

# SOKAOGON CHIPPEWA COMMUNITY FAMILY CODE

## CHAPTER 3A - CHILD SUPPORT

### Section 3A.1 Purpose, Authority and Scope

(A) **Purpose.** The purpose of this Code is to establish the legal responsibility of parents to provide financially for their children's well-being. The Sokaogon Chippewa Community finds its children are among the Tribe's most valuable resources and their financial needs must be met to ensure their success in the future. Therefore, it is the intent of the Tribe to define a process to establish, modify and enforce child support court orders involving members of the Sokaogon Chippewa Community, and all those subject to the jurisdiction of the Sokaogon Chippewa Community.

(B) **Authority.** The Sokaogon Chippewa Community authorized the creation of the Sokaogon Chippewa Community Tribal Child Support Agency (SCC-TCSA) (Agency) and hereby delegates to the Agency the responsibility and authority for implementing, monitoring and enforcing this Law. Included in this delegation of authority is rule-making authority to facilitate enforcement and includes the authority to make rules that govern the compliance of other tribal departments, businesses, agencies, boards, committees or other tribal entity that may be in a position to facilitate the collection or enforcement of child support obligations.

(C) **Scope.** Nothing in this Law is intended to waive the sovereign immunity of the Sokaogon Chippewa Community or its application to the Sokaogon Chippewa Community and its agents and employees acting within the scope of their authority.

### Section 3A.2 Applicability

This Law applies to the SCC-TCSA and its agents and employees acting within the scope of their authority; individuals participating in the child support program; tribal departments including but not limited to the Sokaogon Chippewa Community Administration, the Education Department, the Aging and Disability or Elderly Services Departments, the Family Services Department, the Conservation Department, tribal boards, committees and commissions including but not limited to the Gaming Commission, tribal business and any other tribal entity that offers a benefit, including but not limited to all tribally issued licenses, permits, assignments, rights and passes.

### Section 3A.3 Jurisdiction

(A) **Territorial Jurisdiction.** The Sokaogon Chippewa Community has jurisdiction over land held in trust by the United States, whether for the Sokaogon Chippewa Community or individual members, over land held in fee by Sokaogon Chippewa Community and over all lands declared reservation lands, to the extent not inconsistent with federal law.

(B) **Subject Matter Jurisdiction.** The Sokaogon Chippewa Community Tribal Court may exercise jurisdiction in paternity and child support matters where there is personal jurisdiction and when one or more of the following applies:

- (1) One or more parties or the child is an enrolled member of the Sokaogon Chippewa Community.
- (2) In the case of enforcement of a child support order pursuant to Federal Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B, when a party is a contract, temporary or regular employee of the Sokaogon Chippewa Community.
- (3) The enrolled member asserted parentage in a declaration of parental interest filed with the Wisconsin Department of Health and Family Services under s. 48.025, or in a statement acknowledging parentage filed with the State Registrar under s. 69.15(3)(b)1 or 3, or in a petition filed in the Sokaogon Chippewa Community Tribal Court.

(C) **Personal Jurisdiction.** The Sokaogon Chippewa Community, in any proceeding under this Code, may exercise personal jurisdiction as provided in Sections 3.1.1.D. and 3.1.1.E., and over a resident individual, or the individual's guardian or conservator. Also in any proceeding under this Code, the Court may exercise personal jurisdiction over a nonresident individual, or the individual's guardian or conservator, if any of the following applies:

- (1) The individual is personally served with a summons or other notice on lands under the jurisdiction of the Tribe, which includes both land held in trust by the United States, whether for the Sokaogon Chippewa Community or individual members, and land held in fee by the Sokaogon Chippewa Community.
- (2) The individual submits to the jurisdiction of the Tribal Court, by consent, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction.
- (3) The individual resided with the child on Tribal lands.
- (4) The individual resided on Tribal lands and provided parental expenses or support for the child.
- (5) The child resides on Tribal lands as a result of the acts or directives of the individual.
- (6) The individual engaged in sexual intercourse on Tribal lands, and the child may have been conceived by that act of intercourse.

### Section 3A.4 Definitions

- (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 Court.
- (B) “Alternative Payment Plan” means a negotiated agreement between a child support agency and a Payor, or an order set by the court, which establishes terms for the payment of the arrearage debt.
- (C) “Arrears” means the amount of money the Payor has not paid pursuant to the most recent child support court order. Arrears do not include birth expenses imposed by a state or other Tribe.
- (D) “Child” means the natural or adopted child under the age of eighteen (18) years old, or the age of nineteen (19) years if attending an accredited course to obtain a high school diploma or high school equivalency and resides with the custodial parent.
- (E) “Child Support Order” means a Sokaogon Chippewa Community Tribal court order, or other court order from a court of competent jurisdiction relating to payment of child support.
- (F) “Court” means the Sokaogon Chippewa Community Tribal Court as established by Sokaogon Chippewa Community Tribal Law.
- (G) “Court Order” means a Tribal Court Order or a valid Court Order of a court of competent jurisdiction.
- (H) “Custodial Party” means the person who has had placement of the child, whether by voluntary agreement or by Court Order.
- (I) “Gross Income” means the income of a parent before any taxes, loans, or other deductions are made. Gross income shall include the following:
  - (1) Salaries and wages, including bonuses;
  - (2) Interest and investment income;
  - (3) Social Security disability and or social security retirement benefits BUT NOT Supplemental Security Income or “SSI,” which is a needs based federal benefit that is expressly exempted from child support garnishment and income withholding;
  - (4) Net proceeds from worker’s compensation or other personal injury awards;
  - (5) Unemployment benefits;
  - (6) Voluntary deferred compensation, including pension and profit-sharing plans;
  - (7) Military and veteran benefits;

- (8) Undistributed income of a business, partnership and corporation; and
- (9) All other income, whether taxable or not, including per capita and Tribal bonuses in accordance with applicable laws.

Gross income **does not** include

- (1) TANF, food stamps or other monetary general assistance;
  - (2) Foster care or kinship care;
  - (3) Social Security Supplemental Income;
  - (4) Child Support for other children but shall be calculated by the Court into record in accordance with Section 3A.7 (F); or
  - (5) Gambling winnings, whether lottery, gaming, bingo or otherwise.
- (J) “Imputed minimum wage” means the amount of income that shall be assigned to a parent when calculating child support when the parent’s income is unknown or if the parent is unemployed. Minimum wage is based on the hourly federal minimum wage multiplied by a 35 hour work week.
- (K) “Judge” means a Sokaogon Chippewa Community Judge.
- (L) “Non-Cash Contribution” means non-monetary payment to a non-assignable child support obligation owed to a payee. Non-cash contributions may include goods or services provided by the payor. Non-cash contributions shall be assigned a whole dollar amount, be based on the current market value of the goods or services, be agreed upon by both the custodial and non-custodial parties and must be approved by the Tribal Court.
- (M) “Parent” means the biological or adopted parent of a minor child.
- (N) “Per Capita Payment” shall mean those payments made or distributed to enrolled tribal members paid directly from the net revenues of their Tribe.
- (O) “Payee” or “Obligee” means the parent, legal guardian or agency which is the recipient of child support.”
- (P) “Payor” or “Obligor” means the party who is responsible to pay child support.
- (Q) “Serial parent” means a parent who has a duty to support more than one family.
- (R) “Shared-Placement Guidelines” means a child support calculation that may be utilized when one parent has overnight placement of the child(ren) 25% (92 days) or more per calendar year.
- (S) “Tribal Child Support Agency” or “Agency” means the Sokaogon Chippewa Community Tribal Child Support Agency.
- (T) “Tribal Member” means enrolled member of the Sokaogon Chippewa Community.

(U) “Tribal Treasurer” means the duly elected Treasurer of the Sokaogon Chippewa Community Tribal Council.

### **Section 3A.5 Actions for Establishment and Modification of Child Support**

(A) In a proceeding involving the dissolution of marriage, paternity or child support establishment and modification pursuant to this Chapter, the Tribal Court may order one or both parents of the minor child(ren) to pay an amount of child support to the custodial party pursuant to the guidelines in this Chapter. The Tribal Court shall consider the following relevant factors when determining child support:

- (1) The financial, emotional, educational and medical needs of the child(ren);
- (2) The financial resources of one or both parents; and
- (3) The ability of the parent to gain and/or maintain employment or other income.

(B) The Tribal Court will refer all cases involving Paternity, Child Support or Dissolution of Marriage involving minor children to the Tribal Child Support Agency. The Tribal Child Support Agency shall follow their procedures to establish a child support settlement agreement in accordance with this section if possible. All agreements shall be reduced to a written child support settlement agreement and order, and must be submitted to the Tribal Court for approval. If an agreement cannot be reached, the Tribal Child Support Agency will file a Summons and Petition for Establishment of Child Support in new actions or a Motion for Review if the case has a pre-existing child support order.

(1) When a Child Support Case Manager has reason to believe that the case is one that involves a child conceived because of incest or forcible rape, the Case Manager shall discuss the option of moving forward with the action with the mother and inform the court of the decision. If there is an adoption pending the Child Support Case Manager shall obtain and provide any documentation that may be beneficial to the Tribal Court when they make the determination.

(C) Child support shall continue until the child reaches the age of eighteen (18) years. Child support will continue until the child reaches the age of nineteen (19) only if enrolled in an accredited program to achieve a high school diploma and still resides full time with the payee. If this applies, the child support will terminate on the day following the high school graduation or the child’s nineteenth birthday, whichever comes first.

### **Section 3A.6 Commencement of New Child Support Cases**

An original action for child support shall be commenced through a Summons and Petition. The Plaintiff is responsible to file the Summons and Petition with the Tribal Clerk of Court and to ensure that proper service is made on the defendant and any co-defendants.

- (A) The Summons and Petition shall contain the name of the plaintiff, the name of the defendant and any co-defendants.
- (B) The Petition shall state the names and dates of birth of the children that are involved in the action and for whom child support is being sought.
- (C) The Petition shall give notice to the parties that they have the right to obtain legal representation at their own expense and to file an Answer to the complaint no later than ten (10) calendar days from the date of service of the Petition.
- (D) The Summons shall indicate the date, time and location of the hearing. The date of the hearing shall be no less than fourteen (14) calendar days from the date of anticipated service.
- (E) A Summons and Petition shall, whenever possible, be served on a defendant by personal service.
- (F) Any person over the age of eighteen (18), not a party to the action, may make personal service. In the case of personal service, an affidavit of service shall be returned to the plaintiff and filed in the docket with the Clerk of Court and shall constitute proof of personal service.
- (G) When the Summons and Petition cannot by reasonable diligence be personally served on the defendant, service may be made by mail. In the case of service by mail, a copy of the Summons and Petition shall be sent by registered or certified mail, and by regular mail, to the defendant's last known address.
- (1) A return receipt for mail delivery signed by the defendant shall be returned to the plaintiff and filed in the docket with the Clerk of Court.
  - (2) If the mail delivery is not returned as signed, but the regular mail was not returned as undeliverable, the plaintiff shall file an Affidavit of Mailing which shall be filed in the docket with the Clerk of Court and shall constitute proof of service by mail.
- (H) In the event the Defendant cannot be served with the Summons and Petition, either personally or by mail, service may be by publication. Service by publication shall mean publication of the Summons for two consecutive weeks in a newspaper of general circulation whose readership is primarily located in the last known vicinity of the Defendant. The published Summons shall state the address at which the Petition can be obtained. Proof of publication of the Summons shall be returned to the Plaintiff and filed in the docket with the Clerk of Court and shall constitute proof of service by publication.

### **Section 3A.7 Child Support Calculations**

There shall be a rebuttable presumption in any proceeding for child support that the amount of the obligation that results from the application of the following child support guidelines is the correct amount of child support to be awarded.

(A) Child support shall be established utilizing the income of the parents and the guidelines in this chapter.

(1) The child support guidelines will be reviewed and revised, if appropriate, at least once every four years by the Tribal Child Support Agency.

(2) If a parent's income is unknown or if the parent is unemployed, imputed minimum wage may be used when calculating the child support, based upon a specific determination made in each case, based on facts presented, that the payor has the ability to pay the support obligation.

(B) Duty to Support – Order of Legal Obligation. If a parent supports more than one family, the court may adjust the parent's income for later child support orders. The order of legal obligation is based on when the support order began. The legal obligation may include a parents' current, intact family, for which there is no support order. A support obligation begins on the date when:

(1) The child is born, if the child was conceived or born during the parent's marriage;

(2) The child is adopted into an intact family; or

(3) Legal fatherhood or paternity is established. For a child born outside of marriage, the duty to support begins at the child's birth.

(C) Non-Cash Contributions. When agreed upon by both parties and approved by the Tribal court, non-cash contributions may be considered in lieu of cash child support and other non-assignable debts owed to the custodial party. The Court may consider the circumstances of the parties including whether a non-custodial party is able to obtain gainful employment or has other financial resources available to meet the current cash child support obligations.

(1) Non-cash may not be ordered to repay assigned debts owed to a state or tribal jurisdiction. All non-cash orders must describe the type of non-cash contribution and must assign a dollar value to the contribution.

(2) Should a non-cash contribution not be met, the recipient of the non-cash is responsible to notify the Tribal Child Support Agency no later than the last day of each month of the non-compliance in writing. If a notice of non-compliance is not received by the last day of the month, it shall be presumed that the non-cash contribution was met and the payor shall receive a credit based on the

Court Order on the first day of each following month on his/her child support account statement maintained by the Tribal Child Support Agency.

- (3) Nothing in this section allows a payor of non-cash contributions to exceed the limits on the hunting or gathering of all regulated natural resources including limits and seasons imposed by tribal law. Non-cash orders may only apply to the extent permitted under tribal, state and federal laws.

(D) If a child is receiving Social Security cash benefits as a result of the natural parent's disability, the amount owed for current support shall be reduced by the amount of the child's monthly cash benefit. Should the child's monthly cash benefit exceed the amount of the monthly child support obligations, there shall be no credit against any child support arrears debt.

(E) Child support obligations must be based on the percentages contained in Section 3A.7(F) and shall be represented as a whole dollar amount or sum certain in the Court Order.

(F) The basic child support guideline in this section shall be utilized when one party has primary placement of a child(ren). Child support is reduced to a whole dollar amount by multiplying the payor's gross income by the number of children in the case as follows:

- (1) 17% for one child
- (2) 25% for two children
- (3) 29% of three children
- (4) 31% for four children
- (5) 34% for five or more children

(G) If a payor has more than one child support case, the amount of any prior child support order(s) shall be deducted from his or her gross income and the reduced income shall be multiplied by the percentages in (E) above.

(H) Non-marital children cases are determined by the child support order date and the legal obligation for marital children will begin on the child's date of birth.

(I) Child support arrears may be ordered by the Tribal Court dating back to the date of application or referral received by the Tribal Child Support Agency or the date of filing of the action if the Tribal Child Support Agency is not involved in the action.

### **Section 3A.8 Shared-Placement Guidelines**

(A) Shared placement calculations may be utilized when one parent has overnight placement of the child(ren) 25% (92 days) or more per calendar year. The Court must determine whether using this guideline is in the best interest of the child(ren) in each case based upon the evidence presented, including the testimony of the parties.



- (1) To determine the percentage, divide the number of overnight placements by 365 days per year.
- (2) Calculate each parent's monthly income available for child support. If one or both parents have a prior child support obligation, determine the parent's adjusted gross income available for this child support order pursuant to Section 3A.7 (F).
- (3) Child support is based on each parent's income multiplied by the appropriate percentage standard and then multiplied by 150% (household expenditures for each parent), then multiplied by the percentage of time the other parent has with the children and then offsetting each parent's child support obligation against each other to determine child support for the month.

### **Section 3A.9 Low-Income Payors**

(A) Payors whose income falls below 150% of the federal poverty level are considered low-income Payors. The Tribal Child Support Agency shall annually apply the low income payor table from the Wisconsin Administrative Codes.

(B) Child support will be determined by multiplying the percentages in the table referenced in 3A.7(F) by the gross monthly income of the payor.

### **Section 3A.10 High-Income Payors**

(A) The Tribal Court may apply the following percentages under Section 3A.7 if the payor is considered to earn high income. The Tribal Court may apply the following percentages when the payor's monthly income available for child support is greater than or equal to \$7000 and less than or equal to \$12,500.

- (1) 14% for one child
- (2) 20% for two children
- (3) 23% for three children
- (4) 25% for four children
- (5) 27% for five or more children

(B) The Tribal Court may apply the following percentages when a payor's monthly income available for child support is greater than \$12,500:

- (1) 10% for one child
- (2) 15% for two children
- (3) 17% for three children
- (4) 19% for four children

(5) 20% for five or more children

(C) Medical support may be considered if one or both parents has accessible and affordable health care coverage available for the child at a reasonable cost. Reasonable cost is defined as no more than 5% of a parent's gross income.

- (1) Each parent may be ordered to pay one-half of the insurance premiums and any uncovered services.
- (2) The Tribal Court may incorporate responsibility for contribution to the cost of private health insurance as an upward or downward adjustment to the payor's child support obligation.
- (3) The Tribal Court may not order a parent whose income is below 150% of the federal poverty level to enroll a child in a private health insurance plan or contribute to the cost of a private health insurance plan unless there is no cost to the parents.

### **Section 3A.11 Deviation from Child Support Guidelines**

(A) There is a rebuttable presumption that the award of child support pursuant to the guidelines listed above is appropriate. However, the Tribal Court may consider a deviation from the child support guidelines only after considering the specific factors in this section. The Court must find by a preponderance of the evidence that use of the guidelines is not in the best interests of the child and is unfair to either of the parties, before deviating from the guidelines. Any deviation from the guidelines, including the factual basis for the deviation, must be included in the written order for support.

- (1) The financial resources of the child and both parents.
- (2) Spousal maintenance received by either parent.
- (3) The needs of each party in order to support himself or herself at a level equal to the federal poverty guidelines.
- (4) The needs of any person other than the child, whom either party is legally obligated to pay support for.
- (5) The desirability of the custodial party to remain in the home as a full-time parent.
- (6) Extraordinary travel expenses incurred in exercising the right to periods of physical placement.
- (7) The physical, mental and emotional needs of the child.
- (8) The child's educational needs.
- (9) The tax consequences to each party.
- (10) The best interests of the child.

- (11) The earning capacity of each parent, based on each parent's education, training and work experience and the availability of work in or near the parent's community.
- (12) The agreement of the parties for a deviation.

### **Section 3A.12 Post-Judgment Modification Orders**

(A) Every two (2) years from the date of the Order, the Tribal Child Support Agency shall conduct a review of the order to determine whether substantial changes of circumstances exist that merit a request for modification of the Order. The Agency shall petition the Court for modification if a substantial change of circumstances exists.

(B) The non-custodial parent, the custodial parent and any interested party has the right to ask for a review of their child support order. The review is done by the Tribal Court upon request of the non-custodial parent, custodial parent or any other interested party, if there is a substantial change in circumstance.

(C) A substantial change in circumstance means:

- (1) the child's placement is changed;
- (2) either parent or the child has a significant change in his or her finances that would lead to a change in child support of more than ten percent (10%) or forty dollars (\$40.00) a month;
- (3) the payee is receiving public benefits and is required to have a current support order in place;
- (4) it has been twenty-four (24) months since the date of the last child support order or revision to the child support order; or
- (5) a change has occurred and if the current circumstances had been in place at the time the order was issued, a significantly different order would have been issued.

(D) The Notice and Motion shall contain the name(s) of the Plaintiff(s), Defendant(s), Co-defendants and the names and dates of birth of the children. The Notice and Motion shall be signed by the moving party and must include the date, time and location of the hearing. The date of the hearing may be no earlier than ten (10) days from the date of service.

(E) The Notice and Motion shall indicate that each party has the right to be represented at their own expense.

(F) Notices and Motions may be served by mail. A copy of the Notice and Motion shall be sent by regular and certified mail to the non-moving party or parties by the moving party.

- (1) A return receipt for registered mail delivery signed by the non-moving party shall be returned to the moving party and filed in the docket with the Clerk of Court.
- (2) If the mail delivery is not returned as signed, but the regular mail was not returned as undeliverable, the moving party shall file an Affidavit of Mailing which shall be filed in the docket with the Clerk of Court and shall constitute proof of service by mail.

(G) If the regular mail is returned as undeliverable, the moving party shall attempt personal service pursuant to Section 3A.6, or if that fails, service by publication pursuant to Section 3A.6(H).

(H) If the Tribal Court finds that there has been a substantial change of circumstances, the Court shall modify child support consistent with the provisions of this chapter.

### **Sections 3A.13 Enforcement of Child Support Orders**

(A) Agency Responsibilities. The Agency shall:

- (1) Track and document the progress of the party who is under an enforcement action.
- (2) Take additional enforcement action when a party fails to comply with a previous enforcement action.
- (3) Document the reasons why an enforcement action is not taken, when such an action would have been appropriate under the circumstances.
- (4) Refund amounts that were improperly withheld, terminate wage withholding when appropriate and allocate amounts across multiple cases.

(B) Income Withholding. The following provisions apply to all income withholding orders, whether the order is an original order of the Tribal Court or a foreign order registered with the Tribal Court.

- (1) Following the issuance of an order for child support by the Tribal Court, the Tribal Child Support Agency shall issue a Federal Notice of Income Withholding Order and submit the Notice to the employer or other source of income of the payor and provide a copy of the Notice to the payor.
- (2) If the Tribal court finds there is good cause to not issue an automatic income withholding order or if the parties agree in writing to not have automatic withholding, the Tribal Child Support Agency shall not issue a Notice of Income Withholding Order pursuant to 3A.13(B)(1) above. However, if the payor becomes delinquent in an amount equal to one full month of child support, the Tribal Child Support Agency must issue a Notice of Income

Withholding Order and submit to the employer or other source of income and provide a copy of the Notice to the payor.

- (3) Income withholding orders shall indicate the specific dollar amounts to withhold for current child support, and any additional amounts to repay any arrearages pursuant to the terms of the Order. The employer must submit all amounts withheld to the Wisconsin State Disbursement Unit no later than five (5) days following the date of withholding from the income. If the source of income is per capita of any tribe, the Tribal Child Support Agency shall submit the appropriate document to said tribe following said tribe's guidelines regarding registration of their order and withholding per capita monies.
- (4) All foreign orders shall be sent to the Tribal Child Support Agency, along with the appropriate documentation, for review, verification of enrollment and employment, and registration with the Tribal Court. The Agency shall send notice to the payor that an order has been received along with a copy of the motion to register the foreign order with the Tribal Court. Included in the motion shall be the right of the payor to object in writing to the enforcement within twenty (20) calendar days of receiving the notice.
- (5) The only basis for contesting a withholding is a mistake of fact (error in the amount of current support or arrears owed) or a mistake of identity of the alleged payor.
- (6) The maximum amounts allowed to be withheld from any source of income shall not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b) but may be set at a lower amount.
- (7) If the employer fails to withhold income in accordance with the terms contained in the Notice of Income Withholding Order, the employer will be liable for all amounts that should have been withheld from the payor.
- (8) An employer may not discharge, refuse to employ or take disciplinary action against a payor based on the issuance of the income withholding notice. Should an employer take such action, they will be subject to a contempt finding by the Tribal Court which may include a fine as determined by the Tribal Court.
- (9) All withheld monies will be allocated across multiple withholding orders to ensure that in no case shall allocation result in a withholding for one of the support obligations not being implemented.
- (10) The Tribal Child Support Agency shall promptly terminate an income withholding order and provide the employer or other source of income a Notice of Income Withholding Termination when there is no current child support order and all arrearages have been satisfied.
- (11) If income withholding is inapplicable, ineffective or insufficient to ensure payment of child support, other administrative enforcement actions may be

utilized, including suspension, revocation or denial of tribal privileges such as tribally issued permits or licenses, being placed on the casino ban list, and other enforcement actions as more fully set forth in the section below.

**(C) Other Authorized Administrative Enforcement Actions**

In the event that a payor is at least one (1) full month delinquent in paying his or her child support obligation, he or she may, with notice, be subject to the following enforcement actions:

- (1) increase in amount of wages withheld;
- (2) placement on state and/or tribal lien docket;
- (3) credit bureau reporting;
- (4) interception of income and/or other payments, including, to the extent possible, both federal and state income tax returns;
- (5) seizure of personal property;
- (6) suspension, revocation and/or denial of state and tribally-issued licenses and/or permits;
- (7) denial of passport;
- (8) denial of loans or other tribal assistance;
- (9) referral for criminal charges; and/or
- (10) any other enforcement action included in this law or in a rule established under this law.

**(D) Tribal Court Enforcement Action**

If the Agency does not have the authority to conduct the appropriate enforcement action, or the payor is unresponsive to the enforcement actions being imposed by the Agency, the case shall be referred to the Tribal Court for enforcement. The court may order any of the enforcement actions the Agency is authorized to implement. In addition, the Court may order the following to enforce a child support order:

- (1) Bonds or other Guarantees. The Court may require a payor to provide a surety, bond or guarantee to secure the payment of arrears, if wage withholding is not applicable, practical or feasible to secure payment of arrears.
- (2) Claims Against Estates.
  - (a) The Court may approve a claim for past and future support against a payor's estate.
  - (b) The Court may issue a restraining order against an estate from which a payor will inherit.
- (3) Community Service. The Court may order a payor to perform community service. The number of hours of work required may not exceed what would be

reasonable considering the amount of arrears the payor owes. The payor 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:

- (a) how many hours of community service the payor is required to complete;
  - (b) the time frame in which the hours must be completed;
  - (c) how the payor will report his or her hours;
  - (d) any other information the Court determines is relevant; and
  - (e) and that community service may not be interpreted or used in any way as a non-cash satisfaction of a child support or arrearages obligation.
- (4) Civil Contempt. A payor who disobeys a lawful child support order shall be subject to punishment for contempt of court. A payor found in contempt of court may be subject to any of the civil enforcement remedies available to the court including civil forfeitures. The payor may be fined in an amount not to exceed one thousand (\$1000.00) per act of contempt. In instances of continuing contempt, each day shall constitute a separate act of contempt. The Court in its order may offer purge conditions to the contempt order provided the purge conditions have a timeframe not to exceed thirty (30) days unless otherwise agreed to by all the parties.

(E) **Due Process and Requests for Court Hearings in Enforcement Actions.** The Agency shall provide due process prior to taking enforcement actions. Due process at a minimum shall include an initial written notice and a final notice. The Agency shall promulgate such rules and regulations as are needed in order to enforce this provision.

(F) **Objections to Enforcement Actions Limited.** The only allowable objection for which a hearing may be requested is for “mistake of fact.” The individual may allege, for example, that the amount of arrears is a mistake or that there has been a mistake of identity.

### **Sections 3A.14      Petition for Registration for Enforcement of Foreign Order**

All requests from foreign jurisdictions shall be referred to the Tribal Child Support Agency for proper processing under this Section. The Tribal Court will recognize any valid child support order that is properly registered with the Tribal Court pursuant to 28 U.S.C. §1738B, Federal Full Faith and Credit for Child Support Orders Act.

(A) The Petition shall include:

- (1) The name of the plaintiff or petitioner;
- (2) The name of the payor;
- (3) Statement that upon information and belief that the payor is an enrolled member or employee of the Sokaogon Chippewa Community.

- (4) The name of the child and other children that the payor may have child support obligations for;
- (5) The amount of arrears;
- (6) A copy of the most recent court order that the foreign jurisdiction is seeking to enforce;
- (7) The record of payment over the past twelve months;
- (8) The amount of the income sought from the petition;
- (9) The person or entity that should be paid if the petition is granted;
- (10) Any other relevant information that will aid the court;
- (11) Any filing fee as required by the Tribal Court must accompany the petition;
- (12) Notice shall be given by the Tribal Child Support Agency of the registration action by mailing a copy of the petition to the payor. Included in the notice shall be the right of the payor to object in writing to the registration within twenty (20) days of the notice. The only allowable objection to the recognition and enforcement of a judgment is a mistake of fact (error in the amount of current support of arrears) or a mistake of identity of the payor.

### **Section 3A.15            Enforcement of a Foreign Judgment**

A judgment shall be considered enforceable after it is signed by the judge as a Court Order and twenty (20) days have lapsed and no objection by the payor has been received.

(A) The Court Order shall not modify the underlying child support order or otherwise change the payment percentage or other payment amount in the underlying child support order.

(B) The Tribal Child Support Agency shall issue a Federal Notice of Income Withholding and submit the Notice to the employer or other source of income of the payor.

- (1) Income withholding orders shall indicate the amounts to withhold and any additional amounts to repay any arrearages pursuant to the terms of the Order. The employer must submit all amounts withheld to the State Disbursement Unit within five (5) days following the date of withholding from the payor's income.
- (2) If the source of income is per capita, the Tribal Child Support Agency shall provide the Treasurer with an income withholding form no later than forty-five (45) days prior to the scheduled release of per capita payment.
- (3) The maximum amounts allowed to be withheld from any source of income shall be no more than fifty (50%) of the payor's gross income available for child support.
- (4) If the employer fails to withhold income in accordance with the terms contained in the Notice of Income Withholding, the employer will be liable for all amounts that should have been withheld from the payor.



- (5) An employer may not discharge, refuse to employ or take disciplinary action against a payor based on the issuance of the income withholding notice. Should an employer take such action, they will be subject to a contempt finding. A finding of contempt may result in a forfeiture of up to \$1,000.00 per act and each day may constitute a separate act.

### **Section 3A.16 Amendments**

This ordinance shall be reviewed by the Tribal Child Support Agency and the Legal Department no less than every four years. Amendments to this Code will be effective upon enactment by the Sokaogon Chippewa Community Tribal Council without further review by the Secretary of the Interior.

### **Section 3A.17 Effective date.**

This ordinance shall become effective on the date approved by Tribal Council.

### **LEGISLATIVE HISTORY:**

1. Adopted by the Tribal Council on December 13, 2017, Resolution No.12-13B-2017. Adoption required repeal of Sections 3.8.7 and 3.7.7.A.(3), and amendment of Sections 3.7.7.A.(5), 3.7.7.B, 3.7.7.C. and 3.7.7.D. of the Family Code by the same resolution.
2. Amended by the Tribal Council on February 7, 2018, Resolution No.2-7C-2018.
3. Amended by the Tribal Council on May 23, 2018, Resolution No.05-23A-2018.