

Chapter 34C

SISSETON WAHPETON OYATE CHILD SUPPORT ACT

34C-01-01 Purpose

The Sisseton Wahpeton Oyate hereby finds as a matter of policy and tradition, that all parents have a moral and legal duty to support their children to the extent of their ability. The Tribe, in order to assure uniformity for child support orders entered by the Tribal Court, and to provide certain guidelines to tribal court judges when setting child support orders, does hereby enact this section laying out the considerations for the tribal court when establishing support obligations and authorizing the Tribe's Judicial Committee and court to establish judicial guidelines for child support.

The Oyate hereby establishes and authorizes the Sisseton Wahpeton Oyate Child Support Enforcement Office (SWOCSE), the Oyate's Title IV-D Child Support Enforcement Agency, to establish paternity, establish, modify and enforce child support orders and to enforce spousal support orders only when previously entered in conjunction with a child support order, to locate absent parents, to enter into cooperative agreements with state and other tribal Title IV-D agencies and to provide any and all other services related to matters of child support.

The SWOCSE represents the Oyate and acts in the best interests of the children when bringing an action in Tribal Court or carrying out the provisions of this Chapter and Chapter 34A, the Uniform Parentage Act. The SWOCSE will establish and periodically modify as needed, Child Support Guidelines as required by 45 C.F.R. §309.105 and as approved by the Tribal Council.

34C-02-01 Definitions

For purposes of this Title, unless the context or subject matter otherwise requires:

A. "**Absent Parent**" means a parent of a child or children either during the course of marriage or outside marriage who is not providing the custodial parent with child support for the benefit of the child or children, or whom is not residing with the child or children and thus not providing parental control and supervision, and who is bound by an administrative or court order to pay child support;

B. "**Child Support**" means the financial obligation an absent parent has towards his or her children whether such action is established through judicial or administrative process, by stipulation, or by any other process recognized by tribal law. The financial obligation of an absent parent shall be met through the payment of moneys or through the provision of other goods and services as ordered by the tribal court. An order or judgment for child support continues until the end of the month the child either attains the age of eighteen (18) or once a child is living at home and a full-time student, either graduates from high school or attains the age of nineteen (19)

while still attending high school, whichever comes first.

C. 'Court' means a court of the Sisseton-Wahpeton Sioux Oyate,

D. 'Court Order' means any order for support established by a court of competent jurisdiction;

E. "Custodial Parent" means the parent or other guardian who has legal custody of a child or children pursuant to a court order or who exercises physical custody over a child on the basis of an agreement between the parents or because one parent has absented himself from the child's home.

F. "Foreign Judgment" means any child support judgment, order or decree of another Tribe, State or territorial Court which is entitled to be recognized by the SWO Court as a matter of full faith and credit and pursuant to the requirement of 28 U.S.C. §1738B.

G. "Gross Income" is income from any source, including but not limited to salaries, wages, commissions, bonuses, dividends, severance or retirement pay, pensions, lease income, interest on trust income, trust income, annuities, capital gains, unemployment compensation, worker's compensation, disability insurance benefits, tips, gifts, prizes, alimony, veteran's disability payments, unemployment insurance, general assistance payments and any per capita payments. It also includes in-kind contributions calculated at reasonable market value. Annual Gross Income does not include any income derived from child support payments actually received and income derived from public assistance based upon a determination of need. Child support received by a party for children from another relationship shall not be included as part of that party's gross or net income.

H. "Non-cash Payments" are those contributions to the support of a minor child other than cash contributions. The order allowing non-cash payments must state the specific dollar amount of the support obligation and would include but not be limited to: food or sustenance provided to the child and the family in the form of game or fish; necessities provided to the family such as heating wood or fuel; propane or heating fuel payments; other utility payments; rent; vehicle payment(s); medical insurance; necessary day care services; diapers and other clothing or accessory necessities and other forms of non-cash contributions as determined appropriate by the Court. Any credit for In-kind contributions must be approved by the Court and a dollar value attached to the contribution. Non-cash contributions will be permitted to satisfy the current support obligations and/or arrears and will not be permitted to satisfy assigned obligations.

I. "Net Income" means total gross income less:

1. The Obligor's Federal Income tax, Social Security and Medicare obligations. In the absence of the Obligor's pay stubs, the Court may estimate the Obligor's federal withholdings between seventeen percent (17%) and twenty-two percent (22%);

2. The Obligor's state income tax obligation, if any. In the absence of the Obligor's pay stubs, the Court may estimate the Obligor's state withholding at seven percent (7%) unless there is no state income tax;
3. Premium payments for health insurance policies intended to afford coverage for the child or children for whom support is being sought;
4. Court ordered child support payments for other children of the Obligor;
5. Medical court ordered health insurance payments for other children of the Obligor;
6. "Obligor" means the person who owes a duty of support.

34C-03-01 Creation of Tribal Child Support Enforcement Unit

A. Purpose and Authority

There shall be created an entity called the Sisseton Wahpeton Oyate Child Support Enforcement Office (SWOCSE), which shall have the authority to operate a Title IV-D child support enforcement program in compliance with this Child Support Act. The SWOCSE shall have the following authority-

1. To apply to any state child support enforcement program for a cooperative agreement or to any federal agency for direct funding to operate a tribal child support enforcement program in compliance with the Sisseton-Wahpeton Oyate Child Support Act. Any agreement reached shall be subject to final approval by the Tribal Council,
2. To accept an assignment of child support from any custodial parent or other guardian, including a tribal child protection or foster care program, of any child receiving TANF or foster care assistance either from a tribal or state agency.
3. To file actions in the Tribal Court on behalf of any custodial parent or child owed child support from a non-custodial parent located either on or off the reservation;
4. To charge a nominal fee, not to exceed \$25.00, from any custodial parent not receiving TANF or any other form of state or tribal assistance who applies for services from the Unit;
5. To work cooperatively with the Tribal Court in developing appropriate procedures for the filing of paternity actions and support actions in the tribal court, including complying with any federal regulations regarding timelines for the filing of actions and the disbursement of moneys received, for the referral of tribal court judgments for child support to other state and federal agencies for collection efforts, and for the expenditure of any moneys received by the Tribe for the collection of child support either from a state through a cooperative agreement or directly from the federal government.

6. To establish Guidelines for the establishment and modification of child support obligations and to conduct a formal review of the Guidelines once every four (4) years and subject to approval by the Tribal Council.

7. To establish policies and procedures for establishment of paternity, establishment, modification and enforcement of support orders. The SWOCSE is authorized to update and amend operational procedures as needed and as required by the federal regulations (45 C.F.R. Part 309, et seq.), and subject to approval by the Tribal Council and Secretary of the Department of Health and Human Services.

B. Location of Said Unit

The SWOCSE shall be considered a stand-alone program and shall operate independently of Tribal Court and any other Tribal Program.

34C-03-01 Setting of Child Support Obligation

In any case where the tribal court is determining the paternity of a child, decreeing a divorce between parties or establishing child support for a custodial parent when the absent parent is away from the home for more than 30 days, the tribal court shall set an amount of support to be paid by an absent parent to the custodial parent using the standards set out herein. Upon request by either parent, the Court may review any order of child support every three years to determine if more or less support is called upon under the child support guidelines. If there is a substantial and material change of circumstances, any party may petition the tribal court for a modification of child support at any time. All support orders entered by the Tribal Court shall contain a record of the obligors Social Security number.

34C-04-01 Presumptive Child Support

The presumptive child support established by guidelines adopted by the Tribal Council shall be rebuttable presumed to be the correct amount of support to be awarded in any child support proceeding to establish or modify an order of support. Every order or decree setting or modifying a child support order shall state the presumptive amount of support and justify either an upward or downward deviation based upon the deviations prescribed by the Court. The Court shall issue(s) a written specific finding that the application of the guidelines would be unjust or inappropriate in a particular case and in accordance with the criteria found in Section 34C-05-2. Such criteria must take into consideration the needs of the child. Findings that rebut the guidelines must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

34C-05-01 Establishing Child Support Guidelines:

The SWOCSE shall establish child support guidelines which must at a minimum:

- a. Take into consideration all gross income of the absent parent;
- b. Be based on specific and descriptive criteria and result in a computation of an amount of child support which is sufficient to meet the basic needs of the child or children for housing, clothing, food, education, health care, and goods and services required by physical and mental disability;
- c. Provide for the children's health care needs either through assuring Indian Health Service coverage, or benefits that supplement those benefits, and providing for each parent to pay his/her share of uninsured medical expenses;
- d. Consider the economic condition of the absent parent and his ability or inability to obtain gainful employment within the reservation;
- e. Provide for review and revision, where appropriate, of the child support guidelines, when needed, and at least once every four years to ensure that the amounts provided for in the guidelines are periodically adjusted for increases or decreases associated with the cost of caring for children on the Lake Traverse reservation;
- f. Consider the non-cash contributions of the absent parent as child support.

34C-05-02 Deviation

Deviation from the Guidelines may be based upon factors such as:

- a. the amount of visitation exercised by the absent parent, including provisions for abatement of support, when the absent parent exercises visitation for a consecutive period of more than 29 days;
- b. whether the absent parent provides the transportation for visitation;
- c. income contributed to the child by third persons including extended family members of the absent parent;
- d. income contributed to the absent parent by a third party including spouse;
- e. special medical needs of the child;
- f. day care expenses;
- g. age of the child;
- h. the responsibility of the absent parent to support other children (biological or adopted), either in his care or children he is paying support for; and

- i. where the Court has granted the absent parent a significant amount of visitation (but less than joint physical custody); and
- j. any other ground cited by the Court.

In any case where deviation is granted the Court shall expressly state the ground for deviation and shall issue(s) a written specific finding that the application of the guidelines would be unjust or inappropriate in a particular case. The criteria must take into consideration the needs of the child. Findings that rebut the guidelines must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

34C-06-01 Public Assignment of Child Support Rights

A. Assignment

1. Any person who receives Temporary Assistance for Needy Families (TANF) either from the State of South Dakota or the Tribe shall, upon applying for such benefits, assign future child support and any child support arrearages limited to the amounts they have received and are receiving through TANF. Said assignment shall authorize the SWOCSE to bring an action in the Tribal Court, or other appropriate court of competent jurisdiction, to both establish a support order and to collect on that order from the absent parent.

2. Any person, required to execute an assignment of support rights to the SWOCSE, but refuses to do so without good cause or who fails to cooperate with the SWOCSE in the collection of support may be subject to a sanction of exclusion from the TANF program for such refusal to cooperate. Good cause to refuse cooperation shall include the following situations:

- a. When the custodial parent has a well-founded fear of violence from the non-custodial parent as evidenced by the existence of an order of protection in which the custodial parent is protected from the absent parent;
- b. When the child was the product of rape or incest; or
- c. Legal proceedings for adoption are pending in court.

34C-06-02 Application for Services by Non-TANF Custodial Parent or Other Person

Any other person, not receiving TANF benefits, may apply to the Tribe or any other state or Tribal IV-D Program for the establishment and collection of support. In those non-TANF cases, the SWOCSE or other state or Tribal IV-D Program shall be entitled to collect a fee from the custodial parent for the collection of support in accordance with a fee schedule not to exceed \$25.00. There shall be no charge in an intergovernmental case referral and no application fee to an individual receiving services under titles IV-A, IV-E foster care maintenance assistance or

XIX Medicaid. The SWOCSE shall exclude from its quarterly expenditure claim an amount equal to all fees which are collected and costs recovered during the quarter.

34C-07-01 Child Support Agreements

Agreements regarding child support may be submitted to the Court. If the notarized amount of support deviates from the presumptive amount of support the parties shall furnish statements explaining why they have agreed to a lesser amount than that presumed. The Court may reject an agreed-upon support amount if the parties do not demonstrate good grounds for deviating from the presumptive amount. The criteria must take into consideration the needs of the child. Findings that rebut the guidelines must state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

34C-07-02 Child Support Actions Against Minors

An Obligor who is under the age of eighteen (18) years must be accompanied by a parent, guardian or legal custodian when child support is established. In all instances where the Obligor is in high school or unable to earn an income, the Court shall establish child support at the minimum amount set forth in the Guidelines. The obligation and any arrearages shall be enforceable once the Minor attains the age of eighteen (18), or once the Minor attains the age of nineteen (19) if the Minor continues to live at home and is a full-time student in a secondary school, whichever occurs first.

34C-08-01 Foreign Child Support Orders

In accordance with federal law, 28 U.S.C. §1738B, the Court is required to recognize a child support order issued by another Tribe or State Court, provided the court that issued the child support order has met the appropriate standard for acquiring personal and subject matter jurisdiction.

In order to be recognized as an enforceable order within the jurisdiction of the Sisseton Wahpeton Oyate, all foreign child support orders must first be presented to the Tribal Court for recognition. As a matter of policy and sovereignty, the Sisseton Wahpeton Oyate declares that any foreign order sent directly to an employer and not first presented to the Tribal Court for recognition, is not enforceable and amounts to a violation of the Oyate's sovereignty. The SWOCSE shall be responsible for receiving and processing IWO's from states, tribes and other entities, and ensuring that orders are properly and promptly served on employers within the Tribe's jurisdiction and once they have been recognized by the SWO Court.

All forms presented to the employer for Income Withholding must be in the form prescribed by the Code of Federal Regulations. See 45 C.F.R. §309.65(a)(11) and 309.110.

The SWO Tribal Court may modify a foreign order if:

- a. Neither the child, the Obligee, nor the Obligor resides in the issuing State or on another reservation whose Tribal Court issued the foreign judgment;
- b. The Obligee is a non-resident of the SWO Reservation and seeks modification of the court order and the Obligor is subject to the personal jurisdiction of the Court; or
- c. The child is a resident of the Reservation and all the parties have filed a written consent with the issuing state of issuing Tribe, granting the SWO Court the authority/jurisdiction to modify the prior child support order.

A court of the issuing state or issuing Tribe that no longer has continuing, exclusive jurisdiction of a child support order may enforce such order with respect to non-modifiable and unsatisfied obligation that accrued before the date on which a modification of the order is made.

34C-09-01 Determination of the Child Support Amount – General Instructions

Calculations of a child support obligation are to consider and assume that one caregiver acts as a primary caregiver and the other parent contributes a payment of child support to the child's care as follows:

- a. Net income received by an Obligor from all sources not otherwise excluded must be considered in the determination of available money for child support;
- b. The responsibility of the noncustodial parent to support other children (biological or adopted) either in his or her care or children he or she is paying support for by Court order shall be taken into account in determining the child support obligation;
- c. When applying the guidelines, an Obligor's net monthly income may be rounded up or down to the nearest increment on the guidelines chart by the Court. It should be rounded down if the amount falls below half of the amount on the increment guidelines chart and rounded up if the amount is halfway above on the increment guidelines chart;
- d. The annual total of all income considered in determining a child support obligation must be determined and then divided by twelve in order to determine the Obligor's net monthly income;
- e. Income must be sufficiently documented through the use of tax returns, current wage and income statement, and other information in order to fully apprise the Court of the Obligor's income;
- f. Where gross income is subject to fluctuation, regardless of whether the Obligor is employed or self-employed, information regarding the fluctuation of employment must be provided to the Court. The Court may then calculate an average weekly, monthly or annual hours of work and income to arrive at a monthly amount for child support;

- g. When the Obligor has seasonal employment, the Court may annualize the gross income to determine the monthly child support obligation or may establish the monthly child support obligation based upon the Obligor's income for the period it is received. If the Court chooses to establish the monthly child support obligation based upon the obligor's income for the period it is received, the Court shall also set the matter for a modification hearing when it is verified that the Obligor either is unemployed, underemployed or is employed;
- h. A child support obligation shall be established in each case regardless of whether the Obligor has any income and or lacks the ability to produce income. This requirement includes incarcerated individual(s) unless the individual receives a life sentence. If the obligor has no income, the Court shall establish child support at the minimum level as established by the Guidelines;
- i. Each child support order must include a statement of the net income of the Obligor used to determine the child support obligation, and how that net income was determined;
- j. The Court cannot retroactively modify a child support obligation or arrearage, absent fraud or mistake of fact or law;
- k. The date of filing shall control when determining any arrearage amount when establishing the child support obligation;
- l. The SWOCSE and Tribal Court must have safeguards in place against the unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish, modify or enforce support.

34C-10-01 Determination of Child Support Amount – Split or Joint Legal and Joint Physical Custody

A child support obligation must be determined for the child or children in each parent's custody. The lesser obligation is then subtracted from the greater obligation. The difference is the child support amount owed by the parent with the greater obligation.

In those instances where the parents share the custody of the minor child or have joint legal and joint physical custody, there shall be no child supports. The Court shall expressly state deviation from the guidelines is justified based upon the shared custody by the parents and shall issue(s) a written specific finding that the application of the guidelines would be inappropriate based upon shared joint/equal custody. If the Obligor has visitation with the child more than eight (8) days per month, but less than fifteen (15) days per month, the monthly child support obligation may be prorated by the Court.

34C- 11-01 Prior Period Support

The noncustodial parent is responsible for the support of the child(ren). The Court shall determine prior period support at the time current support is determined. Arrearages without an order for support are limited to the period at which the Complaint or Petition is filed.

34C-12 -01 Modifications

After passage of the child support guidelines, current child support orders may be modified to conform to the guidelines, unless the amount of support previously entered was the result of an agreement which the Court finds to be equitable in light of the guidelines. In no case may the Court retroactively modify an order for support previously entered, except after an appropriate petition for modification has been filed. Parties shall be notified every three years that they have the right to seek a modification of existing support orders or if there has been a substantial and material change of circumstances or change of custody.

34C-13--01 Voluntary Unemployment or Underemployment

Where either parent is voluntarily unemployed or underemployed the Court shall compute the amount of support based upon the potential earning capacity of the unemployed or underemployed person. In making that determination the Court shall consider:

- A. Prior employment and educational background and history;
- B. Availability of employment in the area which the parent is qualified for;
- C. Prevailing wage rates and unemployment rate in the area;
- D. In no circumstance shall a parent who is a member of the Tribe be subject to a determination that he/she voluntarily became unemployed or underemployed because he returned to the reservation for purposes of being closer to his family.

34C-14-01 Non-Cash Payments

The Court may allow non-cash payments but must state the specific dollar amount of the support obligation the obligor would be required to pay. Non-cash payments may include but not be limited to: food or sustenance provided to the child and the family in the form of game or fish; necessities provided to the family such as heating wood or fuel; propane or heating fuel payments; other utility payments; rent; vehicle payment(s); medical insurance; necessary day care services; diapers and other clothing or accessory necessities and other forms of non-cash contributions as determined appropriate by the Court. Any credit for non-cash payment must be approved by the Court and a dollar value attached to the payment. Non-cash payments will be permitted to satisfy the current support obligations and/or arrears and will not be permitted to satisfy assigned support obligations.

34C-15-01 Collection of Child Support Obligations

A. Purpose

It is the intent of this Child Support Act to allow for the prompt collection and enforcement of child support from absent parents in a manner that is consistent with due process of law under the Tribe's constitution and the Indian Civil Rights Act, while permitting the tribal court and tribal child support agency to use all lawful methods to collect support for children.

B. Income Withholding

In addition to the order establishing child support and establishing the arrears amount, the Code of Federal Regulations requires the Court to also order an Income Withholding order (IWO) and require the SWOCSE to prepare the IWO, directing the Obligor's employer to withhold income from the Obligor's earnings and to make the court ordered amount payable through the SWOCSE for disbursement to the parent and/or to the Tribal or state agency. The Income Withholding Order is applicable to all individuals regardless of their status as Indian or non-Indian. The following applies with regard to the Income Withholding Order and process:

1. The IWO must conform to the "Federal Income Withholding Order for Support" and "Income Withholding Order – Instructions". The IWO must also include an amount to be applied toward liquidation of any overdue support (arrearages).
2. The total amount to be withheld may not exceed the maximum amount permitted under Section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b)), which is 50% of net income after taxes. The Court may also set a lower amount based upon the Child Support Guidelines.
3. The Obligor must be given notice and an opportunity to be heard prior to the entry of the IWO.
4. The SWOCSE will promptly refund any amounts that have been improperly withheld.
5. The SWOCSE will promptly terminate and IWO in any case where there is no longer a current order for support and all arrearages have been satisfied.
6. If the employer fails to withhold income in accordance with the IWO, the employer will be liable for the accumulated amount the employer should have withheld. No employer shall be allowed to take any disciplinary action against the Obligor because of the IWO. Any employer is subject to a fine pursuant to an Order to Show Cause proceeding for discharging an Obligor from employment, refusing to employ, or taking any disciplinary action against any Obligor because of the IWO.
7. The Obligor's employer must be provided prior notice using the "Federal Income Withholding Order for Support" and "Income Withholding Order – Instructions". The notice must provide that an IWO takes precedence over any other lawful debt owed by the Obligor, except federal or state (if applicable) income withholding taxes.

8. Income shall not be subject to withholding however, in any case where: a.) either the Custodial Parent or obligor demonstrates, and the Court enters a finding, that there is good cause not to require income withholding; or b.) a signed written agreement is reached between the Custodial Parent and the Obligor, which provides for an alternative arrangement of payment, and the Agreement is reviewed and entered into the record by the Court.
9. Where an IWO is not in place, the income of the Obligor shall become subject to withholding, at the earliest, on the date on which the payments which the Obligor has failed to make under a Child Support Order are at least equal to the support payable for one month.
10. The only basis for contesting an IWO is a mistake of fact, which means an error in the amount of current or past due support or in the identity of the alleged Obligor.
11. The SWOCSE shall allocate withheld amounts across multiple IWO's to ensure that in no case shall allocation result in a withholding for one of the IWO's to ensure that in no case shall allocation result in a withholding for one of the IWO's not being implemented.
12. The SWOCSE shall be responsible for receiving and processing IWO's from states, tribes and other entities, and ensuring that orders are properly and promptly served on employers within the Tribe's jurisdiction and once they have been recognized by the Court.

C. Collection of Support From Other Sources

1. In any case where the Tribal Court has entered a judgment for child support arrearages against a child support obligor, the SWOCSE shall forward the judgment to the appropriate state IV-D agency (State Child Support Enforcement) with a request that that the receiving agency:
 - a. Apply for an intercept of the child support obligors federal or state tax refund, if applicable, in the amount identified by the tribal court as the appropriate arrearages. Said amounts intercepted shall be applied to any amounts owed the Tribal or State agency for past support of the child, and then to the amount owed the custodial parent;
 - b. Apply for the intercept of any worker's compensation or unemployment compensation benefits owed the obligor in the amount identified by the tribal court. Said amounts intercepted shall be applied first to any amounts owed the custodial parent, and then to the amount owed the Tribal or State agency for past support of the child ;
 - c. Apply for any other collection efforts available to the receiving agency including liens against real or personal property under the jurisdiction of the receiving agency, and/or suspension of drivers or other licenses issued by the state jurisdiction;

d. Apply for any parental locator services that can assist the custodial parent in the location of the absent parent to assure collection of child support;

e. Apply for any financial institution data match programs that the State IV-D agency operates which would permit the development of information about any tribal child support obligor who maintains a financial institution account, including a request that the State agency impose liens upon any accounts held by the obligor and pay said amounts first to any Tribal or State agency owed moneys for supporting said child and then to the custodial parent,

f. Apply for any credit bureau reporting that the State IV-D agency operates with regard to state orders for support.

2. In any case where the Tribal Court establishes that a child support obligor owes more than \$1,000 in back child support to either the custodial parent or a tribal or state agency and after a show cause hearing establishes that the obligor has the ability to pay said support obligation and has wrongfully refused to do so, the Tribal Court may order the suspension of the obligors gaming license, hunting and fishing license, business license or any other license issued by the Tribe including the privilege to drive on the reservation public highways. Said license may be suspended under the following conditions:

a. The Court shall allow the obligor to retire the child support arrearages by paying periodic payments to the Court and if the obligor complies with said order by making the first payment, he shall regain his license or licenses, subject to a further suspension if the obligor fails to make future periodic payments for no substantial reason;

b. The obligor shall be permitted to demonstrate that the suspension of his license will cause a severe hardship upon himself or his existent family.

c. The obligor shall be permitted to appeal any suspension of his license or licenses to the appropriate tribal appellate court during which time his license will not be suspended.

3. Any judgment entered by the Tribal Court against a non-custodial parent shall automatically act as a lien against any real or personal property owned by that parent, except it shall not operate as a lien against any trust or allotted land without consent of the Department of Interior. This section shall also apply when a judgment has been entered by another jurisdiction.

D. Collection of Support from Parents of Children in Tribal Foster Care

In any case where the Court collects child support amounts from a parent of a child in Tribal Foster care, those monies shall be promptly paid to the Child Protection program for the Tribe which may expend those monies in its discretion for the best interest of the children in foster care and other purposes.

34C-16-02 District Withholding When in Arrears

In any case where the Court determines that a tribal member is in arrears of more than \$300.00 under a child support order, the Office of Child Support may apply for a Withholding Order for any District Distribution to that district member. This shall include District holiday monies, birthday monies, and other general monies distributed to all district members excluding Medical Emergency, Home Repair and Hardship monies and any Casino contributions.

34C-17-01 Contempt – Willful Failure to Pay Child Support

When the Court enters an order compelling a person to furnish support or non-cash contributions, medical assistance or other remedial care for his or her child, proof that the order was made, filed and served on the parent or proof that the person was present in court at the time the order was pronounced and proof that the parent did not comply with the order is prima facie evidence of a contempt of court.

A person may be found in Contempt of Court for failure to pay child support if the person willfully fails to pay child support in an amount ordered by the Court.

If the contempt alleged is for failure to pay child support, each month for which payment has not been made in full may be alleged as a separate count of contempt and punishment imposed for each count proven.

34C-18-01 Severability

If any clause, sentence, paragraph, section, or part of this code shall, for any reason be adjudicated by any Court of competent jurisdiction, to be invalid or unconstitutional, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgment shall have been rendered.

34C-19-01 Applicable Law

In any matter arising under this Act, the Court shall follow the provisions of this Chapter. In the event the provisions of this Chapter are silent on a particular issue or matter, the Court may look to other jurisdictions for guidance.