in the petition. There is a requirement for a confidential petition addendum, which is again on the next page. That is required to be included in all cases. We would like to add that the address be included in the confidential petition addendum instead of the petition.

Response

The commenter is requesting that the requirement that the address of the petitioner, respondent, and child be removed from the petition. The Agency handles cases involving domestic violence and the requirement to request a nondisclosure of information from the Family Court would require the Agency to take additional action to protect the address of the party in those cases.

The Legislative Operating Committee discussed this matter at length during the development of amendments to the Law. The Legislative Operating Committee was tasked with finding a balancing point between ensuring that protections exist for those cases involving domestic violence, but also ensuring that the due process rights of all parties are not infringed upon.

Although the Legislative Operating Committee understands that in most cases the Agency is involved in the initiation of an action, a party not the Agency may initiate an action for the establishment of child support at any time by filing a petition with the Family Court. [7 O.C. 704.5-3]. The Legislative Operating Committee was concerned that if a petition did not include an address for the petitioner, then a respondent may have difficulties serving an answer on the petitioner within twenty (20) calendar days of the date of service of the petition as required by the Law. [7 O.C. 704.5-5(e)].

In an effort to address those cases involving domestic violence, the Legislative Operating Committee did include section 704.5-5(b) which addresses the nondisclosure of information in protected cases. This allows the Family Court to find that the health, safety, or welfare of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, the Family Court shall order that the address of the child or party, or other identifying information, not be disclosed in a pleading or other document filed in a proceeding under this law. [7 O.C. 704.5-5(b)]. This allows the Family Court to protect information from being disclosed in those cases that may involve domestic violence.

The Legislative Operating Committee determined that allowing a party to request that a case be protected ensures that a party's information can be protected in situations involving domestic violence, without unduly infringing on the due process rights of a respondent in cases where domestic violence does not exist.

Due to the fact that section 704.5-5(b) allows for the nondisclosure of information in protected cases there is no recommended revision based on this comment.

LOC Consideration

Comment 4 – Access to the Confidential Petition Addendum

704.5-5. *Petition to Establish Child Support.* If the parties do not enter into a stipulation, then a petition to establish child support may be filed with the Family Court. The petition to establish child support may be filed as a separate proceeding or in connection with a petition for child custody.

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

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

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

Michelle Gordon (oral): We would also like to add at the end of the confidential petition addendum that the court could refuse access to that confidential petition addendum in these types of protected cases, because right now it is available to all parties to the action and we think the court should have the right to refuse access in case it is a protected case. When we send these documents over to the court, we do specify when the cases are protected, so the court would know when we file the confidential petition addendum that it is a protected case, so they would know if someone made a request that they could deny that if the court allows them to deny access to that confidential petition addendum.

Response

The commenter is requesting that the Family Court be allowed to refuse access to the confidential petition addendum in protected cases.

A petition to establish child support is required to contain a confidential petition addendum which is a separate form from the petition, that is maintained in a confidential file, that contains the parties and the child's name, date of birth, and social security number. [7 O.C. 704.5-5(a)(9)]. The form is only available to the parties, the parties' attorneys or advocates, the Agency, or any person authorized by the Family Court to have access to the form. [7 O.C. 704.5-5(a)(9)].

The Law currently does allow for the non-disclosure of information in protected cases. The Family Court can order that the address of the child or party, or other identifying information such as what is contained in the confidential petition addendum, not be disclosed in a pleading or other document filed in a proceeding under this Law. [7 O.C. 704.5-5(b)]. This means that in those protected cases the Family Court would be able to protect the information contained in the confidential petition addendum and ensure it is not disclosed in any pleadings or documents.

Due to the fact that section 704.5-5(b) allows for the nondisclosure of information in protected cases there is no recommended revision based on this comment.

LOC Consideration

Comment 5 – Notice by Publication:

704.5-5(d)(1)(B) *Publication.* When a responding party cannot be found for personal service after diligent attempts and attempts to serve the responding party by certified mail have failed, the petitioner may use service by publication. The publication shall be in the Nation’s newspaper or a newspaper of general circulation in the county of residence of the respondent, if known. The publication shall be designated as a Legal Notice and any confidential information shall be redacted.

Michelle Gordon (oral): Then also on page 8, line 360, this talks about notice, it deals with the summons. Up above it talks about serving the summons by Certified Mail. This section is about publication and it says, “When a responding party cannot be found for personal service after diligent attempts and attempts to serve the responding party by certified mail have failed, the petitioner may use service by publication.” “May” needs to be changed to “shall” because they have to be served in some form and so how it’s done is if you can’t serve by mail, you have to serve by publication and that’s a requirement that the court makes, so the word “may” we’re asking to be changed to “shall”.

Response

The commenter is requesting that the term “may” in section 704.5-5(d)(1)(B) be changed to shall.

The following revision is recommended based on this comment:

704.5-5(d)(1)(B) *Publication.* When a responding party cannot be found for personal service after diligent attempts and attempts to serve the responding party by certified mail have failed, the petitioner ~~may~~ shall use service by publication. The publication shall be in the Nation’s newspaper or a newspaper of general circulation in the county of residence of the respondent, if known. The publication shall be designated as a Legal Notice and any confidential information shall be redacted.

LOC Consideration

Comment 6 – Monthly Income:

704.3. Definitions

704.3-1. This section shall govern the definitions of words and phrases used within this law.

All

words not defined herein shall be used in their ordinary and everyday sense.

(z) “Monthly income” means the obligor’s annual gross income or, if applicable, the obligor’s annual income modified for business expenses; plus the obligor’s annual income imputed based on earning capacity; plus the obligor’s annual income imputed from assets; divided by twelve (12).

704.7. Determining the Child Support Obligation

704.7-1. The Family Court shall determine child support payments by using the percentage standards established in section 704.7-2 of this law, except as provided elsewhere in this law. The obligor’s monthly income shall be considered in determining his or her child support obligation.

Michelle Gordon (oral): Page 10 of the redline, at lines 449, it’s determining child support obligation. It simply says right now that the obligor’s monthly income shall be considered and then when the next section percentage standards, it just talks about the portion of the obligor’s monthly income, it needs to say, “gross monthly income”. That helps to explain to parties when they come in we can point to the law that it says, because a lot of times we get the argument why are you going off my gross, not my net, I don’t make that much, but the law in staying consistent and how we’ve been doing it, it is based on gross monthly income and so we are asking for that clarification in that section that it say gross monthly income. Sorry I’m trying to go through my pages here.

Response

The commenter requests that references to the obligor’s “monthly income” in section 704.7-1 be changed to “gross monthly income.”

There is no revision recommended based on this comment, as it would be unnecessary to revise references to “monthly income” to “gross monthly income” as the definition for “monthly income” already qualifies that it is the gross income that is used. The definition for “monthly income” is the obligor’s annual *gross* income divided by twelve (12).

LOC Consideration

Comment 7 – Modification of Order by the Agency:

704.11-5. *Modification of Order by the Agency.* If the Agency determines the obligor’s income is two hundred dollars (\$200) per month or more while incarcerated, the Agency shall file with the Family Court a Motion to Modify.

- (a) The Family Court shall schedule a hearing on the motion with the Agency providing notice to all parties with the proposed modification to the child support order by first class mail at least ten (10) business days prior to the hearing.**
- (b) If no objection to the modification is received at the hearing, the Family Court shall enter the order as proposed.**

Michelle Gordon (oral): Page 21 of the redline, line 975. So, this is for modification of order by the agency. This is going to require a hearing and the way it's worded right now it says, "shall file with the Family Court a Motion and Order to Modify." It needs to say just a "Motion to Modify", because a motion and order to modify means we don't have to have a hearing. We send over the motion with an order and if there is no objection to the order then the court just signs the order. So, this needs to have "an Order to Modify" removed and I believe that was in the discussion we had in the work meeting.

Response

The commenter is requesting a change based on the redline draft of the Law that was included in the public meeting packet. The redline draft contained an error and did not demonstrate the revision that was made to section 704.11-5 of the Law. This revision was included in the clean draft of the proposed amendments that was included in the public meeting packet.

The Law provides that if the Agency determines the obligor's income is two hundred dollars (\$200) per month or more while incarcerated, the Agency shall file with the Family Court a Motion to Modify. [7 O.C. 704.11-5].

LOC Consideration

Comment 8 – Entering an Order Based on a Request for Modification of Order by the Agency:

704.11-5. Modification of Order by the Agency. If the Agency determines the obligor's income is two hundred dollars (\$200) per month or more while incarcerated, the Agency shall file with the Family Court a Motion to Modify.

- (a) The Family Court shall schedule a hearing on the motion with the Agency providing notice to all parties with the proposed modification to the child support order by first class mail at least ten (10) business days prior to the hearing.**
- (b) If no objection to the modification is received at the hearing, the Family Court shall enter the order as proposed.**

Michelle Gordon (oral): And then also lines 979 on the next page again this is requiring a hearing but line 979 which is "b." needs to be removed because it says, "If no objection to the modification

is received at the hearing, the Family Court shall enter the order as proposed.” , but that’s tying the court, I mean the court should have discretion to make an order that they see as appropriate so they may not agree with the agency and so they should have that discretion and I think that’s just confusion about the motion and order we had talked about with the objection, so we would like that section be removed.

Response

The commenter requests that section 704.11-5(b) be removed, so that the Family Court is not required to enter an order as proposed by the Agency, and instead can have the discretion to enter an order the Family Court finds appropriate.

In an effort to ensure the Family Court has the proper discretion when entering orders, the following revision is recommended based on this comment:

704.11-5. *Modification of Order by the Agency.* If the Agency determines the obligor’s income is two hundred dollars (\$200) per month or more while incarcerated, the Agency shall file with the Family Court a Motion to Modify.

(a) The Family Court shall schedule a hearing on the motion with the Agency providing notice to all parties with the proposed modification to the child support order by first class mail at least ten (10) business days prior to the hearing.

~~(b) If no objection to the modification is received at the hearing, the Family Court shall enter the order as proposed.~~

LOC Consideration

Comment 9 – Responses to a Compliance Plan Appointment Letter:

704.12. Compliance Plan

704.12-2. An Appointment Letter may be sent by the Agency at any time deemed appropriate, but the Agency shall send out the Appointment Letter at least thirty (30) days prior to the initiation of any enforcement action.

(a) The Letter shall request the party meet with the Agency to discuss barriers to payment and how to avoid future enforcement action.

(b) If the party does not respond to the Letter within five (5) business days after receipt of the letter, the Agency may proceed with appropriate enforcement action.

(c) If the obligor responds to the Letter, the Agency shall interview the party to determine the reasons and barriers for the non-compliance and create a compliance plan. The compliance plan may include an increase in payment and/or any activity that is necessary to assist in payment, including programs that focus on:

- (1) Employment and training;**
- (2) Social service and mental health;**

- (3) Physical and learning disabilities;
- (4) Tribal traditions and customs;
- (5) Family counseling and parenting; and
- (6) Any other program deemed necessary.

(d) If the party successfully completes the compliance plan, no further enforcement action is necessary. However, if the party fails to complete the compliance plan, the Agency shall proceed with appropriate enforcement action.

Michelle Gordon (oral): The next one is page 23, line 1033 of the redline. This is 704.12-2, subsection c., it says “If the obligor responds to the Letter”, but we had thought, our notes say that, we had specifically said that it would be when the obligor actually meets with the agency, not just responds in writing to the agency, then the agency shall interview the party.

Response

The commenter is requesting that the language of “If the obligor responds to the Letter, the Agency shall interview the party” found in section 704.12-2(c) be revised to read “If the obligor meets with the Agency, the Agency shall interview the party.”

This section of the Law details the use of a compliance plan by the Agency. If at any time the obligor is, or may become, non-compliant with his or her child support order by failing to pay support as ordered or meeting a required obligation or action, the Agency is required to meet with the obligor to develop a compliance plan. [7 O.C. 704.12-1]. The Agency can send out an Appointment Letter to request the party meet with the Agency to discuss barriers to payment and how to avoid future enforcement action, at any time deemed appropriate but at least thirty (30) days prior to the initiation of any enforcement action. [7 O.C. 704.12-2]. Once a party receives an Appointment Letter the party has five (5) business days to respond, and if no response is made by the party then the Agency can proceed with the appropriate enforcement action. [7 O.C. 704.12-2(b)]. If the party does respond to the Letter, then the Agency can proceed with interviewing the party to determine the reasons and barriers for the non-compliance and create a compliance plan. [7 O.C. 704.12-2(c)].

The Law references a “response to the Letter” instead of “meeting with the Agency” because there is a five (5) business day period of time in which the party has the opportunity to decide they wish to seek a compliance plan with the Agency before the Agency moves forward with seeking enforcement action. This response to the letter allows the Agency more flexibility in scheduling a meeting with the party to have the interview with the party to determine the reasons and barriers for the non-compliance and create a compliance plan, since the actual meeting does not have to occur within the five (5) business day period, just a response by the party to the Agency has to be made.

In an effort to provide the most flexibility in scheduling compliance plan meetings, there is no recommended revision based on this comment.

LOC Consideration

Comment 10 – Completion of the Compliance Plan:

704.12. Compliance Plan

704.12-2. An Appointment Letter may be sent by the Agency at any time deemed appropriate, but the Agency shall send out the Appointment Letter at least thirty (30) days prior to the initiation of any enforcement action.

(a) The Letter shall request the party meet with the Agency to discuss barriers to payment and how to avoid future enforcement action.

(b) If the party does not respond to the Letter within five (5) business days after receipt of the letter, the Agency may proceed with appropriate enforcement action.

(c) If the obligor responds to the Letter, the Agency shall interview the party to determine the reasons and barriers for the non-compliance and create a compliance plan. The compliance plan may include an increase in payment and/or any activity that is necessary to assist in payment, including programs that focus on:

- (1) Employment and training;
- (2) Social service and mental health;
- (3) Physical and learning disabilities;
- (4) Tribal traditions and customs;
- (5) Family counseling and parenting; and
- (6) Any other program deemed necessary.

(d) If the party successfully completes the compliance plan, no further enforcement action is necessary. However, if the party fails to complete the compliance plan, the Agency shall proceed with appropriate enforcement action.

Michelle Gordon (oral): Line 1043, it says “If the party successfully completes the compliance plan,” we believe it should say “completes the terms of the compliance plan” because there is a list of terms that are included.

Response

The commenter requests that the phrase “if the party successfully completes the compliance plan” be revised to state “if the party successfully completes the terms of the compliance plan.”

The requested revision does not affect the content or meaning of this provision. Therefore, whether to make this requested revision is a policy determination for the Legislative Operating Committee to make. The Legislative Operating Committee may determine:

1. The Law should remain as currently drafted and state, “if the party successfully completes the compliance plan.”
2. The Law should be amended to state, “if the party successfully completes the terms of the compliance plan.” If the Legislative Operating Committee makes this determination the following revision is recommended.

(d) If the party successfully completes the terms of the compliance plan, no further enforcement action is necessary. However, if the party fails to complete the compliance plan, the Agency shall proceed with appropriate enforcement action.

LOC Consideration

Comment 11 – Negotiations of an Alternative Payment Plan:

704.14. Alternative Payment Plans

704.14-2. *Negotiation of an Alternative Payment Plan After Receiving Notice of an Enforcement Action.*

(a) In order to negotiate an alternative payment plan, an obligor shall submit a written request to the Agency.

(1) A written request to negotiate an alternative payment plan received by the Agency within ten (10) business days after the date of notice shall stay any administrative enforcement action.

(2) If a written request to negotiate an alternative payment plan is received by the Agency more than ten (10) business days after the date of notice, administrative enforcement action may be taken, as long as the requirements for staying or suspension of administrative enforcement actions are met.

Michelle Gordon (oral): The next is at page 25 under the “Alternative Payment Plans” section, line 1150. Our notes say that this sentence should end at enforcement action may be taken period and the remainder of that sentence should be removed. There also should be a paragraph 3. I do note that in my discussions with Clorissa from the Legislative Reference Office, she had stated that that additional sentence, I didn’t get to her, she must have not caught it at the meeting and then I didn’t get it to her in time to be included in the packet, but she does intend to bring it to the Committee, but I thought for safety purposes I would just put it on the record today.

So, subsection 3 would be “If the Agency agrees to negotiate an alternative payment plan after the ten (10) business days after the date of notice, the Agency and obligor may agree to stay or suspend the administrative enforcement action.” So that would be an additional subsection 3.

Response

The commenter requests that section 704.14-2(a)(2) be amended to address what would happen if the Agency receives a request to negotiate an alternative payment plan more than ten (10) business days after the date of notice.

In an effort to provide the Agency the most flexibility with the decision to enter into a negotiation plan with a party, the following revision is recommended:

A good mind. A good heart. A strong fire.



704.14. Alternative Payment Plans

704.14-2. *Negotiation of an Alternative Payment Plan After Receiving Notice of an Enforcement Action.*

(a) In order to negotiate an alternative payment plan, an obligor shall submit a written request to the Agency.

(1) A written request to negotiate an alternative payment plan received by the Agency within ten (10) business days after the date of notice shall stay any administrative enforcement action.

(2) If a written request to negotiate an alternative payment plan is received by the Agency more than ten (10) business days after the date of notice, administrative enforcement action may be taken, ~~as long as the requirements for staying or suspension of administrative enforcement actions are met.~~

(3) If the Agency agrees to negotiate an alternative payment plan after the ten (10) business days after the date of notice, the Agency and obligor may agree to stay or suspend the administrative enforcement action.

LOC Consideration

Comment 12 – Hearing on the Reasonableness of an Alternative Payment Plan:

704.14. Alternative Payment Plans

704.14-2. *Negotiation of an Alternative Payment Plan After Receiving Notice of an Enforcement Action.*

(c) *Hearings for Negotiations of an Alternative Payment Plan.* The obligor may submit a written request for a hearing with the Family Court regarding negotiations of an alternative payment plan in the following circumstances:

(1) The obligor and the Agency have agreed to terms of a plan, but the obligor wants the Family Court to consider the reasonableness of the plan.

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

(2) The obligor and the Agency are unable to reach agreement on the terms of a plan.

(A) The Family Court may order a plan by setting conditions and/or payments in the amounts and at the times it considers reasonable.

Michelle Gordon (oral): Then line 1158, we also thought that we had agreed to add this additional language after the end of that sentence, so it would end with “reasonableness of the plan due to a change of circumstances since the plan was agreed to by the Agency and the obligor. Because right now it allows the obligor to challenge the reasonableness of the plan, but they entered into the plan, so for us wouldn’t it make sense that they entered into the plan because the plan was

reasonable. They wouldn't have entered into the plan if they didn't feel it was reasonable and so they've entered into the plan and now they are objecting to it later, so we're just requesting that this change of circumstances is now making it unreasonable.

Response

The commenter is requesting that section 704.14-2 be amended to provide that the obligor can request a hearing with the Family Court only if the obligor wants the Family Court to consider the reasonableness of the plan due to a change of circumstances since the plan was agreed to by the Agency and the obligor.

The Law currently provides that the obligor may submit a written request for a hearing with the Family Court regarding negotiations of an alternative payment plan when the obligor and the Agency have agreed to terms of a plan, but the obligor wants the Family Court to consider the reasonableness of the plan. [7 O.C. 704.14-2(c)(1)]. The Law does not qualify why the obligor may want the Family Court to consider the reasonableness of the plan.

Whether or not to limit when an obligor can request the Family Court to consider the reasonableness of the plan is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee may determine:

1. The Law should remain as currently drafted, and not limit the circumstances for when an obligor can request the Family Court to consider the reasonableness of the plan that was negotiated with the Agency.
2. The Law should be amended to clarify that the obligor can only request the Family Court to consider the reasonableness of a plan that has been negotiated with the Agency when there has been a change in circumstances since when the plan was agreed to. If the Legislative Operating Committee makes this decision then the following revision is recommended:

704.14-2. *Negotiation of an Alternative Payment Plan After Receiving Notice of an Enforcement Action.*

(c) *Hearings for Negotiations of an Alternative Payment Plan.* The obligor may submit a written request for a hearing with the Family Court regarding negotiations of an alternative payment plan in the following circumstances:

(1) The obligor and the Agency have agreed to terms of a plan, but the obligor wants the Family Court to consider the reasonableness of the plan due to a substantial change of circumstances since the plan was agreed to by the Agency and the obligor.

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

LOC Consideration

Comment 13 – Suspending Administrative Enforcement Actions Due to a Substantial Change in Circumstances:

704.14. Alternative Payment Plans

704.14-6. *Suspension of Administrative Enforcement Actions.*

(a) When a plan has been negotiated between the obligor and the Agency, or the Family Court has determined that a plan is reasonable or has ordered a plan, the Agency shall suspend administrative enforcement actions as long as the obligor complies with the plan or requests a hearing because of a substantial change in circumstances.

(b) If an obligor makes an arrears payment agreeable to the Agency, the administrative enforcement action shall be suspended.

Michelle Gordon (oral): Page 26, line 1202. This kind of goes to the same issue. It ends with “or requests a hearing because of a substantial change in circumstances.”, we would like the wording “which makes the plan unreasonable” added to that to clarify.

Response

The commenter is requesting that section 704.14-6(a) be amended to provide that the Agency shall suspend administrative enforcement actions as long as the obligor complies with the plan or requests a hearing because of a substantial change in circumstances which makes the plan unreasonable.

The Law currently provides that the Agency shall suspend administrative enforcement actions as long as the obligor complies with the plan or requests a hearing because of a substantial change in circumstances. [7 O.C. 704.14-6(a)]. The Law does not qualify what the substantial change in circumstances has to be based on, or if it has to affect the reasonableness of the alternative payment plan.

Whether or not to limit when an obligor can request a hearing because of a substantial change in circumstances is a policy consideration for the Legislative Operating Committee. The Legislative Operating Committee may determine:

1. The Law should remain as currently drafted, and not limit when an obligor can request a hearing because of a substantial change in circumstances in order to suspend administrative enforcement action.
2. The Law should be amended to clarify that an obligor can only request a hearing because of a substantial change in circumstances when the substantial change of circumstances makes the plan unreasonable. If the Legislative Operating Committee makes this decision the following revision is recommended:

704.14-6. *Suspension of Administrative Enforcement Actions.*

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

or requests a hearing because of a substantial change in circumstances which makes the plan unreasonable.

LOC Consideration

Comment 14 – Family Court Enforcement Action:

704.16. Family Court Enforcement Action

704.16-1. If the Agency does not have the authority to conduct the appropriate enforcement action, or the obligor is unresponsive to the enforcement actions being imposed by the Agency, the case shall be referred to the Family Court for enforcement. The Family Court may order any of the enforcement actions the Agency is authorized to implement, in addition to the enforcement actions described in this section.

704.16-2. Bonds and Other Guarantees. The Family Court may require an obligor to provide a surety, bond or guarantee to secure the payment of arrears, if income withholding is not applicable, practical, or feasible to secure payment of arrears.

704.16-3. Claims Against Estates. The Family Court may approve a claim for past and future support against an obligor's estate. The Family Court may issue a restraining order against an estate from which an obligor will inherit.

704.16-4. Contempt. The Family Court may hold an obligor who fails to comply with a lawful child support order in contempt. An obligor found to be in contempt shall be subject to the following punishments:

(a) **Community Service.** The Family Court may order an obligor to perform community service. The number of hours of work required may not exceed what would be reasonable considering the amount of arrears the obligor owes. The obligor shall be provided a written statement of the terms of the community service order and that the community service order is monitored. The order shall specify:

- (1) how many hours of community service the obligor is required to complete;
- (2) the time frame in which the hours must be completed;
- (3) how the obligor will report his or her hours; and
- (4) any other information the Family Court determines is relevant.

(b) **Fines.** An obligor found in contempt of court may be fined in an amount not to exceed one thousand dollars (\$1,000.00) per act of contempt and may not exceed five thousand dollars (\$5,000.00) in total. In instances of continuing contempt, each day shall constitute a separate act of contempt.

(c) **Incarceration.** The Family Court may order an obligor be incarcerated. Before a jail sentence is imposed, the Family Court shall provide other conditions that require a certain amount of money be paid or action be taken for an obligor to avoid incarceration.

(d) **Criminal Non-Support.** A criminal non-support action may be initiated, in the appropriate county, against an obligor who has the ability to pay child support and

willfully or intentionally failed to pay and the obligor knew or reasonably should have known he or she was legally obligated to provide.

Michelle Gordon (oral): And then lastly, it is the end which deals with Family Enforcement Action, page 30, line 1379, and when we had our meeting, we thought that we had agreed that we would create a contempt section and that this section would be retitled “Contempt”, because we needed to be stronger on our contempt issues. So, this is a lot, so 704.16-1, that whole section would be struck except for, it would read “The Family Court may order the following as a part of a contempt order.” Then prior to that at line 1418 is a section on contempt that says “The Family Court may hold an obligor who fails to comply with a lawful child support order in contempt. An obligor found to be in contempt shall be subject to following punishments.”, or we feel that that should be moved to the top. So that should be your start of this section entitled “Contempt”. And then everything underneath, the bonds and other guarantees, the claims against estates, all of that would then be part of the Contempt, so you would just name those a., b., so Bonds and Other Guarantees would be subsection a., Claims Against Estates would be subsection b., Community Service would be subsection c., Fines would be subsection d., Incarceration would be subsection e., and Criminal Non-support would be subsection f.

So that is all of my comments in regards to the law that we thought we had in regards to our work meeting. Thank you.

Response

The commenter requests reorganization of section 704.16 so that all the Family Court’s enforcement action is listed as actions that can be issued as part of a contempt order. The commenter makes this request in an effort to strengthen contempt issues.

All of the current types of enforcement actions contained in the Law are available to be used by the Family Court during contempt proceedings. Revising this section of the Law will clarify that the Family Court utilizes its enforcement actions through contempt proceedings.

Therefore, in an effort to clarify that the Family Court uses its enforcement actions through contempt proceedings the following revisions are recommended based on this comment:

704.16. Family Court Enforcement Contempt Action

704.16-1. If the Agency does not have the authority to conduct the appropriate enforcement action, or the obligor is unresponsive to the enforcement actions being imposed by the Agency, the ~~Agency shall file a motion for contempt with the ease shall be referred to the~~ Family Court ~~for enforcement.~~ ~~During a contempt proceeding~~ The Family Court may order any of the enforcement actions the Agency is authorized to implement, in addition to the ~~enforcement-contempt~~ actions described in this section.

704.16-2. ~~Bonds and Other Guarantees. The Family Court may require an obligor to provide a surety, bond or guarantee to secure the payment of arrears, if income withholding is not applicable, practical, or feasible to secure payment of arrears.~~

~~704.16-3. Claims Against Estates. The Family Court may approve a claim for past and future support against an obligor’s estate. The Family Court may issue a restraining order against an estate from which an obligor will inherit.~~

704.16-4. Contempt. The Family Court may hold an obligor who fails to comply with a lawful child support order in contempt. An obligor found to be in contempt shall be subject to the **any of the** following punishments:

(a) *Community Service.* The Family Court may order an obligor to perform community service. The number of hours of work required may not exceed what would be reasonable considering the amount of arrears the obligor owes. The obligor shall be provided a written statement of the terms of the community service order and that the community service order is monitored. The order shall specify:

- (1) how many hours of community service the obligor is required to complete;
- (2) the time frame in which the hours must be completed;
- (3) how the obligor will report his or her hours; and
- (4) any other information the Family Court determines is relevant.

(b) *Fines.* An obligor found in contempt of court may be fined in an amount not to exceed one thousand dollars (\$1,000.00) per act of contempt and may not exceed five thousand dollars (\$5,000.00) in total. In instances of continuing contempt, each day shall constitute a separate act of contempt.

(c) *Incarceration.* The Family Court may order an obligor be incarcerated. Before a jail sentence is imposed, the Family Court shall provide other conditions that require a certain amount of money be paid or action be taken for an obligor to avoid incarceration.

(d) *Criminal Non-Support.* A criminal non-support action may be initiated, in the appropriate county, against an obligor who has the ability to pay child support and willfully or intentionally failed to pay and the obligor knew or reasonably should have known he or she was legally obligated to provide.

(e) *Bonds and Other Guarantees.* The Family Court may require an obligor to provide a surety, bond or guarantee to secure the payment of arrears, if income withholding is not applicable, practical, or feasible to secure payment of arrears.

(f) *Claims Against Estates.* The Family Court may approve a claim for past and future support against an obligor's estate. The Family Court may issue a restraining order against an estate from which an obligor will inherit.

LOC Consideration

Comment 15 – Attachment of Per Capita Payments of a Deceased Member:

704.15. Administrative Enforcement Action

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

Bonnie Pigman (oral): So, I'm curious in regards to Per Capita Law in regards to when a person becomes deceased and child support can or cannot be taken, it's not clear in that law written in

regards to whether or not by virtue of the attachment process that an attachment can or cannot be applied. The department, Trust and Enrollment Department has taken, has gotten legal reviews, however, in my opinion it's still not clear because the law is not clearly written to truly define about a deceased person's per capita being allowed to be taken as an attachment and so like I said it's just not clear in that law. So if it's not clear in that law I don't know what the child support process in this law how that's coming together, how those two documents are going to meld together, because in one hand the attachment section of the Per Capita law says that they don't even have to submit anything, but yet you have a deceased person and we're now paying deceased people, there seems to be a conflict on how we should be handling those individuals because on one hand they become deceased and yes they can be attached or two that they did claim the form before they passed, but then they died before the distribution occurred and yet we're still taking the distribution on that deceased person. So, I think that that law, those two laws, that Per Capita law needs to be, I think it needs to be, something needs to happen between these two laws that make that clearly definable regarding those, that particular situation. Thank you.

Response

The commenter questions the application of attaching a deceased person's per capita for child support arrears.

The Law simply provides that the Agency may initiate the attachment and/or seizure of per capita payments of members of the Nation in accordance with the Nation's Per Capita law. [7 O.C. 704.15-4].

For more information on how a per capita payment is attached for child support arrears one must review the Nation's Per Capita law. The Per Capita law provides that a per capita payment may be attached for child support arrears ordered by a court of competent jurisdiction. [1 O.C. 123.4-9(a)(1)]. The Per Capita law then provides the specific process for how requests for attachments for child support arrears is handled by the Nation's Child Support Agency. [1 O.C. 123.4-9(c)(1)-(4)].

The Per Capita law also provides that members of the Nation are eligible to receive a per capita payment so long as the member has complied with the distribution document and/or distribution rule(s) requirements. [1 O.C. 123.5-3(a)]. This means that even if a member becomes deceased after submitting the required distribution form, but before the distribution date, the Trust Enrollment Department shall continue to issue the distribution in the name of the deceased member. [1 O.C. 123.5-3(a)].

Therefore, if a per capita payment will be distributed for a member, it can be presumed that the per capita payment is still eligible to be attached for child support arrears as long as the requirements of section 123.4-9(c)(1)-(4) are met.

There is no revision to this law recommended based on this comment, as this comment refers to provisions found in the Per Capita law and not the Child Support law.

LOC Consideration

Comment 16 – Subpoenas Requiring Production of Evidence:

704.6. Child Support Hearing Procedures

704.6-2. The Family Court may utilize discovery procedures and contempt powers, as authorized by any law, policy, or rule of the Nation to obtain information relevant to the establishment or enforcement of child support. These procedures may include the following:

- (a) Issue subpoenas requiring necessary and relevant parties to appear in person and provide testimony;**
- (b) Issue subpoenas requiring the production of evidence;**
- (c) Obtain information about property or assets to assess its value or funding source for lien or seizure actions;**
- (d) Obtain information about the income of any party to the action; and/or**
- (e) Issue contempt findings for failure to comply with the lawful order of the Family Court.**

Jennifer J. Jordan (written): Lines 366 thru 368 regarding the obligor's employer. What will happen if the obligor's employer is subpoenaed to provide the family court with a record of the obligor's earning and cannot produce that information as the obligor is paid in cash and does not pay taxes?

Response

The commenter questions what happens if the Family Court issues a subpoena to an obligor's employer to provide a record of the obligor's earnings, but the employer cannot produce that information as the obligor is paid in cash and does not pay taxes.

If the obligor cannot produce information on his or her income, or the obligor's income is less than his or her earning capacity, the Family Court may impute income to the obligor at an amount that represents the parent's ability to earn. [7 O.C. 704.7-4]. The obligor's ability to earn may be based on his or hers:

- education, training, and recent work experience;
- earnings during previous periods;
- current physical and mental health;
- history of child care responsibilities as the parent with primary physical placement; and
- the availability of work in or near the obligor's community. [7 O.C. 704.7-4(a)].

The Law also provides that if evidence is presented that due diligence has been exercised to ascertain information on the obligor's actual income or ability to earn and that information is unavailable, the Family Court may impute to the obligor the income that a person would earn by working thirty-five (35) hours per week for the federal minimum hourly wage. [7 O.C. 704.7-

4(b)]. In addition to imputed income, the Family Court may order the parent to search for a job or participate in a work experience and job training program. [7 O.C. 704.7-4(b)].

An employer of an obligor should be able to produce information on the obligor's earning as the Law provides that when a child support order is issued by the Family Court the order shall provide for immediate income withholding. [7 O.C. 704.9-3]. A copy of the Family Court's income withholding order is then sent by the Agency to the obligor's employer within three (3) business days of the entry of the order by the Family Court. [7 O.C. 704.9-3(a)]. No employer of an obligor shall refuse to honor an income withholding order executed pursuant to this law. [7 O.C. 704.9-3(d)]. The employer has (5) business days after paying the obligor to send the amount withheld to the Wisconsin Support Collections Trust Fund. [7 O.C. 704.9-3(d)].

Any employer who fails or refuses to deduct or promptly remit the amounts of money required in the order or otherwise is unwilling to comply with the requirements of this law shall be liable for one hundred percent (100%) of the child support order, or the amount of money that should have been withheld from the obligor's earnings, whichever is the lesser amount. [7 O.C. 704.9-3(e)]. Additionally, an employer who repeatedly fails to comply with an income withholding order as required by this law may be subject to a fine, not to exceed five hundred dollars (\$500), or have its Oneida vendor license revoked or suspended, if applicable, until compliance with this law is assured. [7 O.C. 704.9-3(g)]. If the employer is a non-Indian off-reservation employer then the employer is still subject to income withholding, just under requirements of federal law. [7 O.C. 704.9-3(j)].

The provisions of the Law that address a situation where the obligor's income is less than his or her earning capacity or unknown, as well as a situation where an employer refuses to comply with an income withholding order address the commenter's question. There is no revision to the Law recommended based on this comment.

LOC Consideration

Title 7. Children, Elders and Family - Chapter 704

CHILD SUPPORT

shakoti'nukú·lale? latiksashúha?

They watch over the children

CHILD SUPPORT

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

704.1. Purpose and Policy

704.1-1. *Purpose.* The purposes of this law **are** ~~is~~ to:

- (a) Establish the legal responsibility of parents to provide financially for their children's general well-being;
- (b) Make support payments more equitable by ensuring consistent treatment of persons in similar circumstances;
- (c) Make support payments based on the real earning capability of parents; and
- (d) Improve the efficiency of child support establishment and enforcement.

704.1-2. *Policy.* It is the policy of this law to:

- (a) establish an adequate standard of support for children whose paternity has been established or acknowledged;
- (b) encourage the use of ~~voluntary agreements~~ **stipulations** to resolve disputes over child support obligations; ~~and~~
- (c) limit the use and disclosure of personal information received or maintained by the **Nation's** Family Court ~~and/or~~ the Oneida ~~Tribe~~ **Nation** Child Support Agency in order to protect the privacy rights of all parties and children who are involved in proceedings or actions under this law.

704.2. Adoption, Amendment, Repeal, ~~Other Laws and Agency Rules~~

704.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-24-09-B and amended by resolutions BC-02-24-10-G, BC-02-23-11-E, BC-06-22-11-K, BC-10-10-12-C, ~~and BC-08-13-14-E, and BC-~~ - - - .

704.2-2. This law may be amended ~~pursuant to the procedures set out in the Oneida Administrative Procedures Act or repealed~~ by the Oneida Business Committee or the Oneida General Tribal Council **pursuant to the procedures set out in the Legislative Procedures Act.**

704.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

704.2-4. In the event of a conflict between a provision of this law and a provision of another law, ~~ordinance, policy, regulation, rule, resolution, or motion~~, the provisions of this law shall control.

32 ~~Provided that, nothing in this law is intended to repeal or modify any existing law, ordinance,~~
33 ~~policy, regulation, rule, resolution or motion.~~

34 704.2-5. This law is adopted under authority of the Constitution of the Oneida ~~Nation Tribe of~~
35 ~~Indians of Wisconsin.~~

36 ~~704.2-6. Any Agency requirements which would affect individuals outside the Agency and do not~~
37 ~~relate to the internal management of the Agency shall require Oneida Business Committee~~
38 ~~approval in the form of a law or rule.~~

39

40 **704.3. Definitions**

41 704.3-1. This section shall govern the definitions of words and phrases used within this law. All
42 words not defined herein shall be used in their ordinary and everyday sense.

43 (a) ~~“Administrative enforcement action” means enforcement actions taken by the Oneida~~
44 ~~Nation Child Support Agency authorized by federal regulations which are taken~~ to enforce
45 a child support order without obtaining an order from the Family Court.

46 (b) “Agency” ~~shall mean means~~ the Oneida ~~Nation Tribe~~ Child Support Agency
47 established to administer and supervise the ~~Nation’s Tribe’s~~ child support enforcement
48 program.

49 (c) ~~“Alternative payment plan” or “plan” means a negotiated agreement between the~~
50 ~~Agency and an obligor, or an order set by the Family Court, to establish terms and~~
51 ~~conditions for the payment of arrears.~~

52 (d) ~~“Basic support costs” means food, shelter, clothing, transportation, personal care, and~~
53 ~~incidental recreational costs.~~

54 (e) ~~“Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding~~
55 ~~holidays recognized by the Nation.~~

56 (f) “Child” ~~shall mean means~~ a ~~biological natural~~ or adopted child of the obligor under the
57 age of eighteen (18), or any person who is less than nineteen (19) years old if he or she is
58 pursuing a high school diploma or its equivalent from an accredited course of instruction.

59 (g) “Child support” means the total financial obligation a parent has towards his or her
60 child as established through judicial and/or administrative processes.

61 (h) ~~“Child Support Obligation of Low-Income Payers Schedule” means the Wisconsin~~
62 ~~Department of Children and Families Child Support Obligation of Low-Income Payers at~~
63 ~~the Federal Poverty Guidelines, found in DCF 150 Appendix C.~~

64 (i) “Child support order” ~~shall mean means~~ a judgment of the Family Court or a court of
65 competent jurisdiction ordering payment of child support which provides monetary
66 support, health care, arrearages, or reimbursement, and which may include related costs
67 and fees, interest and penalties, income withholding, attorney’s fees and other relief.

68 ~~(e) “Clerk” shall mean the designated clerk in the Family Court who is identified to carry~~
69 ~~out certain provisions in this law.~~

70 (j) ~~“Current six (6) month treasury bill rate” means the yield of a U.S. government security~~
71 ~~with a term of six (6) months.~~

72 (k) “Custodial parent” ~~shall mean means~~ the parent who exercises physical custody of the
73 child pursuant to a custody order, on the basis of agreement between the parents or in the
74 absence of one parent. A legal guardian with primary physical custody of the child or
75 children and standing in the position of the parent shall have the same rights to child support
76 as a custodial parent.

77 (l) “Employer” ~~shall mean means~~ any individual, business, government, institution, or
78 other entity paying wages to one or more employees.

79 (m) “Equity” means the fair market value of property minus the liens on that property with
80 priority over the child support lien.

81 (n) “Equivalent care” means a period of time during which the parent cares for the child
82 that is not overnight, but is determined by the court to require the parent to assume the
83 basic support costs that are substantially equivalent to what the parent would spend to care
84 for the child overnight. Blocks of time with the child of at least six (6) hours may be
85 considered the equivalent of a half-day if a meal is provided during that time period. Two
86 (2) half-day blocks may be considered the equivalent of an overnight.

87 (o) “Family Court” shall mean means the judicial arm branch of the Tribe-Nation’s
88 Judiciary that is designated to handle all matters under this Law related to the family and/or
89 children.

90 (p) “Gross income” shall mean means any form of payment due to an individual regardless
91 of source, including, but not limited to:

- 92 (1) Salary and wages, including overtime pay;
- 93 (2) Interest and investment income;
- 94 (3) Social Security disability and old age insurance benefits under 42 U.S.C. §401
95 to 433;
- 96 (4) Net proceeds resulting from worker’s compensation or other personal injury
97 awards intended to replace income;
- 98 (5) Unemployment insurance;
- 99 (6) Income continuation benefits;
- 100 (7) Voluntary deferred compensation and ~~voluntary~~ employee contributions to the
101 following: employee benefit plan, profit-sharing, pension or retirement account;
- 102 (8) Military allowances and veterans disability compensation benefits;
- 103 (9) Undistributed income of a corporation or any partnership in which the parent
104 has an ownership interest sufficient to individually exercise control or to access the
105 earnings of the business, unless the income included is an asset;
- 106 (10) Per capita distribution payments;
- 107 (11) Lease or rental income;
- 108 (12) Prizes over one thousand dollars (\$1,000); and
- 109 (13) All other income, whether taxable or not, except that gross income does not
110 include any of the following:
 - 111 (A) Child support;
 - 112 (B) Foster care payments;
 - 113 (C) Kinship care payments;
 - 114 (D) Public assistance benefits, except that child care subsidy payments shall
115 be considered income to a child care provider;
 - 116 (E) Food stamps;
 - 117 (F) Public assistance or financial hardship payments paid by a county or a
118 ~~tribe-Nation~~;
 - 119 (G) Supplemental Security Income under 42 U.S.C. §1381 to 1383(f) and
120 state supplemental payments; or
 - 121 (H) Payments made for social services.

122 (q) “Guardian ad litem” means a person appointed by the Family Court to appear at any
123 peacemaking, mediation, or hearing and tasked with representing the best interest of the
124 person appointed for.

125

- 126 (r) “Immediate family member” means an individual’s husband, wife, mother, father, step-
127 mother, step-father, son, daughter, step-son, step-daughter, brother, sister, step-brother,
128 step-sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-
129 law, brother-in-law or sister-in-law and any of the these relations attained through legal
130 adoption.
- 131 (s) “Income withholding” means the process whereby a court order, Family Court order,
132 or voluntary wage assignment directs an employer, bank, or agent holding monies or
133 property of an obligor, to make payments or deliver property to satisfy a child support
134 obligation.
- 135 (t) “Intact family” means a family in which the child or children and the obligor reside in
136 the same household and the obligor shares his or her income directly with the child or
137 children and has a legal obligation to support the child or children.
- 138 (u) “Legally incompetent adult” ~~shall mean~~ means a person at least eighteen (18) years old
139 who has been declared incompetent by a court of competent jurisdiction because he or she
140 is temporarily or permanently impaired to the extent that the person lacks sufficient
141 understanding to make or communicate responsible personal decisions.
- 142 (v) “Lien amount” means the difference between the monthly amount of support due and
143 the arrears in a case.
- 144 (w) “Lien docket” means the registry kept by the State of Wisconsin containing the names
145 of people who owe past-due child support.
- 146 (x) “Low-income obligor” means an obligor for whom the Family Court uses the monthly
147 support amount provided in the schedule in ~~Appendix A~~ **the Child Support Obligation of**
148 **Low-Income Payers Schedule** based on the Family Court’s determination that the obligor’s
149 total economic circumstances limit his or her ability to pay support at ~~the level provided~~
150 ~~under 704.7-2(a)~~ standard percentages and the obligor’s income is at a level set forth in the
151 schedule in ~~Appendix A~~ **the Child Support Obligation of Low-Income Payers Schedule.**
- 152 (y) “Marital child” means a child born during the marriage of his or her parents. In
153 addition, if the father and mother of a non-marital child enter into a lawful marriage or a
154 marriage which appears and they believe is lawful, except where the parental rights of the
155 mother were terminated before either of these circumstances, the child becomes a marital
156 child and shall enjoy all of the rights and privileges of a marital child as if he or she had
157 been born during the marriage of the parents. The children of all marriages declared void
158 under the law are nevertheless marital children.
- 159 (z) “Monthly ~~i~~Income” ~~shall mean~~ means the obligor’s annual gross income or, if
160 applicable, the obligor’s annual income modified for business expenses; plus the obligor’s
161 annual income imputed based on earning capacity; plus the obligor’s annual income
162 imputed from assets; divided by twelve (12).
- 163 (aa) “Nation” means the Oneida Nation.
- 164 (bb) “Non-~~c~~Custodial ~~p~~Parent” ~~shall mean~~ means the parent of a child who does not hold
165 primary care, custody and/or control of a child.
- 166 (cc) “Non-legally responsible relative” means a relative person connected with a child by
167 blood, marriage, or adoption who assumes responsibility for the care of a child without
168 legal custody, but is not in violation of a court order. A “N~~non-legally responsible relative”~~
169 does not include a relative who has physical custody of a child during a court-ordered
170 visitation period.
- 171 (dd) “Obligee” ~~shall mean~~ means the person or entity to whom child support is owed.
- 172 (ee) “Obligor” ~~shall mean~~ means the person who is obliged to pay child support to the
173 obligee.

- 174 (ff) “Ownership interest” means any personal financial interest.
175 (gg) “Parent” means the biological natural or adoptive parent of the child.
176 (hh) “Payor” shall mean means a person or entity with a legal obligation, as an employer,
177 buyer of goods, debtor, or otherwise, to pay an obligor.
178 ~~(i) “Relative” means any person connected with a child by blood, marriage or adoption.~~
179 (ii) “Reservation” shall mean means all lands within the exterior boundaries of the
180 Reservation of the Oneida Nation Tribe of Indians of Wisconsin, as created pursuant to the
181 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal
182 law.
183 (jj) “Serial family obligor” means an obligor with an existing legal obligation for child
184 support who incurs an additional legal obligation for child support in a subsequent family
185 as a result of a child support order.
186 (kk) “Shared-placement obligor” means a parent who has an ordered period of placement
187 of at least twenty-five percent (25%), is ordered by the Family Court to assume the child’s
188 basic support costs in proportion to the time that the parent has placement of the child and
189 is determined to owe a greater support amount than the other parent.
190 (ll) “Split-placement obligor” means an obligor who has two (2) or more children and who
191 has physical placement of one (1) or more children but not all of the children.
192 (mm) “Stipulation” means a voluntary agreement between parties concerning some
193 relebatn point.
194 ~~(mnn)~~ “Substantial change of income” means the obligor has a significant change in his
195 or her finances that would lead to a change in child support of more than fifteen percent
196 (15%) and fifty dollars (\$50.00) per month.
197 ~~(moo)~~ “Variable costs” means the reasonable costs above basic support costs incurred by
198 or on behalf of a child, including but not limited to, the cost of child care, tuition, a child’s
199 special needs, and other activities that involve substantial cost.
200 ~~(eopp)~~ “Threshold” means an amount, expressed as either a percentage of the monthly
201 amount due, a fixed dollar amount, or both, that the lien amount must equal or exceed
202 before an administrative enforcement action may be used to enforce a child support order.
203 ~~(t) “Tribe” or “Tribal” shall mean the Oneida Tribe of Indians of Wisconsin.~~
204 ~~(u) “Wage Withholding” shall mean the process whereby a court order, Family Court~~
205 ~~order or voluntary wage assignment directs an employer, bank or agent holding monies or~~
206 ~~property of an obligor, to make payments or deliver property to satisfy a child support~~
207 ~~obligation.~~

704.4. Jurisdiction

- 210 704.4-1. The Family Court has jurisdiction over any action brought under this law.
211 704.4-2. Personal Jurisdiction. Personal jurisdiction over an individual under this law may be
212 established where one party or a child of the parties is any of the following:
213 (a) a member of the ~~Tribe;~~ Nation;
214 (b) a resident of the Reservation who is also a member of an Indian tribe, band or
215 community which is recognized by a State or the federal government;
216 (c) a resident of the Reservation who is also the biological parent of ~~a~~ the child that is
217 enrolled or is eligible for enrollment with the ~~Tribe~~ Nation; ~~or~~
218 (d) an individual who consents to the jurisdiction of the Family Court by one (1) of the
219 following means:
220 (1) Filing an action with the Family Court;

221 (2) Knowingly and voluntarily giving written consent to the jurisdiction of the
222 Family Court;

223 (3) Entering a notice of appearance before the Family Court in an action without
224 concurrently preserving the defense of lack of personal jurisdiction or filing a
225 motion to dismiss for lack of personal jurisdiction within thirty (30) days of entering
226 the notice of appearance; ~~or~~

227 (4) Appearing in an action before the Family Court without asserting the defense
228 of lack of personal jurisdiction.

229 704.4-~~23~~. Personal jurisdiction over the other party may be established using any method provided
230 by law, including long-arm jurisdiction procedures as provided for in Section 201 of the Uniform
231 Interstate Family Support Act as referred to in 42 ~~USC Section~~ U.S.C. §666.

232 704.4-~~34~~. *Transfer of Cases from Other Courts*. If personal jurisdiction over the parties has been
233 established under ~~704.4-1 or 704.4-2~~ this law, the Family Court has jurisdiction over any action
234 transferred to the Family Court from any court of competent jurisdiction.

235 **704.5. Initiating an Action for Child Support Orders**

236 704.5-1. Every parent has a duty to support each and every child of that parent. A child support
237 order may be obtained from the Family Court by either submitting a voluntary agreement to the
238 Family Court for approval or by filing a petition for child support with the Family Court.

239 (a) If a party to the action is a minor or is a legally incompetent adult, the Family Court
240 may appoint a guardian ad litem to represent such party in the action, ~~in accordance with~~
241 ~~section 705.8 of the Child Custody, Placement and Visitation law.~~

242 ~~704.5-2. A party may request the services of the Agency or may be referred to the Agency from~~
243 ~~an entitlement program.~~

244 704.5-2. *Initiation of Action by the Agency*. For assistance in initiating a child support order ~~A~~
245 party may request the services of the Agency or may be referred to the Agency from an entitlement
246 program.

247 (a) Within ~~thirty five (530) business~~ days of receiving a completed application for services
248 or a referral, the Agency shall ~~send the non-~~ meet with the custodial parent ~~a Letter of~~
249 ~~Request for Support and Financial Disclosure form.~~

250 (b) Within seven (7) business days of the meeting with the custodial parent, the Agency
251 shall send a Letter of Request for Support and Financial Disclosure form to the non-
252 custodial parent.

253 (c) If the non-custodial parent fails to respond to or take action on the Letter ~~within ten~~
254 ~~(10) business days, a second Letter~~ of Request for Support and Financial Disclosure form
255 shall be sent.

256 (e) ~~If the non-custodial parent fails to respond to or take action on the second Letter within~~
257 ~~five (5) within ten (10) business days, the custodial parent, or the Agency when required by~~
258 federal law, may initiate a hearing in accordance with this law.

259 (d) If the non-custodial parent responds within the required time period after receiving a
260 Letter of Request for Support and Financial Disclosure form, the parties shall attempt to
261 enter into a ~~stipulation~~ voluntary agreement.

262 704.5-3. *Initiation of Action by a Party Not the Agency*. Any of the following individuals may
263 initiate an action for the establishment of child support at any time by filing a petition with the
264 Family Court:

265 (1a) a custodial parent;

266 (2b) a child's mother;

267 (3c) a child's father;

- 269 (4d) a child’s guardian ad litem;
270 (5e) a child’s non-legally responsible relative; or
271 (6f) a legally incompetent adult’s guardian ad litem; ~~or~~

272 704.5-34. ~~Voluntary Agreement~~ Stipulation. (a) The parties may enter into a stipulation ~~voluntary~~
273 ~~agreement~~ at any time as to the level of the child support obligation.

274 (a) The Agency shall assist parties in reaching a stipulation ~~voluntary agreement~~ upon
275 request or when the parties are referred to the Agency by an entitlement program. Parties
276 may also submit a stipulation ~~voluntary agreement~~ to the Family Court for approval without
277 the Agency’s assistance.

278 (b) In order for a stipulation ~~voluntary agreement~~ to be valid the following conditions shall
279 be met:

- 280 (1) The stipulation ~~agreement~~ shall be in writing, signed, and notarized;
281 (2) If the parties deviate from the percentage standards, the stipulation ~~agreement~~
282 shall state the amount of support that would have been ordered by the percentage
283 standards and the reasons for deviating from the percentage standards;
284 (3) All parties shall sign the stipulation ~~agreement~~ free of duress and coercion; and
285 (4) The Family Court shall make written findings that the stipulation ~~agreement~~ is
286 appropriate, using the criteria for deviating from standard percentages ~~under 704.7-~~
287 3 as a guideline, if applicable.

288 (c) After the stipulation ~~agreement~~ is approved and filed by the Family Court, it shall have
289 the same force and effect as an order issued by the Family Court. The obligation of the
290 obligor to pay child support shall commence on the date specified in the stipulation
291 ~~agreement~~, but no later than the date the agreement is approved and filed by the Family
292 Court.

293 704.5-45. Initiating a Hearing Petition to Establish Child Support. If the parties do not enter into
294 a stipulation ~~voluntary agreement~~, then ~~any of the following may initiate an action for the~~
295 ~~establishment of a petition to establish~~ child support ~~by filing a petition~~ may be filed with the
296 Family Court.

- 297 (a) ~~a custodial parent;~~
298 (b) ~~a child’s natural mother;~~
299 (c) ~~a child’s father;~~
300 (d) ~~a child’s guardian ad litem;~~
301 (e) ~~a child’s non-legally responsible relative;~~
302 (f) ~~a legally incompetent adult’s guardian ad litem; or~~
303 (g) ~~the Agency when required by federal law.~~

304 ~~704.5-5. Petition~~: The petition to establish child support may be filed as a separate proceeding or
305 in connection with a petition for child custody. ~~The petition to establish child support shall include~~
306 ~~the following:~~

307 (a) Requirements of the Petition. The petition to establish child support shall include the
308 following:

- 309 (1) The name, date of birth, and address, and tribal affiliation of the petitioner, and
310 respondent, and child for whom support is requested;
311 (+A) If the address of the respondent is unknown, other ~~Tribal~~ departments
312 of the Nation shall cooperate with the Family Court, at the Family Court’s
313 request, to provide the Family Court with the respondent’s address. Any
314 such Family Court requests shall be made in such a way which protects the
315 privacy rights of all parties and children who are involved in proceedings or
316 actions under this law.

- 317 (2) With whom the child currently resides;
318 (3) When and how paternity was established;
319 (4) Name and date of birth of other children of the parties, and the child support
320 obligation for those children, if applicable;
321 (5) Whether either party is receiving state or tribal benefits, and if so, what benefits;
322 (6) Whether any other action to determine child support has been commenced or
323 is pending in a court of another jurisdiction and whether a child support order has
324 been entered by another court;
325 (7) Financial information such as the parties' income;
326 (8) The relief the petitioner is requesting, which shall include, but is not limited to,
327 establishment of support, request for support back to date of filing, and/or any other
328 relief the court may deem just and equitable;

329 (b2) Confidential Petition Addendum. The confidential petition addendum is a A
330 separate form which has the parties and the child's name, date of birth and social
331 security number. This form shall be kept separate from the petition and shall be
332 maintained in a confidential file. The form shall be available only to the parties,
333 ~~their~~ the parties' attorneys or advocates, the Agency, or any person authorized by
334 the Family Court to have access to the form.

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

341 704.5-6-(c) Hearing Date. Upon receipt of a petition, the Family Court shall schedule a
342 hearing to determine child support to be held at a time after the filing of the petition and
343 consistent with the manner of service.

344 704.5-7-(d) Notice Summons. All parties shall be notified of the petition and of all
345 hearings, and shall be given an opportunity to be heard.

346 (1) Service of the Summons. The summons, which N-notices the initiation of an
347 action shall be served by certified mail (return receipt requested) or in person within
348 fifteen (15) calendar days after the petition is filed with the Family Court. All
349 mailing-of-notice The summons shall include the Family Court clerk's return
350 address, with a notice request to file an answer to that address. Subsequent Any
351 notice after the summons shall be served by first-class mail to the recently verified
352 last-known address of the party.

353 (aA) Certified mail. Certified mail sent to a party's most recently verified
354 last-known address but returned because it was unclaimed or refused shall
355 constitute constructive service. Certified mail returned for other reasons
356 shall require service by other methods pursuant to the Oneida Judiciary
357 Rules of Civil Procedure.

358 (bB) Publication. When a responding party cannot be found for personal
359 service after diligent attempts and attempts to serve the responding party by
360 certified mail have failed, the petitioner may ask the Family Court to direct
361 the Agency to provide use service by publication. If the request is granted,
362 the Agency The publication shall be publish the petition in the Kalihwisaks
363 Nation's newspaper or a newspaper of general circulation in the county of

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

366 (1i) If service by publication is ~~used~~permitted and there is
367 insufficient time for notice and answer pursuant to this ~~L~~law, the
368 Family Court shall re-schedule the hearing appropriately and may
369 permit extended time deadlines for default orders and for hearings
370 in order to provide for fair notice and opportunity for the party to
371 respond.

372 ~~704.5-8(2) Requirements of the Summons and Petition.~~ The summons to be served
373 on the respondent(s), along with the petition, shall include the following notice, in
374 addition to providing a time, place, and date for appearance:

375 (a1) That if he or she chooses not to appear at the hearing or enter a defense
376 to the petition challenging the authority of the Family Court to hear the
377 matter by the date of the hearing, the hearing shall proceed on the basis of
378 the petitioner's evidence;

379 (b2) That a child support order may require the ~~respondent~~person found to
380 be the obligor to pay child support until the child reaches eighteen (18) years
381 of age or until the child graduates from high school, or its equivalent, up to
382 age nineteen (19);

383 (e3) That the ~~respondent's~~ person found to be the obligor may have his or
384 her license(s) ~~may be~~ suspended or denied for failure to pay child support,
385 in addition to other enforcement actions;

386 (d4) That the ~~respondent's~~ person found to be the obligor's employer or
387 others with evidence of ~~the respondent's~~ his or her income may be
388 subpoenaed to provide the Family Court with records of his or her earnings;

389 (e5) That if the ~~respondent~~ person found to be the obligor is unemployed,
390 ~~he or she will~~ it shall still be ~~imputed to be~~ determind that he or she is able
391 to provide some degree of child support and an order of support ~~will~~shall
392 be calculated according to this law unless the Family Court makes written
393 findings ordering otherwise; and

394 (f6) That any answer to the petition shall be filed with the Family Court
395 within twenty (20) calendar days of the date of service of the petition, and
396 a copy served on the other party.

397 ~~704.5-9(e) Answers.~~ Answers shall be filed with the Family Court and served on the
398 petitioner within twenty (20) calendar days of the date of service of the petition in
399 accordance with the Nation's laws and policies governing civil procedure.

400 ~~704.5-10(f) Subpoenas.~~ Upon request of either party, the Family Court shall issue
401 subpoenas to any person in possession of relevant information to appear or produce
402 documents to the Family Court. Failure to comply with such a subpoena may be punishable
403 as contempt.

404 ~~704.5-11. Temporary Orders.—At any time after a child's parentage has been established, the~~
405 ~~Family Court may make a temporary order for the payment of child support and the child's health~~
406 ~~care expenses. Before making a temporary order, the Family Court shall consider those factors~~
407 ~~that the Family Court is required to consider when granting a final child support order. If the~~
408 ~~Family Court makes a temporary child support order that deviates from the amount of support that~~
409 ~~would be required by using the percentage standard, the requirements of section 704.7-38 shall be~~
410 ~~complied with.~~

411

412 **704.6. Child Support Hearing Procedures**

413 704.6-1. The factual determinations made at a hearing shall ~~include, but is not be~~ limited to, the
414 income and expense information necessary to determine the appropriate level of support according
415 to this law.

416 704.6-2. The Family Court may utilize discovery procedures and contempt powers, as authorized
417 by ~~any Tribal~~ law, policy, or rule of the Nation to obtain information relevant to the establishment
418 or enforcement of child support. These procedures may include the following:

- 419 (a) Issue subpoenas requiring necessary and relevant parties to appear in person and
420 provide testimony;
- 421 (b) Issue subpoenas requiring the production of evidence;
- 422 (c) Obtain information about property or assets to assess its value or funding source for
423 lien or seizure actions;
- 424 (d) Obtain information about the income of any party to the action; ~~and/or~~
- 425 (e) Issue contempt findings for failure to comply with the lawful order of the Family Court.

426 704.6-3. Both parties have the right to representation by an attorney and/or advocate at his or her
427 ~~their~~ own expense. The ~~Tribe~~ Nation shall not be required to pay for any fees and/or expenses
428 incurred by any party in connection with proceedings under this law.

429 704.6-4. Temporary Orders. At any time after a child's parentage has been established, the Family
430 Court may make a temporary order for the payment of child support and the child's health care
431 expenses. Before making a temporary order, the Family Court shall consider ~~these~~ all factors that
432 the Family Court is required to consider when granting a final child support order. If the Family
433 Court makes a temporary child support order that deviates from the amount of support that would
434 be required by using the percentage standard, the requirements of ~~section 704.7-38~~ shall be
435 complied with.

436 704.6-~~45~~. *Default.* If the respondent fails to appear at the hearing upon a showing of valid service
437 and the petitioner presents evidence of the obligation by the absent party, a child support order
438 shall be entered pursuant to the evidence.

439 704.6-~~56~~. *Hearings and Records Closed.* Child ~~S~~support proceedings shall be closed to any
440 person other than those necessary to the action or proceeding. Records of child support cases shall
441 remain confidential and shall only be viewed by the parties, the legal guardian of a party who is a
442 minor, the parties' attorney or advocate, guardian ad litem, Judges and staff assigned to the case,
443 and those other persons who first obtain a written release from a party to view material contained
444 in the record.

445

446 **704.7. Determining the Child Support Determination Obligation**

447 704.7-1. ~~Except as provided elsewhere in this law, T~~he Family Court shall determine child
448 support payments by using the percentage standards established in section 704.7-2 of this law,
449 except as provided elsewhere in this law. The obligor's monthly income shall be considered in
450 determining his or her child support obligation.

451 704.7-2. *Percentage Standards to Determine the Amount of Child Support.*

- 452 (a) The following percentages shall be applied to the portion of an obligor's monthly
453 income available for child support that is less than seven thousand dollars (\$7,000~~±~~):
- 454 (1) seventeen percent (17%) for one (1) child;
- 455 (2) twenty-five percent (25%) for two (2) children;
- 456 (3) twenty-nine percent (29%) for three (3) children;
- 457 (4) thirty-one percent (31%) for four (4) children; and
- 458 (5) thirty-four percent (34%) for five (5) or more children.

459 (b) The following percentages shall be applied to the portion of an obligor's monthly
460 income available for child support that is greater than or equal to seven thousand dollars
461 (\$7,000) and less than or equal to twelve thousand five hundred dollars (\$12,500):

- 462 (1) fourteen percent (14%) for one (1) child;
- 463 (2) twenty percent (20%) for two (2) children;
- 464 (3) twenty-three percent (23%) for three (3) children;
- 465 (4) twenty-five percent (25%) for four (4) children; and
- 466 (5) twenty-seven percent (27%) for five (5) or more children.

467 (c) The following percentages shall be applied to the portion of an obligor's monthly
468 income available for child support that is greater than twelve thousand five hundred dollars
469 (\$12,500):

- 470 (1) ten percent (10%) for one (1) child;
- 471 (2) fifteen percent (15%) for two (2) children;
- 472 (3) seventeen percent (17%) for three (3) children;
- 473 (4) nineteen percent (19%) for four (4) children; and
- 474 (5) twenty percent (20%) for five (5) or more children.

475 704.7-3. ~~1.3-1.~~ *Determining Income Modified for Business Expenses.* In determining a parent's
476 monthly income, the Family Court may adjust a parent's-gross income as follows:

477 (a) Adding wages paid to dependent household members.

478 (b) Adding undistributed income that the Family Court determines is not reasonably
479 necessary for the growth of the business. The parent shall have the burden of proof to show
480 that any undistributed income is reasonably necessary for the growth of the business.

481 (c) Reducing gross income by the business expenses that the Family Court determines are
482 reasonably necessary for the production of that income or operation of the business and
483 that may differ from the determination of allowable business expenses for tax purposes.

484 704.7-4. *Determining Income Imputed Based on Earning Capacity.* When a parent's income is
485 less than the parent's earning capacity or is unknown, the Family Court may impute income to the
486 parent at an amount that represents the parent's ability to earn.

487 (a) The parent's ability to earn may be based on the parent's:

488 (1) education, training, and recent work experience;

489 (2) earnings during previous periods;

490 (3) current physical and mental health;

491 (4) history of child care responsibilities as the parent with primary physical
492 placement; and

493 (5) the availability of work in or near the obligor's community.

494 (b) If evidence is presented that due diligence has been exercised to ascertain information
495 on the parent's actual income or ability to earn and that information is unavailable, the
496 Family Court may impute to the parent the income that a person would earn by working
497 thirty-five (35) hours per week for the federal minimum hourly wage ~~under 29 USC 206~~
498 ~~(a)(1).~~ In addition to imputed income, the Family Court may order the parent to search for
499 a job or participate in a work experience and job training program.

500 (c) If a parent has gross income or income modified for business expenses below his or
501 her earning capacity, the income imputed based on earning capacity shall be the difference
502 between the parent's earning capacity and the parent's gross income or income modified
503 for business expenses.

504 704.7-5. *Determining Income Imputed from Assets.*

505 (a) The Family Court may impute a reasonable earning potential to a parent's assets if the
506 Family Court finds both of the following:

507 (1) The parent has ownership and control over any real or personal property,
508 including but not limited to, life insurance, cash and deposit accounts, stocks and
509 bonds, business interests, net proceeds resulting from worker's compensation or
510 other personal injury awards not intended to replace income, and cash and corporate
511 income in a corporation in which the obligor has an ownership interest sufficient to
512 individually exercise control and the cash or corporate income is not included as
513 gross income.

514 (2) The parent's assets are underproductive and at least one (1) of the following
515 applies:

516 (A) The parent has diverted income into assets to avoid paying child
517 support.

518 (B) Income from the parent's assets is necessary to maintain the child or
519 children at the standard of living they would have had if they were living
520 with both parents.

521 (b) The Family Court shall impute income to assets by multiplying the total net value of
522 the assets by the current six (6) month treasury bill rate or any other rate that the Family
523 Court determines is reasonable and subtracting the actual income from the assets that were
524 included as gross income.

525 704.7-6. Adjustment for Child's Social Security Benefits. The Family Court may ~~include~~ consider
526 benefits received by a child under 42 U.S.C. §402(d) based on a parent's entitlement to federal
527 disability or old-age insurance benefits under 42 U.S.C. §401 to 433 ~~in the parent's gross income~~
528 and adjust an obligor's child support obligation by subtracting the amount of the child's benefit.
529 In no case may this adjustment require the obligee to reimburse the obligor for any portion of the
530 child's benefit. If the obligor is receiving the child's benefit, the support amount is either the
531 percentage standard applied to the obligor's income or the amount of the child's benefit, whichever
532 is greater.

533 (a) Determining the Child Support Obligations of Shared-Placement Parent when the
534 Child Receives Social Security Benefits. If the shared-placement guidelines under section
535 704.8-2 apply, the child's benefit is split between the parents in proportion to the amount
536 of time the child spends with each parent. Add the proportion of the child's benefit that
537 represents the proportion of time the child spends with the parent not receiving the benefit
538 to the support obligation of the parent who is receiving the child's benefit. Child support
539 shall be determined as follows:

540 (1) Determine each parent's monthly income available for child support under
541 section 704.7-2. If a parent has one (1) or more previous child support obligations,
542 determine the parent's monthly income available for child support adjusted for the
543 previous obligations as provided in section 704.8-1. Include the parent's federal
544 disability or old age insurance benefits under 42 U.S.C. §401 to 433 in that parent's
545 income, but do not include the child's benefit under 42 U.S.C. §402 (d) in either
546 parent's income.

547 (2) Multiply each parent's monthly income available for child support by the
548 appropriate percentage standard under section 704.7-2.

549 (3) Multiply each amount determined under section 704.7-6(a)(2) by one hundred
550 and fifty percent (150%).

551 (4) Multiply the amount determined for each parent in section 704.7-6(a)(3) by the
552 proportion of time that the child spends with the other parent.

553 (5) Multiply the amount of the child's benefit by the proportion of the time the
554 child spends with the parent who is not receiving the child's benefit.

555 (6) Add the amount in section 704.7-6(a)(5) to the child support obligation
556 calculated in section 704.7-6(a)(4) for the parent who is receiving the child's
557 benefit.

558 (7) Offset the resulting amounts against each other. The parent with the greater
559 child support obligation is the shared-placement obligor. The shared-placement
560 obligor shall pay either the greater of the amount determined in this subsection or
561 the amount determined using the appropriate percentage standard under section
562 704.7-2.

563 704.7-7. Claiming Children for Tax Purposes. The Family Court may address who may claim
564 the child for tax purposes or accept a stipulation entered into by the parties regarding children and
565 taxes.

566 704.7-38. Deviation from ~~Standard Factors~~ the Percentage Standards. Upon request by a party,
567 the Family Court may modify the amount of child support payments determined by the percentage
568 standards if, after considering the following factors, the Family Court finds by the greater weight
569 of the credible evidence that use of the percentage standards is unfair to the child or to any of the
570 parties:

- 571 (a) The financial resources of the child;
- 572 (b) The financial resources of both parents;
- 573 (c) Maintenance received by either party;
- 574 (d) The needs of each party in order to support himself or herself at a level equal to or
575 greater than ~~that~~ the federal poverty line as established under 42 U.S.C. §9902 (2);
- 576 (e) The needs of any person, other than the child, whom either party is legally obligated to
577 support;
- 578 (f) The standard of living the child would have enjoyed if his or her parents were living
579 together;
- 580 (g) The desirability that the custodial parent remain in the home as a full-time parent;
- 581 (h) The cost of day care if the ~~eustodian-custodial parent~~ works outside the home, or the
582 value of custodial services performed by the ~~eustodian-custodial parent~~ if the ~~eustodian~~
583 custodial parent remains in the home;
- 584 (i) The award of substantial periods of physical placement to both parents;
- 585 (j) Extraordinary travel expenses incurred in exercising the right to periods of physical
586 placement;
- 587 (k) The physical, mental, and emotional health needs of the child, including any costs for
588 health insurance;
- 589 (l) The child's educational needs;
- 590 (m) The tax consequences to each party;
- 591 (n) The best interests of the child;
- 592 (o) The earning capacity of each parent, based on each parent's education, training and
593 work experience and the availability of work in or near the parent's community; and
- 594 (p) Any other factors which the Family Court in each case determines are relevant.

595 ~~Cross-reference: See also Rule CS-1 CHILD SUPPORT PERCENTAGE OF INCOME STANDARD.~~

596 704.7-59. Past-due and Arrears obligations.

- 597 (a) A party may request payment of arrears or past-due child support as follows:
 - 598 (1) In an action ~~pursuant to Chapter 703, Paternity,~~ regarding paternity, back to
 - 599 the date of birth of the child or date of application, whichever is later;
 - 600 (2) In a child support establishment or modification pursuant to this law, back to
 - 601 the date of application, review, or referral; or

602 (3) In an establishment or modification of placement pursuant to ~~Chapter 702 or~~
603 ~~Chapter 705, an action regarding divorce, annulment and legal separation or child~~
604 ~~custody, placement, and visitation,~~ back to the date of filing, or as otherwise ordered
605 by the Family Court.

606 (b) ~~An~~ A payment for arrears or a past-due payment shall be set based on the amount due
607 and the income available to pay current support.

608 (c) Once current child support is ended in any manner prescribed by law, child support
609 shall continue to be paid at the same rate, until all arrears or past due child support is paid
610 in full.

611
612 **704.8. Determining the Child Support Obligation in Special Circumstances** ~~Content and~~
613 ~~Effect of Order~~

614 704.8-1.1.4-1. ~~Determining the Child Support Obligation of a Serial-Family Obligor.~~

615 (a) ~~Applicability.~~ This ~~subsection~~ applies only if the ~~additional~~ support obligation ~~incurred~~
616 ~~by the obligor is the result of a child support order and the support obligation~~ being
617 ~~calculated is for children from a subsequent family or subsequent paternity judgment or~~
618 ~~acknowledgment.~~ An obligor may not use the provisions of this section as a basis for
619 ~~seeking modification of an existing order based on a subsequently incurred legal obligation~~
620 ~~for child support.~~

621 (b) ~~Determination.~~ For a serial-family obligor, the child support obligation incurred for a
622 ~~marital or non-marital child in a subsequent family as a result of a child support order may~~
623 ~~be determined as follows:~~

624 (1) Determine the obligor's monthly income.

625 (2) Determine the order of the obligor's legal obligations for child support by
626 ~~listing them according to the date each obligation is incurred.~~

627 (A) For a marital child, the legal obligation for child support is incurred on
628 the child's date of birth.

629 (B) For a non-marital child, the legal obligation for child support is incurred
630 on the date ~~of the child support order~~ that paternity is legally established.

631 (C) For a non-marital paternal child in an intact family, it is incurred on the
632 date of adoption or the date of the filing of an acknowledgement of paternity
633 that paternity is legally established.

634 (D) For a non-marital maternal child in an intact family, it is incurred on
635 the child's date of birth~~;~~.

636 (3) Determine the first child support obligation as follows:

637 (a) ~~A~~ If the obligor is subject to an existing support order for that legal
638 obligation, except a shared-placement order, the support for that obligation
639 is the monthly amount of that order; or

640 (b) ~~B~~ If the obligor is in an intact family, has primary placement of another
641 child, or is subject to a shared-placement order, the support is determined
642 by multiplying the appropriate percentage for that number of children by
643 the obligor's monthly income;.

644 (4) Adjust the monthly income by subtracting the support for the first legal
645 obligation ~~under (3)~~ from the obligor's monthly income ~~under (1)~~~~;~~.

646 (5) Determine the second child support obligation as follows:

- 647 (aA) If the obligor is subject to an existing support order for that legal
648 obligation, except a shared-placement order, the support for that obligation
649 is the monthly amount of that order; or
650 (bB) If the obligor is in an intact family or is subject to a shared-placement
651 order, the support is determined by multiplying the appropriate percentage
652 for that number of children by the obligor's monthly income.;
653 (6) Adjust the monthly income a second time by subtracting the support for the
654 second legal obligation ~~determined under (5)~~ from the first adjusted monthly
655 income ~~under (4)~~;
656 (7) Repeat the procedure ~~under (5) and (6)~~ for determining the child support
657 obligation and adjusting the monthly income for each additional legal obligation
658 for child support the serial family obligor has incurred.;
659 (8) Multiply the appropriate percentage for the number of children subject to the
660 new order by the final adjusted monthly income ~~determined in either (6) or (7)~~ to
661 determine the new child support obligation.

662 704.8-2. 1.4-2. Determining the Child Support Obligations of Shared-Placement Parents.

- 663 (a) Applicability. The shared-placement formula may be applied when both of the
664 following conditions are met:
665 (1) Both parents have periods of placement of at least twenty-five percent (25%)
666 or ninety-two (92) days a year. ~~When calculating periods of placement based on~~
667 ~~equivalent care, the total number of overnights may exceed three hundred and sixty-~~
668 ~~five (365). The period of placement for each parent shall be determined by~~
669 ~~calculating the number of overnights or equivalent care ordered to be provided by~~
670 ~~the parent and dividing that number by 365, the total number of overnights in a~~
671 ~~year. The combined periods of placement for both parents shall equal one hundred~~
672 ~~percent (100%).~~
673 (2) Each parent is ordered by the Family Court to assume the child's basic support
674 costs in proportion to the time that the parent has placement of the child.
675 (b) Determination. The child support obligations for parents who meet the requirements
676 ~~of (a) for the shared-placement formula~~ may be determined as follows:
677 (1) Determine each parent's monthly income.
678 (A) In determining whether to impute income based on earning capacity
679 for an unemployed parent or a parent employed less than full time ~~under~~
680 ~~1.3-2~~, the Family Court shall consider benefits to the child of having a
681 parent remain in the home during periods of placement and the additional
682 variable day care costs that would be incurred if the parent worked more.
683 (2) Multiply each parent's monthly income by the appropriate percentage standard
684 ~~under 704.7.~~
685 (3) Multiply each amount determined under ~~(2)~~ section 704.8-2(b)(2) by ~~one~~
686 ~~hundred and fifty percent (150%).~~
687 (4) Multiply the amount determined for each parent under ~~(3)~~ section 704.8-2(b)(3)
688 by the proportion of the time that the child spends with the other parent to determine
689 each parent's child support obligation.
690 (5) Offset resulting amounts under ~~(4)~~ section 704.8-2(b)(4) against each other.
691 The parent with a greater child support obligation is the shared-placement obligor.
692 The shared-placement obligor shall pay the lesser of the amount determined under
693 this section or the amount determined using the appropriate percentage standard
694 ~~under 704.7.~~ If the shared-placement obligor is also a low-income obligor, the child

695 support obligation may be the lesser of the amount determined under ~~this section~~
696 ~~or under 1.4.4~~ the shared placement determination or the low-income
697 determination.

698 (6) In addition to the child support obligation determined under ~~(5)~~ section 704.8-
699 ~~2(b)(5)~~, the Family Court shall assign responsibility for payment of the child's
700 variable costs in proportion to each parent's share of physical placement, with due
701 consideration to a disparity in the parents' incomes.

702 (A) The Family Court shall direct the manner of payment of a variable cost
703 order to be either between the parents or from a parent to a third-party
704 service provider.

705 (B) The Family Court shall not direct payment of variable costs to be made
706 to the Agency or the Agency's designee, except as incorporated in the ~~fixed~~
707 ~~sum or percentage expressed~~ child support order.

708 (7) A change in the child's variable costs shall not in and of itself be considered a
709 substantial change in circumstances sufficient to justify a modification of a
710 judgment or order under section 704.10.

711 704.8-3.1.4-3. *Determining the Child Support Obligations of Split-Placement Parents.*

712 (a) *Applicability.* The split-placement formula may be applied when ~~For parents who~~ have
713 two (2) or more children and each parent has placement of one (1) or more but not all of
714 the children, ~~the child support obligations may be determined as follows:~~

715 (b) *Determination.* The child support obligation for a split-placement parent may be
716 determined as follows:

717 (a1) Determine each parent's monthly income.

718 (b2) ~~Multiply each parent's monthly income by the appropriate percentage for the~~
719 ~~number of children placed with the other parent to determine each parent's child~~
720 ~~support obligation. Determine the appropriate percentage standard for the number~~
721 ~~of total children.~~

722 (3) Divide the appropriate percentage standard for the number of total children by
723 the total number of children.

724 (4) Multiply the number calculated in section 704.8-3(b)(3) by the number of
725 children placed with each parent.

726 (5) Multiply each parent's monthly income by the number calculated in 704.8-
727 ~~3(b)(4)~~ based on the number of children placed with the other parent to determine
728 each parent's child support obligation; and

729 (e6) Offset resulting amounts under ~~(b)~~ section 704.8-3(b)(5) against each other.
730 The parent with a greater child support obligation is the split-placement obligor.

731 704.8-4.1.4-4. *Determining the Child Support Obligation of a Low-Income Obligor.*

732 (a) *Applicability.* If an ~~the~~ obligor's total economic circumstances limit his or her ability
733 to pay support at the level determined ~~under 704.7~~ by the standard percentage standards,
734 then the low-income obligor standards found in the Child Support Obligation of Low-
735 Income Payers Schedule may be used.

736 (b) *Determination.* The Family Court may use the monthly support amount provided in
737 the ~~schedule in Appendix A~~ Child Support Obligation of Low-Income Payers Schedule as
738 the support amount for an obligor with a monthly income at a level set forth in the schedule
739 if the obligor's total economic circumstances limit his or her ability to pay support at the
740 level determined under 704.7.

741 (1) If an obligor's monthly income is below the lowest income level in ~~Appendix~~
742 ~~A~~ the Child Support Obligation of Low-Income Payers Schedule, the Family Court

743 may set an order at an amount appropriate for the obligor's total economic
744 circumstances. This amount may be lower than the lowest support amount in
745 Appendix A the Child Support Obligation of Low-Income Payers Schedule. (b) The
746 Agency shall revise the schedule in Appendix A at least once every four (4) years.
747 The revision shall be based on changes in the federal poverty guidelines since the
748 schedule was last revised.

749 704.8-1. The child support order shall provide for immediate wage withholding. An order to
750 withhold income shall be binding against future payors upon actual notice of the order through
751 service by personal delivery or certified mail upon the payor. Wages shall not be subject to
752 withholding only where:

753 (a) One of the parties demonstrates and the Family Court finds that there is good cause not
754 to require wage withholding due to one of the following:

755 (1) There is an error in the amount of current or overdue support; or

756 (2) The identity of the obligor is mistaken.

757 (b) The parties reach a written agreement which provides for an alternative arrangement
758 and is approved by the Family Court.

759 704.8-2. The Family Court may require a party, or both parties, to utilize the services available to
760 him or her to obtain and maintain regular employment and/or job training.

761 704.8-3. Support Order Notice Requirements. Each order for child support shall include an order
762 that the obligor and obligee notify the Agency of any change of address or name change within
763 ten (10) business days of such change. Each order for child support shall also include an order that
764 the obligor notify the Agency and the obligee of any change of employer or substantial change of
765 income within ten (10) business days of the change. A "substantial change of income" means the
766 obligor has a significant change in his or her finances that would lead to a change in child support
767 of either more than fifteen percent (15%) or fifty dollars (\$50.00) per month. An order under this
768 section is enforceable as contempt.

769 704.8-4. Collection and Distribution of Child Support. The Agency shall collect and distribute
770 child support monies pursuant to regulations set forth in the Social Security Act 45 CFR 309.115.

771

772 **704.9. Child Support Order Enforcement of Order**

773 704.9-1. ~~1-3-5~~. Expression of Ordered Support. The child support amount shall be expressed as
774 a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the
775 obligor's income and the stipulation requirements of Chapter 704 are satisfied.

776 704.9-~~4~~2. Interest on Arrears. The ~~Tribe Nation~~ shall not charge a party an obligor ordered to
777 pay child support interest on any arrears.

778 704.9-~~2~~3. Income Wage Withholding. The child support order shall provide for immediate wage
779 income withholding.

780 (a) A copy of the Family Court's wage-income withholding order shall be sent by the
781 Agency to a payor within three (3) business days of the entry of the order of the Family
782 Court by any business method acceptable to the payor mail, fax, or electronic means.

783 (b) An order to withhold income shall be binding against future payors upon actual notice
784 of the income withholding order through service notice by mail, fax, or electronic means.
785 personal delivery or certified mail upon the payor.

786 (c) Income wages shall not be subject to withholding only where:

787 (a1) One of the parties demonstrates, and the Family Court finds, that there is good
788 cause not to require income wage withholding due to one of the following:

789 (1A) There is an error in the amount of current or overdue support; or

790 (2B) The identity of the obligor is mistaken.
791 (b2) The parties reach a written agreement which provides for an alternative
792 arrangement that is approved by the Family Court.

793 ~~(bd)~~ No payor shall refuse to honor ~~a wage an income~~ withholding order executed pursuant
794 to this law. A payor shall begin withholding income immediately after ~~notice~~ service of a
795 ~~wage-an income~~ withholding order made pursuant to this law. Within five (5) business
796 days after the payor pays the obligor, the payor shall send the amount withheld to the
797 Agency-Wisconsin Support Collections Trust Fund.

798 ~~(ee)~~ A payor shall be liable for one hundred percent (100%) of the child support order, or
799 the amount of money that should have been withheld from the obligor's earnings,
800 whichever is the lesser amount, if the payor:

801 (1) Fails or refuses, after being ~~noticed of served with~~ noticed an income withholding order,
802 to deduct or promptly remit the amounts of money required in the order; ~~or~~

803 (2) Fails or refuses to submit an answer to the notice of ~~wage-income~~ withholding
804 after being ~~noticed served~~; or

805 (3) Is unwilling to comply with the other requirements of this law.

806 ~~(df)~~ A payor shall not discharge from employment, refuse to employ, or otherwise take
807 disciplinary action against any obligor solely because he or she is subject to ~~wage-income~~
808 withholding.

809 (1) When the Family Court finds that a payor has taken any of these actions, the
810 payor shall be liable for a civil penalty. Any payor who violates any provision of
811 this paragraph shall be liable in a civil action for reasonable damages suffered by
812 an obligor as a result of the violation, and an obligor discharged or demoted in
813 violation of this paragraph shall be entitled to be reinstated to his or her former
814 position.

815 (2) The statute of limitations for actions under this section shall be one (1) year.

816 ~~(eg)~~ A payor who repeatedly fails to comply with ~~a wage an income~~ withholding order as
817 required by this law may be subject to a fine, not to exceed five hundred dollars (\$500), or
818 have its Oneida vendor license revoked or suspended, if applicable, until compliance with
819 this law is assured.

820 (1) The vendor license issuing agency shall comply with the Family Court order to
821 revoke or suspend a vendor license.

822 ~~(fh)~~ If ~~wage income~~ withholding is inapplicable, ineffective or insufficient to ensure
823 payment of child support, the Family Court may require the obligor to establish an account
824 for the purpose of transferring child support payments.

825 ~~(gi)~~ The total amount withheld under an income withholding order shall not exceed the
826 maximum amount permitted under section 303(b) of the Consumer Credit Protection Act
827 (15 U.S.C. §1673(b)).

828 ~~(hj)~~ Non-Indian off-reservation payors shall be subject to income withholding under 28
829 U.S.C. §1738B.

830 704.9-4.704.8-2. Conditions of the Order. The Family Court may require a party, or both parties,
831 to use the services available to him or her to obtain and maintain regular employment and/or job
832 training.

833 704.9-5. Support Order Notice Requirements. Each order for child support shall include:

834 (a) An order that the obligor and obligee notify the Agency of any change of address or
835 name change within ten (10) business days of such change; and

836 (b) Each order for child support shall also include a An order that the obligor notify the
837 Agency and the obligee of any change of employer or substantial change of income within

838 ~~ten (10) business days of the change. A “substantial change of income” means the obligor~~
839 ~~has a significant change in his or her finances that would lead to a change in child support~~
840 ~~of either more than fifteen percent (15%) or fifty dollars (\$50.00) per month. An order~~
841 ~~under this section is enforceable as contempt.~~

842 704.9-6. Enforcement of Order. A child support order under this section is enforceable as
843 contempt.

844 704.9-7. Collection and Distribution of Child Support. The Agency shall collect and distribute
845 child support monies pursuant to regulations set forth in the Social Security Act 45 CFR 309.115.

846 704.9-8. Trust. The Family Court may protect and promote the best interests of the minor
847 children by setting aside a portion of the child support that either party is ordered to pay in a
848 separate fund or trust for the support, education, and welfare of such children.

849 704.7-49-9. Non-Cash Payments.

850 (a) Non-cash payments may be used to satisfy part or all of a child support order if the
851 parties and the Family Court agree to allow non-cash payments. Non-cash payments shall
852 not be used to fulfill arrears. If non-cash payments are allowed, the order shall:

853 (1) state the specific dollar amount of the support obligation;

854 (2) state the maximum amount (in dollars) of non-cash payment that the obligee
855 will accept;

856 (3) describe the type(s) of non-cash payment that is permitted;

857 (4) provide that non-cash payment cannot be used to satisfy assigned child support
858 obligations.

859 (b) When both parents are in agreement that non-cash payments may be used to satisfy a
860 child support obligation, the non-cash payment may include, but is not limited, to the
861 following:

862 (1) Clothing;

863 (2) Groceries;

864 (3) Child Care;

865 (4) Deer/Venison;

866 (5) Wood;

867 (6) Transportation;

868 (7) Skilled trades or services, such as car repairs, lawn care and snow removal;

869 and/or

870 (8) Gift cards.

871 (c) When a non-cash payment is used to satisfy part or all of a child support order, the
872 obligor and obligee shall submit any forms required by the Agency within the month that
873 the non-cash payment is made. If there are less than five (5) business days left in the month
874 when a non-cash payment is made, the obligor and obligee have five (5) business days to
875 submit any required forms to the Agency. The Agency shall be responsible for applying
876 the non-cash payment towards the child support order during the appropriate month.

877 704.9-3. In the event that an obligor is at least one (1) month delinquent in paying his or her child
878 support obligation, he or she may be subject to the following enforcement actions:

879 (a) increase in amount of wages withheld

880 (b) placement on lien docket;

881 (c) credit bureau reporting;

882 (d) intercept of income and/or other payments;

883 (e) seizure of personal property;

884 (f) suspension of licenses;

885 (g) denial of passport;

- 886 ~~(h) commitment to jail;~~
887 ~~(i) charge of contempt;~~
888 ~~(j) referral for criminal charges;~~
889 ~~(k) any other enforcement action included in this law or in a rule that is established under~~
890 ~~this law.~~

891 ~~Cross-reference: See also Rule CS 2 ENFORCEMENT TOOLS.~~

892

893 **704.10. Modification of a Child Support Order**

894 704.10-1. Review of the Child Support Order. Every two (2) years, the Agency shall conduct a
895 review of the child support order. The Agency shall notify the non-custodial parent, custodial
896 parent, and any interested party that a review of their child support order will shall be conducted.

897 ~~704.10-2. Modification of Child Support Sought by the Agency. After the two (2) year review is~~
898 ~~conducted by the Agency, the Agency shall seek an order to modify the child support obligation if~~
899 ~~there is a substantial change in circumstances, unless otherwise stipulated by the parties an order~~
900 ~~to update the child support obligation will be sought by the Agency if there is a substantial change~~
901 ~~in circumstances.~~ A substantial change in circumstance means includes, but is not limited to:

- 902 (a) the child's placement is changed;
903 (b) either parent or the child has a significant change in his or her finances that would lead
904 to a change in child support of ~~either~~ more than fifteen percent (15%) ~~or and~~ fifty dollars
905 (\$50.00) per month;
906 (c) the obligee is receiving public assistance benefits and is required to have a current
907 support order in place;
908 (d) it has been twenty-four (24) months since the date of the last child support order or
909 revision to the child support order, unless the child support amount is expressed as a
910 percentage; or
911 (e) a change has occurred and if the current circumstances had been in place at the time
912 the order was issued, a significantly different order would have been issued.

913 704.10-~~23~~. Modification of Child Support Sought by the Parties. Either party, not including the
914 Agency, may file a motion for a modification of a child support order at any time based upon a
915 substantial change of circumstances supported by affidavit.

- 916 (a) Such motion shall state why the previous decision should be prospectively modified.
917 (b) The motion and affidavit shall be served by the moving party on the responding party
918 by first-class mail to the recently verified last-known address, or by any method provided
919 by law.
920 (c) A hearing date shall be scheduled no sooner than ten (10) calendar days after the date
921 of service.

922 704.10-~~34~~. An obligor shall not raise a substantial change in circumstances as a reason not to pay
923 a past due reward current child support order or arrears. If a child support ~~award~~ order becomes
924 unjust due to a substantial change in circumstances of the obligor, the obligor has the duty to file
925 a petition or motion with the Family Court for a ~~changed award~~ modification to the child support
926 order at that time. ~~He or she may not raise that change in circumstances as a reason not to pay a~~
927 ~~past due award.~~

928 ~~704.10-4. A change in the percentages shall constitute a substantial change in circumstances and~~
929 ~~shall justify prospective modification of a child support order.~~

930

931 **704.11. Modification of a Child Support Order for an Incarcerated Parent** ~~Full Faith and~~
932 ~~Credit for Foreign Child Support Orders~~

933 704.11-1. In the event an obligor is incarcerated for one hundred and eighty (180) days or more,
934 the obligor shall have the right to have the Agency review his or her child support order to
935 determine if modification or suspension of the child support order is appropriate. The obligor shall
936 notice the Agency of his or her incarceration.

937 (a) An ordered child support obligation shall be suspended for an incarcerated obligor who
938 has been sentenced to one hundred and eighty (180) days or more and has an income of
939 less than two hundred dollars (\$200) per month.

940 (b) If while incarcerated the obligor's income is two hundred dollars (\$200) or more per
941 month the Agency shall review the order and seek temporary modification of the child
942 support order based on the incarcerated obligor's income, if necessary.

943 (c) Child support obligations shall not be suspended or modified for an obligor who is
944 incarcerated for a criminal offense which includes:

945 (1) felony failure to pay support;

946 (2) a crime against a child; and/or

947 (3) a crime against the obligee.

948 (d) Past due child support related debt and/or arrears shall not be suspended or reduced as
949 a result of the obligor's incarceration without stipulation by the parties.

950 704.11-2. Notification of Review. Within fifteen (15) business days of the receipt by the Agency
951 of verification of the obligor's incarceration, the Agency shall send out a letter to the parties of the
952 case informing them of the obligor's right to have his or her child support obligation reviewed,
953 and of the Agency's intent to review the current child support order.

954 704.11-3. Agency Review of Order. The Agency shall review the obligor's child support order
955 and make one of the following determinations:

956 (a) that the obligor's income while incarcerated is two hundred dollars (\$200) or more per
957 month, and the Agency shall seek temporary modification of the obligor's child support
958 order based on the incarcerated obligor's income, if necessary; or

959 (b) that the obligor's income while incarcerated is less than two hundred dollars (\$200)
960 per month, and the Agency shall seek temporary suspension of the obligor's child support
961 order while incarcerated.

962 704.11-4. Suspension of Order by the Agency. If the Agency determines the obligor's income is
963 less than two hundred dollars (\$200) per month while incarcerated, the Agency shall file with the
964 Family Court a Motion and Order to Suspend without a request for a hearing with notice to all
965 parties that the child support order shall be suspended.

966 (a) Either party shall have the right to object to the suspension of the order within ten (10)
967 business days of the date of the notice by filing such objection with the Family Court and
968 providing a copy of the objection to the Agency.

969 (b) If no objection to the suspension is received, the Family Court shall enter the order as
970 proposed.

971 (c) Upon receipt of an objection from either party, the Family Court shall schedule a
972 hearing on the issue.

973 704.11-5. Modification of Order by the Agency. If the Agency determines the obligor's income
974 is two hundred dollars (\$200) per month or more while incarcerated, the Agency shall file with the
975 Family Court a Motion and Order to Modify.

976 (a) The Family Court shall schedule a hearing on the motion. The Agency shall provide
977 notice to all parties with the proposed modification to the child support order by first class
978 mail at least ten (10) business days prior to the hearing.

979 (b) If no objection to the modification is received at the hearing, the Family Court shall
980 enter the order as proposed.

981 704.11-6. *Modification of the Order by the Incarcerated Parent.* The incarcerated parent may
982 seek modification of his or her own child support order by filing a motion to modify with the
983 Family Court in accordance with section 704.10-3.

984 704.11-7. If during the term of incarceration, the Agency receives notification of a change in the
985 obligor's employment and/or income, the Agency shall review the obligor's order and determine
986 if the obligor's income is two hundred dollars (\$200) or more per month, and whether it is
987 necessary to temporarily modify or suspend the obligor's child support order.

988 (a) If the Agency determines that suspension of the obligor's order is necessary, then the
989 procedure for filing a Motion and Order to Suspend without a request for a hearing
990 described in section 704.11-4 shall be followed.

991 (b) If the Agency determines that modification of the obligor's order is necessary, then the
992 procedure for filing a Motion to Modify described in section 704.11-5 shall be followed.

993 704.11-8. *Reinstatement of Prior Order.* Sixty (60) days after the obligor's release from
994 incarceration, the child support order shall be administratively reinstated by the Agency to the
995 previous child support order in effect before the suspension or modification of the order based on
996 the obligor's incarceration.

997 (a) The Agency shall send notice to both parties of the obligor's release from incarceration
998 and the intent of the Agency to reinstate the original order.

999 ~~704.11-1. Properly issued child support orders, and judgments or decrees of other Indian tribes,~~
1000 ~~tribal organizations and states, that relate to child support shall be recognized and modified in~~
1001 ~~accordance with the requirements under the Full Faith and Credit for Child Support Orders Act,~~
1002 ~~28 U.S.C. 1738B.~~

1003 ~~704.11-2. A foreign order is authenticated by reasonable proof that the document tendered to the~~
1004 ~~Family Court is a true copy of the foreign order as it is recorded in the agency or court of the~~
1005 ~~issuing jurisdiction. An authentication stamp issued by a court clerk or custodian of records, or a~~
1006 ~~court seal, is sufficient evidence of authenticity.~~

1007 ~~704.11-3. Unless defects in jurisdiction are apparent on the face of the foreign order, the person~~
1008 ~~contesting enforcement of the order has the burden of showing the order is not valid. Upon a~~
1009 ~~failure to respond to notice of the order and to timely contest it, the Family Court shall enforce it~~
1010 ~~as a Family Court order.~~

1011 ~~704.11-4. If a foreign order is brought before the Family Court solely for an interpretation of the~~
1012 ~~terms of the order, and the order has been recognized and given full faith and credit by the~~
1013 ~~Family Court, the Family Court shall interpret the order by applying the law of the forum that~~
1014 ~~issued the foreign order.~~

1015
1016 **704.12. Compliance Plan-Right of Appeal**

1017 ~~704.12-1. 2.3-1. The Agency shall attempt to meet with a party who is found to be subject to~~
1018 ~~enforcement action as soon as possible by sending a Letter of Non-Compliance within five (5)~~
1019 ~~business days of being informed of a party's failure to either pay support as ordered or to meet a~~
1020 ~~required obligation or action. If at any time an obligor is, or may become, non-compliant with his~~
1021 ~~or her child support order by failing to pay support as ordered or meeting a required obligation or~~
1022 ~~action, the Agency shall meet with the obligor to develop a compliance plan.~~

1023 704.12-2. An Appointment Letter may be sent by the Agency at any time deemed appropriate, but
1024 the Agency shall send out the Appointment Letter at least thirty (30) days prior to the initiation of
1025 any enforcement action.

1026 (a) The Letter of Non-Compliance shall set out the conditions the party has failed to
1027 comply with, outline the enforcement actions that may be taken, and request the party meet
1028 with the Agency to discuss barriers to payment and how to avoid future enforcement action.

1029 (b) If the party does not respond to the Letter within five (5) business days after receipt of
1030 the letter, the Agency shall send a second Letter.

1031 (c) If the party fails to respond to the second Letter within five (5) business days after
1032 receipt of the letter, the Agency may proceed with appropriate enforcement action.

1033 (c) If the party obligor responds to the Letter, the Agency shall interview the party to
1034 determine the reasons and barriers for the non-compliance and create a compliance plan.
1035 The compliance plan may include an increase in payment and/or any activity that is
1036 necessary to ensure assist in payment, including programs that focus on:

1037 (1) Employment and training;

1038 (2) Social service and mental health;

1039 (3) Physical and learning disabilities;

1040 (4) Tribal traditions and customs;

1041 (5) Family counseling and parenting; and

1042 (6) Any other program deemed necessary.

1043 (d) If the party successfully completes the compliance plan, no further enforcement action
1044 is necessary. However, if the party fails to complete the compliance plan, the Agency shall
1045 proceed with appropriate enforcement action.

1046 704.12-1. Any enforcement action implemented by the Agency may, within thirty (30) calendar
1047 days after the date that the action is enforced, be appealed to the Family Court. The decision of
1048 the Family Court shall be final.

1049 704.12-2. If the Family Court conducts a hearing under this law, a party may, within thirty (30)
1050 calendar days after the date that the Family Court makes a decision, appeal that decision to the
1051 Court of Appeals of the Judiciary. The appellate body review shall be based on the record and
1052 the original decision of the Family Court.

1053

1054 **704.13. Enforcement of an Order**

1055 704.13-1. An obligor may be subject to enforcement actions when the obligor is at least one (1)
1056 month delinquent in paying his or her child support obligation. Enforcement actions may include
1057 administrative enforcement action by the Agency and enforcement action by the Family Court.

1058 (a) An obligor shall be provided with notice of an enforcement action of at least thirty (30)
1059 days before an enforcement action is used, unless another timeline is specified.

1060 (b) An enforcement action shall be stayed and/or suspended after notice is given to the
1061 obligor if the obligor pays the debt in full or enters into, and maintains, an alternative
1062 payment plan and/or a compliance plan with the Agency.

1063 704.13-2. 704.9-1. Agency Responsibilities in the Enforcement of an Order. The Agency shall
1064 have the following responsibilities in the enforcement of an order:

1065 (a) Track and document the progress of an obligor who is under an enforcement action;

1066 (b) Take additional enforcement action when an obligor fails to comply with a previous
1067 enforcement action;

1068 (c) Document the reasons why an enforcement action is not taken, when such action would
1069 have been appropriate under the circumstances; and

1070 (d) Assist in Rrefunding amounts that were improperly withheld, terminate income
1071 withholding when appropriate, and allocate amounts across multiple cases.

1072 704.13-3. ~~2.4-2~~ Notice to the Obligor of Delinquency. In the event that an obligor owes a debt
1073 equal to or exceeding the monthly amount due, the Agency shall send a notice of delinquency to
1074 the obligor. ~~(a)~~ The notice of delinquency shall inform the obligor of the following:

- 1075 (1) The dates that the delinquency accrued;
1076 ~~(2a)~~ The total amount of the delinquency; and
1077 ~~(3)~~ Any prior agreement or showing of good cause to not wage withhold may be
1078 terminated and the obligor may be subject to wage withholding;
1079 ~~(4b)~~ The enforcement action that may be taken as a result of the delinquency.
1080 ~~(5)~~ The obligor may request, in writing to the Agency, to negotiate an alternative
1081 payment plan with the Agency within ten (10) business days after the service of
1082 notice in order to stay any enforcement action;
1083 ~~(6)~~ The obligor has ten (10) business days after the service of the notice of
1084 delinquency to file an objection with the Agency presenting good cause why an
1085 arrears payment or other enforcement action should not be implemented. The
1086 only allowable objections are:
1087 ~~(A)~~ There is an error in the amount of current or overdue support; or
1088 ~~(B)~~ The identity of the obligor is mistaken.

1089 704.13-4. Notice to the Obligor of Enforcement Action. After the obligor has been noticed of his
1090 or her delinquency, and at least twenty (20) days prior to an enforcement being used against an
1091 obligor, the Agency shall send a notice of enforcement action to the obligor.

- 1092 (a) The notice of enforcement action shall inform the obligor of the following:
1093 (1) The total amount of the delinquency;
1094 (2) The enforcement action that may be taken as a result of the delinquency;
1095 (3) The obligor may request, in writing to the Agency, to negotiate an alternative
1096 payment plan with the Agency within ten (10) business days after the notice in order
1097 to stay any enforcement action;
1098 (4) The obligor has ten (10) business days after the notice of enforcement action to
1099 file an objection with the Agency presenting good cause why an arrears payment
1100 or other enforcement action should not be implemented. The only allowable
1101 objections are:
1102 (A) There is an error in the amount of current or overdue support; or
1103 (B) The identity of the obligor is mistaken.

1104 (b) If the obligor does not file an objection or request to negotiate an alternative payment
1105 plan:

- 1106 (1) the enforcement action shall be taken; and/or
1107 (2) an ~~income~~ wage withholding order, or revised order if one is already in place,
1108 shall be imposed on the payor. No more than an additional twenty percent (20%)
1109 of the current support payment order can be withheld to satisfy the delinquency
1110 provided that the total amount withheld does not exceed forty percent (40%) of the
1111 obligor's monthly income.

1112 (c) If a permissible objection is filed, the obligor shall be entitled to a hearing before any
1113 enforcement action is taken.

1114 704.13-5. ~~2.4-3~~ Use of Mail for Notices. The Agency shall send notices related to the delinquency
1115 of an obligor and enforcement of a child support order by mail to the last-known mailing address
1116 provided by the obligor.

1117 (a) If the notice is returned, the Agency shall send notice to the obligor using the current
1118 employer mailing address provided by the obligor.

1119 (b) If the notice to the obligor mailed to the obligor's employer is returned, the Agency
1120 shall use all appropriate tribal, federal, state and local resources to ascertain an obligor's
1121 current mailing address.

1122 (c) If those resources are used for a period of ~~sixty~~ thirty (30) days and a verified mailing
1123 address has not been identified, the Agency may proceed with the administrative
1124 enforcement action.

1125 704.13-6. 2.4-4. Notice to the Obligee of Enforcement Proceedings. The Agency shall provide
1126 written notice to the obligee when an enforcement action has been initiated against the obligor or
1127 when the obligor requests a hearing and the hearing has been scheduled. The notice to the obligee
1128 shall be sent at the same time notice is sent to the obligor.

1129 704.13-7. 2.4-5. Notice to Individuals Other Than the Obligor with a Recorded Ownership Interest
1130 in Property. The Agency shall provide notice related to the seizure of property to any individual,
1131 other than the obligor, with a recorded ownership interest in property subject to seizure. The
1132 individual may request a hearing for a determination of the proportion of the value of the property
1133 that is attributable to his or her net contribution to the property. The hearing shall be requested
1134 within thirty (30) days after the notice was received by the individual.

1135
1136 **704.14. Alternative Payment Plans**

1137 704.14-1. 2.9-1 Applicability of Alternative Payment Plans. When an obligor is subject to
1138 administrative enforcement action, he or she may negotiate an alternative payment plan with the
1139 Agency.

1140 704.14-2. 2.9-2 Negotiation of an Alternative Payment Plan After Receiving Notice of an
1141 Enforcement Action.

1142 (a) In order to negotiate an alternative payment plan, an obligor shall submit a written
1143 request to the Agency.

1144 (1) A written request to negotiate an alternative payment plan received by the
1145 Agency within ten (10) business days after the date of notice shall stay any
1146 administrative enforcement action.

1147 (2) If a written request to negotiate an alternative payment plan is received by the
1148 Agency more than ten (10) business days after the date of notice, administrative
1149 enforcement action may be taken, as long as the requirements of 2.9-3 and 2.9-4
1150 for staying or suspension of administrative enforcement actions are met.

1151 (b) An obligor may negotiate a plan with the Agency to have a license ~~suspension lifted~~
1152 ~~issued or renewed after it has been restricted, limited, suspended or refused.~~

1153 (c) ~~Hearings for Negotiations of an Alternative Payment Plan.~~ The obligor may submit a
1154 written request for a hearing ~~on the reasonableness of the plan within ten (10) business~~
1155 ~~days after the terms of the plan are agreed upon with the Family Court regarding~~
1156 ~~negotiations of an alternative payment plan in the following circumstances:~~

1157 (1) The obligor and the Agency have agreed to terms of a plan, but the obligor
1158 wants the Family Court to consider the reasonableness of the plan.

1159 (A) ~~The the~~ obligor may submit this a written request for a hearing on the
1160 reasonableness of the plan within ten (10) business days after the terms of
1161 the plan are agreed upon.

1162 (2) ~~If the Agency and the obligor~~ The obligor and the Agency are unable to reach
1163 agreement on the terms of a plan ~~a hearing may be conducted.~~

1164 (A) The Family Court may order a plan by setting **conditions and/or**
1165 payments in the amounts and at the times it considers reasonable.

1166 (d) ~~2.9-5. Proceeding with Administrative Enforcement Actions.~~ The Agency may
1167 continue with the administrative enforcement action if:

1168 (1a) the obligor and the Agency are unable to negotiate a plan;

1169 (2b) the Family Court determines that the plan is not reasonable; and/or

1170 (3e) the Family Court does not order a plan.

1171 704.14-3. ~~2.9-6 Disclosure of Income and Assets.~~ The request to negotiate a plan shall include an
1172 agreement by the obligor to provide the Agency with a full disclosure of income and assets
1173 available. The obligor shall provide complete income and assets information to the Agency within
1174 five (5) business days of the request to negotiate a plan.

1175 704.14-4. ~~2.9-7 Terms of an Alternative Payment Plan.~~

1176 (a) An alternative payment plan may include a lump-sum payment, or periodic payments
1177 on the arrears, or both, subject to the following standards:

1178 (1) The sum of any periodic payment established under the plan and any other
1179 payment of support ordered by the Family Court, when subtracted from the
1180 obligor's gross income, may not leave the obligor below **one hundred percent**
1181 (100%) of the poverty line established under 42 U.S.C. §9902 (2) unless the obligor
1182 agrees otherwise.

1183 (2) When establishing an alternative payment plan, the Agency shall consider the
1184 factors used by the Family Court in determining whether the use of the percentage
1185 standard is unfair to the child or any of the parties.

1186 (b) Periodic payments under the plan may be made through income withholding in
1187 amounts in addition to the amount ordered in the child support order that is in effect.

1188 704.14-5. ~~2.9-3. Staying Administrative Enforcement Actions.~~ Administrative enforcement actions
1189 shall be stayed by the Agency while the obligor and the Agency are negotiating a plan, or, if a
1190 hearing is requested **because an agreement cannot be reached or the reasonableness of the plan is**
1191 **questioned,** until the Family Court determination has been made. To stay an administrative
1192 enforcement action means the following:

1193 (a) The obligor shall not be certified for denial, nonrenewal, restriction, or suspension of
1194 professional, occupational, fishing, recreational, motor vehicle and/or Oneida-issued
1195 licenses **any State or Oneida-issued licenses;**

1196 (b) Any frozen financial accounts shall remain frozen and shall not be seized; and

1197 (c) Personal property that has been seized shall not be sold.

1198 704.14-6. ~~2.9-4. Suspension of Administrative Enforcement Actions.~~

1199 (a) When a plan has been negotiated between the obligor and the Agency, or the Family
1200 Court has determined that a plan is reasonable or has ordered a plan, the Agency shall
1201 suspend administrative enforcement actions as long as the obligor complies with the plan
1202 **or requests a hearing because of a substantial change in circumstances.**

1203 (b) If an obligor makes an **full** arrears payment **agreeable to the Agency,** the administrative
1204 enforcement action shall be suspended.

1205 704.14-7. ~~2.9-8. Default on an Alternative Payment Plan.~~ In the event that the obligor defaults on
1206 the plan, the Agency shall notify the obligor in writing that an administrative enforcement action
1207 shall be implemented unless the **child support** lien is paid in full.

1208 704.14-8. ~~2.9-9. Renegotiation of an Alternative Payment Plan.~~ After the entry of an alternative
1209 payment plan, the plan may be renegotiated upon the written request of the obligor or Agency if
1210 the requesting party can show a substantial change in circumstances. A substantial change in
1211 circumstances includes any of the following:

- 1212 (a) A change in the obligor's income or assets, including the sale or purchase of real or
1213 personal property;
1214 (b) A change in the obligor's earning capacity; and/or
1215 (c) Any other factor that the Agency determines is relevant.

1216 2.9-10. *Obligors with Cases in Multiple Jurisdictions.*

1217 (a) When multiple child support agencies initiate administrative enforcement actions
1218 against the same obligor, and the obligor negotiates an alternative payment plan with one
1219 of the agencies, the plan does not preclude any other child support agency from
1220 proceeding with its administrative enforcement action.

1221 (b) If a child support agency which has a lien against property of an obligor negotiates an
1222 alternative payment plan with the obligor, the agency may receive proceeds from the sale
1223 of the obligor's personal property under the lien including, but not limited to, proceeds
1224 from administrative enforcement actions taken by other child support agencies.

1225

1226 **704.15. Administrative Enforcement Action**

1227 704.15-1. The Agency shall have the authority to use administrative enforcement actions to
1228 enforce a child support order without obtaining an order from the Family Court in the event that
1229 an obligor is at least one (1) month delinquent in paying his or her child support obligations.

1230 704.15-2. ~~2.5-1~~ *Liens.* The Agency shall have an obligor placed on the lien docket if the obligor
1231 owes a debt in one or more of the obligor's cases equal to or exceeding the monthly amount due
1232 or five hundred dollars (\$500.00), whichever is greater.

1233 (a) ~~2.5-2~~ *Lien Amount.* The lien amount on the lien docket shall equal the sum of lien
1234 amounts from the cases in which the lien amount meets or exceeds the lien threshold.

1235 (b) ~~2.5-3~~ *Filing Date.* The filing date on the lien docket is the date that a lien is first
1236 docketed and delivered to the register of deeds. The filing date is the effective date of the
1237 lien. The effective date does not change if the lien amount is adjusted up or down within
1238 five (5) years after the date that the lien is first docketed.

1239 (c) ~~2.5-4~~ *Lien Priority.* The child support lien shall have priority over all other liens on
1240 property except:

1241 (1) tax and special assessment liens;

1242 (2) purchase money mortgages;

1243 (3) construction liens;

1244 (4) environmental liens;

1245 (5) liens that are filed or recorded before the child support lien becomes effective;
1246 and

1247 (6) any other lien given priority under the law.

1248 (d) ~~(a)~~ Property subject to a lien includes personal property in which the obligor has a
1249 recorded ownership interest.

1250 (e) *Effect on a Good Faith Purchaser.* ~~(b)~~ A child support lien is not effective against a
1251 good faith purchaser of titled personal property unless the lien is recorded on the title.

1252 (f) ~~2.5-5~~ *Credit Bureau Reporting.* The Agency may report the total amount of an obligor's
1253 liens to the credit bureau, so long as the lien is fully enforceable and the case is not barred
1254 from credit bureau reporting.

1255 ~~2.5-6. Denial of State-issued Grants and Loans.~~ Wisconsin state agencies may deny grants
1256 and loans to an obligor who is placed on the lien docket. These grants and loans include
1257 student loans and higher education grants, as well as mortgage loans from the Wisconsin
1258 Housing and Economic Development Authority (WHEDA).

- 1259 (g) Agency Lien Responsibilities. 2.5-7 ~~The Agency shall, either on its own or in~~
1260 ~~conjunction with the State,~~ be responsible for:
- 1261 (a1) updating the lien docket periodically;
 - 1262 (b2) providing a copy of the lien docket to the appropriate register of deeds;
 - 1263 (e3) responding to inquiries concerning information recorded on the lien docket;
 - 1264 (d4) ensuring the satisfaction of a lien is recorded on the lien docket;
 - 1265 (e5) renewing a lien if the lien amount equals or exceeds the lien threshold at the
1266 end of the five (5) year effective period;
 - 1267 (1A) When a lien is renewed, the date on which the lien is renewed shall
1268 become the effective date of the lien, and a new five (5) year period shall
1269 commence.
 - 1270 (f6) sending the obligor a notice when a lien has been renewed; and
 - 1271 (g7) developing procedures for releasing a lien and releasing specific property from
1272 a lien.
- 1273 (h) 2.5-8 Financial Record Review.
- 1274 (a1) An obligor may request a financial record review, in writing to the Agency
1275 within ten (10) business days of the date of notice of a lien, to determine the
1276 correctness of the financial records in a case. ~~The request shall be made in writing~~
1277 to the Agency.
 - 1278 (b2) Upon receiving a request for a financial record review, the Agency shall, at
1279 no charge to the obligor, provide the obligor with:
 - 1280 (+A) all relevant financial records;
 - 1281 (2B) information explaining how to interpret the records; and
 - 1282 (3C) a form the obligor may use to identify any alleged errors in the records.
 - 1283 (e3) Within twenty (20) days after receiving the relevant financial records, the
1284 obligor may:
 - 1285 (+A) request a meeting with the Agency to review the financial records and
1286 to discuss any alleged errors; and/or
 - 1287 (2B) provide a statement of alleged error on the documents.
 - 1288 (Ai) The Agency shall review the records to determine whether the
1289 alleged error is correct and provide a written determination within
1290 sixty (60) days after the obligor's request for a financial record
1291 review is received as to whether the lien against the obligor is in the
1292 correct amount.
 - 1293 (d4) The Agency may proceed with the lien if:
 - 1294 (+A) the obligor does not request a meeting with the Agency or provide a
1295 statement of alleged error within twenty (20) days after receiving the
1296 financial records; ~~or~~
 - 1297 (2B) no errors are found in the financial records of the case; or
 - 1298 (3C) the arrears exceed the required threshold amount after any errors in
1299 the financial records are corrected.
- 1300 704.15-3. Seizure of Property. 2.6-1. When seizing property, ~~The Agency shall have the authority~~
1301 ~~to seize property, whether an account or personal property, of an obligor. The Agency shall~~
1302 presume that an obligor's equity or ownership in the property is an equal pro-rata share of the
1303 equity or ownership based on the number of individuals with a recorded ownership interest in the
1304 property.

1305 (a) 2-6-2 Account Seizure. Once a lien is placed against an obligor, the Agency may initiate
1306 an account seizure if there is a lien against an obligor and the lien amount in the obligor's
1307 case equals or exceeds three hundred percent (300%) of the monthly amount due in the
1308 order, or one thousand dollars (\$1,000), whichever is greater.

1309 (a1) The Agency may not issue a notice of seizure unless the sum of the funds in
1310 all of the obligor's financial accounts, minus expected seizure fees and any early
1311 withdrawal penalty, exceeds five hundred dollars (\$500). The first five hundred
1312 dollars (\$500) of each account shall not be frozen and/or seized.

1313 (b2) The notice issued by the Agency shall instruct the financial institution of the
1314 following:

1315 (1A) The maximum amount frozen in an account may not exceed the
1316 amount specified by the Agency in the notice.

1317 (2B) The maximum amount frozen in an account may not exceed the
1318 obligor's ownership interest.

1319 (3C) A financial institution is not liable for encumbering or surrendering
1320 any assets held by the financial institution in response to instructions from
1321 the Agency for the purpose of enforcing a child support order.

1322 (b) 2-6-3 Seizure of Personal Property Other than Financial Accounts. In addition to the
1323 requirements under (a) and (b) below, Once a lien is placed against an obligor, the Agency
1324 may initiate the seizure of personal property if there is a lien against an obligor and the lien
1325 amount equals or exceeds six hundred percent (600%) of the monthly amount due in the
1326 order. Upon issuance of a written order of execution, non-exempt personal property may
1327 be seized and sold in a reasonable manner after notice to the owner in payment of a child
1328 support obligation that has been adjudicated delinquent by the Family Court. Ceremonial
1329 or religious property and real property are exempt from such writs of execution

1330 (a1) Personal Property. The Agency may seize personal property if the obligor's
1331 equity in the property, minus expected seizure fees, exceeds five hundred dollars
1332 (\$500) per item total.

1333 (b) The Tribe's "Disposition of Excess Tribal Property Policy" shall not apply to
1334 any property seized under this law.

1335 (2) Ceremonial or religious property and/or real property are exempt and shall not
1336 be seized by the Agency.

1337 (3) Process for Seizing Property. The Agency shall follow the following process
1338 for seizing personal property:

1339 (A) The Agency shall notify the obligor of the intent to request the Family
1340 Court to issue an order of execution for the seizure of property.

1341 (B) The Agency shall request the Family Court to grant a written order of
1342 execution for the seizure of property. The Agency shall provide the Family
1343 Court an affidavit that notice of this request has been provided to the
1344 obligor.

1345 (C) Upon issuance of a written order of execution by the Family Court,
1346 non-exempt personal property may be seized and sold in a reasonable
1347 manner.

1348 704.15-4. Attachment of Per Capita Payments. The Agency may initiate the attachment and/or
1349 seizure of per capita payments of tribal members of the Nation in accordance with applicable laws
1350 of the Nation.

1351 704.15-5. 2-7-2 License Suspension. (a) The Agency may initiate the suspension or denial of
1352 occupational, fishing, recreational, motor vehicle and/or Oneida issued licenses both State and

1353 Oneida issued licenses if there is a lien against an obligor that equals or exceeds three hundred
1354 percent (300%) of the monthly amount due in the child support order, or one thousand dollars
1355 (\$1000), whichever is greater.

1356 (a) The types of State or Oneida issued licenses that the Agency may initiate the suspension
1357 or denial of include, but are not limited to, vendor, professional, occupational, hunting,
1358 fishing, recreational, and/or motor vehicle licenses.

1359 (b) ~~Suspension of an occupational and/or motor vehicle license shall be pursued only as a~~
1360 ~~last resort and~~ the Agency shall not initiate the suspension of an occupational and/or motor
1361 vehicle license(s) if:

1362 (1) there is an order in place that prohibits the suspension of the license(s);

1363 (2) the obligor has filed for bankruptcy; or

1364 (3) action has already been taken to suspend the license.

1365 (bc) When an Oneida-issued license is suspended, that suspension shall be binding on and
1366 given effect by the license issuing agencies. Orders affecting licenses issued by other
1367 governmental agencies shall be sent to such agencies for enforcement.

1368 704.15-6. ~~Intercept of Lump-Sum Pension Payments, Judgments, and Settlements Intercepts.~~
1369 Once an obligor has been placed on the lien docket the Agency may initiate the intercept of lump-
1370 sum pension payments, judgments and/or settlements ~~when an obligor has been placed on the lien~~
1371 ~~docket.~~

1372 (a) When initiating the intercept of lump-sum pension payments, judgments and/or
1373 settlements, the Agency shall specify in the notice that the amount withheld from the lump-
1374 sum pension payment, judgment or settlement may not exceed the obligor's ownership
1375 interest in the payment.

1376 704.15-7. Tax and Lottery Intercepts. The Agency may coordinate with a federal or state agency
1377 in order to enforce a child support order through a tax and/or lottery intercept. Once an obligor
1378 has been notified that his or her tax refund and/or lottery winnings may be intercepted, that notice
1379 is valid until all arrears are paid in full.

1380 (a) Federal Tax Intercept. The Agency may certify a federal tax intercept when the
1381 requirements pertaining to federal tax intercept contained in an agreement between the
1382 State and the Nation have been met.

1383 (b) Wisconsin State Tax and/or Lottery Intercept. The Agency may certify a Wisconsin
1384 state tax intercept and/or a Wisconsin state lottery intercept, when the lottery winnings are
1385 one thousand dollars (\$1,000) or more, when the following requirements are met:

1386 (1) The arrears shall be at least one hundred and fifty dollars (\$150);

1387 (2) The arrears shall be at least thirty (30) days old; and

1388 (3) The arrears shall be for a minor child or a child who has reached the age of
1389 eighteen (18) within the last twenty (20) year.

1390 (c) Wisconsin Lottery Intercept. When a case is certified for Wisconsin state tax
1391 intercept, it shall also be automatically certified for Wisconsin lottery intercept for lottery
1392 winnings of one thousand dollars (\$1,000) or more.

1393 704.15-8. ~~2.7-5~~ Passport Denial. If a federal tax intercept is in place and the obligor owes five
1394 two thousand five hundred dollars (\$25,500) or more in arrears, an obligor may be denied a
1395 passport. The arrears must meet the criteria for federal tax intercept in order for passport denial to
1396 be used as an enforcement tool. An obligor shall be removed from the passport denial list if:

1397 (a) The federal tax intercept certification amount is zero (0);

1398 (b) The obligor makes a lump-sum payment and/or negotiates a payment plan with the
1399 Agency;

- 1400 (c) The obligor has to travel abroad because of a life-or-death situation involving an
1401 immediate family member, such as the obligor's parent, guardian, step parent, child,
1402 stepchild, grandparent, sibling, step sibling, aunt, uncle or spouse; or
1403 (d) The obligor was denied a passport in error.
1404

1405 **704.16. Family Court Enforcement Action**

1406 704.16-1. 2.8-1 If the Agency does not have the authority to conduct the appropriate enforcement
1407 action, or the obligor is unresponsive to the enforcement actions being imposed by the Agency,
1408 the case shall be referred to the Family Court for enforcement. 2.8-2 The Family Court may order
1409 any of the enforcement actions the Agency is authorized to implement, in addition to the
1410 enforcement actions described in this section. In addition, the Family Court may order the
1411 following to enforce a child support order:

1412 704.16-2. 2.8-2(a) Bonds and Other Guarantees. The Family Court may require an obligor to
1413 provide a surety, bond or guarantee to secure the payment of arrears, if wage income withholding
1414 is not applicable, practical, or feasible to secure payment of arrears.

1415 704.16-3. 2.8-2(b) Claims Against Estates. (1) The Family Court may approve a claim for past
1416 and future support against an obligor's estate. (2) The Family Court may issue a restraining order
1417 against an estate from which an obligor will inherit.

1418 704.16-4. 2.8-2(d) Contempt. The Family Court may hold a An obligor who disobeys a fails to
1419 comply with a lawful child support order in contempt. An obligor found to be in contempt shall be
1420 subject to folloing punishments: for contempt of court.

1421 (a) 2.8-2(e) Community Service. The Family Court may order an obligor to perform
1422 community service. The number of hours of work required may not exceed what would
1423 be reasonable considering the amount of arrears the obligor owes. The obligor shall be
1424 provided a written statement of the terms of the community service order and that the
1425 community service order is monitored. The order shall specify:

- 1426 (1) how many hours of community service the obligor is required to complete;
1427 (2) the time frame in which the hours must be completed;
1428 (3) how the obligor will report his or her hours; and
1429 (4) any other information the Family Court determines is relevant.

1430 (b) Fines. An obligor found in contempt of court may be fined in an amount not to exceed
1431 one thousand dollars (\$1,000.00) per act of contempt and may not exceed five thousand
1432 dollars (\$5,000.00) in total. In instances of continuing contempt, each day shall constitute
1433 a separate act of contempt.

1434 (c) 2.8-2(e) Incarceration. The Family Court may order an obligor be incarcerated,
1435 contingent on the agreements necessary to enable the Tribe to incarcerate individuals.
1436 Before a jail sentence is imposed, the Family Court may provide other conditions that
1437 require a certain amount of money be paid or action be taken for an obligor to avoid
1438 incarceration.

1439 (d) 2.8-3 Criminal Non-Support. A criminal non-support action may be initiated, in the
1440 appropriate county, against an obligor who has the ability to pay child support and willfully
1441 or intentionally failed to pay and the obligor knew or reasonably should have known he or
1442 she was legally obligated to provide.
1443

1444 **704.17. Full Faith and Credit for Foreign Child Support Orders**

1445 704.17-1. Properly issued child Child support orders, and judgments, or decrees of other Indian
1446 federally recognized tribes, tribal organizations, and states, that relate to child support shall be

1447 recognized and modified in accordance with the requirements under the Full Faith and Credit for
1448 Child Support Orders Act, 28 U.S.C. 1738B.

1449 704.17-2. A foreign order is authenticated by reasonable proof that the document tendered to
1450 the Family Court is a true **certified** copy of the foreign order as it is recorded in the agency or court
1451 of the issuing jurisdiction. An authentication stamp issued by a court clerk or custodian of records,
1452 or a court seal, is sufficient evidence of authenticity.

1453 704.17-3. Unless defects in jurisdiction are apparent on the face of the foreign order, the person
1454 contesting enforcement of the order has the burden of showing the order is not valid. Upon a
1455 failure to respond to notice of the order and to timely contest it, the Family Court shall enforce it
1456 as **an order of the Family Court order**.

1457 704.17-4. If a foreign order is brought before the Family Court solely for an interpretation of
1458 the terms of the order, and the order has been recognized and given full faith and credit by the
1459 Family Court, the Family Court shall interpret the order by applying the law of the forum that
1460 issued the foreign order.

1461

1462 **704.18. Right of Appeal**

1463 704.18-1. **Appeals of Administrative Enforcement Action.** Any enforcement action implemented
1464 by the Agency may **be appealed to the Family Court** within thirty (30) calendar days after the date
1465 that the action is enforced, ~~be appealed to the Family Court~~. The decision of the Family Court **as**
1466 **to the Agency's administrative enforcement action** shall be final **and non-appealable**.

1467 704.18-2. **Appeals of Family Court Decisions.** ~~If the Family Court conducts a hearing under this~~
1468 ~~law a~~ **A** party may **appeal a Family Court decision, other than the decision of the Family Court in**
1469 **regard to administrative enforcement action as referenced in section 704.18-1, to the Nation's**
1470 **Court of Appeals** within thirty (30) calendar days after the date ~~that the Family Court~~ **makes a**
1471 **made the** decision, ~~appeal that decision to the Court of Appeals of the Judiciary~~. The **appellate**
1472 **body** review **of the Court of Appeals** shall be based on the record and the original decision of the
1473 Family Court.

1474

1475 *End.*

1476 Emergency Adopted - BC-06-30-08-C (Expired)

1477 Emergency Extended - BC-12-10-08-H (Expired)

1478 Permanently Adopted- BC-06-24-09-B

1479 Emergency Amended - BC-10-28-09-E

1480 Amended - BC-02-24-10-G

1481 Amended - BC-06-22-11-K

1482 Amended - BC-10-10-12-C

1483 Amended - BC-08-13-14-E

1484 Amended - BC- - - -

1485 **Rule CS-1**

1486 **DEVIATION FROM CHILD SUPPORT PERCENTAGE STANDARDS**

1487

1488 ~~1.1. Introduction~~ ~~1.3. Support Orders~~

1489 ~~1.2. Definitions~~ ~~1.4. Determining the Child Support Obligation in~~

1490 ~~Special Circumstances~~

1491

1492

1493 **1.1. Introduction**

1494 ~~1.1-1. Purpose. This rule is promulgated for the purpose of determining child support when~~
1495 ~~circumstances require a deviation from the percentage standards in Chapter 704.~~

1496 ~~1.1-2. Applicability. This rule applies to any child support order or child support order~~
1497 ~~modification implemented under Chapter 704.~~

1498 ~~1.1 3. *Effect of Rule Change.* A modification of any provision in this rule shall not in and of itself~~
1499 ~~be considered a substantial change in circumstances sufficient to justify a revision of a judgment~~
1500 ~~or order under Chapter 704. A modification of any provision in this rule shall apply to orders~~
1501 ~~established after the effective date of the modification.~~

1502 ~~1.1 4. This rule shall be effective June 24, 2009.~~

1503

1504 **1.2. Definitions**

1505 ~~1.2 1. In this rule:~~

1506 ~~(a) “Adjusted monthly income” means the monthly income at which child support is~~
1507 ~~determined for serial family obligors, which is the obligor’s monthly income less the~~
1508 ~~amount of any existing legal obligation for child support.~~

1509 ~~(b) “Agency” means the Oneida Tribe Child Support Agency.~~

1510 ~~(c) “Basic support costs” means food, shelter, clothing, transportation, personal care, and~~
1511 ~~incidental recreational costs.~~

1512 ~~(d) “Child” means a person under the age of eighteen (18), or any person who is less than~~
1513 ~~nineteen (19) years old if he or she is pursuing a high school diploma or its equivalent from~~
1514 ~~an accredited course of instruction.~~

1515 ~~(e) “Child support” means the total financial obligation a parent has towards his or her~~
1516 ~~child as established through judicial and/or administrative processes.~~

1517 ~~(f) “Child Support Order” means a judgment of the Family Court or a court of competent~~
1518 ~~jurisdiction ordering payment of child support which provides monetary support, health~~
1519 ~~care, arrearages, or reimbursement, and which may include related costs and fees, income~~
1520 ~~withholding, attorneys’ fees and other relief.~~

1521 ~~(g) “Current 6 month treasury bill rate” means the yield of a U.S. government security~~
1522 ~~with a term of 6 months.~~

1523 ~~(h) “Dependent household member” means a person for whom a taxpayer is entitled to an~~
1524 ~~exemption for the taxable year under 26 USC 151.~~

1525 ~~(i) “Family Court” shall mean the judicial arm of the Tribe that is designated to handle all~~
1526 ~~matters under this Law.~~

1527 ~~(j) “Federal dependency exemption” means the deduction allowed in computing taxable~~
1528 ~~income pursuant to 26 USC 151 for a child of the taxpayer who has not attained the age of~~
1529 ~~nineteen (19) or who is a student.~~

1530 ~~(k) “Gross income” means any form of payment due to an individual regardless of source,~~
1531 ~~including, but not limited to:~~

1532 ~~(1) Salary and wages, including overtime pay.~~

1533 ~~(2) Interest and investment income.~~

1534 ~~(3) Social Security disability and old age insurance benefits under 42 USC 401 to~~
1535 ~~433.~~

1536 ~~(4) Net proceeds resulting from worker’s compensation or other personal injury~~
1537 ~~awards intended to replace income.~~

1538 ~~(5) Unemployment insurance.~~

1539 ~~(6) Income continuation benefits.~~

1540 ~~(7) Voluntary deferred compensation and voluntary employee contributions to the~~
1541 ~~following: employee benefit plan, profit sharing, pension or retirement account.~~

1542 ~~(8) Military allowances and veterans benefits.~~

1543 ~~(9) Undistributed income of a corporation or any partnership in which the parent~~
1544 ~~has an ownership interest sufficient to individually exercise control or to access the~~
1545 ~~earnings of the business, unless the income included is an asset.~~

- 1546 ~~(10) Per capita distribution payments.~~
1547 ~~(11) Lease or rental income.~~
1548 ~~(12) Prizes over \$1,000.00.~~
1549 ~~(13) All other income, whether taxable or not, except that gross income does not~~
1550 ~~include any of the following:~~
1551 ~~(A) Child support.~~
1552 ~~(B) Foster care payments.~~
1553 ~~(C) Kinship care payments.~~
1554 ~~(D) Public assistance benefits, except that child care subsidy payments shall~~
1555 ~~be considered income to a child care provider.~~
1556 ~~(E) Food stamps.~~
1557 ~~(F) Public assistance or financial hardship payments paid by a county or a~~
1558 ~~tribe.~~
1559 ~~(G) Supplemental Security Income under 42 USC 1381 to 1383(f) and state~~
1560 ~~supplemental payments.~~
1561 ~~(H) Payments made for social services.~~
1562 ~~(l) “Income imputed based on earning capacity” means the amount of income that exceeds~~
1563 ~~the parent’s actual income and represents the parent’s ability to earn, based on the parent’s~~
1564 ~~education, training and recent work experience, earnings during previous periods, current~~
1565 ~~physical and mental health, history of child care responsibilities as the parent with primary~~
1566 ~~physical placement, and the availability of work in or near the parent’s community.~~
1567 ~~(m) “Income imputed from assets” means the amount of income ascribed to assets that are~~
1568 ~~unproductive and to which income has been diverted to avoid paying child support or from~~
1569 ~~which income is necessary to maintain the child or children at the standard of living they~~
1570 ~~would have if they were living with both parents, and that exceeds the actual income from~~
1571 ~~the assets.~~
1572 ~~(n) “Income modified for business expenses” means the amount of income after adding~~
1573 ~~wages paid to dependent household members, adding undistributed income that the Family~~
1574 ~~Court determines is not reasonably necessary for the growth of the business, and~~
1575 ~~subtracting business expenses that the Family Court determines are reasonably necessary~~
1576 ~~for the production of that income or operation of the business and that may differ from the~~
1577 ~~determination of allowable business expenses for tax purposes.~~
1578 ~~(o) “Intact family” means a family in which the child or children and the obligor reside in~~
1579 ~~the same household and the obligor shares his or her income directly with the child or~~
1580 ~~children and has a legal obligation to support the child or children.~~
1581 ~~(p) “Low income obligor” means an obligor for whom the Family Court uses the monthly~~
1582 ~~support amount provided in the schedule in Appendix A based on the Family Court’s~~
1583 ~~determination that the obligor’s total economic circumstances limit his or her ability to pay~~
1584 ~~support at the level provided under 704.7 2(a) and the obligor’s income is at a level set~~
1585 ~~forth in the schedule in Appendix A.~~
1586 ~~(q) “Marital child” means a child born during the marriage of his or her parents. In~~
1587 ~~addition, if the father and mother of a non-marital child enter into a lawful marriage or a~~
1588 ~~marriage which appears and they believe is lawful, except where the parental rights of the~~
1589 ~~mother were terminated before either of these circumstances, the child becomes a marital~~
1590 ~~child and shall enjoy all of the rights and privileges of a marital child as if he or she had~~
1591 ~~been born during the marriage of the parents. The children of all marriages declared void~~
1592 ~~under the law are nevertheless marital children.~~

- 1593 ~~(r) “Monthly income” means the obligor’s income available for child support and is the~~
1594 ~~obligor’s annual gross income or, if applicable, the obligor’s annual income modified for~~
1595 ~~business expenses; plus the obligor’s annual income imputed based on earning capacity;~~
1596 ~~plus the obligor’s annual income imputed from assets; divided by twelve (12).~~
1597 ~~(s) “Parent” means the natural or adoptive parent of the child.~~
1598 ~~(t) “Obligee” means the person or entity to whom child support is owed.~~
1599 ~~(u) “Obligor” means the person who is obliged to pay child support to the obligee.~~
1600 ~~(v) “Serial family obligor” means an obligor with an existing legal obligation for child~~
1601 ~~support who incurs an additional legal obligation for child support in a subsequent family~~
1602 ~~as a result of a child support order.~~
1603 ~~(w) “Shared placement obligor” means a parent who has an ordered period of placement~~
1604 ~~of at least twenty five percent (25%), is ordered by the Family Court to assume the child’s~~
1605 ~~basic support costs in proportion to the time that the parent has placement of the child and~~
1606 ~~is determined to owe a greater support amount than the other parent.~~
1607 ~~(x) “Split placement obligor” means a obligor who has two (2) or more children and who~~
1608 ~~has physical placement of one (1) or more but not all of the children.~~
1609 ~~(y) “Variable costs” means the reasonable costs above basic support costs incurred by or~~
1610 ~~on behalf of a child, including but not limited to, the cost of child care, tuition, a child’s~~
1611 ~~special needs, and other activities that involve substantial cost.~~
1612

1.3. Support Orders

1614 ~~1.3.1. *Determining Income Modified for Business Expenses.* In determining a parent’s monthly~~
1615 ~~income, the Family Court may adjust a parent’s gross income as follows:~~

- 1616 ~~(a) Adding wages paid to dependent household members.~~
1617 ~~(b) Adding undistributed income that the Family Court determines is not reasonably~~
1618 ~~necessary for the growth of the business. The parent shall have the burden of proof to show~~
1619 ~~that any undistributed income is reasonably necessary for the growth of the business.~~
1620 ~~(c) Reducing gross income by the business expenses that the Family Court determines are~~
1621 ~~reasonably necessary for the production of that income or operation of the business and~~
1622 ~~that may differ from the determination of allowable business expenses for tax purposes.~~

1623 ~~1.3.2. *Determining Income Imputed Based on Earning Capacity.* When a parent’s income is less~~
1624 ~~than the parent’s earning capacity or is unknown, the Family Court may impute income to the~~
1625 ~~parent at an amount that represents the parent’s ability to earn, based on the parent’s education,~~
1626 ~~training and recent work experience, earnings during previous periods, current physical and mental~~
1627 ~~health, history of child care responsibilities as the parent with primary physical placement and the~~
1628 ~~availability of work in or near the parent’s community. If evidence is presented that due diligence~~
1629 ~~has been exercised to ascertain information on the parent’s actual income or ability to earn and~~
1630 ~~that information is unavailable, the Family Court may impute to the parent the income that a person~~
1631 ~~would earn by working thirty five (35) hours per week for the federal minimum hourly wage under~~
1632 ~~29 USC 206 (a)(1). If a parent has gross income or income modified for business expenses below~~
1633 ~~his or her earning capacity, the income imputed based on earning capacity shall be the difference~~
1634 ~~between the parent’s earning capacity and the parent’s gross income or income modified for~~
1635 ~~business expenses.~~

1636 ~~1.3.3. *Determining Income Imputed From Assets.*~~

- 1637 ~~(a) The Family Court may impute a reasonable earning potential to a parent’s assets if the~~
1638 ~~Family Court finds both of the following:~~
1639 ~~(1) The parent has ownership and control over any real or personal property,~~
1640 ~~including but not limited to, life insurance, cash and deposit accounts, stocks and~~

1641 ~~bonds, business interests, net proceeds resulting from worker's compensation or~~
1642 ~~other personal injury awards not intended to replace income, and cash and corporate~~
1643 ~~income in a corporation in which the parent has an ownership interest sufficient to~~
1644 ~~individually exercise control and the cash or corporate income is not included as~~
1645 ~~gross income.~~

1646 ~~(2) The parent's assets are underproductive and at least one (1) of the following~~
1647 ~~applies:~~

1648 ~~(a) The parent has diverted income into assets to avoid paying child~~
1649 ~~support.~~

1650 ~~(b) Income from the parent's assets is necessary to maintain the child or~~
1651 ~~children at the standard of living they would have had if they were living~~
1652 ~~with both parents.~~

1653 ~~(b) The Family Court shall impute income to assets by multiplying the total net value of~~
1654 ~~the assets by the current 6 month treasury bill rate or any other rate that the Family Court~~
1655 ~~determines is reasonable and subtracting the actual income from the assets that were~~
1656 ~~included as gross income.~~

1657 ~~1.3-4. Adjustment for Child's Social Security. The Family Court may include benefits received~~
1658 ~~by a child under 42 USC 402(d) based on a parent's entitlement to federal disability or old-age~~
1659 ~~insurance benefits under 42 USC 401 to 433 in the parent's gross income and adjust a parent's~~
1660 ~~child support obligation by subtracting the amount of the child's social security benefit. In no case~~
1661 ~~may this adjustment require the obligee to reimburse the obligor for any portion of the child's~~
1662 ~~benefit.~~

1663 ~~1.3-5. Expression of Ordered Support. The support amount shall be expressed as a fixed sum~~
1664 ~~unless the parties have stipulated to expressing the amount as a percentage of the obligor's income~~
1665 ~~and the stipulation requirements of Chapter 704 are satisfied.~~

1666 ~~1.3-6. Trust. The Family Court may protect and promote the best interests of the minor children~~
1667 ~~by setting aside a portion of the child support that either party is ordered to pay in a separate fund~~
1668 ~~or trust for the support, education, and welfare of such children.~~

1669 ~~1.3-7. Dependency Exemption. The Family Court may order the obligee to waive the federal~~
1670 ~~dependency exemption provided that the obligee's execution of the exemption waiver is made~~
1671 ~~contingent on the receipt of child support payments.~~

1672

1673 **1.4. Determining the Child Support Obligation in Special Circumstances**

1674 **1.4-1. Determining the Child Support Obligation of a Serial Family Obligor.**

1675 ~~(a) Applicability. This subsection applies only if the additional child support obligation~~
1676 ~~incurred by an obligor is the result of a child support order and the support obligation being~~
1677 ~~calculated is for children from a subsequent family or subsequent paternity judgment or~~
1678 ~~acknowledgment. An obligor may not use the provisions of this section as a basis for~~
1679 ~~seeking modification of an existing order based on a subsequently incurred legal obligation~~
1680 ~~for child support.~~

1681 ~~(b) Determination. For a serial family obligor, the child support obligation incurred for a~~
1682 ~~marital or nonmarital child in a subsequent family as a result of a child support order may~~
1683 ~~be determined as follows:~~

1684 ~~(1) Determine the obligor's monthly income;~~

1685 ~~(2) Determine the order of the obligor's legal obligations for child support by~~
1686 ~~listing them according to the date each obligation is incurred. For a marital child,~~
1687 ~~the legal obligation for child support is incurred on the child's date of birth. For a~~
1688 ~~nonmarital child, the legal obligation for child support is incurred on the date of the~~

1689 ~~child support order. For a nonmarital child in an intact family, it is incurred on the~~
1690 ~~date of adoption or the date of the filing of an acknowledgement of paternity. For~~
1691 ~~a nonmarital maternal child in an intact family, it is incurred on the child's date of~~
1692 ~~birth;~~

1693 ~~(3) Determine the first child support obligation as follows:~~

1694 ~~(a) If the obligor is subject to an existing support order for that legal~~
1695 ~~obligation, except a shared placement order, the support for that obligation~~
1696 ~~is the monthly amount of that order; or~~

1697 ~~(b) If the obligor is in an intact family or is subject to a shared placement~~
1698 ~~order, the support is determined by multiplying the appropriate percentage~~
1699 ~~for that number of children by the obligor's monthly income;~~

1700 ~~(4) Adjust the monthly income by subtracting the support for the first legal~~
1701 ~~obligation under (3) from the obligor's monthly income under (1);~~

1702 ~~(5) Determine the second child support obligation as follows:~~

1703 ~~(a) If the obligor is subject to an existing support order for that legal~~
1704 ~~obligation, except a shared placement order, the support for that obligation~~
1705 ~~is the monthly amount of that order; or~~

1706 ~~(b) If the obligor is in an intact family or is subject to a shared placement~~
1707 ~~order, the support is determined by multiplying the appropriate percentage~~
1708 ~~for that number of children by the obligor's monthly income;~~

1709 ~~(6) Adjust the monthly income a second time by subtracting the support for the~~
1710 ~~second legal obligation determined under (5) from the first adjusted monthly~~
1711 ~~income determined under (4);~~

1712 ~~(7) Repeat the procedure under (5) and (6) for each additional legal obligation for~~
1713 ~~child support the serial family obligor has incurred;~~

1714 ~~(8) Multiply the appropriate percentage for the number of children subject to the~~
1715 ~~new order by the final adjusted monthly income determined in either (6) or (7) to~~
1716 ~~determine the new child support obligation.~~

1717 ~~Note: The following example shows how the child support obligation is determined for a serial-~~
1718 ~~family obligor whose additional child support obligation has been incurred for a subsequent~~
1719 ~~family.~~

1720 ~~Assumptions:~~

- 1721 ~~• Parent A's current monthly income is \$3000.~~
- 1722 ~~• Parent A and Parent B were married, had a child in 1990 and divorced in 1991. Parent~~
1723 ~~A is subject to an existing support order of \$450 per month.~~
- 1724 ~~• Parent A remarries and has two children, one born in 1996 and the other in 1997, and~~
1725 ~~remains an intact family.~~
- 1726 ~~• Parent A was adjudicated the father in 1998 for a child born in 1995. Child support~~
1727 ~~needs to be established for this child.~~

1728

1729 ~~Order of parent A's legal obligation for child support:~~

- 1730 ~~• First legal obligation: one child (1990) (divorcee)~~
- 1731 ~~• Second legal obligation: 2 children (1996 and 1997) (intact family)~~
- 1732 ~~• Third legal obligation: one child (1998) (paternity)~~

1733

1734 ~~Calculation:~~

- 1735 ~~• Parent A's current monthly income \$3000.~~

- 1736 ● ~~The first legal obligation is subject to an existing monthly support order (divorcee) \$450.~~
- 1737 ● ~~Adjust the monthly income \$3000—450~~
- 1738 ● ~~First adjusted monthly income \$2550~~
- 1739 ● ~~Determine support for the second legal obligation (intact family) $\$2550 \times .25 = \637.50~~
- 1740 ● ~~Adjust the first adjusted monthly income $\$2550—637.50$~~
- 1741 ● ~~Second adjusted monthly income \$1912.50~~
- 1742 ● ~~Determine support for the third legal obligation (paternity) $\$1912.50 \times .17 = \325.12~~
- 1743

1744 1.4.2. ~~Determining the Child Support Obligations of Shared Placement Parents.~~

1745 (a) ~~The shared placement formula may be applied when both of the following conditions~~
1746 ~~are met:~~

1747 (1) ~~Both parents have periods of placement of at least twenty-five percent (25%)~~
1748 ~~or ninety-two (92) days a year. The period of placement for each parent shall be~~
1749 ~~determined by calculating the number of overnights or equivalent care ordered to~~
1750 ~~be provided by the parent and dividing that number by 365. The combined periods~~
1751 ~~of placement for both parents shall equal 100%.~~

1752 (2) ~~Each parent is ordered by the Family Court to assume the child's basic support~~
1753 ~~costs in proportion to the time that the parent has placement of the child.~~

1754 (b) ~~The child support obligations for parents who meet the requirements of (a) may be~~
1755 ~~determined as follows:~~

1756 (1) ~~Determine each parent's monthly income. In determining whether to impute~~
1757 ~~income based on earning capacity for an unemployed parent or a parent employed~~
1758 ~~less than full time under 1.3-2, the Family Court shall consider benefits to the child~~
1759 ~~of having a parent remain in the home during periods of placement and the~~
1760 ~~additional variable day care costs that would be incurred if the parent worked more.~~

1761 (2) ~~Multiply each parent's monthly income by the appropriate percentage standard~~
1762 ~~under 704.7.~~

1763 (3) ~~Multiply each amount determined under (2) by 150%.~~

1764 (4) ~~Multiply the amount determined for each parent under (3) by the proportion of~~
1765 ~~the time that the child spends with the other parent to determine each parent's child~~
1766 ~~support obligation.~~

1767 (5) ~~Offset resulting amounts under (4) against each other. The parent with a greater~~
1768 ~~child support obligation is the shared placement obligor. The shared placement~~
1769 ~~obligor shall pay the lesser of the amount determined under this section or the~~
1770 ~~amount determined using the appropriate percentage standard under 704.7. If the~~
1771 ~~shared placement obligor is also a low-income obligor, the child support obligation~~
1772 ~~may be the lesser of the amount determined under this section or under 1.4-4.~~

1773 (6) ~~In addition to the child support obligation determined under (5), the Family~~
1774 ~~Court shall assign responsibility for payment of the child's variable costs in~~
1775 ~~proportion to each parent's share of physical placement, with due consideration to~~
1776 ~~a disparity in the parents' incomes. The Family Court shall direct the manner of~~
1777 ~~payment of a variable cost order to be either between the parents or from a parent~~
1778 ~~to a third party service provider. The Family Court shall not direct payment of~~
1779 ~~variable costs to be made to the Agency or the Agency's designee, except as~~
1780 ~~incorporated in the fixed sum or percentage expressed child support order.~~

1781 Note: ~~The following example shows how to calculate the child support obligations of shared-~~
1782 ~~placement parents.~~

- 1783 ~~• Number of children: Two~~
- 1784 ~~• Parent A: \$2,000 monthly income~~
- 1785 ~~• Ordered placement of the child for 219 days a year or 60%~~
- 1786 ~~• Parent B: \$3,000 monthly income~~
- 1787 ~~Ordered placement of the child for 146 days a year or 40%~~
- 1788

	Parent A	Parent B
1. Monthly income	\$2,000	\$3,000
2. Monthly income X percentage standard for two children	$\$2,000 \times 25\% = \500	$\$3,000 \times 25\% = \750
3. Amount in 2. X 150%.	$\$500 \times 150\% = \750	$\$750 \times 150\% = \1125
4. Amount in 3. X the proportion of time that the child spends with the other parent	$\$750 \times 40\% = \300	$\$1125 \times 60\% = \675
5. Offset	$\$675 - \$300 = \$375$	
6. Family Court also assigns responsibility for payment of the child's variable costs:	Manner of payment is between the parents or from a parent to a third party service provider, except as incorporated in the fixed sum or percentage expressed child support order.	

1789
 1790 ~~1.4.3. Determining the Child Support Obligations of Split-Placement Parents. For parents who~~
 1791 ~~have two (2) or more children and each parent has placement of one (1) or more but not all of the~~
 1792 ~~children, the child support obligations may be determined as follows:~~

- 1793 ~~(a) Determine each parent's monthly income.~~
- 1794 ~~(b) Multiply each parent's monthly income by the appropriate percentage for the number of~~
 1795 ~~children placed with the other parent to determine each parent's child support obligation.~~
- 1796 ~~(c) Offset resulting amounts under (b) against each other. The parent with a greater child support~~
 1797 ~~obligation is the split placement obligor.~~

1798 ~~Note: The following example shows how to calculate the amount of child support for split-~~
 1799 ~~placement parents:~~

1800 ~~Assumptions:~~

- 1801 ~~• Parent A and B have 3 children.~~
- 1802 ~~• Parent A has placement of one child and Parent B has placement of 2 children.~~
- 1803 ~~• Parent A's monthly income is \$3,000.~~
- 1804 ~~• Parent B's monthly income is \$1,500.~~

1805 ~~Calculation:~~

- 1806 ~~• Parent A's child support obligation is $\$3,000 \times 25\% = 750$~~
- 1807 ~~• Parent B's child support obligation is $\$1,500 \times 17\% = 255$~~
- 1808 ~~• Parent A owes Parent B $750 - 255 = \$495$~~

1809 ~~1.4.4. Determining the Child Support Obligation of a Low-Income Obligor.~~

1810 ~~(a) The Family Court may use the monthly support amount provided in the schedule in Appendix~~
 1811 ~~A as the support amount for an obligor with a monthly income at a level set forth in the schedule~~
 1812 ~~if the obligor's total economic circumstances limit his or her ability to pay support at the level~~
 1813 ~~determined under 704.7. If an obligor's monthly income is below the lowest income level in~~
 1814 ~~Appendix A, the Family Court may set an order at an amount appropriate for the obligor's total~~

1815 ~~economic circumstances. This amount may be lower than the lowest support amount in Appendix~~
1816 ~~A.~~

1817 ~~(b) The Agency shall revise the schedule in Appendix A at least once every four (4) years. The~~
1818 ~~revision shall be based on changes in the federal poverty guidelines since the schedule was last~~
1819 ~~revised.~~

1820 ~~**Note:** The schedule in Appendix A provides reduced percentage rates that may be used to~~
1821 ~~determine the child support obligation for obligors with an income below approximately 125% of~~
1822 ~~the federal poverty guidelines. If an obligor's monthly income is below approximately 75% of the~~
1823 ~~federal poverty guidelines, the Family Court may order an amount appropriate for the obligor's~~
1824 ~~total economic circumstances. For monthly income amount for child support between~~
1825 ~~approximately 75% and 125% of the federal poverty guidelines, the percentage rates in the~~
1826 ~~schedule gradually increase as income increases. The percentage rates used in 704.7 apply to~~
1827 ~~obligors with income greater than or equal to approximately 125% of the federal poverty~~
1828 ~~guidelines.~~

1829
1830 ~~End.~~

1831

Rule CS-2
ENFORCEMENT TOOLS

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

2.1. Purpose and Effective Date

~~2.1-1. This rule is promulgated for the purpose of establishing the enforcement tools that may be used when an obligor is no longer paying the amount required by a child support order.~~

~~2.1-2. This rule shall be effective June 24, 2009.~~

2.2. Definitions

~~2.2-1. In this rule:~~

~~(a) “Administrative enforcement actions” means actions authorized by federal regulations which are taken to enforce a child support order without obtaining an order from the Family Court.~~

~~(b) “Agency” means the Oneida Tribe Child Support Agency.~~

~~(c) “Alternative payment plan” or “plan” means a negotiated agreement between the Agency and an obligor, or an order set by the Family Court, to establish terms for the payment of arrears.~~

~~(d) “Equity” means the fair market value of property minus the liens on that property with priority over the child support lien.~~

~~(e) “Lien amount” means the difference between the monthly amount of support due and the arrears in a case.~~

~~(f) “Lien docket” means the registry kept by the State of Wisconsin containing the names of people who owe past due child support.~~

~~(g) “Monthly amount due” means the sum of court ordered provisions for periodic payments due in one (1) month, including any arrears payment.~~

~~(h) “Obligee” means the person or entity to whom child support is owed.~~

~~(i) “Obligor” means the person who is obliged to pay child support to the obligee.~~

~~(j) “Ownership interest” means any personal financial interest.~~

~~(k) “Qualified child” means an individual who is no longer a minor but who, while still a minor, was determined to be disabled under Title II or Title XVI of the Social Security Act.~~

~~(l) “Threshold” means an amount, expressed as either a percentage of the monthly amount due, a fixed dollar amount, or both, that the lien amount must equal or exceed before an administrative enforcement action may be used to enforce a child support order.~~

2.3. Compliance Plan

~~2.3-1. The Agency shall attempt to meet with a party who is found to be subject to enforcement action as soon as possible by sending a Letter of Non-Compliance within five (5) business days of being informed of a party’s failure to either pay support as ordered or to meet a required obligation or action.~~

~~(a) The Letter shall set out the conditions the party has failed to comply with, outline the enforcement actions that may be taken and request the party meet with the Agency.~~

~~(b) If the party does not respond to the Letter within five (5) business days after receipt of the letter, the Agency shall send a second Letter.~~

1881 ~~(c) If the party fails to respond to the second Letter within five (5) business days after~~
1882 ~~receipt of the letter, the Agency shall proceed with appropriate enforcement action.~~

1883 ~~(d) If the party responds to the Letter, the Agency shall interview the party to determine~~
1884 ~~the reasons and barriers for the non-compliance and create a Compliance Plan. The~~
1885 ~~Compliance Plan may include an increase in payment and/or any activity that is necessary~~
1886 ~~to ensure payment, including programs that focus on:~~

- 1887 ~~(1) Employment and training;~~
1888 ~~(2) Social service and mental health;~~
1889 ~~(3) Physical and learning disabilities;~~
1890 ~~(4) Tribal traditions and customs;~~
1891 ~~(5) Family counseling.~~

1892 ~~(e) If the party successfully completes the Compliance Plan, no further enforcement action~~
1893 ~~is necessary. However, if the party fails to complete the Compliance Plan, the Agency~~
1894 ~~shall proceed with appropriate enforcement action.~~

1896 **2.4. Notice of Enforcement Actions**

1897 ~~2.4.1. The enforcement actions in this rule may be applied when an obligor is no longer in~~
1898 ~~compliance with a child support order and is not making efforts to comply with the order. An~~
1899 ~~obligor shall be provided with at least thirty (30) days notice before an enforcement action is~~
1900 ~~utilized, unless another time line is specified within this rule. An enforcement action shall be stayed~~
1901 ~~and/or suspended after notice is given to the obligor if the obligor pays the debt in full or enters~~
1902 ~~into, and maintains, an alternative payment plan.~~

1903 ~~2.4.2. Notice of Delinquency. In the event that an obligor owes a debt equal to or exceeding the~~
1904 ~~monthly amount due, the Agency shall send a notice of delinquency to the obligor.~~

1905 ~~(a) The notice shall inform the obligor of the following:~~

- 1906 ~~(1) The dates that the delinquency accrued;~~
1907 ~~(2) The total amount of the delinquency;~~
1908 ~~(3) Any prior agreement or showing of good cause to not wage withhold may be~~
1909 ~~terminated and the obligor may be subject to wage withholding;~~
1910 ~~(4) The enforcement action that may be taken as a result of the delinquency;~~
1911 ~~(5) The obligor may request, in writing to the Agency, to negotiate an alternative~~
1912 ~~payment plan with the Agency within ten (10) business days after the service of~~
1913 ~~notice in order to stay any enforcement action;~~
1914 ~~(6) The obligor has ten (10) business days after the service of the notice of~~
1915 ~~delinquency to file an objection with the Agency presenting good cause why an~~
1916 ~~arrears payment or other enforcement action should not be implemented. The only~~
1917 ~~allowable objections are:~~

- 1918 ~~(A) There is an error in the amount of current or overdue support; or~~
1919 ~~(B) The identity of the obligor is mistaken.~~

1920 ~~(b) If the obligor does not file an objection or request to negotiate an alternative payment~~
1921 ~~plan:~~

- 1922 ~~(1) the enforcement action shall be taken; and/or~~
1923 ~~(2) a wage withholding order, or revised order if one is already in place, shall be~~
1924 ~~imposed on the payor. No more than an additional twenty percent (20%) of the~~
1925 ~~current support payment order can be withheld to satisfy the delinquency provided~~
1926 ~~that the total amount withheld does not exceed forty percent (40%) of the obligor's~~
1927 ~~monthly income.~~

1928 ~~(c) If a permissible objection is filed, the obligor shall be entitled to a hearing before any~~
1929 ~~enforcement action is taken.~~

1930 ~~2.4 3. Use of Mail. The Agency shall send notices related to the enforcement of a child support~~
1931 ~~order by mail to the last known mailing address provided by the obligor. If the notice is returned,~~
1932 ~~the Agency shall send notice to the obligor using the current employer mailing address provided~~
1933 ~~by the obligor. If the notice to the obligor mailed to the obligor's employer is returned, the Agency~~
1934 ~~shall use all appropriate tribal, federal, state and local resources to ascertain an obligor's current~~
1935 ~~mailing address. If those resources are used for a period of sixty (60) days and a verified mailing~~
1936 ~~address has not been identified, the Agency may proceed with the administrative enforcement~~
1937 ~~action.~~

1938 ~~2.4 4. Notice to the Obligee of Enforcement Proceedings. The Agency shall provide written notice~~
1939 ~~to the obligee when an enforcement action has been initiated against the obligor or when the~~
1940 ~~obligor requests a hearing and the hearing has been scheduled. The notice to the obligee shall be~~
1941 ~~sent at the same time notice is sent to the obligor.~~

1942 ~~2.4 5. Notice to Individuals Other Than the Obligor with a Recorded Ownership Interest in~~
1943 ~~Property. The Agency shall provide notice related to the seizure of property to any individual,~~
1944 ~~other than the obligor, with a recorded ownership interest in property subject to seizure. The~~
1945 ~~individual may request a hearing for a determination of the proportion of the value of the property~~
1946 ~~that is attributable to his or her net contribution to the property. The hearing shall be requested~~
1947 ~~within thirty (30) days after the notice was received by the individual.~~

1948

1949 **2.5. Liens**

1950 ~~2.5 1. The Agency shall have an obligor placed on the lien docket if the obligor owes a debt in~~
1951 ~~one or more of the obligor's cases equal to or exceeding the monthly amount due or \$500.00,~~
1952 ~~whichever is greater.~~

1953 ~~2.5 2. Lien Amount. The lien amount on the lien docket shall equal the sum of lien amounts from~~
1954 ~~the cases in which the lien amount meets or exceeds the lien threshold.~~

1955 ~~2.5 3. Filing Date. The filing date on the lien docket is the date that a lien is first docketed and~~
1956 ~~delivered to the register of deeds. The filing date is the effective date of the lien. The effective~~
1957 ~~date does not change if the lien amount is adjusted up or down within five (5) years after the date~~
1958 ~~that the lien is first docketed.~~

1959 ~~2.5 4. Lien Priority. The child support lien shall have priority over all other liens on property~~
1960 ~~except tax and special assessment liens, purchase money mortgages, construction liens,~~
1961 ~~environmental liens, liens that are filed or recorded before the child support lien becomes effective~~
1962 ~~and any other lien given priority under the law.~~

1963 ~~(a) Property subject to a lien includes personal property in which the obligor has a recorded~~
1964 ~~ownership interest.~~

1965 ~~(b) A child support lien is not effective against a good faith purchaser of titled personal~~
1966 ~~property unless the lien is recorded on the title.~~

1967 ~~2.5 5. Credit Bureau Reporting. The Agency may report the total amount of an obligor's liens to~~
1968 ~~the credit bureau, so long as the lien is fully enforceable and the case is not barred from credit~~
1969 ~~bureau reporting.~~

1970 ~~2.5 6. Denial of State issued Grants and Loans. Wisconsin state agencies may deny grants and~~
1971 ~~loans to an obligor who is placed on the lien docket. These grants and loans include student loans~~
1972 ~~and higher education grants, as well as mortgage loans from the Wisconsin Housing and Economic~~
1973 ~~Development Authority (WHEDA).~~

1974 ~~2.5 7. The Agency shall, either on its own or in conjunction with the State, be responsible for:~~

1975 ~~(a) updating the lien docket periodically.~~

1976 ~~(b) providing a copy of the lien docket to the appropriate register of deeds.~~
1977 ~~(c) responding to inquiries concerning information recorded on the lien docket.~~
1978 ~~(d) ensuring the satisfaction of a lien is recorded on the lien docket.~~
1979 ~~(e) renewing a lien if the lien amount equals or exceeds the lien threshold at the end of the~~
1980 ~~five (5) year effective period.~~

1981 ~~(1) When a lien is renewed, the date on which the lien is renewed shall become the~~
1982 ~~effective date of the lien, and a new five (5) year period shall commence.~~

1983 ~~(f) sending the obligor a notice when a lien has been renewed.~~

1984 ~~(g) developing procedures for releasing a lien and releasing specific property from a lien.~~

1985 ~~2.5 8. Financial Record Review.~~

1986 ~~(a) An obligor may request a financial record review, within ten (10) business days of~~
1987 ~~receiving a notice of a lien, to determine the correctness of the financial records in a case.~~
1988 ~~The request shall be made in writing to the Agency.~~

1989 ~~(b) Upon receiving a request for a financial record review, the Agency shall, at no charge~~
1990 ~~to the obligor, provide the obligor with:~~

1991 ~~(1) all relevant financial records.~~

1992 ~~(2) information explaining how to interpret the records.~~

1993 ~~(3) a form the obligor may use to identify any alleged errors in the records.~~

1994 ~~(c) Within twenty (20) days after receiving the relevant financial records, the obligor may:~~

1995 ~~(1) request a meeting with the Agency to review the financial records and to discuss~~
1996 ~~any alleged errors.~~

1997 ~~(2) provide a statement of alleged error on the documents.~~

1998 ~~(A) The Agency shall review the records to determine whether the alleged~~
1999 ~~error is correct and provide a written determination within sixty (60) days~~
2000 ~~after the obligor's request for a financial record review is received as to~~
2001 ~~whether the lien against the obligor is in the correct amount.~~

2002 ~~(d) The Agency may proceed with the lien if:~~

2003 ~~(1) the obligor does not request a meeting with the Agency or provide a statement~~
2004 ~~of alleged error within twenty (20) days after receiving the financial records; or~~

2005 ~~(2) no errors are found in the financial records of the case; or~~

2006 ~~(3) the arrears exceed the required threshold amount after any errors in the financial~~
2007 ~~records are corrected.~~

2008

2009 ~~**2.6. Seizure of Property**~~

2010 ~~2.6 1. When seizing property, the Agency shall presume that an obligor's equity or ownership in~~
2011 ~~the property, whether an account or personal property, is an equal pro-rata share of the equity or~~
2012 ~~ownership based on the number of individuals with a recorded ownership interest in the property.~~

2013 ~~2.6 2. Account Seizure. The Agency may initiate an account seizure if there is a lien against an~~
2014 ~~obligor and the lien amount in the obligor's case equals or exceeds 300% of the monthly amount~~
2015 ~~due in the order or \$1,000, whichever is greater.~~

2016 ~~(a) The Agency may not issue a notice of seizure unless the sum of the funds in all of the~~
2017 ~~obligor's financial accounts, minus expected seizure fees and any early withdrawal penalty,~~
2018 ~~exceeds \$500. The first \$500 of each account shall not be frozen and/or seized.~~

2019 ~~(b) The notice shall instruct the financial institution of the following:~~

2020 ~~(1) The maximum amount frozen in an account may not exceed the amount~~
2021 ~~specified by the Agency in the notice.~~

2022 ~~(2) The maximum amount frozen in an account may not exceed the obligor's~~
2023 ~~ownership interest.~~

2024 ~~(3) A financial institution is not liable for encumbering or surrendering any assets~~
2025 ~~held by the financial institution in response to instructions from the Agency for the~~
2026 ~~purpose of enforcing a child support order.~~

2027 ~~2.6 3. Seizure of Personal Property Other than Financial Accounts. In addition to the~~
2028 ~~requirements under (a) and (b) below, the Agency may initiate the seizure of personal property if~~
2029 ~~there is a lien against an obligor and the lien amount equals or exceeds 600% of the monthly~~
2030 ~~amount due in the order. Upon issuance of a written order of execution, non-exempt personal~~
2031 ~~property may be seized and sold in a reasonable manner after notice to the owner in payment of a~~
2032 ~~child support obligation that has been adjudicated delinquent by the Family Court. Ceremonial or~~
2033 ~~religious property and real property are exempt from such writs of execution.~~

2034 ~~(a) Personal Property. The Agency may seize personal property if the obligor's equity in~~
2035 ~~the property, minus expected seizure fees, exceeds \$500 per item total.~~

2036 ~~(b) The Tribe's "Disposition of Excess Tribal Property Policy" shall not apply to any~~
2037 ~~property seized under this law.~~

2038

2039 **2.7. Other Enforcement Tools:**

2040 ~~2.7 1. Attachment of Per Capita Payments. The Agency may initiate the attachment and/or seizure~~
2041 ~~of per capita payments of tribal members in accordance with applicable law.~~

2042 ~~2.7 2. License Suspension.~~

2043 ~~(a) The Agency may initiate the suspension or denial of occupational, fishing, recreational,~~
2044 ~~motor vehicle and/or Oneida issued licenses if there is a lien against an obligor that equals~~
2045 ~~or exceeds 300% of the monthly amount due in the child support order, or \$1000,~~
2046 ~~whichever is greater. Suspension of an occupational and/or motor vehicle license shall be~~
2047 ~~pursued only as a last resort and the Agency shall not initiate the suspension of a license(s)~~
2048 ~~if:~~

2049 ~~(1) there is an order in place that prohibits the suspension of the license(s);~~

2050 ~~(2) the obligor has filed for bankruptcy; or~~

2051 ~~(3) action has already been taken to suspend the license.~~

2052 ~~(b) When an Oneida issued license is suspended, that suspension shall be binding on and~~
2053 ~~given effect by the license issuing agencies. Orders affecting licenses issued by other~~
2054 ~~governmental agencies shall be sent to such agencies for enforcement.~~

2055 ~~2.7 3. Intercept of Lump-Sum Pension Payments, Judgments and Settlements. The Agency may~~
2056 ~~initiate the intercept of lump sum pension payments, judgments and/or settlements when an~~
2057 ~~obligor has been placed on the lien docket.~~

2058 ~~(a) When initiating the intercept of lump sum pension payments, judgments and/or~~
2059 ~~settlements, the Agency shall specify in the notice that the amount withheld from the lump-~~
2060 ~~sum pension payment, judgment or settlement may not exceed the obligor's ownership~~
2061 ~~interest in the payment.~~

2062 ~~2.7 4. Tax and Lottery Intercepts. The Agency may coordinate with a federal or state agency in~~
2063 ~~order to enforce a child support order through a tax and/or lottery intercept. Once an obligor has~~
2064 ~~been notified that his or her tax refund and/or lottery winnings may be intercepted, that notice is~~
2065 ~~valid until all arrears are paid in full.~~

2066 ~~(a) Federal Tax Intercept. The Agency may certify a federal tax intercept when the~~
2067 ~~requirements pertaining to federal tax intercept contained in an agreement between the~~
2068 ~~State and the Tribe have been met.~~

2069 ~~(b) Wisconsin State Tax Intercept. The Agency may certify a Wisconsin state tax intercept~~
2070 ~~when the following requirements are met:~~

2071 ~~(1) The arrears shall be at least one hundred fifty dollars (\$150).~~

- 2072 ~~(2) The arrears shall be at least thirty (30) days old.~~
2073 ~~(3) The arrears shall be for a minor child or a child who has reached the age of~~
2074 ~~eighteen (18) within the last twenty (20) years.~~
2075 ~~(c) Wisconsin Lottery Intercept. When a case is certified for Wisconsin state tax intercept,~~
2076 ~~it shall also be automatically certified for Wisconsin lottery intercept for lottery winnings~~
2077 ~~of one thousand dollars (\$1,000) or more.~~
2078 ~~2.7.5. Passport Denial. If a federal tax intercept is in place and the obligor owes five thousand~~
2079 ~~dollars (\$5,000) or more in arrears, an obligor may be denied a passport. The arrears must meet~~
2080 ~~the criteria for federal tax intercept in order for passport denial to be used as an enforcement tool.~~
2081 ~~An obligor shall be removed from the passport denial list if:~~
2082 ~~(a) The federal tax intercept certification amount is zero (0);~~
2083 ~~(b) The obligor makes a lump sum payment and/or negotiates a payment plan with the~~
2084 ~~Agency;~~
2085 ~~(c) The obligor has to travel abroad because of a life or death situation involving an~~
2086 ~~immediate family member, such as the obligor's parent, guardian, step parent, child, step~~
2087 ~~child, grandparent, sibling, step-sibling, aunt, uncle or spouse; or~~
2088 ~~(d) The obligor was denied a passport in error.~~
2089

2.8. Family Court Enforcement Action

- 2091 ~~2.8.1. If the Agency does not have the authority to conduct the appropriate enforcement action,~~
2092 ~~or the obligor is unresponsive to the enforcement actions being imposed by the Agency, the case~~
2093 ~~shall be referred to the Family Court for enforcement.~~
2094 ~~2.8.2. The Family Court may order any of the enforcement actions the Agency is authorized to~~
2095 ~~implement. In addition, the Family Court may order the following to enforce a child support order:~~
2096 ~~(a) Bonds and Other Guarantees. The Family Court may require an obligor to provide a~~
2097 ~~surety, bond or guarantee to secure the payment of arrears, if wage withholding is not~~
2098 ~~applicable, practical or feasible to secure payment of arrears.~~
2099 ~~(b) Claims Against Estates.~~
2100 ~~(1) The Family Court may approve a claim for past and future support against an~~
2101 ~~obligor's estate.~~
2102 ~~(2) The Family Court may issue a restraining order against an estate from which~~
2103 ~~an obligor will inherit.~~
2104 ~~(c) Community Service. The Family Court may order an obligor to perform community~~
2105 ~~service. The number of hours of work required may not exceed what would be reasonable~~
2106 ~~considering the amount of arrears the obligor owes. The obligor shall be provided a written~~
2107 ~~statement of the terms of the community service order and that the community service order~~
2108 ~~is monitored. The order shall specify:~~
2109 ~~(1) how many hours of community service the obligor is required to complete;~~
2110 ~~(2) the time frame in which the hours must be completed;~~
2111 ~~(3) how the obligor will report his or her hours; and~~
2112 ~~(4) any other information the Family Court determines is relevant.~~
2113 ~~(d) Contempt. An obligor who disobeys a lawful child support order shall be subject to~~
2114 ~~punishment for contempt of court. An obligor found in contempt of court may be fined in~~
2115 ~~an amount not to exceed one thousand dollars (\$1,000.00) per act of contempt and may not~~
2116 ~~exceed five thousand dollars (\$5,000.00) in total. In instances of continuing contempt,~~
2117 ~~each day shall constitute a separate act of contempt.~~
2118 ~~(e) Incarceration. The Family Court may order an obligor be incarcerated, contingent on~~
2119 ~~the agreements necessary to enable the Tribe to incarcerate individuals. Before a jail~~

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

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

2126 ~~2.9. Alternative Payment Plans~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2168 ~~obligor shall provide complete income and assets information to the Agency within five (5)~~
2169 ~~business days of the request to negotiate a payment plan.~~

2170 ~~2.9-7. Terms of an Alternative Payment Plan.~~

2171 ~~(a) An alternative payment plan may include a lump sum payment, or periodic payments~~
2172 ~~on the arrears, or both, subject to the following standards:~~

2173 ~~(1) The sum of any periodic payment established under the plan and any other~~
2174 ~~payment of support ordered by the Family Court, when subtracted from the~~
2175 ~~obligor's gross income, may not leave the obligor below 100% of the poverty line~~
2176 ~~established under 42 USC 9902 (2) unless the obligor agrees otherwise.~~

2177 ~~(2) When establishing an alternative payment plan, the Agency shall consider the~~
2178 ~~factors used by the Family Court in determining whether the use of the percentage~~
2179 ~~standard is unfair to the child or any of the parties.~~

2180 ~~(b) Periodic payments under the plan may be made through wage withholding in amounts~~
2181 ~~in addition to the amount ordered in the child support order that is in effect.~~

2182 ~~2.9-8. Default on an Alternative Payment Plan. In the event that the obligor defaults on the plan,~~
2183 ~~the Agency shall notify the obligor in writing that an administrative enforcement action shall be~~
2184 ~~implemented unless the lien is paid in full.~~

2185 ~~2.9-9. Renegotiation of an Alternative Payment Plan. After the entry of an alternative payment~~
2186 ~~plan, the plan may be renegotiated upon the written request of the obligor or Agency if the~~
2187 ~~requesting party can show a substantial change in circumstances. A substantial change in~~
2188 ~~circumstances includes any of the following:~~

2189 ~~(a) A change in the obligor's income or assets, including the sale or purchase of real or~~
2190 ~~personal property.~~

2191 ~~(b) A change in the obligor's earning capacity.~~

2192 ~~(c) Any other factor that the Agency determines is relevant.~~

2193 ~~2.9-10. Obligors with Cases in Multiple Jurisdictions.~~

2194 ~~(a) When multiple child support agencies initiate administrative enforcement actions~~
2195 ~~against the same obligor, and the obligor negotiates an alternative payment plan with one~~
2196 ~~of the agencies, the plan does not preclude any other child support agency from proceeding~~
2197 ~~with its administrative enforcement action.~~

2198 ~~(b) If a child support agency which has a lien against property of an obligor negotiates an~~
2199 ~~alternative payment plan with the obligor, the agency may receive proceeds from the sale~~
2200 ~~of the obligor's personal property under the lien including, but not limited to, proceeds~~
2201 ~~from administrative enforcement actions taken by other child support agencies.~~

2202
2203 ~~End.~~

2204 ~~Emergency Adopted BC 06-30-08-C (Expired)~~

2205 ~~Emergency Extended BC 12-10-08-H (Expired)~~

2206 ~~Permanently Adopted BC 06-24-09-B~~

2207 ~~Emergency Amended BC 10-28-09-E~~

2208 ~~Amended BC 02-24-10-G~~

2209 ~~Amended BC 02-23-11-E~~

2210 ~~Amended BC 06-22-11-K~~

2211 ~~Amended BC 10-10-12-C~~

2212 ~~Amended BC 08-13-14-E~~

2213

Title 7. Children, Elders and Family - Chapter 704
shakoti'nukú'lale? latiksashúha?
They watch over the children
CHILD SUPPORT

704.1. Purpose and Policy	704.10. Modification of a Child Support Order
704.2. Adoption, Amendment, Repeal	704.11. Modification of a Child Support Order for an Incarcerated Parent
704.3. Definitions	704.12. Compliance Plan
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704.5. Initiating an Action for Child Support	704.14. Alternative Payment Plans
704.6. Child Support Hearing Procedures	704.15. Administrative Enforcement Action
704.7. Determining the Child Support Obligation	704.16. Family Court Enforcement Action
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704.9. Child Support Order	704.18. Right of Appeal

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704.1. Purpose and Policy

704.1-1. *Purpose.* The purpose of this law is to:

- (a) Establish the legal responsibility of parents to provide financially for their children's general well-being;
- (b) Make support payments more equitable by ensuring consistent treatment of persons in similar circumstances;
- (c) Make support payments based on the real earning capability of parents; and
- (d) Improve the efficiency of child support establishment and enforcement.

704.1-2. *Policy.* It is the policy of this law to:

- (a) establish an adequate standard of support for children whose paternity has been established or acknowledged;
- (b) encourage the use of stipulations to resolve disputes over child support obligations; and
- (c) limit the use and disclosure of personal information received or maintained by the Nation's Family Court and/or the Oneida Nation Child Support Agency in order to protect the privacy rights of all parties and children who are involved in proceedings or actions under this law.

704.2. Adoption, Amendment, Repeal

704.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-24-09-B and amended by resolutions BC-02-24-10-G, BC-02-23-11-E, BC-06-22-11-K, BC-10-10-12-C, BC-08-13-14-E, and BC-__-__-__-__.

704.2-2. This law may be amended or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

704.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

704.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

704.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

33 **704.3. Definitions**

34 704.3-1. This section shall govern the definitions of words and phrases used within this law. All
35 words not defined herein shall be used in their ordinary and everyday sense.

36 (a) “Administrative enforcement action” means enforcement action taken by the Oneida
37 Nation Child Support Agency to enforce a child support order without obtaining an order
38 from the Family Court.

39 (b) “Agency” means the Oneida Nation Child Support Agency established to administer
40 and supervise the Nation’s child support enforcement program.

41 (c) “Alternative payment plan” means a negotiated agreement between the Agency and an
42 obligor, or an order set by the Family Court, to establish terms and conditions for the
43 payment of arrears.

44 (d) “Basic support costs” means food, shelter, clothing, transportation, personal care, and
45 incidental recreational costs.

46 (e) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding
47 holidays recognized by the Nation.

48 (f) “Child” means a biological or adopted child of the obligor under the age of eighteen
49 (18), or any person who is less than nineteen (19) years old if he or she is pursuing a high
50 school diploma or its equivalent from an accredited course of instruction.

51 (g) “Child support” means the total financial obligation a parent has towards his or her
52 child as established through judicial and/or administrative processes.

53 (h) “Child Support Obligation of Low-Income Payers Schedule” means the Wisconsin
54 Department of Children and Families Child Support Obligation of Low-Income Payers at
55 the Federal Poverty Guidelines, found in DCF 150 Appendix C.

56 (i) “Child support order” means a judgment of the Family Court or a court of competent
57 jurisdiction ordering payment of child support which provides monetary support, health
58 care, arrearages, or reimbursement, and which may include related costs and fees, interest
59 and penalties, income withholding, attorney’s’ fees and other relief.

60 (j) “Current six (6) month treasury bill rate” means the yield of a U.S. government security
61 with a term of six (6) months.

62 (k) “Custodial parent” means the parent who exercises physical custody of the child
63 pursuant to a custody order, on the basis of agreement between the parents or in the absence
64 of one parent. A legal guardian with primary physical custody of the child or children and
65 standing in the position of the parent shall have the same rights to child support as a
66 custodial parent.

67 (l) “Employer” means any individual, business, government, institution, or other entity
68 paying wages to one or more employees.

69 (m) “Equity” means the fair market value of property minus the liens on that property with
70 priority over the child support lien.

71 (n) “Equivalent care” means a period of time during which the parent cares for the child
72 that is not overnight, but is determined by the court to require the parent to assume the
73 basic support costs that are substantially equivalent to what the parent would spend to care
74 for the child overnight. Blocks of time with the child of at least six (6) hours may be
75 considered the equivalent of a half-day if a meal is provided during that time period. Two
76 (2) half-day blocks may be considered the equivalent of an overnight.

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

79 (p) “Gross income” means any form of payment due to an individual regardless of source,
80 including, but not limited to:

- 81 (1) Salary and wages, including overtime pay;
- 82 (2) Interest and investment income;
- 83 (3) Social Security disability and old age insurance benefits under 42 U.S.C. §401
84 to 433;
- 85 (4) Net proceeds resulting from worker’s compensation or other personal injury
86 awards intended to replace income;
- 87 (5) Unemployment insurance;
- 88 (6) Income continuation benefits;
- 89 (7) Voluntary deferred compensation and employee contributions to the following:
90 employee benefit plan, profit-sharing, pension or retirement account;
- 91 (8) Military allowances and veterans disability compensation benefits;
- 92 (9) Undistributed income of a corporation or any partnership in which the parent
93 has an ownership interest sufficient to individually exercise control or to access the
94 earnings of the business, unless the income included is an asset;
- 95 (10) Per capita distribution payments;
- 96 (11) Lease or rental income;
- 97 (12) Prizes over one thousand dollars (\$1,000); and
- 98 (13) All other income, whether taxable or not, except that gross income does not
99 include any of the following:

- 100 (A) Child support;
- 101 (B) Foster care payments;
- 102 (C) Kinship care payments;
- 103 (D) Public assistance benefits, except that child care subsidy payments shall
104 be considered income to a child care provider;
- 105 (E) Food stamps;
- 106 (F) Public assistance or financial hardship payments paid by a county or a
107 Nation;
- 108 (G) Supplemental Security Income under 42 U.S.C. §1381 to 1383(f) and
109 state supplemental payments; or
- 110 (H) Payments made for social services.

111 (q) “Guardian ad litem” means a person appointed by the Family Court to appear at any
112 peacemaking, mediation, or hearing and tasked with representing the best interest of the
113 person appointed for.

114 (r) “Immediate family member” means an individual’s husband, wife, mother, father, step-
115 mother, step-father, son, daughter, step-son, step-daughter, brother, sister, step-brother,
116 step-sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-
117 law, brother-in-law or sister-in-law and any of the these relations attained through legal
118 adoption.

119 (s) “Income withholding” means the process whereby a court order, Family Court order,
120 or voluntary wage assignment directs an employer, bank, or agent holding monies or
121 property of an obligor, to make payments or deliver property to satisfy a child support
122 obligation.

123 (t) “Intact family” means a family in which the child or children and the obligor reside in
124 the same household and the obligor shares his or her income directly with the child or
125 children and has a legal obligation to support the child or children.

- 126 (u) “Legally incompetent adult” means a person at least eighteen (18) years old who has
127 been declared incompetent by a court of competent jurisdiction because he or she is
128 temporarily or permanently impaired to the extent that the person lacks sufficient
129 understanding to make or communicate responsible personal decisions.
- 130 (v) “Lien amount” means the difference between the monthly amount of support due and
131 the arrears in a case.
- 132 (w) “Lien docket” means the registry kept by the State of Wisconsin containing the names
133 of people who owe past-due child support.
- 134 (x) “Low-income obligor” means an obligor for whom the Family Court uses the monthly
135 support amount provided in the schedule in the Child Support Obligation of Low-Income
136 Payers Schedule based on the Family Court’s determination that the obligor’s total
137 economic circumstances limit his or her ability to pay support at standard percentages and
138 the obligor’s income is at a level set forth in the schedule in the Child Support Obligation
139 of Low-Income Payers Schedule.
- 140 (y) “Marital child” means a child born during the marriage of his or her parents. In
141 addition, if the father and mother of a non-marital child enter into a lawful marriage or a
142 marriage which appears and they believe is lawful, except where the parental rights of the
143 mother were terminated before either of these circumstances, the child becomes a marital
144 child and shall enjoy all of the rights and privileges of a marital child as if he or she had
145 been born during the marriage of the parents. The children of all marriages declared void
146 under the law are nevertheless marital children.
- 147 (z) “Monthly income” means the obligor’s annual gross income or, if applicable, the
148 obligor’s annual income modified for business expenses; plus the obligor’s annual income
149 imputed based on earning capacity; plus the obligor’s annual income imputed from assets;
150 divided by twelve (12).
- 151 (aa) “Nation” means the Oneida Nation.
- 152 (bb) “Non-custodial parent” means the parent of a child who does not hold primary care,
153 custody and/or control of a child.
- 154 (cc) “Non-legally responsible relative” means a person connected with a child by blood,
155 marriage, or adoption who assumes responsibility for the care of a child without legal
156 custody, but is not in violation of a court order. A non-legally responsible relative does
157 not include a relative who has physical custody of a child during a court-ordered visitation
158 period.
- 159 (dd) “Obligee” means the person or entity to whom child support is owed.
- 160 (ee) “Obligor” means the person who is obliged to pay child support to the obligee.
- 161 (ff) “Ownership interest” means any personal financial interest.
- 162 (gg) “Parent” means the biological or adoptive parent of the child.
- 163 (hh) “Payor” means a person or entity with a legal obligation, as an employer, buyer of
164 goods, debtor, or otherwise, to pay an obligor.
- 165 (ii) “Reservation” means all lands within the exterior boundaries of the Reservation of the
166 Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and
167 any lands added thereto pursuant to federal law.
- 168 (jj) “Serial family obligor” means an obligor with an existing legal obligation for child
169 support who incurs an additional legal obligation for child support in a subsequent family
170 as a result of a child support order.
- 171 (kk) “Shared-placement obligor” means a parent who has an ordered period of placement
172 of at least twenty-five percent (25%), is ordered by the Family Court to assume the child’s

173 basic support costs in proportion to the time that the parent has placement of the child and
174 is determined to owe a greater support amount than the other parent.

175 (ll) “Split-placement obligor” means an obligor who has two (2) or more children and who
176 has physical placement of one (1) or more children but not all of the children.

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

179 (nn) “Substantial change of income” means the obligor has a significant change in his or
180 her finances that would lead to a change in child support of more than fifteen percent (15%)
181 and fifty dollars (\$50.00) per month.

182 (oo) “Variable costs” means the reasonable costs above basic support costs incurred by or
183 on behalf of a child, including but not limited to, the cost of child care, tuition, a child’s
184 special needs, and other activities that involve substantial cost.

185 (pp) “Threshold” means an amount, expressed as either a percentage of the monthly
186 amount due, a fixed dollar amount, or both, that the lien amount must equal or exceed
187 before an administrative enforcement action may be used to enforce a child support order.

188

189 **704.4. Jurisdiction**

190 704.4-1. The Family Court has jurisdiction over any action brought under this law.

191 704.4-2. *Personal Jurisdiction.* Personal jurisdiction over an individual under this law may be
192 established where one party or a child of the parties is any of the following:

193 (a) a member of the Nation;

194 (b) a resident of the Reservation who is also a member of an Indian tribe, band or
195 community which is recognized by a State or the federal government;

196 (c) a resident of the Reservation who is also the biological parent of the child that is
197 enrolled or is eligible for enrollment with the Nation; or

198 (d) an individual who consents to the jurisdiction of the Family Court by one (1) of the
199 following means:

200 (1) Filing an action with the Family Court;

201 (2) Knowingly and voluntarily giving written consent to the jurisdiction of the
202 Family Court;

203 (3) Entering a notice of appearance before the Family Court in an action without
204 concurrently preserving the defense of lack of personal jurisdiction or filing a
205 motion to dismiss for lack of personal jurisdiction within thirty (30) days of entering
206 the notice of appearance; or

207 (4) Appearing in an action before the Family Court without asserting the defense
208 of lack of personal jurisdiction.

209 704.4-3. Personal jurisdiction over the other party may be established using any method provided
210 by law, including long-arm jurisdiction procedures as provided for in Section 201 of the Uniform
211 Interstate Family Support Act as referred to in 42 U.S.C. §666.

212 704.4-4. *Transfer of Cases from Other Courts.* If personal jurisdiction over the parties has been
213 established under this law, the Family Court has jurisdiction over any action transferred to the
214 Family Court from any court of competent jurisdiction.

215

216 **704.5. Initiating an Action for Child Support**

217 704.5-1. Every parent has a duty to support each and every child of that parent. A child support
218 order may be obtained from the Family Court by either submitting a stipulation to the Family Court
219 for approval or by filing a petition for child support with the Family Court.

220 (a) If a party to the action is a minor or is a legally incompetent adult, the Family Court
221 may appoint a guardian ad litem to represent such party in the action.

222 704.5-2. *Initiation of Action by the Agency.* For assistance in initiating a child support order a
223 party may request the services of the Agency or may be referred to the Agency from an entitlement
224 program.

225 (a) Within thirty (30) days of receiving a completed application for services or a referral,
226 the Agency shall meet with the custodial parent.

227 (b) Within seven (7) business days of the meeting with the custodial parent, the Agency
228 shall send a Letter of Request for Support and Financial Disclosure form to the non-
229 custodial parent.

230 (b) If the non-custodial parent fails to respond to or take action on the Letter of Request
231 for Support and Financial Disclosure form within ten (10) business days the Agency may
232 initiate a hearing in accordance with this law.

233 (c) If the non-custodial parent responds within the required time period after receiving a
234 Letter of Request for Support and Financial Disclosure form, the parties shall attempt to
235 enter into a stipulation.

236 704.5-3. *Initiation of Action by a Party Not the Agency.* Any of the following individuals may
237 initiate an action for the establishment of child support at any time by filing a petition with the
238 Family Court:

239 (a) a custodial parent;

240 (b) a child's mother;

241 (c) a child's father;

242 (d) a child's guardian ad litem;

243 (e) a child's non-legally responsible relative; or

244 (f) a legally incompetent adult's guardian ad litem.

245 704.5-4. *Stipulation.* The parties may enter into a stipulation at any time as to the level of the
246 child support obligation.

247 (a) The Agency shall assist parties in reaching a stipulation upon request or when the
248 parties are referred to the Agency by an entitlement program. Parties may also submit a
249 stipulation to the Family Court for approval without the Agency's assistance.

250 (b) In order for a stipulation to be valid the following conditions shall be met:

251 (1) The stipulation shall be in writing, signed, and notarized;

252 (2) If the parties deviate from the percentage standards, the stipulation shall state
253 the amount of support that would have been ordered by the percentage standards
254 and the reasons for deviating from the percentage standards;

255 (3) All parties shall sign the stipulation free of duress and coercion; and

256 (4) The Family Court shall make written findings that the stipulation is appropriate,
257 using the criteria for deviating from standard percentages as a guideline, if
258 applicable.

259 (c) After the stipulation is approved and filed by the Family Court, it shall have the same
260 force and effect as an order issued by the Family Court. The obligation of the obligor to
261 pay child support shall commence on the date specified in the agreement, but no later than
262 the date the stipulation is approved and filed by the Family Court.

263 704.5-5. *Petition to Establish Child Support.* If the parties do not enter into a stipulation, then a
264 petition to establish child support may be filed with the Family Court. The petition to establish
265 child support may be filed as a separate proceeding or in connection with a petition for child
266 custody.

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

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

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

277 (2) With whom the child currently resides;

278 (3) When and how paternity was established;

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

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

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

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

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

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

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

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

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

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

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

315 shall require service by other methods pursuant to the Oneida Judiciary
316 Rules of Civil Procedure.

317 (B) *Publication.* When a responding party cannot be found for personal
318 service after diligent attempts and attempts to serve the responding party by
319 certified mail have failed, the petitioner may use service by publication.
320 The publication shall be in the Nation's newspaper or a newspaper of
321 general circulation in the county of residence of the respondent, if known.
322 The publication shall be designated as a Legal Notice and any confidential
323 information shall be redacted.

324 (i) If service by publication is used and there is insufficient time for
325 notice and answer pursuant to this law, the Family Court shall re-
326 schedule the hearing appropriately and may permit extended time
327 deadlines for default orders and for hearings in order to provide for
328 fair notice and opportunity for the party to respond.

329 (2) *Requirements of the Summons.* The summons to be served on the
330 respondent(s), along with the petition, shall include the following notice, in addition
331 to providing a time, place, and date for appearance:

332 (A) That if he or she chooses not to appear at the hearing or enter a defense
333 to the petition challenging the authority of the Family Court to hear the
334 matter by the date of the hearing, the hearing shall proceed on the basis of
335 the petitioner's evidence;

336 (B) That a child support order may require the person found to be the
337 obligor to pay child support until the child reaches eighteen (18) years of
338 age or until the child graduates from high school, or its equivalent, up to age
339 nineteen (19);

340 (C) That the person found to be the obligor may have his or her license(s)
341 suspended or denied for failure to pay child support, in addition to other
342 enforcement actions;

343 (D) That the person found to be the obligor's employer or others with
344 evidence of the his or her income may be subpoenaed to provide the Family
345 Court with records of his or her earnings;

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

350 (F) That any answer to the petition shall be filed with the Family Court
351 within twenty (20) calendar days of the date of service of the petition, and
352 a copy served on the other party.

353 (e) *Answers.* Answers shall be filed with the Family Court and served on the petitioner
354 within twenty (20) calendar days of the date of service of the petition in accordance with
355 the Nation's laws and policies governing civil procedure.

356 (f) *Subpoenas.* Upon request of either party, the Family Court shall issue subpoenas to
357 any person in possession of relevant information to appear or produce documents to the
358 Family Court. Failure to comply with such a subpoena may be punishable as contempt.
359

360 **704.6. Child Support Hearing Procedures**

361 704.6-1. The factual determinations made at a hearing shall include, but is not limited to, the
362 income and expense information necessary to determine the appropriate level of support according
363 to this law.

364 704.6-2. The Family Court may utilize discovery procedures and contempt powers, as authorized
365 by any law, policy, or rule of the Nation to obtain information relevant to the establishment or
366 enforcement of child support. These procedures may include the following:

- 367 (a) Issue subpoenas requiring necessary and relevant parties to appear in person and
368 provide testimony;
369 (b) Issue subpoenas requiring the production of evidence;
370 (c) Obtain information about property or assets to assess its value or funding source for
371 lien or seizure actions;
372 (d) Obtain information about the income of any party to the action; and/or
373 (e) Issue contempt findings for failure to comply with the lawful order of the Family Court.

374 704.6-3. Both parties have the right to representation by an attorney and/or advocate at his or her
375 own expense. The Nation shall not be required to pay for any fees and/or expenses incurred by any
376 party in connection with proceedings under this law.

377 704.6-4. *Temporary Orders.* At any time after a child's parentage has been established, the Family
378 Court may make a temporary order for the payment of child support and the child's health care
379 expenses. Before making a temporary order, the Family Court shall consider all factors that the
380 Family Court is required to consider when granting a final child support order. If the Family Court
381 makes a temporary child support order that deviates from the amount of support that would be
382 required by using the percentage standard, the requirements of section 704.7-8 shall be complied
383 with.

384 704.6-5. *Default.* If the respondent fails to appear at the hearing upon a showing of valid service
385 and the petitioner presents evidence of the obligation by the absent party, a child support order
386 shall be entered pursuant to the evidence.

387 704.6-6. *Hearings and Records Closed.* Child support proceedings shall be closed to any person
388 other than those necessary to the action or proceeding. Records of child support cases shall remain
389 confidential and shall only be viewed by the parties, the legal guardian of a party who is a minor,
390 the parties' attorney or advocate, guardian ad litem, Judges and staff assigned to the case, and those
391 other persons who first obtain a written release from a party to view material contained in the
392 record.

393

394 **704.7. Determining the Child Support Obligation**

395 704.7-1. The Family Court shall determine child support payments by using the percentage
396 standards established in section 704.7-2 of this law, except as provided elsewhere in this law. The
397 obligor's monthly income shall be considered in determining his or her child support obligation.

398 704.7-2. *Percentage Standards to Determine the Amount of Child Support.*

- 399 (a) The following percentages shall be applied to the portion of an obligor's monthly
400 income available for child support that is less than seven thousand dollars (\$7,000):
401 (1) seventeen percent (17%) for one (1) child;
402 (2) twenty-five percent (25%) for two (2) children;
403 (3) twenty-nine percent (29%) for three (3) children;
404 (4) thirty-one percent (31%) for four (4) children; and
405 (5) thirty-four percent (34%) for five (5) or more children.

406 (b) The following percentages shall be applied to the portion of an obligor's monthly
407 income available for child support that is greater than or equal to seven thousand dollars
408 (\$7,000) and less than or equal to twelve thousand five hundred dollars (\$12,500):

- 409 (1) fourteen percent (14%) for one (1) child;
- 410 (2) twenty percent (20%) for two (2) children;
- 411 (3) twenty-three percent (23%) for three (3) children;
- 412 (4) twenty-five percent (25%) for four (4) children; and
- 413 (5) twenty-seven percent (27%) for five (5) or more children.

414 (c) The following percentages shall be applied to the portion of an obligor's monthly
415 income available for child support that is greater than twelve thousand five hundred dollars
416 (\$12,500):

- 417 (1) ten percent (10%) for one (1) child;
- 418 (2) fifteen percent (15%) for two (2) children;
- 419 (3) seventeen percent (17%) for three (3) children;
- 420 (4) nineteen percent (19%) for four (4) children; and
- 421 (5) twenty percent (20%) for five (5) or more children.

422 704.7-3. *Determining Income Modified for Business Expenses.* In determining an parent's
423 monthly income, the Family Court may adjust an parent's gross income as follows:

- 424 (a) Adding wages paid to dependent household members.
- 425 (b) Adding undistributed income that the Family Court determines is not reasonably
426 necessary for the growth of the business. The parent shall have the burden of proof to show
427 that any undistributed income is reasonably necessary for the growth of the business.
- 428 (c) Reducing gross income by the business expenses that the Family Court determines are
429 reasonably necessary for the production of that income or operation of the business and
430 that may differ from the determination of allowable business expenses for tax purposes.

431 704.7-4. *Determining Income Imputed Based on Earning Capacity.* When a parent's income is
432 less than the parent's earning capacity or is unknown, the Family Court may impute income to the
433 parent at an amount that represents the parent's ability to earn.

- 434 (a) The parent's ability to earn may be based on the parent's:
 - 435 (1) education, training, and recent work experience;
 - 436 (2) earnings during previous periods;
 - 437 (3) current physical and mental health;
 - 438 (4) history of child care responsibilities as the parent with primary physical
439 placement; and
 - 440 (5) the availability of work in or near the obligor's community.
- 441 (b) If evidence is presented that due diligence has been exercised to ascertain information
442 on the parent's actual income or ability to earn and that information is unavailable, the
443 Family Court may impute to the parent the income that a person would earn by working
444 thirty-five (35) hours per week for the federal minimum hourly wage. In addition to
445 imputed income, the Family Court may order the parent to search for a job or participate
446 in a work experience and job training program.
- 447 (c) If a parent has gross income or income modified for business expenses below his or
448 her earning capacity, the income imputed based on earning capacity shall be the difference
449 between the parent's earning capacity and the parent's gross income or income modified
450 for business expenses.

451 704.7-5. *Determining Income Imputed from Assets.*

- 452 (a) The Family Court may impute a reasonable earning potential to a parent's assets if the
453 Family Court finds both of the following:

454 (1) The parent has ownership and control over any real or personal property,
455 including but not limited to, life insurance, cash and deposit accounts, stocks and
456 bonds, business interests, net proceeds resulting from worker's compensation or
457 other personal injury awards not intended to replace income, and cash and corporate
458 income in a corporation in which the obligor has an ownership interest sufficient to
459 individually exercise control and the cash or corporate income is not included as
460 gross income.

461 (2) The parent's assets are underproductive and at least one (1) of the following
462 applies:

463 (A) The parent has diverted income into assets to avoid paying child
464 support.

465 (B) Income from the parent's assets is necessary to maintain the child or
466 children at the standard of living they would have had if they were living
467 with both parents.

468 (b) The Family Court shall impute income to assets by multiplying the total net value of
469 the assets by the current six (6) month treasury bill rate or any other rate that the Family
470 Court determines is reasonable and subtracting the actual income from the assets that were
471 included as gross income.

472 *704.7-6. Adjustment for Child's Social Security Benefits.* The Family Court may consider benefits
473 received by a child under 42 U.S.C. §402(d) based on a parent's entitlement to federal disability
474 or old-age insurance benefits under 42 U.S.C. §401 to 433 and adjust an obligor's child support
475 obligation by subtracting the amount of the child's benefit. In no case may this adjustment require
476 the obligee to reimburse the obligor for any portion of the child's benefit. If the obligor is receiving
477 the child's benefit, the support amount is either the percentage standard applied to the obligor's
478 income or the amount of the child's benefit, whichever is greater.

479 (a) *Determining the Child Support Obligations of Shared-Placement Parent when the*
480 *Child Receives Social Security Benefits.* If the shared-placement guidelines under section
481 704.8-2 apply, the child's benefit is split between the parents in proportion to the amount
482 of time the child spends with each parent. Add the proportion of the child's benefit that
483 represents the proportion of time the child spends with the parent not receiving the benefit
484 to the support obligation of the parent who is receiving the child's benefit. Child support
485 shall be determined as follows:

486 (1) Determine each parent's monthly income available for child support under
487 section 704.7-2. If a parent has one (1) or more previous child support obligations,
488 determine the parent's monthly income available for child support adjusted for the
489 previous obligations as provided in section 704.8-1. Include the parent's federal
490 disability or old age insurance benefits under 42 U.S.C. §401 to 433 in that parent's
491 income, but do not include the child's benefit under 42 U.S.C. §402 (d) in either
492 parent's income.

493 (2) Multiply each parent's monthly income available for child support by the
494 appropriate percentage standard under section 704.7-2.

495 (3) Multiply each amount determined under section 704.7-6(a)(2) by one hundred
496 and fifty percent (150%).

497 (4) Multiply the amount determined for each parent in section 704.7-6(a)(3) by the
498 proportion of time that the child spends with the other parent.

499 (5) Multiply the amount of the child's benefit by the proportion of the time the
500 child spends with the parent who is not receiving the child's benefit.

501 (6) Add the amount in section 704.7-6(a)(5) to the child support obligation
502 calculated in section 704.7-6(a)(4) for the parent who is receiving the child's
503 benefit.

504 (7) Offset the resulting amounts against each other. The parent with the greater
505 child support obligation is the shared-placement obligor. The shared-placement
506 obligor shall pay either the greater of the amount determined in this subsection or
507 the amount determined using the appropriate percentage standard under section
508 704.7-2.

509 *704.7-7. Claiming Children for Tax Purposes.* The Family Court may address who may claim
510 the child for tax purposes or accept a stipulation entered into by the parties regarding children and
511 taxes.

512 *704.7-8. Deviation from the Percentage Standards.* Upon request by a party, the Family Court
513 may modify the amount of child support payments determined by the percentage standards if, after
514 considering the following factors, the Family Court finds by the greater weight of the credible
515 evidence that use of the percentage standards is unfair to the child or to any of the parties:

- 516 (a) The financial resources of the child;
- 517 (b) The financial resources of both parents;
- 518 (c) Maintenance received by either party;
- 519 (d) The needs of each party in order to support himself or herself at a level equal to or
520 greater than the federal poverty line as established under 42 U.S.C. §9902(2);
- 521 (e) The needs of any person, other than the child, whom either party is legally obligated to
522 support;
- 523 (f) The standard of living the child would have enjoyed if his or her parents were living
524 together;
- 525 (g) The desirability that the custodial parent remain in the home as a full-time parent;
- 526 (h) The cost of day care if the custodial parent works outside the home, or the value of
527 custodial services performed by the custodial parent if the custodial parent remains in the
528 home;
- 529 (i) The award of substantial periods of physical placement to both parents;
- 530 (j) Extraordinary travel expenses incurred in exercising the right to periods of physical
531 placement;
- 532 (k) The physical, mental, and emotional health needs of the child, including any costs for
533 health insurance;
- 534 (l) The child's educational needs;
- 535 (m) The tax consequences to each party;
- 536 (n) The best interests of the child;
- 537 (o) The earning capacity of each parent, based on each parent's education, training and
538 work experience and the availability of work in or near the parent's community; and
- 539 (p) Any other factors which the Family Court in each case determines are relevant.

540 *704.7-9. Past-due and Arrears obligations.*

- 541 (a) A party may request payment of arrears or past-due child support as follows:
 - 542 (1) In an action regarding paternity, back to the date of birth of the child or date of
543 application, whichever is later;
 - 544 (2) In a child support establishment or modification pursuant to this law, back to
545 the date of application, review, or referral; or
 - 546 (3) In an establishment or modification of placement pursuant to an action
547 regarding divorce, annulment and legal separation or child custody, placement, and
548 visitation, back to the date of filing, or as otherwise ordered by the Family Court.

549 (b) A payment for arrears or a past-due payment shall be set based on the amount due and
550 the income available to pay current support.

551 (c) Once current child support is ended in any manner prescribed by law, child support
552 shall continue to be paid at the same rate, until all arrears or past due child support is paid
553 in full.

554

555 **704.8. Determining the Child Support Obligation in Special Circumstances**

556 704.8-1. *Determining the Child Support Obligation of a Serial-Family Obligor.*

557 (a) *Applicability.* This applies only if the support obligation being calculated is for children
558 from a subsequent family or subsequent paternity judgment or acknowledgment. An
559 obligor may not use the provisions of this section as a basis for seeking modification of an
560 existing order based on a subsequently incurred legal obligation for child support.

561 (b) *Determination.* For a serial-family obligor, the child support obligation incurred for a
562 marital or non-marital child in a subsequent family as a result of a child support order may
563 be determined as follows:

564 (1) Determine the obligor's monthly income.

565 (2) Determine the order of the obligor's legal obligations for child support by
566 listing them according to the date each obligation is incurred.

567 (A) For a marital child, the legal obligation for child support is incurred on
568 the child's date of birth.

569 (B) For a non-marital child, the legal obligation for child support is incurred
570 on the date that paternity is legally established.

571 (C) For a non-marital paternal child in an intact family, it is incurred on the
572 date of adoption or the date that paternity is legally established.

573 (D) For a non-marital maternal child in an intact family, it is incurred on
574 the child's date of birth.

575 (3) Determine the first child support obligation as follows:

576 (A) If the obligor is subject to an existing support order for that legal
577 obligation, except a shared-placement order, the support for that obligation
578 is the monthly amount of that order; or

579 (B) If the obligor is in an intact family, has primary placement of another
580 child, or is subject to a shared-placement order, the support is determined
581 by multiplying the appropriate percentage for that number of children by
582 the obligor's monthly income.

583 (4) Adjust the monthly income by subtracting the support for the first legal
584 obligation from the obligor's monthly income.

585 (5) Determine the second child support obligation as follows:

586 (A) If the obligor is subject to an existing support order for that legal
587 obligation, except a shared-placement order, the support for that obligation
588 is the monthly amount of that order; or

589 (B) If the obligor is in an intact family or is subject to a shared-placement
590 order, the support is determined by multiplying the appropriate percentage
591 for that number of children by the obligor's monthly income.

592 (6) Adjust the monthly income a second time by subtracting the support for the
593 second legal obligation from the first adjusted monthly income.

594 (7) Repeat the procedure for determining the child support obligation and adjusting
595 the monthly income for each additional legal obligation for child support the serial
596 family obligor has incurred.

597 (8) Multiply the appropriate percentage for the number of children subject to the
598 new order by the final adjusted monthly income to determine the new child support
599 obligation.

600 704.8-2. *Determining the Child Support Obligations of Shared-Placement Parents.*

601 (a) *Applicability.* The shared-placement formula may be applied when both of the
602 following conditions are met:

603 (1) Both parents have periods of placement of at least twenty-five percent (25%)
604 or ninety-two (92) days a year. When calculating periods of placement based on
605 equivalent care, the total number of overnights may exceed three hundred and sixty-
606 five (365). The period of placement for each parent shall be determined by
607 calculating the number of overnights or equivalent care ordered to be provided by
608 the parent and dividing that number by the total number of overnights in a year.
609 The combined periods of placement for both parents shall equal one hundred
610 percent (100%).

611 (2) Each parent is ordered by the Family Court to assume the child's basic support
612 costs in proportion to the time that the parent has placement of the child.

613 (b) *Determination.* The child support obligations for parents who meet the requirements
614 for the shared-placement formula may be determined as follows:

615 (1) Determine each parent's monthly income.

616 (A) In determining whether to impute income based on earning capacity
617 for an unemployed parent or a parent employed less than full time, the
618 Family Court shall consider benefits to the child of having a parent remain
619 in the home during periods of placement and the additional variable day
620 care costs that would be incurred if the parent worked more.

621 (2) Multiply each parent's monthly income by the appropriate percentage standard.

622 (3) Multiply each amount determined under section 704.8-2(b)(2) by one hundred
623 and fifty percent (150%).

624 (4) Multiply the amount determined for each parent under section 704.8-2(b)(3) by
625 the proportion of the time that the child spends with the other parent to determine
626 each parent's child support obligation.

627 (5) Offset resulting amounts under section 704.8-2(b)(4) against each other. The
628 parent with a greater child support obligation is the shared-placement obligor. The
629 shared-placement obligor shall pay the lesser of the amount determined under this
630 section or the amount determined using the appropriate percentage standard. If the
631 shared-placement obligor is also a low-income obligor, the child support obligation
632 may be the lesser of the amount determined under the shared placement
633 determination or the low-income determination.

634 (6) In addition to the child support obligation determined under section 704.8-
635 2(b)(5), the Family Court shall assign responsibility for payment of the child's
636 variable costs in proportion to each parent's share of physical placement, with due
637 consideration to a disparity in the parents' incomes.

638 (A) The Family Court shall direct the manner of payment of a variable cost
639 order to be either between the parents or from a parent to a third-party
640 service provider.

641 (B) The Family Court shall not direct payment of variable costs to be made
642 to the Agency or the Agency's designee, except as incorporated in the child
643 support order.

644 (7) A change in the child's variable costs shall not in and of itself be considered a
645 substantial change in circumstances sufficient to justify a modification of a
646 judgment or order under section 704.10.

647 **704.8-3. *Determining the Child Support Obligations of Split-Placement Parents.***

648 (a) *Applicability.* The split-placement formula may be applied when parents have two (2)
649 or more children and each parent has placement of one (1) or more but not all of the
650 children.

651 (b) *Determination.* The child support obligation for a split-placement parent may be
652 determined as follows:

653 (1) Determine each parent's monthly income.

654 (2) Determine the appropriate percentage standard for the number of total children.

655 (3) Divide the appropriate percentage standard for the number of total children by
656 the total number of children.

657 (4) Multiply the number calculated in section 704.8-3(b)(3) by the number of
658 children placed with each parent.

659 (5) Multiply each parent's monthly income by the number calculated in 704.8-
660 3(b)(4) based on the number of children placed with the other parent to determine
661 each parent's child support obligation; and

662 (6) Offset resulting amounts under section 704.8-3(b)(5) against each other. The
663 parent with a greater child support obligation is the split-placement obligor.

664 **704.8-4. *Determining the Child Support Obligation of a Low-Income Obligor.***

665 (a) *Applicability.* If an obligor's total economic circumstances limit his or her ability to
666 pay support at the level determined by the standard percentage standards, then the low-
667 income obligor standards found in the Child Support Obligation of Low-Income Payers
668 Schedule may be used.

669 (b) *Determination.* The Family Court may use the monthly support amount provided in
670 the Child Support Obligation of Low-Income Payers Schedule as the support amount for
671 an obligor with a monthly income at a level set forth in the schedule.

672 (1) If an obligor's monthly income is below the lowest income level in the Child
673 Support Obligation of Low-Income Payers Schedule, the Family Court may set an
674 order at an amount appropriate for the obligor's total economic circumstances. This
675 amount may be lower than the lowest support amount in the Child Support
676 Obligation of Low-Income Payers Schedule

677

678 **704.9. Child Support Order**

679 704.9-1. *Expression of Ordered Support.* The child support amount shall be expressed as a fixed
680 sum.

681 704.9-2. *Interest on Arrears.* The Nation shall not charge an obligor ordered to pay child support
682 interest on any arrears.

683 704.9-3. *Income Withholding.* The child support order shall provide for immediate income
684 withholding.

685 (a) A copy of the Family Court's income withholding order shall be sent by the Agency to
686 a payor within three (3) business days of the entry of the order of the Family Court by mail,
687 fax, or electronic means.

688 (b) An order to withhold income shall be binding against future payors upon actual notice
689 of the income withholding order through notice by mail, fax, or electronic means.

690 (c) Income shall not be subject to withholding only where:

691 (1) One of the parties demonstrates, and the Family Court finds, that there is good
692 cause not to require income withholding due to one of the following:

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

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

695 (2) The parties reach a written agreement which provides for an alternative
696 arrangement that is approved by the Family Court.

697 (d) No payor shall refuse to honor an income withholding order executed pursuant to this
698 law. A payor shall begin withholding income immediately after notice of an income
699 withholding order made pursuant to this law. Within five (5) business days after the payor
700 pays the obligor, the payor shall send the amount withheld to the Wisconsin Support
701 Collections Trust Fund.

702 (e) A payor shall be liable for one hundred percent (100%) of the child support order, or
703 the amount of money that should have been withheld from the obligor's earnings,
704 whichever is the lesser amount, if the payor:

705 (1) Fails or refuses, after being noticed of an income withholding order, to deduct
706 or promptly remit the amounts of money required in the order;

707 (2) Fails or refuses to submit an answer to the notice of income withholding after
708 being noticed; or

709 (3) Is unwilling to comply with the other requirements of this law.

710 (f) A payor shall not discharge from employment, refuse to employ, or otherwise take
711 disciplinary action against any obligor solely because he or she is subject to income
712 withholding.

713 (1) When the Family Court finds that a payor has taken any of these actions, the
714 payor shall be liable for a civil penalty. Any payor who violates any provision of
715 this paragraph shall be liable in a civil action for reasonable damages suffered by
716 an obligor as a result of the violation, and an obligor discharged or demoted in
717 violation of this paragraph shall be entitled to be reinstated to his or her former
718 position.

719 (2) The statute of limitations for actions under this section shall be one (1) year.

720 (g) A payor who repeatedly fails to comply with an income withholding order as required
721 by this law may be subject to a fine, not to exceed five hundred dollars (\$500), or have its
722 Oneida vendor license revoked or suspended, if applicable, until compliance with this law
723 is assured.

724 (1) The vendor license issuing agency shall comply with the Family Court order to
725 revoke or suspend a vendor license.

726 (h) If income withholding is inapplicable, ineffective or insufficient to ensure payment of
727 child support, the Family Court may require the obligor to establish an account for the
728 purpose of transferring child support payments.

729 (i) The total amount withheld under an income withholding order shall not exceed the
730 maximum amount permitted under section 303(b) of the Consumer Credit Protection Act
731 (15 U.S.C. §1673(b)).

732 (j) Non-Indian off-reservation payors shall be subject to income withholding under 28
733 U.S.C. §1738B.

734 704.9-4. *Conditions of the Order.* The Family Court may require a party, or both parties, to use
735 the services available to him or her to obtain and maintain regular employment and/or job training.

736 704.9-5. *Support Order Notice Requirements.* Each order for child support shall include:

737 (a) An order that the obligor and obligee notify the Agency of any change of address or
738 name change within ten (10) business days of such change; and

739 (b) An order that the obligor notify the Agency and the obligee of any change of employer
740 or substantial change of income within ten (10) business days of the change.

741 704.9-6. *Enforcement of Order.* A child support order under this section is enforceable as
742 contempt.

743 704.9-7. *Collection and Distribution of Child Support.* The Agency shall collect and distribute
744 child support monies pursuant to regulations set forth in the Social Security Act 45 CFR 309.115.

745 704.9-8. *Trust.* The Family Court may protect and promote the best interests of the minor children
746 by setting aside a portion of the child support that either party is ordered to pay in a separate fund
747 or trust for the support, education, and welfare of such children.

748 704.9-9. *Non-Cash Payments.*

749 (a) Non-cash payments may be used to satisfy part or all of a child support order if the
750 parties and the Family Court agree to allow non-cash payments. Non-cash payments shall
751 not be used to fulfill arrears. If non-cash payments are allowed, the order shall:

752 (1) state the specific dollar amount of the support obligation;

753 (2) state the maximum amount (in dollars) of non-cash payment that the obligee
754 will accept;

755 (3) describe the type of non-cash payment that is permitted;

756 (4) provide that non-cash payment cannot be used to satisfy assigned child support
757 obligations.

758 (b) When both parents are in agreement that non-cash payments may be used to satisfy a
759 child support obligation, the non-cash payment may include, but is not limited, to the
760 following:

761 (1) Clothing;

762 (2) Groceries;

763 (3) Child Care;

764 (4) Deer/Venison;

765 (5) Wood;

766 (6) Transportation;

767 (7) Skilled trades or services, such as car repairs, lawn care and snow removal;
768 and/or

769 (8) Gift cards.

770 (c) When a non-cash payment is used to satisfy part or all of a child support order, the
771 obligor and obligee shall submit any forms required by the Agency within the month that
772 the non-cash payment is made. If there are less than five (5) business days left in the month
773 when a non-cash payment is made, the obligor and obligee have five (5) business days to
774 submit any required forms to the Agency. The Agency shall be responsible for applying
775 the non-cash payment towards the child support order during the appropriate month.

776

777 **704.10. Modification of a Child Support Order**

778 704.10-1. *Review of the Child Support Order.* Every two (2) years, the Agency shall conduct a
779 review of the child support order. The Agency shall notify the non-custodial parent, custodial
780 parent, and any interested party that a review of their child support order shall be conducted.

781 704.10-2. *Modification of Child Support Sought by the Agency.* After the two (2) year review is
782 conducted by the Agency, the Agency shall seek an order to modify the child support obligation if

783 there is a substantial change in circumstances, unless otherwise stipulated by the parties. A
784 substantial change in circumstances includes, but is not limited to:

- 785 (a) the child's placement is changed;
- 786 (b) either parent or the child has a significant change in his or her finances that would lead
787 to a change in child support of more than fifteen percent (15%) and fifty dollars (\$50.00)
788 per month;
- 789 (c) the obligee is receiving public assistance benefits and is required to have a current
790 support order in place;
- 791 (d) it has been twenty-four (24) months since the date of the last child support order or
792 revision to the child support order, unless the child support amount is expressed as a
793 percentage; or
- 794 (e) a change has occurred and if the current circumstances had been in place at the time
795 the order was issued, a significantly different order would have been issued.

796 704.10-3. *Modification of Child Support Sought by the Parties.* Either party, not including the
797 Agency, may file a motion for a modification of a child support order at any time based upon a
798 substantial change of circumstances supported by affidavit.

- 799 (a) Such motion shall state why the previous decision should be prospectively modified.
- 800 (b) The motion and affidavit shall be served by the moving party on the responding party
801 by first-class mail to the recently verified last-known address, or by any method provided
802 by law.
- 803 (c) A hearing date shall be scheduled no sooner than ten (10) calendar days after the date
804 of service.

805 704.10-4. An obligor shall not raise a substantial change in circumstances as a reason not to pay
806 a current child support order or arrears. If a child support order becomes unjust due to a substantial
807 change in circumstances of the obligor, the obligor has the duty to file a petition or motion with
808 the Family Court for a modification to the child support order at that time.

809

810 **704.11. Modification of a Child Support Order for an Incarcerated Parent**

811 704.11-1. In the event an obligor is incarcerated for one hundred and eighty (180) days or more,
812 the obligor shall have the right to have the Agency review his or her child support order to
813 determine if modification or suspension of the child support order is appropriate. The obligor shall
814 notice the Agency of his or her incarceration.

- 815 (a) An ordered child support obligation shall be suspended for an incarcerated obligor who
816 has been sentenced to one hundred and eighty (180) days or more and has an income of
817 less than two hundred dollars (\$200) per month.
- 818 (b) If while incarcerated the obligor's income is two hundred dollars (\$200) or more per
819 month the Agency shall review the order and seek temporary modification of the child
820 support order based on the incarcerated obligor's income, if necessary.
- 821 (c) Child support obligations shall not be suspended or modified for an obligor who is
822 incarcerated for a criminal offense which includes:
 - 823 (1) felony failure to pay support;
 - 824 (2) a crime against a child; and/or
 - 825 (3) a crime against the obligee.
- 826 (d) Past due child support related debt and/or arrears shall not be suspended or reduced as
827 a result of the obligor's incarceration without stipulation by the parties.

828 704.11-2. *Notification of Review.* Within fifteen (15) business days of the receipt by the Agency
829 of verification of the obligor's incarceration, the Agency shall send out a letter to the parties of the

830 case informing them of the obligor's right to have his or her child support obligation reviewed,
831 and of the Agency's intent to review the current child support order.

832 704.11-3. *Agency Review of Order.* The Agency shall review the obligor's child support order
833 and make one of the following determinations:

834 (a) that the obligor's income while incarcerated is two hundred dollars (\$200) or more per
835 month, and the Agency shall seek temporary modification of the obligor's child support
836 order based on the incarcerated obligor's income, if necessary; or

837 (b) that the obligor's income while incarcerated is less than two hundred dollars (\$200)
838 per month, and the Agency shall seek temporary suspension of the obligor's child support
839 order while incarcerated.

840 704.11-4. *Suspension of Order by the Agency.* If the Agency determines the obligor's income is
841 less than two hundred dollars (\$200) per month while incarcerated, the Agency shall file with the
842 Family Court a Motion and Order to Suspend without a request for a hearing with notice to all
843 parties that the child support order shall be suspended.

844 (a) Either party shall have the right to object to the suspension of the order within ten (10)
845 business days of the date of the notice by filing such objection with the Family Court and
846 providing a copy of the objection to the Agency.

847 (b) If no objection to the suspension is received, the Family Court shall enter the order as
848 proposed.

849 (c) Upon receipt of an objection from either party, the Family Court shall schedule a
850 hearing on the issue.

851 704.11-5. *Modification of Order by the Agency.* If the Agency determines the obligor's income
852 is two hundred dollars (\$200) per month or more while incarcerated, the Agency shall file with the
853 Family Court a Motion to Modify.

854 (a) The Family Court shall schedule a hearing on the motion with the Agency providing
855 notice to all parties with the proposed modification to the child support order by first class
856 mail at least ten (10) business days prior to the hearing.

857 (b) If no objection to the modification is received at the hearing, the Family Court shall
858 enter the order as proposed.

859 704.11-6. *Modification of the Order by the Incarcerated Parent.* The incarcerated parent may
860 seek modification of his or her own child support order by filing a motion to modify with the
861 Family Court in accordance with section 704.10-3.

862 704.11-7. If during the term of incarceration, the Agency receives notification of a change in the
863 obligor's employment and/or income, the Agency shall review the obligor's order and determine
864 if the obligor's income is two hundred dollars (\$200) or more per month, and whether it is
865 necessary to temporarily modify or suspend the obligor's child support order.

866 (a) If the Agency determines that suspension of the obligor's order is necessary, then the
867 procedure for filing a Motion and Order to Suspend without a request for a hearing
868 described in section 704.11-4 shall be followed.

869 (b) If the Agency determines that modification of the obligor's order is necessary, then the
870 procedure for filing a Motion to Modify described in section 704.11-5 shall be followed.

871 704.11-8. *Reinstatement of Prior Order.* Sixty (60) days after the obligor's release from
872 incarceration, the child support order shall be administratively reinstated by the Agency to the
873 previous child support order in effect before the suspension or modification of the order based on
874 the obligor's incarceration.

875 (a) The Agency shall send notice to both parties of the obligor's release from incarceration
876 and the intent of the Agency to reinstate the original order.

877

878 **704.12. Compliance Plan**

879 704.12-1. If at any time the obligor is, or may become, non-compliant with his or her child support
880 order by failing to pay support as ordered or meeting a required obligation or action, the Agency
881 shall meet with the obligor to develop a compliance plan.

882 704.12-2. An Appointment Letter may be sent by the Agency at any time deemed appropriate, but
883 the Agency shall send out the Appointment Letter at least thirty (30) days prior to the initiation of
884 any enforcement action.

885 (a) The Letter shall request the party meet with the Agency to discuss barriers to payment
886 and how to avoid future enforcement action.

887 (b) If the party does not respond to the Letter within five (5) business days after receipt of
888 the letter, the Agency may proceed with appropriate enforcement action.

889 (c) If the obligor responds to the Letter, the Agency shall interview the party to determine
890 the reasons and barriers for the non-compliance and create a compliance plan. The
891 compliance plan may include an increase in payment and/or any activity that is necessary
892 to assist in payment, including programs that focus on:

- 893 (1) Employment and training;
- 894 (2) Social service and mental health;
- 895 (3) Physical and learning disabilities;
- 896 (4) Tribal traditions and customs;
- 897 (5) Family counseling and parenting; and
- 898 (6) Any other program deemed necessary.

899 (d) If the party successfully completes the compliance plan, no further enforcement action
900 is necessary. However, if the party fails to complete the compliance plan, the Agency shall
901 proceed with appropriate enforcement action.

902

903 **704.13. Enforcement of an Order**

904 704.13-1. An obligor may be subject to enforcement actions when the obligor is at least one (1)
905 month delinquent in paying his or her child support obligation. Enforcement actions may include
906 administrative enforcement action by the Agency and enforcement action by the Family Court.

907 (a) An obligor shall be provided with notice of an enforcement action of at least thirty (30)
908 days before an enforcement action is used, unless another timeline is specified.

909 (b) An enforcement action shall be stayed and/or suspended after notice is given to the
910 obligor if the obligor pays the debt in full or enters into, and maintains, an alternative
911 payment plan and/or a compliance plan with the Agency.

912 704.13-2. *Agency Responsibilities in the Enforcement of an Order.* The Agency shall have the
913 following responsibilities in the enforcement of an order:

- 914 (a) Track and document the progress of an obligor who is under an enforcement action;
- 915 (b) Take additional enforcement action when an obligor fails to comply with a previous
916 enforcement action;
- 917 (c) Document the reasons why an enforcement action is not taken, when such action would
918 have been appropriate under the circumstances; and
- 919 (d) Assist in refunding amounts that were improperly withheld, terminate income
920 withholding when appropriate, and allocate amounts across multiple cases.

921 704.13-3. *Notice to the Obligor of Delinquency.* In the event that an obligor owes a debt equal to
922 or exceeding the monthly amount due, the Agency shall send a notice of delinquency to the obligor.
923 The notice of delinquency shall inform the obligor of the following:

- 924 (a) The total amount of the delinquency; and

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

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

939 (A) There is an error in the amount of current or overdue support; or
940 (B) The identity of the obligor is mistaken.

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

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

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

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

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

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

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

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

966 704.13-7. *Notice to Individuals Other Than the Obligor with a Recorded Ownership Interest in*
967 *Property.* The Agency shall provide notice related to the seizure of property to any individual,
968 other than the obligor, with a recorded ownership interest in property subject to seizure. The
969 individual may request a hearing for a determination of the proportion of the value of the property
970 that is attributable to his or her net contribution to the property. The hearing shall be requested
971 within thirty (30) days after the notice was received by the individual.

972

973 **704.14. Alternative Payment Plans**

974 704.14-1. *Applicability of Alternative Payment Plans.* When an obligor is subject to
975 administrative enforcement action, he or she may negotiate an alternative payment plan with the
976 Agency.

977 704.14-2. *Negotiation of an Alternative Payment Plan After Receiving Notice of an Enforcement*
978 *Action.*

979 (a) In order to negotiate an alternative payment plan, an obligor shall submit a written
980 request to the Agency.

981 (1) A written request to negotiate an alternative payment plan received by the
982 Agency within ten (10) business days after the date of notice shall stay any
983 administrative enforcement action.

984 (2) If a written request to negotiate an alternative payment plan is received by the
985 Agency more than ten (10) business days after the date of notice, administrative
986 enforcement action may be taken, as long as the requirements for staying or
987 suspension of administrative enforcement actions are met.

988 (b) An obligor may negotiate a plan with the Agency to have a license suspension lifted.

989 (c) *Hearings for Negotiations of an Alternative Payment Plan.* The obligor may submit a
990 written request for a hearing with the Family Court regarding negotiations of an alternative
991 payment plan in the following circumstances:

992 (1) The obligor and the Agency have agreed to terms of a plan, but the obligor
993 wants the Family Court to consider the reasonableness of the plan.

994 (A) The obligor may submit this written request for a hearing on the
995 reasonableness of the plan within ten (10) business days after the terms of
996 the plan are agreed upon.

997 (2) The obligor and the Agency are unable to reach agreement on the terms of a
998 plan.

999 (A) The Family Court may order a plan by setting conditions and/or
1000 payments in the amounts and at the times it considers reasonable.

1001 (d) *Proceeding with Administrative Enforcement Actions.* The Agency may continue with
1002 the administrative enforcement action if:

1003 (1) the obligor and the Agency are unable to negotiate a plan;

1004 (2) the Family Court determines that the plan is not reasonable; and/or

1005 (3) the Family Court does not order a plan.

1006 704.14-3. *Disclosure of Income and Assets.* The request to negotiate a plan shall include an
1007 agreement by the obligor to provide the Agency with a full disclosure of income and assets
1008 available. The obligor shall provide complete income and assets information to the Agency within
1009 five (5) business days of the request to negotiate a plan.

1010 704.14-4. *Terms of an Alternative Payment Plan.*

1011 (a) An alternative payment plan may include a lump-sum payment, or periodic payments
1012 on the arrears, or both, subject to the following standards:

1013 (1) The sum of any periodic payment established under the plan and any other
1014 payment of support ordered by the Family Court, when subtracted from the
1015 obligor's gross income, may not leave the obligor below one hundred percent
1016 (100%) of the poverty line established under 42 U.S.C. §9902 (2) unless the obligor
1017 agrees otherwise.

1018 (2) When establishing an alternative payment plan, the Agency shall consider the
1019 factors used by the Family Court in determining whether the use of the percentage
1020 standard is unfair to the child or any of the parties.

1021 (b) Periodic payments under the plan may be made through income withholding in
1022 amounts in addition to the amount ordered in the child support order that is in effect.

1023 704.14-5. *Staying Administrative Enforcement Actions.* Administrative enforcement actions shall
1024 be stayed by the Agency while the obligor and the Agency are negotiating a plan, or, if a hearing
1025 is requested because an agreement cannot be reached or the reasonableness of the plan is
1026 questioned, until the Family Court determination has been made. To stay an administrative
1027 enforcement action means the following:

1028 (a) The obligor shall not be certified for denial, nonrenewal, restriction, or suspension of
1029 any State or Oneida-issued licenses;

1030 (b) Any frozen financial accounts shall remain frozen and shall not be seized; and

1031 (c) Personal property that has been seized shall not be sold.

1032 704.14-6. *Suspension of Administrative Enforcement Actions.*

1033 (a) When a plan has been negotiated between the obligor and the Agency, or the Family
1034 Court has determined that a plan is reasonable or has ordered a plan, the Agency shall
1035 suspend administrative enforcement actions as long as the obligor complies with the plan
1036 or requests a hearing because of a substantial change in circumstances.

1037 (b) If an obligor makes an arrears payment agreeable to the Agency, the administrative
1038 enforcement action shall be suspended.

1039 704.14-7. *Default on an Alternative Payment Plan.* In the event that the obligor defaults on the
1040 plan, the Agency shall notify the obligor in writing that an administrative enforcement action shall
1041 be implemented unless the child support lien is paid in full.

1042 704.14-8. *Renegotiation of an Alternative Payment Plan.* After the entry of an alternative payment
1043 plan, the plan may be renegotiated upon the written request of the obligor or Agency if the
1044 requesting party can show a substantial change in circumstances. A substantial change in
1045 circumstances includes any of the following:

1046 (a) A change in the obligor's income or assets, including the sale or purchase of real or
1047 personal property;

1048 (b) A change in the obligor's earning capacity; and/or

1049 (c) Any other factor that the Agency determines is relevant.

1050

1051 **704.15. Administrative Enforcement Action**

1052 704.15-1. The Agency shall have the authority to use administrative enforcement actions to
1053 enforce a child support order without obtaining an order from the Family Court in the event that
1054 an obligor is at least one (1) month delinquent in paying his or her child support obligations.

1055 704.15-2. *Liens.* The Agency shall have an obligor placed on the lien docket if the obligor owes
1056 a debt in one or more of the obligor's cases equal to or exceeding the monthly amount due or five
1057 hundred dollars (\$500.00), whichever is greater.

1058 (a) *Lien Amount.* The lien amount on the lien docket shall equal the sum of lien amounts
1059 from the cases in which the lien amount meets or exceeds the lien threshold.

1060 (b) *Filing Date.* The filing date on the lien docket is the date that a lien is first docketed
1061 and delivered to the register of deeds. The filing date is the effective date of the lien. The
1062 effective date does not change if the lien amount is adjusted up or down within five (5)
1063 years after the date that the lien is first docketed.

- 1064 (c) *Lien Priority*. The child support lien shall have priority over all other liens on property
1065 except:
- 1066 (1) tax and special assessment liens;
 - 1067 (2) purchase money mortgages;
 - 1068 (3) construction liens;
 - 1069 (4) environmental liens;
 - 1070 (5) liens that are filed or recorded before the child support lien becomes effective;
 - 1071 and
 - 1072 (6) any other lien given priority under the law.
- 1073 (d) Property subject to a lien includes personal property in which the obligor has a recorded
1074 ownership interest.
- 1075 (e) *Effect on a Good Faith Purchaser*. A child support lien is not effective against a good
1076 faith purchaser of titled personal property unless the lien is recorded on the title.
- 1077 (f) *Credit Bureau Reporting*. The Agency may report the total amount of an obligor's
1078 liens to the credit bureau, so long as the lien is fully enforceable and the case is not barred
1079 from credit bureau reporting.
- 1080 (g) *Agency Lien Responsibilities*. The Agency shall be responsible for:
- 1081 (1) updating the lien docket periodically;
 - 1082 (2) providing a copy of the lien docket to the appropriate register of deeds;
 - 1083 (3) responding to inquiries concerning information recorded on the lien docket;
 - 1084 (4) ensuring the satisfaction of a lien is recorded on the lien docket;
 - 1085 (5) renewing a lien if the lien amount equals or exceeds the lien threshold at the
1086 end of the five (5) year effective period;
 - 1087 (A) When a lien is renewed, the date on which the lien is renewed shall
1088 become the effective date of the lien, and a new five (5) year period shall
1089 commence.
 - 1090 (6) sending the obligor a notice when a lien has been renewed; and
 - 1091 (7) developing procedures for releasing a lien and releasing specific property from
1092 a lien.
- 1093 (h) *Financial Record Review*.
- 1094 (1) An obligor may request a financial record review in writing to the Agency
1095 within ten (10) business days of the date of notice of a lien, to determine the
1096 correctness of the financial records in a case.
 - 1097 (2) Upon receiving a request for a financial record review, the Agency shall, at no
1098 charge to the obligor, provide the obligor with:
 - 1099 (A) all relevant financial records;
 - 1100 (B) information explaining how to interpret the records; and
 - 1101 (C) a form the obligor may use to identify any alleged errors in the records.
 - 1102 (3) Within twenty (20) days after receiving the relevant financial records, the
1103 obligor may:
 - 1104 (A) request a meeting with the Agency to review the financial records and
1105 to discuss any alleged errors; and/or
 - 1106 (B) provide a statement of alleged error on the documents.
 - 1107 (i) The Agency shall review the records to determine whether the
1108 alleged error is correct and provide a written determination within
1109 sixty (60) days after the obligor's request for a financial record
1110 review is received as to whether the lien against the obligor is in the
1111 correct amount.

- 1112 (4) The Agency may proceed with the lien if:
1113 (A) the obligor does not request a meeting with the Agency or provide a
1114 statement of alleged error within twenty (20) days after receiving the
1115 financial records;
1116 (B) no errors are found in the financial records of the case; or
1117 (C) the arrears exceed the required threshold amount after any errors in the
1118 financial records are corrected.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1204 (c) The obligor has to travel abroad because of a life-or-death situation involving an
1205 immediate family member; or

1206 (d) The obligor was denied a passport in error.
1207

1208 **704.16. Family Court Enforcement Action**

1209 704.16-1. If the Agency does not have the authority to conduct the appropriate enforcement action,
1210 or the obligor is unresponsive to the enforcement actions being imposed by the Agency, the case
1211 shall be referred to the Family Court for enforcement. The Family Court may order any of the
1212 enforcement actions the Agency is authorized to implement, in addition to the enforcement actions
1213 described in this section.

1214 704.16-2. *Bonds and Other Guarantees.* The Family Court may require an obligor to provide a
1215 surety, bond or guarantee to secure the payment of arrears, if income withholding is not applicable,
1216 practical, or feasible to secure payment of arrears.

1217 704.16-3. *Claims Against Estates.* The Family Court may approve a claim for past and future
1218 support against an obligor's estate. The Family Court may issue a restraining order against an
1219 estate from which an obligor will inherit.

1220 704.16-4. *Contempt.* The Family Court may hold an obligor who fails to comply with a lawful
1221 child support order in contempt. An obligor found to be in contempt shall be subject to the
1222 following punishments:

1223 (a) *Community Service.* The Family Court may order an obligor to perform community
1224 service. The number of hours of work required may not exceed what would be reasonable
1225 considering the amount of arrears the obligor owes. The obligor shall be provided a written
1226 statement of the terms of the community service order and that the community service order
1227 is monitored. The order shall specify:

- 1228 (1) how many hours of community service the obligor is required to complete;
1229 (2) the time frame in which the hours must be completed;
1230 (3) how the obligor will report his or her hours; and
1231 (4) any other information the Family Court determines is relevant.

1232 (b) *Fines.* An obligor found in contempt of court may be fined in an amount not to exceed
1233 one thousand dollars (\$1,000.00) per act of contempt and may not exceed five thousand
1234 dollars (\$5,000.00) in total. In instances of continuing contempt, each day shall constitute
1235 a separate act of contempt.

1236 (c) *Incarceration.* The Family Court may order an obligor be incarcerated. Before a jail
1237 sentence is imposed, the Family Court shall provide other conditions that require a certain
1238 amount of money be paid or action be taken for an obligor to avoid incarceration.

1239 (d) *Criminal Non-Support.* A criminal non-support action may be initiated, in the
1240 appropriate county, against an obligor who has the ability to pay child support and willfully
1241 or intentionally failed to pay and the obligor knew or reasonably should have known he or
1242 she was legally obligated to provide.
1243

1244 **704.17. Full Faith and Credit for Foreign Child Support Orders**

1245 704.17-1. Child support orders, judgments, or decrees of other federally recognized tribes, and
1246 states that relate to child support shall be recognized and modified in accordance with the
1247 requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B.

1248 704.17-2. A foreign order is authenticated by reasonable proof that the document tendered to the
1249 Family Court is a true certified copy of the foreign order as it is recorded in the agency or court of
1250 the issuing jurisdiction. An authentication stamp issued by a court clerk or custodian of records,
1251 or a court seal, is sufficient evidence of authenticity.

1252 704.17-3. Unless defects in jurisdiction are apparent on the face of the foreign order, the person
1253 contesting enforcement of the order has the burden of showing the order is not valid. Upon a
1254 failure to respond to notice of the order and to timely contest it, the Family Court shall enforce it
1255 as an order of the Family Court.

1256 704.17-4. If a foreign order is brought before the Family Court solely for an interpretation of the
1257 terms of the order, and the order has been recognized and given full faith and credit by the Family
1258 Court, the Family Court shall interpret the order by applying the law of the forum that issued the
1259 foreign order.

1260

1261 **704.18. Right of Appeal**

1262 704.18-1. *Appeals of Administrative Enforcement Action.* Any enforcement action implemented
1263 by the Agency may be appealed to the Family Court within thirty (30) calendar days after the date
1264 that the action is enforced. The decision of the Family Court as to the Agency’s administrative
1265 enforcement action shall be final and non-appealable.

1266 704.18-2. *Appeals of Family Court Decisions.* A party may appeal a Family Court decision, other
1267 than the decision of the Family Court in regard to administrative enforcement action as referenced
1268 in section 704.18-1, to the Nation’s Court of Appeals within thirty (30) calendar days after the date
1269 the Family Court made the decision. The review of the Court of Appeals shall be based on the
1270 record and the original decision of the Family Court.

1271

1272 *End.*

1273 Emergency Adopted - BC-06-30-08-C (Expired)

1274 Emergency Extended – BC-12-10-08-H (Expired)

1275 Permanently Adopted- BC-06-24-09-B

1276 Emergency Amended - BC-10-28-09-E

1277 Amended - BC-02-24-10-G

1278 Amended - BC-06-22-11-K

1279 Amended - BC-10-10-12-C

1280 Amended – BC-08-13-14-E

1281 Amended – BC-__-__-__-__

1282



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING**

Child Support Law Amendments

Business Committee Conference Room-2nd Floor Norbert Hill Center
October 17, 2019 12:00 p.m.

Present: Jennifer Webster, Daniel Guzman King, Clorissa N. Santiago, Brandon Wisneski, Michelle Gordon, Bonnie Pigman, Trina Schuyler, Tami Bush, Rae Skenandore.

Jennifer Webster: Good Afternoon. The time is 12:00 p.m. and today's date is Thursday, October 17, 2019. I will now call to order the public meeting for the proposed amendments to the Child Support law.

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community. The public meeting is not a question and answer period. The LOC will review and consider all comments received during the public comment period. The LOC will respond to all comments received in a memorandum, which will be submitted in the meeting materials at a future LOC meeting.

All persons who wish to present oral testimony need to register on the sign-in sheet at the back of the room. If you leave an e-mail address on the sign-in sheet, we can ensure you receive a copy of the memorandum.

Additionally, written comments may be submitted to the Nation's Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business day on Thursday October 24, 2019.

In attendance from the LOC is myself Jenny Webster, and Daniel Guzman King

The LOC may impose a time limit for all speakers pursuant to Section 109.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons.

We will now begin today's public meeting for the proposed amendments to the Child Support law. The purpose of this law is to establish the legal responsibility of parents to provide financially for their children's well-being, as well as to make support payments more equitable by ensuring consistent treatment of persons in similar circumstances; make support payments based on real earning capability of parents; and improve the efficiency of child support establishment and enforcement.

Those who wish to speak please come to the microphone.

Michelle Gordan: Attorney Michelle Gordon with the Law Office. I am the attorney that is assigned to the Child Support Department. As you know we held a work meeting with the department and the LRO and the LOC and when reviewing the draft we caught just a couple of things that we thought we agreed upon but weren't changing the law, so we just wanted to go through those to maybe go back and look at those.

So, the first thing in the definitions we thought we had agreed upon adding a definition of contempt and that is not in there, so if the LOC reviews that and decides to put in a definition, we think that would be helpful. And I am going through the redline that is, so when I call out line numbers it is going to be through the redline that was in the packet.

So, the first one is line 258 on page 6 of the redline. We had, so it says within ten (10) business days, the custodial parent, or the Agency when required by federal law, may initiate a hearing, but this section is initiation of action by the Agency, so the reference to the custodial parent should be removed, because their section comes later and then we also agreed that when required by federal law would be removed. So, the wording the "custodial parent" should be struck and the wording "when required by federal law" should be struck.

Then page 7, Line 309 of the redline, and this is actually something that I am not sure we did bring up, we can't remember. It might have been something we forgot, but the requirement of the petition does require the address and we are asking that the requirement for the address be removed and that is for the safety of the parties. We do have a lot of cases where there is domestic violence. There is on the next page a section that was added for nondisclosure of information in protected cases. It says upon a finding which may be made ex parte if the court found it would be unreasonable to include, the court could order, but that just adds an additional step for the department and so that means every time we have a case where we find out that the parties are a protected person, if the address is required to be included in the petition, that means every time before we could file we would have to send something to the court to get that ex parte order, asking for permission not to include the address in the petition. There is a requirement for a confidential petition addendum, which is again on the next page. That is required to be included in all cases. We would like to add that the address be included in the confidential petition addendum instead of the petition. We would also like to add at the end of the confidential petition addendum that the court could refuse access to that confidential petition addendum in these types of protected cases, because right now it is available to all parties to the action and we think the court should have the right to refuse access in case it is a protected case. When we send these documents over to the court, we do specify when the cases are protected, so the court would know when we file the confidential petition addendum that it is a protected case, so they would know if someone made a request that they could deny that if the court allows them to deny access to that confidential petition addendum.

Then also on page 8, line 360, this talks about notice, it deals with the summons. Up above it talks about serving the summons by Certified Mail. This section is about publication and it says, "When a responding party cannot be found for personal service after diligent attempts and attempts to serve the responding party by certified mail have failed, the petitioner may use service by publication." "May" needs to be changed to "shall" because they have to be served in some form

and so how it's done is if you can't serve by mail, you have to serve by publication and that's a requirement that the court makes, so the word "may" we're asking to be changed to "shall".

Page 10 of the redline, at lines 449, it's determining child support obligation. It simply says right now that the obligor's monthly income shall be considered and then when the next section percentage standards, it just talks about the portion of the obligor's monthly income, it needs to say, "gross monthly income". That helps to explain to parties when they come in we can point to the law that it says, because a lot of times we get the argument why are you going off my gross, not my net, I don't make that much, but the law is staying consistent and how we've been doing it, it is based on gross monthly income and so we are asking for that clarification in that section that it say gross monthly income. Sorry I'm trying to go through my pages here.

Page 21 of the redline, line 975. So, this is for modification of order by the agency. This is going to require a hearing and the way it's worded right now it says, "shall file with the Family Court a Motion and Order to Modify." It needs to say just a "Motion to Modify", because a motion and order to modify means we don't have to have a hearing. We send over the motion with an order and if there is no objection to the order then the court just signs the order. So, this needs to have "an Order to Modify" removed and I believe that was in the discussion we had in the work meeting. And then also lines 979 on the next page again this is requiring a hearing but line 979 which is "b." needs to be removed because it says, "If no objection to the modification is received at the hearing, the Family Court shall enter the order as proposed." , but that's tying the court, I mean the court should have discretion to make an order that they see as appropriate so they may not agree with the agency and so they should have that discretion and I think that's just confusion about the motion and order we had talked about with the objection, so we would like that section be removed.

The next one is page 23, line 1033 of the redline. This is 704.12-2, subsection c., it says "If the obligor responds to the Letter", but we had thought, our notes say that, we had specifically said that it would be when the obligor actually meets with the agency, not just responds in writing to the agency, then the agency shall interview the party.

Line 1043, it says "If the party successfully completes the compliance plan," we believe it should say "completes the terms of the compliance plan" because there is a list of terms that are included.

The next is at page 25 under the "Alternative Payment Plans" section, line 1150. Our notes say that this sentence should end at enforcement action may be taken period and the remainder of that sentence should be removed. There also should be a paragraph 3. I do note that in my discussions with Clarissa from the Legislative Reference Office, she had stated that that additional sentence, I didn't get to her, she must have not caught it at the meeting and then I didn't get it to her in time to be included in the packet, but she does intend to bring it to the Committee, but I thought for safety purposes I would just put it on the record today.

Jennifer Webster: Okay

Michelle Gordon: So, subsection 3 would be "If the Agency agrees to negotiate an alternative payment plan after the ten (10) business days after the date of notice, the Agency and obligor may

agree to stay or suspend the administrative enforcement action.” So that would be an additional subsection 3.

Then line 1158, we also thought that we had agreed to add this additional language after the end of that sentence, so it would end with “reasonableness of the plan due to a change of circumstances since the plan was agreed to by the Agency and the obligor. Because right now it allows the obligor to challenge the reasonableness of the plan, but they entered into the plan, so for us wouldn’t it make sense that they entered into the plan because the plan was reasonable. They wouldn’t have entered into the plan if they didn’t feel it was reasonable and so they’ve entered into the plan and now they are objecting to it later, so we’re just requesting that this change of circumstances is now making it unreasonable.

Page 26, line 1202. This kind of goes to the same issue. It ends with “or requests a hearing because of a substantial change in circumstances.”, we would like the wording “which makes the plan unreasonable” added to that to clarify.

And then lastly, it is the end which deals with Family Enforcement Action, page 30, line 1379, and when we had our meeting, we thought that we had agreed that we would create a contempt section and that this section would be retitled “Contempt”, because we needed to be stronger on our contempt issues. So, this is a lot, so 704.16-1, that whole section would be struck except for, it would read “The Family Court may order the following as a part of a contempt order.” Then prior to that at line 1418 is a section on contempt that says “The Family Court may hold an obligor who fails to comply with a lawful child support order in contempt. An obligor found to be in contempt shall be subject to following punishments.”, or we feel that that should be moved to the top. So that should be your start of this section entitled “Contempt”. And then everything underneath, the bonds and other guarantees, the claims against estates, all of that would then be part of the Contempt, so you would just name those a., b., so Bonds and Other Guarantees would be subsection a., Claims Against Estates would be subsection b., Community Service would be subsection c., Fines would be subsection d., Incarceration would be subsection e., and Criminal Non-support would be subsection f.

So that is all of my comments in regards to the law that we thought we had in regards to our work meeting. Thank you.

Jennifer Webster: Thank you. Is there anybody else that would like to give comments today? Did you sign in in the back Bonnie? Bonnie did you sign in in the back?

Bonnie Pigman: Yes

Jennifer Webster: Okay. Thanks.

Bonnie Pigman: So, I’m curious in regards to Per Capita Law in regards to when a person becomes deceased and child support can or cannot be taken, it’s not clear in that law written in regards to whether or not by virtue of the attachment process that an attachment can or cannot be applied. The department, Trust and Enrollment Department has taken, has gotten legal reviews, however, in my opinion it’s still not clear because the law is not clearly written to truly define

about a deceased person's per capita being allowed to be taken as an attachment and so like I said it's just not clear in that law. So if it's not clear in that law I don't know what the child support process in this law how that's coming together, how those two documents are going to meld together, because in one hand the attachment section of the Per Capita law says that they don't even have to submit anything, but yet you have a deceased person and we're now paying deceased people, there seems to be a conflict on how we should be handling those individuals because on one hand they become deceased and yes they can be attached or two that they did claim the form before they passed, but then they died before the distribution occurred and yet we're still taking the distribution on that deceased person. So, I think that that law, those two laws, that Per Capita law needs to be, I think it needs to be, something needs to happen between these two laws that make that clearly definable regarding those, that particular situation. Thank you.

Jennifer Webster: Thank you. Is there anybody else that would like to speak this morning?

With there no other speakers registered, the public meeting for the amendments to the Child Support is now closed at 12:19 p.m. Thank you.

Written comments may be submitted until close of business day on Thursday, October 24, 2019. Thank you for coming.

-End of Meeting-

From: [Jennifer J. Jordan](#)
To: [LOC](#)
Subject: Public Comment for Title 7. Child Support
Date: Thursday, October 17, 2019 2:32:49 PM

Lines 366 thru 368 regarding the obligor's employer.

1. What will happen if the obligor's employer is subpoenaed to provide the family court with a record of the obligor's earning and cannot produce that information as the obligor is paid in cash and does not pay taxes?

Yaw^ko.

Jennifer J. Jordan, Ph.D.



Legislative Operating Committee
 November 6, 2019

Indian Preference in Contracting Law Amendments

Submission Date: 4/17/19	Public Meeting: n/a
LOC Sponsor: Ernest Stevens III	Emergency Enacted: n/a

Summary: *The purpose of the amendments to this Law is to complete an overview of any amendments and updates that might be needed for this law.*

4/17/19 LOC: Motion by Jennifer Webster to add the Indian Preference in Contracting law to the active files list with a medium priority and Ernest Stevens III as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

5/20/19: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Kirby Metoxen, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Paul Stensloff, Jeff House, Cathy Bachhuber. The purpose of this work meeting was to discuss why the law was added to the AFL and what portions of the law needed to be addressed through amendments. The group identified potential areas for amendments and policy considerations for the LOC. Discussed that the notes from the meeting will be compiled and the LOC will begin making policy considerations – additional meetings to have further discussions of those considerations and the law in general will be scheduled.

6/5/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to begin considering potential amendments to the Law – based on the discussion and suggestions from the last work meeting. The LOC did not complete an initial review of the beginning policy considerations so an additional work meeting will be scheduled this week.

6/6/19: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was to continue the discussion and consideration of potential amendments to the Law from the June 6 LOC work session – based on the discussion and suggestions for potential amendments from the May 20 LOC work meeting.

7/25/19: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski, Patricia Garvey, Travis Wallenfang, Patrick Stensloff. The purpose of this work meeting was to review the law line-by-line and discuss potential amendments, as well as to review and confirm prior issues the LOC decided to support and not support so we can move forward with amendments to this law.

9/26/19: *Work Meeting.* Present: Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Kirby Metoxen, Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Patrick Stensloff, Paul

Witek, Jameson Wilson. The purpose of this work meeting was for Indian Preference, Purchasing, and Community Economic Development Divisions Engineering to educate and discuss with the LOC on the internal spreadsheets that are used for scoring, SOPs, and a proposed fine schedule.

10/21/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Paul Witek. The purpose of this work meeting was to review the draft of the proposed amendments and the fine and penalty resolution with the affected entities.

10/24/19: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Ernest Stevens III, Jennifer Falck, Clorissa N. Santiago, Brandon Wisneski. The purpose of this work meeting was for the LOC to review the draft of the proposed amendments to the law.

Next Steps:

- Approve draft and legislative analysis.

Title 5. Business - Chapter 502
~~INDIAN PREFERENCE IN CONTRACTING~~
Yukwatánhas Ukwéhu-wé Kayanláhsla
Laws concerning the hiring of the Oneida People

~~502.1. Purpose and Policy~~
~~502.2. Adoption, Amendment, Conflicts~~
~~502.3. Definitions~~
~~502.4. Jurisdiction~~
~~502.5. Indian Preference Office~~
~~502.6. Certification of Entities~~
~~502.7. Application of Indian Preference~~
~~502.8. Skills Bank and Qualified Trades Workers~~
~~502.9. Compliance Agreements~~
~~502.10. Office Investigations and Enforcement~~

INDIAN PREFERENCE IN CONTRACTING

~~502.1. Purpose and Policy~~
~~502.2. Adoption, Amendment, Conflicts~~
~~502.3. Definitions~~
~~502.4. Jurisdiction~~
~~502.5. Certification of Entities~~

~~502.6. Application of Indian Preference to Contracts~~
~~502.7. Compliance Agreements~~
~~502.8. Skills Bank and Qualified Trades Workers~~
~~502.9. Investigations and Enforcement~~

502.1. Purpose and Policy

502.1-1. *Purpose.* The purpose of this law is to establish an Indian Preference Office and increase economic benefits for the ~~Tribes~~Nation and ~~Tribal~~members of the Nation by providing for the maximum utilization of Indian workers and businesses on ~~Tribal~~projects of the Nation which occur on or near the Reservation.

502.1-2. *Policy.* It is the policy of the ~~Tribes:~~

(a) ~~To~~Nation to ensure that Indian preference provisions are applied fairly in all situations and in such a way that reflects the intent of this law; and

(b) ~~To~~to undertake reasonable efforts to ensure that all entities that enter into contracts with or on behalf of the ~~Tribes~~Nation utilize the labor force of Indian workers and businesses by applying Indian preference in all aspects of fulfilling that contract, including but not limited to: hiring, training, business opportunities, labor and/or professional services, and the supply of materials.

502.2. Adoption, Amendment, Conflicts

502.2-1. This law is adopted by the Oneida Business Committee by Resolution BC-03-27-13-B and ~~shall be effective immediately.~~amended by resolution BC- - - - .

502.2-2. This law may be amended ~~pursuant to the procedures set out in Tribal law~~or repealed by the Oneida Business Committee ~~and/or the Oneida~~ General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

502.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

502.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. ~~However, this law specifically supersedes the following:~~

- ~~(a) BC 04 03 96 A Indian Preference Policy Rider I~~
- ~~(b) BC 05 22 96 A Technical Amendments to Rider I Policy~~
- ~~(c) BC 06 10 98 D Amendment to Resolution 5 22 96 A~~
- ~~(d) BC 07 29 98 B Indian Preference Law~~

~~(e) BC 03-27-02-A Sections 9-14 of the Indian Preference Law~~

~~(f) BC 03-26-03-A Amendment to Indian Preference Law Addendum~~

502.2-5. This law is adopted under authority of the Constitution of the Oneida ~~Tribe of Indians of Wisconsin.~~

~~502.2-6. Adoption and enforcement of this law does not waive the sovereign immunity of the Oneida Tribe of Indians of Wisconsin~~Nation.

502.3. Definitions

502.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

~~(a)~~ (a) “Agent” means one who acts relative to a fiduciary relationship to another; a person authorized to negotiate and/or transact business on behalf of an entity.

~~(b)~~ (b) “Bid” means an offer to execute a specified job or jobs within a prescribed time and not exceeding a proposed amount, and includes both offers that become legally binding upon acceptance, and nonbinding or informal quotes.

~~(c)~~ (c) “Bid shopping” means the practice of divulging a contractor’s or subcontractor’s bid to other prospective bidders before the award of a contract, in order to secure a lower bid.

~~(d)~~ (d) “Broker” means an intermediary; an independent contractor employed to negotiate business between a buyer and seller for compensation.

(e) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.

~~(f)~~ (f) “Certification” means verification by the Indian Preference Office that an entity meets all the requirements necessary to qualify for Indian preference in accordance with this law.

~~(g)~~ “Certified entity. See Entity, Certified entity”

~~(h)~~ “Compliance agreement” means a binding agreement, negotiated between the Indian Preference Office and a contractor, identifying specific Indian preference related requirements for a Tribal project.

~~(i)~~ “Construction contract” means any contract issued to build, repair or remodel structures, and includes subcontracts and other construction agreements.

~~(j)~~ “Contractor” means one who enters into a contract.

~~(k)~~ “Core work crew” means the minimum amount of the contractor’s key employees that are essential to start up and continue work on a Tribal project.

~~(l)~~ “Days” means calendar days, except as otherwise provided.

~~(m)~~ “Employee” means any person that performs services and/or labor for an employer in exchange for compensation.

~~(n)~~ “Employer” means any entity, except the Oneida Tribe of Indians of Wisconsin, that controls and directs an employee under an express or implied contract of employment and is obligated to pay salary or wages in compensation.

~~(o)~~ “Entity” means any person, sole proprietor, partnership, corporation, franchise, governmental enterprise, or any other natural or artificial person or organization. The term is intended to be as broad and encompassing as possible to ensure this law covers all employment and contract activities within the jurisdiction of the Tribe.

~~(p)~~ (g) “Certified entity” means an entity that has received certification as an Indian-owned business from the Indian Preference Office.

77 ~~“Tribal-~~(h) “Compliance agreement” means a binding agreement, negotiated between the
78 Indian Preference Office and a contractor identifying specific Indian preference-related
79 requirements for a project.

80 (i) “Construction contract” means any contract issued to build, repair, or remodel
81 structures, and includes subcontracts and other construction agreements.

82 (j) “Contractor” means one who enters into a contract.

83 (k) “Core work crew” means the minimum amount of the contractor’s key employees, who
84 perform a critical function such that an employer would risk likely financial damage or loss
85 if that task were assigned to a person unfamiliar with and/or untrained in the employer’s
86 procedures and routines, that are essential to start up and continue work on a project.

87 (l) “Employee” means any person that performs services and/or labor for an employer in
88 exchange for compensation.

89 (m) “Employer” means any entity”~~means~~, except the Nation, that controls and directs an
90 employee under an express or implied contract of employment and is obligated to pay
91 salary or wages in compensation.

92 (n) “Enterprise” means any internal operation owned and operated by the Nation that
93 generates revenues through its core business functions, including but not limited to, Oneida
94 Gaming, Oneida Retail, and Oneida Printing.

95 (o) “Entity” means any person, sole proprietor, partnership, corporation, franchise,
96 governmental body, or any other natural or artificial person or organization. The term is
97 intended to be as broad and encompassing as possible to ensure this law covers all
98 Tribal employment and contract activities within the jurisdiction of the Nation.

99 ~~(p)~~ (p) “Entities of the Nation” means all programs, departments, boards, committees,
100 commissions and similar business units of the Nation, but shall not mean Tribal
101 corporations, ~~such as Oneida Seven Generations Corporation or Oneida Tribal Integrated~~
102 ~~Enterprises.~~

103 ~~(q)~~ (q) “Front” means a business entity that is strategically structured, financed, operated
104 or staffed such as to unfairly take advantage of Indian preference as granted under this law.

105 ~~(r)~~ (r) “Indian” means an enrolled member of any federally-recognized Indian tribe.

106 ~~(s)~~ (s) “Indian-owned business” means an entity which is majority owned and managed
107 by an Indian.

108 ~~(t)~~ (t) “Indian preference” means preference for Indians, regardless of tribal affiliation,
109 in all aspects of employment and contracting.

110 ~~(u)~~ (u) _____ “Internal service” means any service provided for free or at cost for the
111 Tribal Nation and includes but is not limited to such services as certain types of advocacy
112 or representation, mail delivery and pick up, grant writing or assistance, tourism initiatives,
113 Human Resource assistance and technical support.

114 ~~(v)~~ (v) “Joint venture” means an entity that is fifty percent (50%) owned and managed
115 by an Indian.

116 ~~(w)~~ (w) “Key employee” means a one who performs a critical function such that an employer
117 would risk likely financial damage-time grouping of two (2) or loss if that task were
118 assigned to a person unfamiliar with and/or untrained more entities in the employer’s
119 procedures and routines a business undertaking.

120 ~~(x)~~ (w) “Lowest responsible bidder” means a bidder who, after any Indian preference
121 discounts are applied, submits the lowest bid and is considered to be fully responsible and
122 qualified to perform the work for which the bid is submitted.

123 ~~(y)~~ (x) “Office” _____ “Nation” means the Indian Preference Office or its designee.

124 ~~(z)~~ (y) “Oneida” means the Oneida Tribe of Indians of Wisconsin Nation.

125 ~~“Outsource(y) “Non-construction contract” means to obtain goods or any contract other~~
126 ~~than a service from a third party, instead of having~~ construction contract, and includes
127 subcontracts and other agreements.

128 ~~(y) (z) “Project” means any effort whereby the Nation or an entity of the Nation contracts~~
129 ~~for labor and/or goods or services be provided from within the Tribe by a Tribal entity or~~
130 ~~Tribal enterprise that will support or benefit any aspect of the Nation’s government,~~
131 holdings, infrastructure, workplace, economy or community.

132 ~~(z) (aa) _____ “Qualified trades worker” means a skilled worker qualified to perform~~
133 ~~services for the trade in which the person is trained, and includes general laborers.~~

134 ~~(aa) (bb) _____ “Reservation” means all the lands within the exterior boundaries of the~~
135 ~~Reservation of the Oneida Tribe of Indians of Wisconsin Nation, as created pursuant to the~~
136 ~~1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal~~
137 ~~law.~~

138 ~~(bb) “Skills Bank” means the services provided by the Office, whereby listings of qualified~~
139 ~~trades workers are maintained and made available for those required to comply with this~~
140 ~~law.~~

141 ~~(ee) (cc) _____ “Subcontractor” means a trade contractor, who is awarded a contract for the~~
142 ~~supply of services pursuant to a construction agreement, or a junior or secondary contractor~~
143 ~~who performs some or all of the prime contractor’s contractual obligations.~~

144 ~~(dd) “Trade contractor” means an entity that is awarded a contract for the supply of services~~
145 ~~pursuant to a construction agreement, including all entities that enter into any subcontracts.~~

146 ~~(ee) “Tribal” or “Tribe” means the Oneida Tribe of Indians of Wisconsin.~~

147 ~~(dd) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the~~
148 ~~judicial system that was established by Oneida General Tribal Council resolution GTC-01-~~
149 ~~07-13-B, and then later authorized to administer the judicial authorities and responsibilities~~
150 ~~of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.~~

151 ~~(ff) (ee) _____ “Tribal corporation” means a corporation chartered and/or wholly owned by the~~
152 ~~Oneida Tribe of Indians of Wisconsin Nation pursuant to the Constitution and Bylaws of~~
153 ~~the Oneida Tribe. Nation.~~

154 ~~(gg) “Tribal enterprise” means any internal operation owned and operated by the Tribe that~~
155 ~~generates revenues through its core business functions, including but not limited to: Oneida~~
156 ~~Gaming, Oneida Retail, Oneida Farm, and Oneida Printing.~~

157 ~~(hh) Tribal entity. See Entity, Tribal entity.~~

158 ~~(ii) “Tribal project” means any effort whereby the Tribe or a Tribal entity contracts for~~
159 ~~labor and/or goods or services that will support or benefit any aspect of the Tribal~~
160 ~~government, holdings, infrastructure, workplace, economy or community.~~

161 **502.4. Jurisdiction**

162 **502.4-1.** The Indian Preference Office shall ~~have authority over matters relating to the~~
163 ~~interpretation~~ implement, monitor, and enforcement of enforce this law ~~as set out within this~~
164 ~~law and other applicable laws and policies relating to Indian preference.~~

165 **502.4-2.** The ~~Tribe’s judicial system~~ Trial Court shall have ~~exclusive~~ jurisdiction over all ~~other~~
166 ~~matters relating~~ related to the interpretation and enforcement of this law.

167 **502.4-23.** The Indian Preference Office and ~~the Tribe’s judicial system~~ Trial Court shall have
168 jurisdiction over all parties to any contract, subcontract, or compliance agreement to which this
169 law applies, as well as jurisdiction over all subcontractors, employees, or other entities working
170 with, for, or on behalf of such a party in fulfilling such contract, subcontract or compliance
171 agreement.
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502.5. Indian Preference Office

~~502.5-1. An Indian Preference Office is hereby created for the purpose of implementing, monitoring and enforcing this law and other applicable laws and policies relating to Indian preference.~~

~~502.5-2. The Office shall have the following duties, along with other responsibilities as may be listed throughout this law.~~

~~(a) Certification of Entities-~~

~~502.5-1. (1) Verify information provided by entities seeking Criteria for Certification as an Indian-Owned Business. In order to seek certification and make determination of eligibility.~~

~~(2) Issue certification.~~

~~(b) Skills Bank. Establish and maintain a Skills Bank and actively recruit qualified trades workers for listing in the Skills Bank.~~

~~(1) Identify, initiate, and sponsor training, internship and apprenticeship opportunities necessary in order to increase the pool of qualified trades workers and to assist Indians in becoming qualified in the various job classifications used by employers.~~

~~(2) Cooperate with other Tribal programs to provide counseling and support to assist Indians in retaining employment.~~

~~(c) Negotiations. Negotiate compliance agreements that include, but are not limited to the following:~~

~~(1) Numerical hiring goals and timetables that specify the minimum number of Indians that must be utilized per Tribal contract dollar.~~

~~(2) Compensation of qualified trades workers including wage scale, salaries and other benefits. Compensation shall be determined based on the prevailing federal, state and/or Tribal wage scales.~~

~~(d) Monitoring.~~

~~(1) Perform on site inspections to verify compliance with this law.~~

~~(2) Require and review weekly workforce reports.~~

~~(3) Establish a mandatory training process for Tribal entities that do contracting or bidding as a regular function of their duties.~~

~~(4) Provide training to assist certified entities with understanding their rights and abilities under this law.~~

~~(5) Receive feedback from contractors regarding the performance of any certified entity or qualified trades worker.~~

~~(e) Investigations. Investigate written complaints and respond to inquiries.~~

~~(f) Enforcement.~~

~~(1) Enforce compliance agreements and the provisions of this law.~~

~~(2) Create internal procedures to implement and carry out the provisions of this law.~~

~~(3) Suspend or revoke certification of entities or remove trades workers from the Skills Bank.~~

~~(4) Issue Notices of Noncompliance.~~

~~(5) Represent the interests of the Tribe in bringing or defending Indian preference-related actions before the Tribe's judicial system relating to noncompliance with~~

219 this law, a compliance agreement, or regulations or policies issued pursuant to this
220 law.

221 ~~(6) Establish a schedule of fines in accordance with 502.10 3, and impose such~~
222 ~~fines in accordance with 502.10 4.~~

223 ~~502.5 3. Records. Any records created and maintained by the Office shall be made available in~~
224 ~~accordance with applicable Tribal and federal law.~~

225 ~~502.5 4. Within the scope of authority defined in this law, the Office may enter into cooperative~~
226 ~~agreements with federal and state agencies, subject to the approval of the Oneida Business~~
227 ~~Committee.~~

228 ~~502.5 5. Prior to the posting or announcement of a contract for any Tribal project, the~~
229 ~~specifications for such project shall be submitted to the Office.~~

230 ~~(a) The Office shall, with experts identified from other Tribal entities, review the~~
231 ~~specifications, including bidding requirements, to ensure that there are no unnecessary and~~
232 ~~unjustifiable restrictions that may:~~

233 ~~(1) preclude certified entities from bidding or being eligible to fulfill the contract~~
234 ~~or subcontract;~~

235 ~~(2) disqualify qualified trades workers from employment opportunities created~~
236 ~~under such contract or subcontract; or~~

237 ~~(3) create conditions that would make bidding, compliance, or employment unduly~~
238 ~~burdensome for qualified trades workers or certified entities.~~

239 ~~(b) Unbundling a Contract. The Office may require that specific portions of a contract be~~
240 ~~outsourced to internal services, Tribal enterprises, certified entities and/or qualified trades~~
241 ~~workers, even if a single entity is capable of providing all of the goods and/or services~~
242 ~~required under the contract. Provided that, such outsourcing shall not cause undue hardship,~~
243 ~~unnecessary delay or additional expenses in completing the Tribal project.~~

244 245 **502.6. Certification of Entities**

246 ~~502.6 1. Applicants seeking certification of an Indian-owned business shall submit a completed~~
247 ~~and signed application to the Office, along with any documentation required under the following~~
248 ~~criteria shall be met by 502.6 4.~~

249 ~~502.6 2. The Office may interview the applicant(s) and/or request additional information as may~~
250 ~~be necessary to make a determination regarding certification. entity:~~

251 ~~502.6 3. Within thirty (30) days of receiving the application and any additional requested~~
252 ~~information, the Office shall inform the applicant of a determination to:~~

253 ~~(a) grant the certification; or~~

254 ~~(b) deny the certification, including a full written explanation of the reason for the denial;~~
255 ~~or~~

256 ~~(c) grant probationary certification for a period of up to one (1) year, if so determined by~~
257 ~~the Office for reasonable and just cause as identified and set out in regulations. During the~~
258 ~~probationary period, the applicant shall satisfy any conditions imposed by the Office, and~~
259 ~~the Office shall monitor the activities of the applicant, and may request and receive such~~
260 ~~information as necessary to ensure compliance with this law. The Office shall either grant~~
261 ~~or deny full certification at the end of the probationary period, or upon petition by the~~
262 ~~applicant, whichever occurs first.~~

263 ~~502.6 4. Certification may be granted to entities that qualify in accordance with the criteria listed~~
264 ~~in this law. In order to receive certification, an applicant entity shall provide proof of:~~

265 ~~(a) (a) There is Indian financial ownership, control and management of at least fifty-one~~
266 ~~percent (51%) of the entity. Evidence of both financial ownership and control shall be~~

embodied in the entity's organizational documents, including, but not limited to the documents of incorporation, stock ownership, or a partnership agreement.

(1) *Indian Financial Ownership.* Indian financial ownership is established where the ~~Tribe, Tribal~~Nation, members of the Nation and/or other Indians own fifty-one percent (51%) or more of the assets and equipment, receive fifty-one percent (51%) or more of distributed net profits, and would receive fifty-one percent (51%) or more of the entity's assets upon dissolution.

(2) *Indian Control.* Indian control is established where the ~~Tribe, Tribal~~Nation, member of the Nation and/or other Indian owner(s) maintain a minimum of fifty-one percent (51%) of voting rights or other controlling decisional authority.

(3) *Indian Management.* Indian Management is established where an Indian owner(s) is directly involved in the entity's management, this can be shown where:

(A) at least one (1) Indian owner is directly involved in the daily operations of the entity on a full-time basis and in a senior-level position; or

(B) at least one (1) Indian owner is responsible for the oversight of operations, even though the daily operations are conducted by non-owner employees.

~~(b) Financial~~(b) The entity can demonstrate financial responsibility, including but not limited to, evidence of an adequate line of credit, contributions of sufficient working capital, applicable required bonding and insurance, materials and/or equipment necessary to perform applicable work.

~~(c) A#~~The entity can provide past and current licensing or certifications, including any penalties, or other punitive actions or debarments taken by any licensing body within the past ten (10) years.

502.6-5-2. Application. The applicant entity shall submit a completed and signed application to the Indian Preference Office, along with any documentation proving the entity meets the criteria for certification of an Indian-owned business.

(a) Upon receiving an application, the Indian Preference Office may interview the applicant and/or request additional information as may be necessary to make a determination regarding certification.

502.5-3. Certification Determination. Within thirty (30) days of receiving the application and any additional requested information, the Indian Preference Office shall inform the applicant of a determination to:

(a) grant the certification;

(b) deny the certification, including a full written explanation of the reason for the denial;
or

(c) grant probationary certification for a period of up to one (1) year, if so determined by the Indian Preference Office for reasonable and just cause.

(1) During the probationary period, the applicant shall satisfy any conditions imposed by the Indian Preference Office.

(2) The Indian Preference Office shall monitor the activities of the applicant, and may request and receive such information as necessary to ensure compliance with this law.

(3) The Indian Preference Office shall either grant or deny full certification at the end of the probationary period, or upon petition by the applicant, whichever occurs first.

502.5-4. Once an applicant entity has been granted certification, the Indian Preference Office shall mail a certificate to the entity.- Granting an entity certification does not convey any comment

315 regarding the ability of the entity to perform any work nor does it guarantee that an entity has met
316 all the qualifications to obtain work under any particular contract where Indian preference may be
317 applied.

318 ~~502.6-6-5-5.~~ Notification Requirements. A certified entity shall report the following to the Indian
319 Preference Office within ten (10) business days of such an occurrence:

- 320 (a) changes in the ownership or control status of the entity; ~~and/or~~
321 (b) suspension, revocation, lapse or loss of any licensing, certification, insurance, bonding,
322 or credit lines; and/or
323 (c) any other changes that could:
324 (1) affect an entity's eligibility for certification;
325 (2) affect the financial liability of any entity, contracting party or the Tribe, Nation;
326 and/or
327 (3) alter the status of the qualifications of the entity.

328 ~~502.5-6-7.~~ Certification Renewal. Certification is granted on an annual basis, and shall lapse after
329 one (1) year unless renewed.

330 (a) To apply for a renewal certification, each certified entity shall complete and return a
331 renewal application and annual reporting form so that the Indian Preference Office may
332 update its records.

333 (b) Annual renewal notices, applications and reporting forms shall be mailed to each
334 certified entity at least thirty (30) days prior to the expiration of an entity's certification;
335 however, the responsibility for renewal is upon the entity.

336 ~~502.6-85-7.~~ Open Records. In accordance with the Open Records Nation's laws and Open
337 Meetings law policies governing open records, general, non-proprietary and non-private
338 information provided for the purposes of acquiring certification shall be considered open records
339 and available for public inspection. Provided ~~further, that,~~ all information given for purposes of
340 receiving certification, including financial information, is subject to internal audit of the
341 Tribe Nation.

342 ~~502.6-95-8.~~ Joint Ventures. Joint All joint ventures shall not be certified seeking certification as
343 eligible for Indian preference even though one equal fifty percent (50%) partner is an Indian that
344 shares in equal financial ownership, control and direct involvement with-owned business shall
345 submit documentation of the business arrangements of the joint venture in addition to the required
346 documentation for certification.

347 (a) Certification for a joint venture shall be issued on a project specific basis.

348 ~~502.6-105-9.~~ Brokers, Agents and Franchises.

349 (a) Brokers. Brokers shall be certified as an Indian-owned business only if they are dealers
350 who own, operate or maintain a store, warehouse or other establishment in which the
351 commodities being supplied are bought, kept in stock and sold to the public in the usual
352 course of business; provided that this requirement shall not apply where the applicant
353 demonstrates that it is not customary and usual in the area of the trade in question for a
354 broker to maintain an establishment and to keep commodities in stock.

355 (1) To qualify as an Indian-owned business, the broker shall provide conclusive
356 evidence that the broker is an independent contractor and not an agent of a non-
357 Indian owned business.

358 (2) The broker shall also provide proof that he owes no fiduciary responsibility nor
359 has a fixed or permanent relationship to any one company. A broker shall hold
360 himself or herself out for employment to the public generally and that the
361 employment is not that of being a special agent for a single client.

362 (b) *Agents*. Agents who are employees of a non-Indian-owned business or who merely
363 represent a company, such as an insurance agent or real estate agent for a non-Indian-
364 owned business, shall not be certified as an Indian-owned business.

365 (c) *Franchises*. A franchise may be certified as an Indian-owned business if the franchisee
366 does not pay the franchisor a share or percentage of revenue or profits, but only
367 compensates the franchisor through licensing, royalty and franchise fees as set out by
368 contract, and/or for services provided, such as training and advising.

369 ~~502.6-11~~5-10. *Fronts are Prohibited*. Entities shall be disqualified from certification as an Indian
370 preference-eligibility-owned business in all situations where the entity operates as a front in order
371 to unfairly take advantage of Indian preference granted under this law to Indian-owned businesses.

372 (a) The Indian Preference Office shall not certify entities that operate solely as fronts.

373 (b) No entity shall manipulate its business structure or misrepresent the roles of Indian
374 individuals or entities in such a way as to become eligible for Indian preference in a manner
375 inconsistent with the purpose and intent of this law.

376 (c) Examples of fronts include but are not limited to:

377 (1) Entities that represent that they are exercising management control of a Tribal
378 project in order to qualify for Indian preference when in fact such management
379 control is exercised by a non-Indian entity-;

380 (2) Entities where Indians have senior management titles without the correlating
381 responsibilities, control, or knowledge of operations; where the entity only qualifies
382 for certification because an Indian holds that senior management role-;

383 (3) Entities, not including legitimate brokers, that derive profit only by providing
384 goods or services at an increased cost, where such goods or services could be
385 acquired directly on the open market and/or from the entity's source without paying
386 a marked-up cost-; and/or

387 (4) Any other situation where the Indian Preference Office determines that the
388 application of Indian preference would in fact predominantly or substantially
389 benefit non-Indians or non-Indian-owned businesses; or where Indians or Indian-
390 owned businesses only benefit by assisting the non-Indian or non-Indian-owned
391 business with receiving the contract.

392
393 **502.76. Application of Indian Preference to Contracts**

394 ~~502.76-1~~. *Application of the Law*. Except where prohibited or limited by law or grant funding
395 requirements, this law shall apply to all contracts over ~~one~~three thousand ~~five hundred~~
396 ~~(\$1,500.00)~~3,000 that meet the requirements of (a) and/or (b) below-;

397 (a) This law shall apply to:

398 (1) all contracts, subcontracts, and compliance agreements to which the
399 TribeNation is a party, and all contracts, subcontracts and compliance agreements
400 that are entered into on behalf of, or for the benefit of the TribeNation, whereby
401 goods and services are provided on or near the Reservation-; and

402 (2) all subcontractors, employees, or other entities working with, for, on behalf of
403 a party to a contract, subcontract or compliance agreement as identified in (1), in
404 fulfilling such contract, subcontract, or compliance agreement.

405 (b) *Tribal Corporations*. This law shall apply to Tribal corporations to the extent such
406 corporations enter into contracts with the TribeNation.

407 ~~502.76-2~~. *Non-Applicability of the Law*.

408 (a) ~~*Tribal Indian Preference in Hiring of Employees of the Nation*~~. The standards set out
409 in this law shall not apply to preference as applicable to ~~Tribal~~ employees hired through

410 the ~~Oneida~~Nation's Human Resources ~~department~~Department or pursuant to an
411 employment contract.

412 (b) *Internal Services and ~~Tribal~~ Enterprises*. The application of Indian preference shall be
413 superseded in specific situations in accordance with the following:

414 (1) The ~~Tribe~~Nation shall exclusively utilize internal services and ~~Tribal~~
415 enterprises whenever an internal service of the ~~Tribe~~Nation or ~~Tribal~~ enterprise
416 could or does provide the necessary goods and services in the ordinary course of
417 business.

418 (2) If an internal service or ~~Tribal~~ enterprise is unable to fulfill some or all of the
419 requirements of a contract, then the provisions of this law shall apply to any
420 outsourcing conducted by the internal service or ~~Tribal~~ enterprise.

421 502.6-3. Contract Specifications Review. Prior to the posting or announcement of a contract for
422 any project of the Nation, the specifications for such project shall be submitted to the Indian
423 Preference Office.

424 (a) Within five (5) business days of receiving the specifications of the project the Indian
425 Preference Office shall, with experts identified from other entities of the Nation, review
426 the specifications, including bidding requirements, to ensure that there are no unnecessary
427 and/or unjustifiable restrictions that may:

428 ~~502.7-3-~~(1) preclude certified entities from bidding or being eligible to fulfill the
429 contract or subcontract;

430 (2) disqualify qualified trades workers from employment opportunities created
431 under such contract or subcontract; and/or

432 (3) create conditions that would make bidding, compliance, or employment unduly
433 burdensome for qualified trades workers or certified entities.

434 (b) Unbundling a Contract. The Indian Preference Office may require that specific
435 portions of a contract be outsourced to internal services, enterprises, certified entities
436 and/or qualified trades workers, even if a single entity is capable of providing all of the
437 goods and/or services required under the contract. Provided that, such outsourcing shall
438 not cause undue hardship, unnecessary delay or additional expenses in completing the
439 project.

440 502.6-4. In soliciting bids, the entity offering the contract shall indicate that Indian preference
441 shall be applied in accordance with this law.

442 ~~502.7-4-~~6-5. Cooperative Agreements. Within the scope of authority defined in this law, the
443 Indian Preference Office may enter into cooperative agreements with federal and state agencies,
444 subject to the approval of the Oneida Business Committee.

445 502.6-6. Cultural Setting of Contracts. All parties to a contract to which this law applies shall
446 recognize that any operations are taking place within a unique cultural setting within the
447 ~~community of the Tribe.~~Nation. Every contractor shall make reasonable accommodations to the
448 customs and beliefs of all Indian workers so as to promote rather than hinder the employment of
449 Indians.

450 (a) If an Indian worker wishes to attend any traditional cultural activities or ceremonies,
451 the worker shall provide reasonable advance notice to the contractor in requesting such
452 time off.

453 (b) Where attendance at traditional cultural activities or ceremonies requires a worker to
454 take time off from a regularly scheduled shift or workday, such time may be paid or unpaid,
455 at the discretion of the employer or as established by contract or compliance agreement.

456 ~~502.6-7-~~5. ~~Tribal~~ Employees of the Nation. In the execution of employment duties and in
457 accordance with the ~~Tribe's Personnel Policies~~Nation's laws and ~~Procedures,~~Tribal policies

458 governing employment, employees of the Nation shall follow this law in following contracting
459 and bidding procedures for the ~~Tribe~~Nation or ~~Tribal~~ entities of the Nation.

460 (a) The Indian Preference Office shall establish a training process for entities of the Nation
461 that do contracting or bidding as a regular function of their duties.

462 ~~502.7-6-8.~~ Contracts and Attachments. All contracts this law applies to shall:

463 (a) Stipulate that compliance with this law is required, and that violation of any portion of
464 this law or applicable compliance agreement may be deemed a material and substantial
465 breach of contract, enforceable:

466 (1) As set forth by the terms of the original contract for a breach of contract; and

467 (2) In accordance with the provisions of this law.

468 (b) Reference this law, and shall contain an ~~Acknowledgment Clause~~acknowledgment
469 clause, whereby the contractor shall agree to the following:

470 (1) The contractor has read and understands the provisions of this law;
471 (2) The contractor understands how this law affects the contractor's rights and

472 responsibilities; and

473 (3) The contractor agrees that the provisions of this law shall govern the
474 performance of the parties.

475 (c) Reference ~~Chapter 56 of the Oneida Code of Laws, Oneida Vendor Licensing~~Nation's
476 laws governing vendor licensing, and provide the contracting parties with directions on
477 how to access that document.

478 502.6-9. Applying Indian Preference to Non-Construction Contracts. Where more than one (1)
479 bid is received for a non-construction contract, an Indian preference percentage discount of five
480 percent (5%) shall be applied to all bids received from certified Indian-owned businesses.

481 502.6-10. Applying Indian Preference to Construction Contracts. Where more than one (1) bid
482 is received for a construction contract, the discount applied to bids from certified Indian-owned
483 businesses shall be:

484 ~~502.7-7. In the event that a dispute may arise regarding this law or a compliance agreement, all~~
485 ~~affected parties shall cooperate in good faith with the Office toward a mutually satisfactory~~
486 ~~resolution.~~

487 (a) ten percent (10%) of the first fifty thousand dollar (\$50,000) segment of a bid;

488 (b) plus nine percent (9%) of the next fifty thousand dollar (\$50,000) segment of a bid;

489 (c) plus eight percent (8%) of the next one hundred thousand dollar (\$100,000) segment
490 of a bid;

491 (d) plus seven percent (7%) of the next one hundred thousand dollar (\$100,000) segment
492 of a bid;

493 (e) plus six percent (6%) of the next one hundred thousand dollar (\$100,000) segment of
494 a bid;

495 (f) plus five percent (5%) of the next one hundred thousand dollar (\$100,000) segment of
496 a bid;

497 (g) plus four percent (4%) of the next five hundred thousand dollar (\$500,000) segment of
498 a bid;

499 (h) plus two percent (2%) of the next one million dollar (\$1,000,000) segment of a bid;
500 and

501 (i) plus one percent (1%) of any amount over two million dollars (\$2,000,000).

502 ~~502.7-8-11.~~ Awarding the Contract. After the appropriate discount has been subtracted from
503 preferred bids, the following shall be used to determine which bidder is awarded the contract:

504 (a) If a bid from a certified entity is less than the total of the apparent low bid after Indian
505 preference is applied, then the contract shall be awarded to the certified entity.

(b) If none of the certified entity bids are less than the total of the apparent low bid after the Indian preference discount is applied, the contract shall be awarded to the lowest responsible bidder.

~~502.7-9. Applying Indian Preference to Non-Construction Contracts. Where more than one (1) bid is received for a non-construction contract, an Indian preference percentage discount of five percent (5%) shall be applied to all bids received from certified Indian-owned businesses.~~

~~502.7-10. Applying Indian Preference to Construction Contracts. Where more than one (1) bid is received for a construction contract, the discount applied to bids from certified Indian-owned businesses shall be:~~

~~(a) ten percent (10%) of the first \$50,000 segment of a bid.~~

~~(b) plus nine percent (9%) of the next \$50,000 segment of a bid.~~

~~(c) plus eight percent (8%) of the next \$100,000 segment of a bid.~~

~~(d) plus seven percent (7%) of the next \$100,000 segment of a bid.~~

~~(e) plus six percent (6%) of the next \$100,000 segment of a bid.~~

~~(f) plus five percent (5%) of the next \$100,000 segment of a bid.~~

~~(g) plus four percent (4%) of the next \$500,000 segment of a bid.~~

~~(h) plus two percent (2%) of the next \$1,000,000 segment of a bid.~~

~~(i) plus one percent (1%) of any amount over \$2,000,000.~~

~~502.7-11. Bid shopping is prohibited.~~

~~502.8. Skills Bank and Qualified Trades Workers~~

~~502.8-1. The 6-12. Monitoring the Contract. Once a contract is awarded to an entity, the Indian Preference Office shall establish perform the following monitoring duties:~~

~~(a) Perform on-site inspections to verify compliance with this law;~~

~~(b) Require and administer a Skills Bank review weekly workforce reports;~~

~~(c) Provide training to assist with providing Indians and first generation descendants certified entities with employment opportunities. The goal understanding their rights and abilities under this law; and~~

~~(d) Receive feedback from contractors regarding the performance of the Tribe is to achieve one hundred percent (100%) participation of any certified entity or qualified trades workers on Tribal projects worker.~~

~~502.8-2. The Skills Bank shall be the exclusive referral source under this law, representing the official compilation of qualified trades workers eligible for Indian preference in accordance with this law. Skills Bank listings shall include the names and qualifications of the qualified trades workers.~~

~~502.8-3. The Office shall regularly update the Skills Bank listings.~~

~~502.8-4. Entities required to fill positions in accordance with 502.6-13. In the event that a dispute may arise regarding this law and/or a compliance agreement under 502.9, all affected parties shall contact cooperate in good faith with the Indian Preference Office prior to the commencement of any work toward a mutually satisfactory resolution.~~

~~(a) Except where prohibited by law or grant funding requirements, the entity shall hire qualified trades workers from the Skills Bank in the following order of priority:~~

~~(1) Members of the Oneida Tribe.~~

~~(2) First generation descendants of Oneida Tribal members.~~

~~(3) Members of other federally recognized Indian tribes.~~

~~(b) If a law or grant funding requirements prohibit the hiring of qualified trades workers in accordance with 502.8-4(a), qualified trades workers shall be hired in accordance with the requirements of said law or grant.~~

554 ~~(e) If the necessary labor cannot be acquired from the Skills Bank, then a limited waiver~~
555 ~~may be granted in accordance with 502.8-4.~~

556 ~~502.8-5. In order to be added to the Skills Bank, an applicant shall submit a completed application~~
557 ~~and documentation of the following:~~

558 ~~(a) proof of enrollment or proof that the individual is a first generation descendant of the~~
559 ~~Oneida Tribe.~~

560 ~~(b) education; including degrees, diplomas, apprenticeships, internships or continuing~~
561 ~~education training related to the field.~~

562 ~~(c) if applicable, proof of a driver license, including any endorsements.~~

563 ~~(d) if the worker is seeking to be listed as a qualified trades worker for a specific trade,~~
564 ~~then the worker shall provide specific information related to that trade, including:~~

565 ~~(1) past and current licensing, credentials and certifications, including information~~
566 ~~related to penalties or punitive actions taken by any licensing body within the past~~
567 ~~ten (10) years; and~~

568 ~~(2) any required or possessed insurance and/or bonding.~~

569 ~~502.8-6. Placing an applicant in the Skills Bank as a qualified trades worker confers recognition~~
570 ~~that he or she is eligible to receive Indian preference in accordance with this law. A qualified~~
571 ~~trades worker shall be qualified for Indian preference for employment for a particular skill or trade~~
572 ~~if he or she meets the minimum qualifications for a particular skill or trade.~~

573 ~~502.8-7. Wage and Hour Standards, Layoffs and Terminations, Call Backs, Promotions, Unions.~~

574 ~~(a) Every contractor utilizing qualified trades workers shall ensure that such workers~~
575 ~~receive equal compensation, including overtime pay, and shall have equal work standards,~~
576 ~~that are provided to other employees. Contractors that hire qualified trades workers in~~
577 ~~order to comply with this law, but do not utilize those workers in a manner similar to other~~
578 ~~employees are not maintaining equal work standards.~~

579 ~~(b) In making any layoffs or terminations, all contractors shall notify the Office prior to~~
580 ~~laying off or terminating a qualified trades worker.~~

581 ~~(1) No qualified trades worker with at least minimum qualifications for the job~~
582 ~~classification shall be terminated or laid off so long as a non-Indian employee in~~
583 ~~the same craft with similar skills remains employed. If the contractor lays off by~~
584 ~~crews, qualified trades workers shall be transferred to any crew that will be retained,~~
585 ~~as long as there are non-Indian employees in the same craft employed elsewhere~~
586 ~~under the same contract.~~

587 ~~(2) No contractor shall terminate or lay off any qualified trades worker pursuant to~~
588 ~~this law, without documented good cause. The contractor shall promptly replace~~
589 ~~the qualified trades worker with another qualified trades worker.~~

590 ~~(3) When a contractor begins to call back laid-off employees, that contractor shall~~
591 ~~notify the Office and shall call back qualified trades workers before bringing back~~
592 ~~other employees.~~

593 ~~(e) Qualified trades workers and certified entities shall not be required to affiliate with~~
594 ~~organized labor for employment under this law. The mere absence of affiliation with~~
595 ~~organized labor shall not disqualify a qualified trades worker from employment or~~
596 ~~contracting where that worker is otherwise qualified. A qualified trades worker shall not~~
597 ~~be guaranteed to receive the benefits of a union contract, other than wage scales, unless the~~
598 ~~worker elects to join the union.~~

599 ~~502.8-8. Construction Contracts: Core Work Crew. As a condition of a construction contract~~
600 ~~award, the contractor shall identify its core work crew, including those core work crew employees~~
601 ~~utilized by known subcontractors. If such employees are approved by the Office, they may be~~

602 ~~employed on the Tribal project without regard to Indian preference. Provided that, core work crew~~
603 ~~employees shall at no time displace qualified trades workers and/or potential qualified trades~~
604 ~~workers by performing work outside their trade or skill.~~

605 ~~(a) For the purposes of employment on a Tribal project, the Office and the contractor, and~~
606 ~~any subcontractor, shall negotiate the designated members of the contractor's core work~~
607 ~~crew.~~

608 ~~(b) Any contractor that fills vacant positions immediately prior to undertaking work~~
609 ~~pursuant to a contract to which this section applies shall provide evidence acceptable to the~~
610 ~~Office that such actions were not intended to circumvent the provisions of this law.~~

611 ~~(c) A contractor shall not use extraneous qualification criteria or other personnel~~
612 ~~requirements that prevent qualified trades workers from being employed, unless the~~
613 ~~contractor is able to demonstrate that such criteria or requirements are required by~~
614 ~~regulatory compliance.~~

615 ~~502.9.~~

616 **502.7. Compliance Agreements**

617 ~~502.9-1. Compliance Agreements. All contractors and subcontractors shall comply with the~~
618 ~~terms of any compliance agreement executed in accordance with this law. Once a bid has been~~
619 ~~accepted, but before work commences on any portion of a contract or subcontract, each contractor~~
620 ~~shall meet with the Indian Preference Office to negotiate and execute a compliance agreement. All~~
621 ~~contractors and subcontractors shall comply with the terms of any compliance agreement executed~~
622 ~~in accordance with this law.~~

623 ~~502.7-2. Contents of a Compliance Agreement. A compliance agreement shall include, but is not~~
624 ~~limited to, the following information:~~

625 ~~(a) Numerical hiring goals and timetables that specify the minimum number of Indians~~
626 ~~that must be utilized per contract dollar; and~~

627 ~~(b) Compensation of qualified trades workers including wage scale, salaries and other~~
628 ~~benefits. Compensation shall be determined based on the prevailing wage scales of the~~
629 ~~Nation and/or federal or state governments.~~

630 ~~502.7-3.502.9-2. Term of a Compliance Agreement. Where a contract lasts for more than one (1)~~
631 ~~year, compliance agreements shall be reviewed annually and revised as necessary to reflect~~
632 ~~changes in hiring plans or the number of certified entities available.~~

633 ~~502.9-37-4. Unless prior written consent of the Indian Preference Office has been received, a~~
634 ~~contractor shall not deviate from an executed compliance agreement by adding or removing any~~
635 ~~subcontracts, subcontractors or positions filled by qualified trades workers or certified entities, or~~
636 ~~by filling a vacancy with a non-qualified trades worker or a non-certified entity.~~

637 ~~502.9-47-5. Limited Waivers. The Indian Preference Office shall establish standard operating~~
638 ~~procedures to provide for emergency conditions and situations whereby a limited waiver of~~
639 ~~compliance may be authorized, in situations where a contractor has made a significant and~~
640 ~~documented good faith effort to achieve compliance, or can demonstrate that compliance is not~~
641 ~~practical for reasons other than pricing.~~

642 **502.8. Skills Bank and Qualified Trades Workers**

643 ~~502.8-1. The Indian Preference Office shall establish and administer a Skills Bank to assist with~~
644 ~~providing Indians and first-generation descendants with employment opportunities. The goal of~~
645 ~~the Nation is to achieve one hundred percent (100%) participation of qualified trades workers on~~
646 ~~projects.~~

649 (a) The Indian Preference Office shall identify, initiate, and sponsor training, internship,
650 and apprenticeship opportunities necessary in order to increase the pool of qualified trades
651 workers and to assist Indians in becoming qualified in the various job classifications used
652 by employers.

653 (b) The Indian Preference Office shall cooperate with other programs of the Nation to
654 provide counseling and support to assist Indians in retaining employment.

655 502.8-2. The Skills Bank shall be the exclusive referral source under this law, representing the
656 official compilation of qualified trades workers eligible for Indian preference in accordance with
657 this law. Skills Bank listings shall include the names and qualifications of the qualified trades
658 workers.

659 ~~502.10-~~ The Indian Preference Office shall regularly update the Skills Bank listings.

660 502.8-3. Entities required to fill positions in accordance with this law and/or a compliance
661 agreement under section 502.7, shall contact the Indian Preference Office prior to the
662 commencement of any work.

663 (a) Except where prohibited by law or grant funding requirements, the entity shall hire
664 qualified trades workers from the Skills Bank in the following order of priority:

665 (1) Members of the Nation;

666 (2) First generation descendants of the Nation; and then

667 (3) Members of other federally-recognized Indian tribes.

668 (b) If a law or grant funding requirement prohibits the hiring of qualified trades workers
669 in accordance with section 502.8-3(a), qualified trades workers shall be hired in accordance
670 with the requirements of said law or grant.

671 (c) If the necessary labor cannot be acquired from the Skills Bank, then a limited waiver
672 may be granted by the Indian Preference Office.

673 502.8-4. In order to be added to the Skills Bank, an applicant shall submit a completed application
674 and documentation of the following:

675 (a) proof of enrollment or proof that the individual is a first-generation descendant of the
676 Nation;

677 (b) education; including degrees, diplomas, apprenticeships, internships or continuing
678 education training related to the field;

679 (c) proof of a driver's license, including any endorsements, if applicable;

680 (d) if the worker is seeking to be listed as a qualified trades worker for a specific trade,
681 then the worker shall provide specific information related to that trade, including:

682 (1) past and current licensing;

683 (2) credentials and certifications; and

684 (3) information related to penalties or punitive actions taken by any licensing body
685 within the past ten (10) years.

686 502.8-5. Placing an applicant in the Skills Bank as a qualified trades worker confers recognition
687 that he or she is eligible to receive Indian preference in accordance with this law. A qualified
688 trades worker shall be qualified for Indian preference for employment for a particular skill or trade
689 if he or she meets the minimum qualifications for a particular skill or trade.

690 ~~502.8-6. Wage and Hour Standards, Layoffs and Terminations, Call-Backs, Promotions, Unions.~~

691 (a) Every contractor utilizing qualified trades workers shall ensure that such workers
692 receive equal compensation, including overtime pay, and shall have equal work standards,
693 that are provided to other employees. Contractors that hire qualified trades workers in
694 order to comply with this law, but do not utilize those workers in a manner similar to other
695 employees are not maintaining equal work standards.

696 (b) In making any layoffs or terminations, all contractors shall notify the Indian Preference
697 Office prior to laying off or terminating a qualified trades worker.

698 (1) No qualified trades worker with at least minimum qualifications for the job
699 classification shall be terminated or laid off so long as a non-Indian employee in
700 the same craft with similar skills remains employed. If the contractor lays off by
701 crews, qualified trades workers shall be transferred to any crew that will be retained,
702 as long as there are non-Indian employees in the same craft employed elsewhere
703 under the same contract.

704 (2) No contractor shall terminate or lay off any qualified trades worker pursuant to
705 this law, without documented good cause. The contractor shall promptly replace
706 the qualified trades worker with another qualified trades worker.

707 (3) When a contractor begins to call back laid-off employees, that contractor shall
708 notify the Indian Preference Office and shall call back qualified trades workers
709 before bringing back other employees.

710 (c) Qualified trades workers and certified entities shall not be required to affiliate with
711 organized labor for employment under this law. The mere absence of affiliation with
712 organized labor shall not disqualify a qualified trades worker from employment or
713 contracting where that worker is otherwise qualified. A qualified trades worker shall not
714 be guaranteed to receive the benefits of a union contract, other than wage scales, unless the
715 worker elects to join the union.

716 502.8-7. Construction Contracts: Core Work Crew. As a condition of a construction contract
717 award, the contractor shall identify its core work crew, including those core work crew employees
718 utilized by known subcontractors. If such employees are approved by the Indian Preference Office,
719 they may be employed on the project without regard to Indian preference. Provided that, core
720 work crew employees shall at no time displace qualified trades workers and/or potential qualified
721 trades workers by performing work outside their trade or skill.

722 (a) For the purposes of employment on a project, the Indian Preference Office and the
723 contractor, and any subcontractor, shall negotiate the designated members of the
724 contractor's core work crew.

725 (b) Any contractor that fills vacant positions immediately prior to undertaking work
726 pursuant to a contract to which this section applies shall provide evidence acceptable to the
727 Indian Preference Office that such actions were not intended to circumvent the provisions
728 of this law.

729 (c) A contractor shall not use extraneous qualification criteria or other personnel
730 requirements that prevent qualified trades workers from being employed, unless the
731 contractor is able to demonstrate that such criteria or requirements are required by
732 regulatory compliance.

734 **502.9. Investigations and Enforcement**

735 ~~502.109-1. Office Investigations—Any Complaints.~~ An individual or entity may file a written
736 complaint with the Indian Preference Office if aggrieved by a perceived an act of noncompliance
737 non-compliance with:

738 (a) this law;

739 (b) a compliance agreement; and/or

740 (c) any standard operating procedure issued pursuant to this law, who wishes to complain
741 shall file a written complaint with the Office.

742 502.9-2. Contents of the Complaint. A complaint shall ~~provide such~~ include information that will
743 reasonably enable the Indian Preference Office to understand the general nature of the complaint

744 and carry out an investigation. ~~Wherever possible, the complainant shall provide the Office with,~~
745 ~~such as~~ evidence of any discriminatory practices, alleged misconduct, or other ~~noncompliance~~non-
746 compliance.

747 ~~(a)~~502.9-3. *Complaint Investigation.* Upon receipt of a complaint or after witnessing
748 ~~noncompliance~~non-compliance with this law while conducting its monitoring duties, the Indian
749 Preference Office shall conduct an investigation.

750 ~~(1) If the Office receives a complaint or information that an entity is operating in~~
751 ~~a manner that is harmful to the health, safety, or welfare of the Tribe or community,~~
752 ~~the Office shall immediately refer the complaint or information to the appropriate~~
753 ~~Tribal department or authority for investigation. The Office may also~~
754 ~~independently investigate such complaint or information for purposes of ensuring~~
755 ~~compliance with this law, and shall have the authority to review the results of any~~
756 ~~other investigation conducted by another Tribal department or authority in~~
757 ~~accordance with the Open Records and Open Meetings Law.~~

758 ~~(2)~~(a) In conducting an investigation, ~~the~~ to determine if the complaint has merit, the Indian
759 Preference Office shall be authorized to:

- 760 (1) inspect and copy all relevant records;
761 (2) interview and ~~shall have the right to~~ speak to workers; and ~~to~~
762 (3) conduct inspections of the job site~~(s)~~.

763 ~~(3)~~(b) Information collected during an Indian Preference Office investigation shall be kept
764 confidential unless disclosure is necessary or required as part of any judicial or
765 administrative proceeding or in accordance with Tribal law. ~~Provided that, any report or~~
766 ~~recommendation prepared by the Office for use at a hearing shall be promptly released to~~
767 ~~the complainant and alleged violator.~~ a law of the Nation.

768 ~~(b1)~~ (b1) Any report or recommendation prepared by the Indian Preference Office for
769 use at a hearing shall be promptly released to the complainant and alleged violator.

770 ~~(c)~~ (c) If, ~~after conducting~~ the Indian Preference Office receives a complaint or information
771 that an entity is operating in a manner that is harmful to the health, safety, or welfare of the
772 Nation or community, the Indian Preference Office shall immediately refer the complaint
773 or information to the appropriate department or authority of the Nation for investigation
774 under.

775 (1) The referral of a complaint does not prohibit the Indian Preference Office from
776 its independent investigation of such complaint or information for purposes of
777 ensuring compliance with this section, the law.

778 (2) The Indian Preference Office shall have the authority to review the results of
779 any other investigation conducted by another department or authority of the Nation
780 in accordance with the Nation's laws and policies governing open records.

781 502.9-4. *Alleged Violation Has No Merit.* If the Indian Preference Office determines that the
782 alleged violation has no merit, the Indian Preference Office shall notify all parties in writing that
783 the ~~issue will~~complaint shall be closed. A

784 (a) The complainant may appeal file a complaint to contest this decision to with the Tribe's
785 judicial system Nation's Trial Court within ten (10) business days after issuance of such
786 notice.

787 ~~(1)~~ (1) ~~The complainant's appeal may only request the Tribe's judicial system~~ (b) The Trial
788 Court shall then conduct an in-camera inspection of the investigation completed by the
789 Indian Preference Office. - During an in-camera inspection, only a judge~~(s)~~ may review the
790 information obtained by the Indian Preference Office during the investigation, as this
791 information is confidential and disclosure is not necessary.

792 (2c) If, after reviewing the ~~Office's investigation, the Tribe's judicial system~~
793 ~~determines that there is sufficient evidence of a genuine and material issue of~~
794 ~~noncompliance, the Tribe's judicial system shall order the Office to take action in~~
795 ~~accordance with 502.10 4 and/or 502.10 5, as if the Office's original investigation~~
796 ~~had determined that sufficient evidence of a genuine and material issue of~~
797 ~~noncompliance existed.~~

798 (3) ~~If, after reviewing the Indian Preference~~ Office's investigation, the ~~Tribe's judicial~~
799 ~~system~~ Trial Court determines the alleged violation has no merit, the ~~Tribe's judicial~~
800 ~~system~~ Trial Court shall notify all parties in writing that the ~~issue~~ matter will be
801 ~~closed~~ dismissed and no further appeals of the matter will be accepted.

802 ~~502.10 2. Retaliatory Action Prohibited. No entity shall punish, terminate, harass or take any~~
803 ~~other adverse personnel or hiring action in retaliation for a party's exercise of Indian preference~~
804 ~~rights under this law. However, this section shall not prohibit action that can be reasonably justified~~
805 ~~as taken in good faith based on documented employee performance.~~

806 ~~502.10 3. Fines and Fees.~~

807 (a) ~~The Office shall establish, and the Oneida Business Committee shall approve:~~

808 (1) ~~a schedule of fines that may be imposed upon any person or entity violating~~
809 ~~provisions of this law. Each offense shall result in a fine of no less than one hundred~~
810 ~~dollars (\$100) nor more than one thousand dollars (\$1,000); and a separate offense~~
811 ~~shall be deemed committed on each day during which a violation occurs or~~
812 ~~continues.~~

813 (2) ~~a schedule of penalty fees that may be imposed upon any person or entity on~~
814 ~~all amounts due on monetary judgments not paid within at least thirty (30) days of~~
815 ~~the initial judgment.~~

816 (b) ~~No fines or penalty fees may be assessed against the Tribe, the Office or other Tribal~~
817 ~~departments, or employees engaged in their official duties under this law.~~

818 ~~502.10 4.(d) If, after an reviewing the Indian Preference Office's investigation under~~
819 ~~502.10 1, the Office reasonably believes~~ Trial Court determines that there is sufficient
820 evidence of a genuine and material issue of ~~noncompliance~~ non-compliance, the Trial Court
821 shall order the Indian Preference Office to take action in accordance with section 502.9-5.
822 502.9-5. Alleged Violation Has Merit. If the Indian Preference Office determines that the alleged
823 violation has merit and there is sufficient evidence of a genuine and material issue of non-
824 compliance, the Indian Preference Office may take action to resolve the complaint.

825 (a) The Indian Preference Office may take any of the following actions to resolve the
826 complaint:

827 (a1) Attempt to reach an informal or formal resolution of the alleged
828 ~~noncompliance~~ non-compliance;

829 (A) If a formal resolution is reached, any agreement shall be in writing and
830 signed by all parties. The issue shall then remain in abeyance for the term
831 of the contract during which time all parties shall comply with the terms of
832 the written agreement. ~~Breach of the terms of the written agreement may~~
833 ~~be a cause of action for litigation before the Tribe's judicial system~~ Trial
834 Court.

835 (b2) Issue a ~~Notice~~ notice of ~~Noncompliance~~ non-compliance to the entity by
836 certified mail-;

837 (A) The ~~Notice~~ notice shall state the specific violation(s) alleged, the
838 requirements that must be met to ensure compliance with this law, and shall
839 provide a reasonable amount of time, not to exceed thirty (30) days, wherein

840 the entity shall provide evidence that it has taken the steps necessary to
841 come into compliance.

842 (e3) Place the entity's certification in probationary status for a period not to exceed
843 six (6) months; or suspend, revoke, or deny renewal of the entity's certification;

844 (A) Once certification is revoked, an entity shall not be eligible to re-apply
845 for re-certification until one (1) year has passed from the effective date of
846 the revocation.

847 (B) At any time that certification is suspended, revoked, or has lapsed, a
848 formerly certified entity shall not qualify for Indian preference. ~~Where a~~
849 ~~certified entity loses certification:~~

850 (C) Where a certified entity loses certification:

851 (i) the contractor may be required to replace that entity with another
852 certified entity if the work has not begun or performance under a
853 contract has not commenced, unless replacement is impossible or
854 would cause undue hardship; or

855 (ii) the Indian Preference Office may authorize the contractor to
856 continue to utilize that entity without regard to Indian preference if
857 work has already begun or performance under a contract has
858 commenced.

859 (d4) Issue a fine;

860 (A) The Indian Preference Office shall be delegated authority to develop a
861 fine and penalty schedule that may be imposed upon any person or entity
862 violating provisions of this law. The fine and penalty schedule shall be
863 adopted by the Oneida Business Committee through resolution.

864 (B) No fines as established or penalties may be assessed against the Nation,
865 the Indian Preference Office, or other department of the Nation, or
866 employees engaged in their official duties under 502.10-3 this law.

867 (e5) Re-negotiate a compliance agreement with the contractor to include additional
868 opportunities for qualified trades workers or certified entities; and/or

869 (f6) Request the appropriate entity withdraw any licensing issued by the
870 TribeNation.

871 (b) An individual or entity may contest an action taken by the Indian Preference Office by
872 filing a complaint with the Trial Court within ten (10) business days after the date of
873 issuance of the Indian Preference Office's decision.

874 ~~502.10-5-9-6.~~ Additional Enforcement Measures. If the Indian Preference Office is unable to
875 facilitate a satisfactory resolution, and a ~~Notice~~notice of ~~Noncompliance~~non-compliance or action
876 against a certified entity's certification has not resulted in a successful resolution, the Indian
877 Preference Office may file an action with the ~~Tribe's judicial system~~Trial Court, seeking
878 appropriate relief, including but not limited to:

879 (a) An injunction;

880 (b) Specific performance, including but not limited to:

881 (1) reinstatement of a qualified trades worker at the previous wage;

882 (2) immediate removal of employees hired in violation of this law; and/or

883 (3) employment, promotion or additional training for Indian preference-eligible
884 parties injured by a violation;

885 (c) Payment of back pay, damages, and/or costs associated with the enforcement of an
886 order issued by the ~~Tribe's judicial system~~Trial Court, including but not limited to filing
887 fees, attorney fees, and/or costs incurred by the Indian Preference Office in bringing an

888 action. Provided that, no money damages may be claimed in any suit against the
889 ~~Tribe~~Nation, the Indian Preference Office or other ~~Tribal~~ departments of the Nation, or
890 ~~Tribal~~ officials of the Nation or employees engaged in their official duties under this law;
891 and/or

892 (d) ~~Other~~Any other action the ~~Tribe's judicial system~~Trial Court deems lawful, equitable,
893 and necessary to ensure compliance with this law and to alleviate or remedy any harm
894 caused by ~~noncompliance~~non-compliance.

895 ~~502.10-69-7~~. Although relief granted by the ~~Tribe's judicial system under 502.10-5~~Trial Court
896 may benefit an individual qualified trades worker, certified Indian preference entity, or other
897 individual or entity, neither the Indian Preference Office nor the ~~Tribe~~Nation represents those
898 individuals and/or entities in any action for non-compliance with this law.

899 ~~502.10-79-8~~. *Cease-and-Desist Orders*. The Oneida ~~Tribal~~ Police ~~are~~Department is hereby
900 expressly authorized and directed to enforce such cease-and-desist or related orders as may from
901 time to time be properly issued by the ~~Tribe's judicial system~~Trial Court. Such orders shall require
902 a decree or order to render them enforceable. The Oneida ~~Tribal~~ Police Department shall not be
903 civilly liable for enforcing such orders so long as the ~~Commission~~Trial Court signs the order.

904 ~~502.10-8~~. *Appeals*:

905 (a) ~~Any appeal from an action taken by the Office shall be filed with the Tribe's judicial~~
906 ~~system within ten (10) business days after the date of issuance of the Office's decision.~~
907 ~~Any decision not appealed within the required time frame shall become final.~~

908 (b) ~~Except as otherwise stated in this law, a party may appeal orders, rulings and judgments~~
909 ~~of the Tribe's judicial system in accordance with the applicable rules of appellate~~
910 ~~procedure.~~

911 502.9-9. Retaliatory Action Prohibited. No entity shall punish, terminate, harass or take any other
912 adverse personnel or hiring action in retaliation for a party's exercise of Indian preference rights
913 under this law. However, this section shall not prohibit action that can be reasonably justified as
914 taken in good faith based on documented employee performance.

915
916 *End.*

917
918 Adopted BC-03-27-13-B

919 Amended BC- - - -

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925

Title 5. Business - Chapter 502
Yukwatánhas Ukwehu·wé Kayanláhsla
Laws concerning the hiring of the Oneida People
INDIAN PREFERENCE IN CONTRACTING

502.1. Purpose and Policy
502.2. Adoption, Amendment, Conflicts
502.3. Definitions
502.4. Jurisdiction
502.5. Certification of Entities

502.6. Application of Indian Preference to Contracts
502.7. Compliance Agreements
502.8. Skills Bank and Qualified Trades Workers
502.9. Investigations and Enforcement

502.1. Purpose and Policy

502.1-1. *Purpose.* The purpose of this law is to establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation.

502.1-2. *Policy.* It is the policy of the Nation to ensure that Indian preference provisions are applied fairly in all situations and in such a way that reflects the intent of this law; and to undertake reasonable efforts to ensure that all entities that enter into contracts with or on behalf of the Nation utilize the labor force of Indian workers and businesses by applying Indian preference in all aspects of fulfilling that contract, including but not limited to: hiring, training, business opportunities, labor and/or professional services, and the supply of materials.

502.2. Adoption, Amendment, Conflicts

502.2-1. This law is adopted by the Oneida Business Committee by Resolution BC-03-27-13-B and amended by resolution BC-__-__-__-__.

502.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

502.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

502.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

502.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

502.3. Definitions

502.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Agent” means one who acts relative to a fiduciary relationship to another; a person authorized to negotiate and/or transact business on behalf of an entity.

(b) “Bid” means an offer to execute a specified job or jobs within a prescribed time and not exceeding a proposed amount, and includes both offers that become legally binding upon acceptance, and nonbinding or informal quotes.

(c) “Bid shopping” means the practice of divulging a contractor’s or subcontractor’s bid to other prospective bidders before the award of a contract, in order to secure a lower bid.

(d) “Broker” means an intermediary; an independent contractor employed to negotiate business between a buyer and seller for compensation.

- 39 (e) “Business day” means Monday through Friday from 8:00 a.m. to 4:30 p.m.,
40 excluding holidays recognized by the Nation.
- 41 (f) “Certification” means verification by the Indian Preference Office that an entity
42 meets all the requirements necessary to qualify for Indian preference in accordance with
43 this law.
- 44 (g) “Certified entity” means an entity that has received certification as an Indian-owned
45 business from the Indian Preference Office.
- 46 (h) “Compliance agreement” means a binding agreement, negotiated between the Indian
47 Preference Office and a contractor identifying specific Indian preference-related
48 requirements for a project.
- 49 (i) “Construction contract” means any contract issued to build, repair, or remodel
50 structures, and includes subcontracts and other construction agreements.
- 51 (j) “Contractor” means one who enters into a contract.
- 52 (k) “Core work crew” means the minimum amount of the contractor’s key employees,
53 who perform a critical function such that an employer would risk likely financial damage
54 or loss if that task were assigned to a person unfamiliar with and/or untrained in the
55 employer’s procedures and routines, that are essential to start up and continue work on a
56 project.
- 57 (l) “Employee” means any person that performs services and/or labor for an employer in
58 exchange for compensation.
- 59 (m) “Employer” means any entity, except the Nation, that controls and directs an
60 employee under an express or implied contract of employment and is obligated to pay
61 salary or wages in compensation.
- 62 (n) “Enterprise” means any internal operation owned and operated by the Nation that
63 generates revenues through its core business functions, including but not limited to,
64 Oneida Gaming, Oneida Retail, and Oneida Printing.
- 65 (o) “Entity” means any person, sole proprietor, partnership, corporation, franchise,
66 governmental body, or any other natural or artificial person or organization. The term is
67 intended to be as broad and encompassing as possible to ensure this law covers all
68 employment and contract activities within the jurisdiction of the Nation.
- 69 (p) “Entities of the Nation” means all programs, departments, boards, committees,
70 commissions and similar business units of the Nation, but shall not mean Tribal
71 corporations.
- 72 (q) “Front” means a business entity that is strategically structured, financed, operated or
73 staffed such as to unfairly take advantage of Indian preference as granted under this law.
- 74 (r) “Indian” means an enrolled member of any federally-recognized Indian tribe.
- 75 (s) “Indian-owned business” means an entity which is majority owned and managed by
76 an Indian.
- 77 (t) “Indian preference” means preference for Indians, regardless of tribal affiliation, in all
78 aspects of employment and contracting.
- 79 (u) “Internal service” means any service provided for free or at cost for the Nation and
80 includes but is not limited to such services as certain types of advocacy or representation,
81 mail delivery and pick up, grant writing or assistance, tourism initiatives, Human
82 Resource assistance and technical support.
- 83 (v) “Joint venture” means a one-time grouping of two (2) or more entities in a business
84 undertaking.

85 (w) “Lowest responsible bidder” means a bidder who, after any Indian preference
86 discounts are applied, submits the lowest bid and is considered to be fully responsible and
87 qualified to perform the work for which the bid is submitted.

88 (x) “Nation” means the Oneida Nation.

89 (y) “Non-construction contract” means any contract other than a construction contract,
90 and includes subcontracts and other agreements.

91 (z) “Project” means any effort whereby the Nation or an entity of the Nation contracts
92 for labor and/or goods or services that will support or benefit any aspect of the Nation’s
93 government, holdings, infrastructure, workplace, economy or community.

94 (aa) “Qualified trades worker” means a skilled worker qualified to perform services for
95 the trade in which the person is trained, and includes general laborers.

96 (bb) “Reservation” means all the lands within the exterior boundaries of the Reservation
97 of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566,
98 and any lands added thereto pursuant to federal law.

99 (cc) “Subcontractor” means a trade contractor, who is awarded a contract for the supply
100 of services pursuant to a construction agreement, or a junior or secondary contractor who
101 performs some or all of the prime contractor’s contractual obligations.

102 (dd) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the
103 judicial system that was established by Oneida General Tribal Council resolution GTC-
104 01-07-13-B, and then later authorized to administer the judicial authorities and
105 responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-
106 17-A.

107 (ee) “Tribal corporation” means a corporation chartered and/or wholly owned by the
108 Nation pursuant to the Constitution and Bylaws of the Oneida Nation.

110 **502.4. Jurisdiction**

111 502.4-1. The Indian Preference Office shall implement, monitor, and enforce this law and other
112 applicable laws and policies relating to Indian preference.

113 502.4-2. The Trial Court shall have jurisdiction over all matters related to the interpretation and
114 enforcement of this law.

115 502.4-3. The Indian Preference Office and Trial Court shall have jurisdiction over all parties to
116 any contract, subcontract, or compliance agreement to which this law applies, as well as
117 jurisdiction over all subcontractors, employees, or other entities working with, for, or on behalf
118 of such a party in fulfilling such contract, subcontract or compliance agreement.

120 **502.5. Certification of Entities**

121 502.5-1. *Criteria for Certification as an Indian-Owned Business.* In order to seek certification
122 as an Indian-owned business the following criteria shall be met by the applicant entity:

123 (a) There is Indian financial ownership, control and management of at least fifty-one
124 percent (51%) of the entity. Evidence of both financial ownership and control shall be
125 embodied in the entity’s organizational documents, including, but not limited to the
126 documents of incorporation, stock ownership, or a partnership agreement.

127 (1) *Indian Financial Ownership.* Indian financial ownership is established where
128 the Nation, members of the Nation and/or other Indians own fifty-one percent
129 (51%) or more of the assets and equipment, receive fifty-one percent (51%) or
130 more of distributed net profits, and would receive fifty-one percent (51%) or more
131 of the entity’s assets upon dissolution.

132 (2) *Indian Control.* Indian control is established where the Nation, member of
133 the Nation and/or other Indian owner(s) maintain a minimum of fifty-one percent
134 (51%) of voting rights or other controlling decisional authority.

135 (3) *Indian Management.* Indian Management is established where an Indian
136 owner(s) is directly involved in the entity's management, this can be shown
137 where:

138 (A) at least one (1) Indian owner is directly involved in the daily
139 operations of the entity on a full-time basis and in a senior-level position;
140 or

141 (B) at least one (1) Indian owner is responsible for the oversight of
142 operations, even though the daily operations are conducted by non-owner
143 employees.

144 (b) The entity can demonstrate financial responsibility, including but not limited to,
145 evidence of an adequate line of credit, contributions of sufficient working capital,
146 applicable required bonding and insurance, materials and/or equipment necessary to
147 perform applicable work.

148 (c) The entity can provide past and current licensing or certifications, including any
149 penalties, or other punitive actions or debarments taken by any licensing body within the
150 past ten (10) years.

151 502.5-2. *Application.* The applicant entity shall submit a completed and signed application to
152 the Indian Preference Office, along with any documentation proving the entity meets the criteria
153 for certification of an Indian-owned business.

154 (a) Upon receiving an application, the Indian Preference Office may interview the
155 applicant and/or request additional information as may be necessary to make a
156 determination regarding certification.

157 502.5-3. *Certification Determination.* Within thirty (30) days of receiving the application and
158 any additional requested information, the Indian Preference Office shall inform the applicant of a
159 determination to:

160 (a) grant the certification;

161 (b) deny the certification, including a full written explanation of the reason for the
162 denial; or

163 (c) grant probationary certification for a period of up to one (1) year, if so determined by
164 the Indian Preference Office for reasonable and just cause.

165 (1) During the probationary period, the applicant shall satisfy any conditions
166 imposed by the Indian Preference Office.

167 (2) The Indian Preference Office shall monitor the activities of the applicant, and
168 may request and receive such information as necessary to ensure compliance with
169 this law.

170 (3) The Indian Preference Office shall either grant or deny full certification at the
171 end of the probationary period, or upon petition by the applicant, whichever
172 occurs first.

173 502.5-4. Once an applicant entity has been granted certification, the Indian Preference Office
174 shall mail a certificate to the entity. Granting an entity certification does not convey any
175 comment regarding the ability of the entity to perform any work nor does it guarantee that an
176 entity has met all the qualifications to obtain work under any particular contract where Indian
177 preference may be applied.

178 502.5-5. *Notification Requirements.* A certified entity shall report the following to the Indian
179 Preference Office within ten (10) business days of such an occurrence:

- 180 (a) changes in the ownership or control status of the entity;
181 (b) suspension, revocation, lapse or loss of any licensing, certification, insurance,
182 bonding, or credit lines; and/or
183 (c) any other changes that could:
184 (1) affect an entity's eligibility for certification;
185 (2) affect the financial liability of any entity, contracting party or the Nation;
186 and/or
187 (3) alter the status of the qualifications of the entity.

188 502.5-6. *Certification Renewal*. Certification is granted on an annual basis and shall lapse after
189 one (1) year unless renewed.

190 (a) To apply for a renewal certification, each certified entity shall complete and return a
191 renewal application and annual reporting form so that the Indian Preference Office may
192 update its records.

193 (b) Annual renewal notices, applications and reporting forms shall be mailed to each
194 certified entity at least thirty (30) days prior to the expiration of an entity's certification;
195 however, the responsibility for renewal is upon the entity.

196 502.5-7. *Open Records*. In accordance with the Nation's laws and policies governing open
197 records, general, non-proprietary and non-private information provided for the purposes of
198 acquiring certification shall be considered open records and available for public inspection.
199 Provided that, all information given for purposes of receiving certification, including financial
200 information, is subject to internal audit of the Nation.

201 502.5-8. *Joint Ventures*. All joint ventures seeking certification as an Indian-owned business
202 shall submit documentation of the business arrangements of the joint venture in addition to the
203 required documentation for certification.

204 (a) Certification for a joint venture shall be issued on a project specific basis.

205 502.5-9. *Brokers, Agents and Franchises*.

206 (a) *Brokers*. Brokers shall be certified as an Indian-owned business only if they are
207 dealers who own, operate or maintain a store, warehouse or other establishment in which
208 the commodities being supplied are bought, kept in stock and sold to the public in the
209 usual course of business; provided that this requirement shall not apply where the
210 applicant demonstrates that it is not customary and usual in the area of the trade in
211 question for a broker to maintain an establishment and to keep commodities in stock.

212 (1) To qualify as an Indian-owned business, the broker shall provide conclusive
213 evidence that the broker is an independent contractor and not an agent of a non-
214 Indian owned business.

215 (2) The broker shall also provide proof that he owes no fiduciary responsibility
216 nor has a fixed or permanent relationship to any one company. A broker shall
217 hold himself or herself out for employment to the public generally and that the
218 employment is not that of being a special agent for a single client.

219 (b) *Agents*. Agents who are employees of a non-Indian-owned business or who merely
220 represent a company, such as an insurance agent or real estate agent for a non-Indian-
221 owned business, shall not be certified as an Indian-owned business.

222 (c) *Franchises*. A franchise may be certified as an Indian-owned business if the
223 franchisee does not pay the franchisor a share or percentage of revenue or profits, but
224 only compensates the franchisor through licensing, royalty and franchise fees as set out
225 by contract, and/or for services provided, such as training and advising.

226 502.5-10. *Fronts are Prohibited.* Entities shall be disqualified from certification as an Indian-
227 owned business in all situations where the entity operates as a front in order to unfairly take
228 advantage of Indian preference granted under this law to Indian-owned businesses.

229 (a) The Indian Preference Office shall not certify entities that operate solely as fronts.

230 (b) No entity shall manipulate its business structure or misrepresent the roles of Indian
231 individuals or entities in such a way as to become eligible for Indian preference in a
232 manner inconsistent with the purpose and intent of this law.

233 (c) Examples of fronts include but are not limited to:

234 (1) Entities that represent that they are exercising management control of a
235 project in order to qualify for Indian preference when in fact such management
236 control is exercised by a non-Indian entity;

237 (2) Entities where Indians have senior management titles without the correlating
238 responsibilities, control, or knowledge of operations; where the entity only
239 qualifies for certification because an Indian holds that senior management role;

240 (3) Entities, not including legitimate brokers, that derive profit only by providing
241 goods or services at an increased cost, where such goods or services could be
242 acquired directly on the open market and/or from the entity's source without
243 paying a marked-up cost; and/or

244 (4) Any other situation where the Indian Preference Office determines that the
245 application of Indian preference would in fact predominantly or substantially
246 benefit non-Indians or non-Indian-owned businesses; or where Indians or Indian-
247 owned businesses only benefit by assisting the non-Indian or non-Indian-owned
248 business with receiving the contract.
249

250 **502.6. Application of Indian Preference to Contracts**

251 502.6-1. *Application of the Law.* Except where prohibited or limited by law or grant funding
252 requirements, this law shall apply to all contracts over three thousand dollars (\$3,000) that meet
253 the requirements of (a) and/or (b) below:

254 (a) This law shall apply to:

255 (1) all contracts, subcontracts, and compliance agreements to which the Nation is
256 a party, and all contracts, subcontracts and compliance agreements that are
257 entered into on behalf of, or for the benefit of the Nation, whereby goods and
258 services are provided on or near the Reservation; and

259 (2) all subcontractors, employees, or other entities working with, for, on behalf of
260 a party to a contract, subcontract or compliance agreement as identified in (1), in
261 fulfilling such contract, subcontract, or compliance agreement.

262 (b) *Tribal Corporations.* This law shall apply to Tribal corporations to the extent such
263 corporations enter into contracts with the Nation.

264 502.6-2. *Non-Applicability of the Law.*

265 (a) *Indian Preference in Hiring of Employees of the Nation.* The standards set out in this
266 law shall not apply to preference as applicable to employees hired through the Nation's
267 Human Resources Department or pursuant to an employment contract.

268 (b) *Internal Services and Enterprises.* The application of Indian preference shall be
269 superseded in specific situations in accordance with the following:

270 (1) The Nation shall exclusively utilize internal services and enterprises
271 whenever an internal service of the Nation or enterprise could or does provide the
272 necessary goods and services in the ordinary course of business.

273 (2) If an internal service or enterprise is unable to fulfill some or all of the
274 requirements of a contract, then the provisions of this law shall apply to any
275 outsourcing conducted by the internal service or enterprise.

276 502.6-3. *Contract Specifications Review.* Prior to the posting or announcement of a contract for
277 any project of the Nation, the specifications for such project shall be submitted to the Indian
278 Preference Office.

279 (a) Within five (5) business days of receiving the specifications of the project the Indian
280 Preference Office shall, with experts identified from other entities of the Nation, review
281 the specifications, including bidding requirements, to ensure that there are no
282 unnecessary and/or unjustifiable restrictions that may:

283 (1) preclude certified entities from bidding or being eligible to fulfill the contract
284 or subcontract;

285 (2) disqualify qualified trades workers from employment opportunities created
286 under such contract or subcontract; and/or

287 (3) create conditions that would make bidding, compliance, or employment
288 unduly burdensome for qualified trades workers or certified entities.

289 (b) *Unbundling a Contract.* The Indian Preference Office may require that specific
290 portions of a contract be outsourced to internal services, enterprises, certified entities
291 and/or qualified trades workers, even if a single entity is capable of providing all of the
292 goods and/or services required under the contract. Provided that, such outsourcing shall
293 not cause undue hardship, unnecessary delay or additional expenses in completing the
294 project.

295 502.6-4. In soliciting bids, the entity offering the contract shall indicate that Indian preference
296 shall be applied in accordance with this law.

297 502.6-5. *Cooperative Agreements.* Within the scope of authority defined in this law, the Indian
298 Preference Office may enter into cooperative agreements with federal and state agencies, subject
299 to the approval of the Oneida Business Committee.

300 502.6-6. *Cultural Setting of Contracts.* All parties to a contract to which this law applies shall
301 recognize that any operations are taking place within a unique cultural setting within the Nation.
302 Every contractor shall make reasonable accommodations to the customs and beliefs of all Indian
303 workers so as to promote rather than hinder the employment of Indians.

304 (a) If an Indian worker wishes to attend any traditional cultural activities or ceremonies,
305 the worker shall provide reasonable advance notice to the contractor in requesting such
306 time off.

307 (b) Where attendance at traditional cultural activities or ceremonies requires a worker to
308 take time off from a regularly scheduled shift or workday, such time may be paid or
309 unpaid, at the discretion of the employer or as established by contract or compliance
310 agreement.

311 502.6-7. *Employees of the Nation.* In the execution of employment duties and in accordance
312 with the Nation's laws and policies governing employment, employees of the Nation shall follow
313 this law in following contracting and bidding procedures for the Nation or entities of the Nation.

314 (a) The Indian Preference Office shall establish a training process for entities of the
315 Nation that do contracting or bidding as a regular function of their duties.

316 502.6-8. *Contracts and Attachments.* All contracts this law applies to shall:

317 (a) Stipulate that compliance with this law is required, and that violation of any portion
318 of this law or applicable compliance agreement may be deemed a material and substantial
319 breach of contract, enforceable:

320 (1) As set forth by the terms of the original contract for a breach of contract; and

- 321 (2) In accordance with the provisions of this law.
322 (b) Reference this law, and shall contain an acknowledgment clause, whereby the
323 contractor shall agree to the following:
324 (1) The contractor has read and understands the provisions of this law;
325 (2) The contractor understands how this law affects the contractor's rights and
326 responsibilities; and
327 (3) The contractor agrees that the provisions of this law shall govern the
328 performance of the parties.
329 (c) Reference the Nation's laws governing vendor licensing, and provide the contracting
330 parties with directions on how to access that document.
- 331 502.6-9. *Applying Indian Preference to Non-Construction Contracts.* Where more than one (1)
332 bid is received for a non-construction contract, an Indian preference percentage discount of five
333 percent (5%) shall be applied to all bids received from certified Indian-owned businesses.
- 334 502.6-10. *Applying Indian Preference to Construction Contracts.* Where more than one (1) bid
335 is received for a construction contract, the discount applied to bids from certified Indian-owned
336 businesses shall be:
337 (a) ten percent (10%) of the first fifty thousand dollar (\$50,000) segment of a bid;
338 (b) plus nine percent (9%) of the next fifty thousand dollar (\$50,000) segment of a bid;
339 (c) plus eight percent (8%) of the next one hundred thousand dollar (\$100,000) segment
340 of a bid;
341 (d) plus seven percent (7%) of the next one hundred thousand dollar (\$100,000) segment
342 of a bid;
343 (e) plus six percent (6%) of the next one hundred thousand dollar (\$100,000) segment of
344 a bid;
345 (f) plus five percent (5%) of the next one hundred thousand dollar (\$100,000) segment of
346 a bid;
347 (g) plus four percent (4%) of the next five hundred thousand dollar (\$500,000) segment
348 of a bid;
349 (h) plus two percent (2%) of the next one million dollar (\$1,000,000) segment of a bid;
350 and
351 (i) plus one percent (1%) of any amount over two million dollars (\$2,000,000).
- 352 502.6-11. *Awarding the Contract.* After the appropriate discount has been subtracted from
353 preferred bids, the following shall be used to determine which bidder is awarded the contract:
354 (a) If a bid from a certified entity is less than the total of the apparent low bid after
355 Indian preference is applied, then the contract shall be awarded to the certified entity.
356 (b) If none of the certified entity bids are less than the total of the apparent low bid after
357 the Indian preference discount is applied, the contract shall be awarded to the lowest
358 responsible bidder.
359 (c) Bid shopping is prohibited.
- 360 502.6-12. *Monitoring the Contract.* Once a contract is awarded to an entity, the Indian
361 Preference Office shall perform the following monitoring duties:
362 (a) Perform on-site inspections to verify compliance with this law;
363 (b) Require and review weekly workforce reports;
364 (c) Provide training to assist certified entities with understanding their rights and abilities
365 under this law; and
366 (d) Receive feedback from contractors regarding the performance of any certified entity
367 or qualified trades worker.

368 502.6-13. In the event that a dispute may arise regarding this law or a compliance agreement, all
369 affected parties shall cooperate in good faith with the Indian Preference Office toward a mutually
370 satisfactory resolution.
371

372 **502.7. Compliance Agreements**

373 502.7-1. *Compliance Agreements.* Once a bid has been accepted, but before work commences
374 on any portion of a contract or subcontract, each contractor shall meet with the Indian Preference
375 Office to negotiate and execute a compliance agreement. All contractors and subcontractors shall
376 comply with the terms of any compliance agreement executed in accordance with this law.

377 502.7-2. *Contents of a Compliance Agreement.* A compliance agreement shall include, but is
378 not limited to, the following information:

379 (a) Numerical hiring goals and timetables that specify the minimum number of Indians
380 that must be utilized per contract dollar; and

381 (b) Compensation of qualified trades workers including wage scale, salaries and other
382 benefits. Compensation shall be determined based on the prevailing wage scales of the
383 Nation and/or federal or state governments.

384 502.7-3. *Term of a Compliance Agreement.* Where a contract lasts for more than one (1) year,
385 compliance agreements shall be reviewed annually and revised as necessary to reflect changes in
386 hiring plans or the number of certified entities available.

387 502.7-4. Unless prior written consent of the Indian Preference Office has been received, a
388 contractor shall not deviate from an executed compliance agreement by adding or removing any
389 subcontracts, subcontractors or positions filled by qualified trades workers or certified entities, or
390 by filling a vacancy with a non-qualified trades worker or a non-certified entity.

391 502.7-5. *Limited Waivers.* The Indian Preference Office shall establish standard operating
392 procedures to provide for emergency conditions and situations whereby a limited waiver of
393 compliance may be authorized, in situations where a contractor has made a significant and
394 documented good faith effort to achieve compliance, or can demonstrate that compliance is not
395 practical for reasons other than pricing.
396

397 **502.8. Skills Bank and Qualified Trades Workers**

398 502.8-1. The Indian Preference Office shall establish and administer a Skills Bank to assist with
399 providing Indians and first-generation descendants with employment opportunities. The goal of
400 the Nation is to achieve one hundred percent (100%) participation of qualified trades workers on
401 projects.

402 (a) The Indian Preference Office shall identify, initiate, and sponsor training, internship,
403 and apprenticeship opportunities necessary in order to increase the pool of qualified
404 trades workers and to assist Indians in becoming qualified in the various job
405 classifications used by employers.

406 (b) The Indian Preference Office shall cooperate with other programs of the Nation to
407 provide counseling and support to assist Indians in retaining employment.

408 502.8-2. The Skills Bank shall be the exclusive referral source under this law, representing the
409 official compilation of qualified trades workers eligible for Indian preference in accordance with
410 this law. Skills Bank listings shall include the names and qualifications of the qualified trades
411 workers. The Indian Preference Office shall regularly update the Skills Bank listings.

412 502.8-3. Entities required to fill positions in accordance with this law and/or a compliance
413 agreement under section 502.7, shall contact the Indian Preference Office prior to the
414 commencement of any work.

415 (a) Except where prohibited by law or grant funding requirements, the entity shall hire
416 qualified trades workers from the Skills Bank in the following order of priority:

- 417 (1) Members of the Nation;
- 418 (2) First generation descendants of the Nation; and then
- 419 (3) Members of other federally-recognized Indian tribes.

420 (b) If a law or grant funding requirement prohibits the hiring of qualified trades workers
421 in accordance with section 502.8-3(a), qualified trades workers shall be hired in
422 accordance with the requirements of said law or grant.

423 (c) If the necessary labor cannot be acquired from the Skills Bank, then a limited waiver
424 may be granted by the Indian Preference Office.

425 502.8-4. In order to be added to the Skills Bank, an applicant shall submit a completed
426 application and documentation of the following:

- 427 (a) proof of enrollment or proof that the individual is a first-generation descendant of the
428 Nation;
- 429 (b) education; including degrees, diplomas, apprenticeships, internships or continuing
430 education training related to the field;
- 431 (c) proof of a driver's license, including any endorsements, if applicable;
- 432 (d) if the worker is seeking to be listed as a qualified trades worker for a specific trade,
433 then the worker shall provide specific information related to that trade, including:
 - 434 (1) past and current licensing;
 - 435 (2) credentials and certifications; and
 - 436 (3) information related to penalties or punitive actions taken by any licensing
437 body within the past ten (10) years.

438 502.8-5. Placing an applicant in the Skills Bank as a qualified trades worker confers recognition
439 that he or she is eligible to receive Indian preference in accordance with this law. A qualified
440 trades worker shall be qualified for Indian preference for employment for a particular skill or
441 trade if he or she meets the minimum qualifications for a particular skill or trade.

442 502.8-6. *Wage and Hour Standards, Layoffs and Terminations, Call-Backs, Promotions,*
443 *Unions.*

444 (a) Every contractor utilizing qualified trades workers shall ensure that such workers
445 receive equal compensation, including overtime pay, and shall have equal work
446 standards, that are provided to other employees. Contractors that hire qualified trades
447 workers in order to comply with this law, but do not utilize those workers in a manner
448 similar to other employees are not maintaining equal work standards.

449 (b) In making any layoffs or terminations, all contractors shall notify the Indian
450 Preference Office prior to laying off or terminating a qualified trades worker.

- 451 (1) No qualified trades worker with at least minimum qualifications for the job
452 classification shall be terminated or laid off so long as a non-Indian employee in
453 the same craft with similar skills remains employed. If the contractor lays off by
454 crews, qualified trades workers shall be transferred to any crew that will be
455 retained, as long as there are non-Indian employees in the same craft employed
456 elsewhere under the same contract.
- 457 (2) No contractor shall terminate or lay off any qualified trades worker pursuant
458 to this law, without documented good cause. The contractor shall promptly
459 replace the qualified trades worker with another qualified trades worker.
- 460 (3) When a contractor begins to call back laid-off employees, that contractor shall
461 notify the Indian Preference Office and shall call back qualified trades workers
462 before bringing back other employees.

463 (c) Qualified trades workers and certified entities shall not be required to affiliate with
464 organized labor for employment under this law. The mere absence of affiliation with
465 organized labor shall not disqualify a qualified trades worker from employment or
466 contracting where that worker is otherwise qualified. A qualified trades worker shall not
467 be guaranteed to receive the benefits of a union contract, other than wage scales, unless
468 the worker elects to join the union.

469 502.8-7. *Construction Contracts: Core Work Crew.* As a condition of a construction contract
470 award, the contractor shall identify its core work crew, including those core work crew
471 employees utilized by known subcontractors. If such employees are approved by the Indian
472 Preference Office, they may be employed on the project without regard to Indian preference.
473 Provided that, core work crew employees shall at no time displace qualified trades workers
474 and/or potential qualified trades workers by performing work outside their trade or skill.

475 (a) For the purposes of employment on a project, the Indian Preference Office and the
476 contractor, and any subcontractor, shall negotiate the designated members of the
477 contractor's core work crew.

478 (b) Any contractor that fills vacant positions immediately prior to undertaking work
479 pursuant to a contract to which this section applies shall provide evidence acceptable to
480 the Indian Preference Office that such actions were not intended to circumvent the
481 provisions of this law.

482 (c) A contractor shall not use extraneous qualification criteria or other personnel
483 requirements that prevent qualified trades workers from being employed, unless the
484 contractor is able to demonstrate that such criteria or requirements are required by
485 regulatory compliance.
486

487 **502.9. Investigations and Enforcement**

488 502.9-1. *Complaints.* An individual or entity may file a written complaint with the Indian
489 Preference Office if aggrieved by an act of non-compliance with:

490 (a) this law;

491 (b) a compliance agreement; and/or

492 (c) any standard operating procedure issued pursuant to this law.

493 502.9-2. *Contents of the Complaint.* A complaint shall include information that will reasonably
494 enable the Indian Preference Office to understand the general nature of the complaint and carry
495 out an investigation, such as evidence of any discriminatory practices, alleged misconduct, or
496 other non-compliance.

497 502.9-3. *Complaint Investigation.* Upon receipt of a complaint or after witnessing non-
498 compliance with this law while conducting its monitoring duties, the Indian Preference Office
499 shall conduct an investigation.

500 (a) In conducting an investigation to determine if the complaint has merit, the Indian
501 Preference Office shall be authorized to:

502 (1) inspect and copy all relevant records;

503 (2) interview and speak to workers; and

504 (3) conduct inspections of the job site.

505 (b) Information collected during an Indian Preference Office investigation shall be kept
506 confidential unless disclosure is necessary or required as part of any judicial or
507 administrative proceeding or in accordance with a law of the Nation.

508 (1) Any report or recommendation prepared by the Indian Preference Office for
509 use at a hearing shall be promptly released to the complainant and alleged
510 violator.

511 (c) If the Indian Preference Office receives a complaint or information that an entity is
512 operating in a manner that is harmful to the health, safety, or welfare of the Nation or
513 community, the Indian Preference Office shall immediately refer the complaint or
514 information to the appropriate department or authority of the Nation for investigation.

515 (1) The referral of a complaint does not prohibit the Indian Preference Office
516 from its independent investigation of such complaint or information for purposes
517 of ensuring compliance with this law.

518 (2) The Indian Preference Office shall have the authority to review the results of
519 any other investigation conducted by another department or authority of the
520 Nation in accordance with the Nation's laws and policies governing open records.

521 502.9-4. *Alleged Violation Has No Merit.* If the Indian Preference Office determines that the
522 alleged violation has no merit, the Indian Preference Office shall notify all parties in writing that
523 the complaint shall be closed.

524 (a) The complainant may file a complaint to contest this decision with the Nation's Trial
525 Court within ten (10) business days after issuance of such notice.

526 (b) The Trial Court shall then conduct an in-camera inspection of the investigation
527 completed by the Indian Preference Office. During an in-camera inspection only a judge
528 may review the information obtained by the Indian Preference Office during the
529 investigation as this information is confidential and disclosure is not necessary.

530 (c) If after reviewing the Indian Preference Office's investigation, the Trial Court
531 determines the alleged violation has no merit, the Trial Court shall notify all parties in
532 writing that the matter will be dismissed and no further appeals of the matter will be
533 accepted.

534 (d) If after reviewing the Indian Preference Office's investigation the Trial Court
535 determines that there is sufficient evidence of a genuine and material issue of non-
536 compliance, the Trial Court shall order the Indian Preference Office to take action in
537 accordance with section 502.9-5.

538 502.9-5. *Alleged Violation Has Merit.* If the Indian Preference Office determines that the
539 alleged violation has merit and there is sufficient evidence of a genuine and material issue of
540 non-compliance, the Indian Preference Office may take action to resolve the complaint.

541 (a) The Indian Preference Office may take any of the following actions to resolve the
542 complaint:

543 (1) Attempt to reach an informal or formal resolution of the alleged non-
544 compliance;

545 (A) If a formal resolution is reached, any agreement shall be in writing
546 and signed by all parties. The issue shall then remain in abeyance for the
547 term of the contract during which time all parties shall comply with the
548 terms of the written agreement. Breach of the terms of the written
549 agreement may be a cause of action for litigation before the Trial Court.

550 (2) Issue a notice of non-compliance to the entity by certified mail;

551 (A) The notice shall state the specific violation(s) alleged, the
552 requirements that must be met to ensure compliance with this law, and
553 shall provide a reasonable amount of time, not to exceed thirty (30) days,
554 wherein the entity shall provide evidence that it has taken the steps
555 necessary to come into compliance.

556 (3) Place the entity's certification in probationary status for a period not to
557 exceed six (6) months; or suspend, revoke, or deny renewal of the entity's
558 certification;

559 (A) Once certification is revoked, an entity shall not be eligible to apply
560 for re-certification until one (1) year has passed from the effective date of
561 the revocation.

562 (B) At any time that certification is suspended, revoked, or has lapsed, a
563 formerly certified entity shall not qualify for Indian preference.

564 (C) Where a certified entity loses certification:

565 (i) the contractor may be required to replace that entity with
566 another certified entity if the work has not begun or performance
567 under a contract has not commenced, unless replacement is
568 impossible or would cause undue hardship; or

569 (ii) the Indian Preference Office may authorize the contractor to
570 continue to utilize that entity without regard to Indian preference if
571 work has already begun or performance under a contract has
572 commenced.

573 (4) Issue a fine;

574 (A) The Indian Preference Office shall be delegated authority to develop a
575 fine and penalty schedule that may be imposed upon any person or entity
576 violating provisions of this law. The fine and penalty schedule shall be
577 adopted by the Oneida Business Committee through resolution.

578 (B) No fines or penalties may be assessed against the Nation, the Indian
579 Preference Office, or other department of the Nation, or employees
580 engaged in their official duties under this law.

581 (5) Re-negotiate a compliance agreement with the contractor to include
582 additional opportunities for qualified trades workers or certified entities; and/or

583 (6) Request the appropriate entity withdraw any licensing issued by the Nation.

584 (b) An individual or entity may contest an action taken by the Indian Preference Office
585 by filing a complaint with the Trial Court within ten (10) business days after the date of
586 issuance of the Indian Preference Office's decision.

587 502.9-6. *Additional Enforcement Measures.* If the Indian Preference Office is unable to
588 facilitate a satisfactory resolution, and a notice of non-compliance or action against a certified
589 entity's certification has not resulted in a successful resolution, the Indian Preference Office may
590 file an action with the Trial Court, seeking appropriate relief, including but not limited to:

591 (a) An injunction;

592 (b) Specific performance, including but not limited to:

593 (1) reinstatement of a qualified trades worker at the previous wage;

594 (2) immediate removal of employees hired in violation of this law; and/or

595 (3) employment, promotion or additional training for Indian preference-eligible
596 parties injured by a violation;

597 (c) Payment of back pay, damages, and/or costs associated with the enforcement of an
598 order issued by the Trial Court, including but not limited to filing fees, attorney fees,
599 and/or costs incurred by the Indian Preference Office in bringing an action. Provided that,
600 no money damages may be claimed in any suit against the Nation, the Indian Preference
601 Office or other departments of the Nation, or officials of the Nation or employees
602 engaged in their official duties under this law; and/or

603 (d) Any other action the Trial Court deems lawful, equitable, and necessary to ensure
604 compliance with this law and to alleviate or remedy any harm caused by non-compliance.

605 502.9-7. Although relief granted by the Trial Court may benefit an individual qualified trades
606 worker, certified Indian preference entity, or other individual or entity, neither the Indian

607 Preference Office nor the Nation represents those individuals and/or entities in any action for
608 non-compliance with this law.

609 502.9-8. *Cease-and-Desist Orders.* The Oneida Police Department is hereby expressly
610 authorized and directed to enforce such cease-and-desist or related orders as may from time to
611 time be properly issued by the Trial Court. Such orders shall require a decree or order to render
612 them enforceable. The Oneida Police Department shall not be civilly liable for enforcing such
613 orders so long as the Trial Court signs the order.

614 502.9-9. *Retaliatory Action Prohibited.* No entity shall punish, terminate, harass or take any
615 other adverse personnel or hiring action in retaliation for a party's exercise of Indian preference
616 rights under this law. However, this section shall not prohibit action that can be reasonably
617 justified as taken in good faith based on documented employee performance.

618
619 *End.*

620
621 _____
622 Adopted BC-03-27-13-B
623 Amended BC-__-__-__-__

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AMENDMENTS TO INDIAN PREFERENCE IN CONTRACTING LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Ernie Stevens III	SPONSOR: Ernie Stevens III	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	<ul style="list-style-type: none"> To update the definition of tribal corporation to include any corporation chartered and/or wholly owned by the Nation; To raise the threshold to apply Indian Preference from one thousand five hundred dollars (\$1,500) to three-thousand dollars (\$3,000) for any contracts entered into by the Nation; To permit joint ventures to qualify for Indian Preference on a project-specific basis; Set a new timeline for Indian Preference Office to review contracts; Clarify the Indian Preference Office’s authority to develop a fine and penalty schedule for violations of this law, to be approved by the Oneida Business Committee by resolution. 		
Purpose	To establish an Indian Preference Office and increase economic benefits for the Nation and members of the Nation by providing for the maximum utilization of Indian workers and businesses on projects of the Nation which occur on or near the Reservation [5 O.C. 502.1-1].		
Affected Entities	Indian Preference Office, Purchasing Department, Oneida Judiciary, Oneida Police Department, Oneida Licensing Department, Corporations chartered and/or wholly owned by the Nation, and any department or entity of the Nation that enters into projects or contracts greater than \$3,000.		
Related Legislation	Open Records and Open Meetings law, Vendor Licensing law, Personnel Policies and Procedures; Independent Contractor Policy, Travel and Expense Policy.		
Public Meeting	A public meeting has not yet been held.		
Fiscal Impact	A fiscal impact statement has not yet been requested.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A.** The Nation’s Indian Preference in Contracting law was adopted on July 29, 1998 and most recently
- 3 amended on March 27, 2013. The purpose of this law is to increase economic benefits for the Nation
- 4 and members of the Nation by providing maximum utilization of Indian workers and businesses on
- 5 projects of the Nation. The Nation’s Indian Preference Office is responsible for monitoring and
- 6 enforcing Indian Preference in contracting.
- 7 **B.** This law was added to the LOC’s Active file List on April 17, 2019 at the request of Councilmember
- 8 Ernie Stevens III. The original intent of the amendments was to update the definition of “tribal entity.”
- 9 Since that time, a work group of representatives from relevant entities and departments have met to
- 10 review the law. Many of the proposed amendments reflect the feedback and suggestions of this work
- 11 group.

12 **SECTION 3. CONSULTATION AND OUTREACH**

- 13 A. Representatives from the following departments or entities of the Nation participated in the
 14 development of this law and legislative analysis: Indian Preference Office, Purchasing Department,
 15 Law Office, Community and Economic Development Division, and Oneida ESC Group.
 16 B. The following laws of the Nation were reviewed in drafting this analysis: Open Meetings and Open
 17 Records law, Vendor Licensing law, Personnel Policies and Procedures, Independent Contractor
 18 Policy, Travel and Expense Policy, Layoff Policy, Furlough Policy, Oneida Nation Law Enforcement
 19 Ordinance.

20
 21 **SECTION 4. PROCESS**

- 22 A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
 23 B. The law was added to the Active Files List on April 17, 2019.
 24 C. At the time this legislative analysis was developed, the following work meetings had been held
 25 regarding developments of these amendments and legislative analysis:
 26 ▪ May 20, 2019 Work Meeting: LOC, Indian Preference, Purchasing, Oneida ESC Group.
 27 ▪ June 5, 2019 Work Meeting: LOC.
 28 ▪ June 6, 2019 Work Meeting: LOC.
 29 ▪ July 25, 2019 Work Meeting: LOC, Law Office, Indian Preference, Purchasing.
 30 ▪ September 26, 2019 Work Meeting: LOC, Indian Preference, Purchasing, Community Economic
 31 Development.
 32 ▪ October 21, 2019 Work Meeting: Indian Preference, Community Economic Development.
 33 ▪ October 24, 2019 Work Meeting: LOC.

34
 35 **SECTION 5. CONTENTS OF THE LEGISLATION**

- 36 A. **Definition of Tribal Corporation.** The Indian Preference law applies to tribal corporations to the extent
 37 that those corporations enter into contracts with the Oneida Nation [5 O.C. 502.6-1(b)]. Previously, the
 38 definition of tribal corporation was “a corporation chartered by the Oneida Tribe of Indians of
 39 Wisconsin pursuant to the Constitution and Bylaws of the Oneida Tribe.” This definition has been
 40 updated to “a corporation chartered and/or wholly owned by the Nation pursuant to the Constitution
 41 and Bylaws of the Oneida Nation” [5 O.C. 502.3-1(ee)].
 42 ▪ *Effect.* Some of the corporations owned by the Nation are chartered in other states. For example,
 43 Oneida ESC Group is incorporated in the state of Nevada, but wholly owned by the Oneida Nation.
 44 This updated definition clarifies that this law will apply to all of the Nation’s corporations
 45 regardless of where they are chartered, organized or incorporated.

46 **Chart 1. List of Oneida Nation Corporations.**

<i>Tribal Corporation</i>	
<i>Oneida Airport Hotel Corporation</i>	Chartered by Oneida Nation.
<i>Bay Bancorporation</i>	Incorporated under WI Business Corporation law. Wholly owned by Oneida Nation.
<i>Oneida ESC Group, LLC</i>	Limited liability company (LLC) organized under Nevada law. Wholly owned by Oneida Nation.
<i>Oneida Golf Course Enterprise Corporation</i>	Chartered by Oneida Nation.
<i>Oneida Seven Generations Corporation.</i>	Chartered by Oneida Nation. Currently in the process of being dissolved.

- 47 **B. *Joint Ventures.*** Joint ventures will now qualify for Indian Preference on a project-specific basis.
- 48 ▪ *What is a Joint Venture?* A “joint venture” is a one-time grouping of two (2) or more entities in a
49 business undertaking [5 O.C. 502.3-1(v)]. A joint venture is a short-term partnership where each
50 party jointly undertakes a transaction for mutual profit. Each member of the joint venture
51 contributes assets and shares risk [Cornell Law Legal Information Institute (LII)]. For example,
52 two companies may form a joint venture to bid on a construction project that they otherwise would
53 be unable to complete on their own.
- 54 ▪ *Joint Ventures Now Eligible for Indian Preference.* Previously, joint ventures were not eligible to
55 receive Indian Preference. These amendments will permit joint ventures to receive Indian
56 Preference on a project-specific basis [5 O.C. 502.5-8]. In other words, the joint venture will only
57 receive Indian Preference for the specific project they are bidding on. Because joint ventures are
58 typically a short-term partnership, any future joint venture will need to reapply for Indian
59 Preference each time they bid on a project.
- 60 ▪ *Effect.* Entities that form joint ventures to bid on projects will now qualify for Indian Preference
61 assuming they meet all other requirements of this law.
- 62 **C. *Threshold to Apply Indian Preference.*** Currently, the Indian Preference law applies to all of the
63 Nation’s contracts over \$1,500 except where prohibited by law or grant funding requirements. These
64 amendments raise this threshold. Now, the Indian Preference will only apply to the Nation’s contracts
65 over \$3,000 [5 O.C. 502.6-1].
- 66 ▪ *Justification.* This change was made at the recommendation of the Purchasing Department to match
67 the Nation’s current procurement threshold. The Nation’s procurement policy requires three bids
68 for any contract or purchase over \$3,000. Setting both the Indian Preference and three-bid
69 thresholds at \$3,000 will make both policies easier to implement for the Nation. Purchasing also
70 explained that most Indian Preference vendors bid on projects above \$3,000, such as construction
71 projects. Therefore, Purchasing Department predicts that the higher threshold will have minimal
72 impact on most Indian Preference vendors.
- 73 ▪ *Effect.* Indian Preference will only apply to contracts greater than \$3,000. Any vendors bidding on
74 projects between \$1,500 and \$2,999 will no longer receive Indian Preference.
- 75 **D. *New Timeline for Indian Preference Office to Review Contracts.*** The current Indian Preference law
76 already requires that projects must be submitted to the Indian Preference Office for review before being
77 posted or announced for bids. However, the current law does not include a timeframe for the Indian
78 Preference office to complete this review.
- 79 ▪ *New Timeline.* These amendments add a new timeline for when the Indian Preference office must
80 complete this review. Now, the Indian Preference Office must complete their review within five
81 (5) business days [5 O.C. 502.6-4]. The intent is to ensure that projects can be posted in a timely
82 manner.
- 83 **E. *Fine and Penalty Schedule for Indian Preference Violations.*** The current Indian Preference law
84 already authorizes the Indian Preference Office to develop and the Business Committee to approve a
85 fine and penalty schedule for violations of this law. However, no fine and penalty schedule has been
86 adopted.
- 87 ▪ *Changes.* Previously, this law stated that fine amounts must be no less than \$100 and no more than
88 \$1,000. These amendments remove this limitation. In addition, the amendments also specify that
89 the fine amounts will be adopted by the Business Committee by resolution. [5 O.C. 502.9-5(a)(4)].

90 **F. *Minor Drafting Changes.*** Minor drafting changes have been made throughout the law, such as
91 changing “Tribe” to “Nation” or moving the order of existing sections.
92

93 **SECTION 6. EFFECT ON EXISTING LEGISLATION**

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

- 96 ■ *Open Records and Open Meetings law.* In accordance with the Nation’s laws and policies
97 governing open records, general, non-proprietary and non-private information provided for the
98 purposes of acquiring certification shall be considered open records and available for public
99 inspection. [5 O.C. 502.5-7 and 502.9-3(c)(2)].
- 100 ■ *Personnel Policies and Procedures.* In the execution of employment duties and in accordance
101 with the Nation’s laws and policies governing employment, employees of the Nation shall follow
102 this law in following contracting and bidding procedures for the Nation or entities of the Nation
103 [5 O.C. 502.6-7].
- 104 ■ *Vendor Licensing.* All contracts this law applies to must include reference to the Nation’s laws
105 governing vendor licensing and provide the contracting parties with directions on how to access
106 that document [5 O.C. 502.6-8(c)].

107 **B. *Other Laws that Reference Indian Preference in Contracting:*** The following laws of the Nation
108 reference Indian Preference in Contracting. These amendments do not conflict with any of the
109 referenced laws.

- 110 ■ *Independent Contractor Policy.* “It is... the policy of the Tribe that the order of preference, as set
111 out in the Tribe’s Indian Preference law, be used in the selection of independent contractors” [5
112 O.C. 503.1-2(b)].
- 113 ■ *Travel and Expense Policy.* In regard to business expenses, “Considerations should be given to
114 patronizing tribally owned business and Indian Preference vendors certified by the Compliance
115 division” [2 O.C. 219.9-4(f)].
- 116 ■ *Judiciary Canons of Judicial Conduct.* “Nothing in these canons shall be construed as prohibiting
117 a Judge from affiliating with, using the facilities of, or attending events sponsored by organizations
118 that support Native American issues, exercise tribal or Indian Preference...” [8 O.C. 802.3.2.2].

119 **C. *Other Laws that Reference Indian Preference in Hiring:*** The following laws of the Nation reference
120 Indian Preference as it relates to the Nation’s hiring process. The standards set in this law do not apply
121 to preference “as applicable to employees hired through the Nation’s HRD or pursuant to an
122 employment contract” [5 O.C. 502.6-2(a)]. The Nation’s Indian preference in hiring process is located
123 in Section III of the Nation’s Personnel Policies and Procedures. These amendments do not conflict
124 with any of the referenced laws.

- 125 ■ *Layoff Policy.* “The Oneida Tribe recognizes Indian preference in the development of layoff SOPs.
126 Indian preference as used in this policy shall mean a preference granted to retain the Oneida
127 member employee when all other things being equal with non-member employees. Provided that,
128 a manager may identify critical positions within the business unit which shall not be subject to
129 Indian Preference” [2 O.C. 207.4-1].
- 130 ■ *Furlough Policy.* “Indian preference may not be used as a consideration in identifying employees
131 to be furloughed” [2 O.C. 205.5-4].
- 132 ■ *Oneida Nation Law Enforcement Ordinance.* “The following positions shall be held only by
133 members of the Oneida Tribe: Police Chief, Assistant Chief, Police Lieutenant or Sergeant,

134 Conservation Director, Assistant Conservation Director... All other positions and appointments
135 shall be subject to the Indian Preference rules of the Oneida Tribe” [3 O.C. 301.5-3(d)].
136

137 **SECTION 7. ENFORCEMENT AND ACCOUNTABILITY**

138 **A. Enforcement.** The Nation’s Indian Preference Office is authorized to enforce this law [5 O.C. 502.4-1
139 502.9-5]. In addition, the Oneida Police Department is authorized to enforce orders issued by the Trial
140 Court, such as cease-and-desist orders [5 O.C. 502.9-8].
141

142 **SECTION 8. OTHER CONSIDERATIONS**

143 **A. Fine and Penalty Schedule.** At the time this analysis was drafted, the Indian Preference Office is
144 developing a fine and penalty schedule for consideration by the Oneida Business Committee. The LOC
145 intends to bring a proposed fine and penalty resolution to the Business Committee at the time these
146 amendments are up for adoption.

147 **B. Fiscal Impact.** A fiscal impact statement has not yet been requested.
148 ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except
149 emergency legislation [1 O.C. 109.6-1].
150 ▪ A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating
151 Committee and may be prepared by any agency who may receive funding if the legislation is
152 enacted; who may administer a program if the legislation is enacted; who may have financial
153 information concerning the subject matter of the legislation; or by the Finance Office, upon request
154 of the Legislative Operating Committee [1 O.C. 109.6-1(a and b)].

155



Oneida Nation
 Oneida Business Committee
 Legislative Operating Committee
 PO Box 365 • Oneida, WI 54115-0365
 Oneida-nsn.gov



Legislative Operating Committee

FY19 Fourth Quarter Report: July 1, 2019- September 30, 2019

Executive Summary

The Legislative Operating Committee (LOC) focused on the following items in the fourth quarter; amendments to all the boards, committee's and commissions bylaws, adoption of a Curfew law, community outreach for the draft Sanctions & Penalties law, amendments to the Vehicle Driver and Fleet Management law, and a Citations law. A brief summary of each of these items;

- **Bylaws Amendments** The OBC adopted the Boards, Committees, and Commissions Law in September of 2018. As a result, all the Nation's boards, committees, and commissions were required to amend their bylaws to become compliant with the law. The LOC has been working with the entities to complete this project. All bylaws amendments should be approved by the OBC by the end of the first quarter of FY20.
- **Curfew law** The LOC began work on this law in December of 2018. This legislation was a recommendation from the Tribal Action Plan Policy and Law Sub-Committee. The legislation is designed to contribute to drug prevention efforts. The LOC hopes the OBC will consider its adoption on October 2019. *(Update: this law was adopted and became effective on October 23, 2019.
- **Sanctions & Penalties law** The LOC continues to provide community outreach regarding the proposed Sanctions & Penalties Law, per the General Tribal Council directive.
- **Vehicle Driver & Fleet Management Amendments** The LOC is working on simplifying this law and providing more clarity. This law applies to Oneida Nation employees, elected and appointed officials, and volunteers who drive vehicles as part of their job duties.
- **Citations law** The LOC has been working on this since May of 2019. This will set a process for how citations are processed through the Oneida Judiciary. There are several laws that allow for citations including; Domestic Animals, Oneida Food Service Code, and the Hunting, Fishing, Trapping Law. A Citations Law will streamline and clarify the citations process that the Judiciary uses.

Updates to the Active Files List

The active files list is the list of legislation that the LOC is working on. During the fourth quarter, the LOC added the Children’s Burial Fund Policy Amendments to the active files list, upon request from the Trust Enrollment Department. Work will begin on these amendments in the first quarter of FY20. Table 1. illustrates the status of each legislative item the LOC was working on as of October 15, 2019. Attachment A. includes a list of the legislation that has been completed in the 2017-2020 term (Since August 2017), along with a brief description of the legislation.

Table 1. Current Active Files List

*Notes an item that the LOC intends to finish by July 2020 (end of the 2017-2020 term).

● This item has been completed and the LOC is no longer working on it.

Name of Legislation	Drafting	Public Meeting	BC/GTC Consideration or Adoption
Election Amendments -Rejected by GTC 7/11/19	●		
*Sanctions & Penalties -Deferred by GTC 3/17/19	●		
GTC Petition Process -Rejected by GTC 7/11/19	●		
*Child Support Amendments	●		
Domestic Animals Amendments	●		
Boards, Committees, & Commissions Bylaws (17)	●		
*Oneida Food Service Code Amendments	●		
Curfew	●		
*Industrial Hemp	●		
Taxation	●		
Wellness Court	●		
Children’s Code (Adopted)	●		
*Indian Preference in Contracting Amendments	●		
*Vehicle Driver Certification & Fleet Management	●		
*Citations Law	●		
*Recycling & Solid Waste Law Amendments	●		
*Children’s Burial Fund	●		
Public Peace	●		
Drug & Alcohol Free Elected/Appointed Officials	●		
Tribal Traffic Code	●		
Business Corporations	●		
Code of Ethics Amendments	●		
Rules of Civil Procedure Amendments	●		
General Welfare Exclusion- Income Exemptions	●		
Work Visas	●		
Law Enforce. Ord. Amendments- Con. Wardens	●		
*Environmental Review Law	●		
Attorney Contract Policy Amendments	●		
Tribal Institutional Review Board	●		
Guardianship	●		
Uniform Commercial Code	●		
Personnel Policies & Procedures Amendments	●		
Investigative Leave Policy Amendments	●		
Workplace Violence Amendments	●		

Completed Legislation in 2017-2020 Term

Chart 1. Illustrates what legislation has been completed since August 2017 and it indicates which General Tribal Council’s priorities each piece of legislation is tied to. Attachment A. provides further details of the completed legislation, as well as a brief description of the legislation.

Chart 1. Completed Legislation and GTC Priorities

Most of the adopted legislation completed so far in this term have addressed **Government Administration**, **Human Services**, and **Housing** priorities.

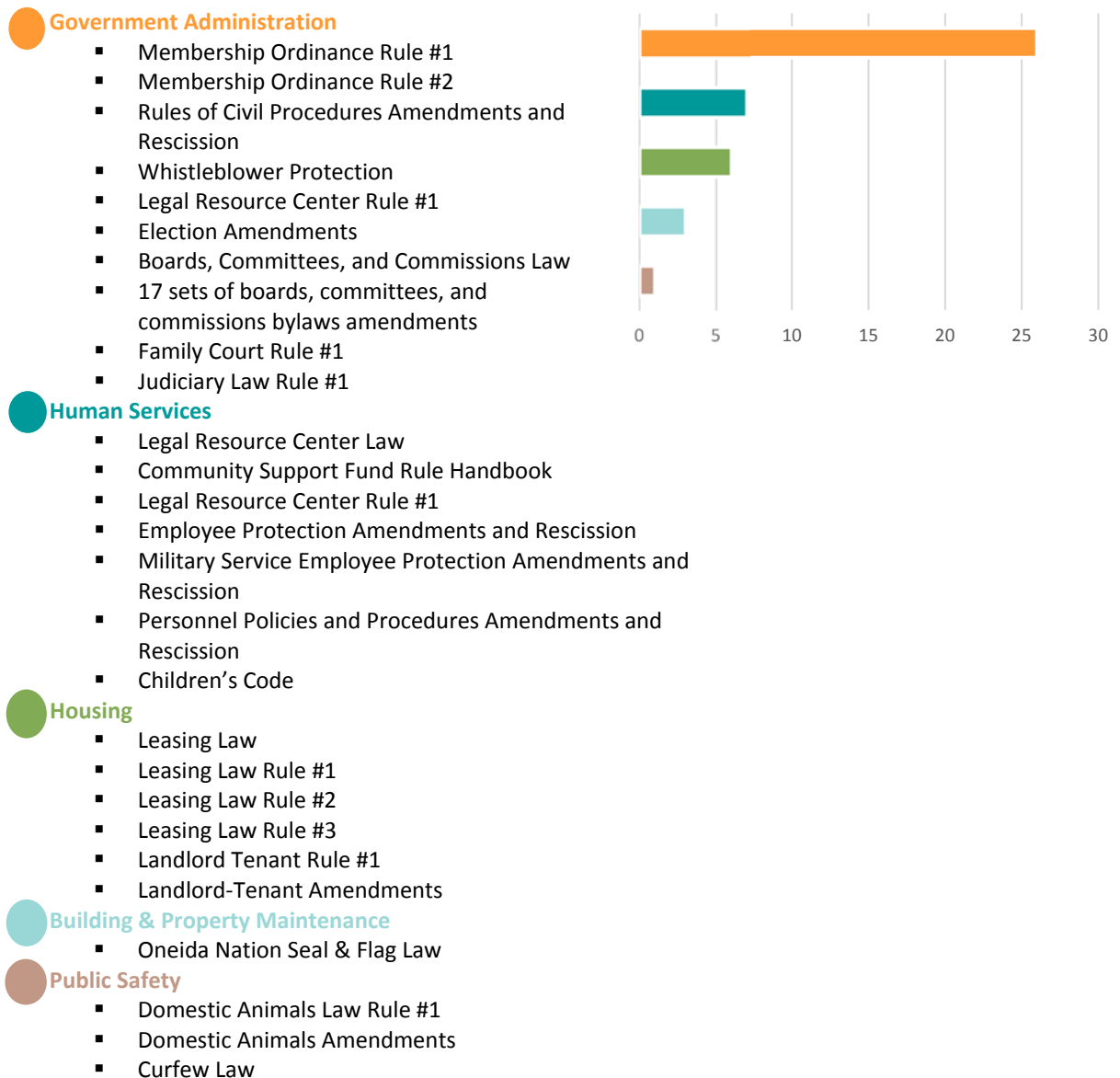


Table 2. Meetings held by the Legislative Operating Committee in Fourth Quarter

Legislative Operating Committee Meetings	
July 3, 2019	Regular LOC meeting cancelled
July 17, 2019	Regular LOC meeting
August 7, 2019	Regular LOC meeting
August 21, 2019	Regular LOC meeting cancelled
September 4, 2019	Regular LOC meeting
September 18, 2019	Regular LOC meeting

Fourth Quarter Legislative Highlights

Boards, Committees, and Commission Bylaws Amendments

All the Nation's boards, committees, and commissions are required to amend their bylaws as a result of the adoption of the Boards, Committees, and Commissions law (formerly known as the Comprehensive Policy Governing Boards, Committees, and Commissions). The LOC has been assisting the entities with this project and the Oneida Business Committee approved six sets of bylaws amendments in the fourth quarter;

Oneida Police Commission	Anna John Resident Centered Care Community Board
Oneida Election Board	Oneida Community Library Board
Oneida Powwow Committee	Oneida Nation Veteran Affairs Committee

Administrative Rulemaking

The LOC certified and the Oneida Business Committee subsequently approved two rules in the fourth quarter; the Judiciary Rule No. 1- Oneida Trial Court Rules and the Family Court Law Rule No. 1- Family Court Rule. The purpose of the rules is to supplement the Oneida Judiciary Rules of Civil Procedure and other laws governing the Trial Court and the Family Court.

Community Outreach: Proposed Sanctions and Penalties Law

This law would increase accountability among elected and appointed officials of the Nation. This proposed law creates a formal complaint process and allows for corrective actions against officials who engage in misconduct. The legislation is designed to establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation, including members of the Oneida Business Committee, for misconduct in office; and to establish an orderly and fair process for imposing such sanctions and penalties.

The LOC hosted a community pot luck to discuss the legislation on May 3, 2018 and sixteen (16) people attended. The public meeting was held on October 10, 2018 and seven (7) people attended. Approximately 115 comments were collected for this legislation.

At the March 17, 2019 General Tribal Council Meeting, the GTC discussed the proposed Sanctions & Penalties law and took the following actions:

- *Motion by Cathy L. Metoxen to table this item for sixty (60) days. Motion ruled out of order by Vice-Chairman Brandon Stevens; all the materials are available today in order to make a decision.*
- *Motion by Becky Webster to adopt the resolution entitled Sanctions and Penalties Law on pages 5 and 6 of the meeting packet; with the amendment to the law to limit those who have standing to file a complaint to Tribal Members only. Seconded by Jamie Willis. Motion not voted on; item deferred, see amendment.*
- *Amendment to the main motion by Mike Debraska to defer item IV.A. for at least sixty (60) days for GTC to have additional time to consider it and have input. Seconded by Tina Danforth. Motion carried by show of hands.*

Since March 17, the LOC has been holding outreach events, in an effort to meet the directive that the GTC have more time to consider the legislation. These events will provide the community opportunities to learn more about the legislation and have additional input on the legislation. The dates and times of these events:

July 11, 2019, 5:00-6:00 pm, just prior to the General Tribal Council Meeting, Radisson Hotel and Conference Center

July 17, 2019, 12:00-1:00 pm, Norbert Hill Center Business Committee Conference Room

August 9, 2019, 8:00-9:00 am, Oneida Veteran’s Breakfast, Vets Office, Riverdale Dr., Oneida

August 15, 2019, 12:00-3:00 pm, Oneida Farmer’s Market, Water Circle Place, Oneida

October 7, 2019, 12:00 pm-1:00 pm, Elder Congregate Meal Site

October 18, 2019, 11:00 am-1:00 pm, SEOTS Building, Milwaukee, WI.

**LEGISLATIVE OPERATING COMMITTEE
COMMUNITY OUTREACH EVENTS**

SANCTIONS AND PENALTIES LAW

At the March 17, 2019, General Tribal Council meeting the General Tribal Council directed that the consideration of the adoption of the proposed Sanctions and Penalties Law be deferred until the General Tribal Council has additional time to consider it and have input.

Join the Legislative Operating Committee (LOC) at the following community outreach events to share ideas, ask questions, and provide input on the proposed Sanctions and Penalties Law:

DATE	TIME	LOCATION
July 11, 2019	Prior to General Tribal Council Meeting from 5:00 pm – 6:00 pm	Radisson Hotel & Conference Center
July 17, 2019	12:00pm-1:00pm	Norbert Hill Center Business Committee Conference Room
August 9, 2019	8:00am-9:00am	Oneida Veteran’s Breakfast Vets Office, Riverdale Dr, Oneida
August 15, 2019	12:00pm-3:00pm	Oneida Farmer’s Market Water Circle Place, Oneida

Additional Opportunity for Input on the Sanctions and Penalties Law

If you are unable to attend a community outreach event to provide input, the LOC is offering the additional opportunity to provide comments and input through written submissions. The LOC will be accepting written thoughts and comments from the community until August 31, 2019. Written comments can be submitted via e-mail to LOC@oneidatribal.org or in person to the Legislative Reference Office located in the Norbert Hill Center.

FOR MORE INFORMATION
www.oneida.nm.gov, Right/Left/Forward/Backward or contact Oneida Nation Legislative Reference Office
Norbert Hill Center, PO Box 216, Oneida, Wisconsin 54155
Email: LOC@oneidatribal.org Phone: 920-869-4376

Community Outreach
The Sanctions & Penalties
Outreach events were published
in the Kalihwisaks September ,
2019 issues.

Sanctions & Penalties Outreach

The LOC held 6 outreach events to discuss the proposed law.



8-9-19
Breakfast with the Vets



8-15-19
Oneida Farmer’s Market



10-7-19
Elder Services Meal Site



10-18-19
SEOTS

FY20 First Quarter Plans

Bylaws Amendments

The LOC's goal is to present the remaining bylaws to the OBC and have them approved in the first quarter. *(Update: The OBC did adopt the remaining bylaws amendments by October 23. There are two sets that will come back to the OBC in the future).

Curfew law

The LOC's goal is that the OBC consider adoption of the Curfew law and that it is implemented in the first quarter. *(Update: The OBC did adopt this law on October 9, and it became effective on October 23, 2019)

Industrial Hemp law

The LOC is waiting for the U.S Department of Agriculture (USDA) to release its hemp rules. The rules will provide the LOC with guidance on drafting an Industrial Hemp law that will provide a structure for the Oneida Nation to regulate and license hemp production on the Oneida Reservation. The goal is to regulate industrial hemp growers on the reservation as an exercise in sovereignty. The USDA has indicated that the rules will be released in the fall of 2019.

*(Update: The USDA published the Industrial Hemp Rules on October 31, 2019 and the LOC will continue to work on this item).

Child Support Amendments- The LOC will hold a public meeting in October, and the LOC hopes to present these amendments to the Oneida Business Committee in January of 2020. The purpose of this law is to establish the legal responsibility of parents to provide financially for their children's general well-being, as well as to make support payments more equitable by ensuring consistent treatment of persons in similar circumstances; make support payments based on the real earning capability of parents; and improve the efficiency of child support establishment and enforcement. Currently the draft amendments include;

- Creating a process to suspend or modify child support orders for parents incarcerated for one hundred and eighty (180) days or more.
- Updating notice requirements and timelines for initiating an action by the Agency, as well as sending appointment letters, notices of delinquency, notices of enforcement action, and income withholding orders.
- Clarifying how the Family Court may redact addresses and identifying information from court documents to ensure the safety of a party.
- Making updates to how child support obligations are calculated in certain special circumstances involving shared-placement parents, split-placement parents, and a serial family obligor.
- Repealing Child Support Rule No.1- Deviation from Child Support and Rule No. 2 - Enforcement Tools and move the contents of the rules into the body of the law itself.
- Making additional updates and clarify language throughout the law.

Legislative Reference Office Update

In addition to working on the LOC's priorities, the LRO staff attended the Haudenosaunee Nation Re-building Workshop in August. In September LRO staff attended and facilitated discussion panels at the Oneida Food Sovereignty Summit with regard to Food Code legislation. Staff completed thirty-one (31) Statements of Effect for various departments. Statements of Effect accompany resolutions adopted by the Oneida Business Committee or the General Tribal Council. They are meant to indicate if and how the resolution may conflict with tribal law. In the FY20 first quarter the LRO will also update some technology and begin working on a plan to move the office from its current location.

Yaw^ko






Legislative Operating Committee Contact Information

Feel free to contact the LOC with questions or comments;

- David Jordan, LOC Chairperson, djordan1@oneidanation.org
- Kirby Metoxen, LOC Vice Chairperson, kmetox@oneidanation.org
- Jennifer Webster, LOC member, jwebste1@oneidanation.org
- Daniel King-Guzman, LOC Member, dguzman@oneidanation.org
- Ernest Stevens III, LOC Member, esteven4@oneidanation.org
- LOC@oneidanation.org



Attachment A. Legislative Operating Committee Summary of Work Completed in 2017-2020 Term

General Tribal Council Priorities	
	Government Administration= 26
	Human Services= 7
	Housing= 6
	Building & Property Maintenance= 1
	Public Safety= 3

Laws, Amendments, and Rules Adopted

Legal Resource Center Law

BC-09-13-17-L

On 11/14/17 the GTC directed the OBC to establish a legal office consisting of advocates and an advising attorney for the GTC. This law provides the framework for the office.

Oneida Nation Seal & Flag Rule #1- Placement, Maintenance, & Authorized Use

Approved by the OBC 09-13-17

This rule governs the placement, maintenance, and authorized use of the official Oneida Nation Seal under the Oneida Nation Seal & Flag Law.

Landlord-Tenant Law Amendments

BC-12-13-17-D

Extended the length of a rental agreement for tenants in the rent to own program.

Membership Ordinance Rule #1- Enrollment Rule

Approved by OBC 01-10-18

This rule creates enrollment procedures for carrying out the responsibility delegated to the Oneida Trust Enrollment Committee by the Membership Ordinance.

Community Support Fund-Rule Handbook

Approved by OBC-01-24-18

This rule handbook provides guidance on how the Community Support Fund is used so that the Nation can assist the greatest number of members of the Nation who apply for assistance to the Fund in times of a catastrophic event, illness, injury, or emergency event when no other resources for assistance exist.

Membership Ordinance Rule #2-Voiding Unlawful Membership

Approved by OBC 02-14-18

This rule creates a process by which the Oneida Nation may void the membership of a tribal member who no longer qualifies for enrollment pursuant to the Membership Ordinance under limited circumstances.

Domestic Animals law Rule #1- Licensing, Fees, & Penalties Emergency Adoption

Approved by OBC 04-25-18

This rule sets the licensing, fees, and penalties for the Domestic Animals law.

Leasing Law Rule #2- Agriculture Leases

Approved by OBC 05-16-18

This rule codifies the existing standard operating procedure regarding agricultural leases, allowing the Nation to lease agricultural land in the best interest of the Nation.

Leasing Law

Adopted BC-10-26-16-C

Became Effective BC-05-19-18

The federal HEARTH Act enables tribes to approve individual surface leases for their own

trust lands- provided that the tribe has adopted a tribal leasing regulations that are approved by the Secretary of the Interior. This law was adopted on 10/26/16 and became effective on 5/19/18.

● **Leasing Law Rule #3- Commercial Leases**

Approved by OBC 06-16-18

This rule codifies the existing standard operating procedures regarding commercial leases, allowing the Nation to lease in a manner that is fair and equitable for tribal fee and trust lands that are used for commercial purposes.

● **Legal Resource Center Rule #1- Application for Services**

Approved by OBC on 07-25-18

This rule created a procedure for individuals to apply for services from the Legal Resource Center.

● **Leasing Law Rule #1-Residential Leasing-Emergency Adoption**

Approved by OBC on 08-22-18

This rule expands upon information provided in the Leasing Law regarding eligibility, administration, inheritability, and enforcement related to residential leases.

● **Boards, Committees, and Commissions Law** *BC-09-26-18-C*

The Comprehensive Policy Governing Boards, Committees, and Commissions was updated regarding; creation of an entity, application, vacancies, appointments, oaths, reporting, stipends, dissolution, and enforcement. It was also renamed.

● **Employee Protection Emergency Amendments and Rescission**

BC-09-26-18-F (Rescission)

The OBC dissolved the Oneida Personnel Commission by Resolution BC-04-11-18-A and directed the LOC to identify which laws would need emergency amendments in response to the dissolution. The Employee Protection Policy included responsibilities that would be completed by the Oneida Personnel Commission. These amendments removed that responsibility.

Then, on August 27, 2018 the GTC motioned to rescind the OBC's actions as they related to the Oneida Personnel Commission. The OBC then adopted resolution BC09-26-18-F which formally repealed the emergency amendments to the Employee Protection Policy.

**Note:* this law was on the active files list prior to the dissolution of the Oneida Personnel Commission. After the rescissions, it remained on the active files list and was amended in February 2019. See Whistleblower Law on page 2.

● **Landlord-Tenant Rule #1- General Renter Program Eligibility, Selection, and other Requirements**

Approved by OBC 10-24-18

These amendments provide eligibility requirements, selection procedures, & general requirements that govern the Comprehensive Housing Division's general rental programs that are not reserved for elders or low-income tribal members.

● **Military Service Protection Emergency Amendments**

BC-09-26-18-F (Rescission)

See Employee Protection Emergency Amendments and Rescission explanation above.

● **Personnel, Policies, & Procedures Emergency Amendments & Rescission**

BC-09-26-18-F (Rescission)

See Employee Protection Emergency Amendments and Rescission explanation above.

● **Rules of Civil Procedure Emergency Amendments and Rescission**

BC-09-26-18-F (Rescission)

See Employee Protection Emergency Amendments and Rescission explanation above.

● **Whistleblower Protection Law**

BC-02-12-19-B

This law, formerly known as the Employee Protection Policy was eventually amended for reason not related to the dissolution of the Oneida Personnel Commission. The law was renamed the Whistleblower Protection Law.

● **Domestic Animals Amendments**

BC-05-08-19-C

These amendments eliminated rulemaking authority, reduced the space requirements for dog kennels, provided guidelines for tethering animals, reduced the number of pets allowed in residential homes, and simplified the dangerous animal declaration process.

● **Election Amendments**

Rejected by General Tribal Council 07-11-19

On November 12, 2017, the General Tribal Council (GTC) directed the OBC to identify amendments for the Election Law. The LOC drafted amendments and brought the item back to the GTC on 10/28/18, where it was deferred. The amendments came back to the GTC on 1/21/19 and they were tabled. Finally, on 7/11/19, the GTC voted to reject the amendments.

● **Children's Code**

BC-07-26-17-J

This purpose of this law is to provide for the welfare, care, and protection of Oneida children through the preservation of the family unit, while recognizing that in some cases it may be in a child's best interest not to be reunited with his or her family. This law was adopted 7/26/17, and included a 15 month implementation plan. Resolution BC-10-24-18-A delayed implementation until October 1, 2019. The Children's Code has been effective since that date.

● **Family Court Rule #1- Family Court Rules**

Approved by OBC 9-11-19

The amendments to this Rule supplement the Oneida Judiciary Rules of Civil Procedure and other laws governing the Family Court.

● **Judiciary Law Rule #1-Oneida Trial Court Rules**

Approved by OBC 9-25-19

This rule supplements the Oneida Judiciary Rules of Civil Procedure and other laws governing the Trial Court.

● **Curfew Law**

BC-10-09-19-G

The purpose of this new law is to protect the health, safety, and welfare of persons and property within the Reservation by regulating the activities of minors during certain hours. The curfew hours are similar to other local curfews-10:00 pm- 6:00 am, and there are many exemptions to the curfew including school events, athletics, travelling to and from a job, cultural events, etc.

● **Boards, Committees, and Commissions Bylaws Amendments- 17 sets**

The OBC adopted the Boards, Committees, and Commissions Law on 09-26-18. That law

resulted in all the Nations boards, committees, and commissions having to amend their bylaws in order to be compliant with the law. The LOC assisted all seventeen entities, and the process took approximately one year.

- Environmental Resources Board
- Oneida Nation Commission on Aging
- Oneida Gaming Commission
- Oneida Land Claims Commission
- Oneida Land Commission
- Oneida Nation Arts Board
- Oneida Personnel Commission
- Pardon & Forgiveness Screening Committee
- Southeastern Wisconsin Oneida Tribal Services
- Trust Enrollment Committee
- Anna John Resident Centered Care Center
- Oneida Community Library
- Oneida Election Board
- Oneida Police Commission
- Oneida Powwow Committee
- Oneida Nation Veterans Affairs Committee
- Oneida Nation School Board

- Petition: Gladys Dallas- Special Per Capita Payment and/or Options Payment
- Petition: G. Dallas- \$5k Per Capita
- Petition: Graham- 2017 General Election
- Petition: G. Powless- Banishment Law Resolution
- Petition: G. Powless- Oneida Personnel Commission Dissolution
- Petition: G. Powless- Rescinding the Removal Law
- Petition: Linda Dallas- Medicare Part B Premium Payment
- Petition: Metivier- Treatment Center
- Petition: Powless, Debra- 2017 Tri-Annual General Election
- Petition: Scott Kosbab- Creating a Term Limits Law
- Petition: Vandehei- E-poll Process
- Petition: C. Metoxen- Oneida Youth Leadership Institute

Other Projects Completed

There were other projects that the LOC worked on that were not legislation per se but took a significant amount of time.

General Tribal Council Petitions Statements of Effect

A statement of effect is an analysis of whether a General Tribal Council Petition or any resolution conflict with existing laws. Since August of 2017, the LOC has developed one hundred fifty two (152) statements of effect. The GTC Petition statements of effect are listed below;

- Petition: Delgado- Trust Land Distribution
- Petition: Dodge- Law Firm for GTC
- Petition: G. Dallas- \$5,000 Payment Within 90 Days

November 2019

November 2019

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

December 2019

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Oct 27	28	29	30	31	Nov 1	2
3	4	5 1:30pm Vehicle Driver Certification and Fleet Management Law Amendments (BC_Exec_Conf)	6 9:00am LOC (BC_Conf_Room) - LOC 9:00am LOC Meeting (BC_Conf_Room) 9:00am LOC Meeting	7	8	9
10	11	12	13	14	15 9:00am LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	16
17	18	19	20 9:00am LOC Meeting (BCCR) - LOC	21	22 12:00pm PUBLIC MEETING: Citations Law (BC_Conf_Room) - Clorissa N. Santiago	23
24	25	26	27	28	29	30

December 2019

December 2019

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

January 2020

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Dec 1	2	3	4 9:00am LOC (BC_Conf_Room) - LOC 9:00am LOC Meeting (BC_Conf_Room) 9:00am LOC Meeting	5	6	7
8	9	10	11	12 2:00pm LOC Work Session (BC_Exec_Conf_Room) - Clorissa N. Santiago	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31	Jan 1, 20	2	3	4