



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA

Business Committee Conference Room-2nd Floor Norbert Hill Center

November 20, 2019

9:00 a.m.

- I. Call to Order and Approval of the Agenda**

- II. Minutes to be Approved**
November 6, 2019 LOC Meeting Minutes (pg. 2)

- III. Current Business**
 1. Child Support Amendments (pg. 4)
 2. Indian Preference in Contracting Amendments (pg. 155)

- IV. New Submissions**

- V. Additions**

- VI. Administrative Updates**
 1. E-Poll Results: Sanctions and Penalties law (pg. 197)

- VII. Executive Session**

- VIII. Recess/Adjourn**



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Oneida Business Committee Conference Room-2nd Floor Norbert Hill Center
November 06, 2019
9:00 a.m.

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

Others Present: Brandon Wisneski, Clorissa Santiago, Ralinda Ninham-Lamberies, Michelle Gordon, Trina Schuyler, Jameson Wilson, Leyne Orosco, Lee Cornelius.

I. Call to Order and Approval of the Agenda

David P. Jordan called the November 06, 2019, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Jennifer Webster to adopt the agenda; seconded by Kirby Metoxen. Motion carried unanimously.

II. Minutes to be Approved

Motion by Jennifer Webster to approve the October 16, 2019, Legislative Operating Committee meeting minutes and forward to the Business Committee for consideration; seconded by Ernest Stevens III. Motion carried unanimously.

III. Current Business

1. Child Support Amendments (1:04-6:11)

Motion by Jennifer Webster to accept the public comments and public comment review memorandum and forward to a work meeting for further consideration; seconded by Ernest Stevens III. Motion carried unanimously.

2. Indian Preference in Contracting Law Amendments (6:16-8:25)

Motion by Ernest Stevens III to approve the draft and the legislative analysis for the Indian Preference in Contracting Law Amendments; seconded by Kirby Metoxen. Motion carried unanimously.

IV. New Submissions

V. Additions

VI. Administrative Items

1. FY19 LOC Fourth Quarter Report (8:29-12:47)

Motion by Jennifer Webster to accept the FY19 LOC Fourth Quarter Report and forward to the Oneida Business Committee; seconded by Ernest Stevens III. Motion carried unanimously.



VII. Executive Session

VIII. Adjourn

Motion by Ernest Stevens III to adjourn the November 06, 2019, Legislative Operating Committee meeting at 9:15 a.m.; seconded by Daniel Guzman King. Motion carried unanimously.



Legislative Operating Committee
November 20, 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.
- 11/6/19 LOC:** Motion by Jennifer Webster to accept the public comments and public comment review memorandum and forward to a work meeting for further consideration; seconded by Ernest Stevens III. Motion carried unanimously.
- 11/6/19:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Ernest Stevens III, Clorissa N. Santiago, Brandon Wisneski, Jameson Wilson. The purpose of this work meeting was to review and consider the public comments that were received for the proposed amendments to the Child Support law.

Next Steps:

- Accept the updated public comment review memorandum, draft, and legislative analysis.
- Approve the Child Support law amendments fiscal impact statement request memorandum and forward to the Finance Department requesting that a fiscal impact statement be prepared and submitted to the Legislative Operating Committee by December 6, 2019.



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office, Staff Attorney *CNS*
DATE: November 20, 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. On November 6, 2019, the Legislative Operating Committee reviewed and considered all public comments that were received.

This memorandum is submitted as the Legislative Operating Committee’s review and consideration of the oral and written comments received within the public meeting and public comment period.

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

The Legislative Operating Committee determined that the Law should be revised to include a definition for the term “contempt.” The Legislative Operating Committee discussed whether the Law needed a definition for the term “contempt” and the fact that there are other laws of the Nation that allow for contempt that do not necessarily define it. Although the Legislative Operating Committee felt many people would understand the use of the term “contempt” without being provided a definition, the Legislative Operating Committee decided to include a definition based on the fact that there might still be people who use this Law, such as young parents, that may not be aware of what the term means so it is beneficial to provide that explanation through a definition.

Based on their decision to include a definition for the term “contempt,” the Legislative Operating Committee directed that 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.

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

The Legislative Operating Committee determined no revision to the Law is needed based on this comment due to the fact that this change has already been addressed in the Law.

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

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment due to the inclusion of section 704.5-5(b) which allows for the nondisclosure of information in protected cases.

This has been an issue that the Legislative Operating Committee has reviewed and discussed at length. The Legislative Operating Committee determined that the inclusion of section 704.5-5(b) in the Law allows for 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, and then 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)].

The Legislative Operating Committee understands that this would involve an additional step for the Agency to take when seeking protection for those cases that may involve domestic violence, but feels that this is an important step for the Agency to take in those cases. This will still ensure that we are not unnecessarily limiting information during the court process and infringing on the due process rights of a respondent in cases where domestic violence does not exist.

The Legislative Operating Committee discussed the fact that they would like to communicate with the Family Court to discuss the potential for the Family Court to develop a form for requesting the non-disclosure of information that could be made readily available with instructions on how to use and file the form to make it simpler for those individuals who may seek the nondisclosure of information.

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

The Legislative Operating Committee determined that there is no revision to the Law needed based on this comment because section 704.5-5(b) of the Law already allows for the nondisclosure of information in protected cases, which would provide the Family Court the ability to protect the information that is contained in the confidential petition addendum.

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

The Legislative Operating Committee determined the term "may" in section 704.5-5(d)(1)(B) be changed to shall. The Legislative Operating Committee directed the following revision be made to the Law:

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.

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

The Legislative Operating Committee determined it would be unnecessary to revise references of "monthly income" in this Law to "gross monthly income" since the definition for "monthly income" already states that it is the gross income that is used.

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

The Legislative Operating Committee determined no revision to the Law is needed based on this comment due to the fact that this change has already been addressed in the Law.

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

The Legislative Operating Committee determined that the Family Court should be allowed discretion when entering orders, and therefore directed that the following revision be made to the Law:

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.~~

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

The Legislative Operating Committee decided not to revise the Law based on this comment. The Legislative Operating Committee determined that the way section 704.12-2(c) is written provides more flexibility to the Agency to schedule a compliance plan meeting.

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

The Legislative Operating Committee determine the Law should be revised in accordance with this comment. The Legislative Operating Committee directed the following revision be made to the Law:

704.12-2(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.

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:

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

The Legislative Operating Committee determine the Law should be revised to provide the Agency the most flexibility with the decision to enter into a negotiation plan with a party. The Legislative Operating Committee directed the following revision be made to the Law:

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.

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

The Legislative Operating Committee determine the Law should be revised in accordance with this comment. The Legislative Operating Committee directed the following revision be made to the Law:

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.

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

The Legislative Operating Committee determine the Law should be revised in accordance with this comment. The Legislative Operating Committee directed the following revision be made to the Law:

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.

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~~ tThe 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

The Legislative Operating Committee determined that section 704.16 be reorganized in an effort to clarify that the Family Court uses its enforcement actions through contempt proceedings. The Legislative Operating Committee directed the following revision be made to the Law:

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.

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

The Legislative Operating Committee determined there is no revision to the Law needed based on this comment as this comment refers to provisions found in the Per Capita law and not the Child Support law.

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

The Legislative Operating Committee determined that there is no revision to the Law needed based on this comment. The commenter's question may be answered by the provisions of the Law that addresses 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. Additionally, the Legislative Operating Committee would like to highlight that section 704.15 of the Law provides an entire section on administrative enforcement action where the Agency can take action to enforce a child support order without obtaining an order from the Family Court in the event that an obligor is at least one (1) month delinquent in paying his or her child support obligation.

Title 7. Children, Elders and Family - Chapter 704
shakoti?nukú·lale? latiksashúha?
They watch over the children
CHILD SUPPORT

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

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

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

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.

26 704.2-3. Should a provision of this law or the application thereof to any person or circumstances
27 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
28 to have legal force without the invalid portions.

29 704.2-4. In the event of a conflict between a provision of this law and a provision of another law,
30 the provisions of this law shall control.

31 704.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.
32

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

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

64 ~~(l)~~ “(l) “Custodial parent” means the parent who exercises physical custody of the child
65 pursuant to a custody order, on the basis of agreement between the parents or in the absence
66 of one parent. A legal guardian with primary physical custody of the child or children and
67 standing in the position of the parent shall have the same rights to child support as a
68 custodial parent.

69 ~~(m)~~ “(m) “Employer” means any individual, business, government, institution, or other entity
70 paying wages to one or more employees.

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

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

79 (ep) “Family Court” means the branch of the Nation’s Judiciary that is designated to
80 handle all matters related to the family and/or children.

81 (pq) “Gross income” means any form of payment due to an individual regardless of source,
82 including, but not limited to:

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

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

116 (fs) “Immediate family member” means an individual’s husband, wife, mother, father,
117 step-mother, step-father, son, daughter, step-son, step-daughter, brother, sister, step-
118 brother, step-sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-
119 law, son-in-law, brother-in-law or sister-in-law and any of the these relations attained
120 through legal adoption.

- 121 (st) “Income withholding” means the process whereby a court order, Family Court order,
122 or voluntary wage assignment directs an employer, bank, or agent holding monies or
123 property of an obligor, to make payments or deliver property to satisfy a child support
124 obligation.
- 125 (tu) “Intact family” means a family in which the child or children and the obligor reside in
126 the same household and the obligor shares his or her income directly with the child or
127 children and has a legal obligation to support the child or children.
- 128 (tv) “Legally incompetent adult” means a person at least eighteen (18) years old who has
129 been declared incompetent by a court of competent jurisdiction because he or she is
130 temporarily or permanently impaired to the extent that the person lacks sufficient
131 understanding to make or communicate responsible personal decisions.
- 132 (vw) “Lien amount” means the difference between the monthly amount of support due and
133 the arrears in a case.
- 134 (wx) “Lien docket” means the registry kept by the State of Wisconsin containing the names
135 of people who owe past-due child support.
- 136 (xy) “Low-income obligor” means an obligor for whom the Family Court uses the monthly
137 support amount provided in the schedule in the Child Support Obligation of Low-Income
138 Payers Schedule based on the Family Court’s determination that the obligor’s total
139 economic circumstances limit his or her ability to pay support at standard percentages and
140 the obligor’s income is at a level set forth in the schedule in the Child Support Obligation
141 of Low-Income Payers Schedule.
- 142 (yz) “Marital child” means a child born during the marriage of his or her parents. In
143 addition, if the father and mother of a non-marital child enter into a lawful marriage or a
144 marriage which appears and they believe is lawful, except where the parental rights of the
145 mother were terminated before either of these circumstances, the child becomes a marital
146 child and shall enjoy all of the rights and privileges of a marital child as if he or she had
147 been born during the marriage of the parents. The children of all marriages declared void
148 under the law are nevertheless marital children.
- 149 (zaa) “Monthly income” means the obligor’s annual gross income or, if applicable, the
150 obligor’s annual income modified for business expenses; plus the obligor’s annual income
151 imputed based on earning capacity; plus the obligor’s annual income imputed from assets;
152 divided by twelve (12).
- 153 (aabb) “Nation” means the Oneida Nation.
- 154 (bbcc) “Non-custodial parent” means the parent of a child who does not hold primary care,
155 custody and/or control of a child.
- 156 (eedd) “Non-legally responsible relative” means a person connected with a child by blood,
157 marriage, or adoption who assumes responsibility for the care of a child without legal
158 custody, but is not in violation of a court order. A non-legally responsible relative does
159 not include a relative who has physical custody of a child during a court-ordered visitation
160 period.
- 161 (deee) “Obligee” means the person or entity to whom child support is owed.
- 162 (eeff) “Obligor” means the person who is obliged to pay child support to the obligee.
- 163 (ffgg) “Ownership interest” means any personal financial interest.
- 164 (gghh) “Parent” means the biological or adoptive parent of the child.
- 165 (hhii) “Payor” means a person or entity with a legal obligation, as an employer, buyer of
166 goods, debtor, or otherwise, to pay an obligor.

167 (~~hij~~) “Reservation” means all lands within the exterior boundaries of the Reservation of
168 the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and
169 any lands added thereto pursuant to federal law.

170 (~~hjk~~) “Serial family obligor” means an obligor with an existing legal obligation for child
171 support who incurs an additional legal obligation for child support in a subsequent family
172 as a result of a child support order.

173 (~~klj~~) “Shared-placement obligor” means a parent who has an ordered period of placement
174 of at least twenty-five percent (25%), is ordered by the Family Court to assume the child’s
175 basic support costs in proportion to the time that the parent has placement of the child and
176 is determined to owe a greater support amount than the other parent.

177 (~~hmm~~) “Split-placement obligor” means an obligor who has two (2) or more children and
178 who has physical placement of one (1) or more children but not all of the children.

179 (~~mmn~~) “Stipulation” means a voluntary agreement between parties concerning some
180 relevant point.

181 (~~noo~~) “Substantial change of income” means the obligor has a significant change in his
182 or her finances that would lead to a change in child support of more than fifteen percent
183 (15%) and fifty dollars (\$50.00) per month.

184 (~~oep~~) “Variable costs” means the reasonable costs above basic support costs incurred by
185 or on behalf of a child, including but not limited to, the cost of child care, tuition, a child’s
186 special needs, and other activities that involve substantial cost.

187 (~~ppq~~) “Threshold” means an amount, expressed as either a percentage of the monthly
188 amount due, a fixed dollar amount, or both, that the lien amount must equal or exceed
189 before an administrative enforcement action may be used to enforce a child support order.
190

191 **704.4. Jurisdiction**

192 704.4-1. The Family Court has jurisdiction over any action brought under this law.

193 704.4-2. *Personal Jurisdiction.* Personal jurisdiction over an individual under this law may be
194 established where one party or a child of the parties is any of the following:

195 (a) a member of the Nation;

196 (b) a resident of the Reservation who is also a member of an Indian tribe, band or
197 community which is recognized by a State or the federal government;

198 (c) a resident of the Reservation who is also the biological parent of the child that is
199 enrolled or is eligible for enrollment with the Nation; or

200 (d) an individual who consents to the jurisdiction of the Family Court by one (1) of the
201 following means:

202 (1) Filing an action with the Family Court;

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

205 (3) Entering a notice of appearance before the Family Court in an action without
206 concurrently preserving the defense of lack of personal jurisdiction or filing a
207 motion to dismiss for lack of personal jurisdiction within thirty (30) days of entering
208 the notice of appearance; or

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

211 704.4-3. Personal jurisdiction over the other party may be established using any method provided
212 by law, including long-arm jurisdiction procedures as provided for in Section 201 of the Uniform
213 Interstate Family Support Act as referred to in 42 U.S.C. §666.

214 704.4-4. *Transfer of Cases from Other Courts.* If personal jurisdiction over the parties has been
215 established under this law, the Family Court has jurisdiction over any action transferred to the
216 Family Court from any court of competent jurisdiction.

217

218 **704.5. Initiating an Action for Child Support**

219 704.5-1. Every parent has a duty to support each and every child of that parent. A child support
220 order may be obtained from the Family Court by either submitting a stipulation to the Family Court
221 for approval or by filing a petition for child support with the Family Court.

222 (a) If a party to the action is a minor or is a legally incompetent adult, the Family Court
223 may appoint a guardian ad litem to represent such party in the action.

224 704.5-2. *Initiation of Action by the Agency.* For assistance in initiating a child support order a
225 party may request the services of the Agency or may be referred to the Agency from an entitlement
226 program.

227 (a) Within thirty (30) days of receiving a completed application for services or a referral,
228 the Agency shall meet with the custodial parent.

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

232 (bc) If the non-custodial parent fails to respond to or take action on the Letter of Request
233 for Support and Financial Disclosure form within ten (10) business days the Agency may
234 initiate a hearing in accordance with this law.

235 (ed) If the non-custodial parent responds within the required time period after receiving a
236 Letter of Request for Support and Financial Disclosure form, the parties shall attempt to
237 enter into a stipulation.

238 704.5-3. *Initiation of Action by a Party Not the Agency.* Any of the following individuals may
239 initiate an action for the establishment of child support at any time by filing a petition with the
240 Family Court:

241 (a) a custodial parent;

242 (b) a child's mother;

243 (c) a child's father;

244 (d) a child's guardian ad litem;

245 (e) a child's non-legally responsible relative; or

246 (f) a legally incompetent adult's guardian ad litem.

247 704.5-4. *Stipulation.* The parties may enter into a stipulation at any time as to the level of the
248 child support obligation.

249 (a) The Agency shall assist parties in reaching a stipulation upon request or when the
250 parties are referred to the Agency by an entitlement program. Parties may also submit a
251 stipulation to the Family Court for approval without the Agency's assistance.

252 (b) In order for a stipulation to be valid the following conditions shall be met:

253 (1) The stipulation shall be in writing, signed, and notarized;

254 (2) If the parties deviate from the percentage standards, the stipulation shall state
255 the amount of support that would have been ordered by the percentage standards
256 and the reasons for deviating from the percentage standards;

257 (3) All parties shall sign the stipulation free of duress and coercion; and

258 (4) The Family Court shall make written findings that the stipulation is appropriate,
259 using the criteria for deviating from standard percentages as a guideline, if
260 applicable.

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

265 704.5-5. *Petition to Establish Child Support.* If the parties do not enter into a stipulation, then a
266 petition to establish child support may be filed with the Family Court. The petition to establish
267 child support may be filed as a separate proceeding or in connection with a petition for child
268 custody.

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

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

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

279 (2) With whom the child currently resides;

280 (3) When and how paternity was established;

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

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

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

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

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

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

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

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

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

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

314 (A) *Certified mail.* Certified mail sent to a party's most recently verified
315 last-known address but returned because it was unclaimed or refused shall
316 constitute constructive service. Certified mail returned for other reasons
317 shall require service by other methods pursuant to the Oneida Judiciary
318 Rules of Civil Procedure.

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

326 (i) If service by publication is used and there is insufficient time for
327 notice and answer pursuant to this law, the Family Court shall re-
328 schedule the hearing appropriately and may permit extended time
329 deadlines for default orders and for hearings in order to provide for
330 fair notice and opportunity for the party to respond.

331 (2) *Requirements of the Summons.* The summons to be served on the
332 respondent(s), along with the petition, shall include the following notice, in addition
333 to providing a time, place, and date for appearance:

334 (A) That if he or she chooses not to appear at the hearing or enter a defense
335 to the petition challenging the authority of the Family Court to hear the
336 matter by the date of the hearing, the hearing shall proceed on the basis of
337 the petitioner's evidence;

338 (B) That a child support order may require the person found to be the
339 obligor to pay child support until the child reaches eighteen (18) years of
340 age or until the child graduates from high school, or its equivalent, up to age
341 nineteen (19);

342 (C) That the person found to be the obligor may have his or her license(s)
343 suspended or denied for failure to pay child support, in addition to other
344 enforcement actions;

345 (D) That the person found to be the obligor's employer or others with
346 evidence of the his or her income may be subpoenaed to provide the Family
347 Court with records of his or her earnings;

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

352 (F) That any answer to the petition shall be filed with the Family Court
353 within twenty (20) calendar days of the date of service of the petition, and
354 a copy served on the other party.

355 (e) *Answers*. Answers shall be filed with the Family Court and served on the petitioner
356 within twenty (20) calendar days of the date of service of the petition in accordance with
357 the Nation's laws and policies governing civil procedure.

358 (f) *Subpoenas*. Upon request of either party, the Family Court shall issue subpoenas to
359 any person in possession of relevant information to appear or produce documents to the
360 Family Court. Failure to comply with such a subpoena may be punishable as contempt.

361 362 **704.6. Child Support Hearing Procedures**

363 704.6-1. The factual determinations made at a hearing shall include, but is not limited to, the
364 income and expense information necessary to determine the appropriate level of support according
365 to this law.

366 704.6-2. The Family Court may utilize discovery procedures and contempt powers, as authorized
367 by any law, policy, or rule of the Nation to obtain information relevant to the establishment or
368 enforcement of child support. These procedures may include the following:

369 (a) Issue subpoenas requiring necessary and relevant parties to appear in person and
370 provide testimony;

371 (b) Issue subpoenas requiring the production of evidence;

372 (c) Obtain information about property or assets to assess its value or funding source for
373 lien or seizure actions;

374 (d) Obtain information about the income of any party to the action; and/or

375 (e) Issue contempt findings for failure to comply with the lawful order of the Family Court.

376 704.6-3. Both parties have the right to representation by an attorney and/or advocate at his or her
377 own expense. The Nation shall not be required to pay for any fees and/or expenses incurred by any
378 party in connection with proceedings under this law.

379 704.6-4. *Temporary Orders*. At any time after a child's parentage has been established, the Family
380 Court may make a temporary order for the payment of child support and the child's health care
381 expenses. Before making a temporary order, the Family Court shall consider all factors that the
382 Family Court is required to consider when granting a final child support order. If the Family Court
383 makes a temporary child support order that deviates from the amount of support that would be
384 required by using the percentage standard, the requirements of section 704.7-8 shall be complied
385 with.

386 704.6-5. *Default*. If the respondent fails to appear at the hearing upon a showing of valid service
387 and the petitioner presents evidence of the obligation by the absent party, a child support order
388 shall be entered pursuant to the evidence.

389 704.6-6. *Hearings and Records Closed*. Child support proceedings shall be closed to any person
390 other than those necessary to the action or proceeding. Records of child support cases shall remain
391 confidential and shall only be viewed by the parties, the legal guardian of a party who is a minor,
392 the parties' attorney or advocate, guardian ad litem, Judges and staff assigned to the case, and those
393 other persons who first obtain a written release from a party to view material contained in the
394 record.

395 396 **704.7. Determining the Child Support Obligation**

397 704.7-1. The Family Court shall determine child support payments by using the percentage
398 standards established in section 704.7-2 of this law, except as provided elsewhere in this law. The
399 obligor's monthly income shall be considered in determining his or her child support obligation.

400 704.7-2. *Percentage Standards to Determine the Amount of Child Support*.

401 (a) The following percentages shall be applied to the portion of an obligor's monthly
402 income available for child support that is less than seven thousand dollars (\$7,000):

- 403 (1) seventeen percent (17%) for one (1) child;
- 404 (2) twenty-five percent (25%) for two (2) children;
- 405 (3) twenty-nine percent (29%) for three (3) children;
- 406 (4) thirty-one percent (31%) for four (4) children; and
- 407 (5) thirty-four percent (34%) for five (5) or more children.

408 (b) The following percentages shall be applied to the portion of an obligor's monthly
409 income available for child support that is greater than or equal to seven thousand dollars
410 (\$7,000) and less than or equal to twelve thousand five hundred dollars (\$12,500):

- 411 (1) fourteen percent (14%) for one (1) child;
- 412 (2) twenty percent (20%) for two (2) children;
- 413 (3) twenty-three percent (23%) for three (3) children;
- 414 (4) twenty-five percent (25%) for four (4) children; and
- 415 (5) twenty-seven percent (27%) for five (5) or more children.

416 (c) The following percentages shall be applied to the portion of an obligor's monthly
417 income available for child support that is greater than twelve thousand five hundred dollars
418 (\$12,500):

- 419 (1) ten percent (10%) for one (1) child;
- 420 (2) fifteen percent (15%) for two (2) children;
- 421 (3) seventeen percent (17%) for three (3) children;
- 422 (4) nineteen percent (19%) for four (4) children; and
- 423 (5) twenty percent (20%) for five (5) or more children.

424 704.7-3. *Determining Income Modified for Business Expenses.* In determining an parent's
425 monthly income, the Family Court may adjust an parent's gross income as follows:

- 426 (a) Adding wages paid to dependent household members.
- 427 (b) Adding undistributed income that the Family Court determines is not reasonably
428 necessary for the growth of the business. The parent shall have the burden of proof to show
429 that any undistributed income is reasonably necessary for the growth of the business.
- 430 (c) Reducing gross income by the business expenses that the Family Court determines are
431 reasonably necessary for the production of that income or operation of the business and
432 that may differ from the determination of allowable business expenses for tax purposes.

433 704.7-4. *Determining Income Imputed Based on Earning Capacity.* When a parent's income is
434 less than the parent's earning capacity or is unknown, the Family Court may impute income to the
435 parent at an amount that represents the parent's ability to earn.

- 436 (a) The parent's ability to earn may be based on the parent's:
 - 437 (1) education, training, and recent work experience;
 - 438 (2) earnings during previous periods;
 - 439 (3) current physical and mental health;
 - 440 (4) history of child care responsibilities as the parent with primary physical
441 placement; and
 - 442 (5) the availability of work in or near the obligor's community.

443 (b) If evidence is presented that due diligence has been exercised to ascertain information
444 on the parent's actual income or ability to earn and that information is unavailable, the
445 Family Court may impute to the parent the income that a person would earn by working
446 thirty-five (35) hours per week for the federal minimum hourly wage. In addition to
447 imputed income, the Family Court may order the parent to search for a job or participate
448 in a work experience and job training program.

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

453 *704.7-5. Determining Income Imputed from Assets.*

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

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

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

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

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

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

474 *704.7-6. Adjustment for Child's Social Security Benefits.* The Family Court may consider benefits
475 received by a child under 42 U.S.C. §402(d) based on a parent's entitlement to federal disability
476 or old-age insurance benefits under 42 U.S.C. §401 to 433 and adjust an obligor's child support
477 obligation by subtracting the amount of the child's benefit. In no case may this adjustment require
478 the obligee to reimburse the obligor for any portion of the child's benefit. If the obligor is receiving
479 the child's benefit, the support amount is either the percentage standard applied to the obligor's
480 income or the amount of the child's benefit, whichever is greater.

481 (a) *Determining the Child Support Obligations of Shared-Placement Parent when the*
482 *Child Receives Social Security Benefits.* If the shared-placement guidelines under section
483 704.8-2 apply, the child's benefit is split between the parents in proportion to the amount
484 of time the child spends with each parent. Add the proportion of the child's benefit that
485 represents the proportion of time the child spends with the parent not receiving the benefit
486 to the support obligation of the parent who is receiving the child's benefit. Child support
487 shall be determined as follows:

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

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

- 497 (3) Multiply each amount determined under section 704.7-6(a)(2) by one hundred
498 and fifty percent (150%).
499 (4) Multiply the amount determined for each parent in section 704.7-6(a)(3) by the
500 proportion of time that the child spends with the other parent.
501 (5) Multiply the amount of the child's benefit by the proportion of the time the
502 child spends with the parent who is not receiving the child's benefit.
503 (6) Add the amount in section 704.7-6(a)(5) to the child support obligation
504 calculated in section 704.7-6(a)(4) for the parent who is receiving the child's
505 benefit.
506 (7) Offset the resulting amounts against each other. The parent with the greater
507 child support obligation is the shared-placement obligor. The shared-placement
508 obligor shall pay either the greater of the amount determined in this subsection or
509 the amount determined using the appropriate percentage standard under section
510 704.7-2.

511 *704.7-7. Claiming Children for Tax Purposes.* The Family Court may address who may claim
512 the child for tax purposes or accept a stipulation entered into by the parties regarding children and
513 taxes.

514 *704.7-8. Deviation from the Percentage Standards.* Upon request by a party, the Family Court
515 may modify the amount of child support payments determined by the percentage standards if, after
516 considering the following factors, the Family Court finds by the greater weight of the credible
517 evidence that use of the percentage standards is unfair to the child or to any of the parties:

- 518 (a) The financial resources of the child;
519 (b) The financial resources of both parents;
520 (c) Maintenance received by either party;
521 (d) The needs of each party in order to support himself or herself at a level equal to or
522 greater than the federal poverty line as established under 42 U.S.C. §9902(2);
523 (e) The needs of any person, other than the child, whom either party is legally obligated to
524 support;
525 (f) The standard of living the child would have enjoyed if his or her parents were living
526 together;
527 (g) The desirability that the custodial parent remain in the home as a full-time parent;
528 (h) The cost of day care if the custodial parent works outside the home, or the value of
529 custodial services performed by the custodial parent if the custodial parent remains in the
530 home;
531 (i) The award of substantial periods of physical placement to both parents;
532 (j) Extraordinary travel expenses incurred in exercising the right to periods of physical
533 placement;
534 (k) The physical, mental, and emotional health needs of the child, including any costs for
535 health insurance;
536 (l) The child's educational needs;
537 (m) The tax consequences to each party;
538 (n) The best interests of the child;
539 (o) The earning capacity of each parent, based on each parent's education, training and
540 work experience and the availability of work in or near the parent's community; and
541 (p) Any other factors which the Family Court in each case determines are relevant.

542 *704.7-9. Past-due and Arrears obligations.*

- 543 (a) A party may request payment of arrears or past-due child support as follows:

- 544 (1) In an action regarding paternity, back to the date of birth of the child or date of
545 application, whichever is later;
546 (2) In a child support establishment or modification pursuant to this law, back to
547 the date of application, review, or referral; or
548 (3) In an establishment or modification of placement pursuant to an action
549 regarding divorce, annulment and legal separation or child custody, placement, and
550 visitation, back to the date of filing, or as otherwise ordered by the Family Court.
551 (b) A payment for arrears or a past-due payment shall be set based on the amount due and
552 the income available to pay current support.
553 (c) Once current child support is ended in any manner prescribed by law, child support
554 shall continue to be paid at the same rate, until all arrears or past due child support is paid
555 in full.
556

557 **704.8. Determining the Child Support Obligation in Special Circumstances**

558 704.8-1. *Determining the Child Support Obligation of a Serial-Family Obligor.*

- 559 (a) *Applicability.* This applies only if the support obligation being calculated is for children
560 from a subsequent family or subsequent paternity judgment or acknowledgment. An
561 obligor may not use the provisions of this section as a basis for seeking modification of an
562 existing order based on a subsequently incurred legal obligation for child support.
563 (b) *Determination.* For a serial-family obligor, the child support obligation incurred for a
564 marital or non-marital child in a subsequent family as a result of a child support order may
565 be determined as follows:
566 (1) Determine the obligor's monthly income.
567 (2) Determine the order of the obligor's legal obligations for child support by
568 listing them according to the date each obligation is incurred.
569 (A) For a marital child, the legal obligation for child support is incurred on
570 the child's date of birth.
571 (B) For a non-marital child, the legal obligation for child support is incurred
572 on the date that paternity is legally established.
573 (C) For a non-marital paternal child in an intact family, it is incurred on the
574 date of adoption or the date that paternity is legally established.
575 (D) For a non-marital maternal child in an intact family, it is incurred on
576 the child's date of birth.
577 (3) Determine the first child support obligation as follows:
578 (A) If the obligor is subject to an existing support order for that legal
579 obligation, except a shared-placement order, the support for that obligation
580 is the monthly amount of that order; or
581 (B) If the obligor is in an intact family, has primary placement of another
582 child, or is subject to a shared-placement order, the support is determined
583 by multiplying the appropriate percentage for that number of children by
584 the obligor's monthly income.
585 (4) Adjust the monthly income by subtracting the support for the first legal
586 obligation from the obligor's monthly income.
587 (5) Determine the second child support obligation as follows:
588 (A) If the obligor is subject to an existing support order for that legal
589 obligation, except a shared-placement order, the support for that obligation
590 is the monthly amount of that order; or

- 591 (B) If the obligor is in an intact family or is subject to a shared-placement
592 order, the support is determined by multiplying the appropriate percentage
593 for that number of children by the obligor's monthly income.
594 (6) Adjust the monthly income a second time by subtracting the support for the
595 second legal obligation from the first adjusted monthly income.
596 (7) Repeat the procedure for determining the child support obligation and adjusting
597 the monthly income for each additional legal obligation for child support the serial
598 family obligor has incurred.
599 (8) Multiply the appropriate percentage for the number of children subject to the
600 new order by the final adjusted monthly income to determine the new child support
601 obligation.

602 704.8-2. *Determining the Child Support Obligations of Shared-Placement Parents.*

603 (a) *Applicability.* The shared-placement formula may be applied when both of the
604 following conditions are met:

605 (1) Both parents have periods of placement of at least twenty-five percent (25%)
606 or ninety-two (92) days a year. When calculating periods of placement based on
607 equivalent care, the total number of overnights may exceed three hundred and sixty-
608 five (365). The period of placement for each parent shall be determined by
609 calculating the number of overnights or equivalent care ordered to be provided by
610 the parent and dividing that number by the total number of overnights in a year.
611 The combined periods of placement for both parents shall equal one hundred
612 percent (100%).

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

615 (b) *Determination.* The child support obligations for parents who meet the requirements
616 for the shared-placement formula may be determined as follows:

617 (1) Determine each parent's monthly income.

618 (A) In determining whether to impute income based on earning capacity
619 for an unemployed parent or a parent employed less than full time, the
620 Family Court shall consider benefits to the child of having a parent remain
621 in the home during periods of placement and the additional variable day
622 care costs that would be incurred if the parent worked more.

623 (2) Multiply each parent's monthly income by the appropriate percentage standard.

624 (3) Multiply each amount determined under section 704.8-2(b)(2) by one hundred
625 and fifty percent (150%).

626 (4) Multiply the amount determined for each parent under section 704.8-2(b)(3) by
627 the proportion of the time that the child spends with the other parent to determine
628 each parent's child support obligation.

629 (5) Offset resulting amounts under section 704.8-2(b)(4) against each other. The
630 parent with a greater child support obligation is the shared-placement obligor. The
631 shared-placement obligor shall pay the lesser of the amount determined under this
632 section or the amount determined using the appropriate percentage standard. If the
633 shared-placement obligor is also a low-income obligor, the child support obligation
634 may be the lesser of the amount determined under the shared placement
635 determination or the low-income determination.

636 (6) In addition to the child support obligation determined under section 704.8-
637 2(b)(5), the Family Court shall assign responsibility for payment of the child's

638 variable costs in proportion to each parent's share of physical placement, with due
639 consideration to a disparity in the parents' incomes.

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

643 (B) The Family Court shall not direct payment of variable costs to be made
644 to the Agency or the Agency's designee, except as incorporated in the child
645 support order.

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

649 **704.8-3. *Determining the Child Support Obligations of Split-Placement Parents.***

650 (a) *Applicability.* The split-placement formula may be applied when parents have two (2)
651 or more children and each parent has placement of one (1) or more but not all of the
652 children.

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

655 (1) Determine each parent's monthly income.

656 (2) Determine the appropriate percentage standard for the number of total children.

657 (3) Divide the appropriate percentage standard for the number of total children by
658 the total number of children.

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

661 (5) Multiply each parent's monthly income by the number calculated in 704.8-
662 3(b)(4) based on the number of children placed with the other parent to determine
663 each parent's child support obligation; and

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

666 **704.8-4. *Determining the Child Support Obligation of a Low-Income Obligor.***

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

671 (b) *Determination.* The Family Court may use the monthly support amount provided in
672 the Child Support Obligation of Low-Income Payers Schedule as the support amount for
673 an obligor with a monthly income at a level set forth in the schedule.

674 (1) If an obligor's monthly income is below the lowest income level in the Child
675 Support Obligation of Low-Income Payers Schedule, the Family Court may set an
676 order at an amount appropriate for the obligor's total economic circumstances. This
677 amount may be lower than the lowest support amount in the Child Support
678 Obligation of Low-Income Payers Schedule

679

680 **704.9. Child Support Order**

681 **704.9-1. *Expression of Ordered Support.*** The child support amount shall be expressed as a fixed
682 sum.

683 **704.9-2. *Interest on Arrears.*** The Nation shall not charge an obligor ordered to pay child support
684 interest on any arrears.

685 704.9-3. *Income Withholding.* The child support order shall provide for immediate income
686 withholding.

687 (a) A copy of the Family Court's income withholding order shall be sent by the Agency to
688 a payor within three (3) business days of the entry of the order of the Family Court by mail,
689 fax, or electronic means.

690 (b) An order to withhold income shall be binding against future payors upon actual notice
691 of the income withholding order through notice by mail, fax, or electronic means.

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

693 (1) One of the parties demonstrates, and the Family Court finds, that there is good
694 cause not to require income withholding due to one of the following:

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

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

697 (2) The parties reach a written agreement which provides for an alternative
698 arrangement that is approved by the Family Court.

699 (d) No payor shall refuse to honor an income withholding order executed pursuant to this
700 law. A payor shall begin withholding income immediately after notice of an income
701 withholding order made pursuant to this law. Within five (5) business days after the payor
702 pays the obligor, the payor shall send the amount withheld to the Wisconsin Support
703 Collections Trust Fund.

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

707 (1) Fails or refuses, after being noticed of an income withholding order, to deduct
708 or promptly remit the amounts of money required in the order;

709 (2) Fails or refuses to submit an answer to the notice of income withholding after
710 being noticed; or

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

712 (f) A payor shall not discharge from employment, refuse to employ, or otherwise take
713 disciplinary action against any obligor solely because he or she is subject to income
714 withholding.

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

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

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

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

728 (h) If income withholding is inapplicable, ineffective or insufficient to ensure payment of
729 child support, the Family Court may require the obligor to establish an account for the
730 purpose of transferring child support payments.

731 (i) The total amount withheld under an income withholding order shall not exceed the
732 maximum amount permitted under section 303(b) of the Consumer Credit Protection Act
733 (15 U.S.C. §1673(b)).

734 (j) Non-Indian off-reservation payors shall be subject to income withholding under 28
735 U.S.C. §1738B.

736 704.9-4. *Conditions of the Order.* The Family Court may require a party, or both parties, to use
737 the services available to him or her to obtain and maintain regular employment and/or job training.

738 704.9-5. *Support Order Notice Requirements.* Each order for child support shall include:

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

741 (b) An order that the obligor notify the Agency and the obligee of any change of employer
742 or substantial change of income within ten (10) business days of the change.

743 704.9-6. *Enforcement of Order.* A child support order under this section is enforceable as
744 contempt.

745 704.9-7. *Collection and Distribution of Child Support.* The Agency shall collect and distribute
746 child support monies pursuant to regulations set forth in the Social Security Act 45 CFR 309.115.

747 704.9-8. *Trust.* The Family Court may protect and promote the best interests of the minor children
748 by setting aside a portion of the child support that either party is ordered to pay in a separate fund
749 or trust for the support, education, and welfare of such children.

750 704.9-9. *Non-Cash Payments.*

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

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

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

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

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

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

763 (1) Clothing;

764 (2) Groceries;

765 (3) Child Care;

766 (4) Deer/Venison;

767 (5) Wood;

768 (6) Transportation;

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

771 (8) Gift cards.

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

778

779 **704.10. Modification of a Child Support Order**

780 704.10-1. *Review of the Child Support Order.* Every two (2) years, the Agency shall conduct a
781 review of the child support order. The Agency shall notify the non-custodial parent, custodial
782 parent, and any interested party that a review of their child support order shall be conducted.

783 704.10-2. *Modification of Child Support Sought by the Agency.* After the two (2) year review is
784 conducted by the Agency, the Agency shall seek an order to modify the child support obligation if
785 there is a substantial change in circumstances, unless otherwise stipulated by the parties. A
786 substantial change in circumstances includes, but is not limited to:

- 787 (a) the child's placement is changed;
- 788 (b) either parent or the child has a significant change in his or her finances that would lead
789 to a change in child support of more than fifteen percent (15%) and fifty dollars (\$50.00)
790 per month;
- 791 (c) the obligee is receiving public assistance benefits and is required to have a current
792 support order in place;
- 793 (d) it has been twenty-four (24) months since the date of the last child support order or
794 revision to the child support order, unless the child support amount is expressed as a
795 percentage; or
- 796 (e) a change has occurred and if the current circumstances had been in place at the time
797 the order was issued, a significantly different order would have been issued.

798 704.10-3. *Modification of Child Support Sought by the Parties.* Either party, not including the
799 Agency, may file a motion for a modification of a child support order at any time based upon a
800 substantial change of circumstances supported by affidavit.

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

807 704.10-4. An obligor shall not raise a substantial change in circumstances as a reason not to pay
808 a current child support order or arrears. If a child support order becomes unjust due to a substantial
809 change in circumstances of the obligor, the obligor has the duty to file a petition or motion with
810 the Family Court for a modification to the child support order at that time.

811

812 **704.11. Modification of a Child Support Order for an Incarcerated Parent**

813 704.11-1. In the event an obligor is incarcerated for one hundred and eighty (180) days or more,
814 the obligor shall have the right to have the Agency review his or her child support order to
815 determine if modification or suspension of the child support order is appropriate. The obligor shall
816 notice the Agency of his or her incarceration.

- 817 (a) An ordered child support obligation shall be suspended for an incarcerated obligor who
818 has been sentenced to one hundred and eighty (180) days or more and has an income of
819 less than two hundred dollars (\$200) per month.
- 820 (b) If while incarcerated the obligor's income is two hundred dollars (\$200) or more per
821 month the Agency shall review the order and seek temporary modification of the child
822 support order based on the incarcerated obligor's income, if necessary.
- 823 (c) Child support obligations shall not be suspended or modified for an obligor who is
824 incarcerated for a criminal offense which includes:

- 825 (1) felony failure to pay support;

- 826 (2) a crime against a child; and/or
827 (3) a crime against the obligee.

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

830 704.11-2. *Notification of Review.* Within fifteen (15) business days of the receipt by the Agency
831 of verification of the obligor's incarceration, the Agency shall send out a letter to the parties of the
832 case informing them of the obligor's right to have his or her child support obligation reviewed,
833 and of the Agency's intent to review the current child support order.

834 704.11-3. *Agency Review of Order.* The Agency shall review the obligor's child support order
835 and make one of the following determinations:

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

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

842 704.11-4. *Suspension of Order by the Agency.* If the Agency determines the obligor's income is
843 less than two hundred dollars (\$200) per month while incarcerated, the Agency shall file with the
844 Family Court a Motion and Order to Suspend without a request for a hearing with notice to all
845 parties that the child support order shall be suspended.

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

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

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

853 704.11-5. *Modification of Order by the Agency.* If the Agency determines the obligor's income
854 is two hundred dollars (\$200) per month or more while incarcerated, the Agency shall file with the
855 Family Court a Motion to Modify.

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

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

861 704.11-6. *Modification of the Order by the Incarcerated Parent.* The incarcerated parent may
862 seek modification of his or her own child support order by filing a motion to modify with the
863 Family Court in accordance with section 704.10-3.

864 704.11-7. If during the term of incarceration, the Agency receives notification of a change in the
865 obligor's employment and/or income, the Agency shall review the obligor's order and determine
866 if the obligor's income is two hundred dollars (\$200) or more per month, and whether it is
867 necessary to temporarily modify or suspend the obligor's child support order.

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

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

873 704.11-8. *Reinstatement of Prior Order.* Sixty (60) days after the obligor's release from
874 incarceration, the child support order shall be administratively reinstated by the Agency to the
875 previous child support order in effect before the suspension or modification of the order based on
876 the obligor's incarceration.

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

879

880 **704.12. Compliance Plan**

881 704.12-1. If at any time the obligor is, or may become, non-compliant with his or her child support
882 order by failing to pay support as ordered or meeting a required obligation or action, the Agency
883 shall meet with the obligor to develop a compliance plan.

884 704.12-2. An Appointment Letter may be sent by the Agency at any time deemed appropriate, but
885 the Agency shall send out the Appointment Letter at least thirty (30) days prior to the initiation of
886 any enforcement action.

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

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

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

895 (1) Employment and training;

896 (2) Social service and mental health;

897 (3) Physical and learning disabilities;

898 (4) Tribal traditions and customs;

899 (5) Family counseling and parenting; and

900 (6) Any other program deemed necessary.

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

904

905 **704.13. Enforcement of an Order**

906 704.13-1. An obligor may be subject to enforcement actions when the obligor is at least one (1)
907 month delinquent in paying his or her child support obligation. Enforcement actions may include
908 administrative enforcement action by the Agency and enforcement action by the Family Court.

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

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

914 704.13-2. *Agency Responsibilities in the Enforcement of an Order.* The Agency shall have the
915 following responsibilities in the enforcement of an order:

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

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

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

921 (d) Assist in refunding amounts that were improperly withheld, terminate income
922 withholding when appropriate, and allocate amounts across multiple cases.

923 704.13-3. *Notice to the Obligor of Delinquency.* In the event that an obligor owes a debt equal to
924 or exceeding the monthly amount due, the Agency shall send a notice of delinquency to the obligor.
925 The notice of delinquency shall inform the obligor of the following:

926 (a) The total amount of the delinquency; and

927 (b) The enforcement action that may be taken as a result of the delinquency.

928 704.13-4. *Notice to the Obligor of Enforcement Action.* After the obligor has been noticed of his
929 or her delinquency, and at least twenty (20) days prior to an enforcement being used against an
930 obligor, the Agency shall send a notice of enforcement action to the obligor.

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

932 (1) The total amount of the delinquency;

933 (2) The enforcement action that may be taken as a result of the delinquency;

934 (3) The obligor may request, in writing to the Agency, to negotiate an alternative
935 payment plan with the Agency within ten (10) business days after the notice in order
936 to stay any enforcement action;

937 (4) The obligor has ten (10) business days after the notice of enforcement action to
938 file an objection with the Agency presenting good cause why an arrears payment
939 or other enforcement action should not be implemented. The only allowable
940 objections are:

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

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

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

945 (1) the enforcement action shall be taken; and/or

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

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

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

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

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

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

964 704.13-6. *Notice to the Obligee of Enforcement Proceedings.* The Agency shall provide written
965 notice to the obligee when an enforcement action has been initiated against the obligor or when

966 the obligor requests a hearing and the hearing has been scheduled. The notice to the obligee shall
967 be sent at the same time notice is sent to the obligor.

968 704.13-7. *Notice to Individuals Other Than the Obligor with a Recorded Ownership Interest in*
969 *Property.* The Agency shall provide notice related to the seizure of property to any individual,
970 other than the obligor, with a recorded ownership interest in property subject to seizure. The
971 individual may request a hearing for a determination of the proportion of the value of the property
972 that is attributable to his or her net contribution to the property. The hearing shall be requested
973 within thirty (30) days after the notice was received by the individual.

974

975 **704.14. Alternative Payment Plans**

976 704.14-1. *Applicability of Alternative Payment Plans.* When an obligor is subject to
977 administrative enforcement action, he or she may negotiate an alternative payment plan with the
978 Agency.

979 704.14-2. *Negotiation of an Alternative Payment Plan After Receiving Notice of an Enforcement*
980 *Action.*

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

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

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

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

993 (b) An obligor may negotiate a plan with the Agency to have a license suspension lifted.

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

997 (1) The obligor and the Agency have agreed to terms of a plan, but the obligor
998 wants the Family Court to consider the reasonableness of the plan: due to a
999 substantial change of circumstances since the plan was agreed to by the Agency
1000 and the obligor.

1001 (A) The obligor may submit this written request for a hearing on the
1002 reasonableness of the plan within ten (10) business days after the terms of
1003 the plan are agreed upon.

1004 (2) The obligor and the Agency are unable to reach agreement on the terms of a
1005 plan.

1006 (A) The Family Court may order a plan by setting conditions and/or
1007 payments in the amounts and at the times it considers reasonable.

1008 (d) *Proceeding with Administrative Enforcement Actions.* The Agency may continue with
1009 the administrative enforcement action if:

1010 (1) the obligor and the Agency are unable to negotiate a plan;

1011 (2) the Family Court determines that the plan is not reasonable; and/or

1012 (3) the Family Court does not order a plan.

1013 704.14-3. *Disclosure of Income and Assets.* The request to negotiate a plan shall include an
1014 agreement by the obligor to provide the Agency with a full disclosure of income and assets
1015 available. The obligor shall provide complete income and assets information to the Agency within
1016 five (5) business days of the request to negotiate a plan.

1017 704.14-4. *Terms of an Alternative Payment Plan.*

1018 (a) An alternative payment plan may include a lump-sum payment, or periodic payments
1019 on the arrears, or both, subject to the following standards:

1020 (1) The sum of any periodic payment established under the plan and any other
1021 payment of support ordered by the Family Court, when subtracted from the
1022 obligor's gross income, may not leave the obligor below one hundred percent
1023 (100%) of the poverty line established under 42 U.S.C. §9902 (2) unless the obligor
1024 agrees otherwise.

1025 (2) When establishing an alternative payment plan, the Agency shall consider the
1026 factors used by the Family Court in determining whether the use of the percentage
1027 standard is unfair to the child or any of the parties.

1028 (b) Periodic payments under the plan may be made through income withholding in
1029 amounts in addition to the amount ordered in the child support order that is in effect.

1030 704.14-5. *Staying Administrative Enforcement Actions.* Administrative enforcement actions shall
1031 be stayed by the Agency while the obligor and the Agency are negotiating a plan, or, if a hearing
1032 is requested because an agreement cannot be reached or the reasonableness of the plan is
1033 questioned, until the Family Court determination has been made. To stay an administrative
1034 enforcement action means the following:

1035 (a) The obligor shall not be certified for denial, nonrenewal, restriction, or suspension of
1036 any State or Oneida-issued licenses;

1037 (b) Any frozen financial accounts shall remain frozen and shall not be seized; and

1038 (c) Personal property that has been seized shall not be sold.

1039 704.14-6. *Suspension of Administrative Enforcement Actions.*

1040 (a) When a plan has been negotiated between the obligor and the Agency, or the Family
1041 Court has determined that a plan is reasonable or has ordered a plan, the Agency shall
1042 suspend administrative enforcement actions as long as the obligor complies with the plan
1043 or requests a hearing because of a substantial change in circumstances which makes the
1044 plan unreasonable.

1045 (b) If an obligor makes an arrears payment agreeable to the Agency, the administrative
1046 enforcement action shall be suspended.

1047 704.14-7. *Default on an Alternative Payment Plan.* In the event that the obligor defaults on the
1048 plan, the Agency shall notify the obligor in writing that an administrative enforcement action shall
1049 be implemented unless the child support lien is paid in full.

1050 704.14-8. *Renegotiation of an Alternative Payment Plan.* After the entry of an alternative payment
1051 plan, the plan may be renegotiated upon the written request of the obligor or Agency if the
1052 requesting party can show a substantial change in circumstances. A substantial change in
1053 circumstances includes any of the following:

1054 (a) A change in the obligor's income or assets, including the sale or purchase of real or
1055 personal property;

1056 (b) A change in the obligor's earning capacity; and/or

1057 (c) Any other factor that the Agency determines is relevant.

1058

1059 **704.15. Administrative Enforcement Action**

1060 704.15-1. The Agency shall have the authority to use administrative enforcement actions to
1061 enforce a child support order without obtaining an order from the Family Court in the event that
1062 an obligor is at least one (1) month delinquent in paying his or her child support obligations.

1063 704.15-2. *Liens*. The Agency shall have an obligor placed on the lien docket if the obligor owes
1064 a debt in one or more of the obligor's cases equal to or exceeding the monthly amount due or five
1065 hundred dollars (\$500.00), whichever is greater.

1066 (a) *Lien Amount*. The lien amount on the lien docket shall equal the sum of lien amounts
1067 from the cases in which the lien amount meets or exceeds the lien threshold.

1068 (b) *Filing Date*. The filing date on the lien docket is the date that a lien is first docketed
1069 and delivered to the register of deeds. The filing date is the effective date of the lien. The
1070 effective date does not change if the lien amount is adjusted up or down within five (5)
1071 years after the date that the lien is first docketed.

1072 (c) *Lien Priority*. The child support lien shall have priority over all other liens on property
1073 except:

- 1074 (1) tax and special assessment liens;
- 1075 (2) purchase money mortgages;
- 1076 (3) construction liens;
- 1077 (4) environmental liens;
- 1078 (5) liens that are filed or recorded before the child support lien becomes effective;
- 1079 and
- 1080 (6) any other lien given priority under the law.

1081 (d) Property subject to a lien includes personal property in which the obligor has a recorded
1082 ownership interest.

1083 (e) *Effect on a Good Faith Purchaser*. A child support lien is not effective against a good
1084 faith purchaser of titled personal property unless the lien is recorded on the title.

1085 (f) *Credit Bureau Reporting*. The Agency may report the total amount of an obligor's
1086 liens to the credit bureau, so long as the lien is fully enforceable and the case is not barred
1087 from credit bureau reporting.

1088 (g) *Agency Lien Responsibilities*. The Agency shall be responsible for:

- 1089 (1) updating the lien docket periodically;
- 1090 (2) providing a copy of the lien docket to the appropriate register of deeds;
- 1091 (3) responding to inquiries concerning information recorded on the lien docket;
- 1092 (4) ensuring the satisfaction of a lien is recorded on the lien docket;
- 1093 (5) renewing a lien if the lien amount equals or exceeds the lien threshold at the
1094 end of the five (5) year effective period;
 - 1095 (A) When a lien is renewed, the date on which the lien is renewed shall
1096 become the effective date of the lien, and a new five (5) year period shall
1097 commence.
- 1098 (6) sending the obligor a notice when a lien has been renewed; and
- 1099 (7) developing procedures for releasing a lien and releasing specific property from
1100 a lien.

1101 (h) *Financial Record Review*.

1102 (1) An obligor may request a financial record review in writing to the Agency
1103 within ten (10) business days of the date of notice of a lien, to determine the
1104 correctness of the financial records in a case.

- 1105 (2) Upon receiving a request for a financial record review, the Agency shall, at no
1106 charge to the obligor, provide the obligor with:
1107 (A) all relevant financial records;
1108 (B) information explaining how to interpret the records; and
1109 (C) a form the obligor may use to identify any alleged errors in the records.
1110 (3) Within twenty (20) days after receiving the relevant financial records, the
1111 obligor may:
1112 (A) request a meeting with the Agency to review the financial records and
1113 to discuss any alleged errors; and/or
1114 (B) provide a statement of alleged error on the documents.
1115 (i) The Agency shall review the records to determine whether the
1116 alleged error is correct and provide a written determination within
1117 sixty (60) days after the obligor's request for a financial record
1118 review is received as to whether the lien against the obligor is in the
1119 correct amount.
1120 (4) The Agency may proceed with the lien if:
1121 (A) the obligor does not request a meeting with the Agency or provide a
1122 statement of alleged error within twenty (20) days after receiving the
1123 financial records;
1124 (B) no errors are found in the financial records of the case; or
1125 (C) the arrears exceed the required threshold amount after any errors in the
1126 financial records are corrected.

1127 704.15-3. *Seizure of Property*. The Agency shall have the authority to seize property, whether an
1128 account or personal property, of an obligor. The Agency shall presume that an obligor's equity or
1129 ownership in the property is an equal pro-rata share of the equity or ownership based on the number
1130 of individuals with a recorded ownership interest in the property.

1131 (a) *Account Seizure*. Once a lien is placed against an obligor, the Agency may initiate an
1132 account seizure if the lien amount in the obligor's case equals or exceeds three hundred
1133 percent (300%) of the monthly amount due in the order, or one thousand dollars (\$1,000),
1134 whichever is greater.

1135 (1) The Agency may not issue a notice of seizure unless the sum of the funds in all
1136 of the obligor's financial accounts, minus expected seizure fees and any early
1137 withdrawal penalty, exceeds five hundred dollars (\$500). The first five hundred
1138 dollars (\$500) of each account shall not be frozen and/or seized.

1139 (2) The notice issued by the Agency shall instruct the financial institution of the
1140 following:

1141 (A) The maximum amount frozen in an account may not exceed the amount
1142 specified by the Agency in the notice.

1143 (B) The maximum amount frozen in an account may not exceed the
1144 obligor's ownership interest.

1145 (C) A financial institution is not liable for encumbering or surrendering any
1146 assets held by the financial institution in response to instructions from the
1147 Agency for the purpose of enforcing a child support order.

1148 (b) *Seizure of Personal Property*. Once a lien is placed against an obligor, the Agency
1149 may initiate the seizure of personal property if the lien amount equals or exceeds six
1150 hundred percent (600%) of the monthly amount due in the order.

1151 (1) The Agency may seize personal property if the obligor's equity in the property,
1152 minus expected seizure fees, exceeds five hundred dollars (\$500) per item total.

1153 (2) Ceremonial or religious property and/or real property are exempt and shall not
1154 be seized by the Agency.

1155 (3) *Process for Seizing Property.* The Agency shall follow the following process
1156 for seizing personal property:

1157 (A) The Agency shall notify the obligor of the intent to request the Family
1158 Court to issue an order of execution for the seizure of property.

1159 (B) The Agency shall request the Family Court to grant a written order of
1160 execution for the seizure of property. The Agency shall provide the Family
1161 Court an affidavit that notice of this request has been provided to the
1162 obligor.

1163 (C) Upon issuance of a written order of execution by the Family Court,
1164 non-exempt personal property may be seized and sold in a reasonable
1165 manner.

1166 704.15-4. *Attachment of Per Capita Payments.* The Agency may initiate the attachment and/or
1167 seizure of per capita payments of members of the Nation in accordance with applicable laws of the
1168 Nation.

1169 704.15-5. *License Suspension.* The Agency may initiate the suspension or denial of both State
1170 and Oneida issued licenses if there is a lien against an obligor that equals or exceeds three hundred
1171 percent (300%) of the monthly amount due in the child support order, or one thousand dollars
1172 (\$1000), whichever is greater.

1173 (a) The types of State or Oneida issued licenses that the Agency may initiate the suspension
1174 or denial of include, but are not limited to, vendor, professional, occupational, hunting,
1175 fishing, recreational, and/or motor vehicle licenses.

1176 (b) The Agency shall not initiate the suspension of an occupational and/or motor vehicle
1177 license if:

1178 (1) there is an order in place that prohibits the suspension of the license;

1179 (2) the obligor has filed for bankruptcy; or

1180 (3) action has already been taken to suspend the license.

1181 (c) When an Oneida-issued license is suspended, that suspension shall be binding on and
1182 given effect by the license issuing agencies. Orders affecting licenses issued by other
1183 governmental agencies shall be sent to such agencies for enforcement.

1184 704.15-6. *Lump-Sum Pension Payments, Judgments, and Settlements Intercepts.* Once an obligor
1185 has been placed on the lien docket the Agency may initiate the intercept of lump-sum pension
1186 payments, judgments and/or settlements.

1187 (a) When initiating the intercept of lump-sum pension payments, judgments and/or
1188 settlements, the Agency shall specify in the notice that the amount withheld from the lump-
1189 sum pension payment, judgment or settlement may not exceed the obligor's ownership
1190 interest in the payment.

1191 704.15-7. *Tax and Lottery Intercepts.* The Agency may coordinate with a federal or state agency
1192 in order to enforce a child support order through a tax and/or lottery intercept. Once an obligor
1193 has been notified that his or her tax refund and/or lottery winnings may be intercepted, that notice
1194 is valid until all arrears are paid in full.

1195 (a) *Federal Tax Intercept.* The Agency may certify a federal tax intercept when the
1196 requirements pertaining to federal tax intercept contained in an agreement between the
1197 State and the Nation have been met.

1198 (b) *Wisconsin State Tax and/or Lottery Intercept.* The Agency may certify a Wisconsin
1199 state tax intercept and/or a Wisconsin state lottery intercept, when the lottery winnings are
1200 one thousand dollars (\$1,000) or more, when the following requirements are met:

- 1201 (1) The arrears shall be at least one hundred and fifty dollars (\$150);
1202 (2) The arrears shall be at least thirty (30) days old; and
1203 (3) The arrears shall be for a minor child or a child who has reached the age of
1204 eighteen (18) within the last twenty (20) year.

1205 704.15-8. *Passport Denial.* If a federal tax intercept is in place and the obligor owes two thousand
1206 five hundred dollars (\$2,500) or more in arrears, an obligor may be denied a passport. The arrears
1207 must meet the criteria for federal tax intercept in order for passport denial to be used as an
1208 enforcement tool. An obligor shall be removed from the passport denial list if:

- 1209 (a) The federal tax intercept certification amount is zero (0);
1210 (b) The obligor makes a lump-sum payment and/or negotiates a payment plan with the
1211 Agency;
1212 (c) The obligor has to travel abroad because of a life-or-death situation involving an
1213 immediate family member; or
1214 (d) The obligor was denied a passport in error.
1215

1216 **704.16. Family Court Enforcement Contempt Action**

1217 704.16-1. If the Agency does not have the authority to conduct the appropriate enforcement action,
1218 or the obligor is unresponsive to the enforcement actions being imposed by the Agency, the
1219 ~~Agency~~ shall ~~be referred to file a motion for contempt with~~ the Family Court ~~for enforcement.~~
1220 ~~The. During a contempt proceeding the~~ Family Court may order any of the enforcement actions
1221 the Agency is authorized to implement, in addition to the ~~enforcement~~ ~~contempt~~ actions described
1222 in this section.

1223 ~~704.16-2.704.16-2. Bonds and Other Guarantees. The Family Court may require an~~
1224 ~~obligor to provide a surety, bond or guarantee to secure the payment of arrears, if income~~
1225 ~~withholding is not applicable, practical, or feasible to secure payment of arrears.~~

1226 ~~704.16-3. Claims Against Estates. The Family Court may approve a claim for past and~~
1227 ~~future support against an obligor's estate. The Family Court may issue a restraining order~~
1228 ~~against an estate from which an obligor will inherit.~~

1229 ~~704.16-4. Contempt.~~ The Family Court may hold an obligor who fails to comply with a lawful
1230 child support order in contempt. An obligor found to be in contempt shall be subject to any of the
1231 following punishments:

1232 (a) *Community Service.* The Family Court may order an obligor to perform community
1233 service. The number of hours of work required may not exceed what would be reasonable
1234 considering the amount of arrears the obligor owes. The obligor shall be provided a written
1235 statement of the terms of the community service order and that the community service order
1236 is monitored. The order shall specify:

- 1237 (1) how many hours of community service the obligor is required to complete;
1238 (2) the time frame in which the hours must be completed;
1239 (3) how the obligor will report his or her hours; and
1240 (4) any other information the Family Court determines is relevant.

1241 (b) *Fines.* An obligor found in contempt of court may be fined in an amount not to exceed
1242 one thousand dollars (\$1,000.00) per act of contempt and may not exceed five thousand
1243 dollars (\$5,000.00) in total. In instances of continuing contempt, each day shall constitute
1244 a separate act of contempt.

1245 (c) *Incarceration.* The Family Court may order an obligor be incarcerated. Before a jail
1246 sentence is imposed, the Family Court shall provide other conditions that require a certain
1247 amount of money be paid or action be taken for an obligor to avoid incarceration.

1248 (d) *Criminal Non-Support.* A criminal non-support action may be initiated, in the
1249 appropriate county, against an obligor who has the ability to pay child support and willfully
1250 or intentionally failed to pay and the obligor knew or reasonably should have known he or
1251 she was legally obligated to provide.

1252 (e) *Bonds and Other Guarantees.* The Family Court may require an obligor to provide a
1253 surety, bond or guarantee to secure the payment of arrears, if income withholding is not
1254 applicable, practical, or feasible to secure payment of arrears.

1255 (f) *Claims Against Estates.* The Family Court may approve a claim for past and future
1256 support against an obligor's estate. The Family Court may issue a restraining order against
1257 an estate from which an obligor will inherit.
1258

1259 **704.17. Full Faith and Credit for Foreign Child Support Orders**

1260 704.17-1. Child support orders, judgments, or decrees of other federally recognized tribes, and
1261 states that relate to child support shall be recognized and modified in accordance with the
1262 requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B.

1263 704.17-2. A foreign order is authenticated by reasonable proof that the document tendered to the
1264 Family Court is a true certified copy of the foreign order as it is recorded in the agency or court of
1265 the issuing jurisdiction. An authentication stamp issued by a court clerk or custodian of records,
1266 or a court seal, is sufficient evidence of authenticity.

1267 704.17-3. Unless defects in jurisdiction are apparent on the face of the foreign order, the person
1268 contesting enforcement of the order has the burden of showing the order is not valid. Upon a
1269 failure to respond to notice of the order and to timely contest it, the Family Court shall enforce it
1270 as an order of the Family Court.

1271 704.17-4. If a foreign order is brought before the Family Court solely for an interpretation of the
1272 terms of the order, and the order has been recognized and given full faith and credit by the Family
1273 Court, the Family Court shall interpret the order by applying the law of the forum that issued the
1274 foreign order.
1275

1276 **704.18. Right of Appeal**

1277 704.18-1. *Appeals of Administrative Enforcement Action.* Any enforcement action implemented
1278 by the Agency may be appealed to the Family Court within thirty (30) calendar days after the date
1279 that the action is enforced. The decision of the Family Court as to the Agency's administrative
1280 enforcement action shall be final and non-appealable.

1281 704.18-2. *Appeals of Family Court Decisions.* A party may appeal a Family Court decision, other
1282 than the decision of the Family Court in regard to administrative enforcement action as referenced
1283 in section 704.18-1, to the Nation's Court of Appeals within thirty (30) calendar days after the date
1284 the Family Court made the decision. The review of the Court of Appeals shall be based on the
1285 record and the original decision of the Family Court.
1286

1287 *End.*

1288 Emergency Adopted - BC-06-30-08-C (Expired)

1289 Emergency Extended - BC-12-10-08-H (Expired)

1290 Permanently Adopted- BC-06-24-09-B

1291 Emergency Amended - BC-10-28-09-E

1292 Amended - BC-02-24-10-G

1293 Amended - BC-06-22-11-K

1294 Amended - BC-10-10-12-C

1295 Amended - BC-08-13-14-E

1296 Amended - BC-__-__-__-__

1297

Title 7. Children, Elders and Family - Chapter 704
shakoti'nukú·lale? latiksashúha?
They watch over the children
CHILD SUPPORT

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

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
32

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

62 (k) “Current six (6) month treasury bill rate” means the yield of a U.S. government security
63 with a term of six (6) months.

64 (l) “Custodial parent” means the parent who exercises physical custody of the child
65 pursuant to a custody order, on the basis of agreement between the parents or in the absence
66 of one parent. A legal guardian with primary physical custody of the child or children and
67 standing in the position of the parent shall have the same rights to child support as a
68 custodial parent.

69 (m) “Employer” means any individual, business, government, institution, or other entity
70 paying wages to one or more employees.

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

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

79 (p) “Family Court” means the branch of the Nation’s Judiciary that is designated to handle
80 all matters related to the family and/or children.

81 (q) “Gross income” means any form of payment due to an individual regardless of source,
82 including, but not limited to:

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

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

116 (s) “Immediate family member” means an individual’s husband, wife, mother, father, step-
117 mother, step-father, son, daughter, step-son, step-daughter, brother, sister, step-brother,
118 step-sister, grandparent, grandchild, mother-in-law, father-in-law, daughter-in-law, son-in-
119 law, brother-in-law or sister-in-law and any of the these relations attained through legal
120 adoption.

121 (t) “Income withholding” means the process whereby a court order, Family Court order,
122 or voluntary wage assignment directs an employer, bank, or agent holding monies or
123 property of an obligor, to make payments or deliver property to satisfy a child support
124 obligation.

- 125 (u) “Intact family” means a family in which the child or children and the obligor reside in
126 the same household and the obligor shares his or her income directly with the child or
127 children and has a legal obligation to support the child or children.
- 128 (v) “Legally incompetent adult” means a person at least eighteen (18) years old who has
129 been declared incompetent by a court of competent jurisdiction because he or she is
130 temporarily or permanently impaired to the extent that the person lacks sufficient
131 understanding to make or communicate responsible personal decisions.
- 132 (w) “Lien amount” means the difference between the monthly amount of support due and
133 the arrears in a case.
- 134 (x) “Lien docket” means the registry kept by the State of Wisconsin containing the names
135 of people who owe past-due child support.
- 136 (y) “Low-income obligor” means an obligor for whom the Family Court uses the monthly
137 support amount provided in the schedule in the Child Support Obligation of Low-Income
138 Payers Schedule based on the Family Court’s determination that the obligor’s total
139 economic circumstances limit his or her ability to pay support at standard percentages and
140 the obligor’s income is at a level set forth in the schedule in the Child Support Obligation
141 of Low-Income Payers Schedule.
- 142 (z) “Marital child” means a child born during the marriage of his or her parents. In
143 addition, if the father and mother of a non-marital child enter into a lawful marriage or a
144 marriage which appears and they believe is lawful, except where the parental rights of the
145 mother were terminated before either of these circumstances, the child becomes a marital
146 child and shall enjoy all of the rights and privileges of a marital child as if he or she had
147 been born during the marriage of the parents. The children of all marriages declared void
148 under the law are nevertheless marital children.
- 149 (aa) “Monthly income” means the obligor’s annual gross income or, if applicable, the
150 obligor’s annual income modified for business expenses; plus the obligor’s annual income
151 imputed based on earning capacity; plus the obligor’s annual income imputed from assets;
152 divided by twelve (12).
- 153 (bb) “Nation” means the Oneida Nation.
- 154 (cc) “Non-custodial parent” means the parent of a child who does not hold primary care,
155 custody and/or control of a child.
- 156 (dd) “Non-legally responsible relative” means a person connected with a child by blood,
157 marriage, or adoption who assumes responsibility for the care of a child without legal
158 custody, but is not in violation of a court order. A non-legally responsible relative does
159 not include a relative who has physical custody of a child during a court-ordered visitation
160 period.
- 161 (ee) “Obligee” means the person or entity to whom child support is owed.
- 162 (ff) “Obligor” means the person who is obliged to pay child support to the obligee.
- 163 (gg) “Ownership interest” means any personal financial interest.
- 164 (hh) “Parent” means the biological or adoptive parent of the child.
- 165 (ii) “Payor” means a person or entity with a legal obligation, as an employer, buyer of
166 goods, debtor, or otherwise, to pay an obligor.
- 167 (jj) “Reservation” means all lands within the exterior boundaries of the Reservation of the
168 Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and
169 any lands added thereto pursuant to federal law.
- 170 (kk) “Serial family obligor” means an obligor with an existing legal obligation for child
171 support who incurs an additional legal obligation for child support in a subsequent family
172 as a result of a child support order.

173 (ll) “Shared-placement obligor” means a parent who has an ordered period of placement
174 of at least twenty-five percent (25%), is ordered by the Family Court to assume the child’s
175 basic support costs in proportion to the time that the parent has placement of the child and
176 is determined to owe a greater support amount than the other parent.

177 (mm) “Split-placement obligor” means an obligor who has two (2) or more children and
178 who has physical placement of one (1) or more children but not all of the children.

179 (nn) “Stipulation” means a voluntary agreement between parties concerning some relevant
180 point.

181 (oo) “Substantial change of income” means the obligor has a significant change in his or
182 her finances that would lead to a change in child support of more than fifteen percent (15%)
183 and fifty dollars (\$50.00) per month.

184 (pp) “Variable costs” means the reasonable costs above basic support costs incurred by or
185 on behalf of a child, including but not limited to, the cost of child care, tuition, a child’s
186 special needs, and other activities that involve substantial cost.

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

191 **704.4. Jurisdiction**

192 704.4-1. The Family Court has jurisdiction over any action brought under this law.

193 704.4-2. *Personal Jurisdiction.* Personal jurisdiction over an individual under this law may be
194 established where one party or a child of the parties is any of the following:

195 (a) a member of the Nation;

196 (b) a resident of the Reservation who is also a member of an Indian tribe, band or
197 community which is recognized by a State or the federal government;

198 (c) a resident of the Reservation who is also the biological parent of the child that is
199 enrolled or is eligible for enrollment with the Nation; or

200 (d) an individual who consents to the jurisdiction of the Family Court by one (1) of the
201 following means:

202 (1) Filing an action with the Family Court;

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

205 (3) Entering a notice of appearance before the Family Court in an action without
206 concurrently preserving the defense of lack of personal jurisdiction or filing a
207 motion to dismiss for lack of personal jurisdiction within thirty (30) days of entering
208 the notice of appearance; or

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

211 704.4-3. Personal jurisdiction over the other party may be established using any method provided
212 by law, including long-arm jurisdiction procedures as provided for in Section 201 of the Uniform
213 Interstate Family Support Act as referred to in 42 U.S.C. §666.

214 704.4-4. *Transfer of Cases from Other Courts.* If personal jurisdiction over the parties has been
215 established under this law, the Family Court has jurisdiction over any action transferred to the
216 Family Court from any court of competent jurisdiction.

217

218 **704.5. Initiating an Action for Child Support**

219 704.5-1. Every parent has a duty to support each and every child of that parent. A child support
220 order may be obtained from the Family Court by either submitting a stipulation to the Family Court
221 for approval or by filing a petition for child support with the Family Court.

222 (a) If a party to the action is a minor or is a legally incompetent adult, the Family Court
223 may appoint a guardian ad litem to represent such party in the action.

224 704.5-2. *Initiation of Action by the Agency.* For assistance in initiating a child support order a
225 party may request the services of the Agency or may be referred to the Agency from an entitlement
226 program.

227 (a) Within thirty (30) days of receiving a completed application for services or a referral,
228 the Agency shall meet with the custodial parent.

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

232 (c) If the non-custodial parent fails to respond to or take action on the Letter of Request
233 for Support and Financial Disclosure form within ten (10) business days the Agency may
234 initiate a hearing in accordance with this law.

235 (d) If the non-custodial parent responds within the required time period after receiving a
236 Letter of Request for Support and Financial Disclosure form, the parties shall attempt to
237 enter into a stipulation.

238 704.5-3. *Initiation of Action by a Party Not the Agency.* Any of the following individuals may
239 initiate an action for the establishment of child support at any time by filing a petition with the
240 Family Court:

241 (a) a custodial parent;

242 (b) a child's mother;

243 (c) a child's father;

244 (d) a child's guardian ad litem;

245 (e) a child's non-legally responsible relative; or

246 (f) a legally incompetent adult's guardian ad litem.

247 704.5-4. *Stipulation.* The parties may enter into a stipulation at any time as to the level of the
248 child support obligation.

249 (a) The Agency shall assist parties in reaching a stipulation upon request or when the
250 parties are referred to the Agency by an entitlement program. Parties may also submit a
251 stipulation to the Family Court for approval without the Agency's assistance.

252 (b) In order for a stipulation to be valid the following conditions shall be met:

253 (1) The stipulation shall be in writing, signed, and notarized;

254 (2) If the parties deviate from the percentage standards, the stipulation shall state
255 the amount of support that would have been ordered by the percentage standards
256 and the reasons for deviating from the percentage standards;

257 (3) All parties shall sign the stipulation free of duress and coercion; and

258 (4) The Family Court shall make written findings that the stipulation is appropriate,
259 using the criteria for deviating from standard percentages as a guideline, if
260 applicable.

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

265 704.5-5. *Petition to Establish Child Support*. If the parties do not enter into a stipulation, then a
266 petition to establish child support may be filed with the Family Court. The petition to establish
267 child support may be filed as a separate proceeding or in connection with a petition for child
268 custody.

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

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

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

279 (2) With whom the child currently resides;

280 (3) When and how paternity was established;

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

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

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

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

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

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

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

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

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

308 (1) *Service of the Summons*. The summons, which notices the initiation of an
309 action, shall be served by certified mail (return receipt requested) or in person
310 within fifteen (15) calendar days after the petition is filed with the Family Court.
311 The summons shall include the Family Court clerk's return address, with a notice

312 to file an answer to that address. Any notice after the summons shall be served by
313 first-class mail to the recently verified last-known address of the party.

314 (A) *Certified mail.* Certified mail sent to a party's most recently verified
315 last-known address but returned because it was unclaimed or refused shall
316 constitute constructive service. Certified mail returned for other reasons
317 shall require service by other methods pursuant to the Oneida Judiciary
318 Rules of Civil Procedure.

319 (B) *Publication.* When a responding party cannot be found for personal
320 service after diligent attempts and attempts to serve the responding party by
321 certified mail have failed, the petitioner shall use service by publication.
322 The publication shall be in the Nation's newspaper or a newspaper of
323 general circulation in the county of residence of the respondent, if known.
324 The publication shall be designated as a Legal Notice and any confidential
325 information shall be redacted.

326 (i) If service by publication is used and there is insufficient time for
327 notice and answer pursuant to this law, the Family Court shall re-
328 schedule the hearing appropriately and may permit extended time
329 deadlines for default orders and for hearings in order to provide for
330 fair notice and opportunity for the party to respond.

331 (2) *Requirements of the Summons.* The summons to be served on the
332 respondent(s), along with the petition, shall include the following notice, in addition
333 to providing a time, place, and date for appearance:

334 (A) That if he or she chooses not to appear at the hearing or enter a defense
335 to the petition challenging the authority of the Family Court to hear the
336 matter by the date of the hearing, the hearing shall proceed on the basis of
337 the petitioner's evidence;

338 (B) That a child support order may require the person found to be the
339 obligor to pay child support until the child reaches eighteen (18) years of
340 age or until the child graduates from high school, or its equivalent, up to age
341 nineteen (19);

342 (C) That the person found to be the obligor may have his or her license(s)
343 suspended or denied for failure to pay child support, in addition to other
344 enforcement actions;

345 (D) That the person found to be the obligor's employer or others with
346 evidence of the his or her income may be subpoenaed to provide the Family
347 Court with records of his or her earnings;

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

352 (F) That any answer to the petition shall be filed with the Family Court
353 within twenty (20) calendar days of the date of service of the petition, and
354 a copy served on the other party.

355 (e) *Answers.* Answers shall be filed with the Family Court and served on the petitioner
356 within twenty (20) calendar days of the date of service of the petition in accordance with
357 the Nation's laws and policies governing civil procedure.

358 (f) *Subpoenas*. Upon request of either party, the Family Court shall issue subpoenas to
359 any person in possession of relevant information to appear or produce documents to the
360 Family Court. Failure to comply with such a subpoena may be punishable as contempt.
361

362 **704.6. Child Support Hearing Procedures**

363 704.6-1. The factual determinations made at a hearing shall include, but is not limited to, the
364 income and expense information necessary to determine the appropriate level of support according
365 to this law.

366 704.6-2. The Family Court may utilize discovery procedures and contempt powers, as authorized
367 by any law, policy, or rule of the Nation to obtain information relevant to the establishment or
368 enforcement of child support. These procedures may include the following:

369 (a) Issue subpoenas requiring necessary and relevant parties to appear in person and
370 provide testimony;

371 (b) Issue subpoenas requiring the production of evidence;

372 (c) Obtain information about property or assets to assess its value or funding source for
373 lien or seizure actions;

374 (d) Obtain information about the income of any party to the action; and/or

375 (e) Issue contempt findings for failure to comply with the lawful order of the Family Court.

376 704.6-3. Both parties have the right to representation by an attorney and/or advocate at his or her
377 own expense. The Nation shall not be required to pay for any fees and/or expenses incurred by any
378 party in connection with proceedings under this law.

379 704.6-4. *Temporary Orders*. At any time after a child's parentage has been established, the Family
380 Court may make a temporary order for the payment of child support and the child's health care
381 expenses. Before making a temporary order, the Family Court shall consider all factors that the
382 Family Court is required to consider when granting a final child support order. If the Family Court
383 makes a temporary child support order that deviates from the amount of support that would be
384 required by using the percentage standard, the requirements of section 704.7-8 shall be complied
385 with.

386 704.6-5. *Default*. If the respondent fails to appear at the hearing upon a showing of valid service
387 and the petitioner presents evidence of the obligation by the absent party, a child support order
388 shall be entered pursuant to the evidence.

389 704.6-6. *Hearings and Records Closed*. Child support proceedings shall be closed to any person
390 other than those necessary to the action or proceeding. Records of child support cases shall remain
391 confidential and shall only be viewed by the parties, the legal guardian of a party who is a minor,
392 the parties' attorney or advocate, guardian ad litem, Judges and staff assigned to the case, and those
393 other persons who first obtain a written release from a party to view material contained in the
394 record.
395

396 **704.7. Determining the Child Support Obligation**

397 704.7-1. The Family Court shall determine child support payments by using the percentage
398 standards established in section 704.7-2 of this law, except as provided elsewhere in this law. The
399 obligor's monthly income shall be considered in determining his or her child support obligation.

400 704.7-2. *Percentage Standards to Determine the Amount of Child Support*.

401 (a) The following percentages shall be applied to the portion of an obligor's monthly
402 income available for child support that is less than seven thousand dollars (\$7,000):

403 (1) seventeen percent (17%) for one (1) child;

404 (2) twenty-five percent (25%) for two (2) children;

- 405 (3) twenty-nine percent (29%) for three (3) children;
406 (4) thirty-one percent (31%) for four (4) children; and
407 (5) thirty-four percent (34%) for five (5) or more children.
- 408 (b) The following percentages shall be applied to the portion of an obligor's monthly
409 income available for child support that is greater than or equal to seven thousand dollars
410 (\$7,000) and less than or equal to twelve thousand five hundred dollars (\$12,500):
411 (1) fourteen percent (14%) for one (1) child;
412 (2) twenty percent (20%) for two (2) children;
413 (3) twenty-three percent (23%) for three (3) children;
414 (4) twenty-five percent (25%) for four (4) children; and
415 (5) twenty-seven percent (27%) for five (5) or more children.
- 416 (c) The following percentages shall be applied to the portion of an obligor's monthly
417 income available for child support that is greater than twelve thousand five hundred dollars
418 (\$12,500):
419 (1) ten percent (10%) for one (1) child;
420 (2) fifteen percent (15%) for two (2) children;
421 (3) seventeen percent (17%) for three (3) children;
422 (4) nineteen percent (19%) for four (4) children; and
423 (5) twenty percent (20%) for five (5) or more children.

424 704.7-3. *Determining Income Modified for Business Expenses.* In determining an parent's
425 monthly income, the Family Court may adjust an parent's gross income as follows:

- 426 (a) Adding wages paid to dependent household members.
427 (b) Adding undistributed income that the Family Court determines is not reasonably
428 necessary for the growth of the business. The parent shall have the burden of proof to show
429 that any undistributed income is reasonably necessary for the growth of the business.
430 (c) Reducing gross income by the business expenses that the Family Court determines are
431 reasonably necessary for the production of that income or operation of the business and
432 that may differ from the determination of allowable business expenses for tax purposes.

433 704.7-4. *Determining Income Imputed Based on Earning Capacity.* When a parent's income is
434 less than the parent's earning capacity or is unknown, the Family Court may impute income to the
435 parent at an amount that represents the parent's ability to earn.

- 436 (a) The parent's ability to earn may be based on the parent's:
437 (1) education, training, and recent work experience;
438 (2) earnings during previous periods;
439 (3) current physical and mental health;
440 (4) history of child care responsibilities as the parent with primary physical
441 placement; and
442 (5) the availability of work in or near the obligor's community.
- 443 (b) If evidence is presented that due diligence has been exercised to ascertain information
444 on the parent's actual income or ability to earn and that information is unavailable, the
445 Family Court may impute to the parent the income that a person would earn by working
446 thirty-five (35) hours per week for the federal minimum hourly wage. In addition to
447 imputed income, the Family Court may order the parent to search for a job or participate
448 in a work experience and job training program.
- 449 (c) If a parent has gross income or income modified for business expenses below his or
450 her earning capacity, the income imputed based on earning capacity shall be the difference
451 between the parent's earning capacity and the parent's gross income or income modified
452 for business expenses.

453 704.7-5. *Determining Income Imputed from Assets.*

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

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

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

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

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

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

474 704.7-6. *Adjustment for Child's Social Security Benefits.* The Family Court may consider benefits
475 received by a child under 42 U.S.C. §402(d) based on a parent's entitlement to federal disability
476 or old-age insurance benefits under 42 U.S.C. §401 to 433 and adjust an obligor's child support
477 obligation by subtracting the amount of the child's benefit. In no case may this adjustment require
478 the obligee to reimburse the obligor for any portion of the child's benefit. If the obligor is receiving
479 the child's benefit, the support amount is either the percentage standard applied to the obligor's
480 income or the amount of the child's benefit, whichever is greater.

481 (a) *Determining the Child Support Obligations of Shared-Placement Parent when the*
482 *Child Receives Social Security Benefits.* If the shared-placement guidelines under section
483 704.8-2 apply, the child's benefit is split between the parents in proportion to the amount
484 of time the child spends with each parent. Add the proportion of the child's benefit that
485 represents the proportion of time the child spends with the parent not receiving the benefit
486 to the support obligation of the parent who is receiving the child's benefit. Child support
487 shall be determined as follows:

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

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

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

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

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

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

506 (7) Offset the resulting amounts against each other. The parent with the greater
507 child support obligation is the shared-placement obligor. The shared-placement
508 obligor shall pay either the greater of the amount determined in this subsection or
509 the amount determined using the appropriate percentage standard under section
510 704.7-2.

511 704.7-7. *Claiming Children for Tax Purposes.* The Family Court may address who may claim
512 the child for tax purposes or accept a stipulation entered into by the parties regarding children and
513 taxes.

514 704.7-8. *Deviation from the Percentage Standards.* Upon request by a party, the Family Court
515 may modify the amount of child support payments determined by the percentage standards if, after
516 considering the following factors, the Family Court finds by the greater weight of the credible
517 evidence that use of the percentage standards is unfair to the child or to any of the parties:

- 518 (a) The financial resources of the child;
- 519 (b) The financial resources of both parents;
- 520 (c) Maintenance received by either party;
- 521 (d) The needs of each party in order to support himself or herself at a level equal to or
522 greater than the federal poverty line as established under 42 U.S.C. §9902(2);
- 523 (e) The needs of any person, other than the child, whom either party is legally obligated to
524 support;
- 525 (f) The standard of living the child would have enjoyed if his or her parents were living
526 together;
- 527 (g) The desirability that the custodial parent remain in the home as a full-time parent;
- 528 (h) The cost of day care if the custodial parent works outside the home, or the value of
529 custodial services performed by the custodial parent if the custodial parent remains in the
530 home;
- 531 (i) The award of substantial periods of physical placement to both parents;
- 532 (j) Extraordinary travel expenses incurred in exercising the right to periods of physical
533 placement;
- 534 (k) The physical, mental, and emotional health needs of the child, including any costs for
535 health insurance;
- 536 (l) The child's educational needs;
- 537 (m) The tax consequences to each party;
- 538 (n) The best interests of the child;
- 539 (o) The earning capacity of each parent, based on each parent's education, training and
540 work experience and the availability of work in or near the parent's community; and
- 541 (p) Any other factors which the Family Court in each case determines are relevant.

542 704.7-9. *Past-due and Arrears obligations.*

- 543 (a) A party may request payment of arrears or past-due child support as follows:
 - 544 (1) In an action regarding paternity, back to the date of birth of the child or date of
545 application, whichever is later;
 - 546 (2) In a child support establishment or modification pursuant to this law, back to
547 the date of application, review, or referral; or

- 548 (3) In an establishment or modification of placement pursuant to an action
549 regarding divorce, annulment and legal separation or child custody, placement, and
550 visitation, back to the date of filing, or as otherwise ordered by the Family Court.
551 (b) A payment for arrears or a past-due payment shall be set based on the amount due and
552 the income available to pay current support.
553 (c) Once current child support is ended in any manner prescribed by law, child support
554 shall continue to be paid at the same rate, until all arrears or past due child support is paid
555 in full.

556
557 **704.8. Determining the Child Support Obligation in Special Circumstances**

558 *704.8-1. Determining the Child Support Obligation of a Serial-Family Obligor.*

559 (a) *Applicability.* This applies only if the support obligation being calculated is for children
560 from a subsequent family or subsequent paternity judgment or acknowledgment. An
561 obligor may not use the provisions of this section as a basis for seeking modification of an
562 existing order based on a subsequently incurred legal obligation for child support.

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

- 566 (1) Determine the obligor's monthly income.
567 (2) Determine the order of the obligor's legal obligations for child support by
568 listing them according to the date each obligation is incurred.
569 (A) For a marital child, the legal obligation for child support is incurred on
570 the child's date of birth.
571 (B) For a non-marital child, the legal obligation for child support is incurred
572 on the date that paternity is legally established.
573 (C) For a non-marital paternal child in an intact family, it is incurred on the
574 date of adoption or the date that paternity is legally established.
575 (D) For a non-marital maternal child in an intact family, it is incurred on
576 the child's date of birth.
577 (3) Determine the first child support obligation as follows:
578 (A) If the obligor is subject to an existing support order for that legal
579 obligation, except a shared-placement order, the support for that obligation
580 is the monthly amount of that order; or
581 (B) If the obligor is in an intact family, has primary placement of another
582 child, or is subject to a shared-placement order, the support is determined
583 by multiplying the appropriate percentage for that number of children by
584 the obligor's monthly income.
585 (4) Adjust the monthly income by subtracting the support for the first legal
586 obligation from the obligor's monthly income.
587 (5) Determine the second child support obligation as follows:
588 (A) If the obligor is subject to an existing support order for that legal
589 obligation, except a shared-placement order, the support for that obligation
590 is the monthly amount of that order; or
591 (B) If the obligor is in an intact family or is subject to a shared-placement
592 order, the support is determined by multiplying the appropriate percentage
593 for that number of children by the obligor's monthly income.

594 (6) Adjust the monthly income a second time by subtracting the support for the
595 second legal obligation from the first adjusted monthly income.

596 (7) Repeat the procedure for determining the child support obligation and adjusting
597 the monthly income for each additional legal obligation for child support the serial
598 family obligor has incurred.

599 (8) Multiply the appropriate percentage for the number of children subject to the
600 new order by the final adjusted monthly income to determine the new child support
601 obligation.

602 *704.8-2. Determining the Child Support Obligations of Shared-Placement Parents.*

603 (a) *Applicability.* The shared-placement formula may be applied when both of the
604 following conditions are met:

605 (1) Both parents have periods of placement of at least twenty-five percent (25%)
606 or ninety-two (92) days a year. When calculating periods of placement based on
607 equivalent care, the total number of overnights may exceed three hundred and sixty-
608 five (365). The period of placement for each parent shall be determined by
609 calculating the number of overnights or equivalent care ordered to be provided by
610 the parent and dividing that number by the total number of overnights in a year.
611 The combined periods of placement for both parents shall equal one hundred
612 percent (100%).

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

615 (b) *Determination.* The child support obligations for parents who meet the requirements
616 for the shared-placement formula may be determined as follows:

617 (1) Determine each parent's monthly income.

618 (A) In determining whether to impute income based on earning capacity
619 for an unemployed parent or a parent employed less than full time, the
620 Family Court shall consider benefits to the child of having a parent remain
621 in the home during periods of placement and the additional variable day
622 care costs that would be incurred if the parent worked more.

623 (2) Multiply each parent's monthly income by the appropriate percentage standard.

624 (3) Multiply each amount determined under section 704.8-2(b)(2) by one hundred
625 and fifty percent (150%).

626 (4) Multiply the amount determined for each parent under section 704.8-2(b)(3) by
627 the proportion of the time that the child spends with the other parent to determine
628 each parent's child support obligation.

629 (5) Offset resulting amounts under section 704.8-2(b)(4) against each other. The
630 parent with a greater child support obligation is the shared-placement obligor. The
631 shared-placement obligor shall pay the lesser of the amount determined under this
632 section or the amount determined using the appropriate percentage standard. If the
633 shared-placement obligor is also a low-income obligor, the child support obligation
634 may be the lesser of the amount determined under the shared placement
635 determination or the low-income determination.

636 (6) In addition to the child support obligation determined under section 704.8-
637 2(b)(5), the Family Court shall assign responsibility for payment of the child's
638 variable costs in proportion to each parent's share of physical placement, with due
639 consideration to a disparity in the parents' incomes.

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

643 (B) The Family Court shall not direct payment of variable costs to be made
644 to the Agency or the Agency's designee, except as incorporated in the child
645 support order.

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

649 **704.8-3. *Determining the Child Support Obligations of Split-Placement Parents.***

650 (a) *Applicability.* The split-placement formula may be applied when parents have two (2)
651 or more children and each parent has placement of one (1) or more but not all of the
652 children.

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

- 655 (1) Determine each parent's monthly income.
- 656 (2) Determine the appropriate percentage standard for the number of total children.
- 657 (3) Divide the appropriate percentage standard for the number of total children by
658 the total number of children.
- 659 (4) Multiply the number calculated in section 704.8-3(b)(3) by the number of
660 children placed with each parent.
- 661 (5) Multiply each parent's monthly income by the number calculated in 704.8-
662 3(b)(4) based on the number of children placed with the other parent to determine
663 each parent's child support obligation; and
- 664 (6) Offset resulting amounts under section 704.8-3(b)(5) against each other. The
665 parent with a greater child support obligation is the split-placement obligor.

666 **704.8-4. *Determining the Child Support Obligation of a Low-Income Obligor.***

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

671 (b) *Determination.* The Family Court may use the monthly support amount provided in
672 the Child Support Obligation of Low-Income Payers Schedule as the support amount for
673 an obligor with a monthly income at a level set forth in the schedule.

- 674 (1) If an obligor's monthly income is below the lowest income level in the Child
675 Support Obligation of Low-Income Payers Schedule, the Family Court may set an
676 order at an amount appropriate for the obligor's total economic circumstances. This
677 amount may be lower than the lowest support amount in the Child Support
678 Obligation of Low-Income Payers Schedule

679

680 **704.9. Child Support Order**

681 **704.9-1. *Expression of Ordered Support.*** The child support amount shall be expressed as a fixed
682 sum.

683 **704.9-2. *Interest on Arrears.*** The Nation shall not charge an obligor ordered to pay child support
684 interest on any arrears.

685 **704.9-3. *Income Withholding.*** The child support order shall provide for immediate income
686 withholding.

- 687 (a) A copy of the Family Court's income withholding order shall be sent by the Agency to
688 a payor within three (3) business days of the entry of the order of the Family Court by mail,
689 fax, or electronic means.
- 690 (b) An order to withhold income shall be binding against future payors upon actual notice
691 of the income withholding order through notice by mail, fax, or electronic means.
- 692 (c) Income shall not be subject to withholding only where:
- 693 (1) One of the parties demonstrates, and the Family Court finds, that there is good
694 cause not to require income withholding due to one of the following:
- 695 (A) There is an error in the amount of current or overdue support; or
696 (B) The identity of the obligor is mistaken.
- 697 (2) The parties reach a written agreement which provides for an alternative
698 arrangement that is approved by the Family Court.
- 699 (d) No payor shall refuse to honor an income withholding order executed pursuant to this
700 law. A payor shall begin withholding income immediately after notice of an income
701 withholding order made pursuant to this law. Within five (5) business days after the payor
702 pays the obligor, the payor shall send the amount withheld to the Wisconsin Support
703 Collections Trust Fund.
- 704 (e) A payor shall be liable for one hundred percent (100%) of the child support order, or
705 the amount of money that should have been withheld from the obligor's earnings,
706 whichever is the lesser amount, if the payor:
- 707 (1) Fails or refuses, after being noticed of an income withholding order, to deduct
708 or promptly remit the amounts of money required in the order;
- 709 (2) Fails or refuses to submit an answer to the notice of income withholding after
710 being noticed; or
- 711 (3) Is unwilling to comply with the other requirements of this law.
- 712 (f) A payor shall not discharge from employment, refuse to employ, or otherwise take
713 disciplinary action against any obligor solely because he or she is subject to income
714 withholding.
- 715 (1) When the Family Court finds that a payor has taken any of these actions, the
716 payor shall be liable for a civil penalty. Any payor who violates any provision of
717 this paragraph shall be liable in a civil action for reasonable damages suffered by
718 an obligor as a result of the violation, and an obligor discharged or demoted in
719 violation of this paragraph shall be entitled to be reinstated to his or her former
720 position.
- 721 (2) The statute of limitations for actions under this section shall be one (1) year.
- 722 (g) A payor who repeatedly fails to comply with an income withholding order as required
723 by this law may be subject to a fine, not to exceed five hundred dollars (\$500), or have its
724 Oneida vendor license revoked or suspended, if applicable, until compliance with this law
725 is assured.
- 726 (1) The vendor license issuing agency shall comply with the Family Court order to
727 revoke or suspend a vendor license.
- 728 (h) If income withholding is inapplicable, ineffective or insufficient to ensure payment of
729 child support, the Family Court may require the obligor to establish an account for the
730 purpose of transferring child support payments.
- 731 (i) The total amount withheld under an income withholding order shall not exceed the
732 maximum amount permitted under section 303(b) of the Consumer Credit Protection Act
733 (15 U.S.C. §1673(b)).

734 (j) Non-Indian off-reservation payors shall be subject to income withholding under 28
735 U.S.C. §1738B.

736 704.9-4. *Conditions of the Order.* The Family Court may require a party, or both parties, to use
737 the services available to him or her to obtain and maintain regular employment and/or job training.

738 704.9-5. *Support Order Notice Requirements.* Each order for child support shall include:

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

741 (b) An order that the obligor notify the Agency and the obligee of any change of employer
742 or substantial change of income within ten (10) business days of the change.

743 704.9-6. *Enforcement of Order.* A child support order under this section is enforceable as
744 contempt.

745 704.9-7. *Collection and Distribution of Child Support.* The Agency shall collect and distribute
746 child support monies pursuant to regulations set forth in the Social Security Act 45 CFR 309.115.

747 704.9-8. *Trust.* The Family Court may protect and promote the best interests of the minor children
748 by setting aside a portion of the child support that either party is ordered to pay in a separate fund
749 or trust for the support, education, and welfare of such children.

750 704.9-9. *Non-Cash Payments.*

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

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

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

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

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

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

763 (1) Clothing;

764 (2) Groceries;

765 (3) Child Care;

766 (4) Deer/Venison;

767 (5) Wood;

768 (6) Transportation;

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

771 (8) Gift cards.

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

778

779 **704.10. Modification of a Child Support Order**

780 704.10-1. *Review of the Child Support Order.* Every two (2) years, the Agency shall conduct a
781 review of the child support order. The Agency shall notify the non-custodial parent, custodial
782 parent, and any interested party that a review of their child support order shall be conducted.

783 704.10-2. *Modification of Child Support Sought by the Agency.* After the two (2) year review is
784 conducted by the Agency, the Agency shall seek an order to modify the child support obligation if
785 there is a substantial change in circumstances, unless otherwise stipulated by the parties. A
786 substantial change in circumstances includes, but is not limited to:

- 787 (a) the child's placement is changed;
- 788 (b) either parent or the child has a significant change in his or her finances that would lead
789 to a change in child support of more than fifteen percent (15%) and fifty dollars (\$50.00)
790 per month;
- 791 (c) the obligee is receiving public assistance benefits and is required to have a current
792 support order in place;
- 793 (d) it has been twenty-four (24) months since the date of the last child support order or
794 revision to the child support order, unless the child support amount is expressed as a
795 percentage; or
- 796 (e) a change has occurred and if the current circumstances had been in place at the time
797 the order was issued, a significantly different order would have been issued.

798 704.10-3. *Modification of Child Support Sought by the Parties.* Either party, not including the
799 Agency, may file a motion for a modification of a child support order at any time based upon a
800 substantial change of circumstances supported by affidavit.

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

807 704.10-4. An obligor shall not raise a substantial change in circumstances as a reason not to pay
808 a current child support order or arrears. If a child support order becomes unjust due to a substantial
809 change in circumstances of the obligor, the obligor has the duty to file a petition or motion with
810 the Family Court for a modification to the child support order at that time.

811

812 **704.11. Modification of a Child Support Order for an Incarcerated Parent**

813 704.11-1. In the event an obligor is incarcerated for one hundred and eighty (180) days or more,
814 the obligor shall have the right to have the Agency review his or her child support order to
815 determine if modification or suspension of the child support order is appropriate. The obligor shall
816 notice the Agency of his or her incarceration.

- 817 (a) An ordered child support obligation shall be suspended for an incarcerated obligor who
818 has been sentenced to one hundred and eighty (180) days or more and has an income of
819 less than two hundred dollars (\$200) per month.
- 820 (b) If while incarcerated the obligor's income is two hundred dollars (\$200) or more per
821 month the Agency shall review the order and seek temporary modification of the child
822 support order based on the incarcerated obligor's income, if necessary.
- 823 (c) Child support obligations shall not be suspended or modified for an obligor who is
824 incarcerated for a criminal offense which includes:

- 825 (1) felony failure to pay support;

- 826 (2) a crime against a child; and/or
827 (3) a crime against the obligee.

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

830 704.11-2. *Notification of Review.* Within fifteen (15) business days of the receipt by the Agency
831 of verification of the obligor's incarceration, the Agency shall send out a letter to the parties of the
832 case informing them of the obligor's right to have his or her child support obligation reviewed,
833 and of the Agency's intent to review the current child support order.

834 704.11-3. *Agency Review of Order.* The Agency shall review the obligor's child support order
835 and make one of the following determinations:

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

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

842 704.11-4. *Suspension of Order by the Agency.* If the Agency determines the obligor's income is
843 less than two hundred dollars (\$200) per month while incarcerated, the Agency shall file with the
844 Family Court a Motion and Order to Suspend without a request for a hearing with notice to all
845 parties that the child support order shall be suspended.

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

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

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

853 704.11-5. *Modification of Order by the Agency.* If the Agency determines the obligor's income
854 is two hundred dollars (\$200) per month or more while incarcerated, the Agency shall file with the
855 Family Court a Motion to Modify.

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

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 terms of the compliance plan, no further
900 enforcement action is necessary. However, if the party fails to complete the compliance
901 plan, the Agency shall 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.

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

990 (b) An obligor may negotiate a plan with the Agency to have a license suspension lifted.

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

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

998 (A) The obligor may submit this written request for a hearing on the
999 reasonableness of the plan within ten (10) business days after the terms of
1000 the plan are agreed upon.

1001 (2) The obligor and the Agency are unable to reach agreement on the terms of a
1002 plan.

1003 (A) The Family Court may order a plan by setting conditions and/or
1004 payments in the amounts and at the times it considers reasonable.

1005 (d) *Proceeding with Administrative Enforcement Actions.* The Agency may continue with
1006 the administrative enforcement action if:

1007 (1) the obligor and the Agency are unable to negotiate a plan;

1008 (2) the Family Court determines that the plan is not reasonable; and/or

1009 (3) the Family Court does not order a plan.

1010 704.14-3. *Disclosure of Income and Assets.* The request to negotiate a plan shall include an
1011 agreement by the obligor to provide the Agency with a full disclosure of income and assets

1012 available. The obligor shall provide complete income and assets information to the Agency within
1013 five (5) business days of the request to negotiate a plan.

1014 704.14-4. *Terms of an Alternative Payment Plan.*

1015 (a) An alternative payment plan may include a lump-sum payment, or periodic payments
1016 on the arrears, or both, subject to the following standards:

1017 (1) The sum of any periodic payment established under the plan and any other
1018 payment of support ordered by the Family Court, when subtracted from the
1019 obligor's gross income, may not leave the obligor below one hundred percent
1020 (100%) of the poverty line established under 42 U.S.C. §9902 (2) unless the obligor
1021 agrees otherwise.

1022 (2) When establishing an alternative payment plan, the Agency shall consider the
1023 factors used by the Family Court in determining whether the use of the percentage
1024 standard is unfair to the child or any of the parties.

1025 (b) Periodic payments under the plan may be made through income withholding in
1026 amounts in addition to the amount ordered in the child support order that is in effect.

1027 704.14-5. *Staying Administrative Enforcement Actions.* Administrative enforcement actions shall
1028 be stayed by the Agency while the obligor and the Agency are negotiating a plan, or, if a hearing
1029 is requested because an agreement cannot be reached or the reasonableness of the plan is
1030 questioned, until the Family Court determination has been made. To stay an administrative
1031 enforcement action means the following:

1032 (a) The obligor shall not be certified for denial, nonrenewal, restriction, or suspension of
1033 any State or Oneida-issued licenses;

1034 (b) Any frozen financial accounts shall remain frozen and shall not be seized; and

1035 (c) Personal property that has been seized shall not be sold.

1036 704.14-6. *Suspension of Administrative Enforcement Actions.*

1037 (a) When a plan has been negotiated between the obligor and the Agency, or the Family
1038 Court has determined that a plan is reasonable or has ordered a plan, the Agency shall
1039 suspend administrative enforcement actions as long as the obligor complies with the plan
1040 or requests a hearing because of a substantial change in circumstances which makes the
1041 plan unreasonable.

1042 (b) If an obligor makes an arrears payment agreeable to the Agency, the administrative
1043 enforcement action shall be suspended.

1044 704.14-7. *Default on an Alternative Payment Plan.* In the event that the obligor defaults on the
1045 plan, the Agency shall notify the obligor in writing that an administrative enforcement action shall
1046 be implemented unless the child support lien is paid in full.

1047 704.14-8. *Renegotiation of an Alternative Payment Plan.* After the entry of an alternative payment
1048 plan, the plan may be renegotiated upon the written request of the obligor or Agency if the
1049 requesting party can show a substantial change in circumstances. A substantial change in
1050 circumstances includes any of the following:

1051 (a) A change in the obligor's income or assets, including the sale or purchase of real or
1052 personal property;

1053 (b) A change in the obligor's earning capacity; and/or

1054 (c) Any other factor that the Agency determines is relevant.

1055

1056 **704.15. Administrative Enforcement Action**

1057 704.15-1. The Agency shall have the authority to use administrative enforcement actions to
1058 enforce a child support order without obtaining an order from the Family Court in the event that
1059 an obligor is at least one (1) month delinquent in paying his or her child support obligations.

1060 704.15-2. *Liens*. The Agency shall have an obligor placed on the lien docket if the obligor owes
1061 a debt in one or more of the obligor's cases equal to or exceeding the monthly amount due or five
1062 hundred dollars (\$500.00), whichever is greater.

1063 (a) *Lien Amount*. The lien amount on the lien docket shall equal the sum of lien amounts
1064 from the cases in which the lien amount meets or exceeds the lien threshold.

1065 (b) *Filing Date*. The filing date on the lien docket is the date that a lien is first docketed
1066 and delivered to the register of deeds. The filing date is the effective date of the lien. The
1067 effective date does not change if the lien amount is adjusted up or down within five (5)
1068 years after the date that the lien is first docketed.

1069 (c) *Lien Priority*. The child support lien shall have priority over all other liens on property
1070 except:

1071 (1) tax and special assessment liens;

1072 (2) purchase money mortgages;

1073 (3) construction liens;

1074 (4) environmental liens;

1075 (5) liens that are filed or recorded before the child support lien becomes effective;
1076 and

1077 (6) any other lien given priority under the law.

1078 (d) Property subject to a lien includes personal property in which the obligor has a recorded
1079 ownership interest.

1080 (e) *Effect on a Good Faith Purchaser*. A child support lien is not effective against a good
1081 faith purchaser of titled personal property unless the lien is recorded on the title.

1082 (f) *Credit Bureau Reporting*. The Agency may report the total amount of an obligor's
1083 liens to the credit bureau, so long as the lien is fully enforceable and the case is not barred
1084 from credit bureau reporting.

1085 (g) *Agency Lien Responsibilities*. The Agency shall be responsible for:

1086 (1) updating the lien docket periodically;

1087 (2) providing a copy of the lien docket to the appropriate register of deeds;

1088 (3) responding to inquiries concerning information recorded on the lien docket;

1089 (4) ensuring the satisfaction of a lien is recorded on the lien docket;

1090 (5) renewing a lien if the lien amount equals or exceeds the lien threshold at the
1091 end of the five (5) year effective period;

1092 (A) When a lien is renewed, the date on which the lien is renewed shall
1093 become the effective date of the lien, and a new five (5) year period shall
1094 commence.

1095 (6) sending the obligor a notice when a lien has been renewed; and

1096 (7) developing procedures for releasing a lien and releasing specific property from
1097 a lien.

1098 (h) *Financial Record Review*.

1099 (1) An obligor may request a financial record review in writing to the Agency
1100 within ten (10) business days of the date of notice of a lien, to determine the
1101 correctness of the financial records in a case.

- 1102 (2) Upon receiving a request for a financial record review, the Agency shall, at no
1103 charge to the obligor, provide the obligor with:
1104 (A) all relevant financial records;
1105 (B) information explaining how to interpret the records; and
1106 (C) a form the obligor may use to identify any alleged errors in the records.
1107 (3) Within twenty (20) days after receiving the relevant financial records, the
1108 obligor may:
1109 (A) request a meeting with the Agency to review the financial records and
1110 to discuss any alleged errors; and/or
1111 (B) provide a statement of alleged error on the documents.
1112 (i) The Agency shall review the records to determine whether the
1113 alleged error is correct and provide a written determination within
1114 sixty (60) days after the obligor's request for a financial record
1115 review is received as to whether the lien against the obligor is in the
1116 correct amount.
1117 (4) The Agency may proceed with the lien if:
1118 (A) the obligor does not request a meeting with the Agency or provide a
1119 statement of alleged error within twenty (20) days after receiving the
1120 financial records;
1121 (B) no errors are found in the financial records of the case; or
1122 (C) the arrears exceed the required threshold amount after any errors in the
1123 financial records are corrected.

1124 704.15-3. *Seizure of Property*. The Agency shall have the authority to seize property, whether an
1125 account or personal property, of an obligor. The Agency shall presume that an obligor's equity or
1126 ownership in the property is an equal pro-rata share of the equity or ownership based on the number
1127 of individuals with a recorded ownership interest in the property.

1128 (a) *Account Seizure*. Once a lien is placed against an obligor, the Agency may initiate an
1129 account seizure if the lien amount in the obligor's case equals or exceeds three hundred
1130 percent (300%) of the monthly amount due in the order, or one thousand dollars (\$1,000),
1131 whichever is greater.

1132 (1) The Agency may not issue a notice of seizure unless the sum of the funds in all
1133 of the obligor's financial accounts, minus expected seizure fees and any early
1134 withdrawal penalty, exceeds five hundred dollars (\$500). The first five hundred
1135 dollars (\$500) of each account shall not be frozen and/or seized.

1136 (2) The notice issued by the Agency shall instruct the financial institution of the
1137 following:

1138 (A) The maximum amount frozen in an account may not exceed the amount
1139 specified by the Agency in the notice.

1140 (B) The maximum amount frozen in an account may not exceed the
1141 obligor's ownership interest.

1142 (C) A financial institution is not liable for encumbering or surrendering any
1143 assets held by the financial institution in response to instructions from the
1144 Agency for the purpose of enforcing a child support order.

1145 (b) *Seizure of Personal Property*. Once a lien is placed against an obligor, the Agency
1146 may initiate the seizure of personal property if the lien amount equals or exceeds six
1147 hundred percent (600%) of the monthly amount due in the order.

1148 (1) The Agency may seize personal property if the obligor's equity in the property,
1149 minus expected seizure fees, exceeds five hundred dollars (\$500) per item total.

1150 (2) Ceremonial or religious property and/or real property are exempt and shall not
1151 be seized by the Agency.

1152 (3) *Process for Seizing Property.* The Agency shall follow the following process
1153 for seizing personal property:

1154 (A) The Agency shall notify the obligor of the intent to request the Family
1155 Court to issue an order of execution for the seizure of property.

1156 (B) The Agency shall request the Family Court to grant a written order of
1157 execution for the seizure of property. The Agency shall provide the Family
1158 Court an affidavit that notice of this request has been provided to the
1159 obligor.

1160 (C) Upon issuance of a written order of execution by the Family Court,
1161 non-exempt personal property may be seized and sold in a reasonable
1162 manner.

1163 704.15-4. *Attachment of Per Capita Payments.* The Agency may initiate the attachment and/or
1164 seizure of per capita payments of members of the Nation in accordance with applicable laws of the
1165 Nation.

1166 704.15-5. *License Suspension.* The Agency may initiate the suspension or denial of both State
1167 and Oneida issued licenses if there is a lien against an obligor that equals or exceeds three hundred
1168 percent (300%) of the monthly amount due in the child support order, or one thousand dollars
1169 (\$1000), whichever is greater.

1170 (a) The types of State or Oneida issued licenses that the Agency may initiate the suspension
1171 or denial of include, but are not limited to, vendor, professional, occupational, hunting,
1172 fishing, recreational, and/or motor vehicle licenses.

1173 (b) The Agency shall not initiate the suspension of an occupational and/or motor vehicle
1174 license if:

1175 (1) there is an order in place that prohibits the suspension of the license;

1176 (2) the obligor has filed for bankruptcy; or

1177 (3) action has already been taken to suspend the license.

1178 (c) When an Oneida-issued license is suspended, that suspension shall be binding on and
1179 given effect by the license issuing agencies. Orders affecting licenses issued by other
1180 governmental agencies shall be sent to such agencies for enforcement.

1181 704.15-6. *Lump-Sum Pension Payments, Judgments, and Settlements Intercepts.* Once an obligor
1182 has been placed on the lien docket the Agency may initiate the intercept of lump-sum pension
1183 payments, judgments and/or settlements.

1184 (a) When initiating the intercept of lump-sum pension payments, judgments and/or
1185 settlements, the Agency shall specify in the notice that the amount withheld from the lump-
1186 sum pension payment, judgment or settlement may not exceed the obligor's ownership
1187 interest in the payment.

1188 704.15-7. *Tax and Lottery Intercepts.* The Agency may coordinate with a federal or state agency
1189 in order to enforce a child support order through a tax and/or lottery intercept. Once an obligor
1190 has been notified that his or her tax refund and/or lottery winnings may be intercepted, that notice
1191 is valid until all arrears are paid in full.

1192 (a) *Federal Tax Intercept.* The Agency may certify a federal tax intercept when the
1193 requirements pertaining to federal tax intercept contained in an agreement between the
1194 State and the Nation have been met.

1195 (b) *Wisconsin State Tax and/or Lottery Intercept.* The Agency may certify a Wisconsin
1196 state tax intercept and/or a Wisconsin state lottery intercept, when the lottery winnings are
1197 one thousand dollars (\$1,000) or more, when the following requirements are met:

- 1198 (1) The arrears shall be at least one hundred and fifty dollars (\$150);
1199 (2) The arrears shall be at least thirty (30) days old; and
1200 (3) The arrears shall be for a minor child or a child who has reached the age of
1201 eighteen (18) within the last twenty (20) year.

1202 704.15-8. *Passport Denial*. If a federal tax intercept is in place and the obligor owes two thousand
1203 five hundred dollars (\$2,500) or more in arrears, an obligor may be denied a passport. The arrears
1204 must meet the criteria for federal tax intercept in order for passport denial to be used as an
1205 enforcement tool. An obligor shall be removed from the passport denial list if:

- 1206 (a) The federal tax intercept certification amount is zero (0);
1207 (b) The obligor makes a lump-sum payment and/or negotiates a payment plan with the
1208 Agency;
1209 (c) The obligor has to travel abroad because of a life-or-death situation involving an
1210 immediate family member; or
1211 (d) The obligor was denied a passport in error.
1212

1213 **704.16. Family Court Contempt Action**

1214 704.16-1. If the Agency does not have the authority to conduct the appropriate enforcement action,
1215 or the obligor is unresponsive to the enforcement actions being imposed by the Agency, the
1216 Agency shall file a motion for contempt with the Family Court. During a contempt proceeding the
1217 Family Court may order any of the enforcement actions the Agency is authorized to implement, in
1218 addition to the contempt actions described in this section.

1219 704.16-2. *Contempt*. The Family Court may hold an obligor who fails to comply with a lawful
1220 child support order in contempt. An obligor found to be in contempt shall be subject to any of the
1221 following punishments:

1222 (a) *Community Service*. The Family Court may order an obligor to perform community
1223 service. The number of hours of work required may not exceed what would be reasonable
1224 considering the amount of arrears the obligor owes. The obligor shall be provided a written
1225 statement of the terms of the community service order and that the community service order
1226 is monitored. The order shall specify:

- 1227 (1) how many hours of community service the obligor is required to complete;
1228 (2) the time frame in which the hours must be completed;
1229 (3) how the obligor will report his or her hours; and
1230 (4) any other information the Family Court determines is relevant.

1231 (b) *Fines*. An obligor found in contempt of court may be fined in an amount not to exceed
1232 one thousand dollars (\$1,000.00) per act of contempt and may not exceed five thousand
1233 dollars (\$5,000.00) in total. In instances of continuing contempt, each day shall constitute
1234 a separate act of contempt.

1235 (c) *Incarceration*. The Family Court may order an obligor be incarcerated. Before a jail
1236 sentence is imposed, the Family Court shall provide other conditions that require a certain
1237 amount of money be paid or action be taken for an obligor to avoid incarceration.

1238 (d) *Criminal Non-Support*. A criminal non-support action may be initiated, in the
1239 appropriate county, against an obligor who has the ability to pay child support and willfully
1240 or intentionally failed to pay and the obligor knew or reasonably should have known he or
1241 she was legally obligated to provide.

1242 (e) *Bonds and Other Guarantees*. The Family Court may require an obligor to provide a
1243 surety, bond or guarantee to secure the payment of arrears, if income withholding is not
1244 applicable, practical, or feasible to secure payment of arrears.

1245 (f) *Claims Against Estates.* The Family Court may approve a claim for past and future
1246 support against an obligor’s estate. The Family Court may issue a restraining order against
1247 an estate from which an obligor will inherit.
1248

1249 **704.17. Full Faith and Credit for Foreign Child Support Orders**

1250 704.17-1. Child support orders, judgments, or decrees of other federally recognized tribes, and
1251 states that relate to child support shall be recognized and modified in accordance with the
1252 requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. 1738B.

1253 704.17-2. A foreign order is authenticated by reasonable proof that the document tendered to the
1254 Family Court is a true certified copy of the foreign order as it is recorded in the agency or court of
1255 the issuing jurisdiction. An authentication stamp issued by a court clerk or custodian of records,
1256 or a court seal, is sufficient evidence of authenticity.

1257 704.17-3. Unless defects in jurisdiction are apparent on the face of the foreign order, the person
1258 contesting enforcement of the order has the burden of showing the order is not valid. Upon a
1259 failure to respond to notice of the order and to timely contest it, the Family Court shall enforce it
1260 as an order of the Family Court.

1261 704.17-4. If a foreign order is brought before the Family Court solely for an interpretation of the
1262 terms of the order, and the order has been recognized and given full faith and credit by the Family
1263 Court, the Family Court shall interpret the order by applying the law of the forum that issued the
1264 foreign order.
1265

1266 **704.18. Right of Appeal**

1267 704.18-1. *Appeals of Administrative Enforcement Action.* Any enforcement action implemented
1268 by the Agency may be appealed to the Family Court within thirty (30) calendar days after the date
1269 that the action is enforced. The decision of the Family Court as to the Agency’s administrative
1270 enforcement action shall be final and non-appealable.

1271 704.18-2. *Appeals of Family Court Decisions.* A party may appeal a Family Court decision, other
1272 than the decision of the Family Court in regard to administrative enforcement action as referenced
1273 in section 704.18-1, to the Nation’s Court of Appeals within thirty (30) calendar days after the date
1274 the Family Court made the decision. The review of the Court of Appeals shall be based on the
1275 record and the original decision of the Family Court.
1276

1277 *End.*

1278 Emergency Adopted - BC-06-30-08-C (Expired)

1279 Emergency Extended – BC-12-10-08-H (Expired)

1280 Permanently Adopted- BC-06-24-09-B

1281 Emergency Amended - BC-10-28-09-E

1282 Amended - BC-02-24-10-G

1283 Amended - BC-06-22-11-K

1284 Amended - BC-10-10-12-C

1285 Amended – BC-08-13-14-E

1286 Amended – BC-__-__-__-__

1287

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 Contempt 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

1 2 **704.1. Purpose and Policy**

3 704.1-1. *Purpose.* The purposes of this law ~~are~~ **is** to:

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

10 704.1-2. *Policy.* It is the policy of this law to:

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

19 20 **704.2. Adoption, Amendment, Repeal, ~~Other Laws and Agency Rules~~**

21 704.2-1. This law was adopted by the Oneida Business Committee by resolution BC-06-24-09-B
22 and amended by resolutions BC-02-24-10-G, BC-02-23-11-E, BC-06-22-11-K, BC-10-10-12-C,
23 ~~and BC-08-13-14-E, and BC- - - - .~~

24 704.2-2. This law may be amended ~~pursuant to the procedures set out in the Oneida Administrative~~
25 ~~Procedures Act or repealed~~ by the Oneida Business Committee or the Oneida General Tribal
26 Council ~~pursuant to the procedures set out in the Legislative Procedures Act.~~

27 704.2-3. Should a provision of this law or the application thereof to any person or circumstances
28 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
29 to have legal force without the invalid portions.

30 704.2-4. In the event of a conflict between a provision of this law and a provision of another law,
31 ~~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) ~~“Contempt” means a willful disregard of the authority of a court or disobedience to its~~
71 ~~lawful orders.~~

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

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

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

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

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

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

92 (q) “Gross income” ~~shall mean~~ means any form of payment due to an individual regardless
93 of source, including, but not limited to:

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

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

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

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

704.4. Jurisdiction

704.4-1. The Family Court has jurisdiction over any action brought under this law.

704.4-2. *Personal Jurisdiction.* Personal jurisdiction over an individual under this law may be established where one party or a child of the parties is any of the following:

- (a) a member of the ~~Tribe; or~~ Nation;
- (b) a resident of the Reservation who is also a member of an Indian tribe, band or community which is recognized by a State or the federal government;
- (c) a resident of the Reservation who is also the biological parent of a the child that is enrolled or is eligible for enrollment with the ~~Tribe~~ Nation; ~~or~~

220 (d) an individual who consents to the jurisdiction of the Family Court by one (1) of the
221 following means:

222 (1) Filing an action with the Family Court~~;~~

223 (2) Knowingly and voluntarily giving written consent to the jurisdiction of the
224 Family Court~~;~~

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

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

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

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

237 **704.5. Initiating an Action for Child Support Orders**

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

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

244 ~~704.5-2. A party may request the services of the Agency or may be referred to the Agency from~~
245 ~~an entitlement program.~~

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

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

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

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

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

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

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

- 268 ~~(1a)~~ a custodial parent;
- 269 ~~(2b)~~ a child's mother;
- 270 ~~(3c)~~ a child's father;
- 271 ~~(4d)~~ a child's guardian ad litem;
- 272 ~~(5e)~~ a child's non-legally responsible relative; or
- 273 ~~(6f)~~ a legally incompetent adult's guardian ad litem; or

274 704.5-34. ~~Voluntary Agreement~~ Stipulation. (a) The parties may enter into a stipulation ~~voluntary~~
275 ~~agreement~~ at any time as to the level of the child support obligation.

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

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

- 282 (1) The stipulation ~~agreement~~ shall be in writing, signed, and notarized;
- 283 (2) If the parties deviate from the percentage standards, the stipulation ~~agreement~~
284 shall state the amount of support that would have been ordered by the percentage
285 standards and the reasons for deviating from the percentage standards;
- 286 (3) All parties shall sign the stipulation ~~agreement~~ free of duress and coercion; and
- 287 (4) The Family Court shall make written findings that the stipulation ~~agreement~~ is
288 appropriate, using the criteria for deviating from standard percentages ~~under 704.7-~~
289 ~~3~~ as a guideline, if applicable.

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

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

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

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

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

- 311 (1) The name, date of birth, ~~and address,~~ and tribal affiliation of the petitioner, ~~and~~
312 ~~respondent,~~ and child for whom support is requested;
- 313 ~~(+A)~~ If the address of the respondent is unknown, other ~~Tribal~~ departments
314 of the Nation shall cooperate with the Family Court, at the Family Court's
315 request, to provide the Family Court with the respondent's address. Any

316 such Family Court requests shall be made in such a way which protects the
317 privacy rights of all parties and children who are involved in proceedings or
318 actions under this law.

319 (2) With whom the child currently resides;

320 (3) When and how paternity was established;

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

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

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

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

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

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

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

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

346 704.5-7-(d) Notice Summons. All parties shall be notified of the petition and of all
347 hearings, and shall be given an opportunity to be heard.

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

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

360 (bB) Publication. When a responding party cannot be found for personal
361 service after diligent attempts and attempts to serve the responding party by
362 certified mail have failed, the petitioner shall may ask the Family Court to
363 direct the Agency to provide use service by publication. If the request is

364 ~~granted, the Agency~~ The publication shall ~~be publish the petition~~ in the
365 ~~Kalihwisaks Nation's newspaper~~ or a newspaper of general circulation in
366 the county of residence of the respondent, if known. ~~The P~~publication shall
367 be designated as a Legal Notice and any confidential information shall be
368 redacted.

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

375 ~~704.5-8~~ (2) Requirements of the Summons and Petition. The summons to be served
376 on the respondent(s), along with the petition, shall include the following notice, in
377 addition to providing a time, place, and date for appearance:

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

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

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

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

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

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

400 ~~704.5-9~~ (e) Answers. Answers shall be filed with the Family Court and served on the
401 petitioner within twenty (20) calendar days of the date of service of the petition in
402 accordance with the Nation's laws and policies governing civil procedure.

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

407 ~~704.5-11. Temporary Orders.—At any time after a child's parentage has been established, the~~
408 ~~Family Court may make a temporary order for the payment of child support and the child's health~~
409 ~~care expenses. Before making a temporary order, the Family Court shall consider those factors~~
410 ~~that the Family Court is required to consider when granting a final child support order. If the~~
411 ~~Family Court makes a temporary child support order that deviates from the amount of support that~~

412 ~~would be required by using the percentage standard, the requirements of section 704.7-38 shall be~~
413 ~~complied with.~~

414

415 **704.6. Child Support Hearing Procedures**

416 704.6-1. The factual determinations made at a hearing shall ~~include, but is not~~ be limited to, the
417 income and expense information necessary to determine the appropriate level of support according
418 to this law.

419 704.6-2. The Family Court may utilize discovery procedures and contempt powers, as authorized
420 by ~~any Tribal~~ law, policy, or rule of the Nation to obtain information relevant to the establishment
421 or enforcement of child support. These procedures may include the following:

422 (a) Issue subpoenas requiring necessary and relevant parties to appear in person and
423 provide testimony;

424 (b) Issue subpoenas requiring the production of evidence;

425 (c) Obtain information about property or assets to assess its value or funding source for
426 lien or seizure actions;

427 (d) Obtain information about the income of any party to the action; ~~and/or~~

428 (e) Issue contempt findings for failure to comply with the lawful order of the Family Court.

429 704.6-3. Both parties have the right to representation by an attorney and/or advocate at his or her
430 ~~their~~ own expense. The ~~Tribe~~ Nation shall not be required to pay for any fees and/or expenses
431 incurred by any party in connection with proceedings under this law.

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

439 ~~704.6-45. Default.~~ If the respondent fails to appear at the hearing upon a showing of valid service
440 and the petitioner presents evidence of the obligation by the absent party, a child support order
441 shall be entered pursuant to the evidence.

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

448

449 **704.7. Determining the Child Support Determination Obligation**

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

454 704.7-2. *Percentage Standards to Determine the Amount of Child Support.*

455 (a) The following percentages shall be applied to the portion of an obligor's monthly
456 income available for child support that is less than seven thousand dollars (\$7,000):

457 (1) seventeen percent (17%) for one (1) child;

458 (2) twenty-five percent (25%) for two (2) children;

- 459 (3) twenty-nine percent (29%) for three (3) children;
460 (4) thirty-one percent (31%) for four (4) children; and
461 (5) thirty-four percent (34%) for five (5) or more children.
462 (b) The following percentages shall be applied to the portion of an obligor's monthly
463 income available for child support that is greater than or equal to seven thousand dollars
464 (\$7,000) and less than or equal to twelve thousand five hundred dollars (\$12,500):
465 (1) fourteen percent (14%) for one (1) child;
466 (2) twenty percent (20%) for two (2) children;
467 (3) twenty-three percent (23%) for three (3) children;
468 (4) twenty-five percent (25%) for four (4) children; and
469 (5) twenty-seven percent (27%) for five (5) or more children.
470 (c) The following percentages shall be applied to the portion of an obligor's monthly
471 income available for child support that is greater than twelve thousand five hundred dollars
472 (\$12,500):
473 (1) ten percent (10%) for one (1) child;
474 (2) fifteen percent (15%) for two (2) children;
475 (3) seventeen percent (17%) for three (3) children;
476 (4) nineteen percent (19%) for four (4) children; and
477 (5) twenty percent (20%) for five (5) or more children.

478 704.7-3. ~~1.3-1.~~ Determining Income Modified for Business Expenses. In determining a parent's
479 monthly income, the Family Court may adjust a parent's-gross income as follows:

- 480 (a) Adding wages paid to dependent household members.
481 (b) Adding undistributed income that the Family Court determines is not reasonably
482 necessary for the growth of the business. The parent shall have the burden of proof to show
483 that any undistributed income is reasonably necessary for the growth of the business.
484 (c) Reducing gross income by the business expenses that the Family Court determines are
485 reasonably necessary for the production of that income or operation of the business and
486 that may differ from the determination of allowable business expenses for tax purposes.

487 704.7-4. Determining Income Imputed Based on Earning Capacity. When a parent's income is
488 less than the parent's earning capacity or is unknown, the Family Court may impute income to the
489 parent at an amount that represents the parent's ability to earn.

- 490 (a) The parent's ability to earn may be based on the parent's:
491 (1) education, training, and recent work experience;
492 (2) earnings during previous periods;
493 (3) current physical and mental health;
494 (4) history of child care responsibilities as the parent with primary physical
495 placement; and
496 (5) the availability of work in or near the obligor's community.
497 (b) If evidence is presented that due diligence has been exercised to ascertain information
498 on the parent's actual income or ability to earn and that information is unavailable, the
499 Family Court may impute to the parent the income that a person would earn by working
500 thirty-five (35) hours per week for the federal minimum hourly wage under 29 USC 206
501 (a)(1). In addition to imputed income, the Family Court may order the parent to search for
502 a job or participate in a work experience and job training program.
503 (c) If a parent has gross income or income modified for business expenses below his or
504 her earning capacity, the income imputed based on earning capacity shall be the difference
505 between the parent's earning capacity and the parent's gross income or income modified
506 for business expenses.

507 704.7-5. Determining Income Imputed from Assets.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

561 (7) Offset the resulting amounts against each other. The parent with the greater
562 child support obligation is the shared-placement obligor. The shared-placement
563 obligor shall pay either the greater of the amount determined in this subsection or
564 the amount determined using the appropriate percentage standard under section
565 704.7-2.

566 704.7-7. Claiming Children for Tax Purposes. The Family Court may address who may claim
567 the child for tax purposes or accept a stipulation entered into by the parties regarding children and
568 taxes.

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

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

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

599 704.7-59. Past-due and Arrears obligations.

- 600 (a) A party may request payment of arrears or past-due child support as follows:

- 601 (1) In an action ~~pursuant to Chapter 703, Paternity,~~ regarding paternity, back to
602 the date of birth of the child or date of application, whichever is later;
603 (2) In a child support establishment or modification pursuant to this law, back to
604 the date of application, review, or referral; or
605 (3) In an establishment or modification of placement pursuant to ~~Chapter 702 or~~
606 ~~Chapter 705,~~ an action regarding divorce, annulment and legal separation or child
607 custody, placement, and visitation, back to the date of filing, or as otherwise ordered
608 by the Family Court.

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

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

614
615 **704.8. Determining the Child Support Obligation in Special Circumstances ~~Content and~~**
616 **Effect of Order**

617 ~~704.8-1.1.4-1.~~ Determining the Child Support Obligation of a Serial-Family Obligor.

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

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

- 627 (1) Determine the obligor's monthly income.
628 (2) Determine the order of the obligor's legal obligations for child support by
629 listing them according to the date each obligation is incurred.
630 (A) For a marital child, the legal obligation for child support is incurred on
631 the child's date of birth.
632 (B) For a non-marital child, the legal obligation for child support is incurred
633 on the date of the child support order that paternity is legally established.
634 (C) For a non-marital paternal child in an intact family, it is incurred on the
635 date of adoption or the date of the filing of an acknowledgement of paternity
636 that paternity is legally established.
637 (D) For a non-marital maternal child in an intact family, it is incurred on
638 the child's date of birth.

- 639 (3) Determine the first child support obligation as follows:
640 (aA) If the obligor is subject to an existing support order for that legal
641 obligation, except a shared-placement order, the support for that obligation
642 is the monthly amount of that order; or
643 (bB) If the obligor is in an intact family, has primary placement of another
644 child, or is subject to a shared-placement order, the support is determined
645 by multiplying the appropriate percentage for that number of children by
646 the obligor's monthly income.

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

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

650 (aA) If the obligor is subject to an existing support order for that legal
651 obligation, except a shared-placement order, the support for that obligation
652 is the monthly amount of that order; or

653 (bB) If the obligor is in an intact family or is subject to a shared-placement
654 order, the support is determined by multiplying the appropriate percentage
655 for that number of children by the obligor's monthly income.

656 (6) Adjust the monthly income a second time by subtracting the support for the
657 second legal obligation ~~determined under (5)~~ from the first adjusted monthly
658 income ~~under (4)~~.

659 (7) Repeat the procedure ~~under (5) and (6)~~ for determining the child support
660 obligation and adjusting the monthly income for each additional legal obligation
661 for child support the serial family obligor has incurred.

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

665 704.8-2. 1.4-2. Determining the Child Support Obligations of Shared-Placement Parents.

666 (a) *Applicability.* The shared-placement formula may be applied when both of the
667 following conditions are met:

668 (1) Both parents have periods of placement of at least twenty-five percent (25%)
669 or ninety-two (92) days a year. ~~When calculating periods of placement based on~~
670 ~~equivalent care, the total number of overnights may exceed three hundred and sixty-~~
671 ~~five (365). The period of placement for each parent shall be determined by~~
672 ~~calculating the number of overnights or equivalent care ordered to be provided by~~
673 ~~the parent and dividing that number by 365, the total number of overnights in a~~
674 ~~year. The combined periods of placement for both parents shall equal one hundred~~
675 ~~percent (100%).~~

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

678 (b) *Determination.* The child support obligations for parents who meet the requirements
679 ~~of (a) for the shared-placement formula~~ may be determined as follows:

680 (1) Determine each parent's monthly income.

681 (A) In determining whether to impute income based on earning capacity
682 for an unemployed parent or a parent employed less than full time ~~under~~
683 ~~1.3-2, the Family Court shall consider benefits to the child of having a~~
684 ~~parent remain in the home during periods of placement and the additional~~
685 ~~variable day care costs that would be incurred if the parent worked more.~~

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

688 (3) Multiply each amount determined under ~~(2)~~ section 704.8-2(b)(2) by ~~one~~
689 ~~hundred and fifty percent (150%).~~

690 (4) Multiply the amount determined for each parent under ~~(3)~~ section 704.8-2(b)(3)
691 ~~by the proportion of the time that the child spends with the other parent to determine~~
692 ~~each parent's child support obligation.~~

693 (5) Offset resulting amounts under ~~(4)~~ section 704.8-2(b)(4) against each other.
694 The parent with a greater child support obligation is the shared-placement obligor.

695 The shared-placement obligor shall pay the lesser of the amount determined under
696 this section or the amount determined using the appropriate percentage standard
697 under 704.7. If the shared-placement obligor is also a low-income obligor, the child
698 support obligation may be the lesser of the amount determined under this section
699 or under 1.4.4 the shared placement determination or the low-income
700 determination.

701 (6) In addition to the child support obligation determined under (5) section 704.8-
702 2(b)(5), the Family Court shall assign responsibility for payment of the child's
703 variable costs in proportion to each parent's share of physical placement, with due
704 consideration to a disparity in the parents' incomes.

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

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

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

714 704.8-3.1.4-3. *Determining the Child Support Obligations of Split-Placement Parents.*

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

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

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

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

725 (3) Divide the appropriate percentage standard for the number of total children by
726 the total number of children.

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

729 (5) Multiply each parent's monthly income by the number calculated in 704.8-
730 3(b)(4) based on the number of children placed with the other parent to determine
731 each parent's child support obligation; and

732 (e6) Offset resulting amounts under (b) section 704.8-3(b)(5) against each other.

733 The parent with a greater child support obligation is the split-placement obligor.

734 704.8-4.1.4-4. *Determining the Child Support Obligation of a Low-Income Obligor.*

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

739 (b) *Determination.* The Family Court may use the monthly support amount provided in
740 the ~~schedule in Appendix A~~ Child Support Obligation of Low-Income Payers Schedule as
741 the support amount for an obligor with a monthly income at a level set forth in the schedule

742 ~~if the obligor's total economic circumstances limit his or her ability to pay support at the~~
743 ~~level determined under 704.7.~~

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

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

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

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

759 ~~(2) The identity of the obligor is mistaken.~~

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

762 ~~704.8 2. The Family Court may require a party, or both parties, to utilize the services available to~~
763 ~~him or her to obtain and maintain regular employment and/or job training.~~

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

772 ~~704.8 4. Collection and Distribution of Child Support. The Agency shall collect and distribute~~
773 ~~child support monies pursuant to regulations set forth in the Social Security Act 45 CFR 309.115.~~

775 **704.9. Child Support Order Enforcement of Order**

776 ~~704.9-1. 1.3-5. Expression of Ordered Support. The child support amount shall be expressed as~~
777 ~~a fixed sum unless the parties have stipulated to expressing the amount as a percentage of the~~
778 ~~obligor's income and the stipulation requirements of Chapter 704 are satisfied.~~

779 ~~704.9-42. Interest on Arrears. The Tribe Nation shall not charge a party an obligor ordered to~~
780 ~~pay child support interest on any arrears.~~

781 ~~704.9-23. Income Wage Withholding. The child support order shall provide for immediate wage~~
782 ~~income withholding.~~

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

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

- 789 (c) Income wages shall not be subject to withholding only where:
790 (a1) One of the parties demonstrates, and the Family Court finds, that there is good
791 cause not to require income wage withholding due to one of the following:
792 (1A) There is an error in the amount of current or overdue support; or
793 (2B) The identity of the obligor is mistaken.
794 (b2) The parties reach a written agreement which provides for an alternative
795 arrangement that is approved by the Family Court.
796 (bd) No payor shall refuse to honor ~~a wage~~ an income withholding order executed pursuant
797 to this law. A payor shall begin withholding income immediately after ~~notice~~ service of a
798 ~~wage-an income~~ withholding order made pursuant to this law. Within five (5) business
799 days after the payor pays the obligor, the payor shall send the amount withheld to the
800 Agency-Wisconsin Support Collections Trust Fund.
801 (ee) A payor shall be liable for one hundred percent (100%) of the child support order, or
802 the amount of money that should have been withheld from the obligor's earnings,
803 whichever is the lesser amount, if the payor:
804 (1) Fails or refuses, after being ~~noticed of~~ served with an income withholding order,
805 to deduct or promptly remit the amounts of money required in the order; ~~or~~
806 (2) Fails or refuses to submit an answer to the notice of ~~wage-income~~ withholding
807 after being ~~noticed~~ served; or
808 (3) Is unwilling to comply with the other requirements of this law.
809 (df) A payor shall not discharge from employment, refuse to employ, or otherwise take
810 disciplinary action against any obligor solely because he or she is subject to ~~wage-income~~
811 withholding.
812 (1) When the Family Court finds that a payor has taken any of these actions, the
813 payor shall be liable for a civil penalty. Any payor who violates any provision of
814 this paragraph shall be liable in a civil action for reasonable damages suffered by
815 an obligor as a result of the violation, and an obligor discharged or demoted in
816 violation of this paragraph shall be entitled to be reinstated to his or her former
817 position.
818 (2) The statute of limitations for actions under this section shall be one (1) year.
819 (eg) A payor who repeatedly fails to comply with ~~a wage~~ an income withholding order as
820 required by this law may be subject to a fine, not to exceed five hundred dollars (\$500), or
821 have its Oneida vendor license revoked or suspended, if applicable, until compliance with
822 this law is assured.
823 (1) The vendor license issuing agency shall comply with the Family Court order to
824 revoke or suspend a vendor license.
825 (fh) If ~~wage income~~ withholding is inapplicable, ineffective or insufficient to ensure
826 payment of child support, the Family Court may require the obligor to establish an account
827 for the purpose of transferring child support payments.
828 (gi) The total amount withheld under an income withholding order shall not exceed the
829 maximum amount permitted under section 303(b) of the Consumer Credit Protection Act
830 (15 U.S.C. §1673(b)).
831 (hj) Non-Indian off-reservation payors shall be subject to income withholding under 28
832 U.S.C. §1738B.
833 704.9-4. 704.8-2. Conditions of the Order. The Family Court may require a party, or both parties,
834 to use the services available to him or her to obtain and maintain regular employment and/or job
835 training.
836 704.9-5. Support Order Notice Requirements. Each order for child support shall include:

837 (a) ~~a~~An order that the obligor and obligee notify the Agency of any change of address or
838 name change within ten (10) business days of such change; and
839 (b) ~~Each order for child support shall also include a~~ An order that the obligor notify the
840 Agency and the obligee of any change of employer or substantial change of income within
841 ten (10) business days of the change. A “substantial change of income” means the obligor
842 has a significant change in his or her finances that would lead to a change in child support
843 of either more than fifteen percent (15%) or fifty dollars (\$50.00) per month. An order
844 under this section is enforceable as contempt.

845 704.9-6. *Enforcement of Order.* A child support order under this section is enforceable as
846 contempt.

847 704.9-7. *Collection and Distribution of Child Support.* The Agency shall collect and distribute
848 child support monies pursuant to regulations set forth in the Social Security Act 45 CFR 309.115.

849 704.9-8. *Trust.* The Family Court may protect and promote the best interests of the minor
850 children by setting aside a portion of the child support that either party is ordered to pay in a
851 separate fund or trust for the support, education, and welfare of such children.

852 704.7-49-9. *Non-Cash Payments.*

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

- 856 (1) state the specific dollar amount of the support obligation;
857 (2) state the maximum amount (in dollars) of non-cash payment that the obligee
858 will accept;
859 (3) describe the type(s) of non-cash payment that is permitted;
860 (4) provide that non-cash payment cannot be used to satisfy assigned child support
861 obligations.

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

- 865 (1) Clothing;
866 (2) Groceries;
867 (3) Child Care;
868 (4) Deer/Venison;
869 (5) Wood;
870 (6) Transportation;
871 (7) Skilled trades or services, such as car repairs, lawn care and snow removal;
872 and/or
873 (8) Gift cards.

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

880 704.9-3. In the event that an obligor is at least one (1) month delinquent in paying his or her child
881 support obligation, he or she may be subject to the following enforcement actions:

- 882 (a) increase in amount of wages withheld
883 (b) placement on lien docket;
884 (c) credit bureau reporting;

- 885 ~~(d) intercept of income and/or other payments;~~
- 886 ~~(e) seizure of personal property;~~
- 887 ~~(f) suspension of licenses;~~
- 888 ~~(g) denial of passport;~~
- 889 ~~(h) commitment to jail;~~
- 890 ~~(i) charge of contempt;~~
- 891 ~~(j) referral for criminal charges;~~
- 892 ~~(k) any other enforcement action included in this law or in a rule that is established under~~
- 893 ~~this law.~~

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

895

896 **704.10. Modification of a Child Support Order**

897 704.10-1. Review of the Child Support Order. Every two (2) years, the Agency shall conduct a

898 review of the child support order. The Agency shall notify the non-custodial parent, custodial

899 parent, and any interested party that a review of their child support order ~~will~~ shall be conducted.

900 704.10-2. Modification of Child Support Sought by the Agency. After the two (2) year review is

901 conducted by the Agency, the Agency shall seek an order to modify the child support obligation if

902 there is a substantial change in circumstances, unless otherwise stipulated by the parties ~~an order~~

903 ~~to update the child support obligation will be sought by the Agency if there is a substantial change~~

904 ~~in circumstances.~~ A substantial change in circumstance ~~means~~ includes, but is not limited to:

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

916 704.10-~~23~~. Modification of Child Support Sought by the Parties. Either party, not including the

917 Agency, may file a motion for a modification of a child support order at any time based upon a

918 substantial change of circumstances supported by affidavit.

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

925 704.10-~~34~~. An obligor shall not raise a substantial change in circumstances as a reason not to pay

926 a past due reward current child support order or arrears. If a child support ~~award~~ order becomes

927 unjust due to a substantial change in circumstances of the obligor, the obligor has the duty to file

928 a petition or motion with the Family Court for a ~~changed award~~ modification to the child support

929 order at that time. ~~He or she may not raise that change in circumstances as a reason not to pay a~~

930 past due award.

931 ~~704.10-4. A change in the percentages shall constitute a substantial change in circumstances and~~
932 ~~shall justify prospective modification of a child support order.~~

933
934 **704.11. Modification of a Child Support Order for an Incarcerated Parent** ~~Full Faith and~~
935 ~~Credit for Foreign Child Support Orders~~

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

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

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

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

- 948 (1) felony failure to pay support;
949 (2) a crime against a child; and/or
950 (3) a crime against the obligee.

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

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

957 704.11-3. Agency Review of Order. The Agency shall review the obligor's child support order
958 and make one of the following determinations:

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

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

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

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

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

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

976 704.11-5. Modification of Order by the Agency. If the Agency determines the obligor's income
977 is two hundred dollars (\$200) per month or more while incarcerated, the Agency shall file with the
978 Family Court a Motion to Modify.

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

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

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

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

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

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

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

1000 ~~704.11-1. Properly issued child support orders, and judgments or decrees of other Indian tribes,~~
1001 ~~tribal organizations and states, that relate to child support shall be recognized and modified in~~
1002 ~~accordance with the requirements under the Full Faith and Credit for Child Support Orders Act,~~
1003 ~~28 U.S.C. 1738B.~~

1004 ~~704.11-2. A foreign order is authenticated by reasonable proof that the document tendered to the~~
1005 ~~Family Court is a true copy of the foreign order as it is recorded in the agency or court of the~~
1006 ~~issuing jurisdiction. An authentication stamp issued by a court clerk or custodian of records, or a~~
1007 ~~court seal, is sufficient evidence of authenticity.~~

1008 ~~704.11-3. Unless defects in jurisdiction are apparent on the face of the foreign order, the person~~
1009 ~~contesting enforcement of the order has the burden of showing the order is not valid. Upon a~~
1010 ~~failure to respond to notice of the order and to timely contest it, the Family Court shall enforce it~~
1011 ~~as a Family Court order.~~

1012 ~~704.11-4. If a foreign order is brought before the Family Court solely for an interpretation of the~~
1013 ~~terms of the order, and the order has been recognized and given full faith and credit by the~~
1014 ~~Family Court, the Family Court shall interpret the order by applying the law of the forum that~~
1015 ~~issued the foreign order.~~

1016

1017 **704.12. Compliance Plan-Right of Appeal**

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

1022 or her child support order by failing to pay support as ordered or meeting a required obligation or
1023 action, the Agency shall meet with the obligor to develop a compliance plan.

1024 704.12-2. An Appointment Letter may be sent by the Agency at any time deemed appropriate, but
1025 the Agency shall send out the Appointment Letter at least thirty (30) days prior to the initiation of
1026 any enforcement action.

1027 (a) The Letter of Non-Compliance shall set out the conditions the party has failed to
1028 comply with, outline the enforcement actions that may be taken, and request the party meet
1029 with the Agency to discuss barriers to payment and how to avoid future enforcement action.

1030 (b) If the party does not respond to the Letter within five (5) business days after receipt of
1031 the letter, the Agency shall send a second Letter.

1032 (c) If the party fails to respond to the second Letter within five (5) business days after
1033 receipt of the letter, the Agency may proceed with appropriate enforcement action.

1034 (c) If the party obligor responds to the Letter, the Agency shall interview the party to
1035 determine the reasons and barriers for the non-compliance and create a compliance plan.

1036 The compliance plan may include an increase in payment and/or any activity that is
1037 necessary to ensure assist in payment, including programs that focus on:

- 1038 (1) Employment and training;
- 1039 (2) Social service and mental health;
- 1040 (3) Physical and learning disabilities;
- 1041 (4) Tribal traditions and customs;
- 1042 (5) Family counseling and parenting; and
- 1043 (6) Any other program deemed necessary.

1044 (d) If the party successfully completes the terms of the compliance plan, no further
1045 enforcement action is necessary. However, if the party fails to complete the compliance
1046 plan, the Agency shall proceed with appropriate enforcement action.

1047 704.12-1. Any enforcement action implemented by the Agency may, within thirty (30) calendar
1048 days after the date that the action is enforced, be appealed to the Family Court. The decision of
1049 the Family Court shall be final.

1050 704.12-2. If the Family Court conducts a hearing under this law, a party may, within thirty (30)
1051 calendar days after the date that the Family Court makes a decision, appeal that decision to the
1052 Court of Appeals of the Judiciary. The appellate body review shall be based on the record and
1053 the original decision of the Family Court.

1054

1055 **704.13. Enforcement of an Order**

1056 704.13-1. An obligor may be subject to enforcement actions when the obligor is at least one (1)
1057 month delinquent in paying his or her child support obligation. Enforcement actions may include
1058 administrative enforcement action by the Agency and enforcement action by the Family Court.

1059 (a) An obligor shall be provided with notice of an enforcement action of at least thirty (30)
1060 days before an enforcement action is used, unless another timeline is specified.

1061 (b) An enforcement action shall be stayed and/or suspended after notice is given to the
1062 obligor if the obligor pays the debt in full or enters into, and maintains, an alternative
1063 payment plan and/or a compliance plan with the Agency.

1064 704.13-2. 704.9-1. Agency Responsibilities in the Enforcement of an Order. The Agency shall
1065 have the following responsibilities in the enforcement of an order:

- 1066 (a) Track and document the progress of an obligor who is under an enforcement action;
- 1067 (b) Take additional enforcement action when an obligor fails to comply with a previous
1068 enforcement action;

1069 (c) Document the reasons why an enforcement action is not taken, when such action would
1070 have been appropriate under the circumstances; and

1071 (d) Assist in Rrefunding amounts that were improperly withheld, terminate income
1072 withholding when appropriate, and allocate amounts across multiple cases.

1073 704.13-3. ~~2.4.2~~ Notice to the Obligor of Delinquency. In the event that an obligor owes a debt
1074 equal to or exceeding the monthly amount due, the Agency shall send a notice of delinquency to
1075 the obligor. ~~(a)~~ The notice of delinquency shall inform the obligor of the following:

1076 ~~(1) The dates that the delinquency accrued;~~

1077 ~~(2a) The total amount of the delinquency; and~~

1078 ~~(3) Any prior agreement or showing of good cause to not wage withhold may be~~
1079 ~~terminated and the obligor may be subject to wage withholding;~~

1080 ~~(4b) The enforcement action that may be taken as a result of the delinquency.~~

1081 ~~(5) The obligor may request, in writing to the Agency, to negotiate an alternative~~
1082 ~~payment plan with the Agency within ten (10) business days after the service of~~
1083 ~~notice in order to stay any enforcement action;~~

1084 ~~(6) The obligor has ten (10) business days after the service of the notice of~~
1085 ~~delinquency to file an objection with the Agency presenting good cause why an~~
1086 ~~arrears payment or other enforcement action should not be implemented. The~~
1087 ~~only allowable objections are:~~

1088 ~~(A) There is an error in the amount of current or overdue support; or~~

1089 ~~(B) The identity of the obligor is mistaken.~~

1090 704.13-4. Notice to the Obligor of Enforcement Action. After the obligor has been noticed of his
1091 or her delinquency, and at least twenty (20) days prior to an enforcement being used against an
1092 obligor, the Agency shall send a notice of enforcement action to the obligor.

1093 (a) The notice of enforcement action shall inform the obligor of the following:

1094 (1) The total amount of the delinquency;

1095 (2) The enforcement action that may be taken as a result of the delinquency;

1096 (3) The obligor may request, in writing to the Agency, to negotiate an alternative
1097 payment plan with the Agency within ten (10) business days after the notice in order
1098 to stay any enforcement action;

1099 (4) The obligor has ten (10) business days after the notice of enforcement action to
1100 file an objection with the Agency presenting good cause why an arrears payment
1101 or other enforcement action should not be implemented. The only allowable
1102 objections are:

1103 (A) There is an error in the amount of current or overdue support; or

1104 (B) The identity of the obligor is mistaken.

1105 (b) If the obligor does not file an objection or request to negotiate an alternative payment
1106 plan:

1107 (1) the enforcement action shall be taken; and/or

1108 (2) an ~~income wage~~ withholding order, or revised order if one is already in place,
1109 shall be imposed on the payor. No more than an additional twenty percent (20%)
1110 of the current support payment order can be withheld to satisfy the delinquency
1111 provided that the total amount withheld does not exceed forty percent (40%) of the
1112 obligor's monthly income.

1113 (c) If a permissible objection is filed, the obligor shall be entitled to a hearing before any
1114 enforcement action is taken.

1115 704.13-5. 2.4-3 Use of Mail for Notices. The Agency shall send notices related to the delinquency
1116 of an obligor and enforcement of a child support order by mail to the last-known mailing address
1117 provided by the obligor.

1118 (a) If the notice is returned, the Agency shall send notice to the obligor using the current
1119 employer mailing address provided by the obligor.

1120 (b) If the notice to the obligor mailed to the obligor's employer is returned, the Agency
1121 shall use all appropriate tribal, federal, state and local resources to ascertain an obligor's
1122 current mailing address.

1123 (c) If those resources are used for a period of ~~sixty~~ **thirty** (~~60~~) days and a verified mailing
1124 address has not been identified, the Agency may proceed with the administrative
1125 enforcement action.

1126 704.13-6. 2.4-4. Notice to the Obligee of Enforcement Proceedings. The Agency shall provide
1127 written notice to the obligee when an enforcement action has been initiated against the obligor or
1128 when the obligor requests a hearing and the hearing has been scheduled. The notice to the obligee
1129 shall be sent at the same time notice is sent to the obligor.

1130 704.13-7. 2.4-5. Notice to Individuals Other Than the Obligor with a Recorded Ownership Interest
1131 in Property. The Agency shall provide notice related to the seizure of property to any individual,
1132 other than the obligor, with a recorded ownership interest in property subject to seizure. The
1133 individual may request a hearing for a determination of the proportion of the value of the property
1134 that is attributable to his or her net contribution to the property. The hearing shall be requested
1135 within thirty (30) days after the notice was received by the individual.

1136
1137 **704.14. Alternative Payment Plans**

1138 704.14-1. 2.9-1 Applicability of Alternative Payment Plans. When an obligor is subject to
1139 administrative enforcement action, he or she may negotiate an alternative payment plan with the
1140 Agency.

1141 704.14-2. 2.9-2 Negotiation of an Alternative Payment Plan After Receiving Notice of an
1142 Enforcement Action.

1143 (a) In order to negotiate an alternative payment plan, an obligor shall submit a written
1144 request to the Agency.

1145 (1) A written request to negotiate an alternative payment plan received by the
1146 Agency within ten (10) business days after the date of notice shall stay any
1147 administrative enforcement action.

1148 (2) If a written request to negotiate an alternative payment plan is received by the
1149 Agency more than ten (10) business days after the date of notice, administrative
1150 enforcement action may be taken, ~~as long as the requirements of 2.9-3 and 2.9-4~~
1151 ~~are met.~~

1152 (3) If the Agency agrees to negotiate an alternative payment plan after the ten (10)
1153 business days after the date of notice, the Agency and obligor may agree to stay or
1154 suspend the administrative enforcement action.

1155 (b) An obligor may negotiate a plan with the Agency to have a license ~~suspension lifted~~
1156 ~~issued or renewed after it has been restricted, limited, suspended or refused.~~

1157 (c) Hearings for Negotiations of an Alternative Payment Plan. The obligor may submit a
1158 written request for a hearing ~~on the reasonableness of the plan within ten (10) business~~
1159 ~~days after the terms of the plan are agreed upon~~ with the Family Court regarding
1160 negotiations of an alternative payment plan in the following circumstances:

1161 (1) The obligor and the Agency have agreed to terms of a plan, but the obligor
1162 wants the Family Court to consider the reasonableness of the plan due to a
1163 substantial change of circumstances since the plan was agreed to by the Agency
1164 and the obligor.

1165 (A) The ~~the~~ obligor may submit this a written request for a hearing on the
1166 reasonableness of the plan within ten (10) business days after the terms of
1167 the plan are agreed upon.

1168 (2) ~~If the Agency and the obligor~~ The obligor and the Agency are unable to reach
1169 agreement on the terms of a plan a hearing may be conducted.

1170 (A) The Family Court may order a plan by setting conditions and/or
1171 payments in the amounts and at the times it considers reasonable.

1172 (d) ~~2.9-5. Proceeding with Administrative Enforcement Actions.~~ The Agency may
1173 continue with the administrative enforcement action if:

1174 (1a) the obligor and the Agency are unable to negotiate a plan;

1175 (2b) the Family Court determines that the plan is not reasonable; and/or

1176 (3e) the Family Court does not order a plan.

1177 704.14-3. ~~2.9-6~~ Disclosure of Income and Assets. The request to negotiate a plan shall include an
1178 agreement by the obligor to provide the Agency with a full disclosure of income and assets
1179 available. The obligor shall provide complete income and assets information to the Agency within
1180 five (5) business days of the request to negotiate a plan.

1181 704.14-4. ~~2.9-7~~ Terms of an Alternative Payment Plan.

1182 (a) An alternative payment plan may include a lump-sum payment, or periodic payments
1183 on the arrears, or both, subject to the following standards:

1184 (1) The sum of any periodic payment established under the plan and any other
1185 payment of support ordered by the Family Court, when subtracted from the
1186 obligor's gross income, may not leave the obligor below one hundred percent
1187 (100%) of the poverty line established under 42 U.S.C. §9902 (2) unless the obligor
1188 agrees otherwise.

1189 (2) When establishing an alternative payment plan, the Agency shall consider the
1190 factors used by the Family Court in determining whether the use of the percentage
1191 standard is unfair to the child or any of the parties.

1192 (b) Periodic payments under the plan may be made through income withholding in
1193 amounts in addition to the amount ordered in the child support order that is in effect.

1194 704.14-5. ~~2.9-3.~~ Staying Administrative Enforcement Actions. Administrative enforcement actions
1195 shall be stayed by the Agency while the obligor and the Agency are negotiating a plan, or, if a
1196 hearing is requested because an agreement cannot be reached or the reasonableness of the plan is
1197 questioned, until the Family Court determination has been made. To stay an administrative
1198 enforcement action means the following:

1199 (a) The obligor shall not be certified for denial, nonrenewal, restriction, or suspension of
1200 professional, occupational, fishing, recreational, motor vehicle and/or Oneida-issued
1201 licenses any State or Oneida-issued licenses;

1202 (b) Any frozen financial accounts shall remain frozen and shall not be seized; and

1203 (c) Personal property that has been seized shall not be sold.

1204 704.14-6. ~~2.9-4.~~ Suspension of Administrative Enforcement Actions.

1205 (a) When a plan has been negotiated between the obligor and the Agency, or the Family
1206 Court has determined that a plan is reasonable or has ordered a plan, the Agency shall
1207 suspend administrative enforcement actions as long as the obligor complies with the plan

1208 or requests a hearing because of a substantial change in circumstances which makes the
1209 plan unreasonable.

1210 (b) If an obligor makes an ~~full~~ arrears payment agreeable to the Agency, the administrative
1211 enforcement action shall be suspended.

1212 704.14-7. ~~2.9-8. Default on an Alternative Payment Plan.~~ In the event that the obligor defaults on
1213 the plan, the Agency shall notify the obligor in writing that an administrative enforcement action
1214 shall be implemented unless the ~~child support~~ lien is paid in full.

1215 704.14-8. ~~2.9-9. Renegotiation of an Alternative Payment Plan.~~ After the entry of an alternative
1216 payment plan, the plan may be renegotiated upon the written request of the obligor or Agency if
1217 the requesting party can show a substantial change in circumstances. A substantial change in
1218 circumstances includes any of the following:

1219 (a) A change in the obligor's income or assets, including the sale or purchase of real or
1220 personal property.;

1221 (b) A change in the obligor's earning capacity.; and/or

1222 (c) Any other factor that the Agency determines is relevant.

1223 2.9-10. ~~Obligors with Cases in Multiple Jurisdictions.~~

1224 (a) ~~When multiple child support agencies initiate administrative enforcement actions~~
1225 ~~against the same obligor, and the obligor negotiates an alternative payment plan with one~~
1226 ~~of the agencies, the plan does not preclude any other child support agency from~~
1227 ~~proceeding with its administrative enforcement action.~~

1228 (b) ~~If a child support agency which has a lien against property of an obligor negotiates an~~
1229 ~~alternative payment plan with the obligor, the agency may receive proceeds from the sale~~
1230 ~~of the obligor's personal property under the lien including, but not limited to, proceeds~~
1231 ~~from administrative enforcement actions taken by other child support agencies.~~

1232

1233 **704.15. Administrative Enforcement Action**

1234 704.15-1. The Agency shall have the authority to use administrative enforcement actions to
1235 enforce a child support order without obtaining an order from the Family Court in the event that
1236 an obligor is at least one (1) month delinquent in paying his or her child support obligations.

1237 704.15-2. ~~2.5-1 Liens.~~ The Agency shall have an obligor placed on the lien docket if the obligor
1238 owes a debt in one or more of the obligor's cases equal to or exceeding the monthly amount due
1239 or ~~five hundred dollars (\$500.00)~~, whichever is greater.

1240 (a) ~~2.5-2 Lien Amount.~~ The lien amount on the lien docket shall equal the sum of lien
1241 amounts from the cases in which the lien amount meets or exceeds the lien threshold.

1242 (b) ~~2.5-3 Filing Date.~~ The filing date on the lien docket is the date that a lien is first
1243 docketed and delivered to the register of deeds. The filing date is the effective date of the
1244 lien. The effective date does not change if the lien amount is adjusted up or down within
1245 five (5) years after the date that the lien is first docketed.

1246 (c) ~~2.5-4 Lien Priority.~~ The child support lien shall have priority over all other liens on
1247 property except:

1248 (1) ~~tax and special assessment liens.;~~

1249 (2) ~~purchase money mortgages.;~~

1250 (3) ~~construction liens.;~~

1251 (4) ~~environmental liens.;~~

1252 (5) ~~liens that are filed or recorded before the child support lien becomes effective.;~~

1253 and

1254 (6) ~~any other lien given priority under the law.~~

- 1255 (d) ~~(a)~~ Property subject to a lien includes personal property in which the obligor has a
1256 recorded ownership interest.
- 1257 (e) ~~Effect on a Good Faith Purchaser.~~ ~~(b)~~ A child support lien is not effective against a
1258 good faith purchaser of titled personal property unless the lien is recorded on the title.
- 1259 (f) ~~2.5-5 Credit Bureau Reporting.~~ The Agency may report the total amount of an obligor's
1260 liens to the credit bureau, so long as the lien is fully enforceable and the case is not barred
1261 from credit bureau reporting.
- 1262 ~~2.5-6. Denial of State-issued Grants and Loans. Wisconsin state agencies may deny grants~~
1263 ~~and loans to an obligor who is placed on the lien docket. These grants and loans include~~
1264 ~~student loans and higher education grants, as well as mortgage loans from the Wisconsin~~
1265 ~~Housing and Economic Development Authority (WHEDA).~~
- 1266 (g) ~~Agency Lien Responsibilities.~~ ~~2.5-7~~ The Agency shall, ~~either on its own or in~~
1267 ~~conjunction with the State,~~ be responsible for:
- 1268 (a1) updating the lien docket periodically;
- 1269 (b2) providing a copy of the lien docket to the appropriate register of deeds;
- 1270 (e3) responding to inquiries concerning information recorded on the lien docket;
- 1271 (d4) ensuring the satisfaction of a lien is recorded on the lien docket;
- 1272 (e5) renewing a lien if the lien amount equals or exceeds the lien threshold at the
1273 end of the five (5) year effective period;
- 1274 (1A) When a lien is renewed, the date on which the lien is renewed shall
1275 become the effective date of the lien, and a new five (5) year period shall
1276 commence.
- 1277 (f6) sending the obligor a notice when a lien has been renewed; and
- 1278 (g7) developing procedures for releasing a lien and releasing specific property from
1279 a lien.
- 1280 (h) ~~2.5-8 Financial Record Review.~~
- 1281 (a1) An obligor may request a financial record review, ~~in writing to the Agency~~
1282 within ten (10) business days of the date of notice of a lien, to determine the
1283 correctness of the financial records in a case. ~~The request shall be made in writing~~
1284 ~~to the Agency.~~
- 1285 (b2) Upon receiving a request for a financial record review, the Agency shall, at
1286 no charge to the obligor, provide the obligor with:
- 1287 (1A) all relevant financial records;
- 1288 (2B) information explaining how to interpret the records; and
- 1289 (3C) a form the obligor may use to identify any alleged errors in the records.
- 1290 (e3) Within twenty (20) days after receiving the relevant financial records, the
1291 obligor may:
- 1292 (1A) request a meeting with the Agency to review the financial records and
1293 to discuss any alleged errors; and/or
- 1294 (2B) provide a statement of alleged error on the documents.
- 1295 (Ai) The Agency shall review the records to determine whether the
1296 alleged error is correct and provide a written determination within
1297 sixty (60) days after the obligor's request for a financial record
1298 review is received as to whether the lien against the obligor is in the
1299 correct amount.
- 1300 (d4) The Agency may proceed with the lien if:

1301 (1A) the obligor does not request a meeting with the Agency or provide a
1302 statement of alleged error within twenty (20) days after receiving the
1303 financial records; ~~or~~
1304 (2B) no errors are found in the financial records of the case; or
1305 (3C) the arrears exceed the required threshold amount after any errors in
1306 the financial records are corrected.

1307 704.15-3. Seizure of Property. 2.6-1. When seizing property. The Agency shall have the authority
1308 to seize property, whether an account or personal property, of an obligor. The Agency shall
1309 presume that an obligor's equity or ownership in the property is an equal pro-rata share of the
1310 equity or ownership based on the number of individuals with a recorded ownership interest in the
1311 property.

1312 (a) 2.6-2 Account Seizure. Once a lien is placed against an obligor, the Agency may initiate
1313 an account seizure if ~~there is a lien against an obligor and~~ the lien amount in the obligor's
1314 case equals or exceeds ~~three hundred percent (300%)~~ of the monthly amount due in the
1315 order, or ~~one thousand dollars (\$1,000)~~, whichever is greater.

1316 (a1) The Agency may not issue a notice of seizure unless the sum of the funds in
1317 all of the obligor's financial accounts, minus expected seizure fees and any early
1318 withdrawal penalty, exceeds ~~five hundred dollars (\$500)~~. The first ~~five hundred~~
1319 dollars (\$500) of each account shall not be frozen and/or seized.

1320 (b2) The notice issued by the Agency shall instruct the financial institution of the
1321 following:

1322 (1A) The maximum amount frozen in an account may not exceed the
1323 amount specified by the Agency in the notice.

1324 (2B) The maximum amount frozen in an account may not exceed the
1325 obligor's ownership interest.

1326 (3C) A financial institution is not liable for encumbering or surrendering
1327 any assets held by the financial institution in response to instructions from
1328 the Agency for the purpose of enforcing a child support order.

1329 (b) 2.6-3 Seizure of Personal Property-Other than Financial Accounts. In addition to the
1330 requirements under (a) and (b) below, ~~Once a lien is placed against an obligor, the Agency~~
1331 may initiate the seizure of personal property if ~~there is a lien against an obligor and the lien~~
1332 amount equals or exceeds six hundred percent (600%) of the monthly amount due in the
1333 order. ~~Upon issuance of a written order of execution, non-exempt personal property may~~
1334 ~~be seized and sold in a reasonable manner after notice to the owner in payment of a child~~
1335 ~~support obligation that has been adjudicated delinquent by the Family Court. Ceremonial~~
1336 ~~or religious property and real property are exempt from such writs of execution~~

1337 (a1) Personal Property. The Agency may seize personal property if the obligor's
1338 equity in the property, minus expected seizure fees, exceeds ~~five hundred dollars~~
1339 (\$500) per item total.

1340 (b) The Tribe's "Disposition of Excess Tribal Property Policy" shall not apply to
1341 any property seized under this law.

1342 (2) Ceremonial or religious property and/or real property are exempt and shall not
1343 be seized by the Agency.

1344 (3) Process for Seizing Property. The Agency shall follow the following process
1345 for seizing personal property:

1346 (A) The Agency shall notify the obligor of the intent to request the Family
1347 Court to issue an order of execution for the seizure of property.

1348 (B) The Agency shall request the Family Court to grant a written order of
1349 execution for the seizure of property. The Agency shall provide the Family
1350 Court an affidavit that notice of this request has been provided to the
1351 obligor.

1352 (C) Upon issuance of a written order of execution by the Family Court,
1353 non-exempt personal property may be seized and sold in a reasonable
1354 manner.

1355 704.15-4. Attachment of Per Capita Payments. The Agency may initiate the attachment and/or
1356 seizure of per capita payments of tribal members of the Nation in accordance with applicable laws
1357 of the Nation.

1358 704.15-5. 2.7-2 License Suspension. (a) The Agency may initiate the suspension or denial of
1359 occupational, fishing, recreational, motor vehicle and/or Oneida issued licenses both State and
1360 Oneida issued licenses if there is a lien against an obligor that equals or exceeds three hundred
1361 percent (300%) of the monthly amount due in the child support order, or one thousand dollars
1362 (\$1000), whichever is greater.

1363 (a) The types of State or Oneida issued licenses that the Agency may initiate the suspension
1364 or denial of include, but are not limited to, vendor, professional, occupational, hunting,
1365 fishing, recreational, and/or motor vehicle licenses.

1366 (b) Suspension of an occupational and/or motor vehicle license shall be pursued only as a
1367 last resort and the Agency shall not initiate the suspension of an occupational and/or motor
1368 vehicle license(s) if:

1369 (1) there is an order in place that prohibits the suspension of the license(s);

1370 (2) the obligor has filed for bankruptcy; or

1371 (3) action has already been taken to suspend the license.

1372 (bc) When an Oneida-issued license is suspended, that suspension shall be binding on and
1373 given effect by the license issuing agencies. Orders affecting licenses issued by other
1374 governmental agencies shall be sent to such agencies for enforcement.

1375 704.15-6. Intercept of Lump-Sum Pension Payments, Judgments, and Settlements Intercepts.
1376 Once an obligor has been placed on the lien docket the Agency may initiate the intercept of lump-
1377 sum pension payments, judgments and/or settlements when an obligor has been placed on the lien
1378 docket.

1379 (a) When initiating the intercept of lump-sum pension payments, judgments and/or
1380 settlements, the Agency shall specify in the notice that the amount withheld from the lump-
1381 sum pension payment, judgment or settlement may not exceed the obligor's ownership
1382 interest in the payment.

1383 704.15-7. Tax and Lottery Intercepts. The Agency may coordinate with a federal or state agency
1384 in order to enforce a child support order through a tax and/or lottery intercept. Once an obligor
1385 has been notified that his or her tax refund and/or lottery winnings may be intercepted, that notice
1386 is valid until all arrears are paid in full.

1387 (a) Federal Tax Intercept. The Agency may certify a federal tax intercept when the
1388 requirements pertaining to federal tax intercept contained in an agreement between the
1389 State and the Nation have been met.

1390 (b) Wisconsin State Tax and/or Lottery Intercept. The Agency may certify a Wisconsin
1391 state tax intercept and/or a Wisconsin state lottery intercept, when the lottery winnings are
1392 one thousand dollars (\$1,000) or more, when the following requirements are met:

1393 (1) The arrears shall be at least one hundred and fifty dollars (\$150);

1394 (2) The arrears shall be at least thirty (30) days old; and

1395 (3) The arrears shall be for a minor child or a child who has reached the age of
1396 eighteen (18) within the last twenty (20) year.

1397 (e) Wisconsin Lottery Intercept. When a case is certified for Wisconsin state tax
1398 intercept, it shall also be automatically certified for Wisconsin lottery intercept for lottery
1399 winnings of one thousand dollars (\$1,000) or more.

1400 704.15-8. 2.7-5 Passport Denial. If a federal tax intercept is in place and the obligor owes five
1401 two thousand five hundred dollars (\$25,500) or more in arrears, an obligor may be denied a
1402 passport. The arrears must meet the criteria for federal tax intercept in order for passport denial to
1403 be used as an enforcement tool. An obligor shall be removed from the passport denial list if:

- 1404 (a) The federal tax intercept certification amount is zero (0);
1405 (b) The obligor makes a lump-sum payment and/or negotiates a payment plan with the
1406 Agency;
1407 (c) The obligor has to travel abroad because of a life-or-death situation involving an
1408 immediate family member, such as the obligor's parent, guardian, step parent, child,
1409 stepchild, grandparent, sibling, step sibling, aunt, uncle or spouse; or
1410 (d) The obligor was denied a passport in error.

1411
1412 **704.16. Family Court Contempt Enforcement Action**

1413 704.16-1. 2.8-1 If the Agency does not have the authority to conduct the appropriate enforcement
1414 action, or the obligor is unresponsive to the enforcement actions being imposed by the Agency,
1415 the case shall be referred to the Agency shall file a motion for contempt with the Family Court for
1416 enforcement. 2.8-2 During a contempt proceeding tThe Family Court may order any of the
1417 enforcement actions the Agency is authorized to implement, in addition to the contempt actions
1418 described in this section. In addition, the Family Court may order the following to enforce a child
1419 support order:

1420 704.16-2. 2.8-2(d) Contempt. The Family Court may hold aAn obligor who disobeys a fails to
1421 comply with a lawful child support order in contempt. An obligor found to be in contempt shall be
1422 subject to any of the folloing punishments: for contempt of court.

1423 (a)-2.8-2(e) Community Service. The Family Court may order an obligor to perform
1424 community service. The number of hours of work required may not exceed what would
1425 be reasonable considering the amount of arrears the obligor owes. The obligor shall be
1426 provided a written statement of the terms of the community service order and that the
1427 community service order is monitored. The order shall specify:

- 1428 (1) how many hours of community service the obligor is required to complete;
1429 (2) the time frame in which the hours must be completed;
1430 (3) how the obligor will report his or her hours; and
1431 (4) any other information the Family Court determines is relevant.

1432 (b) Fines. An obligor found in contempt of court may be fined in an amount not to exceed
1433 one thousand dollars (\$1,000.00) per act of contempt and may not exceed five thousand
1434 dollars (\$5,000.00) in total. In instances of continuing contempt, each day shall constitute
1435 a separate act of contempt.

1436 (c) 2.8-2(e) Incarceration. The Family Court may order an obligor be incarcerated,
1437 contingent on the agreements necessary to enable the Tribe to incarcerate individuals.
1438 Before a jail sentence is imposed, the Family Court may provide other conditions that
1439 require a certain amount of money be paid or action be taken for an obligor to avoid
1440 incarceration.

1441 (d) 2.8-3 Criminal Non-Support. A criminal non-support action may be initiated, in the
1442 appropriate county, against an obligor who has the ability to pay child support and willfully
1443 or intentionally failed to pay and the obligor knew or reasonably should have known he or
1444 she was legally obligated to provide.

1445 (e) 2.8-2(a) Bonds and Other Guarantees. The Family Court may require an obligor to
1446 provide a surety, bond or guarantee to secure the payment of arrears, if ~~wage-income~~
1447 ~~withholding is not applicable, practical, or feasible to secure payment of arrears.~~

1448 (f) 2.8-2(b) Claims Against Estates. ~~(1) The Family Court may approve a claim for past~~
1449 ~~and future support against an obligor's estate. (2) The Family Court may issue a restraining~~
1450 ~~order against an estate from which an obligor will inherit.~~

1451 1452 **704.17. Full Faith and Credit for Foreign Child Support Orders**

1453 704.~~17~~-1. ~~Properly issued child~~ Child support orders, ~~and~~ judgments, or decrees of other Indian
1454 federally recognized tribes, ~~tribal organizations~~, and states, that relate to child support shall be
1455 recognized and modified in accordance with the requirements under the Full Faith and Credit for
1456 Child Support Orders Act, 28 U.S.C. 1738B.

1457 704.~~17~~-2. A foreign order is authenticated by reasonable proof that the document tendered to
1458 the Family Court is a true certified copy of the foreign order as it is recorded in the agency or court
1459 of the issuing jurisdiction. An authentication stamp issued by a court clerk or custodian of records,
1460 or a court seal, is sufficient evidence of authenticity.

1461 704.~~17~~-3. Unless defects in jurisdiction are apparent on the face of the foreign order, the person
1462 contesting enforcement of the order has the burden of showing the order is not valid. Upon a
1463 failure to respond to notice of the order and to timely contest it, the Family Court shall enforce it
1464 as an order of the Family Court ~~order~~.

1465 704.~~17~~-4. If a foreign order is brought before the Family Court solely for an interpretation of
1466 the terms of the order, and the order has been recognized and given full faith and credit by the
1467 Family Court, the Family Court shall interpret the order by applying the law of the forum that
1468 issued the foreign order.

1469 1470 **704.18. Right of Appeal**

1471 704.~~18~~-1. Appeals of Administrative Enforcement Action. Any enforcement action implemented
1472 by the Agency may be appealed to the Family Court within thirty (30) calendar days after the date
1473 that the action is enforced, ~~be appealed to the Family Court~~. The decision of the Family Court as
1474 to the Agency's administrative enforcement action shall be final and non-appealable.

1475 704.~~18~~-2. Appeals of Family Court Decisions. ~~If the Family Court conducts a hearing under this~~
1476 ~~law a~~ A party may appeal a Family Court decision, other than the decision of the Family Court in
1477 regard to administrative enforcement action as referenced in section 704.18-1, to the Nation's
1478 Court of Appeals within thirty (30) calendar days after the date ~~that~~ the Family Court ~~makes a~~
1479 ~~made the~~ decision, ~~appeal that decision to the Court of Appeals of the Judiciary~~. The appellate
1480 body review of the Court of Appeals shall be based on the record and the original decision of the
1481 Family Court.

1482
1483 *End.*

1484 Emergency Adopted - BC-06-30-08-C (Expired)
1485 Emergency Extended - BC-12-10-08-H (Expired)
1486 Permanently Adopted- BC-06-24-09-B
1487 Emergency Amended - BC-10-28-09-E
1488 Amended - BC-02-24-10-G
1489 Amended - BC-06-22-11-K

1490 Amended - BC-10-10-12-C
1491 Amended - BC-08-13-14-E
1492 Amended - BC-_-_-_-_-

Rule CS-1

~~DEVIATION FROM CHILD SUPPORT PERCENTAGE STANDARDS~~

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

1.1. Introduction

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

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

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

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

1.2. Definitions

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

~~(a) "Adjusted monthly income" means the monthly income at which child support is determined for serial family obligors, which is the obligor's monthly income less the amount of any existing legal obligation for child support.~~

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

~~(c) "Basic support costs" means food, shelter, clothing, transportation, personal care, and incidental recreational costs.~~

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

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

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

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

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

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

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

- 1538 ~~(k) “Gross income” means any form of payment due to an individual regardless of source,~~
1539 ~~including, but not limited to:~~
- 1540 ~~(1) Salary and wages, including overtime pay.~~
 - 1541 ~~(2) Interest and investment income.~~
 - 1542 ~~(3) Social Security disability and old age insurance benefits under 42 USC 401 to~~
1543 ~~433.~~
 - 1544 ~~(4) Net proceeds resulting from worker’s compensation or other personal injury~~
1545 ~~awards intended to replace income.~~
 - 1546 ~~(5) Unemployment insurance.~~
 - 1547 ~~(6) Income continuation benefits.~~
 - 1548 ~~(7) Voluntary deferred compensation and voluntary employee contributions to the~~
1549 ~~following: employee benefit plan, profit sharing, pension or retirement account.~~
 - 1550 ~~(8) Military allowances and veterans benefits.~~
 - 1551 ~~(9) Undistributed income of a corporation or any partnership in which the parent~~
1552 ~~has an ownership interest sufficient to individually exercise control or to access the~~
1553 ~~earnings of the business, unless the income included is an asset.~~
 - 1554 ~~(10) Per capita distribution payments.~~
 - 1555 ~~(11) Lease or rental income.~~
 - 1556 ~~(12) Prizes over \$1,000.00.~~
 - 1557 ~~(13) All other income, whether taxable or not, except that gross income does not~~
1558 ~~include any of the following:~~
 - 1559 ~~(A) Child support.~~
 - 1560 ~~(B) Foster care payments.~~
 - 1561 ~~(C) Kinship care payments.~~
 - 1562 ~~(D) Public assistance benefits, except that child care subsidy payments shall~~
1563 ~~be considered income to a child care provider.~~
 - 1564 ~~(E) Food stamps.~~
 - 1565 ~~(F) Public assistance or financial hardship payments paid by a county or a~~
1566 ~~tribe.~~
 - 1567 ~~(G) Supplemental Security Income under 42 USC 1381 to 1383(f) and state~~
1568 ~~supplemental payments.~~
 - 1569 ~~(H) Payments made for social services.~~
- 1570 ~~(l) “Income imputed based on earning capacity” means the amount of income that exceeds~~
1571 ~~the parent’s actual income and represents the parent’s ability to earn, based on the parent’s~~
1572 ~~education, training and recent work experience, earnings during previous periods, current~~
1573 ~~physical and mental health, history of child care responsibilities as the parent with primary~~
1574 ~~physical placement, and the availability of work in or near the parent’s community.~~
- 1575 ~~(m) “Income imputed from assets” means the amount of income ascribed to assets that are~~
1576 ~~unproductive and to which income has been diverted to avoid paying child support or from~~
1577 ~~which income is necessary to maintain the child or children at the standard of living they~~
1578 ~~would have if they were living with both parents, and that exceeds the actual income from~~
1579 ~~the assets.~~
- 1580 ~~(n) “Income modified for business expenses” means the amount of income after adding~~
1581 ~~wages paid to dependent household members, adding undistributed income that the Family~~
1582 ~~Court determines is not reasonably necessary for the growth of the business, and~~
1583 ~~subtracting business expenses that the Family Court determines are reasonably necessary~~
1584 ~~for the production of that income or operation of the business and that may differ from the~~
1585 ~~determination of allowable business expenses for tax purposes.~~

- 1586 ~~(o) “Intact family” means a family in which the child or children and the obligor reside in~~
1587 ~~the same household and the obligor shares his or her income directly with the child or~~
1588 ~~children and has a legal obligation to support the child or children.~~
1589 ~~(p) “Low income obligor” means an obligor for whom the Family Court uses the monthly~~
1590 ~~support amount provided in the schedule in Appendix A based on the Family Court’s~~
1591 ~~determination that the obligor’s total economic circumstances limit his or her ability to pay~~
1592 ~~support at the level provided under 704.7-2(a) and the obligor’s income is at a level set~~
1593 ~~forth in the schedule in Appendix A.~~
1594 ~~(q) “Marital child” means a child born during the marriage of his or her parents. In~~
1595 ~~addition, if the father and mother of a non-marital child enter into a lawful marriage or a~~
1596 ~~marriage which appears and they believe is lawful, except where the parental rights of the~~
1597 ~~mother were terminated before either of these circumstances, the child becomes a marital~~
1598 ~~child and shall enjoy all of the rights and privileges of a marital child as if he or she had~~
1599 ~~been born during the marriage of the parents. The children of all marriages declared void~~
1600 ~~under the law are nevertheless marital children.~~
1601 ~~(r) “Monthly income” means the obligor’s income available for child support and is the~~
1602 ~~obligor’s annual gross income or, if applicable, the obligor’s annual income modified for~~
1603 ~~business expenses; plus the obligor’s annual income imputed based on earning capacity;~~
1604 ~~plus the obligor’s annual income imputed from assets; divided by twelve (12).~~
1605 ~~(s) “Parent” means the natural or adoptive parent of the child.~~
1606 ~~(t) “Obligee” means the person or entity to whom child support is owed.~~
1607 ~~(u) “Obligor” means the person who is obliged to pay child support to the obligee.~~
1608 ~~(v) “Serial family obligor” means an obligor with an existing legal obligation for child~~
1609 ~~support who incurs an additional legal obligation for child support in a subsequent family~~
1610 ~~as a result of a child support order.~~
1611 ~~(w) “Shared-placement obligor” means a parent who has an ordered period of placement~~
1612 ~~of at least twenty five percent (25%), is ordered by the Family Court to assume the child’s~~
1613 ~~basic support costs in proportion to the time that the parent has placement of the child and~~
1614 ~~is determined to owe a greater support amount than the other parent.~~
1615 ~~(x) “Split-placement obligor” means a obligor who has two (2) or more children and who~~
1616 ~~has physical placement of one (1) or more but not all of the children.~~
1617 ~~(y) “Variable costs” means the reasonable costs above basic support costs incurred by or~~
1618 ~~on behalf of a child, including but not limited to, the cost of child care, tuition, a child’s~~
1619 ~~special needs, and other activities that involve substantial cost.~~

1.3. Support Orders

1622 ~~1.3-1. Determining Income Modified for Business Expenses. In determining a parent’s monthly~~
1623 ~~income, the Family Court may adjust a parent’s gross income as follows:~~

- 1624 ~~(a) Adding wages paid to dependent household members.~~
1625 ~~(b) Adding undistributed income that the Family Court determines is not reasonably~~
1626 ~~necessary for the growth of the business. The parent shall have the burden of proof to show~~
1627 ~~that any undistributed income is reasonably necessary for the growth of the business.~~
1628 ~~(c) Reducing gross income by the business expenses that the Family Court determines are~~
1629 ~~reasonably necessary for the production of that income or operation of the business and~~
1630 ~~that may differ from the determination of allowable business expenses for tax purposes.~~

1631 ~~1.3-2. Determining Income Imputed Based on Earning Capacity. When a parent’s income is less~~
1632 ~~than the parent’s earning capacity or is unknown, the Family Court may impute income to the~~
1633 ~~parent at an amount that represents the parent’s ability to earn, based on the parent’s education,~~

1634 ~~training and recent work experience, earnings during previous periods, current physical and mental~~
1635 ~~health, history of child care responsibilities as the parent with primary physical placement and the~~
1636 ~~availability of work in or near the parent's community. If evidence is presented that due diligence~~
1637 ~~has been exercised to ascertain information on the parent's actual income or ability to earn and~~
1638 ~~that information is unavailable, the Family Court may impute to the parent the income that a person~~
1639 ~~would earn by working thirty-five (35) hours per week for the federal minimum hourly wage under~~
1640 ~~29 USC 206 (a)(1). If a parent has gross income or income modified for business expenses below~~
1641 ~~his or her earning capacity, the income imputed based on earning capacity shall be the difference~~
1642 ~~between the parent's earning capacity and the parent's gross income or income modified for~~
1643 ~~business expenses.~~

1644 ~~1.3.3. *Determining Income Imputed From Assets.*~~

1645 ~~(a) The Family Court may impute a reasonable earning potential to a parent's assets if the~~
1646 ~~Family Court finds both of the following:~~

1647 ~~(1) The parent has ownership and control over any real or personal property,~~
1648 ~~including but not limited to, life insurance, cash and deposit accounts, stocks and~~
1649 ~~bonds, business interests, net proceeds resulting from worker's compensation or~~
1650 ~~other personal injury awards not intended to replace income, and cash and corporate~~
1651 ~~income in a corporation in which the parent has an ownership interest sufficient to~~
1652 ~~individually exercise control and the cash or corporate income is not included as~~
1653 ~~gross income.~~

1654 ~~(2) The parent's assets are underproductive and at least one (1) of the following~~
1655 ~~applies:~~

1656 ~~(a) The parent has diverted income into assets to avoid paying child~~
1657 ~~support.~~

1658 ~~(b) Income from the parent's assets is necessary to maintain the child or~~
1659 ~~children at the standard of living they would have had if they were living~~
1660 ~~with both parents.~~

1661 ~~(b) The Family Court shall impute income to assets by multiplying the total net value of~~
1662 ~~the assets by the current 6-month treasury bill rate or any other rate that the Family Court~~
1663 ~~determines is reasonable and subtracting the actual income from the assets that were~~
1664 ~~included as gross income.~~

1665 ~~1.3.4. *Adjustment for Child's Social Security.* The Family Court may include benefits received~~
1666 ~~by a child under 42 USC 402(d) based on a parent's entitlement to federal disability or old-age~~
1667 ~~insurance benefits under 42 USC 401 to 433 in the parent's gross income and adjust a parent's~~
1668 ~~child support obligation by subtracting the amount of the child's social security benefit. In no case~~
1669 ~~may this adjustment require the obligee to reimburse the obligor for any portion of the child's~~
1670 ~~benefit.~~

1671 ~~1.3.5. *Expression of Ordered Support.* The support amount shall be expressed as a fixed sum~~
1672 ~~unless the parties have stipulated to expressing the amount as a percentage of the obligor's income~~
1673 ~~and the stipulation requirements of Chapter 704 are satisfied.~~

1674 ~~1.3.6. *Trust.* The Family Court may protect and promote the best interests of the minor children~~
1675 ~~by setting aside a portion of the child support that either party is ordered to pay in a separate fund~~
1676 ~~or trust for the support, education, and welfare of such children.~~

1677 ~~1.3.7. *Dependency Exemption.* The Family Court may order the obligee to waive the federal~~
1678 ~~dependency exemption provided that the obligee's execution of the exemption waiver is made~~
1679 ~~contingent on the receipt of child support payments.~~

1680

1681 ~~1.4. *Determining the Child Support Obligation in Special Circumstances*~~

- 1682 1.4.1. Determining the Child Support Obligation of a Serial Family Obligor.
1683 (a) Applicability. This subsection applies only if the additional child support obligation
1684 incurred by an obligor is the result of a child support order and the support obligation being
1685 calculated is for children from a subsequent family or subsequent paternity judgment or
1686 acknowledgment. An obligor may not use the provisions of this section as a basis for
1687 seeking modification of an existing order based on a subsequently incurred legal obligation
1688 for child support.
1689 (b) Determination. For a serial family obligor, the child support obligation incurred for a
1690 marital or nonmarital child in a subsequent family as a result of a child support order may
1691 be determined as follows:
1692 (1) Determine the obligor's monthly income;
1693 (2) Determine the order of the obligor's legal obligations for child support by
1694 listing them according to the date each obligation is incurred. For a marital child,
1695 the legal obligation for child support is incurred on the child's date of birth. For a
1696 nonmarital child, the legal obligation for child support is incurred on the date of the
1697 child support order. For a nonmarital child in an intact family, it is incurred on the
1698 date of adoption or the date of the filing of an acknowledgement of paternity. For
1699 a nonmarital maternal child in an intact family, it is incurred on the child's date of
1700 birth;
1701 (3) Determine the first child support obligation as follows:
1702 (a) If the obligor is subject to an existing support order for that legal
1703 obligation, except a shared placement order, the support for that obligation
1704 is the monthly amount of that order; or
1705 (b) If the obligor is in an intact family or is subject to a shared placement
1706 order, the support is determined by multiplying the appropriate percentage
1707 for that number of children by the obligor's monthly income;
1708 (4) Adjust the monthly income by subtracting the support for the first legal
1709 obligation under (3) from the obligor's monthly income under (1);
1710 (5) Determine the second child support obligation as follows:
1711 (a) If the obligor is subject to an existing support order for that legal
1712 obligation, except a shared placement order, the support for that obligation
1713 is the monthly amount of that order; or
1714 (b) If the obligor is in an intact family or is subject to a shared placement
1715 order, the support is determined by multiplying the appropriate percentage
1716 for that number of children by the obligor's monthly income;
1717 (6) Adjust the monthly income a second time by subtracting the support for the
1718 second legal obligation determined under (5) from the first adjusted monthly
1719 income determined under (4);
1720 (7) Repeat the procedure under (5) and (6) for each additional legal obligation for
1721 child support the serial family obligor has incurred;
1722 (8) Multiply the appropriate percentage for the number of children subject to the
1723 new order by the final adjusted monthly income determined in either (6) or (7) to
1724 determine the new child support obligation.

1725 Note: The following example shows how the child support obligation is determined for a serial-
1726 family obligor whose additional child support obligation has been incurred for a subsequent
1727 family.

1728 Assumptions:

- 1729 ● ~~Parent A's current monthly income is \$3000.~~
- 1730 ● ~~Parent A and Parent B were married, had a child in 1990 and divorced in 1991. Parent~~
- 1731 ~~A is subject to an existing support order of \$450 per month.~~
- 1732 ● ~~Parent A remarries and has two children, one born in 1996 and the other in 1997, and~~
- 1733 ~~remains an intact family.~~
- 1734 ● ~~Parent A was adjudicated the father in 1998 for a child born in 1995. Child support~~
- 1735 ~~needs to be established for this child.~~

1736
1737 ~~Order of parent A's legal obligation for child support:~~

- 1738 ● ~~First legal obligation: one child (1990) (divorcee)~~
- 1739 ● ~~Second legal obligation: 2 children (1996 and 1997) (intact family)~~
- 1740 ● ~~Third legal obligation: one child (1998) (paternity)~~

1741
1742 ~~Calculation:~~

- 1743 ● ~~Parent A's current monthly income \$3000.~~
- 1744 ● ~~The first legal obligation is subject to an existing monthly support order (divorcee) \$450.~~
- 1745 ● ~~Adjust the monthly income \$3000 - 450~~
- 1746 ● ~~First adjusted monthly income \$2550~~
- 1747 ● ~~Determine support for the second legal obligation (intact family) \$2550 x .25 \$637.50~~
- 1748 ● ~~Adjust the first adjusted monthly income \$2550 - 637.50~~
- 1749 ● ~~Second adjusted monthly income \$1912.50~~
- 1750 ● ~~Determine support for the third legal obligation (paternity) \$1912.50 x .17 \$ 325.12~~

1751
1752 ~~1.4.2. Determining the Child Support Obligations of Shared Placement Parents.~~

1753 ~~(a) The shared placement formula may be applied when both of the following conditions~~

1754 ~~are met:~~

1755 ~~(1) Both parents have periods of placement of at least twenty five percent (25%)~~

1756 ~~or ninety two (92) days a year. The period of placement for each parent shall be~~

1757 ~~determined by calculating the number of overnights or equivalent care ordered to~~

1758 ~~be provided by the parent and dividing that number by 365. The combined periods~~

1759 ~~of placement for both parents shall equal 100%.~~

1760 ~~(2) Each parent is ordered by the Family Court to assume the child's basic support~~

1761 ~~costs in proportion to the time that the parent has placement of the child.~~

1762 ~~(b) The child support obligations for parents who meet the requirements of (a) may be~~

1763 ~~determined as follows:~~

1764 ~~(1) Determine each parent's monthly income. In determining whether to impute~~

1765 ~~income based on earning capacity for an unemployed parent or a parent employed~~

1766 ~~less than full time under 1.3.2, the Family Court shall consider benefits to the child~~

1767 ~~of having a parent remain in the home during periods of placement and the~~

1768 ~~additional variable day care costs that would be incurred if the parent worked more.~~

1769 ~~(2) Multiply each parent's monthly income by the appropriate percentage standard~~

1770 ~~under 704.7.~~

1771 ~~(3) Multiply each amount determined under (2) by 150%.~~

1772 ~~(4) Multiply the amount determined for each parent under (3) by the proportion of~~

1773 ~~the time that the child spends with the other parent to determine each parent's child~~

1774 ~~support obligation.~~

~~(5) Offset resulting amounts under (4) against each other. The parent with a greater child support obligation is the shared placement obligor. The shared placement obligor shall pay the lesser of the amount determined under this section or the amount determined using the appropriate percentage standard under 704.7. If the shared placement obligor is also a low income obligor, the child support obligation may be the lesser of the amount determined under this section or under 1.4.4.~~
~~(6) In addition to the child support obligation determined under (5), the Family Court shall assign responsibility for payment of the child's variable costs in proportion to each parent's share of physical placement, with due consideration to a disparity in the parents' incomes. The Family Court shall direct the manner of payment of a variable cost order to be either between the parents or from a parent to a third party service provider. The Family Court shall not direct payment of variable costs to be made to the Agency or the Agency's designee, except as incorporated in the fixed sum or percentage expressed child support order.~~

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

- ~~• Number of children: Two~~
- ~~• Parent A: \$2,000 monthly income~~
- ~~• Ordered placement of the child for 219 days a year or 60%~~
- ~~• Parent B: \$3,000 monthly income~~

~~Ordered placement of the child for 146 days a year or 40%~~

	Parent A	Parent B
1. Monthly income	\$2,000	\$3,000
2. Monthly income X percentage standard for two children	$\$2,000 \times 25\% = \500	$\$3,000 \times 25\% = \750
3. Amount in 2. X 150%.	$\$500 \times 150\% = \750	$\$750 \times 150\% = \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.	

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

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

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

1808 ~~Assumptions:~~

- 1809 ~~• Parent A and B have 3 children.~~
- 1810 ~~• Parent A has placement of one child and Parent B has placement of 2 children.~~
- 1811 ~~• Parent A's monthly income is \$3,000.~~
- 1812 ~~• Parent B's monthly income is \$1,500.~~

1813 ~~Calculation:~~

- 1814 ~~• Parent A's child support obligation is $\$3,000 \times 25\% = 750$~~
- 1815 ~~• Parent B's child support obligation is $\$1,500 \times 17\% = 255$~~
- 1816 ~~• Parent A owes Parent B $750 - 255 = \$495$~~

1817 ~~1.4.4. Determining the Child Support Obligation of a Low Income Obligor.~~

1818 ~~(a) The Family Court may use the monthly support amount provided in the schedule in Appendix~~
1819 ~~A as the support amount for an obligor with a monthly income at a level set forth in the schedule~~
1820 ~~if the obligor's total economic circumstances limit his or her ability to pay support at the level~~
1821 ~~determined under 704.7. If an obligor's monthly income is below the lowest income level in~~
1822 ~~Appendix A, the Family Court may set an order at an amount appropriate for the obligor's total~~
1823 ~~economic circumstances. This amount may be lower than the lowest support amount in Appendix~~
1824 ~~A.~~

1825 ~~(b) The Agency shall revise the schedule in Appendix A at least once every four (4) years. The~~
1826 ~~revision shall be based on changes in the federal poverty guidelines since the schedule was last~~
1827 ~~revised.~~

1828 ~~Note: The schedule in Appendix A provides reduced percentage rates that may be used to~~
1829 ~~determine the child support obligation for obligors with an income below approximately 125% of~~
1830 ~~the federal poverty guidelines. If an obligor's monthly income is below approximately 75% of the~~
1831 ~~federal poverty guidelines, the Family Court may order an amount appropriate for the obligor's~~
1832 ~~total economic circumstances. For monthly income amount for child support between~~
1833 ~~approximately 75% and 125% of the federal poverty guidelines, the percentage rates in the~~
1834 ~~schedule gradually increase as income increases. The percentage rates used in 704.7 apply to~~
1835 ~~obligors with income greater than or equal to approximately 125% of the federal poverty~~
1836 ~~guidelines.~~

1837 ~~End.~~

1838

1839

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.~~

1889 ~~(c) If the party fails to respond to the second Letter within five (5) business days after~~
1890 ~~receipt of the letter, the Agency shall proceed with appropriate enforcement action.~~

1891 ~~(d) If the party responds to the Letter, the Agency shall interview the party to determine~~
1892 ~~the reasons and barriers for the non-compliance and create a Compliance Plan. The~~
1893 ~~Compliance Plan may include an increase in payment and/or any activity that is necessary~~
1894 ~~to ensure payment, including programs that focus on:~~

- 1895 ~~(1) Employment and training;~~
1896 ~~(2) Social service and mental health;~~
1897 ~~(3) Physical and learning disabilities;~~
1898 ~~(4) Tribal traditions and customs;~~
1899 ~~(5) Family counseling.~~

1900 ~~(e) If the party successfully completes the Compliance Plan, no further enforcement action~~
1901 ~~is necessary. However, if the party fails to complete the Compliance Plan, the Agency~~
1902 ~~shall proceed with appropriate enforcement action.~~

1904 **2.4. Notice of Enforcement Actions**

1905 ~~2.4.1. The enforcement actions in this rule may be applied when an obligor is no longer in~~
1906 ~~compliance with a child support order and is not making efforts to comply with the order. An~~
1907 ~~obligor shall be provided with at least thirty (30) days notice before an enforcement action is~~
1908 ~~utilized, unless another time line is specified within this rule. An enforcement action shall be stayed~~
1909 ~~and/or suspended after notice is given to the obligor if the obligor pays the debt in full or enters~~
1910 ~~into, and maintains, an alternative payment plan.~~

1911 ~~2.4.2. Notice of Delinquency. In the event that an obligor owes a debt equal to or exceeding the~~
1912 ~~monthly amount due, the Agency shall send a notice of delinquency to the obligor.~~

1913 ~~(a) The notice shall inform the obligor of the following:~~

- 1914 ~~(1) The dates that the delinquency accrued;~~
1915 ~~(2) The total amount of the delinquency;~~
1916 ~~(3) Any prior agreement or showing of good cause to not wage withhold may be~~
1917 ~~terminated and the obligor may be subject to wage withholding;~~
1918 ~~(4) The enforcement action that may be taken as a result of the delinquency;~~
1919 ~~(5) The obligor may request, in writing to the Agency, to negotiate an alternative~~
1920 ~~payment plan with the Agency within ten (10) business days after the service of~~
1921 ~~notice in order to stay any enforcement action;~~
1922 ~~(6) The obligor has ten (10) business days after the service of the notice of~~
1923 ~~delinquency to file an objection with the Agency presenting good cause why an~~
1924 ~~arrears payment or other enforcement action should not be implemented. The only~~
1925 ~~allowable objections are:~~

- 1926 ~~(A) There is an error in the amount of current or overdue support; or~~
1927 ~~(B) The identity of the obligor is mistaken.~~

1928 ~~(b) If the obligor does not file an objection or request to negotiate an alternative payment~~
1929 ~~plan:~~

- 1930 ~~(1) the enforcement action shall be taken; and/or~~
1931 ~~(2) a wage withholding order, or revised order if one is already in place, shall be~~
1932 ~~imposed on the payor. No more than an additional twenty percent (20%) of the~~
1933 ~~current support payment order can be withheld to satisfy the delinquency provided~~
1934 ~~that the total amount withheld does not exceed forty percent (40%) of the obligor's~~
1935 ~~monthly income.~~

1936 ~~(c) If a permissible objection is filed, the obligor shall be entitled to a hearing before any~~
1937 ~~enforcement action is taken.~~

1938 ~~2.4 3. Use of Mail. The Agency shall send notices related to the enforcement of a child support~~
1939 ~~order by mail to the last known mailing address provided by the obligor. If the notice is returned,~~
1940 ~~the Agency shall send notice to the obligor using the current employer mailing address provided~~
1941 ~~by the obligor. If the notice to the obligor mailed to the obligor's employer is returned, the Agency~~
1942 ~~shall use all appropriate tribal, federal, state and local resources to ascertain an obligor's current~~
1943 ~~mailing address. If those resources are used for a period of sixty (60) days and a verified mailing~~
1944 ~~address has not been identified, the Agency may proceed with the administrative enforcement~~
1945 ~~action.~~

1946 ~~2.4 4. Notice to the Obligee of Enforcement Proceedings. The Agency shall provide written notice~~
1947 ~~to the obligee when an enforcement action has been initiated against the obligor or when the~~
1948 ~~obligor requests a hearing and the hearing has been scheduled. The notice to the obligee shall be~~
1949 ~~sent at the same time notice is sent to the obligor.~~

1950 ~~2.4 5. Notice to Individuals Other Than the Obligor with a Recorded Ownership Interest in~~
1951 ~~Property. The Agency shall provide notice related to the seizure of property to any individual,~~
1952 ~~other than the obligor, with a recorded ownership interest in property subject to seizure. The~~
1953 ~~individual may request a hearing for a determination of the proportion of the value of the property~~
1954 ~~that is attributable to his or her net contribution to the property. The hearing shall be requested~~
1955 ~~within thirty (30) days after the notice was received by the individual.~~

1956
1957 **2.5. Liens**

1958 ~~2.5 1. The Agency shall have an obligor placed on the lien docket if the obligor owes a debt in~~
1959 ~~one or more of the obligor's cases equal to or exceeding the monthly amount due or \$500.00,~~
1960 ~~whichever is greater.~~

1961 ~~2.5 2. Lien Amount. The lien amount on the lien docket shall equal the sum of lien amounts from~~
1962 ~~the cases in which the lien amount meets or exceeds the lien threshold.~~

1963 ~~2.5 3. Filing Date. The filing date on the lien docket is the date that a lien is first docketed and~~
1964 ~~delivered to the register of deeds. The filing date is the effective date of the lien. The effective~~
1965 ~~date does not change if the lien amount is adjusted up or down within five (5) years after the date~~
1966 ~~that the lien is first docketed.~~

1967 ~~2.5 4. Lien Priority. The child support lien shall have priority over all other liens on property~~
1968 ~~except tax and special assessment liens, purchase money mortgages, construction liens,~~
1969 ~~environmental liens, liens that are filed or recorded before the child support lien becomes effective~~
1970 ~~and any other lien given priority under the law.~~

1971 ~~(a) Property subject to a lien includes personal property in which the obligor has a recorded~~
1972 ~~ownership interest.~~

1973 ~~(b) A child support lien is not effective against a good faith purchaser of titled personal~~
1974 ~~property unless the lien is recorded on the title.~~

1975 ~~2.5 5. Credit Bureau Reporting. The Agency may report the total amount of an obligor's liens to~~
1976 ~~the credit bureau, so long as the lien is fully enforceable and the case is not barred from credit~~
1977 ~~bureau reporting.~~

1978 ~~2.5 6. Denial of State issued Grants and Loans. Wisconsin state agencies may deny grants and~~
1979 ~~loans to an obligor who is placed on the lien docket. These grants and loans include student loans~~
1980 ~~and higher education grants, as well as mortgage loans from the Wisconsin Housing and Economic~~
1981 ~~Development Authority (WHEDA).~~

1982 ~~2.5 7. The Agency shall, either on its own or in conjunction with the State, be responsible for:~~

1983 ~~(a) updating the lien docket periodically.~~

- 1984 ~~(b) providing a copy of the lien docket to the appropriate register of deeds.~~
1985 ~~(c) responding to inquiries concerning information recorded on the lien docket.~~
1986 ~~(d) ensuring the satisfaction of a lien is recorded on the lien docket.~~
1987 ~~(e) renewing a lien if the lien amount equals or exceeds the lien threshold at the end of the~~
1988 ~~five (5) year effective period.~~
1989 ~~(1) When a lien is renewed, the date on which the lien is renewed shall become the~~
1990 ~~effective date of the lien, and a new five (5) year period shall commence.~~
1991 ~~(f) sending the obligor a notice when a lien has been renewed.~~
1992 ~~(g) developing procedures for releasing a lien and releasing specific property from a lien.~~

1993 2.5 8. Financial Record Review.

- 1994 ~~(a) An obligor may request a financial record review, within ten (10) business days of~~
1995 ~~receiving a notice of a lien, to determine the correctness of the financial records in a case.~~
1996 ~~The request shall be made in writing to the Agency.~~
1997 ~~(b) Upon receiving a request for a financial record review, the Agency shall, at no charge~~
1998 ~~to the obligor, provide the obligor with:~~
1999 ~~(1) all relevant financial records.~~
2000 ~~(2) information explaining how to interpret the records.~~
2001 ~~(3) a form the obligor may use to identify any alleged errors in the records.~~
2002 ~~(c) Within twenty (20) days after receiving the relevant financial records, the obligor may:~~
2003 ~~(1) request a meeting with the Agency to review the financial records and to discuss~~
2004 ~~any alleged errors.~~
2005 ~~(2) provide a statement of alleged error on the documents.~~
2006 ~~(A) The Agency shall review the records to determine whether the alleged~~
2007 ~~error is correct and provide a written determination within sixty (60) days~~
2008 ~~after the obligor's request for a financial record review is received as to~~
2009 ~~whether the lien against the obligor is in the correct amount.~~
2010 ~~(d) The Agency may proceed with the lien if:~~
2011 ~~(1) the obligor does not request a meeting with the Agency or provide a statement~~
2012 ~~of alleged error within twenty (20) days after receiving the financial records; or~~
2013 ~~(2) no errors are found in the financial records of the case; or~~
2014 ~~(3) the arrears exceed the required threshold amount after any errors in the financial~~
2015 ~~records are corrected.~~

2016
2017 2.6. Seizure of Property

- 2018 ~~2.6 1. When seizing property, the Agency shall presume that an obligor's equity or ownership in~~
2019 ~~the property, whether an account or personal property, is an equal pro-rata share of the equity or~~
2020 ~~ownership based on the number of individuals with a recorded ownership interest in the property.~~
2021 ~~2.6 2. Account Seizure. The Agency may initiate an account seizure if there is a lien against an~~
2022 ~~obligor and the lien amount in the obligor's case equals or exceeds 300% of the monthly amount~~
2023 ~~due in the order or \$1,000, whichever is greater.~~

- 2024 ~~(a) The Agency may not issue a notice of seizure unless the sum of the funds in all of the~~
2025 ~~obligor's financial accounts, minus expected seizure fees and any early withdrawal penalty,~~
2026 ~~exceeds \$500. The first \$500 of each account shall not be frozen and/or seized.~~
2027 ~~(b) The notice shall instruct the financial institution of the following:~~
2028 ~~(1) The maximum amount frozen in an account may not exceed the amount~~
2029 ~~specified by the Agency in the notice.~~
2030 ~~(2) The maximum amount frozen in an account may not exceed the obligor's~~
2031 ~~ownership interest.~~

2032 ~~(3) A financial institution is not liable for encumbering or surrendering any assets~~
2033 ~~held by the financial institution in response to instructions from the Agency for the~~
2034 ~~purpose of enforcing a child support order.~~

2035 ~~2.6 3. Seizure of Personal Property Other than Financial Accounts. In addition to the~~
2036 ~~requirements under (a) and (b) below, the Agency may initiate the seizure of personal property if~~
2037 ~~there is a lien against an obligor and the lien amount equals or exceeds 600% of the monthly~~
2038 ~~amount due in the order. Upon issuance of a written order of execution, non-exempt personal~~
2039 ~~property may be seized and sold in a reasonable manner after notice to the owner in payment of a~~
2040 ~~child support obligation that has been adjudicated delinquent by the Family Court. Ceremonial or~~
2041 ~~religious property and real property are exempt from such writs of execution.~~

2042 ~~(a) Personal Property. The Agency may seize personal property if the obligor's equity in~~
2043 ~~the property, minus expected seizure fees, exceeds \$500 per item total.~~

2044 ~~(b) The Tribe's "Disposition of Excess Tribal Property Policy" shall not apply to any~~
2045 ~~property seized under this law.~~

2046

2047 **2.7. Other Enforcement Tools:**

2048 ~~2.7 1. Attachment of Per Capita Payments. The Agency may initiate the attachment and/or seizure~~
2049 ~~of per capita payments of tribal members in accordance with applicable law.~~

2050 ~~2.7 2. License Suspension.~~

2051 ~~(a) The Agency may initiate the suspension or denial of occupational, fishing, recreational,~~
2052 ~~motor vehicle and/or Oneida issued licenses if there is a lien against an obligor that equals~~
2053 ~~or exceeds 300% of the monthly amount due in the child support order, or \$1000,~~
2054 ~~whichever is greater. Suspension of an occupational and/or motor vehicle license shall be~~
2055 ~~pursued only as a last resort and the Agency shall not initiate the suspension of a license(s)~~
2056 ~~if:~~

2057 ~~(1) there is an order in place that prohibits the suspension of the license(s);~~

2058 ~~(2) the obligor has filed for bankruptcy; or~~

2059 ~~(3) action has already been taken to suspend the license.~~

2060 ~~(b) When an Oneida issued license is suspended, that suspension shall be binding on and~~
2061 ~~given effect by the license issuing agencies. Orders affecting licenses issued by other~~
2062 ~~governmental agencies shall be sent to such agencies for enforcement.~~

2063 ~~2.7 3. Intercept of Lump-Sum Pension Payments, Judgments and Settlements. The Agency may~~
2064 ~~initiate the intercept of lump sum pension payments, judgments and/or settlements when an~~
2065 ~~obligor has been placed on the lien docket.~~

2066 ~~(a) When initiating the intercept of lump sum pension payments, judgments and/or~~
2067 ~~settlements, the Agency shall specify in the notice that the amount withheld from the lump-~~
2068 ~~sum pension payment, judgment or settlement may not exceed the obligor's ownership~~
2069 ~~interest in the payment.~~

2070 ~~2.7 4. Tax and Lottery Intercepts. The Agency may coordinate with a federal or state agency in~~
2071 ~~order to enforce a child support order through a tax and/or lottery intercept. Once an obligor has~~
2072 ~~been notified that his or her tax refund and/or lottery winnings may be intercepted, that notice is~~
2073 ~~valid until all arrears are paid in full.~~

2074 ~~(a) Federal Tax Intercept. The Agency may certify a federal tax intercept when the~~
2075 ~~requirements pertaining to federal tax intercept contained in an agreement between the~~
2076 ~~State and the Tribe have been met.~~

2077 ~~(b) Wisconsin State Tax Intercept. The Agency may certify a Wisconsin state tax intercept~~
2078 ~~when the following requirements are met:~~

2079 ~~(1) The arrears shall be at least one hundred fifty dollars (\$150).~~

- 2080 ~~(2) The arrears shall be at least thirty (30) days old.~~
2081 ~~(3) The arrears shall be for a minor child or a child who has reached the age of~~
2082 ~~eighteen (18) within the last twenty (20) years.~~
2083 ~~(c) Wisconsin Lottery Intercept. When a case is certified for Wisconsin state tax intercept,~~
2084 ~~it shall also be automatically certified for Wisconsin lottery intercept for lottery winnings~~
2085 ~~of one thousand dollars (\$1,000) or more.~~
2086 ~~2.7.5. Passport Denial. If a federal tax intercept is in place and the obligor owes five thousand~~
2087 ~~dollars (\$5,000) or more in arrears, an obligor may be denied a passport. The arrears must meet~~
2088 ~~the criteria for federal tax intercept in order for passport denial to be used as an enforcement tool.~~
2089 ~~An obligor shall be removed from the passport denial list if:~~
2090 ~~(a) The federal tax intercept certification amount is zero (0);~~
2091 ~~(b) The obligor makes a lump sum payment and/or negotiates a payment plan with the~~
2092 ~~Agency;~~
2093 ~~(c) The obligor has to travel abroad because of a life or death situation involving an~~
2094 ~~immediate family member, such as the obligor's parent, guardian, step parent, child, step~~
2095 ~~child, grandparent, sibling, step-sibling, aunt, uncle or spouse; or~~
2096 ~~(d) The obligor was denied a passport in error.~~
2097

2.8. Family Court Enforcement Action

- 2099 ~~2.8.1. If the Agency does not have the authority to conduct the appropriate enforcement action,~~
2100 ~~or the obligor is unresponsive to the enforcement actions being imposed by the Agency, the case~~
2101 ~~shall be referred to the Family Court for enforcement.~~
2102 ~~2.8.2. The Family Court may order any of the enforcement actions the Agency is authorized to~~
2103 ~~implement. In addition, the Family Court may order the following to enforce a child support order:~~
2104 ~~(a) Bonds and Other Guarantees. The Family Court may require an obligor to provide a~~
2105 ~~surety, bond or guarantee to secure the payment of arrears, if wage withholding is not~~
2106 ~~applicable, practical or feasible to secure payment of arrears.~~
2107 ~~(b) Claims Against Estates.~~
2108 ~~(1) The Family Court may approve a claim for past and future support against an~~
2109 ~~obligor's estate.~~
2110 ~~(2) The Family Court may issue a restraining order against an estate from which~~
2111 ~~an obligor will inherit.~~
2112 ~~(c) Community Service. The Family Court may order an obligor to perform community~~
2113 ~~service. The number of hours of work required may not exceed what would be reasonable~~
2114 ~~considering the amount of arrears the obligor owes. The obligor shall be provided a written~~
2115 ~~statement of the terms of the community service order and that the community service order~~
2116 ~~is monitored. The order shall specify:~~
2117 ~~(1) how many hours of community service the obligor is required to complete;~~
2118 ~~(2) the time frame in which the hours must be completed;~~
2119 ~~(3) how the obligor will report his or her hours; and~~
2120 ~~(4) any other information the Family Court determines is relevant.~~
2121 ~~(d) Contempt. An obligor who disobeys a lawful child support order shall be subject to~~
2122 ~~punishment for contempt of court. An obligor found in contempt of court may be fined in~~
2123 ~~an amount not to exceed one thousand dollars (\$1,000.00) per act of contempt and may not~~
2124 ~~exceed five thousand dollars (\$5,000.00) in total. In instances of continuing contempt,~~
2125 ~~each day shall constitute a separate act of contempt.~~
2126 ~~(e) Incarceration. The Family Court may order an obligor be incarcerated, contingent on~~
2127 ~~the agreements necessary to enable the Tribe to incarcerate individuals. Before a jail~~

2128 ~~sentence is imposed, the Family Court may provide other conditions that require a certain~~
2129 ~~amount of money be paid or action be taken for an obligor to avoid incarceration.~~

2130 ~~2.8-3. Criminal Non-Support. A criminal non-support action may be initiated, in the appropriate~~
2131 ~~county, against an obligor who has the ability to pay child support and willfully or intentionally~~
2132 ~~failed to pay and the obligor knew or reasonably should have known he or she was legally obligated~~
2133 ~~to provide.~~

2134 ~~2.9. Alternative Payment Plans~~

2135 ~~2.9-1. Applicability of Alternative Payment Plans. When an obligor is subject to administrative~~
2136 ~~enforcement action, he or she may negotiate an alternative payment plan with the Agency.~~

2137 ~~2.9-2. Negotiation of an Alternative Payment Plan After Receiving Notice of an Enforcement~~
2138 ~~Action.~~

2139 ~~(a) In order to negotiate an alternative payment plan, an obligor shall submit a written~~
2140 ~~request to the Agency. A written request to negotiate an alternative payment plan received~~
2141 ~~by the Agency within ten (10) business days after the date of notice shall stay any~~
2142 ~~administrative enforcement action. If a written request to negotiate an alternative payment~~
2143 ~~plan is received by the Agency more than ten (10) business days after the date of notice,~~
2144 ~~administrative enforcement action may be taken, as long as the requirements of 2.9-3 and~~
2145 ~~2.9-4 are met.~~

2146 ~~(b) An obligor may negotiate a plan with the Agency to have a license issued or renewed~~
2147 ~~after it has been restricted, limited, suspended or refused.~~

2148 ~~(c) The obligor may submit a written request for a hearing on the reasonableness of the~~
2149 ~~plan within ten (10) business days after the terms of the plan are agreed upon.~~

2150 ~~(d) If the Agency and the obligor are unable to reach agreement on the terms of a plan, a~~
2151 ~~hearing may be conducted. The Family Court may order a plan by setting payments in the~~
2152 ~~amounts and at the times it considers reasonable.~~

2153 ~~2.9-3. Staying Administrative Enforcement Actions. Administrative enforcement actions shall be~~
2154 ~~stayed by the Agency while the obligor and the Agency are negotiating a plan, or, if a hearing is~~
2155 ~~requested, until the Family Court determination has been made. To stay an administrative~~
2156 ~~enforcement action means the following:~~

2157 ~~(a) The obligor shall not be certified for denial, nonrenewal, restriction, or suspension of~~
2158 ~~professional, occupational, fishing, recreational, motor vehicle and/or Oneida issued~~
2159 ~~licenses.~~

2160 ~~(b) Any frozen financial accounts shall remain frozen and shall not be seized.~~

2161 ~~(c) Personal property that has been seized shall not be sold.~~

2162 ~~2.9-4. Suspension of Administrative Enforcement Actions:~~

2163 ~~(a) When a plan has been negotiated between the obligor and the Agency, or the Family~~
2164 ~~Court has determined that a plan is reasonable or has ordered a plan, the Agency shall~~
2165 ~~suspend administrative enforcement actions as long as the obligor complies with the plan.~~

2166 ~~(b) If an obligor makes a full arrears payment, the administrative enforcement action shall~~
2167 ~~be suspended.~~

2168 ~~2.9-5. Proceeding with Administrative Enforcement Actions. The Agency may continue with the~~
2169 ~~administrative enforcement action if:~~

2170 ~~(a) the obligor and the Agency are unable to negotiate a plan.~~

2171 ~~(b) the Family Court determines that the plan is not reasonable.~~

2172 ~~(c) the Family Court does not order a plan.~~

2173 ~~2.9-6. Disclosure of Income and Assets. The request to negotiate a plan shall include an agreement~~
2174 ~~by the obligor to provide the Agency with a full disclosure of income and assets available. The~~
2175

2176 ~~obligor shall provide complete income and assets information to the Agency within five (5)~~
2177 ~~business days of the request to negotiate a payment plan.~~

2178 ~~2.9-7. Terms of an Alternative Payment Plan.~~

2179 ~~(a) An alternative payment plan may include a lump sum payment, or periodic payments~~
2180 ~~on the arrears, or both, subject to the following standards:~~

2181 ~~(1) The sum of any periodic payment established under the plan and any other~~
2182 ~~payment of support ordered by the Family Court, when subtracted from the~~
2183 ~~obligor's gross income, may not leave the obligor below 100% of the poverty line~~
2184 ~~established under 42 USC 9902 (2) unless the obligor agrees otherwise.~~

2185 ~~(2) When establishing an alternative payment plan, the Agency shall consider the~~
2186 ~~factors used by the Family Court in determining whether the use of the percentage~~
2187 ~~standard is unfair to the child or any of the parties.~~

2188 ~~(b) Periodic payments under the plan may be made through wage withholding in amounts~~
2189 ~~in addition to the amount ordered in the child support order that is in effect.~~

2190 ~~2.9-8. Default on an Alternative Payment Plan. In the event that the obligor defaults on the plan,~~
2191 ~~the Agency shall notify the obligor in writing that an administrative enforcement action shall be~~
2192 ~~implemented unless the lien is paid in full.~~

2193 ~~2.9-9. Renegotiation of an Alternative Payment Plan. After the entry of an alternative payment~~
2194 ~~plan, the plan may be renegotiated upon the written request of the obligor or Agency if the~~
2195 ~~requesting party can show a substantial change in circumstances. A substantial change in~~
2196 ~~circumstances includes any of the following:~~

2197 ~~(a) A change in the obligor's income or assets, including the sale or purchase of real or~~
2198 ~~personal property.~~

2199 ~~(b) A change in the obligor's earning capacity.~~

2200 ~~(c) Any other factor that the Agency determines is relevant.~~

2201 ~~2.9-10. Obligors with Cases in Multiple Jurisdictions.~~

2202 ~~(a) When multiple child support agencies initiate administrative enforcement actions~~
2203 ~~against the same obligor, and the obligor negotiates an alternative payment plan with one~~
2204 ~~of the agencies, the plan does not preclude any other child support agency from proceeding~~
2205 ~~with its administrative enforcement action.~~

2206 ~~(b) If a child support agency which has a lien against property of an obligor negotiates an~~
2207 ~~alternative payment plan with the obligor, the agency may receive proceeds from the sale~~
2208 ~~of the obligor's personal property under the lien including, but not limited to, proceeds~~
2209 ~~from administrative enforcement actions taken by other child support agencies.~~

2210
2211 ~~End.~~

2212 ~~Emergency Adopted BC 06-30-08-C (Expired)~~

2213 ~~Emergency Extended BC 12-10-08-H (Expired)~~

2214 ~~Permanently Adopted BC 06-24-09-B~~

2215 ~~Emergency Amended BC 10-28-09-E~~

2216 ~~Amended BC 02-24-10-G~~

2217 ~~Amended BC 02-23-11-E~~

2218 ~~Amended BC 06-22-11-K~~

2219 ~~Amended BC 10-10-12-C~~

2220 ~~Amended BC 08-13-14-E~~

2221



shakoti>nuk&=lale> latiksash&ha>
They watch over the children
AMENDMENTS TO CHILD SUPPORT LAW
LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Oneida Child Support Agency	SPONSOR: David P. Jordan	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	<p>To create a process to suspend or modify child support orders for parents incarcerated for one hundred and eighty (180) days or more;</p> <p>To update notice requirements and timelines for initiating an action by the Agency, sending letters of noncompliance, sending notice of delinquency, sending notice of enforcement action, and sending income withholding orders;</p> <p>To clarify how the Family Court may redact addresses and identifying information from court documents to ensure safety of a party;</p> <p>To make updates to how child support obligations are calculated in certain special circumstances, such as:</p> <ul style="list-style-type: none"> ▪ updating how overnights and equivalent care are calculated for shared-placement parents; ▪ updating the formula for calculating child support obligations of split-placement parents; ▪ updating the date when legal obligation for child support is incurred for a non-marital child of a serial family obligor; <p>To update what constitutes a “substantial change in circumstance” that warrants a modification of a child support order;</p> <p>To repeal Child Support Rule #1 Deviation from Child Support and Rule #2 Enforcement Tools and move the contents of the rules into the body of the law itself;</p> <p>To make additional updates and clarify language throughout the law.</p>		
Purpose	<p>The purpose of this law is to establish the legal responsibility of parents to provide financially for their children’s general well-being; make support payments more equitable by ensuring consistent treatment of persons in similar circumstances; make support payments based on the real earning capability of parents; and improve efficiency of child support establishment and enforcement [7 O.C. 704.1-1].</p>		
Affected Entities	<p>Oneida Child Support Agency, Oneida Family Court, Oneida Court of Appeals, Oneida license-issuing agencies such as Oneida Licensing and Oneida Conservation, and any individuals with child support cases that fall under the jurisdiction of the Oneida Family Court [7 O.C. 704.4].</p>		
Public Meeting	<p>A public meeting was held on October 17, 2019.</p>		
Fiscal Impact	<p>A fiscal impact statement prepared in accordance with the Legislative Procedures Act has not yet been requested.</p>		

What Is Child Support?

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

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

SECTION 2. LEGISLATIVE DEVELOPMENT

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

SECTION 3. CONSULTATION AND OUTREACH

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

- 34 ▪ Menominee Nation – Financial Support of Children Law
- 35 ▪ Stockbridge Munsee Child Support Law
- 36 ▪ White Earth Child Support Act
- 37 ▪ State of Wisconsin Child Support Administrative Enforcement – Chapters DCF 150 & 152.
- 38 C. In addition, the following documents or articles were reviewed in the drafting of this analysis:
- 39 ▪ Child Support Enforcement: Tribal Programs – Congressional Research Service Report. July
- 40 5, 2016.
- 41 ▪ Final Rule: Flexibility, Efficiency, and Modernization in Child Support Enforcement
- 42 Programs, Federal Register, Volume 81, Number 244. December 20, 2016.
- 43 ▪ Child Support Final Rule Fact Sheet: Flexibility, Efficiency and Modernization in Child
- 44 Support Enforcement Programs. Office of Child Support Enforcement, Administration for
- 45 Children and Families, Dept. of Health and Human Services. January 5, 2017. DCL-17-01.
- 46

47 **SECTION 4. PROCESS**

- 48 A. Thus far, amendments to this law have followed the process set forth in the Legislative Procedures Act
- 49 (LPA).
- 50 B. The law was added to the Active Files List on March 7, 2018.
- 51 C. A public meeting was held on October 17, 2019. The public comment period was held open until October
- 52 24, 2019.
- 53 C. At the time this legislative analysis was developed, a total of twenty-six (26) work meetings were held
- 54 regarding the development of this law and legislative analysis:
- 55 ▪ April 5, 2018: Work meeting with Child Support.
- 56 ▪ April 18, 2018: Work meeting with LOC.
- 57 ▪ May 17, 2018: Work meeting with Child Support.
- 58 ▪ June 8, 2018: Work meeting with Child Support.
- 59 ▪ June 22, 2018: Work meeting with Child Support.
- 60 ▪ July 13, 2018: Work meeting with Child Support.
- 61 ▪ August 9, 2018: Work meeting with Child Support, Family Court and Oneida Police Department.
- 62 ▪ August 17, 2018: Work meeting with Child Support.
- 63 ▪ September 18, 2018: Work meeting with Child Support.
- 64 ▪ October 12, 2018: Work meeting with Child Support.
- 65 ▪ October 26, 2018: Work meeting with Child Support.
- 66 ▪ October 31, 2018: Work meeting with LOC and Child Support.
- 67 ▪ November 9, 2018: Work meeting with Child Support.
- 68 ▪ December 6, 2018: Work meeting with Child Support.
- 69 ▪ December 10, 2018: Work meeting with Child Support and Oneida Police Department.
- 70 ▪ December 19, 2018: Work meeting with LOC.
- 71 ▪ January 4, 2019: Work meeting with Child Support.
- 72 ▪ February 1, 2019: Work meeting with Child Support.
- 73 ▪ March 3, 2019: Work meeting with Child Support.
- 74 ▪ April 4, 2019: Work meeting with Child Support.
- 75 ▪ April 30, 2019: Work meeting with Child Support.
- 76 ▪ May 16, 2019: Work meeting with Child Support & Law Office.
- 77 ▪ July 17, 2019: Work meeting with LOC.
- 78 ▪ July 18, 2019: Work meeting with LOC.
- 79 ▪ July 25, 2019: Work meeting with LOC.
- 80 ▪ August 21, 2019: Work meeting with LOC and Child Support.
- 81
- 82
- 83

SECTION 5. CONTENTS OF THE LEGISLATION

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

A. Moving Child Support Rules into the Law. The Child Support Law currently includes two (2) rules: Rule #1 Deviation from Child Support and Rule #2 Enforcement Tools. Both rules became effective June 24, 2009, prior the adoption of the Nation’s Administrative Rulemaking law [1 O.C. 106]. The proposed amendments delete the rules and move the contents of both Rule #1 and Rule #2 into the body of the law itself.

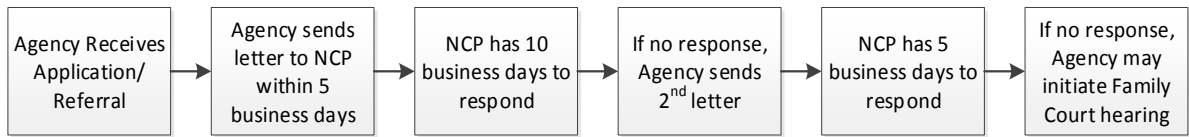
- *Rule #1 Deviation from Child Support.* The information from Rule #1 Deviation from Child Support, unless otherwise noted in this analysis, has been moved to the following sections:
 - 704.7 Determining Child Support Obligation
 - 704.8 Determining the Child Support Obligation in Special Circumstances
 - 704.9 Child Support Order
- *Rule #2 Enforcement Tools.* The information from Rule #2 Enforcement Tools, unless otherwise noted in this analysis, has been moved to the following sections:
 - 704.12 Compliance Plan
 - 704.13 Enforcement of an Order
 - 704.14 Alternative Payment Plans
 - 704.15 Administrative Enforcement Action
 - 704.16 Family Court Contempt Action
- *Deleted Examples.* Rule #1 contained example calculations and scenarios to illustrate how to determine child support in special circumstances. These examples have been deleted. Such examples could be provided in a separate document or worksheet by the Agency.

B. Notice for Initiation of Action by Oneida Child Support Agency.

- *Requesting Services.* When the Oneida Child Support Agency receives an application or referral for services, the Agency is required to send notice to the non-custodial parent. The non-custodial parent is the parent who does not hold primary care, custody or control of the child.
- *Current Notice Requirements.* Within five (5) business days of receiving a referral or application, the Agency is currently required to send two (2) letters to the non-custodial parent before initiating a hearing in the Family Court. The purpose of the letters is to request information and attempt to negotiate a stipulation, or voluntary agreement, between the parents. If the non-custodial parent does not respond to the letters, then the Agency will initiate a hearing in the Family Court.
- *Changes to Notice Requirements.* [7 O.C. 704.5-2].
 - *Meeting with Custodial Parent Prior to Sending Notice.* The Agency will now be required to meet with the custodial parent (the parent who has primary custody of the child) within thirty (30) days of receiving a referral or application. Only after meeting with the custodial parent will the Agency send the notice letter to the non-custodial parent.
 - *Effect.* This change reflects the Agency’s current practice. The Agency reports that most child support cases begin as referrals from other agencies rather than an application from the custodial parent. The Agency reports that meeting with the custodial parent first ensures that the Agency has the information it needs before contacting the non-custodial parent and/or initiating an action.
 - *Deadline for Agency to Send Letter.* The Agency will now have seven (7) business days rather than five (5) business days to send the Letter of Request for Support and Financial Disclosure form to the non-custodial parent.
 - *Number of Letters.* Rather than sending two (2) letters, the Agency is now only required to send one (1) letter before initiating a hearing. This will allow for child support hearings to be scheduled more quickly. Rather than waiting at least fifteen (15) days as the law currently requires, the Agency can now request a hearing after ten (10) days.

134

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



135

136

137

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

138

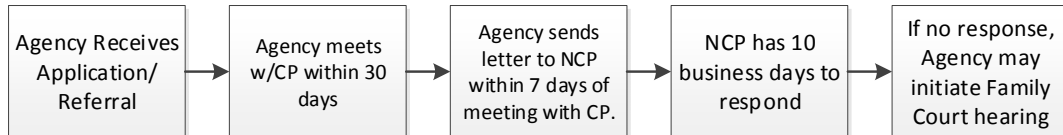
139

140

141

142

143



144

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

145

146

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

152

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

159

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

162

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

166

E. **Child Support Hearings.**

167

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

172

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

175

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

176

177

178

- 179 ○ *Confidential Case Records*. Records may only be viewed by the parties, legal guardians,
180 the parties’ attorney or advocate, guardian ad litem, Judges and staff assigned to the case,
181 and those with written authorization from a party to view the material in the record.
182 ○ *Existing Law*. The Nation’s Rules of Civil Procedure already state: “At the request of any
183 party or on its own motion, the Court may seal any part of a case file, preventing public
184 disclosure. A file or part of a file may only be sealed where the safety of a party, witness
185 or other individual may be in jeopardy if the material is not placed under seal” [8 O.C.
186 803.32-2(b)(3)]. Now, rather than being optional, the court will automatically keep records
187 of child support cases confidential.
- 188 **F. Authority of Family Court to Order Parent to Search for a Job or Participate in Job Training**
189 **Program**. Typically, a child support order is based on a percentage of a parent’s income. When a
190 parent’s income is less than their earning capacity or unknown, the court may “impute,” or “estimate”
191 the parent’s earning capacity based on available evidence.
- 192 ▪ *Order Parent to Search for Job or Participate in Job Training*. For these cases, a new provision
193 has been added allowing the Family Court to order a parent to search for a job or participate in a
194 work experience or job training program [7 O.C. 704.7-4(b)].
- 195 ▪ *Comparison to WI*. This language is similar to updates made to Wisconsin (WI) regulations utilized
196 by county child support agencies. However, unlike WI, Oneida’s Family Court may order a job
197 search or job training program “in addition to” imputed income, rather than as “an alternative” to.
- 198 **G. Formula for Determining Child Support Obligations When the Child Receives Social Security**
199 **Benefits**. The Nation’s current Child Support law includes a provision to account for a child’s social
200 security benefits when calculating a parent’s child support obligation.
- 201 ▪ *Updates to Formula*. These amendments add a new formula to specifically address shared-
202 placement parents whose child receives social security benefits. The intent of this new formula is
203 to ensure that Child Support orders accurately take this income into account in these unique cases
204 [7 O.C. 704.7-6(a)].
- 205 ▪ *Comparison to WI*. This updated formula mirrors recent updates to Wisconsin regulations.
- 206 **H. Claiming Children for Tax Purposes**. A provision from Child Support Rule #1 regarding the
207 “dependency exemption” for federal tax purposes [1.3-7] is deleted. The dependency exemption was
208 eliminated by Congress as a result of the Tax Cuts and Jobs Act of 2017, also known as the “tax reform
209 bill.” In its place, these amendments add a new provision regarding claiming children for tax purposes
210 [7 O.C. 704.7-7].
- 211 ▪ *New provision*. This new provision gives the Family Court authority to address who may claim a
212 child for tax purposes. It also gives the Family Court authority to accept a stipulation entered into
213 by the parties regarding children and taxes. This change was recommended by the Family Court
214 and Child Support Agency Attorney.
- 215 **I. Determining Child Support for Serial Family Obligor**. When one parent has multiple children in
216 separate families, that parent is known as a “serial family obligor.” In these cases, the court must
217 determine the order of the parent’s child support obligations, because the order determines how much
218 support is owed for each child.
- 219 ▪ *New Date for Non-Marital Children*. For a non-marital child, the legal obligation for child support
220 will now be incurred on the date that paternity was legally established rather than the date that the
221 child support order is entered [7 O.C. 704.8-1(b)(2)]. This change was recommended by the
222 Agency to reflect their current practice and mirror Wisconsin regulations.
- 223 **J. Determining Child Support for Shared-Placement Parents**.
- 224 ▪ *Changes to Overnights and Equivalent Care*. At the recommendation of the Agency, changes have
225 been made to how overnights and periods of equivalent care calculated. These changes now give
226 more consideration to periods of time a parent cares for the child that is not technically an overnight,
227 but where the court determines that a parent is still assuming basic support costs that are equivalent

- 228 to what a parent would spend to care for that child overnight. These changes are consistent with
229 updates to Wisconsin regulations [7 O.C. 704.3-1(o) and 704.8-2(a)(1)].
- 230 ○ *Effect.* The number of overnights and periods of equivalent care are important in
231 determining the percentage of time each parent is caring for the child. That information is
232 one of the factors used by the Court to determine the amount of child support ordered for
233 shared placement parents.
 - 234 ■ *Change in Variable Costs.* A new provision has been added that states that a change in the child’s
235 variable costs will not, in and of itself, be considered a “substantial change in circumstances” to
236 justify a modification of a child support order. These changes are consistent with updates to
237 Wisconsin regulations [7 O.C. 704.8-2(b)(7)].
 - 238 ○ *What are Variable Costs?* “Variable costs” are the reasonable costs above basic support
239 costs incurred by or on behalf of a child, such as the cost of child care, tuition, special needs
240 or other activities [7 O.C. 704.3(mm)].
 - 241 ○ *Effect.* In other words, a change to a child’s variable costs (such as child care) will not, by
242 itself, justify modifying the amount of a child support order. Ultimately, the decision as to
243 whether a change in circumstances justify modification of an order will be up to the Family
244 Court.
- 245 **K. *Determining Child Support Obligations of Split-Placement Parents.*** The formula for calculating child
246 support obligation for a split-placement parent has been clarified. The split-placement formula may be
247 applied when parents have two (2) or more children and each parent has placement of at least one, but
248 not all, of the children.
- 249 ■ *Change to Formula.* The Agency reported that the wording of the formula in the current rule [1.4-
250 3] is unclear, resulting in different interpretations of how to calculate support in these cases. These
251 changes were recommended by the Agency to clarify the formula so that support is calculated
252 correctly and uniformly. [7 O.C. 704.8-3(b)].
- 253 **L. *Expression of Ordered Support.*** The Child Support amount must be expressed as a fixed sum. This
254 means that the child support order must include the specific dollar amount the parent is required to pay.
255 [7 O.C. 704.9-1].
- 256 ■ *Option to Agree to Percentage Deleted.* Previously, parents had the option to agree to a percentage
257 of the obligor’s income instead of a specific dollar amount if both parties agreed through a
258 stipulation. This option has been deleted. Oneida Child Support Agency reports that ordering a
259 specific dollar amount is the standard practice for child support orders.
 - 260 ■ *Modifying an Order.* If the fixed sum in the child support order needs to be modified due to a
261 change in circumstances (for example, a change in income), the parties may request to modify the
262 child support order in accordance with the process included in this law [7 O.C. 704.10].
- 263 **M. *How to Send Income-Withholding Orders.*** After an order to withhold income has been issued, the
264 Child Support Agency is required to send a copy of the order to the obligor’s payor (typically their
265 employer) within three (3) business days. This notifies the payor to start withholding a portion of the
266 obligor’s income for child support.
- 267 ■ *Method for Sending Orders.* Previously, the law stated the order could be sent “by any business
268 method acceptable to the payor” and that the order is binding upon notice through service by
269 personal delivery or certified mail. Now the order can be sent “by mail, fax or electronic means.”
270 [7 O.C. 704.9-3(a)].
 - 271 ■ *Comparison to Other Agencies.* Agencies in the state of Wisconsin send income withholding
272 notices by mail, fax or through the Electronic Income Withholding system known as “e-IWO.”
- 273 **N. *Non-Cash Payment Options.*** The current law states that non-cash payment options may be used to
274 satisfy part or all of a child support order if both parties and the Family Court agree to allow non-cash
275 payments. Examples of non-cash payments include clothing, groceries, child care, deer/venison, wood,
276 transportation and skilled trades and services. The list of non-cash options has been updated to add “gift
277 cards” at the recommendation of the Child Support Agency [7 O.C. 704.9-9(b)].

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

Why Modify Child Support Orders for Incarcerated Parents?

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

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

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

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

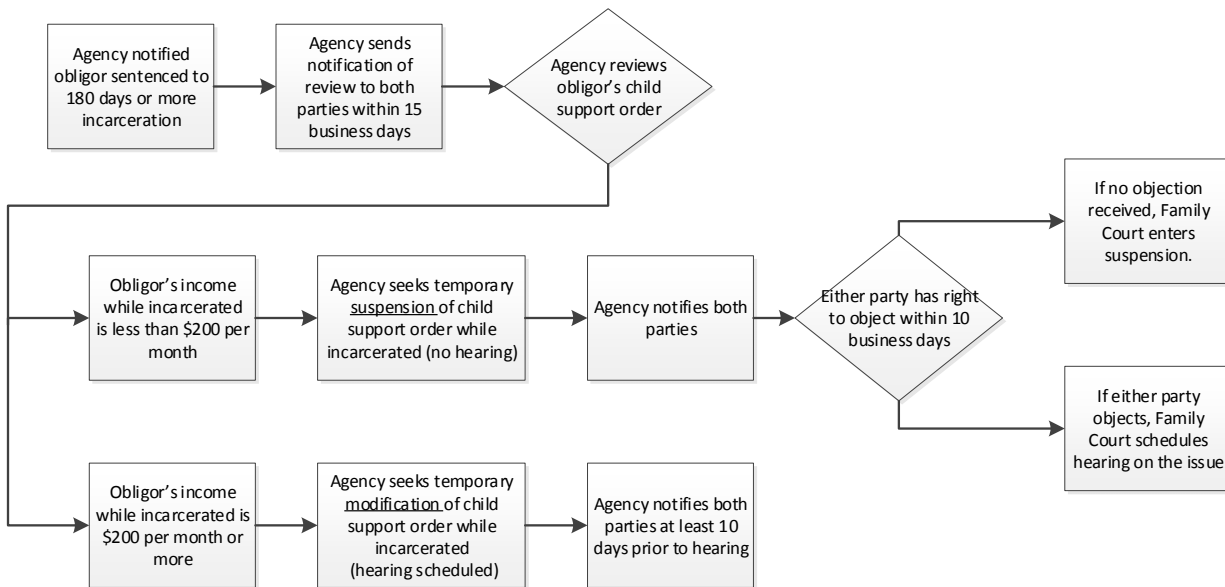
The Oneida Family Court already modifies child support orders for incarcerated parents. The Oneida Child Support Agency supports incorporating this process into Oneida Nation’s Child Support Law. The intent of adding a standard process to the Nation’s Child Support law is to ensure that all incarcerated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

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

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

341 objection is received, the Family Court will enter the order as proposed. If an
 342 objection is received, the Family Court will hold a hearing on the issue.
 343 ○ *Modification of Order by Agency.* If the obligor is sentenced to 180 days or greater with an
 344 income of \$200 per month or more, the Agency will file a motion with the Family Court
 345 to modify the child support order [7 O.C. 704.11-5].
 346 • *Notice & Right to Object.* The Family Court will schedule a hearing and the
 347 Agency will provide notice to all parties at least ten (10) business days prior to the
 348 hearing.
 349

350 *Chart 3. Modifying or Suspending Child Support Order for Incarcerated Parent*
 351



352
 353
 354
 355
 356 ■ ***How is the Original Child Support Order Reinstated after the Incarcerated Parent is Released?***
 357 Sixty (60) days after the obligor is released from jail or prison, the original child support order prior
 358 to the individual's incarceration will be reinstated by the Agency. [7 O.C. 704.11-8].
 359 ■ ***What Happens if the Obligor's Probation or Extended Supervision is Revoked?*** If the obligor is
 360 released from incarceration and is later sentenced to another one hundred and eighty (180) days or
 361 more in jail or prison, the Agency will use the provisions of this section to determine if another
 362 suspension or modification of the child support order is appropriate [7 O.C. 704.11-9].
 363 **R. Compliance Plans.** At any point when the Agency believes an obligor is or may become non-compliant
 364 with their child support payments, the Agency can work with the obligor to develop a compliance plan.
 365 ■ ***Purpose of Compliance Plan.*** The purpose of a compliance plan is to address barriers to making
 366 regular payments so that a parent can once again make regular payments and meet their child
 367 support obligations [7 O.C. 704.12].
 368 ■ ***Components of Compliance Plan.*** A compliance plan may include requirements to participate in
 369 employment and training programs, social service and mental health services, physical and learning
 370 disability programs, tribal traditions and customs, and family counseling. The agency may suspend
 371 enforcement actions if the party successfully completes the compliance plan. Failure to complete
 372 the compliance plan will result in enforcement action [7 O.C. 704.12-2(c)].
 373 ○ ***New Components.*** These amendments add parenting programs and "any other programs
 374 deemed necessary" to the list of acceptable programs that can be included in a compliance

375 plan. The intent is to increase flexibility for the Oneida Child Support Agency to address
 376 unique needs of each obligor.

- 377 ■ *Changes to Timelines and Notice Letters.* The following changes have been made to more
 378 accurately reflect the Child Support Agency’s practices regarding notices and timelines for
 379 initiating compliance plans [7 O.C. 704.12].
 380

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

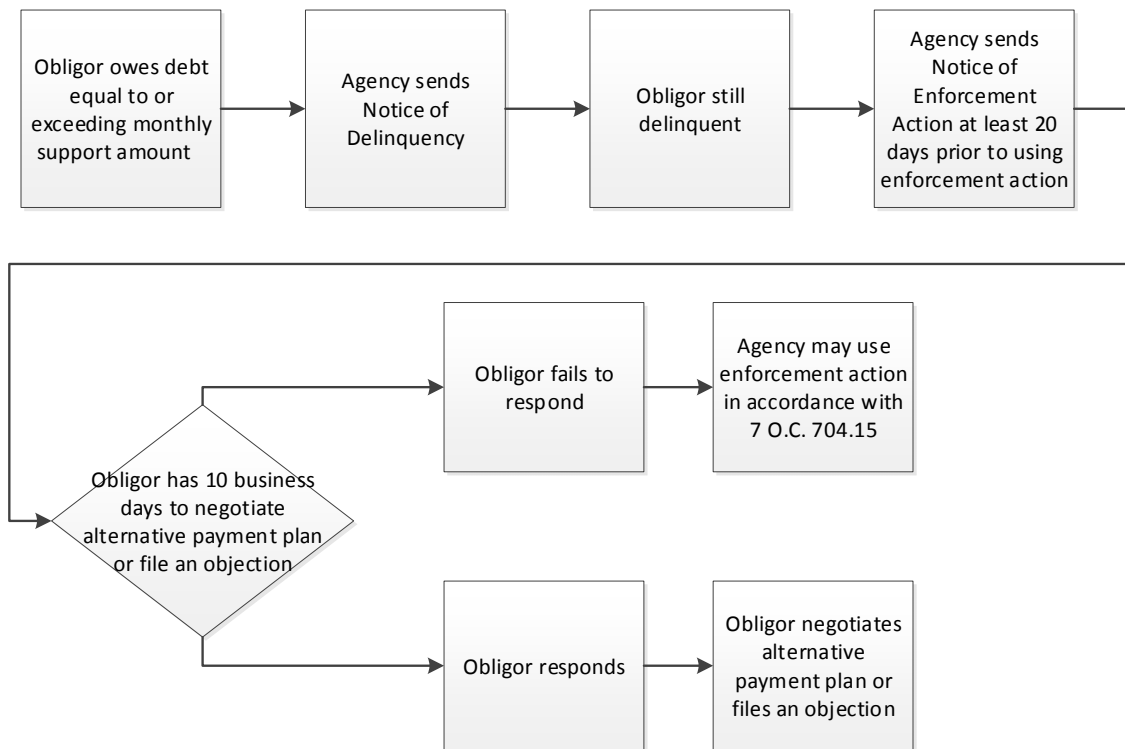
	Current Law	Proposed Amendments
<i>When is first letter sent?</i>	Within five (5) days of learning of the obligor’s failure to pay.	At any time deemed appropriate, but at least thirty (30) days prior to initiating any enforcement action.
<i>How many days to respond to first letter?</i>	Five (5) days.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

382
 383 **S. *Notice of Delinquency and Notice of Enforcement.*** When an obligor fails to make their ordered child
 384 support payments, the Agency is required to send notices to the obligor informing them that they are
 385 delinquent. The Oneida Child Support Agency uses a state software system known as “KIDS” to
 386 monitor child support payments and arrears. This system allows the Agency to track and send notices
 387 to delinquent obligors. The Agency suggested the following changes to the notices to more accurately
 388 reflect their practices and ensure compliance:

- 389 ■ *Notice of Delinquency:* The Agency will send this notice to an obligor in the event that the obligor
 390 owes a debt equal to or exceeding the monthly amount. In other words, if the obligor is a month
 391 behind on their payments. This notice will include the total amount of the delinquency and the
 392 enforcement action that may be taken if they do not pay [7 O.C. 704.13-3].
- 393 ■ *Notice of Enforcement Action.* The Agency will send this notice after the “Notice of Delinquency”
 394 and at least twenty (20) days prior to an enforcement action being used against an obligor. This
 395 notice is more detailed, and will include the total amount of the delinquency, the enforcement action
 396 that may be taken, notice that the obligor may request to negotiate an alternative payment plan
 397 within ten (10) business days in order to stay an enforcement action, and notice that the obligor has
 398 ten (10) business days to file an objection [7 O.C. 704.13-4].
- 399 ■ *Use of Mail for Notices.* The Agency is required to send notices to the last known-mailing address
 400 provided by the obligor. If notice to that address is returned undeliverable, the Agency must send
 401 notice to the current employer’s mailing address provided by the obligor. If that notice is also
 402 returned, the Agency is then required to use all resources available to identify the obligor’s current
 403 mailing address before they can proceed with an enforcement action [7 O.C. 704.13-5].
 - 404 ○ *Time frame.* Currently, Agency must spend at least sixty (60) days attempting to identify
 405 an obligor’s current mailing address before they can proceed with an enforcement action
 406 [2.4-3 in Rule #2]. These amendments shorten this timeframe to thirty (30) days. This
 407 means that the Agency will be able to use enforcement actions more quickly in cases where
 408 the obligor’s address cannot be determined.
 409
 410
 411
 412
 413
 414

415
 416

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



417
 418

T. Alternative Payment Plans.

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

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

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

442

- 443 ▪ *Attachment of Per Capita Payments.* The Agency may initiate the attachment or seizure of per
444 capita payments of members of the Nation in accordance with the Nation’s Per Capita law [7 O.C.
445 704.15-4].
 - 446 ▪ *License Suspension.* The Agency may initiate the suspension or denial of both state and Oneida
447 issued licenses if there is a lien against an obligor that equals or exceeds 300% of the monthly
448 amount due or one thousand dollars (\$1000), whichever is greater [7 O.C. 704.15-5].
 - 449 ○ *Types of licenses:* The types of licenses that the Agency may initiate suspension or denial
450 of include, but are not limited to, vendor, professional, occupational, hunting, fishing,
451 recreational and/or motor vehicle licenses.
 - 452 ○ *Change to License Suspension as Last Resort:* A provision stating that “suspension of an
453 occupational and/or motor vehicle license shall be pursued only as a last resort” has been
454 deleted [2-7(2)(a) in Rule #2]. This will give the Agency the ability to pursue license
455 suspension more readily.
 - 456 ▪ *Lump-Sum Pension Payments, Judgments and Settlement Intercepts.* Once an obligor has been
457 placed on the lien docket, the Agency may initiate the intercept of lump-sum pension payments,
458 judgments and/or settlements [7 O.C. 704.15-6].
 - 459 ▪ *Tax and Lottery Intercepts.* The Agency may coordinate with federal or state agencies to enforce a
460 child support order through tax or lottery intercept [7 O.C. 704.15-7].
 - 461 ▪ *Passport Denial.* If a federal tax intercept is in place and the obligor owes \$2500 or more in arrears,
462 an obligor may be denied a passport [7 O.C. 704.15-8].
 - 463 ○ *Change to Threshold.* The threshold for denying a passport has been lowered from \$5,000
464 to \$2,500 to be consistent with recent changes to this threshold by the federal government.
465 This allows this enforcement tool to be used more readily.
 - 466 ▪ *Denial of State Issued Grants and Loans.*
 - 467 ○ *Deleted Provision.* A provision stating that Wisconsin state agencies may deny state-issued
468 grants and loans has been deleted. The Law Office recommended deleting this item as it
469 was unnecessary, as it is informing the reader of what the State of Wisconsin, not Oneida
470 Nation, may do [2.5-6 in Rule #2].
- 471 **V. Contempt.** In addition to the administrative actions listed above, the current child Support Law also
472 gives the Family Court authority to order certain enforcement actions. An obligor who disobeys a lawful
473 child support order will be subject to punishment for contempt of court. A definition for “contempt”
474 has been added, which means “a willful disregard of the authority of the court or disobedience to its
475 lawful orders” [7 O.C. 704.3-1(j)]. The following enforcement actions already appear in the current
476 law but have now been moved under the “Contempt” section. The intent is to clarify that the obligor
477 must first be found in contempt by the Family Court before the court can proceed with the following
478 enforcement actions:
- 479 ▪ *Community Service.* The Family Court may order an obligor to perform community service [7 O.C.
480 704.16-2(a)].
 - 481 ▪ *Fines.* An obligor found in contempt of court may be fined no more than \$1,000 per act of contempt,
482 not to exceed \$5,000 in total [7 O.C. 704.16-2(b)].
 - 483 ▪ *Incarceration.* The Family Court may order an obligor to be incarcerated. Before a jail sentence is
484 imposed, the Family Court may provide other conditions that require a certain amount of money
485 be paid or action be taken for an obligor to avoid incarceration [7 O.C. 704.16-2(c)].
 - 486 ○ *Current Practice.* The current law allows for the Family Court to order an obligor to be
487 incarcerated. However, in practice, the Family Court has never sentenced an obligor to jail
488 because the Oneida Nation has no jail and does not have agreements in place with other
489 jails to house individuals sentenced under this law. For more information see Section 9
490 “Other Considerations.”
 - 491 ▪ *Criminal Non-Support.* A criminal non-support action may be initiated, in the appropriate county,
492 against an obligor who has the ability to pay child support and willfully or intentionally failed to

- 493 pay. The Agency reports that criminal non-support is rarely used in Brown and Outagamie counties
494 [7 O.C. 704.16-2(d)].
- 495 ■ *Bonds and Other Guarantees.* The Family Court may order an obligor to provide a bond or
496 guarantee if income withholding is not applicable or practical [7 O.C. 704.16-2(e)].
 - 497 ■ *Claims Against Estates.* The Family Court may approve a claim for past and future support against
498 an obligor’s estate or issue a restraining order against an estate that an obligor is set to inherit [7
499 O.C. 704.16-2(f)].

500 **W. Minor Drafting Changes.** Minor drafting and formatting changes have been made throughout the law
501 for clarity.
502

503 **SECTION 6. RELATED LEGISLATION**

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

- 506 ■ *Per Capita law.* The Child Support Agency may initiate the attachment or/seizure of per capita
507 payments of members of the Nation in accordance with the Per Capita law [7 O.C. 704.15-4].
- 508 ■ *Oneida Judiciary Rules of Civil Procedure.* The Family Court may utilize discovery procedures
509 and contempt powers as authorized by any law, policy, or rule of the Nation to obtain information
510 relevant to the establishment or enforcement of child support [7 O.C. 704.6-2].
- 511 ■ *Rules of Appellate Procedure.* A party may appeal a Family Court decision, other than the decision
512 of the Family Court in regard to administrative enforcement action, to the Nation’s Court of
513 Appeals within thirty (30) calendar days after the date the Family Court made the decision. The
514 review of the Court of Appeals shall be based on the record and original decision of the Family
515 Court [7 O.C. 704.18].

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

- 519 ■ *Family Court law.* The Family Court law states that proceedings of the Court shall be closed to the
520 public, except that divorce, child support and post-divorce matters may be attended by members of
521 the general public. However, in any case where the presiding Judge determines that there are safety
522 or confidentiality concerns, the Judge may exclude from the proceedings all individuals not
523 necessarily present as parties of witnesses [8 O.C. 806.4-3].
 - 524 ○ *Comparison to Child Support law.* The Family Court law states that child support matters
525 may be attended by members of the general public, unless the presiding judge determines
526 that there are safety or confidentiality concerns. However, the current Child Support law
527 (and the proposed amendments) state that Child Support proceedings shall be closed to any
528 person other than those necessary to the action or proceeding [7 O.C. 704.6-5 in current
529 Child Support law]. The Family Court law was adopted by the OBC on May 8th, 2013,
530 while the current Child Support law was adopted more recently, on August 13, 2014.
 - 531 ○ *Current Practice.* The Family Court reports that child support hearings are currently closed
532 in accordance with the Child Support law.
 - 533 ○ *Conclusion:* In reviewing amendments to this law, the LOC has expressed that they wish
534 to protect the privacy of matters involving children. Given the inconsistent language
535 between the two laws, the LOC may wish to amend the Family Court law to match the
536 hearing provisions in the Child Support law and the Family Court’s current practice. Since
537 the Family Court law is not currently on the LOC’s Active Files List, the LOC could direct
538 the Legislative Reference Office to make note of this discrepancy the next time the Family
539 Court law comes up for amendments.
- 540 ■ *Family Court Rules.*

- 541 ○ *Family Court Rule #5 – Paternity Procedure.* If genetic testing results establish an alleged
542 father as the biological father, the Family Court may address the issue of Child Support at
543 a final paternity hearing [8 O.C. 807].
- 544 ○ *Family Court Rule #12 – Foreign Child Support orders.* Requests, motions or petitions
545 seeking recognition and enforcement of a foreign child support order is governed by this
546 rule when filed under the Nation’s Child Support Law or Garnishment law. The rule
547 outlines the process for sending notice of the filing, filing objections, requesting a hearing,
548 and authenticating the foreign order [8 O.C. 807].
- 549 ■ *Workers Compensation Law.* Workers compensation awards are subject to child support income
550 withholding and other remedies available for the support of a child support order. The maximum
551 amount that may be withheld is one-half of the compensation award. [2 O.C 203.7-4].
- 552 ■ *Garnishment Law.*
- 553 ○ *Garnishment Amount.* In calculating the amount of the garnishment per pay period, the
554 judge may not include amounts garnished pursuant to child support orders when calculating
555 twenty (20%) of the debtor’s disposable earnings [2 O.C. 205.5-6(c)(1) and 205.6-4(a)(2)].
- 556 ○ *Recognition and Enforcement of Child Support Orders.* The Judiciary shall recognize and
557 enforce child support orders against any employee, provided that the order has been issued
558 from a court of competent jurisdiction. [2 O.C. 204.7].
- 559 ■ *Paternity Law.* The Paternity law outlines the process to establish paternity of Oneida children and
560 other children in order to protect the best interest of these children. The duties and responsibilities
561 of the Child Support Agency in the establishment of paternity through order of the Oneida Family
562 Court are outlined in the Paternity law. The Child Support Agency, when required by federal law,
563 may file a petition requesting the court to establish paternity or other related orders. The Child
564 Support Agency may also assist a party who is filing a petition to establish the paternity of a child
565 [see 7 O.C. 703.6].
- 566 ○ *Commencing a Custody Proceeding.* A child custody proceeding is commenced by a parent
567 by filing a petition to: (a) seek custody of a child, (b) establish the paternity of a child; (c)
568 establish a child support order...” [see 7 O.C. 705.6-1]
- 569 ○ *Peacemaking and Mediation.* Child support shall not be considered during mediation
570 unless child support is directly related to the legal custody or physical placement of the
571 child and the parties agree, in writing, to consider child support. [see 7 O.C. 705.7-3(b)].
- 572 ■ *Per Capita Law.* Per capita payments may be attached for child support arrears ordered by a court
573 of competent jurisdiction, such as the Oneida Family Court. The Per Capita law includes a process
574 for how child support attachments are handled by the Agency and Trust Enrollment Department.
575 [1 O.C. 123.4-9(a)(1) and 1 O.C. 123.4-9(c)].
- 576 ■ *Children’s Code.* At the time this analysis was drafted, the Nation’s Children’s Code was not
577 scheduled to become effective until October 1, 2019.
- 578 ○ *Indian Child Welfare Department Duties.* One of the duties of the Indian Child Welfare
579 Department is to enter into memorandums of understanding and/or agreements with
580 appropriate departments, including the Oneida Child Support Agency, in order to carry out
581 the provisions of the Children’s Code. [7 O.C. 708.7-2(e)].
- 582 ○ *Referrals to Oneida Child Support.* The Family Court or Indian Child Welfare Department
583 may refer matters to the Oneida Child Support Agency at any time. [7 O.C. 708.13-3 &
584 13-4].
- 585 ○ *Indian Child Welfare Disposition Report.* If the ICW Department recommends out-of-
586 home placement, the ICW Department must include in its disposition report a
587 recommendation as to whether the Family Court should establish child support obligation
588 for the parents. [7 O.C. 708.21-2(b)].
- 589 ○ *Termination of Parental Rights.* The Family Court may dismiss a petition if it finds the
590 evidence does not warrant the termination of parental rights or if the Court finds that a

- 591 parent is attempting to voluntarily terminate their parental rights for the sole purpose of
 592 avoiding a child support obligation. [7 O.C. 708.40-2(a)].
- 593 ■ *Divorce, Annulment and Legal Separation.*
 - 594 ○ *Petitions.* Petitions for divorce, annulment or legal separation must state whether the parties
 595 have entered into any written agreement as to child support, and if so, the written agreement
 596 must be attached [7 O.C. 702.5-1(g)].
 - 597 ○ *Legal Separation and Divorce.* After an action for an annulment, legal separation or
 598 divorce is initiated, the Family Court shall make any necessary temporary order concerning
 599 child support. Final orders concerning child support shall be made at the time the
 600 annulment, legal separation or divorce is granted. [7 O.C. 702.8-4].
 - 601 ■ *Child Custody, Placement and Visitation.*
 - 602 ○ *Commencement of Proceeding.* A child custody proceeding may be commenced under the
 603 Child Custody, Placement and Visitation play by a parent filing a petition to seek custody
 604 of a child, establish the paternity of a child, or establish a child support order. [7 O.C.
 605 705.6-1].
 - 606 ○ *Mediation.* If parties agree to mediation under the Child Custody, Placement and Visitation
 607 law, child support shall not be considered during mediation unless child support is directly
 608 related to legal custody or physical placement of the child and the parties agree, in writing,
 609 to consider child support. [7 O.C. 705.7-3(b)].
 - 610

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

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

616 SECTION 8. ENFORCEMENT AND ACCOUNTABILITY

- 617 A. *Enforcement Tools.* Under the current Child Support law, the Oneida Child Support Agency and
 618 Oneida Family Court have a number of administrative and judicial enforcement tools to enforce child
 619 support orders. These include:
- 620 ■ *Administrative (Agency) Enforcement Tools:* Liens, Seizure of Property including account seizure
 621 and personal property, attachment of per capita payments, license suspension, pension, judgment
 622 and settlement intercepts, tax and lottery intercepts and passport denial [7 O.C. 704.15].
 - 623 ■ *Judicial Enforcement Tools:* Bonds and other guarantees, claims against estates, contempt,
 624 community service, incarceration and criminal non-support [7 O.C. 704.16].
 - 625
 - 626

627 SECTION 9. OTHER CONSIDERATIONS

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

630
 631 *Chart 6. Child Support Collection Rates by Agency:*

County or Tribal Agency	Court Cases with Current Support Ordered	Court Cases with Current Support Payments	Collection Rate
Oneida Nation	937	471	50.27%
Lac du Flambeau	256	78	30.47%
Menominee Nation	493	229	46.45%

Ashland County	622	375	60.29%
Brown County	6169	4545	73.67%
Calumet County	1019	828	81.26%
Ho Chunk Nation	145	130	89.66%

Source: Oneida Child Support Agency, August 2018.

632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675

- B. Repeal Child Support Rules.** Since the two Child Support Rules have been incorporated into the body of the law itself, the two rules should be repealed upon adoption of these amendments as they will become redundant.
 - *Recommendation:* The repeal of the Child Support rules should be included in the adopting resolution for these amendments.
- C. Paternity Law.** During the development of these amendments, the Oneida Child Support Agency noted that updates to the Nation’s Paternity law may be needed. The establishment of paternity is an important step in setting child support orders. The Nation’s Paternity law was last amended by the Oneida Business Committee in 2014.
 - *Recommendation:* If the Oneida Child Support Agency wishes to request amendments to the Paternity law, it is recommended that the agency submit an Active Files Request to the LOC.
- D. Potential Enforcement Tools Considered and Not Added.** During the development of these amendments, the LOC and Child Support Agency researched potential new enforcement tools to increase collection of child support orders. After reviewing the research and feedback from departments, the LOC decided not to move forward with adding these new tools to the law. The potential enforcement tools considered included:
 - *Immobilization of Vehicles.* Authorizing the Family Court or Child Support Agency to direct Oneida Police Department to place a “boot” or “wheel lock” on an obligor’s vehicle to immobilize it. The obligor would then have to contact the Agency to make a payment or negotiate a plan to have the “boot” removed.
 - *“Pocket Pulls.”* Ordering an obligor to empty his or her pockets while in Oneida Nation’s court.
 - *“Till Taps.”* Seizing money from an obligor’s business if it is located on the Reservation.
- E. Incarceration.** The current Child Support law already allows the Family Court to sentence individuals to jail. However, this provision has never been used by the Family Court. This is because unlike Wisconsin counties or tribal nations like Menominee Nation, the Oneida Nation has no jail facilities.
 - *Incarceration as a Tool to Encourage Compliance.* While the goal of the Agency is not to send people to jail, the threat of jail time may motivate obligors to make payments in the most egregious of cases. For example, delinquent obligors can be ordered to make a partial payment or meet with the Child Support Agency to develop an alternative payment plan within a certain number of days or else be sentenced to jail [7 O.C. 704.16-2(c)]. The Agency reports that obligors with cases in the Oneida Child Support system are aware that, unlike other courts, Oneida Nation’s courts cannot send them to jail for failing to pay.
 - *Agreement for Housing Inmates:* The Family Court reports that it will not sentence individuals to jail without an agreement in place with another jail to house our inmates. Therefore, in order for the Family Court to utilize incarceration as an enforcement tool for delinquent child support cases, agreements must be developed between the Nation and Brown and/or Outagamie counties to utilize their jail facilities. The Oneida Business Committee established a work group, including Intergovernmental Affairs and the Law Office, to pursue potential agreements with these counties.
 - *Conclusion:* The Child Support Law already authorizes the use of incarceration for Child Support cases. However, this feature of the law cannot be used unless an agreement is developed to utilize a jail. Whether to pursue an agreement with the counties to utilize their jail(s) is a policy decision for the LOC and/or Oneida Business Committee.

676



TO: Lawrence E. Barton, Chief Financial Officer
Ralinda R. Ninham-Lamberies, Assistant Chief Financial Officer
Rae M. Skenandore, Financial Management Analyst

FROM: David P. Jordan, Legislative Operating Committee Chairman

DATE: November 20, 2019

RE: Child Support Law Amendments Fiscal Impact Statement

The Legislative Operating Committee (LOC) is currently developing amendments to the Child Support law. The Legislative Procedures Act requires that a fiscal impact statement be provided for all proposed legislation of the Nation. [1 O.C. 109.6-1]. The fiscal impact statement is an estimate of the total fiscal year financial effects associated with the proposed legislation, and should include:

- startup costs;
- personnel;
- office costs;
- documentation costs; and
- an estimate of the amount of time necessary for an individual or agency to comply with the law after implementation. [1 O.C. 109.3-1(c)].

The fiscal impact statement must be completed and submitted to the LOC prior to the proposed legislation being forwarded to the Oneida Business Committee for consideration. [1 O.C. 109.6-2]. The fiscal impact statement provides the Oneida Business Committee information on what the potential adoption of the proposed legislation will cost the Nation, so that the Oneida Business Committee can determine if adoption of the proposed legislation is in the best interest of the Nation.

The Legislative Procedures Act grants the LOC the authority to direct the Finance Department or any agency who may administer a program if the legislation is enacted or may have financial information concerning the subject matter of the legislation to submit a fiscal impact statement. [1 O.C. 109.6-1].

Oneida Business Committee resolution BC-09-25-19-A titled, “*Interpreting ‘Fiscal Impact Statement’ in the Legislative Procedures Act*” provides further clarification on the process for directing a fiscal impact statement be completed. This resolution provides that when developing a fiscal impact statement for proposed legislation to be used for presentation to and consideration of adoption by the Oneida Business Committee, the Finance Department shall, within ten (10) business days of final approval of draft legislation by the Legislative Operating Committee, provide a fiscal impact statement to the Legislative Operating Committee.

On November 20, 2019, the Legislative Operating Committee approved the final draft of the proposed amendments to the Child Support law. Therefore, the LOC is directing the Finance

Department to provide a fiscal impact statement on the proposed amendments to the Child Support law by December 6, 2019.

A copy of the proposed amendments to the Child Support law, as well as the legislative analysis, have been attached to this memorandum for your convenience.

Requested Action

Provide the LOC a fiscal impact statement of the proposed amendments to the Child Support law by December 6, 2019.



Legislative Operating Committee
 November 20, 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.

11/6/19 LOC: Motion by Ernest Stevens III to approve the draft and the legislative analysis for the Indian Preference in Contracting Law Amendments; seconded by Kirby Metoxen. Motion carried unanimously.

11/14/19: *Work Meeting.* Present: Clorissa N. Santiago, Brandon Wisneski, Travis Wallenfang, Patrick Stensloff. The purpose of this work meeting was to review the updated draft fine and penalty resolution and discuss specific fine amounts for each violation.

Next Steps:

- Approve the public meeting packet and forward the Indian Preference in Contracting law amendments to a public meeting to be held on December 19, 2019.

ONEIDA NATION PUBLIC MEETING NOTICE

Thursday, December 19, 2019, 12:15 pm

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

Find Public Meeting Materials at

Oneida-nsn.gov/government/register/public meetings

Send Public Comments to

LOC@oneidanation.org

Ask Questions here

LOC@oneidanation.org

920-869-4312



INDIAN PREFERENCE IN CONTRACTING LAW AMENDMENTS

The purpose of this law is to 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.

The amendments to the Indian Preference in Contracting law will:

1. Update the definition of tribal corporation to include any corporation chartered and/or wholly owned by the Nation;
2. Raise the threshold for when Indian Preference applies to contracts from \$1,500 to \$3,000;
3. Redefine joint ventures and permit joint ventures to qualify for Indian Preference on a project-specific basis;
4. Set a new timeline for Indian Preference Office to review contracts; and
5. 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.

PUBLIC COMMENTS PERIOD CLOSSES MONDAY, DECEMBER 30, 2019

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

PROVIDING EFFECTIVE PUBLIC COMMENTS

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



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

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

Least Effective Comment	More Effective Comment	Most Effective Comment
Indian preference is a great benefit for members of the Nation.	We should look at increasing the Indian Preference benefit that is applied to contracts.	In section 502.6-9 the Indian preference percentage discount of 5% that is applied to non-construction contracts should be increased to 8%.



Yukwat^nhas Ukwehu=w# Kayanl^hsla

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

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 ~~“(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) “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) “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) “Indian” means an enrolled member of any federally-recognized Indian tribe.~~

106 ~~(s) “Indian-owned business” means an entity which is majority owned and managed~~
107 ~~by an Indian.~~

108 ~~(t) “Indian preference” means preference for Indians, regardless of tribal affiliation,~~
109 ~~in all aspects of employment and contracting.~~

110 ~~(u) “Internal service” means any service provided for free or at cost for the~~
111 ~~TribeNation 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) “Joint venture” means an entity that is fifty percent (50%) owned and managed~~
115 ~~by an Indian.~~

116 ~~(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) “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) “Office(x) “Nation” means the Indian Preference Office or its designee.~~

124 ~~(z) “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.
172

173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218

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.~~

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)~~ (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- - - -

920
921
922
923
924
925

Title 5. Business - Chapter 502
Yukwatánhas Ukwéhu·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-__-__-__-__

624
625
626
627
628

November 15, 2019 Legislative Operating Committee E-Poll Approval of the Sanctions and Penalties Law Materials for the January 20, 2020, GTC Meeting



Good Morning Legislative Operating Committee,

This e-mail serves as the e-poll for approval of the Sanctions and Penalties law materials for the January 20, 2020 General Tribal Council meeting.

EXECUTIVE SUMMARY

At the March 17, 2019, Special General Tribal Council (“GTC”) meeting the proposed Sanctions and Penalties law was presented to the GTC for the consideration of adoption. After some discussion on the proposed Sanctions and Penalties law the GTC took the following actions:

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 the March 17, 2019, GTC meeting, the Legislative Operating Committee has developed a memorandum which provides details on the various outreach efforts the Legislative Operating Committee has made to comply with the GTC directive.

The Legislative Operating Committee has determined that the Sanctions and Penalties law should be placed on the January 20, 2020, annual GTC meeting agenda for consideration.

The Oneida Business Committee will be holding a special meeting on December 4, 2019, to approve the materials for the January 20, 2020, GTC meeting packet. The Oneida Business Committee has imposed a deadline of November 19, 2019, for inclusion on the December 4, 2019, special Oneida Business Committee meeting agenda.

An e-poll is necessary for this matter because the next Legislative Operating Committee meeting is scheduled for November 20, 2019, which is past the deadline for inclusion in the December 4, 2019, special Oneida Business Committee meeting packet.

The materials that will be included in the January 20, 2020, GTC meeting packet for the Sanctions and Penalties law include:

- Memorandum from the Legislative Operating Committee to the GTC providing an update on the Sanctions and Penalties law as it relates to the Legislative Operating Committee’s community outreach efforts;
- Materials from the March 17, 2019, GTC meeting packet regarding the Sanctions and Penalties law including:
 - Adoption memorandum;
 - Resolution;
 - Statement of Effect;
 - Legislative Analysis;
 - Draft;
 - Fiscal Impact Statement; and
 - PowerPoint presentation slides.

REQUESTED ACTION

Approve the Sanctions and Penalties law materials and forward to the Oneida Business Committee for inclusion in the January 20, 2020, General Tribal Council meeting packet materials.





DEADLINE FOR RESPONSE

November 15, 2019 at 12:00 p.m.

All supporting documentation has been attached to this email for your convenience.

E-POLL RESULTS:

The e-poll was approved by David P. Jordan, Ernest Stevens III, Daniel Guzman King, Jennifer Webster.

	David P. Jordan	LOC; Daniel P. Guzman; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen; David P. Jordan; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; + 5 -	11:12 AM
RE: E-POLL REQUEST: Approval of the Sanctions and Penalties Law Materials for the January 20, 2020 General Tribal Council Meeting			
Approve			
	Ernest L. Stevens	LOC; Daniel P. Guzman; David P. Jordan; Jennifer A. Webster; Kirby W. Metoxen; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Oroasco; + 4 -	11:13 AM
RE: E-POLL REQUEST: Approval of the Sanctions and Penalties Law Materials for the January 20, 2020 General Tribal Council Meeting			
Approve			
	Daniel P. Guzman	LOC; David P. Jordan; Ernest L. Stevens; Jennifer A. Webster; Kirby W. Metoxen; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Oroasco; + 4 -	11:14 AM
RE: E-POLL REQUEST: Approval of the Sanctions and Penalties Law Materials for the January 20, 2020 General Tribal Council Meeting			
Approve			
	Jennifer A. Webster	LOC; Daniel P. Guzman; David P. Jordan; Ernest L. Stevens; Kirby W. Metoxen; Fawn J. Billie; Jameson J. Wilson; Jessica L. Wallenfang; Leyne C. Oroasco; + 4 -	11:14 AM
RE: E-POLL REQUEST: Approval of the Sanctions and Penalties Law Materials for the January 20, 2020 General Tribal Council Meeting			
Approve			



TO: General Tribal Council
FROM: David P. Jordan, Legislative Operating Committee Chairperson
DATE: January 20, 2020
RE: Sanctions and Penalties Law

Summary

On March 17, 2019, the Legislative Operating Committee (LOC) presented a proposed Sanctions and Penalties law to the General Tribal Council (GTC). GTC was asked to consider the adoption of this Sanctions and Penalties law which would establish a set of sanctions and penalties that may be imposed upon all elected and appointed officials of the Nation for misconduct in office, including the Oneida Business Committee. During the last four (4) years the GTC has discussed sanctioning an official during at least ten (10) GTC meetings, but the requests to sanction an official have been declined often times due to the fact that the Nation lacks a law that allows for an official to be sanctioned for misconduct. After discussion on the proposed Sanctions and Penalties law, the GTC took the following actions:

- *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.*



The LOC at the Elder Congregate Meal Site for a Sanctions and Penalties law community outreach event on October 7, 2018.

Community Outreach Efforts

Rather than just waiting the sixty (60) days to see if anyone came forward with input, the LOC planned and hosted many opportunities for members of the community to become more informed

about the Sanctions and Penalties law and provide input and suggestions as to what should be addressed in the law.

<i>EFFORTS FOR OUTREACH AND INPUT</i>	
<i>Opportunities for Input Prior to the March 17, 2019 GTC Meeting:</i>	
November 1, 2017	Work Meeting with all Boards, Committees, and Commissions Invited
May 3, 2018	Community Meeting Potluck
October 4, 2018	Public Meeting*
October 11, 2018	Public Comment Period Closed*
February 7, 2019	Article Published in the Kalihwisaks
February 21, 2019	Informational Video Posted on Facebook
<i>Opportunities for Input After the March 17, 2019 GTC Meeting:</i>	
July 11, 2019	Community Outreach Event held at the Radisson Hotel and Conference Center prior to GTC Meeting
July 17, 2019	Community Outreach Event held at the Norbert Hill Center
August 9, 2019	Community Outreach Event held during Oneida Veteran's Breakfast
August 15, 2019	Community Outreach Event held during Oneida Farmer's Market
August 31, 2019	First Period for Written Submissions Closed
September 19, 2019	Article Published in the Kalihwisaks
October 7, 2019	Community Outreach Event held at Elder Congregate Meal Site
October 18, 2019	Community Outreach Event held at SEOTS
October 25, 2019	Input Opportunity at Community Budget Meeting
October 31, 2019	Second Period for Written Submissions Closed
November 7, 2019	Article Published in the Kalihwisaks

* *The public meeting and public comment period are required by the Legislative Procedures Act.*

What opportunities for input did the LOC provide before March 17, 2019?

Before providing what efforts the LOC made after the March 17, 2019, GTC directive to defer this item for GTC to have additional time to consider it and have input, it is important to note the efforts that were already made as the LOC provided various opportunities for members of the community to provide input during the development of the Sanctions and Penalties law.

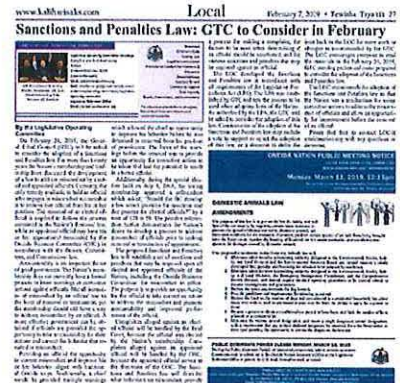
Work Meetings and Community Meetings. On November 1, 2017, the LOC invited all members of boards, committees, and commissions of the Nation to attend a work meeting to provide input on what the Sanctions and Penalties law should address. The LOC then held a community meeting on the proposed Law on May 3, 2018. This community meeting was a potluck style meeting where those community members in attendance shared input, questions, and concerns regarding the Law.

Public Meeting and Public Comment Period. On October 4, 2018, the LOC held a public meeting, as required by the Legislative Procedures Act, where members of the community can provide oral testimony of views or questions on the proposed law. For those who were unable to attend the public meeting in person, the LOC held open a comment period until October 11, 2018, which is a timeframe where written comments on the Law were accepted. Notices for community

meetings and public meetings were published in the Kalihwisaks, on the Nation’s website, and on Facebook.

LOC Meeting Agendas. The proposed Sanctions and Penalties law was on eleven (11) LOC meeting agendas prior to the March 17, 2019, GTC meeting. The LOC holds meetings on the first and third Wednesday of every month at 9:00 a.m. in the Norbert Hill Center Business Committee Conference Room and encourages members of the community to attend and participate by asking questions and/or providing input during those meetings.

Kalihwisaks Article. Leading up to the March 17, 2019, GTC meeting the LOC published an informational article in the February 7, 2019, Kalihwisaks edition in an effort to provide the community background on why this Law was created and information on what the Law would do. This was an effort by the LOC to encourage the community to be prepared to discuss and consider this item. The article included the LOC’s email address and encouraged individuals to contact the LOC with any questions or concerns.



Article as it appeared in the February 7, 2019, Kalihwisaks edition.

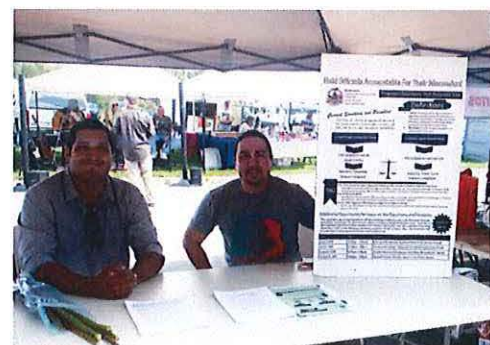


Behind the scenes look at Councilman Daniel Guzman King filming the Sanctions and Penalties law informational video.

Informational Video. The LOC then developed an informational video that was shared on Facebook on February 21, 2019, which provided information on the purpose of the Law and included a link to the Nation’s website for additional information, including “frequently asked questions.” This video was viewed nearly 4,000 times.

What opportunities for input has the LOC provided since the March 17, 2019, directive?

Since the March 17, 2019, GTC directive to allow additional time for members of GTC to consider the Law and have input, the LOC has made many additional efforts to provide an opportunity for community engagement with the proposed Sanctions and Penalties law.

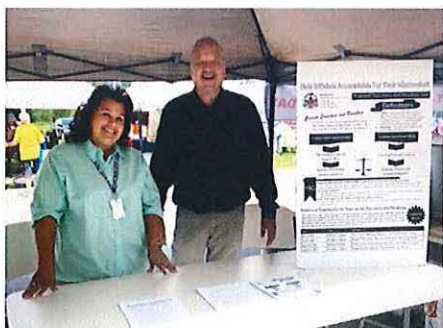


Councilman Ernest Stevens III and Councilman Daniel Guzman King conducting community outreach at the Oneida Farmer’s Market.

Community Outreach Events. The LOC has held six (6) community outreach events. Notices for these community outreach events were published in the July 3, 2019, and September 19, 2019, Kalihwisaks editions and published on the Nation’s website. At the community outreach events the LOC had informational flyers, drafts of the law, and a frequently asked questions document available for people to take and learn more. At many of the community

outreach events the LOC gave a short presentation on the Sanctions and Penalties law and had open discussion on the proposed law with those in attendance. At one (1) event the LOC even read the Sanctions and Penalties law line by line with the community member in attendance in an effort to educate, answer questions, and collect concerns. The LOC was available during these community outreach events to answer questions and collect input from community members. The community outreach events were held at the following dates and locations:

- July 11, 2019, held at the Radisson hotel and conference center prior to the GTC meeting;
- July 17, 2019, held at the Norbert Hill Center;
- August 9, 2019, held during the Oneida Veteran's Breakfast;
- August 15, 2019, held at the Oneida Farmer's Market;
- October 7, 2019, held at the Elder Congregate Meal Site; and
- October 18, 2019, held in Milwaukee at the South Eastern Oneida Tribal Services (SEOTS) building.



Councilwoman Jennifer Webster and LOC Chairman David P. Jordan at the Oneida Farmer's Market.



LOC members held a community outreach event at the SEOTS building in Milwaukee.



LOC Chairman David P. Jordan and Vice-Chairman Kirby Metoxen at Oneida Veteran's Breakfast.

Period for Written Submissions of Comments. Understanding that not everyone is available to attend community outreach events in person, the LOC also allowed for written comments on the proposed Sanctions and Penalties law to be submitted from July 3, 2019, until August 31, 2019, and then from September 18, 2019, until October 31, 2019. Written submissions of comments were received from two (2) individuals.

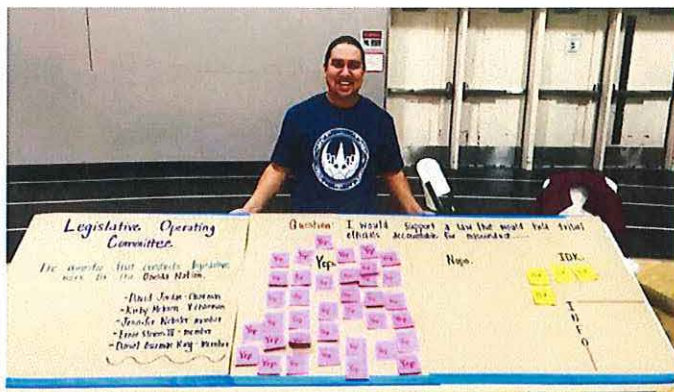
Kalihwisaks Articles. In addition to the various community outreach events, the LOC also published multiple articles in the Kalihwisaks about the proposed Sanctions and Penalties law. An article was published in the September 19, 2019, Kalihwisaks edition for the purpose of informing the community on the various outreach efforts the Legislative Operating Committee has made for the proposed Sanctions and Penalties law. Another article was then published in the November 7, 2019, Kalihwisaks edition for the purpose of informing the community why the Legislative Operating Committee is the body developing the Sanctions and Penalties law.

Community Budget Meeting. During the October 25, 2019, Community Budget Meeting the LOC had an interactive display at the Legislative Reference Office's booth which allowed those community members in attendance to provide input by responding to the statement, "I would

support a law that would hold tribal officials accountable for misconduct.” Individuals could respond with either a “Yep,” “No,” or “IDK.” Thirty-seven (37) individuals responded with “Yep,” four (4) individuals responded with “IDK,” and no one responded with “No.”

Input Received from Community Outreach Efforts

Most of the engagement during the community outreach events that resulted from the March 17, 2019, GTC directive focused on educating the community on the purpose and provisions of the Sanctions and Penalties law and answering questions that community members may have.



Councilman Daniel Guzman King with the information collected at the Community Budget Meeting held on October 25, 2019. 37 of the 41 people who participated stated they would support a law to hold officials accountable for misconduct.

Some members of the community did take the opportunity to provide input to the LOC on issues they would like to see addressed in the law. Some of the input the LOC has received includes:

- We should eliminate every board, committee, or commission of the Nation that is not required by law or grant. We can have employees of the Nation doing the work instead of elected and appointed officials.
- We cannot fault the misconduct of boards, committees, and commissions when there is no performance outcome associated with boards, committees, and commissions, or any way to ensure that the boards, committees, and commissions are aligned with the vision of the Nation as a whole.
- Internal Audit should be delegated the authority to handle investigations of complaints of appointed officials that come before the Oneida Business Committee.
- Complaints against appointed officials should go to the Judiciary and not go to the Oneida Business Committee.
- The Sanctions and Penalties law should only address complaints against elected officials, and not address appointed officials.
- Verbal and written reprimands should be removed from the law. Political figures should be held to a higher standard and there should be zero tolerance for misconduct.
- Sanctions such as loss of stipend and mandatory participation in training should be a mandatory and immediate sanction for any misconduct.
- There should not be a timeframe for when complaints can be brought forward, you should be able to bring a complaint forward as long as that official is in office.
- To reduce frivolous complaints there should be a requirement that the complainant have standing and was the person aggrieved by the conduct of an official.

Additionally, during the March 17, 2019, GTC meeting the following input was received:

- This law allows for too many people to file a complaint resulting in the official being in court.

- Only members of the Nation should have standing to file a complaint against our officials.
- The Oneida Business Committee should not be a hearing body for appointed officials.
- The Judiciary should not be a hearing body for complaints against elected officials.

The GTC directed the LOC to provide additional time for members of the community to consider the Sanctions and Penalties law and have input but did not direct the LOC to make any changes to the proposed draft. Therefore, whether or not to defer this item back to the LOC with direction to make changes to the Law is at the discretion of the GTC.

Why do we need a Sanctions and Penalties law?

If an official of the Nation engages in misconduct, the only remedy available today to hold that official accountable is removal from office. Removal from office must be pursued in accordance with the Removal law if an elected official, or in accordance with the Boards, Committees, and Commissions law if an appointed official. Although not every instance of misconduct rises to the level of removal from office, that does not mean that we should fail to address or attempt to correct every instance of misconduct. The Nation is currently lacking a process to issue warnings, suspensions, or other corrective actions against an official for his or her misconduct.

The desire for a process to be able to better hold officials accountable for misconduct in office has been discussed within the Nation for more than twenty (20) years. From 2016 to 2019, the GTC has discussed sanctioning an official, whether through suspension or loss of stipend or wage, during at least ten (10) GTC meetings. The requests to sanction an official are often times declined due to the fact that the Nation lacks a law that allows for an official to be sanctioned for misconduct while still protecting the due process rights of that official. In November 2018 the GTC even considered a petition regarding “*Rescinding the Removal law*” for the purpose of addressing disciplinary actions such as suspensions or removals of officials through an easier process than what the Removal law provides.

Additionally, during the Special Election held on July 9, 2016, the Nation’s voting membership was asked to consider a referendum question of “*Should the BC develop a law which provides for sanctions and due process for elected officials?*” This referendum question was approved by a vote of one hundred and seventy-eight (178) to fifty-nine (59), requiring this topic to come before the GTC for consideration and discussion.

Most other governments, including tribal, local, state and federal, have some sort of sanctions and penalties process for officials. Through the adoption of the Sanctions and Penalties law the GTC can close the current gap by providing a process to address the misconduct of officials and empower themselves to take action to hold officials accountable.

Conclusion

The LOC has fulfilled the March 17, 2019, GTC directive to defer this item for at least sixty (60) days for GTC to have additional time to consider it and have input. The LOC fulfilled this objective by providing various opportunities for members of the community to have additional time to learn more about the Sanctions and Penalties law and provide input.

It is now up to the GTC to determine the next steps for moving this legislative item forward. Based on input that was received during the March 17, 2019, GTC meeting and subsequent outreach events the LOC is recommending that the Sanctions and Penalties law be deferred back to the LOC for revisions addressing complaints against appointed officials. Currently, the Sanctions and Penalties law is drafted so that complaints against appointed officials are handled by the Oneida Business Committee, while complaints against elected officials are handled by the Judiciary. The LOC is asking for the GTC to provide direction as to how appointed officials should be treated under the Sanctions and Penalties law.

Requested Action

Amend the main motion to defer the Sanctions and Penalties law back to the LOC with specific direction as to what revisions to bring back to GTC for adoption, such as either of the following:

1. Remove the process for addressing complaints against appointed officials from the Sanctions and Penalties law so that the law only addresses misconduct of elected officials.
OR
2. Revise the Sanctions and Penalties law so that complaints against appointed officials are handled by the Judiciary and not the Oneida Business Committee.

PHOTOGRAPHS FROM THE LEGISLATIVE OPERATING COMMITTEE'S COMMUNITY OUTREACH EVENTS



Interactive display from the Community Budget Meeting where 37 of the 41 participants stated they would support a law that held officials accountable for misconduct.



LOC at the Elder Congregate Meal Site for a Sanctions and Penalties law community outreach event on October 7, 2018.



LOC Chairman David P. Jordan and Councilwoman Jennifer Webster in Milwaukee discussing the Sanctions and Penalties law with a community member.



Councilman Ernest Stevens III and Councilman Daniel Guzman King conducting community outreach at the Oneida Farmer's Market.



LOC Chairman David P. Jordan and Vice-Chairman Kirby Metoxen conversing about the Sanctions and Penalties law with those in attendance at the Oneida Veterans Breakfast.

PHOTOGRAPHS FROM THE LEGISLATIVE OPERATING COMMITTEE'S COMMUNITY OUTREACH EVENTS



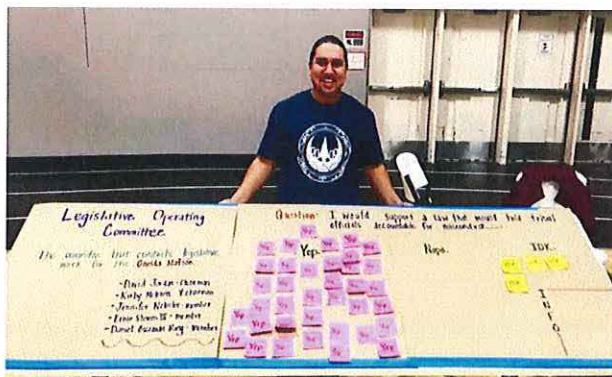
Above: LOC members in Milwaukee holding a community outreach event at the SEOTS building. Below: LOC's materials for the Sanctions and Penalties law outreach events.



LOC Chairman David P. Jordan and Vice-Chairman Kirby Metoxen at the Oneida Veterans Breakfast community outreach event.



LOC Vice-Chairman Kirby Metoxen presenting on the Sanctions and Penalties law at the Elder Congregate Meal Site.



Left: Councilman Daniel Guzman King collecting input at the Community Budget Meeting. Right: LOC Chairman David P. Jordan and Councilwoman Jennifer Webster at the Oneida Farmer's Market.





TO: General Tribal Council
FROM: David P. Jordan, Legislative Operating Committee Chairperson
DATE: February 24, 2019
RE: Sanctions and Penalties Law

Please find the following attached backup documentation for your consideration of the Sanctions and Penalties law:

1. Resolution: Sanctions and Penalties Law
2. Statement of Effect: Sanctions and Penalties Law
3. Sanctions and Penalties Law Legislative Analysis
4. Sanctions and Penalties Law
5. Sanctions and Penalties Law Fiscal Impact Statement
6. Sanctions and Penalties Law PowerPoint Presentation Slides

Overview

If an elected or appointed official of the Nation engages in misconduct while in office the only remedy available to hold the official accountable is to remove that official from his or her position. The removal of an elected official is required to follow the process contained in the Nation's Removal law, which includes a petition, a preliminary review and hearing by the Nation's Judiciary, and ultimately a determination by General Tribal Council. [1 O.C. 104]. The removal of an appointed official is governed by the Boards, Committees, and Commissions law which provides that the Oneida Business Committee can terminate the appointment of an official with a two-thirds (2/3) majority vote. [1 O.C. 105.7-4].

Other than removal or termination of appointment, the Nation does not currently have a formal process to issue warnings, reprimands, or corrective actions against elected and appointed officials. The Legislative Operating Committee recognizes that not all instances of misconduct by an elected or appointed official may rise to the level of removal or termination of appointment. The Legislative Operating Committee also determined that a more effective government can be obtained if officials are provided the opportunity to take accountability for their actions and correct the behavior that resulted in misconduct, which may result in the individual becoming a better official.

Providing an elected or appointed official the opportunity to correct misconduct and improve behavior aligns with traditional Oneida ways. The Legislative Operating Committee learned through discussions with the Cultural Heritage Department that in the past a chief would be provided three (3) warnings in hope of improving the chief's behavior before the chief was dehorned or removed from his position of prominence. The focus of the warnings before the removal of the official was to provide an opportunity for corrective action to be taken that had the potential to result in a better official before removal of that official was sought. The Legislative Operating Committee is seeking the adoption of this Sanctions and Penalties law in an effort to

provide a mechanism for utilizing corrective actions to address the misconduct of officials and allow an opportunity for growth and improvement before removal or termination of appointment.

Additionally, during the special election held on July 9, 2016, a referendum question which asked, “Should the BC develop a law which provides for sanctions and due process for elected officials?” was included on the ballot. This referendum question was approved by a vote of one hundred and seventy-eight (178) to fifty-nine (59). This positive referendum further demonstrates the Nation’s desire to develop a process to address misconduct of officials prior to seeking removal or termination of appointment.

This resolution adopts the proposed Sanctions and Penalties law which establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official. The Sanctions and Penalties law will:

- Require an elected or appointed official of the Nation to behave in a manner that promotes the highest ethical and moral standard [1 O.C. 120.4-1];
- Subject an elected or appointed official of the Nation to sanctions and penalties for behaving in a manner that constitutes misconduct, which is defined as:
 - a violation of the Constitution or any of the Nation’s laws, policies, or rules;
 - a violation of the bylaws, standard operating procedures or other internal operating documents that govern the entity upon which the official serves;
 - a conviction of a felony, or any crime in any jurisdiction that would be classified as a felony under federal law or Wisconsin law; and
 - any other activity that is incompatible with the high moral and ethical standards that are expected of the Nation’s officials [1 O.C. 120.4-2];
- Provide a process for filing a complaint, including:
 - who may file a complaint [1 O.C. 120.5-1];
 - when a complaint may be filed, [1 O.C. 120.5-2];
 - where a complaint may be filed [1 O.C. 120.5-4]; and
 - the necessary contents of a complaint [1 O.C. 120.5-3];
- Prohibit retaliation against any individual who makes a complaint, is a witness to a complaint, or offers testimony or evidence [1 O.C. 120.5-5];
- Require all complaints alleged against an elected or appointed official to be handled in a confidential manner [1 O.C. 120.5-7];
- Delegate the responsibility to handle complaints alleged against an appointed official to the Oneida Business Committee, due to the fact that an appointed official serves at the discretion of the Oneida Business Committee, through a process which includes:
 - The opportunity for mediation between the complainant and the official [1 O.C. 120.6-3];
 - The opportunity for the official to provide an answer to the complaint [1 O.C. 120.6-4];
 - The requirement that an Oneida Business Committee member that has a conflict of interest in a complaint brought before the Oneida Business Committee immediately recuse himself or herself and shall not participate in any portion of the complaint process [1 O.C. 120.6-5];
 - An initial review by the Oneida Business Committee to determine whether or not

- the allegation made within the complaint has merit [1 O.C. 120.6-6];
- An investigatory hearing held by the Oneida Business Committee to determine if there is enough evidence to substantiate the allegations of misconduct [1 O.C. 120.6-8];
- Deliberation and determination by the Oneida Business Committee on whether there is clear and convincing evidence that the official engaged in misconduct, and therefore appropriate sanctions and/or penalties shall be imposed [1 O.C. 120.6-9, 120.6-10];
- Delegate the responsibility to handle complaints alleged against an elected official to the Trial Court [1 O.C. 120.7-1];
- Allow for an individual to appeal the decision of the Oneida Business Committee or Trial Court to the Nation's Court of Appeals [1 O.C. 120.6-11, 120.7-4];
- Provide various sanctions and penalties that may be imposed against an elected or appointed official [1 O.C. 120.8-2];
- Provide factors to be used by the Oneida Business Committee and the Trial Court when determining the appropriate sanctions and/or penalties to impose [1 O.C. 120.8-3];
- Clarify that the imposition of sanctions or penalties does not exempt an official from individual liability for the underlying misconduct, and does not limit any penalties that may be imposed in accordance with other laws [1 O.C. 120.8-5];
- Discuss the effect of a resignation by an elected or appointed official [1 O.C. 120.9]; and
- Require that the Business Committee Support Office maintain a record of conduct in office for each elected or appointed official [1 O.C. 120.10].

The Legislative Operating Committee developed the proposed Sanctions and Penalties law through the review of various laws of the Nation, in addition to the laws of seven (7) other tribal nations. The Business Committee Support Office, Records Management Department, Human Resources Department, Cultural Heritage Department, and various boards, committees, and commissions of the Nation were consulted in the development of this law. Additionally, the Legislative Operating Committee held a community meeting on May 3, 2018, to gather input, ideas, and concerns from members of the community. Sixteen (16) people attended this community meeting and participated in the development of this law.

In accordance with the Legislative Procedures Act, a public meeting on the proposed Sanctions and Penalties law was held on October 4, 2018. Six (6) members of the community attended the public meeting with three (3) people providing oral comments. The public comment period closed on October 11, 2018. The Legislative Operating Committee received four (4) submissions of written comments during the public comment period. All sixty-four (64) public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on October 17, 2018, and October 25, 2018. Any changes made based on those comments have been incorporated into this draft. Additional information regarding the comments received during the public comment period and the Legislative Operating Committee's consideration of those comments can be found at <https://oneida-nsn.gov/government/register/public-meetings/>.

Requested Action

Adopt the Resolution: Sanctions and Penalties Law.

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

GTC Resolution # _____ Sanctions and Penalties Law

- 1
2
3 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
4 recognized by the laws of the United States of America; and
5
6 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
7
8 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
9 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
10
11 **WHEREAS,** the purpose of the Sanctions and Penalties law (“the Law”) is to establish a consistent set
12 of sanctions and penalties that may be imposed upon elected and appointed officials of the
13 Nation for misconduct in office for the purpose of providing an opportunity for the official to
14 take corrective action to address the misconduct and promote accountability and improved
15 performance of the official; and
16
17 **WHEREAS,** the Law will require an elected or appointed official of the Nation to behave in a manner
18 that promotes the highest ethical and moral standard; and
19
20 **WHEREAS,** the Law will subject an elected or appointed official of the Nation to sanctions and penalties
21 for behaving in a manner that constitutes misconduct; and
22
23 **WHEREAS,** the Law will provide a process for filing a complaint alleging misconduct against an elected
24 or appoint official, including who may file a complaint, when to file a complaint, where a
25 complaint may be filed, and the necessary contents of a complaint; and
26
27 **WHEREAS,** the Law will prohibit retaliation against any individual who makes a complaint, is a witness
28 to a complaint, or offers testimony or evidence; and
29
30 **WHEREAS,** the Law will require all complaints alleged against an elected or appointed official to be
31 handled in a confidential manner; and
32
33 **WHEREAS,** the Law will delegate the responsibility to handle complaints alleged against an appointed
34 official to the Oneida Business Committee, due to the fact that an appointed official serves
35 at the discretion of the Oneida Business Committee; and
36
37 **WHEREAS,** the Law will delegate the responsibility to handle complaints alleged against an elected
38 official to the Judiciary - Trial Court; and
39
40 **WHEREAS,** the Law will allow an appeal of a decision of the Oneida Business Committee or Judiciary
41 - Trial Court to be made to the Nation’s Court of Appeals; and
42

43 **WHEREAS,** the Law provides the various sanctions and penalties that may be imposed against an
44 elected or appointed official, and the factors that shall be used when determining the
45 appropriate sanctions and/or penalties to impose; and
46

47 **WHEREAS,** the Law will clarify that the imposition of sanctions and/or penalties does not exempt an
48 official from individual liability for the underlying misconduct, and does not limit any
49 penalties that may be imposed in accordance with other laws; and
50

51 **WHEREAS,** the Law will provide for the effect of a resignation by an elected or appointed official; and
52

53 **WHEREAS,** the Law will require that the Business Committee Support Office maintain a record of
54 conduct in office for each elected or appointed official; and
55

56 **WHEREAS,** a public meeting on the proposed Law was held on October 4, 2018, in accordance with
57 the Legislative Procedures Act, and the public comments were reviewed and accepted by
58 the Legislative Operating Committee on October 17, 2018 and October 25, 2018; and
59

60 **NOW THEREFORE BE IT RESOLVED,** that the Sanctions and Penalties law is hereby adopted and shall
61 become effective ten (10) business days after the date of the adoption of this resolution.
62
63



Statement of Effect

Sanctions and Penalties Law

Summary

This resolution adopts a Sanctions and Penalties law for the purpose of establishing a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official.

Submitted by: Clorissa N. Santiago, Staff Attorney, Legislative Reference Office

Date: January 7, 2019

Analysis by the Legislative Reference Office

The Legislative Procedures Act (“the LPA”) was adopted by the General Tribal Council through resolution GTC-01-07-13-A for the purpose of providing a process for the adoption of laws of the Nation. [1 O.C. 109.1-1]. This resolution adopts a Sanctions and Penalties law, which complies with all processes and procedures required by the LPA, including the development of a legislative analysis, a fiscal analysis, and the opportunity for public review during a public meeting and public comment period. [1 O.C. 109.6, 109.7, 109.8].

This resolution adopts the proposed Sanctions and Penalties law which will establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official. The Sanctions and Penalties law will:

- Require an elected or appointed official of the Nation to behave in a manner that promotes the highest ethical and moral standard [1 O.C. 120.4-1];
- Subject an elected or appointed official of the Nation to sanctions and penalties for behaving in a manner that constitutes misconduct [1 O.C. 120.4-2];
- Provide a process for filing a complaint, including:
 - who may file a complaint [1 O.C. 120.5-1];
 - when a complaint may be filed, [1 O.C. 120.5-2];
 - where a complaint may be filed [1 O.C. 120.5-4]; and
 - the necessary contents of a complaint [1 O.C. 120.5-3];
- Prohibit retaliation against any individual who makes a complaint, is a witness to a complaint, or offers testimony or evidence complying with directives under this law [1 O.C. 120.5-5];
- Require all complaints alleged against an elected or appointed official to be handled in a confidential manner [1 O.C. 120.5-7];
- Delegate the responsibility to handle complaints alleged against an appointed official to the Oneida Business Committee, due to the fact that an appointed official serves at the

discretion of the Oneida Business Committee, through a process which includes:

- The opportunity for mediation between the complainant and official whom is the subject of the complaint [1 O.C. 120.6-3];
- The opportunity for the official who is the subject of the complaint to provide an answer to the complaint [1 O.C. 120.6-4];
- The requirement that an Oneida Business Committee member that has a conflict of interest in a complaint brought before the Oneida Business Committee immediately recuse himself or herself and shall not participate in any portion of the complaint process [1 O.C. 120.6-5];
- An initial review by the Oneida Business Committee to determine whether or not the allegation made within the complaint has merit [1 O.C. 120.6-6];
- An investigatory hearing held by the Oneida Business Committee to determine if there is enough evidence to substantiate the allegations of misconduct by clear and convincing evidence [1 O.C. 120.6-8];
- Deliberation and determination by the Oneida Business Committee on whether there is clear and convincing evidence that the official engaged in misconduct, and therefore appropriate sanctions and/or penalties shall be imposed [1 O.C. 120.6-9, 120.6-10];
- Delegate the responsibility to handle complaints alleged against an elected official to the Trial Court [1 O.C. 120.7-1];
- Allow for an individual to appeal the decision of the Oneida Business Committee or Trial Court to the Nation's Court of Appeals [1 O.C. 120.6-11, 120.7-4];
- Provide sanctions and penalties that may be imposed against an elected or appointed official [1 O.C. 120.8-2];
- Provide factors to be used when determining the appropriate sanctions and/or penalties to impose [1 O.C. 120.8-3];
- Clarify that the imposition of sanctions and/or penalties does not exempt an official from individual liability for the underlying misconduct, and does not limit any penalties that may be imposed in accordance with other laws [1 O.C. 120.8-5];
- Discuss the effect of a resignation by an elected or appointed official [1 O.C. 120.9]; and
- Require that the Business Committee Support Office maintain a record of conduct in office for each elected or appointed official [1 O.C. 120.10].

In accordance with the LPA, a public meeting on the proposed Sanctions and Penalties law was held on October 4, 2018. Six (6) members of the community attended the public meeting with three (3) people providing oral comments. The public comment period closed on October 11, 2018. The Legislative Operating Committee received four (4) submissions of written comments during the public comment period. All sixty-four (64) public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on October 17, 2018, and October 25, 2018.

The Sanctions and Penalties law will become effective ten (10) business days after the adoption of the resolution by the General Tribal Council.

Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws.



SANCTIONS AND PENALTIES LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: Oneida Business Committee	SPONSOR: Jennifer Webster	DRAFTER: Clorissa N. Santiago	ANALYST: Brandon Wisneski
Intent of the Amendments	To increase accountability among elected and appointed officials of the Nation, including members of the Oneida Business Committee. This new law creates a formal complaint process and allows for corrective actions against officials who engage in misconduct.		
Purpose	To establish a consistent set of sanctions and penalties that may be imposed upon elected and appointed officials of the Nation for misconduct in office for the purpose of providing an opportunity for the official to take corrective action to address the misconduct and promote accountability and improved performance of the official [<i>see Sanctions and Penalties, 1 O.C. 120.1-1</i>].		
Affected Entities	All elected and appointed officials of the Nation; Any individual 18 years and older who has knowledge that an official has committed misconduct; Oneida Business Committee; Judiciary Trial Court; Judiciary Court of Appeals; Business Committee Support Office. This law does not apply to the judges of the Oneida Judiciary, whose misconduct process is located within the Judiciary Law. This law does not apply to members of corporate boards.		
Affected Legislation	Rules of Civil Procedure; Rules of Appellate Procedure; Code of Ethics; Boards, Committees and Commissions Law; Garnishment Law; Per Capita Law; and any of the Nation’s laws and bylaws that may be violated by an official.		
Enforcement/Due Process	Sanctions and penalties against appointed officials will be imposed by the Business Committee. Sanctions and penalties against elected officials will be imposed by the Trial Court. Officials accused of misconduct have the right to be represented by an attorney or advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to appear at the investigatory hearing to answer the allegations, provide witness testimony, documents and evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.		
Public Meeting	A public meeting was held on October 4, 2018.		
Fiscal Impact	See fiscal impact statement prepared by Finance Dept. in accordance with the Legislative Procedures Act.		

SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A.** When an official of the Nation commits misconduct while in office, there are few remedies available
- 3 for the Nation to discipline that official. Currently, appointed officials may have their appointment
- 4 terminated by the Business Committee, and elected officials may be removed in accordance with the
- 5 Removal Law. However, there may be instances of misconduct that do not rise to the level of removal.
- 6 In these cases, other remedies such as verbal reprimands, fines, or suspensions may be more
- 7 appropriate.

- 8 **B.** This law creates a formal complaint process that gives all tribal members an opportunity to file
 9 complaints while ensuring that due process rights for those accused are protected. This law also creates
 10 a range of potential sanctions and penalties for officials who violate the laws of the Nation or commit
 11 other forms of misconduct.
- 12 **C.** During the Special Election held on July 9, 2016, the following referendum question was approved by
 13 a vote of 178 to 59: “Should the BC develop a law which provides for sanctions and due process for
 14 elected officials?” The Election Law requires the Oneida Business Committee to present referendum
 15 questions that receive a majority vote to the General Tribal Council (GTC) for discussion and action
 16 [see *Election Law 1 O.C. 102.12-9(c)*].
- 17 **D.** This law will apply to elected and appointed officials of the Nation, including members of the following
 18 entities:
 19

ELECTED	APPOINTED
<ul style="list-style-type: none"> ▪ Oneida Business Committee ▪ Oneida Election Board ▪ Oneida Gaming Commission ▪ Oneida Land Claims Commission ▪ Oneida Land Commission ▪ Oneida Nation Commission on Aging (ONCOA) ▪ Oneida Nation School Board ▪ Trust Enrollment Committee ▪ GTC Legal Resource Center Advocates and Attorney 	<ul style="list-style-type: none"> ▪ Anna John Resident Centered Care Community Board (AJRCCC) ▪ Audit Committee (1 community member seat) ▪ Environmental Resource Board (ERB) ▪ Finance Committee (1 community member seat) ▪ Oneida Community Library Board ▪ Oneida Nation Arts Board ▪ Oneida Personnel Commission ▪ Oneida Police Commission ▪ Oneida Pow Wow Committee ▪ Oneida Nation Veterans Affairs Committee (ONVAC) ▪ Pardon and Screening Forgiveness Committee ▪ Southeastern WI Oneida Tribal Services Advisory Board (SEOTS) ▪ Oneida Youth Leadership Institute Board of Directors

20 *This law does not apply to members of the Judiciary or corporate entities of the Nation.

21 **SECTION 3. CONSULTATION AND OUTREACH**

- 22 **A.** The Rules of Civil Procedure, Rules of Appellate Procedure, Judiciary Law, Code of Ethics, Open
 23 Meetings and Open Records Law, and the Boards, Committees and Commissions Law were reviewed
 24 in drafting this analysis. In addition, the following laws were reviewed in drafting this analysis:
- 25 ▪ Ho Chunk Nation Code of Ethics 2 HCC 1;
 - 26 ▪ Oglala Sioux Tribe Code of Ethics Ordinance No. 08-11;
 - 27 ▪ Pokagon Band of Potawatomi Indians Ethics Code;
 - 28 ▪ Rosebud Sioux Tribal Code of Ethics Ordinance 86-04;
 - 29 ▪ Siletz Tribal Council Ethics Ordinance –Siletz Tribal Code 2.200;
 - 30 ▪ Skokomish Code of Ethics S.T.C. 1.05;
 - 31 ▪ Pit River Tribal Government Code of Conduct Section 80.
- 32 **B.** The Business Committee Support Office, Records Management Department, Human Resources
 33 Department and representatives from the following Boards, Committees and Commissions were
 34 consulted in the development of this law and analysis:

- 35 ▪ Anna John Resident Centered Care Community Board (AJRCCC);
- 36 ▪ Election Board;
- 37 ▪ Environmental Resource Board (ERB);
- 38 ▪ Gaming Commission;
- 39 ▪ Land Commission;
- 40 ▪ Police Commission;
- 41 ▪ Pow-wow Committee;
- 42 ▪ Trust Enrollment Committee;
- 43 ▪ Oneida Nation Veterans Affairs Committee (ONVAC).
- 44 C. A community pot-luck meeting was held on May 3, 2018 to gather community input on this law. Sixteen
- 45 (16) people attended this meeting.

46

47 **SECTION 4. PROCESS**

- 48 A. Thus far, this law has followed the process set forth in the Legislative Procedures Act (LPA).
- 49 B. The law was originally added to the Active Files List on October 15, 2014 and was carried over from
- 50 the previous term. The law was re-added to the Active Files List on September 6, 2017.
- 51 C. At the time this legislative analysis was developed, the following work meetings had been held
- 52 regarding the most recent efforts to develop this law and legislative analysis:
- 53 ▪ September 6, 2017: LOC work meeting.
- 54 ▪ November 1, 2017: LOC work meeting with representatives from the following boards, committees
- 55 and commissions: Police Commission, Trust Enrollment Committee, Election Board, Land
- 56 Commission, Oneida Gaming Commission, Pow-wow Committee. All boards, committees and
- 57 committees were invited to attend this work meeting.
- 58 ▪ December 6, 2017: LOC work meeting.
- 59 ▪ March 9, 2018: LOC work meeting.
- 60 ▪ May 3, 2018: Community pot-luck meeting with LOC, Oneida community members, BC Support
- 61 Office, and representatives from the following boards, committees and commissions: Police
- 62 Commission, ONVAC, ERB, AJRCCC, and Gaming Commission. All boards, committees and
- 63 commissions were invited to attend this meeting.
- 64 ▪ May 11, 2018: LOC work meeting.
- 65 ▪ July 9, 2018: Work meeting with BC Support Office.
- 66 ▪ August 1, 2018: LOC work meeting.
- 67 ▪ October 17, 2018: LOC work meeting.
- 68 ▪ October 25, 2018: LOC work meeting.
- 69 ▪ December 20, 2018: Work meeting with Cultural Heritage.

70

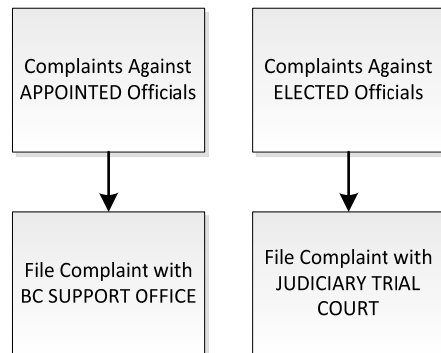
71 **SECTION 5. CONTENTS OF THE LEGISLATION .**

- 72 A. *What Qualifies as Misconduct.* The Oneida Nation expects elected and appointed officials to uphold
- 73 high ethical and moral standards. Officials who engage in misconduct may be subject to sanctions and
- 74 penalties. This section describes what behaviors could be considered misconduct [*see Sanctions and*
- 75 *Penalties 120.4*]. Under this law, the definition of misconduct is very broad and includes any of the
- 76 following:
- 77 ▪ Violating the Oneida Constitution or any law, policy or rule of the Oneida Nation.

- 78 ○ Examples include the Code of Ethics and Conflict of Interest Law.
- 79 ■ Violating the bylaws or standard operating procedures of the board the official serves on.
- 80 ■ Being convicted of a felony under federal or Wisconsin law, or being convicted of a crime
- 81 elsewhere that would be considered a felony in the state of Wisconsin or the United States.
- 82 ■ Any other activity that does not uphold the moral and ethical standards expected of the Nation's
- 83 officials.

84 **B. Filing a Complaint.** Under this law, anyone eighteen (18) years or older who believes that an official
85 has committed misconduct can file a complaint. The person filing the complaint does not need to be an
86 enrolled tribal member. Examples of individuals who might file complaints include community
87 members, employees of the Nation, and fellow officials. The complaint must be filed
88 within 90 days of when the alleged misconduct occurred or was discovered [see *Sanctions and*
89 *Penalties 120.5*].

Chart 2. Where to File Complaints



- 91 ■ **Contents of the Complaint.** Complaints must include the
92 following information [see 120.5-3]:
 - 93 ○ Information about the official, including the official's
94 name and the entity they serve on.
 - 95 ○ Information about the alleged misconduct, including
96 date, time, location and specific details.
 - 97 ○ The specific law, policy, rule or bylaw that the
98 official violated.
 - 99 ○ Information about any witnesses or others with
100 knowledge of the violation.
 - 101 ○ Contact information of the individual filing the complaint.
 - 102 ○ Supporting documents and any other information required by the Rules of Civil Procedure.
 - 103 - The Rules of Civil Procedure must be followed for complaints against elected
104 officials, which are filed in the Trial Court. More detail on the Rules of Civil
105 Procedure is included later in this analysis.
- 106 ■ **Where to File Complaints.** Complaints against appointed officials are filed with the Business
107 Committee (BC) Support Office, which is currently located at the Norbert Hill Center. Complaints
108 against elected officials are filed with the Trial Court, which is located within the Oneida Judiciary.
- 109 ■ **Retaliation.** Retaliation against someone who files a complaint or cooperates with a misconduct
110 investigation is not allowed.
- 111 ■ **Right to an Attorney or Advocate.** Any official who has been accused of misconduct has the right
112 to be represented by an attorney or an advocate, at their own expense.
 - 113 ○ **Legal Resource Center.** The Legal Resource Center Law established an office to provide
114 legal advice and representation to Tribal members and employees in cases before the
115 Judiciary.
- 116 ■ **Confidentiality.** All complaints against officials of the nation will be handled confidentially, with
117 hearings and proceedings regarding the complaint closed to the public. Records of the hearings will
118 be kept confidential. However, the final decision of the Business Committee or Judiciary and any
119 sanctions and penalties imposed against an official will be public information [see 120.5-7].
 - 120 ○ **Judiciary Law.** The Judiciary Law states that proceedings of the court are open to the public
121 except for peacemaking, mediation, proceedings where the judge has safety or

122 confidentiality concerns, or “if expressly prohibited by law” [see Judiciary Law 8 O.C.
123 801.4-4].

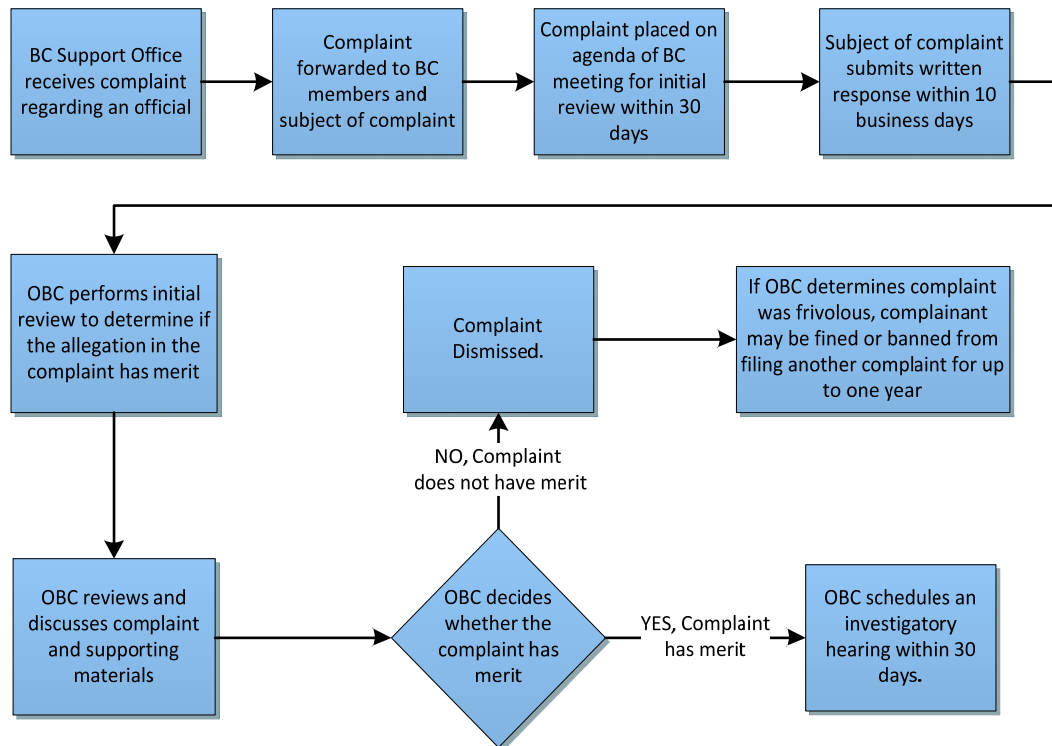
124 **C. *Complaints Against an Appointed Official.*** Complaints against an appointed official will be filed with
125 the Business Committee (BC) Support Office. Appointed officials serve at the discretion of the Oneida
126 Business Committee (BC), who may terminate appointments at any time by 2/3 majority vote [see
127 *Boards, Committees Commissions 1 O.C. 105.7-4*]. The LOC has determined that because the BC is
128 responsible for selecting and appointing officials, the BC should be responsible for holding appointed
129 officials accountable through sanctions and penalties. The following is a description of the complaint
130 process for appointed officials [see 120.6].

- 131 ■ *Receipt of Complaint.* When the BC Support Office receives a complaint, it will forward copies of
132 the complaint to all members of the Oneida Business Committee (BC) for review, and to the official
133 the complaint has been made against. The BC Support Office will place the complaint on the agenda
134 of a Business Committee meeting within thirty (30) days.
- 135 ■ *Mediation.* The individual who filed the complaint or the official accused of misconduct may
136 request mediation within five (5) business days of the complaint being filed. If both parties agree
137 to mediation, the BC Support Office will schedule a meeting with a trained mediator to attempt to
138 resolve the complaint. If the complaint is resolved by mediation, the complaint will be formally
139 dismissed. If the complaint is not resolved, the initial review will proceed [see 120.6-3].
- 140 ■ *Answer to the Complaint.* The official who has been accused of misconduct will have ten (10)
141 business days to respond in writing to the complaint. The official may admit to the misconduct,
142 deny the misconduct, or provide an affirmative defense. An affirmative defense means that an
143 official admits they committed the alleged acts, but that they were justified in doing so.
- 144 ■ *Conflict of Interest & Recusal.* If a member of the Oneida Business Committee (BC) has a conflict
145 of interest regarding a complaint, they must recuse themselves and not participate in the review or
146 hearings. If a member of the BC fails to recuse themselves, that member may be subject to sanctions
147 and penalties under this law.
- 148 ■ *Initial Review.* The Oneida Business Committee (BC) will review the complaint, the official’s
149 written response, and any documentation. The BC will discuss and decide whether the complaint
150 has merit by majority vote. If the BC decides the complaint has merit, they will schedule an
151 investigatory hearing. If BC decides the complaint does not have merit, the complaint will be
152 dismissed.
 - 153 ○ *Frivolous Complaints.* If the BC decides that an individual filed a complaint that was
154 frivolous, false, or made with malicious intent, they may fine that individual up to \$500 or
155 ban them from filing another complaint for up to 1 year. In addition, the official the
156 frivolous complaint was filed against may also file a civil suit in the Trial Court.

157
158
159
160
161
162
163
164
165

166
 167

Chart 3. Complaint Process Against Appointed Officials: Receipt and Initial Review of Complaint.



168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191

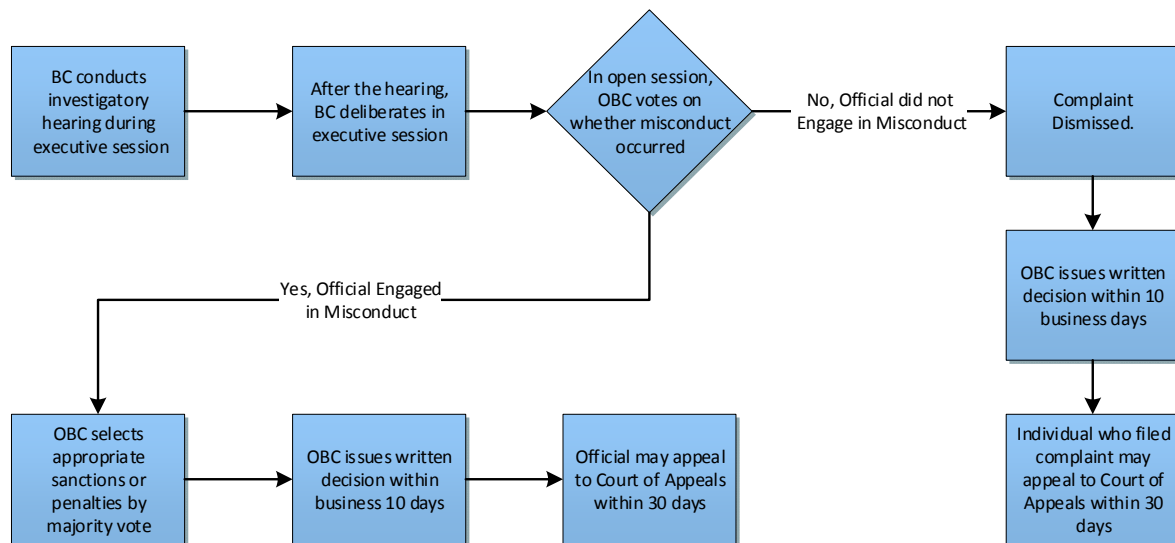
- **Investigatory Hearing.** The BC will conduct an investigatory hearing during executive session of a regular or special BC meeting. During this hearing, the BC will determine whether there is enough evidence to substantiate the allegations by clear and convincing evidence.

 - **Burden of Proof.** The burden of proof for allegations made under this law is “clear and convincing evidence.” This is the same standard the Nation uses in misconduct cases against judges in the Oneida Judiciary [see 8 O.C. Judiciary Law 801.12-6(c)]. This means that the person filing the complaint must provide evidence “indicating that the [allegation] to be proved is highly probably or reasonably certain” [see *Black’s Law Dictionary*]. This is a greater burden than “preponderance of the evidence,” the standard in most civil trials, but less than evidence “beyond a reasonable doubt,” which is used for criminal trials.
 - **Testimony.** The BC will have the authority to call witnesses to provide testimony and physical evidence under oath. The official accused of misconduct will have the opportunity to answer allegations, provide witness testimony and evidence on their own behalf. The individual who filed the complaint will also have an opportunity to answer questions, provide witness testimony and information to support their claim. The hearing will be informal.
- **Deliberation.** After the investigatory hearing, the BC will remain in executive session to discuss the evidence and information provided. The BC will also discuss which sanctions and penalties to impose, if appropriate.
- **Determination.** During an open session of a special or regular Oneida Business Committee meeting, the BC will vote to decide whether the allegations of misconduct have been proven by clear and convincing evidence. If the BC finds that the official has engaged in misconduct, then they will also decide the appropriate sanction or penalty by majority vote. The BC must issue a

written decision within 10 days of the investigatory hearing, and provide copies of the decision to the person who made the complaint, the official accused of misconduct, and the BC Support Office.

- **Appeal.** Both the official accused of misconduct and the individual who filed the complaint have the right to appeal the decision of the Oneida Business Committee. The appeal must be filed with the Court of Appeals in accordance with the Rules of Appellate Procedure.
 - *Timeline for Appeal.* The Rules of Appellate Procedure require parties to file an appeal within thirty (30) days of the original judgment [see *Rules of Appellate Procedure, 8 O.C. 805.5-2(a)*].

Chart 4. Complaint Process Against Appointed Officials: Investigatory Hearing & Decision



D. Complaints Against an Elected Official.

- Complaints against elected officials, including members of the Oneida Business Committee, will be heard by the Nation’s Trial Court. Because elected officials are chosen by the tribal membership, it has been determined that complaints against these officials should go to the Nation’s Trial Court [see *Sanctions and Penalties 120.7*].
- All complaints must follow the Judiciary Rules of Civil Procedure. The following is a brief overview of how a civil case is processed by the Trial Court using the Rules of Civil Procedure. For full and complete information regarding the trial court process, see the Judiciary Rules of Civil of Civil Procedure.
 - *Petitioner Files a Complaint with the Trial Court and Pays Filing Fee.* The Trial Court has a standard complaint form with instructions to fill out the complaint.
 - *Complaint.* At the time this analysis was drafted, the Rules of Civil Procedure require the complaint to include the full name and address of the plaintiff and defendant, why the defendant is being sued, facts supporting each claim, why the trial court has jurisdiction, specifically what relief is sought from the defendant, and a summons [see *Oneida Judiciary Rules of Civil Procedure 803.5-1*].
 - *Filing Fee.* The Oneida Judiciary Trial Court currently charges a \$50 filing fee to file a general civil case. However, individuals may request a fee waiver from the court for the following reasons: unemployed, health/medical, or below poverty level.

222 Note that this fee applies only to cases filed against elected officials. Complaints
223 against appointed officials will be filed with the BC Support Office, which does not
224 charge a filing fee.

225 - *Summons*: A summons is a document ordering a defendant to appear before a judge.
226 The Trial Court has a standard summons form.

227 ○ *Complaint and Summons are served on official*. The complaint and summons must be
228 delivered to the official within 30 days after the complaint is filed. In addition, for
229 complaints against officials, notice must also be served to the Secretary's office [*see 8 O.C.*
230 *Rules of Civil Procedure 803.5*].

231 ○ *Petitioner Files Proof of Service*. The petitioner must provide proof to the Court that the
232 complaint and summons were delivered to the defendant within 10 days of delivery. If
233 proof of service is not completed, then the case will be dismissed. [*see Rules of Civil*
234 *Procedure 803.5-3*].

235 ○ *Official Files an Answer*. The official responds to the complaint by filing an answer. The
236 official can either admit to or deny the allegations made in the complaint and provide
237 defenses to each claim made in the complaint.

238 ○ *Pre-Trial Meeting*. A pre-trial meeting may be scheduled between the judge, petitioner
239 and defendant. The purpose for this meeting could include preparing for the trial, creating
240 a plan regarding discovery, or facilitating a settlement, such as peacemaking [*see Rules of*
241 *Civil Procedure 803.12*].

242 ○ *Discovery*. The petitioner may make efforts to obtain information relevant to the case, such
243 as documents and electronic information. The judge may place limitations on the
244 information.

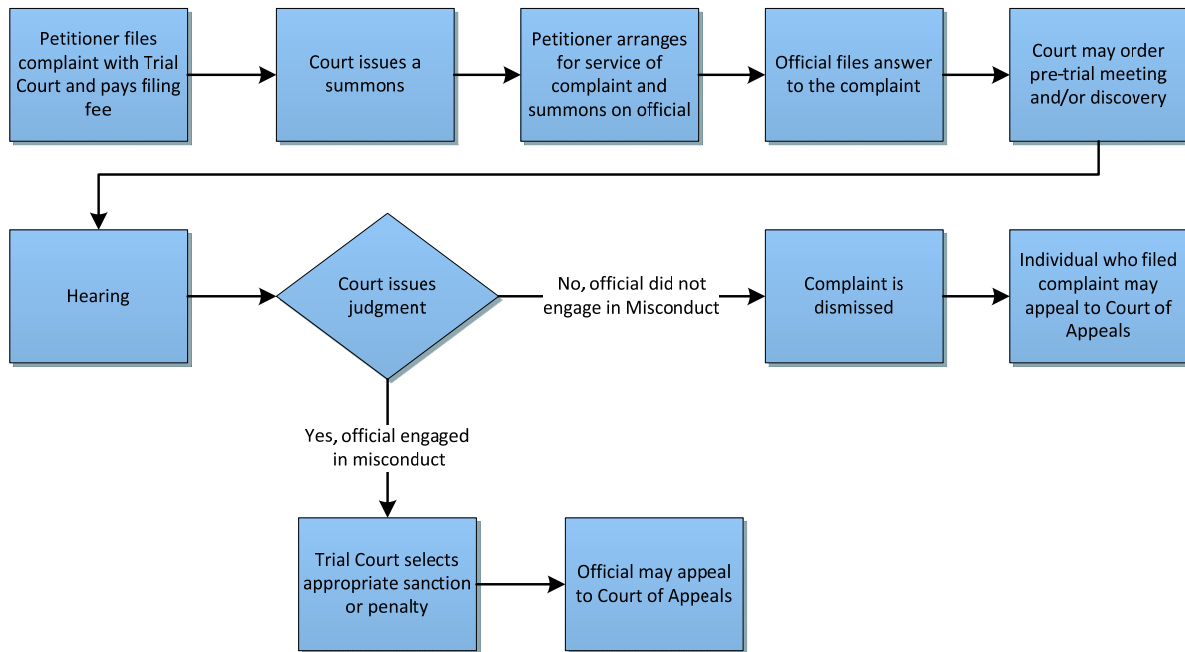
245 ○ *Hearing*. Hearings are conducted in accordance with the Rules of Civil Procedure, which
246 may include opening statements, presentation of the parties' cases, rebuttals and closing
247 statements [*see Rules of Civil Procedure 803.38*].

248 ○ *Judgment*. If the Trial Court determines by clear and convincing evidence that the official
249 engaged in misconduct, then the Trial Court will impose sanctions and penalties that they
250 deem appropriate.

251 ○ *Appeals*. Both the official accused of misconduct and the individual who filed the
252 complaint have the right to appeal the decision of the Trial Court. The appeal must be filed
253 with the Court of Appeals in accordance with the Rules of Appellate Procedure.

254
255
256
257
258
259
260
261
262
263
264
265

266 **Chart 5. Complaint Process Against Elected Officials – Overview of Rules of Civil Procedure.**
267



268
269

270 **E. Sanctions and Penalties.** This law includes a list of sanctions and penalties that may be imposed on
271 an official for misconduct in office. The Trial Court is responsible for imposing sanctions on an elected
272 official. The Oneida Business Committee is responsible for imposing sanctions on an appointed official.
273 Officials may receive one or more of the following penalties. The Trial Court or BC will select
274 whichever penalty they feel is appropriate. [see *Sanctions and Penalties 120.8*]

- 275 ■ *Conditional Penalties.* Sanctions and penalties can also be imposed on a conditional basis. For
276 example, an official could be ordered to make a public apology and attend mandatory training, or
277 otherwise face suspension [see *120.8-4*].
- 278 ■ *Failure to Comply.* If an official fails to comply with a sanction or penalty imposed against them,
279 that official can face additional sanctions as a result of additional misconduct complaints under this
280 law, termination of appointment, or removal in accordance with the Removal Law. An example
281 would be an official failing to pay a fine or violating the terms of their suspension [see *120.8-6*].

282
283

Chart 5. List of Potential Sanctions and Penalties

- **Verbal Reprimand**
- **Public Apology**
- **Written Reprimand**
- **Suspension**
- **Restitution**
- **Fines**
- **Loss of Stipend**
- **Mandatory Training**
- **Termination of Appointment**
- **Removal, in accordance with Removal Law**

284

- 285
- 286
- 287
- 288
- 289
- 290
- 291
- 292
- 293
- 294
- 295
- 296
- 297
- 298
- 299
- 300
- 301
- 302
- 303
- 304
- 305
- 306
- 307
- 308
- 309
- 310
- 311
- 312
- 313
- 314
- 315
- 316
- 317
- 318
- 319
- 320
- 321
- 322
- 323
- 324
- 325
- 326
- **Verbal Reprimand.** During a BC or GTC meeting, the Nation’s chairperson will read a statement describing the official’s misconduct. The chairperson will also state that the official’s behavior was unacceptable and direct the official not to engage in misconduct again.
 - **Public Apology.** An official may be ordered to make a public apology at a BC or GTC meeting. The apology must include a description of the misconduct, a statement that the actions were wrong, a description of the harm caused by the misconduct, and a “clear and unambiguous” apology.
 - **Written Reprimand.** The Oneida Business Committee or Judiciary Trial Court may publish a written reprimand in the Nation’s official media outlets. The Nation’s official media outlets are the Oneida Nation website and the Kalihwisaks newspaper [see BC Resolution #03-22-17-B]. The written reprimand will include the same information as a verbal reprimand.
 - **Suspension.** The BC or Trial Court may suspend part-time officials for up to two (2) meetings. Full-time officials, such as members of the Business Committee or Gaming Commission, may be suspended for up to fifteen (15) business days. During a suspension, the official cannot attend meetings, trainings, or conferences. The official also cannot vote or perform work for the board. In addition, the official cannot earn any stipends, salary or mileage during the suspension.
 - **Multiple Suspensions on One Entity.** If multiple officials on the same entity are suspended at the same time, the suspensions must be imposed on a staggered basis to avoid loss of a quorum. For example, if multiple members of the Business Committee are suspended, each member will be suspended one at a time on a staggered basis [see 120.8-2(d)(3)].
 - **Restitution.** An official can be ordered to pay restitution, which means paying back any improperly received benefit, such as stolen money or items or replacing damaged property. The point of restitution is to make someone whole. Examples of restitution include paying back money that was improperly taken or paying to repair or replace damaged items.
 - **Fines.** An official can be ordered to pay a fine for each act of misconduct. Unlike restitution, a fine is a punishment. The maximum amount of each fine is \$2500.
 - **Fine Process.** All fines will be paid to the trial court and deposited into the Nation’s General Fund. Officials must pay their fine within 90 days after the fine is issued or upheld on final appeal. If the fine is not paid on time, the Nation may collect the money through garnishment or the official’s per capita payment.
 - **Community Service Alternative.** An official can complete community service to make up all or part of their fine. The rate earned for community service will be the Nation’s minimum wage, which is currently \$10.10 per hour. The Nation currently allows community service for fines issued in the Hunting, Fishing and Trapping Law [see Hunting Fishing and Trapping 406.10-5(a)].
 - **Loss of Stipend.** An official may lose their stipend for up to two (2) meetings. Members of appointed boards are eligible for only one meeting stipend per month, so this could amount to two month’s worth of stipends [see Boards, Committees and Commission Law 1 O.C. 105.13-3(a)]. Members of elected boards may receive up to two (2) meeting stipends per month, so this could amount to one month’s worth of stipends for a board that meets twice monthly [see Boards, Committees and Commissions Law 1 O.C. 105.13-3(b)].
 - **Mandatory Training.** An official can be ordered to complete mandatory training program to address their behavior. Examples include anger management or sexual harassment training.

- 327 ▪ **Termination of Appointment.** The Oneida Business Committee can terminate the appointment of
328 any appointed official at any time by 2/3 majority vote. All appointed members serve at the
329 discretion of the BC [see *Boards, Committees and Commissions 1 O.C. 105.7-4*].
- 330 ▪ **Removal.** The Trial Court can recommend that the removal process be initiated for an official in
331 accordance with the Removal Law. However, this would only be a recommendation. The Removal
332 Law provides a strict process that must be followed to remove elected officials:
- 333 ○ **Removal Law Process.** In order to remove an elected official, an eligible voter must file a
334 petition with the Secretary signed by at least 30% of the vote cast in the previous general
335 election. For example, the number of votes cast in the 2017 general election was 1612, so
336 the number of signatures needed to initiate removal is 484. Then, the Judiciary conducts a
337 preliminary review to determine whether there is sufficient grounds for removal. If so, the
338 Judiciary holds a hearing. If the Judiciary determines that sufficient grounds for removal
339 has been proven, the findings are forwarded to the Nation’s Chair, who schedules a GTC
340 meeting. At the GTC meeting, an elected official may be removed from office after a 2/3
341 vote [see *Removal Law 1 O.C. 104*].
- 342 **F. Factors in Determining Appropriate Sanction and/or Penalty.** The Trial Court and Oneida Business
343 Committee may consider the following when deciding which sanction or penalty to apply [see
344 *Sanctions and Penalties 120.8-3*].
- 345 ▪ How severe the misconduct was, whether it was intentional, and how likely the official is to repeat
346 the misconduct.
- 347 ▪ The damage to the finances or reputation of the Nation, the entity, or any person or organization.
- 348 ▪ Whether the official has expressed remorse and is willing to take steps to correct the harm done.
- 349 ▪ Whether any prior complaints have been filed against the official. For example, is this the first
350 complaint against the official or does it represent a pattern of behavior.
- 351 **G. Civil Liability and Criminal Prosecution.** In addition to the sanctions and penalties in this law, an
352 official who commits misconduct may also suffer other consequences [see *Sanctions and Penalties*
353 *120.8-4*]. These include:
- 354 ▪ Removal from office or termination of appointment.
- 355 ▪ Criminal prosecution, if the official violated a criminal law. For example, criminal charges for theft
356 or violent acts.
- 357 ▪ Civil liability, in accordance with any applicable law of any jurisdiction. For example, a lawsuit for
358 damages.
- 359 ▪ Any other penalties listed in another law of the Oneida Nation.
- 360 ○ For example, a violation of the Computer Resources Ordinance may result in loss of access
361 to the Nation’s computer resources [see *Computer Resources Ordinance 2 O.C. 215.9-1*].
- 362 **H. Effect of Resignation by an Official.** If an official resigns from office after a complaint has been filed,
363 that complaint will still be investigated and sanctions and penalties may still be pursued. Resigning
364 from office does not end or prevent an investigation [see *Sanctions and Penalties 120.9*].
- 365 **I. Record of Conduct in Office.** A record of conduct for each official will be maintained by the BC
366 Support Office, which will include copies of complaints filed against the official, outcome of the
367 complaints, and any sanctions and penalties the official received. This record will be maintained for at
368 least seven (7) years [see *Sanctions and Penalties 120.10*].
- 369 ▪ **Public Access to Record of Conduct.** The record of conduct maintained by the BC Support Office
370 will only be made available for review to the Oneida Business Committee and the Trial Court. The

371 purpose of the record of conduct is so that the Trial Court or Business Committee can review
372 previous complaints against the official when determining a potential sanction or penalty [see
373 *Sanctions and Penalties 102.5-7(c)*].
374 ■ *Public Access to BC & Trial Court Decisions.* However, the decisions of the Trial Court and Oneida
375 Business Committee regarding a complaint against an elected official and any sanctions and
376 penalties imposed against an official will be public information [see *Sanctions and Penalties 102.5-*
377 *7(c)*].
378

379 **SECTION 6. EFFECT ON EXISTING LEGISLATION**

380 **A. *References to the Other Laws of the Nation:*** The following laws of the Nation are referenced in this
381 law. This law does not conflict with any of the referenced laws.
382 ■ *Rules of Civil Procedure.*
383 ■ *Rules of Appellate Procedure.*
384 ■ *Garnishment Law.*
385 ■ *Per Capita Law.*
386

387 **SECTION 7. EFFECTS ON EXISTING RIGHTS, PRIVILEGES, OR OBLIGATIONS**

388 **A. *Due Process.*** Officials accused of misconduct have the right to be represented by an attorney or
389 advocate. Officials also have the right to submit a written response to the complaint, and an opportunity to
390 appear at the investigatory hearing to answer the allegations, provide witness testimony, documents and
391 evidence on their behalf. Complaints against officials must be proven by clear and convincing evidence.
392

393 **SECTION 8. ENFORCEMENT AND ACCOUNTABILITY**

394 **A.** Sanctions and penalties against appointed officials will be imposed by the Business Committee.
395 Sanctions and penalties against elected officials will be imposed by the Nation’s Trial Court.
396

397 **SECTION 9. OTHER CONSIDERATIONS**

398 **A. *Code of Ethics.*** Most other tribal, municipal and state governments place sanctions and penalties within
399 their Code of Ethics law. This makes sense, as the Code of Ethics and Sanctions and Penalties are
400 closely related. The Code of Ethics is currently on the LOC’s Active Files List for potential
401 amendments. Updating the Code of Ethics would provide clear guidance to officials, individuals filing
402 complaints, the Business Committee and the Judiciary when they begin hearing complaints under this
403 law.
404 **B. *Number of Potential Complaints.*** Since the Nation currently has no formal sanctions and penalties
405 process, it is not possible to predict the number of complaints that may be filed against elected and
406 appointed officials.
407 ■ *Recommendation:* Given the uncertainty regarding the number of potential complaints, the
408 Business Committee, BC Support Office and Judiciary should be prepared to potentially
409 process a large number of complaints upon passage of this law.
410 **C. *Impact of Suspension on Full-Time Officials.*** Members of the Oneida Business Committee and
411 Oneida Gaming Commission are full-time elected officials. Therefore, suspension of these officials
412 would impact salaries, benefits such as health insurance, and access to buildings. The Human Resources

413 Department reports that they have a suspension procedure in place for employees of the Nation, and
 414 that this procedure could be applied or modified for suspension of full-time officials.

- 415 ▪ *Recommendation:* Since notifications of suspension go to the BC Support Office, it is suggested
 416 that the BC Support Office work with HRD to develop a process should suspensions of full-
 417 time BC members or Gaming Commissioners occur.

418 **D. Comparison to Other Nations.** Research of other tribal nations and municipalities indicate that there
 419 are many different processes for sanctions and penalties of public officials. There is not a single
 420 standard used by all tribal governments. Examples of other sanctions and penalties processes are
 421 provided for information:

422 **Chart 6. Sanctions and Penalties Process of other Tribal Nations**

Tribe	Where Complaints Are Filed	Who Investigates the Complaint	Who Decides the Sanction or Penalty
Siletz	Tribal Council*	Ad Hoc Committee or Special Advisor appointed by Tribal Council*	Tribal Council*
Ho Chunk	Judiciary	Judiciary	President
Rosebud Sioux	Ethics Commission, appointed by Tribal Council*	Ethics Commission, appointed by Tribal Council*	Tribal Council*
Skokomish	Ethics Officer, appointed by Tribal Council*	Ethics Officer, appointed by Tribal Council*	Chairman

423 *Note that “Tribal Council” refers to an elected body similar to the Oneida Business Committee.
 424

425 **E. Create a Standard Complaint Form.** The BC Support Office and Judiciary may want to consider
 426 drafting standard complaint forms to provide to individuals who wish to file a complaint against
 427 officials under this law. This form could include the information required under 120.5-3, instructions,
 428 and clearly state where complaints against elected officials or appointed officials must be filed. The
 429 Nation’ Trial Court has a standard civil complaint packet which could be used as an example.

430 **F. Complaints against Judiciary.** The Judiciary Law already contains a process for reprimand,
 431 suspension and removal of judges [see Judiciary Law 8 O.C. 801.12]. Therefore, the Judiciary is not
 432 included in this law.

433 **G. Rules of Civil Procedure.** Complaints filed in the Judiciary Trial Court must follow the Judiciary Rules
 434 of Civil Procedure. At the time this analysis was drafted, the Judiciary Rules of Civil Procedure is on
 435 the LOC’s Active Files List and may be amended in the future.

436 **H. Fiscal Impact.** Please refer to the fiscal impact statement for any fiscal impacts.

- 437 ▪ Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation except
 438 emergency legislation [see Legislative Procedures Act 1 O.C. 109.6-1].
- 439 ▪ A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating
 440 Committee and may be prepared by any agency who may receive funding if the legislation is
 441 enacted; who may administer a program if the legislation is enacted; who may have financial
 442 information concerning the subject matter of the legislation; or by the Finance Office, upon request
 443 of the Legislative Operating Committee [see Legislative Procedures Act 1 O.C. 109.6-1(a and b).

444

Title 1. Government and Finances - Chapter 120
SANCTIONS AND PENALTIES

Kalihwahníla·tú· Okhale? Atatihwa?thlewáhtu Kayanlása

Giving strength to the issues and Forgiving oneself for the issue at hand Laws

- | | |
|--|--|
| 120.1. Purpose and Policy | 120.7. Complaint Alleged Against an Elected Official |
| 120.2. Adoption, Amendment, Repeal | 120.8. Sanctions and Penalties |
| 120.3. Definitions | 120.9. Effect of Resignation by an Official |
| 120.4. Misconduct. | 120.10. Record of Conduct in Office |
| 120.5. Filing of a Complaint | |
| 120.6. Complaint Alleged Against an Appointed Official | |
-

- 1
2 **120.1. Purpose and Policy**
3 120.1-1. *Purpose.* The purpose of this law is to establish a consistent set of sanctions and penalties
4 that may be imposed upon elected and appointed officials of the Nation for misconduct in office
5 for the purpose of providing an opportunity for the official to take corrective action to address the
6 misconduct and promote accountability and improved performance of the official.
7 (a) This law applies to members of the Oneida Business Committee.
8 (b) This law does not apply to judges of the Oneida Nation Judiciary.
9 (c) This law does not apply to members of corporate entities of the Nation.
10 120.1-2. *Policy.* It is the policy of the Nation to ensure that elected and appointed officials who
11 commit misconduct while in office be subject to appropriate sanctions and penalties; and to ensure
12 that there is a fair process in place that enables officials to fairly respond to allegations of
13 misconduct.
14 120.1-3. It is the intent of the Nation that all elected and appointed officials strive to exhibit and
15 uphold the Nation’s core values of The Good Mind as expressed by Onayote’a’ka, which includes:
16 (a) Kahletsyalúsła. The heart felt encouragement of the best in each of us.
17 (b) Kanolukhwásła. Compassion, caring, identity, and joy of being.
18 (c) Ka?nikuhli·yó. The openness of the good spirit and mind.
19 (d) Ka?tshatstásła. The strength of belief and vision as a People.
20 (e) Kalihwi·yó. The use of the good words about ourselves, our Nation, and our future.
21 (f) Twahwahtsílawayλ. All of us are family.
22 (g) Yukwatsístayλ. Our fire, our spirit within each one of us.
23
24 **120.2. Adoption, Amendment, Repeal**
25 120.2-1. This law was adopted by the General Tribal Council by resolution GTC-__-__-__-__.
26 120.2-2. This law may be amended or repealed by the General Tribal Council pursuant to the
27 procedures set out in the Legislative Procedures Act.
28 120.2-3. Should a provision of this law or the application thereof to any person or circumstances
29 be held as invalid, such invalidity shall not affect other provisions of this law which are considered
30 to have legal force without the invalid portions.
31 120.2-4. In the event of a conflict between a provision of this law and a provision of another law,
32 the provisions of this law shall control.
33 120.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.
34

35 **120.3. Definitions**

36 120.3-1. This section shall govern the definitions of words and phrases used within this law. All
37 words not defined herein shall be used in their ordinary and everyday sense.

38 (a) “Affirmative defense” means a fact or set of facts other than those alleged by the
39 complainant which, if proven by the official, defeats or mitigates the consequences of the
40 official's otherwise unlawful conduct.

41 (b) “Answer” means a formal written statement addressing the dispute on the merits
42 and presents any defenses and counterclaims.

43 (c) “Business Committee Support Office” means the office that provides administrative
44 support for the Oneida Business Committee and various other governmental operations.

45 (d) “Business day” means Monday through Friday 8:00 a.m. – 4:30 p.m., excluding
46 holidays recognized by the Nation.

47 (e) “Clear and convincing evidence” means that it is substantially more likely than not that
48 the facts presented are true.

49 (f) “Complainant” means an individual who has made a complaint.

50 (g) “Constitution” means the Constitution and By-Laws of the Oneida Nation.

51 (h) “Court of Appeals” means the Court of Appeals of the Oneida Nation Judiciary.

52 (i) “Entity” means a board, committee, commission, office, unincorporated agency, or
53 other group of the Nation an individual may be appointed or elected to serve a position on,
54 including the Oneida Business Committee.

55 (j) “Frivolous” means a complaint without any reasonable basis or merit, that cannot be
56 supported by a good faith argument. Most often frivolous complaints are intended to
57 merely harass, delay, or embarrass the opposition.

58 (k) “Misconduct” means wrongful, improper or unlawful conduct or behavior.

59 (l) “Nation” means the Oneida Nation.

60 (m) “Official” means any person who is elected or appointed to serve a position for the
61 Nation, including, but not limited to, a position on a board, committee, commission, or
62 office of the Nation, including the Oneida Business Committee.

63 (n) “Restitution” means compensation to an individual or entity for an injury, damage or
64 loss.

65 (o) “Stipend” means the amount paid by the Oneida Nation to individuals serving on
66 boards, committees and commissions of the Nation to offset the expenses of being a
67 member on the board, committee or commission.

68 (p) “Substantiate” means to find that the complaint or allegation in the complaint is valid
69 because there is clear and convincing evidence.

70 (q) “Trial Court” means the Trial Court of the Oneida Nation Judiciary.

71
72 **120.4. Misconduct**

73 120.4-1. It shall be the obligation of every official to behave in a manner that promotes the highest
74 ethical and moral standard. High moral and ethical standards amongst officials of the Nation is
75 essential to the conduct of government.

76 120.4-2. An official may be subject to sanctions and penalties for behaving in a manner which
77 constitutes misconduct. Misconduct includes:

78 (a) a violation of the Constitution or any of the Nation’s laws, policies, or rules;

79 (b) a violation of the bylaws, standard operating procedures or other internal operating
80 documents that govern the entity upon which the official serves;

81 (c) a conviction of a felony, or any crime in any jurisdiction that would be classified as a
82 felony under federal law or Wisconsin law; and

83 (d) any other activity that is incompatible with the high moral and ethical standards that
84 are expected of the Nation's officials.
85

86 **120.5. Filing of a Complaint**

87 120.5-1. *Who May File.* Any individual at least eighteen (18) years of age or older, or entity, who
88 in good faith, has knowledge or reason to believe that an official has committed misconduct, may
89 file a written complaint.

90 120.5-2. *When to File.* A complaint may be filed as long as the alleged misconduct has occurred,
91 or was discovered to have occurred, within the previous ninety (90) days.

92 120.5-3. *Contents of the Complaint.* The complaint alleging misconduct by an official shall
93 include the following information:

94 (a) The name(s) of the official alleged to have committed the misconduct;

95 (b) The entity or entities upon which the official serves;

96 (c) The specific date(s), time(s), and location(s) of the alleged misconduct;

97 (d) The specific details of the official's misconduct;

98 (e) The specific provision of law, policy, rule, or bylaw of the Nation allegedly violated
99 by the official;

100 (f) Names of any witnesses of the alleged misconduct, or individuals who may have
101 knowledge pertinent to the alleged misconduct;

102 (g) The contact information for the person filing the complaint, which at minimum shall
103 include the person's name, address, and telephone number;

104 (h) A notarized sworn statement attesting that the information provided in and with the
105 complaint is true, accurate, and complete to the best of the complainant's knowledge;

106 (i) Any supporting documentation; and

107 (j) Any other information required by the Nation's Rules of Civil Procedure if the
108 complaint is alleging misconduct of an elected official.

109 120.5-4. *Where to File.*

110 (a) *Appointed Official.* Complaints against an appointed official shall be filed with the
111 Business Committee Support Office.

112 (b) *Elected Official.* Complaints against an elected official shall be filed with the Nation's
113 Trial Court.

114 120.5-5. *Retaliation Prohibited.* Retaliation against any individual who makes a complaint or party
115 or witness to a complaint is prohibited. This protection shall also be afforded to any person offering
116 testimony or evidence or complying with directives authorized under this law. Retaliation shall
117 include any form of adverse or punitive action by or caused by, any official.

118 (a) If an individual alleges that retaliatory action has been threatened or taken based on the
119 individual's complaint, or cooperation with directives authorized under this law, the
120 individual may file a complaint for the retaliatory action in accordance with section 120.5
121 of this law.

122 120.5-6. Any official who is the subject of a complaint has the right to be represented by an
123 attorney or advocate, at his or her own expense, for any actions or proceedings related to the
124 complaint.

125 120.5-7. *Confidentiality.* All complaints alleged against an official of the Nation shall be handled
126 in a confidential manner.

- 127 (a) All hearings and/or proceedings related to a complaint shall be closed to the general
128 public.
129 (b) All records of hearings and/or proceedings shall not be subject to public review or
130 inspection. An official's record of conduct shall only be made available for review to the
131 Oneida Business Committee and the Trial Court.
132 (c) *Exception.* A decision of the Trial Court or the Oneida Business Committee regarding
133 a complaint alleged against an official, and any sanctions and/or penalties that are imposed
134 against an official, shall be public information.
135

136 **120.6. Complaints Alleged Against an Appointed Official**

137 120.6-1. Due to the fact that an appointed official serves at the discretion of the Oneida Business
138 Committee, all complaints alleged against an appointed official shall be handled by the Oneida
139 Business Committee.

140 120.6-2. *Receipt of Complaint.* Upon receiving a complaint, the Business Committee Support
141 Office shall:

142 (a) immediately forward copies of the complaint, including any supporting documentation,
143 to:

- 144 (1) all members of the Oneida Business Committee for review; and
145 (2) the individual who is the subject of the complaint.

146 (b) place the complaint on the executive session portion of the agenda of a regular or
147 special meeting of the Oneida Business Committee for an initial review which shall occur
148 within thirty (30) business days after the initial receipt of a complaint.

149 120.6-3. *Mediation.* The complainant or the official who is the subject of the complaint shall have
150 up to five (5) business days after the initial receipt of the complaint to contact the Business
151 Committee Support Office and request mediation.

152 (a) If both the complainant and the official who is the subject of the complaint agree to
153 mediation, then the Business Committee Support Office shall schedule a mediation
154 between the parties. The intent of this mediation meeting is to resolve the complaint prior
155 to commencing an initial review.

156 (b) The Business Committee Support Office shall utilize a trained mediator to facilitate
157 the mediation meeting. Every mediator shall have at least twenty-five (25) hours of
158 mediation training or at least three (3) years of experience in dispute resolution.

159 (c) The mediation shall occur before the investigatory hearing is scheduled to take place.

160 (d) If a resolution is reached during mediation, the Oneida Business Committee shall be
161 informed of the resolution before the initial review and the complaint shall be formally
162 dismissed during the initial review.

163 (e) If the matter is not resolved through mediation, the initial review shall occur as
164 prescribed by this law.

165 120.6-4. *Answer to the Complaint.* The individual who is the subject of the complaint shall have
166 ten (10) business days after receiving his or her copy of the complaint, to submit to the Business
167 Committee Support Office a written answer setting forth any admission, denial, affirmative
168 defense, or other relevant information upon which the official intends to rely during proceedings
169 related to the complaint.

170 (a) The Business Committee Support Office shall immediately forward the answer and
171 any supporting documentation to all members of the Oneida Business Committee upon
172 receipt from the individual who is the subject of the complaint.

173 120.6-5. *Conflict of Interest.* An Oneida Business Committee member that has a conflict of
174 interest in a complaint brought before the Oneida Business Committee, shall immediately recuse
175 himself or herself and shall not participate in any portion of the complaint process.

176 (a) Failure of an Oneida Business Committee member to recuse themselves due to a
177 conflict of interest shall constitute grounds for sanctions and/or penalties.

178 120.6-6. *Initial Review.* The Oneida Business Committee shall perform an initial review of an
179 allegation of misconduct on the part of an official. The purpose of the initial review shall be to
180 determine whether the allegation made within the complaint has merit.

181 (a) During the initial review the Oneida Business Committee shall review the complaint
182 and the written answer; as well as any supporting documentation.

183 (b) In order to determine if a complaint has merit, the Oneida Business Committee will
184 discuss if whether assuming the facts alleged are true, said facts would support a
185 determination of misconduct.

186 (c) The Oneida Business Committee shall determine, by majority vote, whether the
187 complaint has merit.

188 (1) Upon a finding that the complaint has merit, the Oneida Business Committee
189 shall schedule an investigatory hearing to consider the specific allegations
190 identified in the complaint.

191 (A) The investigatory hearing shall occur within thirty (30) business days
192 after the initial review has concluded and shall take place during the
193 executive session portion of the agenda of a regular or special meeting of
194 the Oneida Business Committee.

195 (2) Upon finding that a complaint has no merit, the Oneida Business Committee
196 shall dismiss the complaint. The Oneida Business Committee shall send notice that
197 the complaint was dismissed to the complainant and the official who is the subject
198 of the complaint within five (5) business days.

199 (A) If the Oneida Business Committee dismisses the complaint based on a
200 determination that the complaint was frivolous, false, or made with a
201 malicious intent, the complainant may be subject to:

202 (i) a fine not to exceed five hundred dollars (\$500);

203 (ii) prohibition from filing another complaint for a period of time
204 not to exceed one (1) year; and/or

205 (iii) a civil suit in the Nation's Trial Court brought by the official
206 accused by the frivolous, false or malicious allegation.

207 120.6-7. *Notice of the Investigatory Hearing.* The Business Committee Support Office shall
208 provide the complainant, the official who is the subject of the complaint, and any other individual
209 compelled to attend the hearing with written notice of the date and the time of the investigatory
210 hearing at least ten (10) business days before the investigatory hearing.

211 120.6-8. *Investigatory Hearing.* The purpose of the investigatory hearing is for the Oneida
212 Business Committee to determine if there is enough evidence to substantiate the allegations of
213 misconduct by clear and convincing evidence.

214 (a) When conducting an investigatory hearing, the Oneida Business Committee shall have
215 the broadest grant of authority to compel any person or organization within the Nation to:

216 (1) appear at the hearing to provide testimony under oath and/or information
217 relevant to the allegations against the official; and/or

218 (2) produce physical evidence that is relevant to the allegations.

219 (b) The Oneida Business Committee shall provide an opportunity for the official who is
220 the subject of the complaint to answer all allegations and to provide witness testimony,
221 documents, and other evidence on his or her own behalf.

222 (c) The Oneida Business Committee shall also provide the complainant the opportunity to
223 answer questions, provide witness testimony or additional information, and/or to otherwise
224 speak on his or her own behalf.

225 (d) The hearing shall be informal and conducted as the interests of justice so require, and
226 shall be recorded by the Business Committee Support Office.

227 120.6-9. *Deliberation of the Oneida Business Committee.* At the conclusion of the investigatory
228 hearing, the Oneida Business Committee shall excuse everyone from executive session for the
229 deliberation of the Oneida Business Committee. Prior to making a final determination as to
230 whether to substantiate the complaint, the Oneida Business Committee shall:

231 (a) consider all evidence and information provided, and shall have a full and complete
232 discussion of all aspects of the complaint and answer; and

233 (b) have a full and complete discussion of all potential sanctions and penalties that may be
234 imposed, if appropriate.

235 120.6-10. *Determination by the Oneida Business Committee.* After the investigatory hearing has
236 concluded and the Oneida Business Committee has deliberated, the Oneida Business Committee
237 shall in open session of a regular or special Oneida Business Committee meeting, by majority vote,
238 declare whether the Oneida Business Committee has determined there is enough evidence to
239 substantiate the allegations of misconduct by clear and convincing evidence.

240 (a) If the Oneida Business Committee finds that there is clear and convincing evidence that
241 the official engaged in misconduct, the Oneida Business Committee shall, by majority vote,
242 determine and impose appropriate sanctions and/or penalties.

243 (b) If the Oneida Business Committee does not find that there is clear and convincing
244 evidence to support the allegations that the official engaged in misconduct, the complaint
245 shall be dismissed.

246 (c) Within ten (10) business days after the investigatory hearing, the Oneida Business
247 Committee shall issue a written decision and provide copies of the decision to:

248 (1) the complainant,

249 (2) the official who is the subject of the complaint, and

250 (3) the Business Committee Support Office, for recordkeeping.

251 120.6-11. *Appeal.* The complainant and the official who is the subject of the complaint shall both
252 have the right to appeal the Oneida Business Committee's decision to the Court of Appeals
253 pursuant to the Nation's Rules of Appellate Procedure. The appeal shall be limited to review of
254 the record, and the Oneida Business Committee's decision may only be overturned if the Court of
255 Appeals determines that:

256 (a) The findings or penalties imposed were clearly erroneous, unsupported by the record,
257 or made on unreasonable grounds or without any proper consideration of circumstances;
258 or

259 (b) Procedural irregularities occurred which prevented a fair and impartial hearing.

260

261 **120.7. Complaints Alleged Against an Elected Official**

262 120.7-1. The Trial Court shall have jurisdiction to hear complaints of alleged misconduct of
263 elected officials. Complaints of alleged misconduct shall be filed with the Trial Court pursuant to
264 the Nation's Rules of Civil Procedure.

265 120.7-2. In a civil action against an elected official for misconduct, the complainant has the burden
266 of proving by clear and convincing evidence that the official engaged in misconduct.

267 120.7-3. In making a final determination, the Trial Court shall determine if there is enough
268 evidence to substantiate the allegations of misconduct by the official by clear and convincing
269 evidence.

270 (a) If the Trial Court finds that there is clear and convincing evidence that the official
271 engaged in misconduct, the Trial Court shall determine and impose any sanctions and/or
272 penalties deemed appropriate in accordance with this law.

273 (b) If the Trial Court does not find that there is clear and convincing evidence to support
274 the allegations that the official engaged in misconduct, the complaint shall be dismissed.

275 120.7-4. *Appeal*. The complainant and the official who is the subject of the complaint shall both
276 have the right to appeal the Trial Court's decision to the Court of Appeals pursuant to the Nation's
277 Rules of Appellate Procedure. The appeal shall be limited to review of the record, and the Trial
278 Court's decision may only be overturned if the Court of Appeals determines that:

279 (a) The findings or penalties imposed were clearly erroneous, unsupported by the record,
280 or made on unreasonable grounds or without any proper consideration of circumstances;
281 or

282 (b) Procedural irregularities occurred which prevented a fair and impartial hearing.

283 120.7-5. The Trial Court shall provide the Business Committee Support Office a copy of the
284 complaint and the determination of the Trial Court for the official's record of conduct in office.
285

286 **120.8. Sanctions and Penalties**

287 120.8-1. A sanction or penalty, or any combination of sanctions and/or penalties, may be imposed
288 upon the Nation's officials for misconduct in office, in accordance with this law.

289 120.8-2. Sanctions and penalties may include:

290 (a) *Verbal Reprimand*. A verbal reprimand may be imposed on the official.

291 (1) The Oneida Business Committee or Trial Court shall submit written notices to
292 both the official and to the Business Committee Support Office of the specific date,
293 time and location of the verbal reprimand. The verbal reprimand shall occur at an
294 Oneida Business Committee meeting and/or a General Tribal Council meeting.

295 (2) To impose the verbal reprimand, the presiding Oneida Business Committee
296 Chairperson, or another Oneida Business Committee member if the verbal
297 reprimand is imposed against the presiding Oneida Business Committee
298 Chairperson, shall read a statement that identifies:

299 (A) The Oneida Business Committee or Trial Court's findings regarding the
300 specific actions or inaction taken by the official that were found to be
301 misconduct;

302 (B) The reasons why the official's actions or inactions amounted to
303 misconduct;

304 (C) A statement identifying that the misconduct violates the high standards
305 of behavior expected of the Nation's officials and is not acceptable; and

306 (D) A direction to the official to refrain from engaging in future misconduct.

307 (b) *Public Apology*. The official may be ordered to make a public apology. The Oneida
308 Business Committee or Trial Court shall submit written notices to both the official and to
309 the Business Committee Support Office of the specific date, time and location of the public
310 apology. The public apology shall occur at an Oneida Business Committee meeting and/or
311 a General Tribal Council meeting. The public apology shall:

- 312 (1) identify the specific misconduct committed by the official;
313 (2) recognize that the official's actions or inactions were wrong;
314 (3) identify the effects of the official's misconduct; and
315 (4) include a clear and unambiguous apology from the official.
- 316 (c) *Written Reprimand*. A written reprimand may be imposed on the official by publication
317 on the Nation's official media outlets, as determined by the Oneida Business Committee.
318 The Oneida Business Committee or the Trial Court may publish a written reprimand which
319 includes the information required for the verbal reprimand as stated in section 120.8-
320 2(a)(2)(A)-(D).
- 321 (d) *Suspension*. An official may be suspended from performing his or her duties as an
322 official for a period of time not to exceed two (2) meetings, or fifteen (15) business days if
323 the official serves in a full-time capacity.
- 324 (1) During a suspension, the official shall not:
- 325 (A) attend meetings, trainings or any other event as part of the entity;
326 (B) attend conferences or other events on behalf of, or as a representative
327 of, the entity;
328 (C) vote or participate in any activities of the entity;
329 (D) perform work on behalf of the entity; or
330 (E) be eligible for any compensation, including regular pay, stipends, or
331 mileage reimbursement.
- 332 (2) When an official is suspended, the Oneida Business Committee or Trial Court
333 shall submit written notices to both the official and to the Business Committee
334 Support Office of the specific start and end date of the suspension.
- 335 (3) If a suspension is imposed on multiple officials of the same entity at one time,
336 the Oneida Business Committee or the Trial Court shall impose the suspensions of
337 the officials on a staggered basis to avoid an interruption of the official business
338 and function of the entity.
- 339 (e) *Restitution*. An official may be ordered to pay restitution, which may include the
340 repayment of any improperly received benefit, or any other payment which is intended to
341 make another whole after suffering losses as a result of the official's misconduct.
- 342 (f) *Fines*. An official may be ordered to pay a fine not to exceed two thousand and five
343 hundred dollars (\$2,500).
- 344 (1) Fines shall be paid to the Trial Court.
345 (2) Fines shall be paid within ninety (90) days after the order is issued or upheld
346 on final appeal, whichever is later. Cash shall not be accepted for payment of fines.
347 If the fine is not paid by this deadline, the Trial Court may seek to collect the money
348 owed through the Nation's garnishment and/or per capita attachment process.
349 (3) Money received from fines shall be deposited into the General Fund.
350 (4) Community service may be substituted for part or all of any fine at the minimum
351 wage rate of the Nation for each hour of community service.
- 352 (g) *Loss of Stipend*. An official may be ordered to forfeit a stipend for his or her service
353 on an entity not to exceed two (2) meetings.
- 354 (h) *Mandatory Participation in Training*. An official may be ordered to participate in and
355 complete a training class or program that will assist the official in addressing and
356 improving his or her behaviors and/or actions.

357 (1) The mandated training class or program may address a variety of topics
358 including, but not limited to, anger management, sexual harassment, or other
359 sensitivity training.

360 (i) *Termination of Appointment.* An appointed official may have his or her appointment
361 terminated by the Oneida Business Committee in accordance with the Nation's laws and/or
362 policies governing boards, committees, and commissions.

363 (j) *Removal.* The Trial Court may recommend that the process for removing an elected
364 official as contained in the Nation's laws and/or policies governing removal be initiated.

365 120.8-3. *Factors in Determining an Appropriate Sanction and/or Penalty.* When determining the
366 appropriate sanction or sanctions to impose, the Oneida Business Committee or the Trial Court
367 may consider all factors it deems relevant, including but not limited to:

- 368 (a) the seriousness or severity of the misconduct;
- 369 (b) whether the conduct was intentional or not;
- 370 (c) the likelihood of repetition;
- 371 (d) the extent of probable damage to the finances or reputation of the Nation, the
372 complainant, the entity, or to any other person or organization;
- 373 (e) whether the official or his or her family personally profited, financially or otherwise,
374 from the prohibited conduct;
- 375 (f) the official's remorse, or
- 376 (g) the official's willingness and ability to take steps to mitigate the harm caused by the
377 violation, and
- 378 (h) any prior complaints filed, including any previous sanctions and penalties imposed
379 upon the official while serving on an entity.

380 120.8-4. The Oneida Business Committee and/or the Trial Court may impose a sanction and/or
381 penalty on a conditional basis, whereas compliance with a specific sanction and/or penalty shall
382 prevent the imposition of a more stringent or burdensome sanction and/or penalty.

383 120.8-5. The imposition of sanctions and/or penalties in accordance with this law does not exempt
384 an official from individual liability for the underlying misconduct, and does not limit any penalties
385 that may be imposed in accordance with other applicable laws. In addition to any sanctions and
386 penalties that may be imposed in accordance with this law, officials who commit misconduct in
387 office may be subject to other consequences; including but not limited to:

- 388 (a) removal in accordance with the Nation's laws and/or policies governing removal, if an
389 elected official;
- 390 (b) termination of appointment by the Oneida Business Committee, if an appointed official;
- 391 (c) criminal prosecution, for misconduct that also violates applicable criminal law;
- 392 (d) civil liability, in accordance with the applicable law of any jurisdiction; and/or
- 393 (e) penalties for specific misconduct as authorized by any other law of the Nation.

394 120.8-6. An official who does not comply with a sanction and/or penalty that has been imposed
395 against him or her by either the Oneida Business Committee or Trial Court may be subject to the
396 following:

- 397 (a) additional sanctions and/or penalties that result from a complaint of misconduct filed
398 in accordance with this Law based on the non-compliance;
- 399 (b) termination of appointment by the Oneida Business Committee in accordance with the
400 Nation's laws and policies governing boards, committees, and commissions, if the official
401 was appointed to his or her position; and/or
- 402 (c) removal in accordance with the Nation's laws and policies governing removal, if the
403 official was elected to his or her position.

404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426

120.9. Effect of Resignation by an Official

120.9-1. The resignation of an official after a complaint has been filed against the official shall not affect the status of the hearing and determination by either the Oneida Business Committee or Trial Court.

120.9-2. An official who resigns may still be subject to sanctions and/or penalties at the discretion of the Oneida Business Committee or Trial Court.

120.10. Record of Conduct in Office

120.10-1. The Business Committee Support Office shall maintain a record of conduct in office for each official.

120.10-2. The record of conduct in office maintained for each official shall include, at a minimum:

- (a) a copy of each complaint filed against the official;
- (b) recording and/or transcript from any hearings and/or proceedings;
- (c) the outcome of the complaint, and
- (d) any sanctions or penalties imposed upon an official.

120.10-3. The record of conduct in office for each official shall be maintained for a period of no less than seven (7) years.

End.

Adopted – GTC-__-__-__-__

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

TO: Larry Barton, Chief Financial Officer
 Ralinda Ninham-Lamberies, Assistant Chief Financial Officer

FROM: Rae Skenandore, Financial Management Analyst

DATE: December 27, 2018

RE: **Fiscal Impact of the Sanctions and Penalties Law**

I. Estimated Fiscal Impact Summary

Law: Sanctions and Penalties Law		Draft 4
Implementing Agency	Oneida Business Committee Business Committee Support Office Oneida Judiciary	
Estimated time to comply	In compliance with the Legislative Procedure Act	
Estimated Impact	Current Fiscal Year	Ten Year Estimate
Total Estimated Fiscal Impact	None	None

II. Background

Legislative History

This is a new Law that was originally placed on the Legislative Operating Committee active files list on October 15, 2014. A public meeting was held on October 4, 2018.

Summary of Content

A summary of the Law is as follows;

- A. The purpose of this law is 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.
- B. The Law applies to all elected or appointed Boards, Committees, and Commissions.

- C. This law does not apply to members of the Judiciary or corporate entities of the Nation.
- D. The definition of misconduct contained in the Law includes but it not limited to the following violations of Oneida Laws, policies, rules, by-laws, SOP's, other operating documents, Federal and State Criminal or Civil law and expected moral and ethical standards.
- E. Complaint Process and Requirements
1. Individuals must be over 18 years old to file a complaint.
 2. Allegations must have occurred within the last 90 days.
 - a) The Law outlines the requirement for the content of the complaint and where to file
 3. Prohibits retaliation
 4. Allows for an attorney or advocate
 5. Is held confidential until/unless a final determination and sanctions and/or penalties are imposed.
 6. The process differentiates complaints against appointed official's vs elected officials.
- F. Complaints against appointed officials
1. The complaint process is conducted through the Oneida Business Committee and includes the following:
 - a) Filing with the Business Committee Support Office.
 - (1) Notification requirements;
 - (2) Allowance for mediation;
 - (3) Timelines to respond;
 - (4) Recusal requirements for a conflict of interest.
 - b) An Initial review to determine a finding of merit
 - (1) An investigatory hearing shall be held within 30 days for a complaint determined to have merit.
 - (2) Where there are findings of no merit, the Business Committee shall review the complaint for a determination of frivolous, false, or malicious complaint. If found, the complainant may be subject to the following:

- (3) be fined up to five hundred dollars (\$500);
 - (4) be banned from filing a complaint for up to one year;
 - (5) be subject to a civil suit.
- c) Investigatory hearing.
- (1) The Oneida Business Committee shall have the broadest grant of authority to compel any person or organization within the Nation to
 - (a) appear at the hearing to provide testimony under oath and/or information relevant to the allegations against the official; and/or
 - (b) produce physical evidence that is relevant to the allegations
 - (2) Within the investigatory hearing section, the law contains criteria for deliberations, determination, and appeals.
 - (a) The standard for the complaint is “clear and convincing evidence”.
 - (b) The Oneida Business Committee determines and imposes appropriate sanctions and/or penalties.
- G. Complaints against elected officials
- 1. Complaints are filed with the Trial Court pursuant to the Nations Rules of Civil Procedures.
 - 2. Decisions on filed complaints against elected officials may be appealed to the Court of Appeals pursuant to the Nation’s Rules of Appellate Procedure.
 - 3. Official court records must be submitted to the Business Committee Support Office.
- H. Sanctions and Penalties may include the following:
- 1. Verbal reprimand.
 - 2. Public apology.
 - 3. Written reprimand.
 - 4. Suspension.
 - 5. Restitution.

6. Fines not to exceed two thousand five hundred dollars (\$2,500) per act of misconduct.
7. Loss of stipend.
8. Mandatory participation in training.
9. Termination of appointment.
10. Removal.

I. The Law contains the factors to be used in determining appropriate Sanctions and/or Penalty as the following:

1. the seriousness or severity of the misconduct;
2. whether the conduct was intentional or not;
3. the likelihood of repetition;
4. the extent of probable damage to the finances or reputation of the Nation, the complainant, the entity, or to any other person or organization;
5. whether the official or his or her family personally profited, financially or otherwise, from the prohibited conduct;
6. the official's remorse, or
7. the official's willingness and ability to take steps to mitigate the harm caused by the violation, and
8. any prior complaints filed, including any previous sanctions and penalties imposed upon the official while serving on an entity.

J. The Law states that the imposition of sanctions and penalties does not exempt officials from individual liability which may include but is not limited to:

1. removal in accordance with the Nation's laws and/or policies governing removal;
2. termination of appointment by the Oneida Business Committee;
3. criminal prosecution, for misconduct that also violates applicable criminal law;
4. civil liability, in accordance with the applicable law of any jurisdiction; and/or penalties for specific misconduct as authorized by any other law of the Nation.

K. Non-compliance may result in the following;

1. Additional sanctions and/or penalties.

2. Termination of appointment.
3. Removal in accordance with the Nation's laws.

L. Resignation does not impact the process or exempt individuals from sanctions and penalties.

M. Records of conduct shall be maintained by the Oneida Business Committee Support Office for no less than seven years.

III. Methodology and Assumptions

A "Fiscal Impact Statement" means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.

Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

The analysis was completed based on the information provided as of the date of this memo.

III. Executive Summary of Findings

The separation of the complaint process duplicates this function within two areas of the Nation. However, aside from the additional duties, there are no other apparent startup, personnel, office, or documentation costs associated with duplicating this function with the approval of this legislation.

III. Financial Impact

No fiscal impact.

IV. Recommendation

Finance Department does not make a recommendation in regards to course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of an action, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.

Sanctions and Penalties Law

Presentation to GTC by
Legislative Operating Committee

February 24, 2019

Why Sanctions & Penalties?

- If an official of the Nation engages in misconduct in office, there are few remedies to hold that official accountable.
 - Removal Law (if elected)
 - Termination of Appointment (if appointed)
- Not all violations rise to level of removal or termination.
- The Nation currently has no formal process to issue warnings, reprimands, or corrective actions against elected and appointed officials.
- Increased accountability and opportunity to correct behavior and become a better official.

Cultural Background

- Great Law of Peace.
- Chief receives up to three warnings from Clan Mother.
 - Try to steer leader on the right path.
 - Opportunity to correct actions.
- After three warnings, the chief is dehorned, or removed.
- Goal is not to shame but to move forward in a good way.

Current Landscape

- Most governments (tribal, local, state and federal) have some sort of sanctions process.
- Sanctions for officials discussed by GTC, previous Business Committees, and community as far back as 1998.
- During the Special Election held on July 9, 2016, the following referendum question was approved by a vote of 178 to 59:
“Should the BC develop a law which provides for sanctions and due process for elected officials?”

Development

- Research
- Work Meetings
 - Meetings w/Boards, Committees and Commissions
- Public Outreach
 - Community Potluck Meeting
 - Public Meeting

What is Misconduct?

- Violating the Oneida Constitution or any law, policy or rule of the Nation;
 - For example, the Code of Ethics or Conflict of Interest Law
- Violating the bylaws or standard operating procedures of the entity the official serves on;
- Being convicted of a felony under federal or Wisconsin law;
- Any other activity that does not uphold the moral and ethical standards expected of the Nation's officials.

Who Can be Sanctioned?

- Elected Officials of the Nation.
 - Including members of the Oneida Business Committee.
- Appointed Officials of the Nation.
- This law does not apply to:
 - Corporate entities of the Nation.
 - Judges of the Oneida Nation Judiciary.
 - Complaint Process for Judges located in Judiciary Law.

Elected Officials

- Oneida Business Committee
- Oneida Election Board
- Oneida Gaming Commission
- Oneida Land Commission
- Oneida Land Claims Commission
- Oneida Nation Commission on Aging (ONCOA)
- Oneida Nation School Board
- Oneida Trust Enrollment Committee
- GTC Legal Resource Center Attorney and Advocates

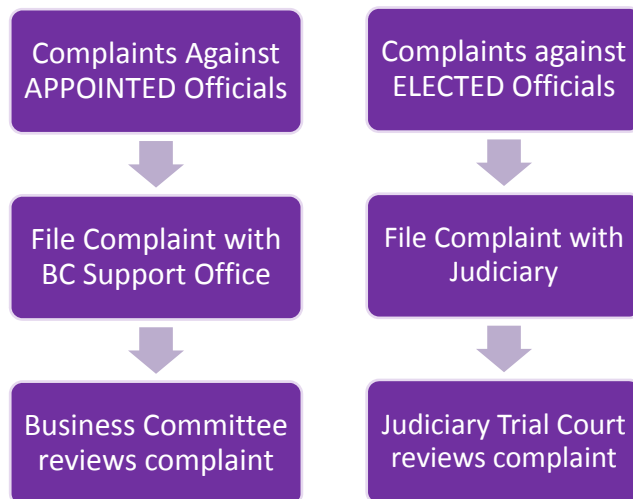
Appointed Officials

- Anna John Resident Centered Care Community Board
- Audit Committee (1 community member seat)
- Environmental Resource Board (ERB)
- Finance Committee (1 community member seat)
- Oneida Community Library Board
- Oneida Nation Arts Board
- Oneida Personnel Commission
- Oneida Police Commission
- Oneida Pow Wow Committee
- Oneida Nation Veterans Affairs Committee (ONVAC)
- Pardon and Screening Forgiveness Committee
- Southeastern WI Oneida Tribal Services Advisory Boards (SEOTS)
- Oneida Youth Leadership Institute Board of Directors

Filing a Complaint

- **Who Can File:** Anyone 18 years and older who, in good faith, has knowledge or reason to believe that an official has committed misconduct may file a written complaint.
- **When To File:** Within 90 days of when the alleged misconduct occurred or was discovered to have occurred.
- **Where to File:**
 - Elected Officials – Judiciary Trial Court.
 - Appointed Officials – BC Support Office.

Filing a Complaint



Complaint Process: Elected Officials

- Complaint filed with the Nation's Judiciary Trial Court.
- Case proceeds according to Judiciary Rules of Civil Procedure:
 - Official files answer to the complaint.
 - Court may order pre-trial meeting and/or discovery.
 - Court holds a hearing.
 - Court issues judgment.
- If Trial Court finds official committed misconduct, the Trial Court selects appropriate sanction or penalty.
- Either party may appeal decision to Judiciary Court of Appeals.

Complaint Process: Appointed Officials

- Complaint filed with BC Support Office.
- Complaint forwarded to BC Members and the Official.
- Official submits written response to complaint.
- BC performs initial review to determine if complaint has merit. If complaint has merit, BC schedules a hearing.
- BC holds investigatory hearing during executive session. After the hearing, BC deliberates.
- In open session, BC votes on whether misconduct occurred and selects appropriate sanction or penalty by majority vote.
- Either party may appeal decision to Judiciary Court of Appeals

List of Sanctions & Penalties

- Verbal Reprimand
- Public Apology
- Written Reprimand
- Suspension
- Restitution
- Fines
- Loss of Stipend
- Mandatory Training
- Termination of Appointment
- Removal, in Accordance with Removal Law

Additional Consequences

- Nothing in this law exempts an official from individual liability or penalties imposed in accordance with other laws.
- For example, officials who commit misconduct may be subject to other consequences, including but not limited to:
 - Criminal Prosecution, for misconduct that violates applicable criminal law.
 - Civil Liability, in accordance with applicable law.
 - Penalties for specific misconduct as authorized by any other law of the Nation.

How is Penalty Selected?

- When imposing a sanction or penalty, the OBC or Judiciary may consider the following:
 - How severe the misconduct was, whether it was intentional, and how likely the official is to repeat the misconduct.
 - The damage to the finances or reputation of the Nation, entity, or any person or organization.
 - Whether the official has expressed remorse and is willing to take steps to correct the harm done.
 - Whether any prior complaints have been filed against the official.

Protecting Due Process

- Officials accused of misconduct have the right to be represented by an attorney or advocate.
- Officials have the right to submit a written response to complaints against them, appear at the investigatory hearing to answer the allegations, provide witness testimony, documents and evidence on their behalf.
- Complaints against officials must be proven by clear and convincing evidence.
- Appeals to Judiciary Court of Appeals

Requested Action

Motion to adopt the Sanction and Penalties Law Resolution

Yaw^ko