

**TITLE 6. FAMILY RELATIONS**

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**TITLE 6. FAMILY RELATIONS****ARTICLE I.****LEGISLATIVE HISTORY:**

[NOTE: Except as otherwise noted, the provisions of Article I, Title 6 was enacted on April 27, 2005 by Res. No.16-2005.]

[NOTE: Except as otherwise noted, the provisions of this Code, Sections 6-1407,1408, 1409, 1506, and 1805 of Article I, Title 6 as amended and adopted by the Tribal Council on September 3, 2014 by Res. No. 18-2014 shall supercede all prior provisions of the original Title 6, Article I, Sections 6-1407,1408, 1409, 1506, and 1805].

**CHAPTER 1. PURPOSE & USE OF LANGUAGE FROM OTHER LAWS****Sec. 6-1101. Purpose.**

The Sac & Fox Tribe of the Mississippi in Iowa has the inherent sovereign power to regulate the family relations of its members. The authority granted to the State of Iowa to hear private civil causes of action between members or other Indians on the Settlement does not affect this power of the Tribe. No more important power is exercised by Indian Tribes than the power to protect and govern the family relations of their members. The purpose of this Title is to inform Sac & Fox Tribal members of that inherent sovereign authority and enable them to use their own Tribal forum which will use Meskwaki values, beliefs and religion to resolve and bring healing to Meskwaki families.

This law will remind people who come before the court and the judge hearing a matter of the values that sustain Meskwaki life. Meskwaki people understand that we are all related. You always have someone to turn to. Parents and children do not stand alone. We know that our mothers' sisters' children are our brothers and sisters. We adopt a person into our family to take someone's place in our family when they have passed on. There are many ways to keep our children in family. At birth a child is part of his father's clan and he must learn the ways of the clan. If a father has no name for his child, he will go to a clan leader for a name: it will be a clan name which only can be given by the clan. Mothers have a duty to encourage children to learn about their clan. In the case of a loss, separation or divorce a child can remain with its mother if the clan ways will still be learned as they should by the child. These are reminders of the foundations of Meskwaki values and beliefs.

Grandparents oftentimes have a lot to say to us about our relations and our respect for each other. They instruct us thoroughly on what is right. If a pattern of neglect or strife develops in a family, our grandparents have stepped in and taken their grandchildren to raise. They have not forced the parents of those children to change, but have helped show them problems they are facing. Things should be worked out without argument and fighting. We know that sometimes this can take a long while; our main objective is to remove the pain from that family and preserve that family by using our Tribal values, beliefs and religion.

**Sec. 6-1102. Use of Language from Other Laws.**

Inclusion of language, definitions, procedure, or other statutory or administrative provisions of other Tribal jurisdictions, the State of Iowa or other state or federal entities in the Code of the Sac & Fox Tribe of the Mississippi in Iowa shall not be deemed an adoption of that law by the Sac & Fox of the Mississippi in Iowa and shall not be deemed an action deferring to state or federal jurisdiction by the Sac & Fox of the Mississippi in Iowa where such state or federal jurisdiction is concurrent or does not otherwise exist.

The Sac & Fox of the Mississippi in Iowa shall have original jurisdiction over the family relations of its members and their families.

**CHAPTER 2. MARRIAGE****Sec. 6-1201. Jurisdiction.**

The Sac & Fox of the Mississippi in Iowa shall have jurisdiction over all marriages licensed and performed on its Settlement or on any allotted or tribally purchased lands or any public domain lands designated for Tribal use. The Tribe shall have jurisdiction over all Tribal members, regardless of residence or domicile.

**Sec. 6-1202. Definition.**

Marriage is a personal relation arising out of a civil contract requiring the consent of the parties entering it or their guardians, as provided in Sec. 6-1203(a) and (d) of this Chapter.

**Sec. 6-1203. Who May Marry.**

(a) Age limits. No person under the age of 18 years on the date of the proposed marriage may marry without the written consent of both parents if the person is living with both parents, or the parent with whom the person lives if only one parent unless the parents share joint legal custody, which would request the consent of both parents. If the person is not living with either parent, the written consent of the adult relative with whom the minor is living or of a guardian appointed by the Courts of the Sac & Fox of the Mississippi in Iowa. If any person authorized to give consent to the marriage of a minor is incapable of giving such consent because of mental incapacity or otherwise, a guardian appointed by the Courts of the Sac & Fox of the Mississippi in Iowa may give consent instead of such person.

(b) Blood relationships. Persons related by blood in the form of parent, or by whole or half blood in the form of sibling, aunt, uncle, niece, nephew, or first cousin may not marry one another.

(c) Same gender marriages prohibited. Only persons of the opposite gender may marry.

(d) Competency of the persons marrying. No person declared incompetent by a Court of the Sac & Fox of the Mississippi in Iowa may marry in the jurisdiction of the Sac & Fox of the Mississippi in Iowa Court without the consent of the person's parent or legal guardian.

(e) Persons already married. No person who is already married in this or any other jurisdiction may be licensed to be married in the Sac & Fox of the Mississippi in Iowa jurisdiction except as provided in Sec. 6-1203(g) of this Chapter.

(f) Citizenship. No person who has failed to obtain United States Citizenship shall be deemed qualified to be married under Meskwaki law.

(g) Absent spouse provision.

(1) A person who is already married, but whose spouse has been absent for five consecutive years and whom the person wishing to marry reasonably believes to be dead, may marry if she or he obtains a judicial determination that the absent spouse is presumed dead, pursuant to subsection (2) as follows:

(2) A judge of the Sac & Fox of the Mississippi in Iowa Court makes a finding and order after hearing that the absent spouse is presumed dead. A judge may make such a finding and order only after notice of hearing to the absent spouse. Publication of the notice of hearing in three consecutive issues of a newspaper having general circulation on the Settlement and publication in three consecutive issues of a newspaper of general circulation in the county of the absent spouse's last known residence, if known, shall be sufficient notice. No hearing on an application for presumption of death of spouse shall be heard before thirty (30) days from the last publication of notice of hearing.

(3) The fact that an absentee spouse was exposed to specific peril of death may be sufficient grounds for finding that she or he died less than five years from the last date on which she or he was heard from.

#### **Sec. 6-1204. Marriage Requirements—Generally.**

(a) License requirement. Anyone wishing to marry under the jurisdiction of the Sac & Fox of the Mississippi in Iowa as defined in Sec. 6-1202 of this Chapter must first obtain a marriage license from the Tribal Clerk of Court.

(1) Before issuing any marriage license, the Clerk of Courts shall ascertain by questioning the applicants, by requiring them to fill out a form, or by any other means at the Clerk's disposal, that they are sober, are mentally competent, and meet all the requirements of Sec. 6-1203 (a) through (g) of this Chapter.

(2) The Clerk of Court may issue Tribal marriage licenses to Tribal members regardless of their places of residence. An otherwise qualified applicant who is not a Tribal member, must be a resident of the Settlement.

(3) The Clerk of Court may charge a fee of not greater than \$35.00 for the issuance of a marriage license.

(4) The Tribal marriage license shall be in conformance with the license in the Appendix of Forms to this Title. Such form shall be available upon request from the Clerk of Court.

(b) Methods of contracting marriage.

(1) Persons within the jurisdiction of the Sac & Fox of the Mississippi in Iowa Tribal Court may contract marriage by declaring in the presence of their families that they take each other to be married. The recognition and approval by the families of the parties shall constitute validation of the marriage if all other license requirements of Section 3 of this Chapter have been satisfied by the couple.

(2) The contracting parties may marry according to the rites of any church, in which case they, the officiating member of the clergy, and two witnesses shall sign in the places provided on the face of the marriage license. See Appendix of Forms. A marriage may be solemnized by a judge of the Sac & Fox of the Mississippi in Iowa Tribal Court, by a person recognized by a clan of the Sac & Fox Tribe of the Mississippi in Iowa to perform marriages, by an individual of any religious denomination designated as having authority to perform marriages according to the form and usage of his or her religion or by a person recognized by Tribal or state law as having authority to perform marriages.

**Sec. 6-1205. Validity of Marriages.**

(a) Valid marriages. Valid marriages are those which comply with Sec. 6-1203 and Sec. 6-1204 of this Chapter. A valid divorce decree is necessary to terminate a valid marriage, absent death or annulment.

All marriages performed other than as provided for in this Code, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Sac & Fox of the Mississippi in Iowa.

(b) Voidable marriages. Voidable marriages are those in which one or more of the elements of Section 6 of this Chapter are met: Either of the parties to a voidable marriage may have the marriage annulled upon a motion to the Sac & Fox of the Mississippi in Iowa Court and granting of the motion by the Court. Annulment of a marriage means that for legal purposes, the marriage never existed.

(c) Void marriages. Marriages which violate one or more of the following requirements of this Title are void without any decree of divorce or other legal proceedings: Sec. 6-1203.



**Sec. 6-1206. Annulment.**

(a) Grounds for annulment. A marriage may be annulled for any of the following causes existing at the time of marriage:

(1) That the party in whose behalf annulment is sought was under the age of 18 years, and such marriage was contracted without the consent of his or her parents or guardian, or persons having charge of him or her;

(2) That the consent of either party was obtained by fraud, unless such party afterward, with full knowledge of the facts constituting the fraud, freely cohabited with the other as husband or wife;

(3) That the consent of either party was obtained by force; or

(4) Impotence which continues and appears to be incurable.

(b) Action to annul - parties and limitations. An action to obtain a decree of annulment of a marriage, for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

(1) For causes mentioned in Sec. 6-1206(a)(1), by the party to marriage who was married under the age of legal consent, within two years after arriving at the age of consent, or by a parent, guardian or other person having charge of such minor, at any time before such married minor has attained the age of legal consent;

(2) For causes mentioned in Sec. 6-1206(a)(2) by the party injured, within two years after the discovery of the facts constituting a fraud;

(3) For causes mentioned in Sec. 6-1206 (a)(3) by the injured party within four years after the marriage.

(4) For causes mentioned in Sec. 6-1206(a)(4) by the injured party within two years after the marriage.

(c) Application of laws of succession. When a marriage is annulled for any reason, other than if for fraud in that the wife is pregnant with a child from a man other than the husband, children born before judgment may succeed to the estate of both parents. The Court may at the time of granting the annulment or at any future time, make necessary orders for the custody and support of said child or children as the circumstances or the parents may require.

**CHAPTER 3. MARITAL PROPERTY****Sec. 6-1301. Definition.**

Marital property is that which is acquired during the marriage except for separate gifts and inheritances unless otherwise provided by this Code. The marital property is liable for the debts contracted during the marriage by either spouse.

**Sec. 6-1302. Separate Property.**

The separate property of each spouse is anything that she or he owned prior to the marriage and separate gifts and inheritances acquired during the marriage. The separate property of either spouse is not liable for the debts of the other spouse.

**Sec. 6-1303. Termination of Marital Property.**

Marital property shall cease to be acquired upon the filing of a petition for divorce by either party, provided the petition leads to the dissolution of the marriage.

**CHAPTER 4. DIVORCE****Sec. 6-1401. Residency Requirement.**

The Sac & Fox of the Mississippi in Iowa shall have divorce jurisdiction over all persons who have resided on its Settlement or on tribally owned lands, or any public domain land designated for Tribal use, for at least six (6) months prior to commencing any action for the dissolution of a marriage before the Court of the Sac & Fox of the Mississippi in Iowa. Only one party to a divorce must meet this residency requirement.

**Sec. 6-1402. Definition.**

A decree of divorce is the termination of the marital relationship and shall restore the parties to the state of unmarried persons.

**Sec. 6-1403. Grounds for Divorce.**

A divorce shall be granted if a Tribal Court of the Sac & Fox of the Mississippi in Iowa finds that there has been an irretrievable breakdown of the marriage relationship. The Tribal Court will find that there has been an irretrievable breakdown of a marriage if one of the spouses alleges an irretrievable breakdown and that there is no reasonable prospect of reconciliation.

**Sec. 6-1404. Filing Fee.**

A filing fee of not greater than \$100.00 will be charged by the Clerk of Tribal Courts for the filing of divorce petitions. If a person is unable to afford the filing fee, upon petition to the Tribal Court, it may be waived.

**Sec. 6-1405. Division of Property Upon Divorce.**

(a) Marital property. If no valid antenuptial contract to the contrary exists between the spouses, the marital property of the spouses is to be divided equitably upon divorce. The Tribal Court shall consider the length of the marriage; the contributions, financial and non-financial of both spouses; the standard of living to which each spouse has become accustomed; the financial needs of each spouse; and any other factor the Court finds appropriate. The Tribal Court shall not consider the misconduct of either spouse when making its determination.

(b) Separate property. If no valid antenuptial contract to the contrary exists between the spouses, the separate property of each of the spouses remains the property of the respective spouse. Separate property of a spouse may be given to the other spouse only to prevent unfair hardship.

(c) Untraceable property. If no valid antenuptial contract to the contrary exists between the spouses, property which cannot be traced as separate property of one of the spouses is considered marital property for the purpose of division of property between the spouses.

(d) Professional degrees. If no valid antenuptial contract to the contrary exists between the spouses, professional degrees earned by one spouse while the other spouse supported him or her are not marital property, but the Tribal Court shall consider such contributions in its equitable distribution of the marital property.

(e) Per capita payments to tribal members. Any per capita payments from the Sac & Fox of the Mississippi in Iowa to its eligible members are the separate property of the person to whom they are issued. Per capita payments shall not be awarded to a spouse nor shall the hardship exception of Sec. 6-1406(b) be applicable to this subsection.

(f) Pensions. If no valid antenuptial contract to the contrary exists, pension plan benefits or rights in the form of future pension plan payments:

(1) Are payable only to the extent of the amount of the pension plan benefit payable under the terms of the plan;

(2) Are not payable for a period that exceeds the time that pension plan benefits are payable to the pension plan benefit recipient;

(3) Are not payable in a lump sum amount from pension plan assets attributable in any fashion to a spouse with the status of an active member, deferred retiree, or benefit recipient of a pension plan;

(4) If the former spouse to whom the payments are to be made dies prior to the end of the specified payment period with the right to any remaining payments accruing to an estate or to more than one survivor, is payable only to a trustee on behalf of the estate or the group of survivors for subsequent apportionment by the trustee; and

(5) In the case of public pension plan benefits or rights, property division may not commence until the public plan member submits a valid application for a public pension plan benefit and the benefit becomes payable.

(g) Modification of property award. All divisions of real and personal property provided by this Sec. 6-1405 shall be final, and may be revoked or modified only where the Court finds the existence of one of the following:

(1) Mistake, inadvertence, surprise, or excusable neglect;

(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under the Sac & Fox of the Mississippi in Iowa Rules of Civil Procedure.

(3) Fraud, whether denominated intrinsic or extrinsic, misrepresentation, or other misconduct of an adverse party;

(4) The judgment and decree or order is void; or

(5) The judgment has been satisfied, released, or discharged, or a prior judgment and decree or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment and decree or order should have prospective application.

A motion for modification must be made within a reasonable time, and for a reason under subsections (1), (2), or (3), not more than one year after the judgment and decree, order, or proceeding was entered or taken. A motion under this subsection does not affect the finality of a judgment and decree or order or suspend its operation. This subsection does not limit the power of the Tribal Court to entertain an independent action to relieve a party from a judgment and decree, order, or proceeding or to grant relief to a party not actually personally notified as provided in the Sac & Fox of the Mississippi in Iowa Rules of Civil Procedure, or to set aside a judgment for fraud upon the Court.

(h) Compliance. All determinations made under this section regarding the award of property upon a decree of divorce shall comply with all applicable Tribal law and mandates of the Constitution of the Sac & Fox Tribe of the Mississippi in Iowa.

#### **Sec. 6-1406. Maintenance.**

(a) When awarded. If no valid antenuptial contract or settlement stipulation to the contrary exists between the spouses, maintenance may be awarded in cases the Tribal Court deems appropriate. There shall be no requirement under the law of the Sac & Fox Tribe of the Mississippi in Iowa that the Court award maintenance. The Tribal Court shall consider the length of the marriage; contributions, financial and non-financial, of both spouses; the standard of living to which each spouse has become accustomed; the financial needs of both spouses; and any other factor the Court finds appropriate. The Tribal Court shall not consider misconduct of

either spouse when making its determination, unless such misconduct involves the abuse of one spouse by the other.

(b) Modification of maintenance award.

(1) After an order for maintenance, the Tribal Court may from time to time, upon motion of either of the parties or upon motion of the public authority responsible for support enforcement, modify the order respecting the appropriation and payment of the principal and income of property held in trust, and may make an order respecting these matters which it might have made in the original proceeding, except as herein otherwise provided.

(2) The terms of a decree respecting maintenance may be modified upon a showing of one or more of the following:

(i) substantially increased or decreased earnings of a party;

(ii) substantially increased or decreased need of a party;

(iii) receipt of public assistance;

(iv) a change in the cost of living for either party measured by the federal bureau of statistics;

(v) abuse by one of the parties to the divorce committed against the other party, any of which makes the terms unreasonable and unfair. On a motion for modification of maintenance, the Tribal Court shall apply, in addition to all other relevant factors, the factors for an award of maintenance under Sec. 6-1406 of this Chapter that exist at the time of the motion. A modification of maintenance may be made retroactive only with respect to any period during which the moving party has pending a motion for modification but only from the date of service of notice of the motion on the responding party.

(c) Termination of maintenance. Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party, the passage of two (2) years from the issuance of the degree or the remarriage of the party receiving maintenance. If the Court provides a different period for the duration of maintenance, it must make specific findings and conclusions for its departure.

**Sec. 6-1407. Child Support & Modification**

(a) Child Support shall be determined and set by the Tribal Court and carried out in accordance with Child Support Guidelines as adopted in Title 6, Article II, Sections 6-2101 to 6-2801 – The Sac & Fox Tribe of the Mississippi in Iowa Child Support Act, as amended by Res. No.9-2014.

[NOTE: Except as otherwise noted, the provisions of this Code, Sections 6-1407,1408, 1409, 1506, and 1805 of Article I, Title 6 as amended and adopted by the Tribal Council on September 3, 2014 by Res. No. 18-2014].

**Sec. 6-1408. Enforcement of Child Support.**

(a) Enforcement of Child Support shall be carried out in accordance with Title 6, Article II Sections 6-2101 to 6-2801 – The Sac & Fox Tribe of the Mississippi in Iowa Child Support Act, as amended by Res. No.9-2014.

[NOTE: Except as otherwise noted, the provisions of this Code, Sections 6-1407,1408, 1409, 1506, and 1805 of Article I, Title 6 as amended and adopted by the Tribal Council on September 3, 2014 by Res. No. 18-2014].

**Sec. 6-1409. Medical Support.**

(a) Medical Support shall be carried out in accordance with Title 6, Article II Sections 6-2101 to 6-2801 – The Sac & Fox Tribe of the Mississippi in Iowa Child Support Act, as amended by Res. No.9-2014.

[NOTE: Except as otherwise noted, the provisions of this Code, Sections 6-1407,1408, 1409, 1506, and 1805 of Article I, Title 6 as amended and adopted by the Tribal Council on September 3, 2014 by Res. No. 18-2014].

**CHAPTER 5. CHILD CUSTODY AND VISITATION**

**Sec. 6-1501. Custody.**

(a) Determinations regarding custody of the children of the parties will be made based on the best means to secure a child's sense of belonging to family, clan and Tribe. When making a custody determination, the Tribal Court shall consider Tribal membership/affiliation of the parents, or, petitioning parties if not a parent and may give preference to Tribal members.

(b) The Court must obtain testimony from extended family and those persons identified by the Tribal Community Panel as knowledgeable in the child-rearing beliefs, customs and traditions of the family's clan and Tribe.

(c) "The best means to secure a child's sense of belonging to family, clan and Tribe" means all relevant factors to be considered by the Tribal Court including, but not limited to:

- (1) The wishes of the child's parent or parents as to custody;
- (2) The reasonable preference of the child, if the Court deems the child to be of sufficient age to express preference;
- (3) The recommendation of the child's primary caretaker;
- (4) The interaction and interrelationship of the child with a parent or parents, siblings, clan and extended family and any other person who may significantly affect the child's sense of belonging;
- (5) The child's adjustment to home, school, and community;

(6) The person best suited to provide parental guidance to the child as required or suggested by Meskwaki beliefs, customs and tradition;

(7) The mental and physical health of all individuals involved; except that a disability of a proposed custodian or the child shall not be determinative of the custody of the child, unless the proposed custodial arrangement does not serve to protect the child's needs and sense of belonging;

(8) The capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in the child's Tribal ways in addition to the child's religion or creed, if any;

(9) The Tribal membership/affiliation of the parent or petitioning party if other than a parent;

(10) The child's Tribal, clan and family background; and

(11) The effect of domestic abuse on the child if such abuse has occurred within the household of the child. Domestic abuse means:

(i) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; or

(ii) criminal sexual conduct, as defined by Tribe, state or federal law, committed against a minor family or household member by an adult or minor family household member; or

(iii) emotional harm or damage to the child or adult caused by the conduct of an adult or minor family household member.

(12) Except in cases in which a finding of domestic abuse has been made, the disposition of each parent to encourage and permit frequent and continuing contact by the other parent with the child.

The Court may not use one factor to the exclusion of all others. The primary caretaker factor may not be used as a presumption in determining the best means to secure a child's sense of belonging to family, clan and Tribe. The Court must make detailed findings on each of the factors used and explain how the factors led to its conclusions and to the determination of the best means to secure the child's sense of belonging to family, clan and Tribe.

#### **Sec. 6-1502. Visitation.**

(a) The Tribal Court may, upon the request of either parent, grant such rights to visitation on behalf of the child and noncustodial parent to maintain a child-to-parent relationship

that will protect the child's sense of belonging. If the Court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health or impair the child's emotional development, the Court shall restrict visitation by the noncustodial parent as to time, place, duration, or supervision and may deny visitation entirely, as the circumstances warrant.

(b) The Court shall acknowledge that structured visitation schedules may interfere with Meskwaki ways of being family. A visitation order must acknowledge the existing frequency of contact between the child and members of his or her extended family. An order shall also protect a parent's visitation right where the non-custodial parent participates in family functions.

(c) Upon the request of either parent, the Court may inform any child of the parties, if eight years of age or older, or otherwise of an age of suitable comprehension, of the rights of the child and the noncustodial parent under the order or decree or any substantial amendment thereof. The custodial parent shall present the child for visitation by the noncustodial parent, at such times as the Court directs.

(d) The custodial parent shall not move the residence of the child to a residence within another state or to another Reservation except upon order of the Tribal Court or with the written and signed consent of the noncustodial parent, when the noncustodial parent has been given visitation rights by the decree. If the Court determines after hearing that the purpose of the move is to interfere with visitation rights given to the noncustodial parent by the decree, the Court shall not permit a change of residence described herein.

(e) Proof of an unwarranted denial of or interference with duly established visitation may constitute contempt of Court and may be sufficient cause for reversal of custody.

(f) Modification. The Tribal Court shall modify an order granting or denying visitation rights whenever modification would serve the best means to secure a child's sense of belonging to family, clan and Tribe. The Tribal Court may not restrict visitation rights unless it finds that the visitation is likely to endanger the child's physical or emotional health or impair the child's emotional development.

#### **Sec. 6-1503. Child Custody Investigation.**

When the parties are unable to reach agreement on custody the Court shall attempt to acquire the advice of family members who, in Meskwaki beliefs, customs & traditions, give such advice to parents. The Court shall also attempt to procure the advice of clan leaders and the Community Advisory Panel prior to a decision.

#### **Sec. 6-1504. Effect of Certain Convictions on Custody and Visitation Rights.**

(a) Suspension of visitation rights; transfer of custody.

(1) If a person with Court-ordered custody or visitation rights is convicted of a crime listed in subsection (b) of this Section and if no action is pending regarding custody or visitation, the Sac & Fox of the Mississippi in Iowa Tribal Court shall:



(i) grant temporary custody to the non-custodial parent, unless it finds that another custody arrangement will protect the child's sense of belonging; or

(ii) suspend visitation rights, unless it finds that visitation with the convicted person will protect the child's sense of belonging.

When the sentencing Court is a federal or state court, the Tribal Court, upon official notification of such conviction, shall:

(iii) grant temporary custody to the non-custodial parent, unless it finds that another custody arrangement that will serve to protect the child's sense of belonging; or

(iv) suspend visitation rights, unless it finds that visitation with the convicted person serves to protect the child's sense of belonging.

The Tribal Court shall expedite proceedings under this section. The defendant has the burden of proving that continued custody or visitation with the defendant will protect the child's sense of belonging. The standard of proof is clear and convincing evidence. "Family or household members" means spouses, former spouses, parents and children, persons related by blood, and persons who are presently residing together or who have resided together in the past, and persons who have a child in common regardless of whether they have been married or lived together at any time.

(2) If a person who has child custody or visitation rights was convicted of a crime listed in subsection (b) before the enactment of this Title, then any interested party may petition this Court for relief under paragraph (1) if:

(i) the defendant is currently incarcerated, on probation, or under supervised release for the offense; or

(ii) the victim of the crime was a family or household member as defined above.

(b) Application. Subsection (a) applies to the following crimes or similar crimes under the laws of any other jurisdiction:

(1) murder in the first, second, or third degree, as defined in tribal, state or federal law;

(2) manslaughter in the first degree, as defined in tribal, state or federal law;

(3) assault in the first, second, or third degree, as defined in tribal, state or federal law;

(4) kidnaping, as defined in tribal, state or federal law;

- (5) depriving another of custodial or parental rights, as defined in tribal, state or federal law;
- (6) soliciting, inducing, or promoting prostitution involving a minor, as defined in tribal, state or federal law;
- (7) receiving profit from prostitution involving a minor, as defined in tribal, state or federal law;
- (8) criminal sexual conduct in the first degree, as defined in tribal, state or federal law;
- (9) criminal sexual conduct in the second degree, as defined in tribal, state or federal law;
- (10) criminal sexual conduct in the third degree, as defined in tribal, state or federal law;
- (11) solicitation of a child to engage in sexual conduct, as defined in tribal, state or federal law;
- (12) incest, as defined in tribal, state or federal law;
- (13) malicious punishment of a child, as defined in tribal, state or federal law if also prohibited by Meskwaki beliefs, customs and tradition;
- (14) neglect of a child, as defined in tribal, state or federal law if also prohibited by Meskwaki beliefs, customs and tradition;

**Sec. 6-1505. Modification of Custody Orders.**

(a) Unless agreed to in writing by the parties, no motion to modify a custody order may be made earlier than one year after the date of the entry of a decree or order containing a provision dealing with custody, except in accordance with subsection (c).

(b) If a motion for modification has been heard, whether or not it was granted, unless agreed to in writing by the parties no subsequent motion may be filed within two years after disposition of the prior motion on its merits, except in accordance with subsection (c).

(c) The time limitations prescribed in subsections (a) and (b) shall not prohibit a motion to modify a custody order if the Court has reason to believe that there may be persistent and willful denial or interference with visitation, or has reason to believe that the child's present environment may endanger the child's physical or emotional health or impair the child's emotional development. The Court shall make such determination(s) based upon the affidavits of the parties.

(d) The Court shall not modify a prior custody order after hearing on the motion unless it finds, upon the basis of facts that have arisen since the prior order or that were unknown to the Court at the time of the prior order, that a change has occurred in the circumstances of the child or the custodian and that the modification is necessary to protect the child's sense of belonging. In applying these standards the Court shall retain the custodian established by the prior order unless the Court finds:

- (1) the custody an agrees to the modification;
- (2) The child has been integrated into the family of the petitioner with the consent of the custodian; or
- (3) The child's present environment endangers the child's physical or emotional health or impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

(e) If a custodial parent has been granted sole physical custody of a minor and the child subsequently lives with the noncustodial parent, and temporary sole physical custody has been approved by the court or by a court-appointed referee, the court may suspend the noncustodial parent's child support obligation pending the final custody determination. The court's order denying the suspension of child support must include a written explanation of the reasons why continuation of the child support obligation would serve to protect the child's sense of belonging to family, clan and Tribe.

**Sec. 6-1506. Per Capita Payments to Children.**

Per Capita Payments to Children shall be carried out in accordance with Title 6, Article II Section 6-2314 – Tribal Per Capita, The Sac & Fox Tribe of the Mississippi in Iowa Child Support Act, as amended by Res. No.9-2014.

[NOTE: Except as otherwise noted, the provisions of this Code, Sections 6-1407,1408, 1409, 1506, and 1805 of Article I, Title 6 as amended and adopted by the Tribal Council on September 3, 2014 by Res. No. 18-2014].

**CHAPTER 6. RULES OF PROCEDURE FOR TITLE 6: FAMILY RELATIONS**

**Sec. 6-1601. Applicability of Rules.**

This Chapter applies only to proceedings covered by Title 6 of the Sac & Fox of the Mississippi in Iowa Judicial Code. If any conflict exists between these rules and the Rules of Civil Procedure, these rules shall be applicable.

**Sec. 6-1602. Commencement; Continuance; Time; Parties.**

- (a) Commencement of proceedings.

(1) Marriage dissolution proceedings shall be commenced by service of a summons and petition upon the person of the other party, or by publication pursuant to Tribal Court order.

Service of process in other family relations matters shall be governed by the Rules of Civil Procedure unless otherwise noted.

(2) No summons shall be required if a joint petition is filed. Proceedings shall be commenced when both parties have signed the verified petition and filed it with the Court.

(3) Service of the summons and petition may be made by publication only upon an order of the Tribal Court. If the respondent subsequently is located, personal service shall be made before the final hearing.

(b) Continuances. If a trial date has been established by the Court pursuant to a scheduling order after consultation with the parties, the Court shall decline to consider requests for continuance except those made by motion or when a judge determines that an emergency exists. A single request for a reasonable continuance of a trial date, by notice without hearing, may be granted by the Court upon agreement of all parties, provided that the request is made within 20 days after notice of the trial date to the parties. All other requests for continuance shall be made by motion with notice to all parties. No continuance of a motion hearing shall be granted unless requested within 3 days of receiving notice under Sec. 6-1603(a)(1) of this Chapter, unless good cause is shown.

(c) Time. Time is governed by the Sac & Fox of the Mississippi in Iowa Rules of Procedure, except where a different time is specified in this Family Relations title. Procedural time limits may be shortened for good cause shown.

(d) Designation of parties.

(1) Parties to dissolution, visitation, child support, and child custody proceedings shall be designated as petitioner (joint petitioners) and respondent. After so designating the parties, it is permissible to refer to them as wife and husband by inserting the following in any petition, order, decree, etc.:

Petitioner is hereinafter referred to as (wife/husband), and respondent as (husband/wife).

(2) A guardian ad litem for minor children may be designated a party to the proceedings in the order of appointment.

**Sec. 6-1603. Motions; Ex Parte Relief; Orders to Show Cause; Orders and Decrees.**

(a) Scheduling of motions.

(1) Notice.

(i) All motions shall be accompanied by either an order to show cause or by a notice of motion which shall state, with particularity, the time and place of the hearing and the name of the judge, referee, or judicial officer, as assigned by the Clerk of the Sac & Fox of the Mississippi in Iowa Tribal Court.

(ii) Except in cases in which the parties reside in the same residence and there is a possibility of abuse, a party who obtains a date and time for hearing a motion shall promptly give notice of the hearing date and time and the name of the judge or referee, if known, to all other parties in the action. If the parties reside in the same residence and there is a possibility of abuse, notice shall be given in accordance with the Sac & Fox of the Mississippi in Iowa Rules of Civil Procedure.

(2) Notice of time to respond . All motions and orders to show cause shall contain the following statement:

"All responsive pleadings shall be served and mailed to or filed with the Sac & Fox of the Mississippi in Iowa Clerk of Tribal Court no later than five days prior to the scheduled hearing. The Court may, in its discretion, disregard any responsive pleadings served or filed with the Clerk of Court less than five days prior to such hearing in ruling on the motion or matter in question."

(b) Form of motion.

(1) Specificity and supporting documents. Motions shall set out with particularity the relief requested in individually numbered paragraphs. All motions must be supported by appropriate affidavits, relevant and material to the issues before the Court. The paragraphs of the affidavits should be specific and factual; where possible, they should be numbered to correspond to the paragraphs of the motion.

(2) Application for temporary relief. When temporary financial relief is initially requested, such as child support, maintenance and attorney's fees, the application for temporary relief form set forth at the Appendix of Forms to this Code shall be served and filed by the moving and responding parties. Additional facts, limited to relevant and material matters, shall be added at paragraph 10 of the application form or by supplemental affidavit. Sanctions for failure to comply include, but are not limited to, the striking of pleadings or hearings.

(c) Motion practice.

(1) Requirements for motions.

(i) Moving party, supporting documents, time limits. No motion shall be heard unless the initial moving party serves a copy of the following documents on opposing counsel, or responding party if not represented by

counsel, and files the original with the Clerk of Tribal Court at least 14 days prior to the hearing:

- (a) Notice of motion in form required by Sec. 6-1603(a)(1) of this Chapter;
- (b) Motion;
- (c) Any relevant affidavits and exhibits; and
- (d) Any memorandum of law the party intends to submit.

(ii) Motion raising new issues. A responding party raising new issues other than those raised in the initial motion shall serve a copy of the following documents on opposing counsel, or responding party if not represented by counsel, and shall file the original with the Clerk of Tribal Court at least 10 days prior to the hearing:

- (a) Notice of the motion in form required by Sec. 6-1603(a)(1) of this Chapter;
- (b) Motion;
- (c) Any relevant affidavits and exhibits; and
- (d) Any memorandum of law the party intends to submit.

(iii) Responding party, supporting documents, time limits. The party responding to issues raised in the initial motion, or the party responding to a motion which raises new issues, shall serve a copy of the following documents on opposing counsel, or responding party if not represented by counsel, and shall file the original with the Clerk of Tribal Court at least five days prior to the hearing, inclusive of Saturdays, Sundays, and holidays:

- (a) Any memorandum of law the party intends to submit;
- (b) Any relevant affidavits and exhibits.

(iv) Computation of time for service and filing by mail. Whenever this rule requires documents to be filed with the Clerk of Tribal Court within a prescribed period of time before a specific event, filing may be accomplished by mail, subject to the following:

- (a) 3 days shall be added to the prescribed period; and
- (b) Filing shall not be considered timely unless the documents are deposited in the mail within the prescribed period. If the matter of

timeliness is contested, only the official post-mark of the U.S. Mail, Federal Express, or U.P.S. shall be considered by the Court.

(c) Service by mail is complete upon mailing.

(2) Failure to comply. In the event an initial moving party fails to timely serve and file documents required in this rule, the hearing may be canceled by the Court. If responsive papers are not properly served and filed, the Tribal Court may deem the initial motion or motion raising new issues unopposed and may issue an order without hearing. The Court, in its discretion, may refuse to permit oral argument by the party not filing the required documents, may consider the matter unopposed, may allow reasonable attorney's fees, or may take other appropriate action.

(3) Settlement efforts. No motion, except motion for temporary relief, will be heard unless the parties or their representatives have conferred either in person, or by telephone, or in writing in an attempt to resolve their differences prior to the hearing. The moving party shall initiate such conference. The moving party shall certify to the Tribal Court, before the time of the hearing, compliance with this rule or any reasons for not complying, including lack of availability or cooperation of opposing party or counsel. Whenever any pending motion is settled, the moving party shall promptly advise the Tribal Court.

(4) Motion with request for oral testimony. Motions, except for contempt proceedings, shall be submitted on affidavits, exhibits, documents subpoenaed to the hearing, memoranda, and arguments of counsel unless otherwise ordered by the Tribal Court for good cause shown. If demand is made for the taking of oral testimony, and if the matter cannot be heard adequately in the scheduled time, the hearing shall be utilized as a prehearing conference. Requests for hearing time in excess of one-half hour shall be submitted by written motion specifically setting forth the necessity and reason that evidence cannot be submitted by affidavit. The motion shall include names of witnesses, nature and length of testimony, including cross-examination, and types of exhibits, if any. The Tribal Court may issue an order limiting the number of witnesses each party may call, the scope of their testimony, and the total time for each party to present evidence. Such an order shall be made only after each party or her/his representative has had an opportunity to suggest appropriate limits. Any motion relating to custody or visitation shall additionally state whether either party desires the Tribal Court to interview minor children. No child under the age of fourteen years will be allowed to testify without prior written notice to the other party and Tribal Court approval.

(d) Ex Parte Relief.

(1) Motion. The Tribal Court may grant ex parte relief only if requested by a motion with supporting affidavit, properly executed.

(2) Order to show cause. An order to show cause shall not be used to grant ex parte relief except in those cases where a finding of contempt or the supporting affidavit makes an affirmative showing of:

- (i) A need to require the party to appear in person at the hearing; or
- (ii) The need for interim support is warranted; or
- (iii) The production of limited financial information deemed necessary by the Tribal Court; or
- (iv) Such other limited relief and appropriate restraining orders, as addressed individually in the separate supportive affidavit for ex parte relief.

(3) Filing. All such orders and supporting documents must be filed with the order appropriately signed out for personal service. A conformed file copy of such order shall be retained by the Clerk of Tribal Court in the file.

(4) Interim support order. To insure support for an unemployed party or a party with children pending a full temporary hearing, an initial order to show cause may, if the situation warrants, contain the following:

IT IS FURTHER ORDERED that pending the aforesaid scheduled hearing, you, shall pay to the (petitioner) (respondent) commencing forthwith \_\_ percent of your net earnings after the usual deductions for FICA, withholding taxes and group insurance, such payments to be made within 24 hours of your receipt of such earnings for each pay period. These payments are to insure that provision is made by you for the support of your (wife) (husband) (and) (children) pending the aforesaid hearing.

The percentage to be used will be in accordance with the child support guidelines of this Code and such other factors related to maintenance as the Tribal Court deems appropriate. There must be a showing in the Application for Temporary Relief of separate affidavit of the necessity for the interim order for support.

(5) Orders to show cause shall be obtained in the same manner specified for ex parte relief. Such orders may require production of limited financial information deemed necessary by the Tribal Court. An order to show cause shall be issued only where the motion seeks a finding of contempt or the supporting affidavits makes an affirmative showing of:

- (i) A need to require the party to appear in person at the hearing; or
- (ii) The need for interim support is warranted; or



(iii) The production of limited financial information deemed necessary by the Tribal Court; or

(iv) Such other limited relief and appropriate restraining orders, as addressed individually in the separate supportive affidavit for ex parte relief.

(6) Orders and decrees requiring child support or maintenance. All orders and judgments and decrees which include awards of child support and/or maintenance, unless otherwise directed by the Tribal Court, shall include the following provisions:

(i) Payment of support or maintenance, or both, is to be as ordered herein, and the giving of gifts or making purchases of food, clothing, and the like will not fulfill the obligation.

(ii) Payment of support must be made as it becomes due, and failure to secure, or denial of rights of, visitation is not an excuse for non-payment, but the aggrieved party must seek relief through proper motion filed with the Tribal Court.

(iii) The payment of support or maintenance, or both, takes priority over payment of debts and other obligations.

(iv) A party who remarries after dissolution and accepts additional obligations of support does so with full knowledge of his or her prior obligations under this proceeding.

(v) Child support and maintenance are based on annual income, and it is the responsibility of a person with seasonal employment to budget income so that payments are made regularly throughout the year as ordered.

#### **Sec. 6-1604. Scheduling of Cases.**

(a) Scope. The purpose of this rule is to provide a uniform system for scheduling matters for disposition and trial in proceedings in Tribal Court for all family relations decisions.

(b) The party's informational statement. Within 30 days after filing an action or within 30 days after a temporary hearing, whichever is later, each party shall submit, on a form to be available from the Tribal Court (Appendix of Forms to this Code), the information needed by the Tribal Court to manage and schedule the case. The information provided shall include:

(1) Whether minor children are involved, and if so:

(i) Whether custody is in dispute; and

(ii) Whether the case involves any issues seriously affecting the welfare of the children;

- (2) Whether the case involves complex evaluation issues, and/or marital and non-marital property issues;
- (3) Whether the case needs to be expedited, and if, so, the specific supporting facts;
- (4) Whether the case is complex, and if so, the specific supporting facts;
- (5) Specific facts about the case which will affect readiness for trial; and
- (6) A proposal for establishing any of the deadlines or dates to be included in a scheduling order pursuant to this rule.

(c) Scheduling order.

(1) When issued . Within 45 days after filing an action or 45 days after a temporary hearing, whichever is later, the Tribal Court shall enter its scheduling order. The Tribal Court may issue the order after either a telephone or in-court conference, or without a conference or hearing if none is needed.

(2) Contents of order. The scheduling order may establish any of the following:

- (i) Deadlines of specific dates for the completion of discovery and other pretrial preparation;
- (ii) Deadlines or specific dates for serving, filing, or hearing motions;
- (iii) Deadlines or specific dates for completion and review of custody/visitation mediation and evaluation or property mediation and evaluation;
- (iv) A deadline or specific date for the prehearing conference;
- (v) A deadline or specific date for the trial or final hearing.

(d) Amendment. A scheduling order pursuant to this rule may be amended at a prehearing conference or upon motion for good cause shown, or upon approval by authorized Tribal Court personnel if there is agreement of all parties.

**Sec. 6-1605. Prehearing Conferences.**

(a) Prehearing statement. Each party shall complete a prehearing conference statement substantially in the form set forth at the Appendix of Forms to this Code which shall be served upon all parties and mailed to or filed with the Tribal Court at least 10 days prior to the date of the prehearing conference.

(b) Prehearing conference attendance.

(1) Parties and counsel. Unless excused by the Tribal Court for good cause, the parties and lawyers who will try the proceedings shall attend the prehearing conference, prepared to negotiate a final settlement. If a stipulation is reduced to writing prior to the prehearing conference, the case may be heard as a default at the time scheduled for the conference. In that event, only the party obtaining the decree need appear.

(2) Failure to appear--sanctions. If a party fails to appear at a prehearing conference, the Tribal Court may dispose of the proceedings without further notice to that party.

(3) Failure to comply--sanctions. Failure to comply with the rules relating to prehearing conferences may result in the case being stricken from the contested calendar, granting of partial relief to the appearing party, striking of the non-appearing party's pleadings and the hearing of the matter as a default, award of attorney fees and costs, and such other relief as the Tribal Court finds appropriate, without further notice to the defaulting party.

(c) Prehearing conference order. If the parties are unable to resolve the case, in whole or in part, at the prehearing conference, the Tribal Court shall issue an order which schedules any remaining discovery and any contemplated motions, identifies the contested issues for trial, and provides for the exchange of witness lists and exhibits to be offered at trial.

**Sec. 6-1606. Default.**

(a) Scheduling of final hearing. To place a matter on the default calendar for final hearing, the moving party shall comply with the following, as applicable:

(1) Without stipulation--no appearance. In all default proceedings where a stipulation has not been filed, an affidavit of default and of non-military status of the defaulting party or a waiver by that party of any rights under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, shall be filed with the Tribal Court.

(2) Without stipulation--appearance. Where the defaulting party has appeared by a pleading other than a response, answer, or personally without a pleading, and has not affirmatively waived notice of the other party's right to a default hearing, the moving party shall notify the defaulting party in writing at least ten (10) days before the final hearing of the intent to proceed to Judgment. The notice shall state:

You are hereby notified that an application has been made for a final hearing to be held not sooner than three (3) days from the date of this notice. You are further notified that the Tribal Court will be requested to grant the relief requested in the petition at the hearing.

The default hearing will not be held until the notice has been mailed to the defaulting party at the last known address and an affidavit of service by mail has been filed.

(3) Default with stipulation. Whenever a stipulation settling all issues has been executed by the parties subsequent to the pre-hearing conference, the stipulation shall be filed with an affidavit of non-military status of the defaulting party or a waiver of that party's rights under the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, if not included in the stipulation.

In a stipulation where a party appears pro se, the following waiver shall be executed by that party:

I know I have the right to be represented by a lawyer of my choice. I hereby expressly waive that right and I freely and voluntarily sign the foregoing stipulation.

(b) Preparation of decree. In a scheduled default matter, proposed findings of fact, conclusions of law, order for judgment and judgment and decree shall be submitted to the Tribal Court in advance of, or at, the final hearing.

#### **Sec. 6-1607. Final Hearings.**

(a) Failure to appear--sanctions. Failure to appear at the scheduled final hearing may result in the case being stricken from the contested calendar, granting of partial relief to the appearing party, striking of the non-appearing party's pleadings and the hearing of the matter as a default, an award of the attorney's fees and costs, and such other relief as the Tribal Court finds appropriate, without further notice to the defaulting party.

(b) Stipulations entered in open Tribal Court--preparation of findings. Where a stipulation has been entered orally upon the record, the lawyer directed to prepare the decree shall submit it to the Tribal Court with a copy to each party. Unless a written, fully executed stipulation is filed or unless the decree contains the written approval of the lawyer for each party, a transcript of the oral stipulation shall be filed by the lawyer directed to prepare the decree. Responsibility for the cost of the transcript shall be determined by the Tribal Court. Entry of the decree shall be deferred for 14 days to allow for objections unless the decree contains the written approval of the lawyer for each party.

#### **Sec. 6-1608. Final decree.**

(a) Notices; service.

(1) Awards of child support and/or maintenance. All judgments and decrees which include awards of child support and/or maintenance, unless otherwise directed by the Tribal Court, shall include notification to both parties that:

(i) Payment of support or maintenance, or both, is to be as ordered herein, and the giving of gifts or making purchases of food, clothing, and the like will not fulfill the obligation.

(ii) Payment of support must be made as it becomes due, and failure to secure, or denial of rights of, visitation is not an excuse for non-payment, but the aggrieved party must seek relief through proper motion filed with the Tribal Court.

(iii) The payment of support or maintenance, or both, takes priority over payment of debts and other obligations. An aggrieved obligee of child support or maintenance payments may seek relief through proper motion filed with the Tribal Court.

(iv) A party who remarries after dissolution and accepts additional obligations of support does so with full knowledge of her or his prior obligations under this proceeding.

(v) Child support and maintenance are based on annual income, and it is the responsibility of a person with seasonal employment to budget income so that the payments are made regularly throughout the year as ordered.

(2) Public assistance. When a party is receiving or has applied for public assistance, the party obtaining the judgment and decree shall serve a copy on the agency responsible for child support enforcement, and the decree shall direct that all payments of child support and spousal maintenance shall be made to the agency providing the assistance for as long as the custodial parent is receiving assistance.

(3) Child support enforcement. When a private party has applied for or is using the services of the local child support enforcement agency, a copy of the decree shall be served by mail upon the agency involved by the party submitting the decree for the Court's execution.

(4) Supervised custody or visitation. A copy of any judgment and decree directing ongoing supervision of custody or visitation shall be provided to the appropriate agency by the party obtaining the decree.

(b) Required notices. Where this Family Relations title or the Sac & Fox Rules of Civil Procedure require that certain subjects be addressed by notices in an order or decree, the notices shall not be included verbatim but shall be set forth in an attachment and incorporated by reference.

(c) Sensitive matters. Whenever the findings of fact include private or sensitive matters, a party may submit a judgment and decree supported by separate documents comprising findings of fact, conclusions of law, and order for judgment.

**Sec. 6-1609. Contempt.**

## (a) Initiation.

(1) Moving papers--service; notice. Contempt proceedings shall be initiated by an order to show cause served upon the person of the alleged contemnor together with motions accompanied by appropriate supporting affidavits.

The order to show cause shall direct the alleged contemnor to appear and show cause why she or he should not be held in contempt of Tribal Court and why the moving party should not be granted the relief requested by the motion.

The order to show cause shall contain at least the following:

- (i) A reference to the specific order of the Tribal Court alleged to have been violated and date of entry of the order;
- (ii) A quotation of the specific applicable provisions ordered; and
- (iii) The alleged failures to comply.

(2) Affidavits. The supporting affidavit of the moving party shall set forth each alleged violation of the order with particularity. Where the alleged violation is a failure to pay sums of money, the affidavit shall state the kind of payment which is in default and shall specifically set forth the payment dates and the amounts due, paid, and unpaid for each failure.

(b) Hearing. The alleged contemnor must appear in person before the Tribal Court to be afforded the opportunity to resist the motion for contempt by sworn testimony. The Tribal Court shall not act upon affidavit alone, absent express waiver by the alleged contemnor of the right to offer sworn testimony.

(c) Disposition. The Tribal Court may impose such civil fine or other penalty, as it deems appropriate.

**Sec. 6-1610. Appeals.**

Appeal of proceedings covered by this Title of the Sac & Fox of the Mississippi in Iowa Judicial Code shall comport with the Sac & Fox Rules of Civil Procedure for appeals.

**Sec. 6-1611. Forms.**

The forms contained in the Appendix of Forms for this chapter are sufficient under these rules.

**CHAPTER 7 ANTENUPTIAL CONTRACTS****Sec. 6-1701. Scope of Antenuptial Contracts.**

(a) Marital and separate property. Antenuptial contracts may cover both marital and separate property of the spouses, except that the parties may not contract regarding any per capita payments from the Sac & Fox of the Mississippi in Iowa which either party may be receiving.

(b) Death and divorce of either spouse. An antenuptial contract may anticipate the death of a spouse and/or divorce as long as the contract does not encourage divorce.

(c) Children. Antenuptial contracts may include provisions governing children of the spouses, but such provisions will only be upheld as long as they are determined by a Court to be the best means to secure the children's sense of belonging to family, clan and Tribe at the time of enforcement of the contract. Antenuptial contracts may not include provisions governing the per capita payments by the Sac & Fox of the Mississippi in Iowa to children.

**Sec. 6-1702. Requirements of Valid Antenuptial Contracts.**

(a) Disclosure. Each party must fully disclose his or her assets to the other party and schedules of each party's assets must be attached to the antenuptial contract.

(b) Separate counsel. If possible, each party should be represented by his or her own attorney.

(c) Substantive and procedural fairness. No antenuptial agreement which is substantively or procedurally unfair either at the time of execution or at the time of enforcement will be valid. Time of execution is the moment of the signing of the contract. Time of enforcement is the moment at which the contract will be activated. The Tribal Court of the Sac & Fox of the Mississippi in Iowa will determine the fairness of the contract.

**Sec. 6-1703. Burden of Proof.**

The burden of proof to prove invalidity of an antenuptial contract is on the person challenging the validity of the contract. He or she must demonstrate by clear and convincing evidence that the contract is unfair, or that the circumstances surrounding execution and/or enforcement render the contract unfair.

**CHAPTER 8 PATERNITY****Sec. 6-1801. Children Born During a Marriage.**

(a) The husband of a child's mother is presumed to be the father of any child born during the marriage.

(b) A biological father who is not the husband of the child's mother may challenge the presumption of paternity of the husband only with the written consent of the mother.

**Sec. 6-1802. Children Born Outside of a Marriage.**

- (a) The paternity of a child born outside of a marriage may be established by blood testing, as ordered by a Tribal Court upon a motion by the either parent of the child; or
- (b) The paternity of a child born outside of a marriage may be established by acknowledgment of paternity by a man not excluded by blood testing. The acknowledgment must be filed with the Clerk of Court of the Sac & Fox of the Mississippi in Iowa in order to be valid.
- (c) Once paternity has been established, each parent of a child born out of wedlock has legal custody of the child unless the Tribal Court grants legal custody to one of the parents or another person or transfers legal custody to an agency.

**Sec. 6-1803. Application of the Laws of Intestate Succession to Children Born Outside of a Marriage.**

- (a) A child whose paternity has been established. A child born outside of a marriage whose paternity has been established may inherit by intestate succession from his or her father.
- (b) A child whose paternity has not been established. A child born outside of a marriage whose paternity has not been established may inherit from his or her father by intestate succession only if she or he can establish by clear and convincing evidence before a Tribal Court of the Sac & Fox of the Mississippi in Iowa that the alleged father acknowledged her or him as his child. Proof of acknowledgement shall include, but is not limited to, testimony by other family members that the child was accepted as the son or daughter of the man from whom he or she wishes to inherit.

**Sec. 6-1804. Determinations of Paternity by the Tribal Court of the Sac & Fox of the Mississippi in Iowa.**

In actions brought for determination of the paternity of a child, the judgment of the Tribal Court establishing the identity of the father of the child shall be conclusive in all subsequent proceedings in the Department of the Interior relating to the determination of heirs and rights of inheritance.

**Sec. 6-1805. Procedure to Determine Father and Child Relationship.**

- (a) Paternity of a child should be pursued for a child up to and including at least eighteen (18) years of age.
- (b) The procedure to establish paternity shall be carried out in accordance with Title 6, Article II Section 6-2201 – Paternity, The Sac & Fox Tribe of the Mississippi in Iowa Child Support Act, as amended by Res. No.9-2014.



[NOTE: Except as otherwise noted, the provisions of this Code, Sections 6-1407, 1408, 1409, 1506, and 1805 of Article I, Title 6 as amended and adopted by the Tribal Council on September 3, 2014 by Res. No. 18-2014].

## CHAPTER 9 ADOPTION

### Sec. 6-1901. Definitions.

The terms listed below, whenever used in this Chapter, shall mean as follows:

(a) Tribe. Tribe means the Sac & Fox Tribe, also known as Sac & Fox of the Mississippi in Iowa.

(b) Child. Child means a person who is less than 18 years of age.

(c) Guardianship of the person. Guardianship of the person means the duty and authority vested in a guardian of a minor. It includes the general power to make decisions such as consent to a major medical, psychiatric and surgical treatment; consent to marriage, and consent to enlistment in the armed forces of the United States; authority to represent the minor in legal actions when the parent-child relationship has been terminated by Court order with respect to the parents, or only living parent; or when no living parent can be found after diligent search, the authority to consent to the adoption of the child and to make any other decision concerning the child which the child's parents could make.

(d) Legal custody. Legal custody means the right given by the Tribal Court to the custody and control of the child and the responsibility to provide for the daily care of the child, unless otherwise specified by Court order.

(e) Parent.

(1) The mother of a child.

(2) A father to whom a child's paternity has been established or is presumed, as defined in Sec. 6-1802(a) or (b) of Chapter VIII of this Title.

(3) An adoptive parent.

(4) A person as to whom the parent-child relationship has been terminated by Court order is not a parent.

(f) Parent-child relationship. A parent-child relationship means all rights, privileges, duties, and obligations existing between parent and child, including inheritance rights.

(g) Protective supervision. Protective supervision means a legal status created by Court order whereby the child is under the protective supervision of the Tribal Court.

(h) Relatives. Relatives mean relatives of the child as established and recognized by Meskwaki beliefs, customs and tradition. Enrolled Tribal members who are relatives of the child shall be given preference in contested adoptions if the best means to secure the child's sense of belonging to family, clan and Tribe is not an issue between or among the parties.

- (i) Tribal Court. Tribal Court means a Court of the Sac & Fox of the Mississippi in Iowa.
- (j) Parties. Parties to adoption proceedings shall be designated as petitioner and respondent, if any. Petitioner(s) will be the person(s) wishing to adopt the children.

**Sec. 6-1902. Jurisdiction.**

The Tribal Court shall have original jurisdiction in adoption matters involving Meskwaki families.

**Sec. 6-1903. Petition for Adoption.**

The petition for adoption shall be filed with the Tribal Court on a form prescribed by this Code. Appendix of Forms. It shall be verified under oath by the petitioning parties, and shall contain the following:

- (a) The full name, the residence, date of birth, enrollment status and sex of the child. Documentary proof of the date and the place of the birth of the child to be adopted shall be provided in the form of a certified birth certificate, and shall be filed with the petition.
- (b) The full name, the residence, date and place of birth, Tribal enrollment, and occupation of the adoptive parent or parents. Documentary proof of the adoptive parents marital status shall be provided in the form of a certified marriage license or other recognition of a solemnized marriage, and shall be filed with the petition. If the adoptive parent or parents are unmarried, they shall so designate on the petition.
- (c) A full description and statement of value of all property owned or possessed by the child.
- (d) An agreement by the adopting parents that it is their desire that the relationship of parent and child be established between them and the child, and that it will be the best means to secure the child's sense of belonging to family, clan and Tribe.
- (e) A fully witnessed and notarized natural parent consent to the adoption (Appendix of Forms to this Code) or a Court order terminating the parent-child relationship with respect to any living parent.

**Sec. 6-1904. Who May File a Petition.**

- (a) General requirements. Any adult identified in this Section may file a petition in the Tribal Court to adopt a child who is enrollable or who is a tribal member whether or not such child is domiciled within the jurisdiction of the Tribal Court. In the case of married persons maintaining a home together, the petition shall be the joint petition of husband and wife except that if one of the spouses is the natural parent of the child to be adopted, the natural parent shall not be required to join in the petition. The natural parent spouse in a step-parent adoption shall file a consent pursuant to Sec. 6-1906(a) herein. The adoptive applicants must be at least ten (10) years older than the child.

(b) Special conditions for non-member adoption.

(1) Non-member adoption shall include only those non-member extended family members of the child, but such adoption may only be ordered by the Tribal Court if there are no Tribal extended family members or other Tribal members to adopt a child.

(2) The Court may order the appropriate agency/office to monitor the adoptive placement to insure that the provisions of this section are being complied with.

(3) The Court may enter a custody order not to exceed six (6) months in order to determine the mandate herein to non-member adoptive parents is complied with.

(4) At the expiration of six (6) months from the entry of the interim order, the Court may enter its final adoption order and decree.

**Sec. 6-1905. When consent to adoption is required.**

(a) No petition for adoption shall be granted unless:

(1) each parent of the child, or if there is no living parent, the guardian of the child's person, consents in writing to the adoption of the child by petitioners; or

(2) the parent-child relationship has been terminated as to any non-consenting parent; or

(3) the Court finds that termination of only the legal incidence of the parent-child relationship is in accordance with Meskwaki beliefs, customs and traditions.

(b) A minor parent may consent to an adoption provided the parents of the minor parent concur, however, the Tribal Court may waive consent by the minor's parents if it finds that the withholding of such consent is arbitrary and capricious.

**Sec. 6-1906. Consents to Adoption.**

(a) Form of consent. Consents to adoption shall be acknowledged before an officer duly authorized to take acknowledgements and witnessed by a representative of the Tribal Court. The consent shall indicate if the parent or guardian wishes her or his identity to be confidential. Appendix of Forms of this Code.

(b) Consent by a child aged 12 or older. The adoption of a child twelve (12) years of age or older shall not be granted without the child's consent given in Court or in writing in such form as the Court may direct. If a child is unable to give consent due to mental incapacity, this consent provision may be waived by the Tribal Court.

(c) Filing of consents. Written consents where required by this Chapter, shall be attached to the adoption petition. A consent by a guardian of the child's person shall be accompanied by evidence satisfactory to the Tribal Court establishing the guardian's authority to consent to adoption of the child. Appendix of Forms.

(d) Withdrawal of consent. A parent's consent to adoption may be withdrawn for any reason within ten working days after the consent is executed and acknowledged. Written notification of withdrawal of consent must be received by the agency, Tribal department or individual to which the child was given no later than the tenth working day after the consent is executed and acknowledged. On the day following the tenth working day after execution and acknowledgement, the consent shall become irrevocable, except upon order of the Tribal Court, after written findings, that consent was obtained by fraud. In proceedings to determine the existence of fraud, the adoptive parents and the child shall be made parties. The proceedings shall be conducted to preserve the confidentiality of the adoption process. There shall be no presumption in the proceedings favoring the natural parents over the adoptive parents.

**Sec. 6-1907. Investigation Report.**

Within five (5) days after the filing of a petition for adoption, the Court shall request the assistance of the appropriate Tribal agency to investigate and report, in writing, to the Court within thirty (30) days as to the suitability of the child for adoption, the financial ability, moral and physical fitness and general background of the adoptive home and of the adoptive parent or parents, and to make recommendations on the proposed adoption.

**Sec. 6-1908. Hearing on Adoption.**

Within five (5) days after the written report required by Sec. 6-1907 is filed, the Court shall fix a time for hearing on the petition for adoption which shall not be sooner than 30 days nor later than 45 days. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption shall be duly notified, unless notice is waived, and may appear or be represented by a person having power of attorney authorizing such person to represent them for the purpose of the adoption.

The Court shall examine all persons appearing separately and if satisfied as to the suitability of the child for adoption, the validity of the consent to adoption, the financial ability and moral and physical fitness and responsibility of the adoptive parents, and that the best means to secure the child's sense of belonging to family, clan and Tribe will be promoted by the adoption, may enter a final decree of adoption in the case of a child who has been in the custody of the petitioners and provided for by them for more than three (3) months or may place the child in legal custody of the petitioners for a period of not less than six (6) months prior to entering a final decree of adoption, or if the Court is satisfied that the adoption petition will not serve to protect the child's sense of belonging, the petition shall be denied and the guardian so instructed to arrange suitable care for the child and the Court may request agencies authorized to provide such services to assist in the placement and the care of the child.

**Sec. 6-1909. Report and Final Decree of Adoption.**

Within six (6) months after the child has been in the custody of the petitioner, the Tribal Court shall request a supplementary written report under the same procedures followed in Sec. 6-1907 of this Chapter as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Tribal Court is satisfied that the proposed adoption is the best means to secure the child's sense of belonging to family, clan and Tribe, a final decree of adoption may be entered.

No final order may be entered by the Tribal Court until the child to be adopted has lived and resided for a period of at least three (3) months in the home of the adoptive parents. In any case where the Tribal Court finds that the best means to secure the child's sense of belonging to family, clan and Tribe will not be served by the adoption, a guardian of the child shall be appointed and suitable arrangements for the care of the child shall be made and the Tribal Court may request an appropriate Tribal, federal, or state agency authorized to provide such services to assist in the placement and the care of the child.

**Sec. 6-1910. Privacy Interests of Person(s) Giving Child up for Adoption.**

In order to protect the privacy interests of the natural parent or guardian consenting to an adoption, the final order for adoption shall clearly indicate if that person's identity shall be confidential pursuant to the designation on the consent form provided by and filed with the Tribal Court. If the person later changes his or her mind, he or she may move to the Court to amend that portion of the order by filing a motion with the Tribal Court.

**Sec. 6-1911. Adoption Records.**

All records, reports, proceedings and orders in adoption cases are confidential and permanent records of the Tribal Court and shall not be available for release to or inspection by the public. Information contained in such records may be released upon petition to the Tribal Court by the adopted person after reaching legal majority, or upon order of the Tribal Court upon good and sufficient cause shown, unless the person consenting to the adoption has requested otherwise as provided for in Sec. 6-1906(a) this Chapter.

**Sec. 6-1912. Contents of Adoption Order.**

The final order and decree of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable for the proper care of the child, as shown by the investigation reports and the findings of the Tribal Court upon the evidence adduced at the hearings, and that it is the best means to secure the child's sense of belonging to family, clan and Tribe. If the Court finds that the termination is limited to the legal incidence of the parent-child relationship, the entry of the orders shall not affect the parent-child relationship as it is recognized by tribal beliefs, customs and tradition.

Within five (5) days after the final order and decree of adoption has been entered by the Tribal Court, the Division of Vital Statistics of the State Board of Health shall be notified on a

form prepared and submitted by the Clerk of Tribal Court that the adoption has taken place. In providing such notification, the clerk shall include the full name, sex, birthday, names of natural parents and full names of adoptive parents so that a new record of birth in the new name and with the name or names of the adopting parents may be recorded. The Clerk shall also provide a certified true and correct copy of the final order and decree of adoption.

**Sec. 6-1913. Name and Legal Status of Adopted Child.**

Children adopted by order of the Tribal Court shall assume the surname chosen by the persons by whom they are adopted, unless the court orders otherwise, and shall be entitled to the same rights of person and property as natural children or heirs of the persons adopting them and shall be subject to the same obligations of natural children of the adoptive parent. The entry of an order and decree of adoption divests any parent or alleged parent who is not married to the adoptive parent or who has not joined in the petition for adoption of all legal rights and obligations with respect to the adopted child, except for past-due child support payments accrued pursuant to Court order.

**Sec. 6-1914. Tribal Status of Child.**

Adoption of any minor child who is a member of the Sac & Fox of the Mississippi in Iowa shall not affect the child's status as a Tribal member.

**TITLE 6. FAMILY RELATIONS**  
**ARTICLE II**

[NOTE: Except as otherwise noted, the provisions of Article II, Title 6 were enacted on March 26 , 2014 by Res. No. 9-2014.]

**CHAPTER 1. DEFINITIONS AND CONSTRUCTION**

**Sec. 6-2101. Act, How Cited.**

Sections 6-2101 to 6-2801 shall be known and may be cited as the *Sac and Fox Tribe of the Mississippi in Iowa Child Support Act*.

**Sec. 6-2102. Findings.**

The Sac and Fox Tribe of the Mississippi in Iowa, also known as Meskwaki, have historically placed great emphasis on the sacredness of its children and families. Change has always been a dynamic element of Meskwaki life, and the tribe continues to adapt to the demands, challenges and opportunities of modern life strengthened by tribal identity and cultural heritage. Therefore, the Tribe has a compelling interest to promote and maintain the health and well-being of tribal children and families. The Sac and Fox Tribe of the Mississippi in Iowa acknowledge the sacred responsibilities of parenthood, and the difficulties and hardships facing tribal children and families. The support of children by their parents is consistent with Meskwaki values and honors the children and their relatives. The Sac and Fox Tribe of the Mississippi in Iowa finds that it is in the best interests of the Tribe to make laws which establish a Tribal Child Support IV-D agency in an effort to offer the community effective, fair, accessible, and culturally appropriate child support services.

In all IV-D actions, the rights of all participants will be protected and all will be afforded due process in all actions initiated by or pursued by the Meskwaki Nation Child Support Services (MNCSS).

Parents have responsibility to make decisions and perform other parental functions for the benefit of their minor children. In any proceeding between parents under this Act, the best interest of the child shall be the standard that the Tribal Court shall apply to determine and allocate parental responsibilities. The best interests of the child are served by parenting support that best maintains a child's emotional growth, cultural and Tribal ties, health and stability, and physical well-being.

**Sec. 6-2103. Purpose**

Pursuant to the Sac and Fox Tribe of the Mississippi in Iowa Constitution ratified by the Tribe on November 13, 1937, Article X – Powers of the Tribal Council, empowers the Tribal Council with legislative authority to establish Tribal laws. In order to protect, preserve and promote the health and welfare of the Tribe and its members, the Tribal Council has established this Child Support Act.

The Sac and Fox Tribe of the Mississippi in Iowa Child Support Act, Title 6, Article II, has been enacted for the following purposes:

- (a) To ensure that children within the jurisdiction of the Sac & Fox Tribe of the Mississippi in Iowa receive adequate and meaningful support from their parents;
- (b) To motivate parents to meet the financial, emotional, social and cultural needs of their children;
- (c) To compel, when necessary, the parent of a child to perform the legal duties owed to the child;
- (d) To promote peaceful resolutions to disputes, and fairness to the children and families seeking services from the Meskwaki Nation Child Support Services (MNCSS) and who come before the Meskwaki Tribal Court for actions under this Article;
- (e) To exercise Tribal sovereignty and open the lines of communication in working with foreign jurisdictions with the goal of providing a continuum of child support services to Tribal children whether they reside on or off the Sac and Fox Tribe of the Mississippi in Iowa Settlement;
- (f) To provide for the supervision and administration of child support functions on a Tribal-wide basis; and,
- (g) To reaffirm Tribal sovereignty and Tribal self-determination by providing for the exercise of the greatest possible Tribal jurisdiction over the greatest number of child support cases involving Tribal children and families.

**Sec. 6-2104. Definitions.**

Terms under this Article shall be liberally construed so as not to limit the jurisdiction of the Sac and Fox Tribe of the Mississippi in Iowa Tribal Court over Tribal children, and to facilitate the authority of the Tribal Court to act to protect the interests of Tribal children and their families. When interpreting terms not defined by this Article, the Tribal Court shall take into consideration Tribal laws and customs. Unless in conflict with applicable Tribal law, terms not specifically defined in this Article shall be defined according to their normal usage, or as defined in the federal regulations for Tribal Child Support Enforcement Programs found at 45 CFR §309 et seq. Unless the context otherwise requires, as used in this Article:

- (a) “Advocate” shall mean, in lieu of an attorney, a non-lawyer who may act as a lay counselor, who performs routine tasks requiring some knowledge of the law and procedures and who is employed by Meskwaki Nation Child Support Services (MNCSS) and who may appear in Tribal Court on behalf of MNCSS or the Tribe’s interest.
- (b) “Arrears Case Record” means the financial case record that is maintained by the MNCSS and houses records related to child support arrears.
- (c) “Business day” means every day that is not a Saturday, Sunday or legal holiday.
- (d) “Child” means:



(1) A person under 18 years of age; and

(2) A person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a tribe or state.

(e) “Child support” means payments for the support of children, including payments for health insurance coverage or other medical support, and combined payments for the support of children if the payment is required by the order of a court or other governmental agency having authority to issue such orders.

(f) “Court” shall mean the Tribal Court of the Sac and Fox Tribe of the Mississippi in Iowa.

(g) “Delinquent” means a situation which occurs on the first business day after the day upon which a child support payment was identified as due and unpaid, and the total amount of unpaid child support is at least equal to the amount of child support payable in one month.

(h) “Disposable income” means gross income less deductions required by law for taxes and social security.

(i) “Emancipation” shall mean that time when a child either reaches the age of eighteen (18); or if regularly and continuously enrolled in high school reaches the age of twenty (20); or if the child marries; or if the child enlists in military services; or is emancipated by an order from a court of competent jurisdiction.

(j) “Employer” means income payer; includes the Tribe and its subordinate entities.

(k) “Health care coverage” means health care benefits that are provided by a health plan. Health care coverage includes any form of public medical assistance.

(l) “Income” is defined as any form of periodic payment to an individual including but not limited to salaries, wages, commissions, self-employment income, worker’s compensation, unemployment benefits, annuity payments, military and naval retirement, pension and disability payments, spousal maintenance received under a previous order or the current proceeding, Social Security or Veteran’s benefits provided for a dependent child, gaming winnings, and any form of federal or tribal trust benefits derived from a person’s status as an enrolled member of any federally recognized Tribe, including but not limited to general assistance payments, oil or other mineral royalties, agricultural leases, and water leases.

Any lump sum per capita payments distributed by the Meskwaki Nation will be considered as income in the calculation of child support, with the exception of per capita payments awarded to a child named in the child support application or a tribal child support court order, subject to the reasonable discretion of the Court as set forth in findings of fact.

(m) “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 Obligor. 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.

(n) “Income payer” means any person, partnership, firm, corporation, limited liability company, association, political subdivision, or department or agency of a tribe, state, or federal government owing income to an obligor and includes an obligor if the obligor is self-employed.

(o) “Issuing state” means the state in which a tribunal issues a child support order or renders a judgment determining parentage.

(p) “Issuing tribe” means the tribe in which a tribunal issues a child support order or renders a judgment determining parentage.

(q) “Issuing tribunal” means the tribunal that issues a child support order or renders a judgment determining parentage.

(r) “Medical support” means providing health care coverage for a child by carrying health care coverage for the child or by contributing to the cost of health care coverage, public coverage, unreimbursed medical expenses, and uninsured medical expenses of the child.

(s) “Monthly support obligation” means an amount of child support ordered by a court in a proceeding to establish or modify a child support obligation, including amounts that are deferred for payment at a later date. The term is defined without regard to any amount of child support that an obligor is required to pay to avoid being held in contempt of court.

(t) “Non-cash” means the Non-custodial parent may provide in-kind support, with the consent of the Custodial Parent, to meet no less than 25% or nor more than 40% of the total monthly child support obligation.

(u) “Obligee” means a person, including a tribe, state, or political subdivision, to whom a duty of support is owed.

(v) “Obligor” means any person owing a duty of support.

(w) “Past-due support” means child support that is not paid by the earlier of:

- (1) The date a court order established under law requires payment to be made; or,
- (2) The last day of the month or other period the payment was intended to cover.

(w) “Payday” means the day upon which the income payer pays or otherwise credits the obligor.

(x) “Public assistance” means temporary financial assistance given to needy persons by a tribal or state government agency.

(z) “Public coverage” means health care benefits provided by any form of federal, state, or tribal medical assistance. Medical benefits provided by the federal Indian Health Service (IHS) are considered public coverage.

(aa) “Register” means to file a child support order or judgment determining parentage in the office of the court manager, clerk, or administrator.

(bb) “Registering tribunal” means a tribal or state tribunal in which a child support order is registered.

(cc) “Service member” means a member of the National Guard or a reserve unit of the United States armed forces and “active duty service” means an order to active duty under United State Code Title 10.

(dd) “Title IV-A” refers to Title IV-A of the Social Security Act, under which the federal government provides funds to tribes and states to provide temporary financial assistance to families using federal dollars.

(ee) “Title IV-D” refers to Title IV-D of the Social Security Act, under which the federal government provides funds to tribes and states to administer child support programs that provide services related to child support.

(ff) “Title IV-E” refers to Title IV-E of the Social Security Act, under which the federal government provides funds to tribes and states to assist with the costs of operating foster care programs.

(gg) “Title XIX” refers to Title XIX of the Social Security Act, under which the federal government provides funds to states to provide medical care assistance through a state-operated and administered program that provides medical benefits for certain indigent or low-income persons in need of health and medical care.

(hh) “Tribal Court” means the Tribal Court of the Sac and Fox Tribe of the Mississippi in Iowa, also known as Meskwaki Tribal Court.

(ii) “Tribe” means the Sac and Fox Tribe of the Mississippi in Iowa, also known as the Meskwaki Nation.

(jj) “Tribunal” means a tribal or state court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify child support orders or to determine parentage.

(kk) “Uninsured medical expenses” means a child’s reasonable and necessary health-related expenses if the child is not covered by a health plan or public coverage when the expenses are incurred.

(ll) “Unreimbursed medical expenses” means a child’s reasonable and necessary health-related expenses if a child is covered by a health plan or public coverage and the plan or coverage does not pay for the total costs of the expenses when the expenses are incurred. Unreimbursed medical expenses do not include the cost of premiums. Unreimbursed medical expenses include, but are not limited to, deductibles, co-payments, and expenses for orthodontia, and prescription eyeglasses and contact lenses, but not over-the-counter medications if coverage is under a health plan.

(mm) “MNCSS” means the Sac and Fox Tribe of the Mississippi in Iowa – Meskwaki Nation Child Support Services.

(nn) “Sac and Fox Tribe of the Mississippi in Iowa Child Support Enforcement Program” means the Tribal Child Support Agency, Meskwaki Nation Child Support Services, which provides child support services to children and families and is authorized to seek:

- (1) Location of Obligors or their assets and Obligees;
- (2) Determination of parentage;
- (3) Establishment or modification of child support; or
- (4) Enforcement of support orders or laws relating to the duty of support;
- (5) Receipt of and distribution and disbursement of court-ordered child support payments; and
- (6) Referral of families to alternative dispute resolution services.

**Sec. 6-2105. Jurisdiction.**

(a) The Sac and Fox Tribal Court shall have subject matter jurisdiction over any proceeding arising under this Article and actions arising under the customs and traditions of the Sac and Fox Tribe of the Mississippi in Iowa affecting the establishment, modification, and enforcement of child support. The Tribal Court shall apply the law and customs of this Tribe to set and enforce child support.

(b) In a proceeding to establish, enforce, or modify a support order, the Tribal Court may assert personal jurisdiction under this Article over:

- (1) All members or persons eligible for membership in the Sac and Fox Tribe of the Mississippi in Iowa;
- (2) Any person eligible for membership in any federal or state recognized tribe coming under the jurisdiction of the Sac and Fox Tribe of the Mississippi in Iowa; or,
- (3) Any person who is alleged to be a parent of a child, where the child or the person’s parenting partner is a member or eligible for membership in the Sac and Fox Tribe of the Mississippi in Iowa; or where the child or the person’s parenting partner is a member or eligible for membership in any federal or state recognized tribe coming under the jurisdiction of the Sac and Fox Tribe of the Mississippi in Iowa;
- (4) Any other person who resides or is domiciled on the Settlement, who also comes under the jurisdiction of the Sac and Fox Tribe of the Mississippi in Iowa or consents to or waives objection to personal jurisdiction of the Sac and Fox Tribe of the Mississippi in Iowa Court;
- (5) Any persons over whom the Tribal Court has ongoing or retained jurisdiction based upon a prior or existing child support order.

(c) The Tribal Court may exercise personal jurisdiction over a non-resident individual or

the individual's guardian or conservator if:

(1) The individual is personally served with a summons within the exterior boundaries of the Sac and Fox Tribe of the Mississippi in Iowa Settlement;

(2) The individual submits to the jurisdiction of the Tribe 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 within the exterior boundaries of the Sac and Fox Tribe of the Mississippi in Iowa Settlement;

(4) The individual resided within the exterior boundaries of the Sac and Fox Tribe of the Mississippi in Iowa Settlement and provided prenatal expenses or support for the child;

(5) The child resides within the exterior boundaries of the Sac and Fox Tribe of the Mississippi in Iowa Settlement as a result of the acts or directives of the individual;

(6) The individual engaged in sexual intercourse within the exterior boundaries of the Sac and Fox Tribe of the Mississippi in Iowa Settlement and the child may have been conceived by that act of intercourse; or,

(7) There is any other basis consistent with the Constitution or laws of the Tribe and the United States for the exercise of personal jurisdiction.

(d) The Tribal Court has the authority to punish for contempt, committed in or out of the Court's presence.

(e) Whenever state, federal, and other tribal courts have jurisdiction over any of the matters provided for in this Article, the Tribal Court shall have concurrent jurisdiction over the same matters, to the extent consistent with federal law.

(f) Unless expressly provided otherwise, nothing in this Title shall be construed as limiting, waiving or abrogating the jurisdiction of the Tribal Court of the Sac and Fox Tribe of the Mississippi in Iowa.

#### **Sec. 6-2106. Sovereign Immunity.**

Nothing in this Title shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Sac and Fox Tribe of the Mississippi in Iowa or any of its agencies, departments, enterprises, agents, officials or employees.

#### **Sec. 6-2107. Protection of Participants – Confidentiality of Case Records.**

The case records of the Tribal Court and the Meskwaki Nation Child Support Services concerning the actions taken under this Article must be kept confidential except as provided in this

Article. The Tribal Court and the Meskwaki Nation Child Support Services shall not release information on the whereabouts of one party or the child to another party against whom a protective order with respect to the former party or the child has been entered. The Tribal Court and the Meskwaki Nation Child Support Services shall not release information on the whereabouts of one party or the child to another person if the Tribe has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or child.

**Sec. 6-2108. Authorize Release of Case Records and Other Information.**

(a) The use or disclosure of personal information received or maintained by the Meskwaki Nation Child Support Services and the Sac and Fox Tribe of the Mississippi in Iowa Tribal Court shall be limited to purposes directly connected with the Sac and Fox Tribe of the Mississippi in Iowa Child Support Services Program and the Sac and Fox Tribe of the Mississippi in Iowa Tribal Court or Titles IV-A, XIX, and IV-E with the administration of other programs or purposes prescribed by the Secretary in regulations.

(b) Records, including case notes and correspondence, may be disclosed to the following persons and entities, unless otherwise protected by this Section:

- (1) MNCSS Staff;
- (2) Sac and Fox Tribe of the Mississippi in Iowa Tribal Court Judges;
- (3) Sac and Fox Tribe of the Mississippi in Iowa Tribal Court Clerks and Court Administrator for filing purposes;
- (4) Tribal Social Services agencies;
- (5) State of Iowa IV-D employees directly connected with the administration of Titles IV-D, IV-A, and XIX programs, as outlined in the cooperative agreements and any addendums between the Sac and Fox Tribe of the Mississippi in Iowa and the State of Iowa;
- (6) A court having jurisdiction in parentage, support or abandonment proceedings or actions;
- (7) The legal guardian, attorney, or agent of a child;
- (8) An attorney requesting discovery as permissible under the laws of the Sac and Fox Tribe of the Mississippi in Iowa; or,
- (9) An agency of the federal government or any other state or tribal child support enforcement IV-D program engaged in the establishment of paternity, a child support obligation, or the enforcement of support for a child in a case.

The MNCSS and Sac and Fox Tribe of the Mississippi in Iowa Tribal Court may limit the information disclosed to persons, agencies, and entities named in this Section to that information

necessary to accomplish the purposes for which it is requested or for which it is being disclosed. Nothing in this Section gives these entities or persons the right to review or copy the complete case record.

**Sec. 6-2109. Penalty for Unauthorized Disclosure.**

Any person, including but not limited to any Tribal employee, Tribal Court employees, and employees of the MNCSS, who willfully discloses otherwise confidential information related to an action to determine parentage or any confidential case information, other than expressly authorized and provided for under this Article, will be subject to any disciplinary actions authorized under the Tribal personnel policies and procedures. Actions brought under this Section may be initiated by the filing of a sworn statement with Tribal Human Resources department regarding the alleged unauthorized disclosure.

**Sec. 6-2110. Attorney or Legal Advocate Represents Tribe's Interest in the Enforcement of Child Support Obligations.**

In any action brought to establish paternity, secure repayment of governmental benefits paid, to secure current or future support of children, or establish, enforce, or modify a child support obligation, the MNCSS may employ or contract with an attorney or a tribally licensed legal advocate. An attorney or legal advocate so employed or contracted represents the interest of the Tribe in the enforcement of child support obligations. Nothing in this Section may be construed to modify confidentiality required of the MNCSS. Representation by the employed or contracted attorney or legal advocate may not be construed to create a client relationship between the attorney or legal advocate and any party or witness to the action, other than the Tribe, regardless of the name in which the action is brought.

**Sec. 6-2111. Notice.**

All parties to a proceeding under this Article shall receive written notice of the time and place of a proceeding and shall receive written notice of their right to be heard at such a proceeding. The Sac and Fox Tribe of the Mississippi in Iowa civil procedure laws are applicable to all child support cases unless a more specific procedure is provided in this Article.

**Sec. 6-2112. Access to Applications; Prohibition on Fee for Services.**

The Tribe will not charge a fee for child support services under this Act. The Tribe will promptly provide applications to any person or entity requesting an application and will accept applications from any person or entity.

**CHAPTER 2. ESTABLISHMENT OF PATERNITY**

**Sec. 6-2201. Paternity.**

In any matter before it where paternity has not previously been established under applicable law, the MNCSS will:

- (a) Attempt to establish paternity under the Process contained in Title 6, Article I,

Chapter 8, for purposes of that Chapter, the Meskwaki Nation Child Support Services shall have the same rights as a parent;

(b) Provide an alleged father with the opportunity to voluntarily acknowledge paternity through the use of a Voluntary Paternity Acknowledgment;

(c) In a contested paternity case, require the child and all other parties to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement by the party:

(1) Alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between parties; or,

(2) Denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

**Sec. 6-2202. Reason Not to Establish Paternity.**

Meskwaki Nation Child Support Services need not attempt to establish paternity in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending, if, in the opinion of the Meskwaki Nation Child Support Services, it would not be in the best interests of the child to establish paternity.

**Sec. 6-2203. Acknowledging Paternity by Affidavit.**

Both the mother and father may sign a paternity affidavit, which is a notarized written statement by the putative father and the biological mother acknowledging paternity. This is an uncontested process allowing a father to swear under oath that he is the biological parent of a minor child. Such statement acknowledging paternity shall have the same legal effect as an order of paternity entered in a court proceeding.

**Sec. 6-2204. Rescission of Paternity Affidavit.**

If either the mother or the father should change their mind about the acknowledgment of the paternity, each shall have 60 days from the date of signing the paternity affidavit to file a rescission of affidavit acknowledging paternity. After 60 days the affidavit acknowledging paternity shall be accepted by the Tribal Court. The rescission of a voluntary paternity acknowledgment is not the function of or service provided by MNCSS.

**Sec. 6-2205. DNA Testing to Determine Paternity.**

Meskwaki Nation Child Support Services may use genetic testing by an accredited genetic testing laboratory to determine paternity. The DNA test results shall use a twelve-(12) marker protocol with a medically acceptable genetics test having a 98% or greater degree of certainty to establish paternity, test results below the threshold will exclude an alleged father.

**Sec. 6-2206. Presumption of Paternity.**

A man is presumed to be the natural father of a child if:



(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage; or,

(b) He and the child's natural mother are or have been married to each other and the child is born within ten (10) months after the termination of the marriage by death, annulment, declaration of invalidity, divorce or dissolution, or after decree of separation is entered by a court.

### **CHAPTER 3. ESTABLISHMENT AND MODIFICATION OF CHILD SUPPORT**

#### **Sec. 6-2301. Duty to Support Children.**

Parents shall give their children support and education suitable to the child's circumstances. The Tribal Court may compel either or both of the parents to provide for the support of their children by establishing a child support order upon an application of the Tribal child support guidelines.

#### **Sec. 6-2302. Parental Support of Children with Disabilities.**

The Tribal Court may order either or both parents to provide for the support of a child eighteen (18) years of age or older for an indefinite period if the Court finds:

(a) The child requires substantial care because of a mental or physical disability and will not be capable of self-support; and

(b) The disability exists or the cause of the disability is known to exist on or before the eighteenth (18) birthday of the child.

#### **Sec. 6-2303. Termination of Parental Rights – Duty of Support.**

A termination of parental rights does not terminate the duty of either parent to support the child before the child's adoption unless that duty is specially terminated by order of the Court after notice of a proposed termination or relinquishment is given to the Sac and Fox Tribe of the Mississippi in Iowa Family Services in the manner appropriate for the service of process in a civil action under the laws of this Tribe. A termination of a child support obligation under this Section does not relieve a parent of the duty to pay any unpaid child support.

#### **Sec. 6-2304. Support by Tribe – Liability of Parent's Estate.**

If a parent chargeable with the support of a child dies leaving it chargeable upon the Tribe and leaving an estate sufficient for its support, the MNCSS, in the name of the Tribe, may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditor against that estate and against the heirs, devisees, and next of kin of the parent.

#### **Sec. 6-2305. Duration of Child Support Obligations.**

Unless dates for the commencement or termination of a child support obligation are specified by the Tribal Court's order, a judgment or order requiring the payment of child support is effective as

to the child in the month in which the order is signed and continues until the end of the month in which the support obligation terminates.

**Sec. 6-2306. Child Support Guidelines**

(a) Guidelines used by Meskwaki Nation Child Support Services and the Sac Fox Tribe of the Mississippi in Iowa Tribal Court are based on a shared income model which utilizes the income of both the Custodial Parent and the Non-Custodial Parent to calculate child support obligations.

(b) For parents whose job skills, education, opportunity, physical or mental capabilities are limited, the Tribal Court may impose a minimum child support amount of \$50.00. Any deviations from this minimum amount will be reflected in the Court Order with reason for the deviation.

**Sec. 6-2307. Rebuttable Presumption.**

There will be a rebuttable presumption in any proceeding for the award of child support that would result from the application of the guidelines established is the correct amount of child support to be awarded.

**Sec. 6-2308. Income of Relative Placements.**

The income of Relative Placements, not the mother or father, shall not be used to calculate child support.

**Sec. 6-2309. Deviation from Child Support Guidelines.**

The Sac and Fox Tribe of the Mississippi in Iowa Tribal Court Judge may deviate from the recommended guideline amount based on relevant Tribal Code provisions. If there is a finding that another amount is more appropriate by the Tribal Court Judge, the Judge must cite the reason for deviation from the recommended guideline amount in the court order.

**Sec. 6-2310. Non-Cash Payment.**

A form of non-cash payment may be allowed at the discretion of the Tribal Court and the consensus of both the Custodial Parent and the Non-Custodial Parent. The value of the non-cash payment will be no less than 25% and no more than 40% of the total monthly child support obligations. If the parties have agreed to a proposed non-cash support obligation, the in-kind amount will be reflected in the Court Order.

**Sec. 6-2311. Review of a Court Order.**

Either party to an order may request a review of their child support order by MNCSS. An existing child support order may be reviewed only once in a six (6) month period from the date of the last review or modification unless there is new or additional evidence to support a substantial change in circumstances. A "substantial change" is defined as a minimum of \$75.00 or a 20% variance increase or decrease in the total monthly gross income, whichever is greater.

**Sec. 6-2312. Modification of a Court Order.**

A court order from another jurisdiction/court may be modified only upon a request for Registration of a Foreign Order for Modification received from another state or tribal child support agency. If the other state or tribal child support agency does not request Registration of a Foreign Order for Modification, then Meskwaki Nation Child Support Services does not have the authority to review and modify the other court's order.

**Sec. 6-2313. Periodic Review of Child Support Guidelines.**

The Meskwaki Nation Child Support Services Guidelines will be reviewed and revised, if appropriate, once every four years. The Child Support Guidelines review will be conducted by the Director of Meskwaki Nation Child Support Services, Legal Counsel for MNCSS, and the Chief Judge of Tribal Court.

**Sec. 6-2314. Tribal Per Capita.**

Tribal "Per Capita" distribution is to be considered as income only when received by the Custodial Parent or Non-Custodial Parent. Should a parent be incarcerated for any length of time, the parent will not be able to stop or delay payment of per capita, and income withholding will continue for child support.

The maximum amount of any one Per Capita payment subject to garnishment under Section 6-2314 is fifty (50) percent of the gross amount of the Per Capita payment, unless the Tribal Member has chosen to deny receiving the Per Capita Payment. The maximum amount of any one Per Capita Payment subject to garnishment under Section 6-2314 is one hundred (100) percent of the gross amount if the Tribal Member payee has chosen to deny receiving the Per Capita amount.

**Garnishments.** Per capita payments are considered benefits offered by the Tribe, to the membership. All per capita payments, including tribal trust accounts, are subject to garnishment prior to distribution in accordance with this section.

(a) Per Capita garnishments may be ordered by the Tribe's judicial system for the following purposes, and in the following order:

(1) Child Support current payments and arrears ordered by a court of competent jurisdiction;

(i) If a Tribal member owes child support or arrears in more than one child support order, the per capita shall be equally divided based on the number of court orders under which child support or arrears are owed.

(2) Debt owed to a Tribal entity;

(i) Debt owed to a Tribal entity includes any money owed to a Tribal entity and any fines that have been issued by a Tribal entity;

(ii) After child support current payments and arrears are fully satisfied, any remaining per capita shall be used for the payment of debt owed to a Tribal entity.

(iii) If a Tribal member owes debt to more than one (1) Tribal entity, the per capita shall be equally divided based on the number of entities that are owed debt.

**Sec. 6-2315. Medical Support.**

(a) Obligor to name beneficiary.

(1) Unless the parent who has not been ordered to pay support (obligee) has comparable or better group dependent health insurance coverage available at a more reasonable cost, the Court shall order the person paying support (obligor) to name the minor child as beneficiary on any health and dental insurance plan that is available to the obligor on a group basis or through an employer or union.

(2) If the Tribal Court finds that dependent health or dental insurance is not available to the obligor on a group basis or through an employer or union, or that the group insurer is not accessible to the obligee, the Court may require the obligor to obtain dependent health or dental insurance, or to be liable for reasonable and necessary medical or dental expenses of the child, or to pay no less than \$50.00 per month to be applied to the medical and dental expenses of the children or to the cost of health insurance dependent coverage.

If the Tribal Court finds that the dependent health or dental insurance required to be obtained by the obligor does not pay all the reasonable and necessary medical or dental expenses, the Court shall require the obligor to be liable for all or a portion of the medical or dental expenses of the child not covered by the required health or dental plan.

(3) The Court shall require the obligor to provide dependent health and dental insurance for the benefit of the child if it is available at no additional cost to the obligor and in this case the provisions of this subsection apply.

(4) A copy of the Court order for insurance coverage shall be forwarded to the obligor's employer or union by the obligee or Meskwaki Nation Child Support Services, the public authority responsible for support enforcement, only when ordered by the Court or when the following conditions are met:

(i) The obligor fails to provide written proof to the obligee or Meskwaki Nation Child Support Services, within 30 days of receiving effective notice of the Court order, that the insurance has been obtained or that application for insurability has been made;

(ii) The obligee or Meskwaki Nation Child Support Services serves written notice of its intent to enforce medical support on the obligor by mail at the obligor's last known post office address; and

(iii) The obligor fails within 15 days after the mailing of the notice to provide

written proof to the obligee or Meskwaki Nation Child Support Services that the insurance coverage existed as of the date of the mailing.

(iv) The employer or union, if based on the Settlement or whose business is substantially carried out on the Settlement, shall forward a copy of the order to the health and dental insurance plan offered by the employer.

(5) If the employer is the Sac & Fox of the Mississippi in Iowa, a Tribally owned business, a Tribally chartered corporation or a business located on the Settlement or a business whose activities are substantially carried out on the Settlement, the order is binding on the employer or union when service under subsection (a)(4) has been made. For all other business or unions, the Tribal Court will attempt to obtain voluntary compliance with its orders. Upon receipt of the order, or upon application of the obligor pursuant to the order, the employer or union shall enroll the minor child as a beneficiary in the group insurance plan and withhold any required premium from the obligor's income or wages. If more than one plan is offered by the employer or union, the child shall be enrolled in the insurance plan in which the obligor is enrolled or the least costly plan otherwise available to the obligor. Failure of the obligor to execute any documents necessary to enroll the dependent in the group health and dental insurance plan will not affect the obligation of the qualified employer or union and group health insurance plan to enroll the dependent in a plan for which other eligibility requirements are met. Information and authorization provided by the public authority responsible for the child support enforcement, or by the custodial parent or guardian, is valid for the purposes of meeting enrollment requirements of the health plan. The insurance coverage for a child under Section 6-1505(e) shall not be terminated except as authorized in Section 6-1505(e).

(6) A minor child that an obligor is required to cover as a beneficiary pursuant to this section is eligible for insurance coverage as a dependent of the obligor until the child is emancipated or until further order of the Tribal Court.

(7) The signature of the custodial parent of the insured dependent is a valid authorization to the insurer for purposes of processing an insurance reimbursement payment to the provider of the medical services. When an order for dependent insurance coverage is in effect and the obligor's employment with the Tribe, Tribally owned or chartered business, or a business located or whose activities are substantially carried out on the Settlement is terminated, or the insurance coverage is terminated, the insurer shall notify the obligee within 10 days of the termination date with notice of conversion privileges. All other employers shall be provided notice by this title and requested to voluntarily comply with such notice.

(8) When an order for dependent insurance coverage is in effect, the obligor's employer or union shall release to the obligee or MNCSS, upon request, information on the dependent coverage, including the name of the insurer. The employer or union shall release a quarterly report of the wages paid to the employee, including the employee's name, social security number, the total wages paid to the employee, and the number of weeks in which work was performed to the MNCSS. Or the purposes of this subsection, "wages paid" includes wages actually or constructively paid and wages overdue and delayed beyond the usual time of payment.

(9) The obligor that fails to maintain the medical or dental insurance for the benefit of the children as ordered shall be liable to the obligee for any medical or dental expenses incurred from the

date of the Tribal Court Order. Proof of failure to maintain insurance constitutes a showing of increased need by the obligee and provides a basis for a modification of the obligor's child support order.

(10) MNCSS shall take necessary steps to implement and enforce an order for dependent health or dental insurance whenever the children receive public assistance, or upon application of the obligee to MNCSS and payment by the obligee of any fees required by this Code.

(11) Remedies available for the collection and enforcement of child support, whether provided by the Community or through cooperative agreement with other public agencies, may also apply to medical support. For the purpose of enforcement, the costs of individual or group health or hospitalization coverage or liabilities pursuant to subsection (a) are additional child support.

(12) The provisions regarding medical support may be modified or waived by the Court at its discretion if the parties demonstrate to the Court's satisfaction that the minor children are currently eligible for comparable medical services through the Indian Health Service of the federal government.

#### **Sec. 6-2316. Non Compliance.**

If an individual does not comply with Meskwaki Nation Child Support Services and does not provide a financial affidavit, the Agency will impute income at the local wage rate for current/past employment area of the Custodial Parent or the Non-Custodial Parent.

### **CHAPTER 4. LOCATION OF MISSING OBLIGOR, ASSETS AND OBLIGEE**

#### **Sec. 6-2401. Location.**

MNCSS must attempt to locate Obligors, Obligees, or sources of income and/or assets when location is required to take necessary action in a child support case.

(a) Location of an obligor is deemed necessary whenever MNCSS has no verified address or employer for obligor, or whenever requested by another state or tribal child support agency. Location of an obligee is deemed necessary when forms mailed to the last known address of the obligee are repeatedly returned "undeliverable" with no forwarding address or when child support collections disbursed to the obligee are returned "undeliverable" from the last known address, or whenever requested by another state or tribal child support agency. Location of an obligor's source(s) of income may be necessary for the establishment of a child support obligation or when enforcement of a child support obligation is required.

(b) All sources of locate available to the MNCSS shall be used to perform locate actions.

### **CHAPTER 5. PAYMENTS, COLLECTIONS, DISTRIBUTION, AND ARREARS**

#### **Sec. 6-2501. Mandatory Payment of Child Support Obligations.**

(a) In any action in which the Tribal Court orders that payments for child support be made, including, but not limited to, a child support order establishing an order for past support or

reimbursement of public assistance, the Tribal Court shall provide in its order that an MNCSS application for services be entered and the payments be paid to the MNCSS for remittance to the obligee.

- (b) Each party subject to the order shall immediately inform the MNCSS of the party's:
- (1) Social Security Number;
  - (2) Date of birth;
  - (3) Residential and mailing addresses and any change of address;
  - (4) Telephone number(s), and alternate telephone number(s);
  - (5) Motor vehicle operator's license number;
  - (6) Employer's name, address, and telephone number; and,
  - (7) Change of any other condition which may affect the proper administration of this Article.

(c) Each order for payment of child support must notify each party of the requirements of this Section and require the party to provide the information within ten business days from the date of the order or ten business days after any change in the information.

(d) The requirements of this Section continue in effect until all child support obligations have been satisfied with respect to each child subject to the order.

(e) The obligor or other income payer shall identify the obligor on the check or remittance by legal name, MNCSS Case Number, and shall comply with the income withholding laws of this article.

(f) A copy of the record of payments maintained by the MNCSS is admissible evidence in court as proof of payments made through the MNCSS without the need of testimony to prove authenticity. If support payments have not been disbursed to an obligee because the obligee is not located, MNCSS shall continue locate efforts following established MNCSS policy and procedures for locate activities.

**Sec. 6-2502. Collections and Distribution – General Rule, Current Receipt of Tribal TANF, Former Receipt of Tribal TANF.**

(a) General Rule. Upon receipt of child support payments as provided for in Sec. 6-2501, MNCSS must, in a timely manner:

- (1) Apply collections first to satisfy current support obligations; and,
  - (2) Pay all child support collections to the family unless the family is currently receiving or formerly received assistance and there is an assignment of child support and MNCSS has received a request for assistance in collecting support on behalf of the family from another tribal or state child support enforcement IV-D agency.
- (b) EXCEPTION. When the collections stem from a federal income tax refund offset,

they must be applied to satisfy child support arrearages.

(c) The MNCSS may contact a state IV-D agency to initiate a federal income tax refund offset only where there is a specific memorandum of understanding or cooperative agreement in place between the Tribe and the state regarding federal income tax refund offsets or as permitted by federal regulations.

(d) Current Receipt of Tribal TANF. If the family is currently receiving assistance and there is a request for assistance in collecting child support on behalf of the family from a tribal or State IV-D agency, collected money must be sent to the other Tribal or State IV-D agency for distribution unless the MNCSS exercises the option to contact the requesting Tribal or State IV-D agency to determine appropriate distribution, and distributes the collections as directed by the requesting agency.

(e) If there is no request for assistance in collecting support from a Tribal or State IV-D agency, MNCSS shall pay current child support collections and arrearages owed to the family to the family.

(f) If there is a request for assistance in collecting support from a Tribal or State IV-D agency, the MNCSS shall send all support collected to the requesting Tribal or State IV-D agency for distribution *unless* MNCSS exercise the option to contact the requesting Tribal or State IV-D agency to determine appropriate distribution, and distributes the collections as directed by the requesting agency.

**Sec. 6-2503. Overpayments.**

If child support or maintenance is not assigned and an obligor has overpaid a child support or maintenance obligation because of a modification or error in the amount owed, MNCSS shall:

(a) Apply the amount of the overpayment to reduce the amount of any child support arrearages owed to the obligee; and,

(b) If an overpayment exists after the reduction of any arrearage, reduce the amount of the child support remitted to the obligee by an amount no great than 20% of the current monthly child support obligation and remit this amount to the obligor until the overpayment is reduced to zero.

**Sec. 6-2504. Agreements to Waive Child Support.**

An agreement purporting to waive any current, future, or past due child support is void and may not be enforced unless the child support obligee and any assignee of the obligee have consented to the agreement in writing and the agreement has been approved by the Tribal Court. A copy of the order of approval must be provided to MNCSS. The Custodial Parent may agree to waive past due child support owed to the Custodial Parent, but may not agree to waive past due child support owed for any state or tribal TANF.

**Sec. 6-2505. Payment Histories.**



MNCSS will provide any annual Payment History statement to the Custodial Parent and to the Non-Custodial Parent by January 15 of each year. MNCSS will also provide a Payment History statement upon request of either the Custodial Parent or the Non-Custodial Parent and will provide a Payment History at the same time to the non-requesting parent, mailed to the last known address of record.

## **CHAPTER 6. CIVIL REMEDIES FOR ENFORCEMENT OF CHILD SUPPORT**

### **Sec. 6-2601. Income Withholding Order.**

When a judgment or order requires the payment of child support or arrears, it may be enforced by an income withholding order, as provided in this Article, in addition to any other remedies provided by tribal law.

### **Sec. 6-2602. Immediate Income Withholding.**

(a) Except as provided in subsection (b) of this Section, each judgment or order which requires the payment of child support subjects the income of the obligor to automatic income withholding, regardless of whether the obligor's support payments are delinquent.

(b) If a party to a proceeding, who would otherwise be subject to immediate income withholding under subsection (a) of this Section, demonstrates, and the Tribal Court finds that there is good cause not to require immediate withholding, or if the parties, including any assignee of support rights, reach a written agreement that provides for an alternative arrangement for assuring the regular payment of child support, the Tribal Court need not subject the income of the obligor to immediate withholding and shall enter a written finding to this effect.

(c) Notwithstanding Sec. 6-2604, any failure to comply with an agreement under this subsection subjects the income of the obligor to income withholding under this Section.

(d) A finding that there is good cause not to require immediate income withholding under subsection (b) of this Section must be based on at least:

(1) A written determination that, and an explanation of why, implementing immediate income withholding would not be in the best interests of the child;

(2) Proof of timely payment of previously ordered support, if any; and

(3) A requirement that the obligor keep MNCSS informed of any employment-related health insurance to which the obligor has access.

(e) A written agreement for an alternative arrangement for assuring the regular payment of child support is effective only if the agreement at least, in addition to other conditions the parties agree to:

(1) Provides that the obligor shall keep MNCSS informed of any employment-related health insurance to which the obligor has access; and

(2) Describes the provision by which regular payment of child support is assured; and is reviewed and approved by the Tribal Court and entered into the Court's records.

**Sec. 6-2603. Subsequent Income Withholding Order – Provision of Notice of Impact of Income Withholding Law to Obligor.**

Each judgment or order issued by the Tribal Court which includes an order for support of minor children, but which does not require immediate income withholding, must include a statement that a delinquency in payment of the support due will result in an income withholding order being issued in accordance with this Article.

**Sec. 6-2604. Procedure – Notice to Obligor.**

If immediate income withholding under Sec. 6-2602 has not been implemented and an obligor is delinquent, or if the Tribal Court changes its finding that there is no longer good cause not to require immediate income withholding, MNCSS shall serve the notice required under this Section upon the obligor whenever issuing an income withholding order. The notice must state:

(a) That the obligor is delinquent in the payment of child support, or that there is no longer good cause not to require immediate income withholding, as the case may be, and the obligor is therefore subject to an income withholding order on all income;

(b) The amount of child support owed and the amount of arrearage, if any;

(c) The total amount of money that will be withheld by the income payer from the obligor's income in each month as determined under the Child Support Guidelines;

(d) That the income payer may withhold an additional sum of up to three dollars per month to cover the income payer's expenses involved in transmitting payment;

(e) That the income withholding order has been issued without further order of the Tribal Court;

(f) That the obligor may contest the issuance of the income withholding order by filing a written request for hearing within ten (10) business days of the date of the notice made under this Section;

(g) That if the obligor contests the income withholding order pursuant to Sec. 6-2604, a hearing will be held and the Court will determine and issue an order consistent with the requirements of Sec. 6-2605; and,

(h) That the income withholding order applies to any current or subsequent income payer or period of employment.

**Sec. 6-2605. Hearing Upon Obligor's Request.**

(a) If the obligor files a request for a hearing within ten (10) business days of the date of

the notice made pursuant to Sec. 6-2604, the Tribal Court shall hold a hearing within ten (10) business days after the date the request is filed;

(b) The Tribal Court may order that the income withholding order be withdrawn if at the hearing the obligor establishes:

(1) In a case where withholding would be based on an alleged delinquency, that there has been a mistake in the identity of the obligor; or,

(2) An error in the amount of current or overdue support; or,

(3) In a case where an approved request for withholding has been made by the obligee, that the approval of the request constituted an abuse of discretion.

(c) If at the hearing the obligor establishes that there is an overstatement in the amount of support stated to be owed by the obligor, the Tribal Court may amend the amount to be withheld.

(d) In the absence of a finding of a mistake of fact in a case where withholding would be based on an alleged delinquency, the Tribal Court shall confirm the income withholding order. Payment of past-due support after issuance of notice under Sec. 6-2605 may not be the basis for an order that the income withholding order be withdrawn.

(e) An obligor is not precluded, by subsection (a), from seeking appropriate relief from a judgment or order affecting a child support obligation nor is the Tribal Court precluded from granting such relief. An obligor's request for such relief, either made by motion under the Rules of Civil Procedure of the Tribal Court or otherwise, may not be considered during the hearing described in subsection (a) of this Section.

#### **Sec. 6-2606. Mandatory Federal Income Withholding Form – Effect of Income Withholding Order.**

An income withholding order must be issued in the name of the Sac and Fox Tribe of the Mississippi in Iowa using the standard federal income withholding form for notice of the order prescribed by the Secretary of the United States Department of Health and Human Services under authority of 42 U.S.C. §666(b)(6)(A)(ii), contain only the information necessary for the income payer to comply with the income withholding order, and be directed to all current and subsequent income payers of the obligor. The income withholding order is binding on the income payer until further notice by MNCSS and applies to all current and subsequent periods in which income is owed the obligor by the income payer. The income withholding order has priority over any other legal process against the same income.

#### **Sec. 6-2607. Voluntary Income Withholding for Child Support – Limitations.**

An obligor may execute a document voluntarily authorizing income withholding from current or future income due to the obligor from an income payer in an amount sufficient to meet any child support obligation imposed by the Tribal Court or otherwise. An income withholding authorization made under this Section is binding on the income payer one week (7 business days) after service

upon the income payer by first-class mail, or in any other manner agreed to by the income payer, of a certified copy of the executed income withholding authorization. The income payer shall deduct the sum or sums specified and pay them as specified by the income withholding authorization and any applicable imposition of a support obligation by a court. In addition, the income payer may deduct a fee of up to three (\$3.00) dollars per month from the obligor's income to cover expenses involved in transmitting payment. Compliance by an income payer with an income withholding authorization issued under this Section discharges the income payer's liability to the obligor for that portion of the obligor's income. The income payer may not use the income withholding authorization as a basis for any disciplinary action against the obligor.

**Sec. 6-2608. Service of Income Withholding Order on Income Payer.**

(a) MNCSS shall serve the income withholding order on the income payer by first-class mail or in any other manner agreed to by the income payer, and upon the obligor by first-class mail to the obligor's last known address of record.

(b) If the obligor is subject to immediate income withholding under Sec. 6-2602, an income withholding order must be served on any known income payer with two (2) business days of the date of receipt of information necessary to carry out income withholding. Subject to the provision of Sec. 6-2610, if service of an income withholding order has been or may have been properly made under this Section, an income withholding order must be served on any subsequently identified income payers within two (2) business days of the date of receipt of information necessary to carry out income withholding.

(c) An income withholding order may also be issued and served at the request of the obligor.

(d) The income payer shall withhold a stated child support obligation as determined under the Tribal Court Child Support Guidelines from the obligor's income at the time the obligor is paid for transmittal to MNCSS within seven (7) business days of the date the obligor is paid, together with a report of the date upon which the amount was withheld from the obligor's income.

(e) If an income payer is ordered to withhold amounts to satisfy an obligor's previous past due support, the income payer may also withhold an additional amount equal to 20% of the monthly child support obligation until the arrearage is paid. The income payer may also retain an additional sum of three (\$3.00) dollars per month from the obligor's income to cover expenses involved in transmitting payment.

(f) The amount to be withheld, including amounts to cover expenses involved in transmitting payment, may not exceed fifty (50%) percent of the obligor's disposable income from this income payer as provided under the Consumer Credit Protection Act 15 U.S.C. §1673(b), but a payment of an amount less than the ordered amount must be accompanied by a written calculation disclosing any of the obligor's income and disposable income which is payable by the income payer.

(g) The income payer shall begin withholding no later than the first payday that occurs after service of the income withholding order.

(h) If the income payer is served with more than one income withholding order issued under this Article on a single obligor and the combined total amount to be paid under the income withholding orders exceeds fifty (50%) percent of the obligor's disposable income, the income payer shall withhold the maximum amount permitted under the Consumer Credit Protection Act 15 U.S.C. §1673(b) and transmit to MNCSS that portion thereof which the obligee's claim bears to the combined total of all claims.

(i) The income payer shall notify MNCSS in writing of the termination of a duty to pay income to the obligor within seven (7) business days of the termination. The notification must include the name and address of the obligor's subsequent income payer, if known.

(j) If the income payer is subject to income withholding orders for more than one obligor, the income payer may combine in a single payment the amounts for all obligors who have been orders to pay MNCSS with identification of the amount attributed to each obligor.

**Sec. 6-2609. Income Withholding – Duties and Liabilities of Income Payer Under Income Withholding Order.**

(a) Any income payer failing to comply with this Section or Sec. 6-2608 may be punished for contempt of court. The Tribal Court shall first afford such income payer a reasonable opportunity to purge itself of such contempt.

(b) Any income payer who fails or refuses to deliver income pursuant to an income withholding order, when such income payer has had in its possession such income, is personally liable for the amount of such income which the income payer failed or refused to deliver, together with costs, interest, and reasonable attorney's fees. If an income payer fails or refuses to deliver income for more than fourteen (14) business days after the date an obligor is paid, the Tribal Court shall award damages in an amount equal to five hundred (\$500.00) dollars or actual damages caused by the violation, whichever is greater. If an income payer has failed to deliver income for more than one obligor, any damages collected under this Section must be divided equally among all affected obligors.

(c) Any employer who refuses to employ, dismisses, demotes, disciplines, or in any way penalizes an obligor on account of any proceeding to collect child support, on account of any order or orders entered by the Tribal Court in such proceeding, on account of the employer's compliance with such order or orders, or on account of an income withholding order, is liable to the obligor for all damages, together with costs, interest thereon, and reasonable attorney's fees resulting from the employer's action. The employer may be required to make full restitution to the aggrieved obligor, including reinstatements and back pay.

(d) An income payer may be enjoined by the Tribal Court from continuing any action in violation of Sec. 6-2607.

(e) Any contempt proceeding against an income payer under this Section must be commenced within one year after the income payer's act or failure to act upon which said proceeding is based.

(f) Compliance by an income payer with an income withholding order operates as a discharge of the income payer's liability to the obligor as to that portion of the obligor's income so affected.

(g) Upon receipt of an order for support entered in another tribe or state and the registration of the foreign order with the Tribal Court, the MNCSS shall initiate income withholding.

(1) An income payer within the exterior boundaries of the Sac and Fox Tribe of the Mississippi in Iowa Settlement shall withhold income based on foreign court orders for withholding that have been registered in the Sac and Fox Tribe of the Mississippi in Iowa Tribal Court.

(3) An employer receiving an income withholding notice from another tribe or state that has been registered in the Sac and Fox Tribe of the Mississippi in Iowa Tribal Court shall withhold and distribute the funds as directed in the withholding notice and shall apply the law of the obligor's principal place of employment when determining:

- i. The employer's fee for processing an income withholding notice shall be no more than \$3.00 per month for an administrative fee.
- ii. The maximum amount permitted to be withheld from the obligor's income; and
- iii. Deadlines for implementing and forwarding the child support payment.

(3) An obligor may contest withholding under this subsections as provided for in this Section.

(4) An employer receiving an income withholding order or notice from another tribe or state that has not been registered in the Sac and Fox Tribe of the Mississippi in Iowa Tribal Court must forward the order and notice to the MNCSS for registration in Tribal Court before withholding and distributing the funds under the order.

(h) An income payer who has been served with an income withholding order issued under Sec. 6-2606 for an obligor which includes an amount for past-due support shall notify MNCSS before making any lump sum payment of one thousand (\$1,000.00) dollars or more to the obligor. "Lump sum payment" includes pay in lieu of vacation or other leave, bonus, commission, and any other payment to an obligor but does not include periodic payments made on regular paydays as compensation for services and does not include reimbursement for expenses incurred by the obligor on behalf of the income payer.

(1) An income payer who provides notice of a lump sum payment to MNCSS under this subsection may not make more than one-half of the payment to the obligor for thirty (30) days from the date of the notice to MNCSS or until the income payer receives written authorization from the MNCSS to make the lump sum payment to the obligor,

whichever occurs first.

(2) Notwithstanding paragraph (1) of this subsection, an income payer who provides notice of a lump sum payment to MNCSS under this subsection may not make a lump sum payment to an obligor if the income payer has been notified that an execution, garnishment, attachment, or other process has been initiated regarding the lump sum payment to satisfy a child support obligation of the obligor.

(3) An income payer who owes a lump sum payment under this subsection is subject to the duties and liabilities in this Section unless the context indicates otherwise.

(4) This subsection does not apply to any portion of a lump sum payment that must be paid to satisfy an income withholding order issued under Sec. 6-2605.

(i) An income payer who complies with an income withholding order that is regular on its face is not subject to civil liability to any individual or agency for conduct in compliance with the order.

(j) An income payer who fails to deliver income for more than seven (7) business days after the date one or more obligors are paid may be charged a late fee equal to twenty-five (25) dollars per obligor for each additional business day the payment is delinquent, whichever is greater. A late fee charged under this subsection is payable fifteen (15) days after service on the employer, by first-class mail, of notice of the imposition of the late fee. Failure to pay a late fee under this subsection may be punished as a contempt of court. Any late fee collected by MNCSS under this subsection must be paid to the MNCSS for distribution under Sec. 6-2502 and any remaining balance must be paid to the obligor. If an income payer has failed to deliver income for more than one obligor, any late fees collected under this Section must be divided equally among all affected obligors.

#### **Sec. 6-2610. Requests for Information from Income Payer.**

(a) MNCSS may send a written request for information to the income payer in any matter in which it secures reliable information that the income payer may be indebted to an obligor. The request must identify the obligor by name, and, if known, address and social security number.

(b) Within ten (10) business days after receipt of a request for information issued under subsection (a) of this Section, an income payer shall provide the requester with a written statement informing the requester whether or not the income payer is, or within the one hundred eighty (180) days immediately preceding receipt of the request has been, an income payer with respect to that obligor. If the income payer is, or within the previous one hundred eighty (180) days has been, an income payer with respect to that obligor, the income payer shall furnish information to the requester, including:

(1) The amount of any income currently paid to the obligor, calculated on a monthly basis;

(2) The total amount of income paid to the obligor in the twelve (12) months

preceding the month in which the request is received;

(3) Information regarding any health insurance that may be made available to the obligor's children through the income payer;

(4) The social security number under which payment of any income by the income payer to the obligor is reported;

(5) The obligor's address; and

(6) If the income payer is no longer an income payer with respect to that obligor, the date of last payment and any forwarding address.

(c) Any income payer failing to comply with any requirements of this Section may be punished for contempt of court. The Tribal Court shall first afford such income payer a reasonable opportunity to purge itself of contempt.

(d) A proceeding against an income payer under this Section may be commenced upon motion by the MNCSS and must be commenced within ninety (90) days after the income payer's act or failure to act upon which such proceeding is based.

**Sec. 6-2611. Amendment – Termination of Income Withholding Order.**

Upon amendment or termination of an income withholding order, MNCSS shall send appropriate notice to the income payer. An income withholding order is to be amended by MNCSS when the total amount of money to be withheld is changed by elimination of arrearages or by court-ordered change in amount of child support. An income withholding order is to be terminated when the duty to support ceases and all child support arrearages have been paid. When two or more income payers have been subjected to income withholding orders with respect to a child support obligation, MNCSS shall suspend the income withholding order directed to one or more income payers, provided that the amount of child support withheld by the remaining income payer or payers equals the child support obligation determined under the Tribal Child Support Guidelines as located in the appendix of the Meskwaki Nation Child Support Services Policy and Procedure Manual. MNCSS shall immediately reinstate any suspended income withholding order should any child support obligation of the obligor thereafter become delinquent. MNCSS shall provide a copy of the reinstated income withholding order, by first-class mail, to the obligor and the income payer. Should any income have been improperly withheld after the termination of the income withholding order, the improperly withheld amount shall be reimbursed to the obligor.

**Sec. 6-2612. Interstate Income Withholding – Initiation by the Sac and Fox Tribe of the Mississippi in Iowa to Another Jurisdiction.**

On application of any applicant for IV-D services from MNCSS, an obligee or an obligor of a support order issued by this Tribe, or a public assistance agency to which an obligee has assigned support rights, MNCSS shall request the child support enforcement agency of another tribe or state in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding against such income. MNCSS shall make that request within twenty (20)



calendar days of the later of the date income withholding is determined appropriate or the date of receipt of any information necessary to carry out withholding. MNCSS shall compile and transmit to the child support agency of the other tribe or state all documentation required to enter an order for this purpose. MNCSS shall also transmit to the child support agency of the other tribe or state certified copies of any subsequent modifications of the support order. If the MNCSS receives notice that the obligor is contesting the income withholding in another tribe or state, it shall immediately notify the individual obligee of the date, time, and place of the hearings and of the obligee's right to attend.

**Sec. 6-2613. Child Support Exempt from Process.**

A child support obligation owed to an obligee who is a judgment debtor may not be subject to execution, garnishment, attachment, or other process except to satisfy that child support obligation.

**Sec. 6-2614. Judicial Seek Employment Orders.**

(a) COURT ORDER. For any support order being enforced by MNCSS, MNCSS may seek a court order requiring the obligor to seek employment if:

- (1) Employment of the obligor cannot be verified;
- (2) The obligor is in arrears in court-ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments; and,
- (3) The obligor is not in compliance with a written payment plan.

Upon proper notice being given to the obligor, the Tribal Court may enter a seek employment order if it finds that the obligor has not provided proof of gainful employment and has not consented to an order for income withholding under this Article or entered into a written payment plan approved by the Court or the MNCSS.

(b) CONTENTS OF ORDER. The order to seek employment shall:

- (1) Order that the obligor seek employment within a determinate amount of time;
- (2) Order that the obligor file with the MNCSS on a weekly basis a report of at least five new attempts to find employment or of having found employment, which report must include the names, addresses, and telephone numbers of any employers or businesses with whom the obligor attempted to seek employment and the name of the individual contact to whom the obligor made application for employment or to whom an inquiry was directed;
- (3) Notify the obligor that failure to comply with the order is evidence of a willful failure to pay support under this Article;
- (4) Order that the obligor provide the MNCSS with verification of any reason for noncompliance with the order; and,

- (5) Specify the duration of the order, not to exceed three (3) months.

**Sec. 6-2615. Driver's License and Occupational License Suspension, Motor Vehicle Lien.**

(a) If MNCSS determines that the obligor is in arrears in court-ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly child support payments and not in compliance with a written approved payment agreement pursuant to this Article, MNCSS is authorized to request assistance from another tribal or state child support enforcement IV-D agency in the pursuit of the suspension of the obligor's driver's license or occupational license. MNCSS is also authorized to request assistance from another tribal or state IV-D agency to seek a motor vehicle lien against the obligor.

**Sec. 6-2616. Contempt Proceedings for Nonpayment of Child Support.**

(a) If a person against whom an order or decree for support has been entered under this Article, or a comparable law from another jurisdiction, is in arrears in court-ordered child support payments in an amount equal to or greater than the obligor's total monthly child support payments and is not in compliance with a written payment plan approved by the Tribal Court or the MNCSS, the person may be cited and punished by the Tribal Court for contempt pursuant to this Section, this Article, and other applicable tribal law.

(b) Any person found in contempt of court may be subject to a sanction or civil fine not to exceed five hundred (\$500.00) dollars and sentenced to serve no more than six (6) months in jail. A person may be subject to additional sanctions, fines, or jail time for subsequent violations of court orders. A person found in contempt of court for nonpayment of child support may make bond set by the Tribal Court. The Tribal Court shall apportion the bond between the child support arrears and the court fine.

(c) If the Tribal Court cites a person for contempt under this Section, the Court may order the performance of the community service work up to thirty-two (32) hours per week for six weeks for each finding of contempt if the obligor:

- (1) Is able to work full time;
- (2) Works an average of less than 32 hours per week; and,
- (3) Has actual weekly gross income averaging less than 40 times the federal minimum hourly wage under 29 U.S.C. §206(a)(1), or is voluntarily earning less than the obligor has the ability to earn, as determined by the Tribal Court.

(d) An obligor is presumed to be able to work full time; a minimum of 30-32 hours per week. The obligor has the burden of proving inability to work full time.

(e) A person ordered to do community service work under this Section may, during the six-week period, apply to the Tribal Court or MNCSS to be released from the community service work requirement if the person:

- (1) Provides proof to the Tribal Court or MNCSS that the person is gainfully employed and submits to an order for income withholding under this Article;
  - (2) Enters into a written payment plan regarding both current child support and arrearages approved by the Tribal Court and MNCSS; or,
  - (4) Provides proof to the Tribal Court or MNCSS that, subsequent to entry of the order, the person's circumstances have so changed that the person is no longer able to fulfill the terms of the community service order.
- (f) The performance of community service work does not relieve a child support obligor of any unpaid accrued or accruing support obligation.

## **CHAPTER 7. INTERGOVERNMENTAL CHILD SUPPORT CASES – AFFORDING FULL FAITH AND CREDIT**

### **Sec. 6-2701. Full Faith and Credit of Foreign Child Support Orders.**

MNCSS and Tribal Court shall recognize child support orders issued by other tribes and states, in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. §173B. MNCSS shall extend the full range of services available under its IV-D plan to respond to all requests from, and cooperate with, other tribal and state IV-D agencies.

### **Sec. 6-2702. Enforcement Terms of Intergovernmental Orders.**

MNCSS shall enforce according to its terms a child support order made consistently with this section by a court of another Tribe or State; and shall not seek or make a modification of such an order except in accordance with sections 6-2705, 6-2706 and 6-2709.

### **Sec. 6-2703. Requirements of Child Support Orders.**

A child support order made by a court of a State or Tribe is made consistently with this section if:

- (a) A court that makes the order, pursuant to the laws of the State or Tribe in which the court is located and Sections 6-2705, 6-2706 and 6-2707, and:
  - (1) Has subject matter jurisdiction to hear the matter and enter such an order; and
  - (2) Has personal jurisdiction of the person (includes parent) who:
    - (i) Claims a right to receive child support;
    - (ii) Is a party to a proceeding that may result in the issuance of a child support order; or
    - (iii) Is under a child support order; and

(iv) A State or Tribe or political subdivision of a State or Tribe to which the right to obtain child support has been assigned.

(b) Reasonable notice and opportunity to be heard is given to the person or State or Tribe who claims child support.

**Sec. 6-2704. Continuing Jurisdiction.**

A court of a State or Tribe that has made a child support order consistently with this section has continuing exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant unless the court of another State or Tribe, acting in accordance with Section 6-2705 and Section 6-2706, has made a modification of the order.

**Sec. 6-2705. Authority to Modify Orders.**

A court of a State or Tribe may modify a child support order issued by a court of another State or Tribe if:

(a) The Court has jurisdiction to make such a child support order pursuant to Section 6-2709; and

(1) The Court of the other State or Tribe no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant; or

(2) Each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State or Tribe to modify the order and assume continuing, exclusive jurisdiction over the order.

**Sec. 6-2706. Recognition of Child Support Orders.**

If one or more child support orders have been issued with regard to an obligor and a child, the Court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

(a) If only one court has issued a child support order, the order of that court must be recognized.

(b) If two or more courts has issued child support orders for the same obligor and child, and only one of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.

(c) If two or more courts has issued child support orders for the same obligor and child, and more than one of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but if an order has not been issued in the current home State of the child, the order most recently issued must be

recognized.

(d) If two or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.

(e) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under Section 6-2704.

**Sec. 6-2707. Enforcement of Modified Orders.**

A court of a State or Tribe that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under Section 6-2705 and Section 6-2706.

**Sec. 6-2708. Choice of Law.**

In general, in a proceeding to establish, modify or enforce a child support order, the forum State or Tribe's law shall apply except as provided in paragraphs (1) and (2).

(1) Law of State of issuance or order. In interpreting a child support order, including the duration of current payments and other obligations of support, a court shall apply the law of the State or Tribe of the court that issued the order.

(2) Period of limitation. In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or Tribe or the State or Tribe of the court that issued the order, whichever statute provides the longer period of limitation.

**Sec. 6-2709. Registration for Modification.**

If there is no individual contestant or child residing in the issuing State or Tribe, the party for support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State or Tribe shall register that order in a State or Tribe with jurisdiction over the nonmovant for the purpose of Modification.

**CHAPTER 8. APPLICATION OF CHILD SUPPORT ACT**

**Sec. 6-2801. Application of the Sac and Fox Tribe of the Mississippi in Iowa Child Support Act.**

This Act shall govern all child support proceedings commenced after the effective date of this Act.