

**CHAPTER 28**  
**STOCKBRIDGE-MUNSEE TRIBAL LAW**  
**CHILD SUPPORT**

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**Section 28.1 Authority, Purpose and Scope**

The purpose of this Ordinance is to establish the legal responsibility of parents to provide financially for their children’s general well-being. The Stockbridge-Munsee 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 Stockbridge-Munsee Community, and all those subject to the jurisdiction of the Stockbridge-Munsee Community.

**28.1.2** The Stockbridge-Munsee Community authorized the creation of the Stockbridge-Munsee Tribal Child Support Agency (SMTCSA) (Agency) and hereby delegates to that Agency, through the Child Support Manager the responsibility and authority for implementing, monitoring and enforcing this Law. Included in this delegation of authority is rule-making authority to facilitate enforcement of child support orders and obligations. The enforcement authority delegated under this section 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. An example of a Tribal Child Support Agency rule affecting a tribal department might, for instance, be a rule that requires the loan department to either deny a tribal loan in cases where a noncustodial parent payor was more than one month in arrears on child support payments or grant the loan conditioned on a portion of that loan being used to satisfy the outstanding child support arrears.

**28.1.3** The SMTCSA is not an administrative decision-making body and is not subject to actions under the Administrative Appeals Act, Chapter 5 of the Stockbridge-Munsee Tribal Law.

Chapter 28 is expressly exempted from the operation of Chapter 5, the Administrative Appeals Act.

**28.1.4** Nothing in this Law is intended to waive the sovereign immunity of the Stockbridge-Munsee Community or its application to the SMTCSA and its agents and employees acting within the scope of their authority.

## **Section 28.2 Applicability**

This Law applies to the SMTCSA 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 Mohican Loan Department, the Education Office, the Elderly Center, the Family Center, 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 and passes. The Agency may not make any rules or guidelines regarding the determination of membership.

## **Section 28.3 Jurisdiction**

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

**28.3.2** Subject Matter Jurisdiction. The Stockbridge-Munsee 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:

- (A) One or more parties or the child is an enrolled member of the Stockbridge-Munsee Community, Band of Mohican Indians;
- (B) 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 Stockbridge-Munsee Community.
- (C) The enrolled member asserted parentage in a declaration of paternal interest filed with the Wisconsin Department of Health and Family Services under s. 48.025, or in a statement acknowledging paternity filed with the State Registrar under s.69.15(3)(b) 1 or 3.
- (D) In cases where the parties are not enrolled members but have requested services from the SMTCA.
- (E) In cases where the Tribal Court issued a divorce or custody judgment involving a minor child.

**28.3.3 Personal Jurisdiction.** The Stockbridge-Munsee Tribal Court, in any proceeding under this Ordinance, may exercise personal jurisdiction over a resident individual, or the individual's guardian or conservator. Also in any proceeding under this Ordinance, the Court may exercise personal jurisdiction over a nonresident individual, or the individual's guardian or conservator, if any of the following applies:

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

#### **Section 28.4 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. Additionally, administrative enforcement actions means all enforcement actions authorized through the KIDS system and those specifically set forth in Section 28.10 of this Ordinance.
- (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 does 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 Manager” means the person in charge of the day to day operation of the Agency.
- (F) “Child Support Order” means a Stockbridge-Munsee court order, or other court order from a court of competent jurisdiction relating to payment of child support.
- (G) “Court” means the Stockbridge-Munsee Tribal Court as established by the Stockbridge-Munsee Tribal Law.
- (H) “Court Order” means a Tribal Court Order or a valid Court Order of a court of competent jurisdiction.
- (I) “Custodial Party” means the person who has had placement of the child, whether by voluntary agreement or by Court Order.
- (J) “Disposable Income” means gross pay minus mandatory deductions. Disposable income is the amount that is left after subtracting mandatory deductions from gross pay. Mandatory deductions include federal, state and local taxes; unemployment insurance; workers’ compensation insurance; state employee retirement deductions; and other deductions determined by state law. Health insurance premiums may be included in a state’s mandatory deductions; they are mandatory deductions for federal employees. The Consumer Credit Protection Act (CCPA) limits the amount of disposable earnings which may be withheld to 60% of the payer’s disposable earnings per pay period, or up to 50% of the payer’s disposable earnings per pay period if the payer is supporting a second family. Wisconsin’s income withholding statute prohibits withholding at a level that would leave the payer below the poverty line.
- (K) “Duty to support” means an obligation imposed or imposed by law or by order, decree, or judgment of any court, whether incidental to an action for divorce separation, separate to provide support for child(ren).
- (L) “Guardian or Conservator” means a person who looks after and is legally responsible for someone who is unable to manage their own affairs, especially an incompetent or disabled person or a child whose parents have died or do not have the ability to parent their child. For purposes of this Ordinance, the guardian or conservatorship must be court-ordered and the order must show the length of time for which the guardianship has been granted.
- (M) “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 or 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 stamp 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 the record in accordance with 28.7 (F).

(N) "Judge" means a Stockbridge-Munsee Community Judge.

(O) "In-Kind Contributions" means non-monetary payment to a non-assignable child support obligation owed to a payee. In-Kind contributions may include goods or services provided by the payor. In-Kind contributions shall be assigned a whole dollar amount, be based on the current market value of the services, be agreed upon by both the custodial and non-custodial parties and must be approved by the Tribal Court.

(P) "Interested party" means a person or entity who has an interest in a legal proceeding. For purposes of this Ordinance, the Agency shall be deemed an interested party in all actions affecting the family where minor children are involved.

(Q) "Income imputed based on earning capacity" means the amount of income that exceeds the parent's actual income and represents the parent's ability to earn, based on the parent's 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 parent's community.

(R) "Income imputed from assets" means the amount of income ascribed to assets that are unproductive and to which income has been diverted to avoid paying child support or from which income is necessary to maintain the child or children at the standard of living they would have if they were living with both parents, and that exceeds the actual income from the assets.

(S) "Income modified for business expenses" means the amount of income after adding wages paid to dependent household members, adding undistributed income that the Family court determines is not reasonably necessary for the growth of the business, and subtracting business expenses that the Family Court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expenses for tax purposes.

- (T) “Intact family” means a family in which the child or children and the obligor reside in the same household and the obligor shares his or her income directly with the child or children and has a legal obligation to support the child or children.
- (U) “Parent” means the biological or adopted person of a minor child.
- (V) “Per Capita Payment” shall mean those payments made or distributed to all enrolled tribal members paid directly from the net revenues of the Tribe.
- (W) “Payee” or “Obligee” means the parent, legal guardian or agency which is the recipient of child support.
- (X) “Payor” or “Obligor” means the party who is responsible to pay child support.
- (Y) “Resident” means an individual who has a primary residence on federal trust land held in trust for the benefit of the Stockbridge-Munsee Community.
- (Z) “Serial parent” means a parent who has prior child support orders or a duty to support.
- (AA) “Tribal Child Support Agency” or “Agency” means the Stockbridge-Munsee Tribal Child Support Agency.
- (BB) “Tribal Member” means enrolled member of the Stockbridge-Munsee Community, Band of Mohican Indians.
- (CC) “Tribal Treasurer” means the duly elected Treasurer of the Stockbridge-Munsee Tribal Council.

### **Section 28.5 Actions for Establishment and Modification of Child Support**

In a proceeding affecting the family, including but not limited to, the dissolution of marriage, custody, 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 Court shall provide notice to the parties that they can sign up for services with the Child Support Agency. For purposes of all actions affecting the family where there are minor children involved, the Agency shall be considered an interested party and shall receive notice from the Court of any proceedings in the case and have the right to file a separate child support petition pursuant to the Agency’s required procedures. The Agency shall prepare and file the child support petition or stipulation for the Court’s consideration in a distinct child support action. Any deviations from the standards shall be noted in writing in the child support order. 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;
  - (3) The standard of living the child(ren) would have enjoyed had the parents resided together.
- (A) The Tribal Court shall refer all cases involving child support or paternity to the Tribal Child Support Agency for review and recommendation. The parties shall comply with the Agency's program requirements. The Tribal Child Support Agency shall follow their procedures to establish a child support order consistent with tribal law for the Court's consideration.
- (B) 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 occurs first.
- (C) Certified Child Support Orders. The court shall enter, certify and distribute a child support order, temporary or permanent, to the Agency, within five (5) days from the date of a hearing. The Agency shall provide the court with the draft order or provide such information as needed to assist the court in meeting this timeframe.

### **Section 28.6 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 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 notice 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) days from the date of service of the Complaint.
- (D) A Summons and Petition shall, whenever possible, be served on a defendant by personal service or to any person of apparent normal understanding and fourteen (14) years of age or older, residing within the residence of the defendant or respondent
- (E) 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 petitioner and filed in the docket with the Clerk of Court and shall constitute proof of personal service.

(F) 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, copy of the Summons and Petition shall be sent by registered or certified mail to the defendant's last known address.

(1) A return receipt for mail delivery signed by the defendant shall be returned to the petitioner 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.

(G) 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 once in each of two consecutive weeks in a newspaper of general circulation whose readership is primarily located in the 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 Petitioner and filed in the docket by the Clerk of Court and shall constitute proof of service by publication.

### **Section 28.7 Child Support Calculations**

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

(B) Determining Income Modified for Business Expenses. In determining a parent's monthly income, the Court may adjust a parent's gross income as follows:

(1) Adding wages paid to dependent household members.

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

(3) Reducing gross income by the business expenses that the Court determines are reasonably necessary for the production of that income or operation of the business and that may differ from the determination of allowable business expense for tax purpose.

(C) Determining Income Imputed Based on Earning Capacity. When a parent's income is less than the parent's earning capacity or is unknown, the Court may impute income to the parent at an amount that represents the parent's ability to earn, based on the parent's 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 parent's community. If evidence is presented that due diligence has been exercised to ascertain information on the parent's actual income or ability to earn and that information is unavailable, the Commission may impute to the parent the income that a person would earn by working thirty-five (35) hours per week for the federal minimum hourly wage under 29 USC 2016(a)(1). If a parent has gross income or income modified for business expenses below his or her earning capacity, the income imputed based on earning capacity shall be the difference between the parent's earning capacity and the parent's gross income or income modified for business expenses.

(D) Determining Income Imputed from Assets.

- (1) The Court may impute a reasonable earning potential to a parent's assets if the Court finds both of the following:
  - (a) The parent has ownership and control over any real or personal property, including but not limited to, life insurance, cash and deposit account, stocks and bonds, business interests, net proceeds resulting from worker's compensation or other personal injury awards not intended to replace income, and cash and corporate income in a corporation in which the parent has an ownership interest sufficient to individually exercise control and the cash or corporate income is not included as gross income.
- (2) The parent's assets are underproductive and at least one (1) of the following applies:
  - (a) The parent has diverted income into assets to avoid paying child support.
  - (b) Income from the parent's assets is necessary to maintain the child or children at the standard of living they would have had if they were living with both parents.
- (3) The Commission shall impute income to assets by multiplying the total net value of the assets by the current 6-month treasury bill rate or any other rate that the Commission determines is reasonable and subtracting the actual income from the assets that were included as gross income.

(E) In-Kind Contributions. Only when agreed upon by both parties and the Tribal Court, in-kind contributions may be considered in lieu of cash child support and other non-assignable debts owed to the custodial party. The Court may consider circumstances of the parties including whether a non-custodial party is able obtain employment or has no other financial resources available to meet the current cash child support obligation.

- (1) In-kind may not be ordered to repay assigned debts owed to a state or tribal jurisdiction. All in-kind orders must describe the type of in-kind contribution and must assign a dollar value to the contribution.
  - (2) Should an in-kind contribution not be met, the recipient of the in-kind 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 the in-kind 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 in-kind contributions to exceed the limits on the hunting or gathering of all regulated natural resources including limits and seasons imposed by tribal law. In-kind orders may only apply to the extent permitted under tribal, state and federal laws.
- (F) 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 obligation there shall be no credit against any child support arrears debt.
- (G) Child support obligations must be based on the percentages contained in Section 28.7(H) and shall be represented as a whole dollar amount or sum certain in the Court Order.
- (H) 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 or serial parent gross income by the number of children in the case as follows:
- (1) 17% for one child
  - (2) 25% for two children
  - (3) 29% for three children
  - (4) 31% for four children
  - (5) 34% for five or more children
- (I) If a payor has more than one child support case, the amount of the prior child support order or duty to support shall be deducted from his or her gross income and then multiplied by the percentages in (H) above.

(J) 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.

(K) 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 28.7.1 Shared-Placement Guidelines**

(A) Shared placement calculations must be utilized when one parent has overnight placement of the child(ren) overnight 25% (92 days) or more per calendar year.

- (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 or duty to support, determine the parent's adjusted gross income available for this child support order pursuant to Section 28.7(H).
- (3) Child Support is based on each parent's income multiplied by the appropriate percentage standard and then multiplied by 150% (household maintenance 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 28.7.2 Split-Placement Guidelines**

(A) Split-placement calculations must be used when the parents have two or more children and each parent has placement of one or more, but not all, of the minor children.

- (1) 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 28.7(E).
- (2) Multiply the amount of adjusted gross income for each parent by the pro-rata percentage standard for the number of children in split-placement who are placed with the other parent. The pro-rata percentage standard for the number of children in split-placement who are placed with the other parent is calculated by determining the appropriate percentage standard for the total number of children, dividing the total number of children and adding together the percentages for the children in split-placement who are placed with the other parent as follows:

- (a) 2 children=12.5% for each child (25% divided by 2)
- (b) 3 children=9.67% for each child (29% divided by 3)
- (c) 4 children=7.75% for each child (31% divided by 4)
- (d) 5 children=6.8% for each child (34% divided by 5)

**Section 28.7.3 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 28.7(E) by the gross monthly income of the payor.

**Section 28.7.4 High-Income Payors**

- (A) The Tribal Court may apply reduced percentages under Section 28.7 if the payor is considered to earn high income. The Tribal Court may apply the following percentages to the proportion of a payor's monthly income available for child support that is greater than or equal to \$7,000 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 to the proportion of a payor's monthly income available for child support that 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 and one or both parents has accessible and affordable health coverage available for the child at a reasonable cost. Reasonable cost is defined at no more than 5% of a parent's gross wages.

- (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 28.8 Deviation**

(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 specific factors in this section. The Court must find by the preponderance of evidence that use of the guidelines is not in the best interests of the child and unfair to either of the parties. Any basis for a deviation from the guidelines must be included in the written order for support.

- (1) The financial resources of the child and or both parents.
- (2) 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.
- (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 28.9 Post Judgment Modification of Order.**

- (A) Every two (2) years from the date of the Order, the Tribal Child Support Agency Specialist shall initiate a review of the order to determine whether substantial changes of circumstances exist that merit a request for modification. The Agency shall petition the Court for modification if substantial changes of circumstances exist.
- (B) The non-custodial parent, the custodial parent and any interested party has a right to ask for a review of their child support order. The review is done by the Tribal Court upon the 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) 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, unless the child support amount is expressed as a percentage; 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 Petitioner(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 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.

Notices and Motions may be made by mail. A copy of the Notice and Motion shall be sent by regular mail to the non-moving party by the moving party. If 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.

(F) If the regular mail is returned as undeliverable, the moving party shall attempt personal service pursuant to Section 28.6(E) or if that fails, service by publication pursuant to Section 28.6(G).

### **Section 28.10 Enforcement of Child Support Orders**

(A) Agency Responsibilities. The Agency shall:

- (1) Track and document the progress of a 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 action would have been appropriate under the circumstances.
- (4) Refund amounts that were improperly withheld, when possible, terminate wage withholding when appropriate and allocate amounts across multiple cases.

(B) Income Withholding.

- (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 and submit the Notice to the employer or other source of income of the payor.
- (2) If the Tribal Court may find there is good cause to not issue an automatic income withholding order and if the parties agree in writing to not have automatic withholding, the Tribal Child Support Agency shall not issue a Notice of Income Withholding pursuant to 28.10(B)(1) above. However, if the payor becomes delinquent in an amount equal to one month of child support, the Tribal Child Support Agency must issue a Notice of Income Withholding and submit to the employer or other source of income.

- (3) 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 no later than five (5) days following the date of withholding from the income. If the source of income is per capita of the Stockbridge-Munsee Tribe, 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 the per capita payment.
- (4) Foreign Income Withholding Orders. All withholding orders submitted from other jurisdictions shall be sent to the Child Support Agency for review and verification of enrollment, employment. The Agency shall send notice to the payor that this order has been received and forwarded for enforcement. Included in the notice shall be the right of the payor to object in writing to the enforcement within twenty (20) days of the notice. The only allowable objection to the recognition and enforcement of the income withholding order is a mistake of fact (error in the amount of current support or arrears) or a mistake of identity of the payor. (See Definition Section for “disposable income”).
- (5) The maximum amounts allowed to be withheld from any source of income shall be no more than fifty percent (50%) of the payor’s disposable income available for child support.
- (6) 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.
- (7) 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 of a contempt finding.

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 notice when there is no current child support order and all arrearages have been satisfied.



- (8) 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 loans and tribally issued permits or licenses, and other enforcement actions as more fully set forth below.

(C) Other Authorized Administrative Enforcement Actions.

In the event that a payor is at least one (1) 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 tribal lien docket;
- (3) credit bureau reporting and reporting to the tribal loan department;
- (4) intercept of income and/or other payments, including, to the extent possible, both federal and state income tax returns;
- (4) 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;
- (9) referral for criminal charges;
- (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:

Bonds and 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.

Claims Against Estates.

- (1) The Court may approve a claim for past and future support against a payor's estate.
- (2) The Court may issue a restraining order against an estate from which a payor will inherit.

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:

- (1) how many hours of community service the payor is required to complete;
- (2) the time frame in which the hours must be completed;
- (3) how the payor will report his or her hours; and
- (4) any other information the Court determines is relevant.
- (5) and that community service may not be interpreted or used in any way as an in-kind satisfaction of a child support or arrearages obligation.

A payor who disobeys a lawful child support order shall be subject to punishment for contempt of court.

- (1) A payor found in contempt of court may be subject to any of the civil enforcement remedies available to the court including civil forfeitures.
- (2) The payor may be fined in an amount not to exceed one thousand dollars (\$1,000.00) per act of contempt
- (3) In instances of continuing contempt, each day shall constitute a separate act of contempt.
- (4) In the event that the Tribe has entered into an agreement for jail services, as a last resort, the Court may consider a jail sentence.
- (5) 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 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.

**Section 28.11 Petition-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.

The Petition shall include:

- (1) The name of the petitioner;
- (2) The name of the payor;
- (3) Statement that upon information and belief the payor is an enrolled member or employee of the Stockbridge-Munsee Community;
- (4) The name of the child and other children that the payor may have child support obligations;
- (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 or percentage of the per capita payment 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) Service shall be made by the Tribal Child Support Agency of the registration action by sending 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 or arrears) or a mistake of identity of the payor.

### **Section 28.12 Enforcement of 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 allow any modification of 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 and 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 of the Stockbridge-Munsee Tribe, 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 the per capita payment.
  - (3) The maximum amounts allowed to be withheld from any source of income shall be no more than fifty percent (50%) of the payor's gross income.
  - (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 28.13 Amendments**

This Ordinance shall be reviewed no less than every four years. Amendments to this Ordinance will be effective upon enactment by the Stockbridge-Munsee Community Tribal Council without further review by the Secretary of the Interior.

### **LEGISLATIVE HISTORY:**

1. Adopted by the Tribal Council in June 1, 2004, Resolution Number 026-04. Adoption required amendments to Chapter 17 and 27 by same resolution. Approved by BIA June 15, 2004.
2. Sections 28.1, 28.3(A), 28.6 are amended, sections 28.2(H), 28.5(A), 28.5(C) are deleted; sections 28.3(C) and 28.8 are created; section 28.5 is renumbered on October 5, 2004 by Tribal Council Resolution No. 052-04 to add a filing fee, clarify how the court is to notify the Treasurer, clarify that delivery to the Treasurer occurs 45 days prior to a per capita payment, add in future amendment section, and delete references to wage assignments because 28 U.S.C. §1738B requires full faith and credit of foreign child support orders. Approved by BIA on November 8, 2004.
3. Sections 28.2(A); 28.3(C), (E); 28.4(C); 28.8 are created; sections 28.3(A)(1), (B); 28.6, 28.6(A), (A)(1), (B), (B)(1), (B)(2) are amended; sections 28.2, 28.9, 28.1 are renumbered; and sections 28.3(B)(2) and 28.4(C) are deleted by Tribal Council on September 20, 2005, Resolution No. 046-05.
4. On November 6<sup>th</sup>, 2012, the Tribal Council repealed existing Chapter 28 and adopted a new Chapter 28 that added new sections, renumbered, re-organized and revised existing sections in order to establish a tribal child support agency in accordance with federal law. This was done by Resolution Number 009-13.
5. In order to meet requirements as identified by the Office of Child Support Enforcement, Sections 28.3 (P), 28.7 (C) are amended; section 28.8 moved to its own section; 28.2 (B) is deleted; and beginning at section 28.3 the chapter is renumbered throughout by Tribal Council on May 29, 2013, Resolution No. 054-13.
6. On November 18th, 2014, Tribal Council repealed the existing Chapter 28 Child Support Order and adopted a new Chapter 28 Child Support to accommodate whole-scale changes, including adding new sections and re-numbering, re-organizing and revising existing sections, and re-naming it as the “Child Support Ordinance”. This was done by Resolution No. 08-15.
7. Sections 28.1.2; 28.1.5; 28.4; 28.6 (C) & (D); 28.9 (E) & (G); 28.10 (A)(4) & (B); and 28.7(A) are clarified and amended; and sections 28.32 (D) & (E); 28.4; 28.5 par. 1 & 28.5(C); 28.7 (B), (C) and (D) are added; and a portion of section 28.5(A) has been deleted by Tribal Council on September 19, 2017, Resolution No. 050-17.