



**NCA 12-238**

**CLASSIFICATION: #6. CHILDREN AND FAMILY RELATIONS**

**A LAW OF THE MUSCOGEE (CREEK) NATION REPEALING TITLE 6 CHAPTER 6, ENTITLED "MUSCOGEE (CREEK) NATION CHILD SUPPORT ENFORCEMENT CODE" AND TITLE 12 CHAPTER 6 ENTITLED "INCOME ASSIGNMENT FOR CHILD SUPPORT" AND REPLACING BOTH WITH A NEW CHAPTER 6 ENTITLED, "MUSCOGEE (CREEK) NATION CHILD SUPPORT CODE"**

**Be it enacted by the National Council of the Muscogee (Creek) Nation:**

**SECTION ONE: FINDINGS. The National Council finds that:**

- A. Child Support is a basic legal right of the Indian parents and children.
- B. Child support payments have a substantial impact on Indian child poverty and welfare expenditure.
- C. The Muscogee (Creek) Nation has a duty to ensure that children are cared for by their parents and that parents provide the support needed to take care of their children.
- D. Parents have a legal obligation to provide financial support for their children.
- E. The Muscogee (Creek) Nation needs to establish child support standards which shall provide guidance to parties seeking child support, and encourage the payment of child support to decrease overall costs to the Indian citizens while increasing the amount of financial support collected for Indian children.
- F. The National Council finds that the Muscogee (Creek) Nation Child Support Enforcement Code enacted in 2007 needs to be updated to provide guidelines for the establishment and enforcement of child support.
- G. This Act repeals the Muscogee (Creek) Nation Child Support Enforcement Code enacted in 2007 and replaces it with this Child Support Code that provides for updated child support laws for the establishment and enforcement of child support.

**SECTION TWO. REPEALER. MCNCA Title 6, Chapter 6 and Title 12, Chapter 6,**

**is hereby repealed.**

**SECTION THREE. NEW LAW.** The following new law shall be codified in Title 6, Chapter 6 of the Code of Laws of the Muscogee (Creek) Nation; provided that for purposes of codification of said new law and its inclusion in pocket parts for the Code of Laws of the Muscogee (Creek) Nation, the Codification Committee is hereby authorized: (1) to approve any changes related to the manner in which sections, articles, chapters and sub-chapters are designated in this law in order to be consistent with the format in the Code of Laws published in 2010 by West Publishing Company; (2) to include footnoted references to the legislative history in said pocket parts to the Code of Laws; and (3) to note in said pocket parts any editorial correction of minor clerical or grammatical errors in the following new law:

**CHAPTER 6. MUSCOGEE (CREEK) NATION CHILD SUPPORT CODE  
CHAPTER 1: GENERAL PROVISIONS**

**§ 6-101. Short Title.**

This Chapter shall be referred to as the "Muscogee (Creek) Nation Child Support Code."

**§ 6-102. Purpose.**

The purpose of the Muscogee (Creek) Nation Child Support Code (Code) is to provide child support laws and guidelines for the Muscogee (Creek) Nation. The child support guidelines provided herein shall be used by the Muscogee (Creek) Nation in judicial and administrative proceedings which provides for the establishment, modification and enforcement of a child support order.

**§ 6-103. Paternity Establishment.**

The establishment of the paternity of a child is governed by the Muscogee (Creek) Nation Parentage Determination Code under Title 6 Chapter 7 Parentage Determination Code.

**§ 6-104. Jurisdiction.**

A. The Muscogee (Creek) Nation Child Support Code shall comply with the Muscogee (Creek) Nation Civil and Criminal Codes, and other applicable federal child support laws and regulations. In a child support or paternity proceeding, the District Trial Court Family Division shall have personal and subject matter jurisdiction over the following:

1. Citizens of the Nation; or
2. Parties that consent to the jurisdiction of the District Trial Court Family Division; or
3. A child who is a citizen or member of a federally recognized Indian Tribe or is eligible for citizenship or membership of a federally recognized Indian Tribe and is residing within the territorial boundaries of the Nation; or
4. Person, whether or not a resident of the Nation, who is a party to a paternity and child support action.

**§ 6-105. Pleadings.**

A. Pleadings, motions, answers, and other similar actions shall be in compliance with the District Trial Court Family Division Rules and Procedures. All pleadings shall be signed by the party, attorney or advocate and shall contain the printed name, mailing address and phone number of said person.

B. A true copy of any order made pursuant to this Code shall be filed with the District Trial Court Family Division in accordance with court rules and procedures.

**§ 6-106. Intent, Uniformity and Construction of Code.**

A. The Muscogee (Creek) Nation Child Support Code establishes child support laws under Title IV-D of the Social Security Act, 42 U.S.C. 651, *et seq.*, as amended, and applicable laws, rules and regulations pertaining to the establishment, modification and enforcement of child support orders. The Code is generally consistent with the child support laws of the State of Oklahoma in order to provide uniformity in the establishment and enforcement of child support orders with the State and other Tribal Nations.

B. If there is a child support issue not addressed by a law of the Muscogee (Creek) Nation, the District Trial Court Family Division shall first apply applicable federal law mandated by Title IV-D of the Social Security Act, , 42 U.S.C. 651, *et seq.*, as

amended. If a child support issue is still not addressed, the District Trial Court Family Division may consider applicable state law as a guideline to make a determination in a child support action.

**§ 6-107. Venue.**

The venue for child support and paternity proceedings shall be at the Muscogee (Creek) Nation District Trial Court Family Division located in Okmulgee, Oklahoma.

**§ 6-108. Fees.**

A. The CSE shall be exempt from any filing fees required of individuals in the Nation's courts in matters pertaining to the official functions and duties of the CSE. The District Trial Court Clerk shall waive all fees incurred by the CSE office operated by and/or for the benefit of the Nation.

B. The District Trial Court Clerk may charge any tribal or state agency or other entity the usual and customary fee or cost for filing any document with the District Trial Court Family Division.

**§ 6-109. Definitions.**

A. "*IV-D Child Support Enforcement Program*" means the federal, state and tribal child support programs established under Title IV-D, 42 U.S.C. §651 *et seq.*, as amended, and Title IV-D rules and regulations.

B. "*IV-D Services*" means the services that are authorized or required for the establishment of paternity; establishment, modification, and enforcement of support orders; and, location of non-custodial parents under Title IV-D of the Social Security Act, 42 U.S.C. §651 *et seq.*, as amended, and Title IV-D rules and regulations.

C. "*Address of Record*" means the address of a custodial and non-custodial parent or party that is used for the service of process in child support establishment or modification.

D. "*Arrearage*" shall mean the total unpaid child support obligation owed by an obligor.

E. "*Administrative Procedure*" means a method by which support orders are made and enforced by a tribal or state agency in accordance with tribal and state law.

F. "*Assignment*" means, unless otherwise specified, any assignment of rights to support under Section 408 (a) (3) of the Social Security Act or Section 471 (a) (17) of the Act, or any assignment of rights to medical support and to payment for medical care from any third party under 42 CFR 433.146.

G. "*Child*" shall mean any person under the age of 18 who is not emancipated according to the laws of the Nation.

H. "*Child Support*" shall mean the financial obligation a non-custodial parent has towards his or her child(ren), whether such obligation is established through administrative or judicial process, by stipulation of the non-custodial parent, or by parentage of any child(ren).

I. "*Child Support Guidelines*" shall mean a standard method for setting child support obligations based on the income of the parent(s) and other factors as determined under the laws of the Nation or other applicable federal laws.

J. "*Child Support Order*" shall mean any order, judgment or decree from a court of competent jurisdiction or administrative agency that establishes paternity; establishes, modifies, and enforces support obligations for any child(ren); or establishes either a public or private debt for unpaid support which may include related costs and fees, interest and penalties, income withholding, attorney's fees and other relief.

K. "*Consumer Credit Protection Act (CCPA)*" means the federal law that limits the amount that may be withheld from earnings to satisfy child support obligations under §303(b) of the CCPA, 15 U.S.C. §1673(b).

L. "CSE" means the Muscogee (Creek) Nation Office of Child Support Enforcement.

M. "*Court Order*" means a legally binding edict issued by a court of law, issued by a magistrate, judge, or properly empowered administrative officer. A court order related to child support can dictate how often, how much, what kind of support a non-custodial parent is to pay, how long he or she is to pay it, and whether an employer must withhold support from their wages.

N. "*Custodial Parent (CP)*" means the person with legal custody of the child(ren) or who exercises physical custody of the child(ren), may be a parent, relative, legal guardian, or custodian appointed by a court.

O. "*Director*" means the director of the Muscogee (Creek) Nation Child Support

Services.

P. "*District Trial Court Family Division*" means the District Trial Court Family Division of the Muscogee (Creek) Nation.

Q. "*Enforcement*" means the application of remedies to obtain payment of a child support or medical support obligation contained in a child and/or spousal support order.

R. "*Establishment*" means the process of proving paternity and/or obtaining a court or administrative order to put a child support obligation in place.

S. "*Full Faith and Credit for Child Support Orders Act (FFCCSOA)*" requires tribes and states to enforce child support orders made by other States if: one, the issuing State's tribunal had subject matter jurisdiction to hear and resolve the matter and enter an order; two, the issuing State's tribunal had personal jurisdiction over the parties; and, three, reasonable notice and the opportunity to be heard were given to the parties.

T. "*Income*" means any periodic form of payment due to an individual regardless of source.

U. "*Income Assignment*" means an assignment by operation of law or by court or administrative order of a portion of the monies, income or periodic earning due and owing to the non-custodial parent, the person entitled to the support or to another person designated by the support order or assignment. An income assignment may be for payment of current support, arrearages, or both.

V. "*Income tax interception*" shall mean any income tax refund of a non-custodial parent or obligor intercepted directly by the United States, a state, the Nation or other tribal child support enforcement agency, as a remedy for the payment of public and/or child support debt.

W. "*Income Withholding*" means the procedure by which automatic deductions are made from wages or income to pay a debt such as child support.

X. "*Indian Tribe*" means any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe and includes in the list of federally recognized Indian Tribal governments as published in the Federal Register pursuant to 25 U.S.C. 479a-1.

Y. "*Intercept*" means a method of securing child support by taking a portion of non-wage payments made to a non-custodial parent. Non-wage payments subject to interception include federal tax refunds, state tax refunds, unemployment benefits, and

disability benefits.

Z. "*Locate*" means process by which a non-custodial parent (NCP) or alleged father is found for the purpose of the establishment of paternity or the establishment and enforcement of a child support order.

AA. "*Lien*" means a claim upon property to prevent sale or transfer of that property until a debt is satisfied.

BB. "*Medical Support*" means health or dental insurance coverage or health benefits ordered to be paid by a parent(s) for the benefit of a minor child(ren).

CC. "*Non-Custodial Parent (NCP)*" means a parent who does not have legal or physical custody of the child(ren) and has an obligation to pay child support.

DD. "*Non-Cash Support*" means support provided to a family in the nature of goods and/or services, rather than in cash and has a certain and specific dollar value.

EE. "*Obligation*" means amount of money to be paid as support by a non-custodial parent and can take the form of financial support for the child, medical support, or spousal support. An obligation is a recurring, ongoing obligation, not a onetime debt such as an assessment.

FF. "*Obligee*" or "person entitled" means;

1. A person to whom a support debt or support obligation is owed,
2. Another public state or tribal agency that has the right to receive current or accrued support payments or that is providing support enforcement services, or
3. a person designated in a support order or otherwise specified by the court;

GG. "*Obligor*" means the person who is required to make payments under an order for support.

HH. "*Offset*" means an amount of money intercepted from a non-custodial parent's state or federal tax refund or from an administrative payment such as federal retirement benefits to satisfy a child support debt.

II. *"Muscogee (Creek) Nation Office of Child Support Enforcement (CSE)"* shall mean, unless otherwise indicated, the Tribal IV-D Agency that is designated to administer the child support program for the Muscogee (Creek) Nation, in accordance with 42 U.S.C. 654 (the Social Security Act).

JJ. *"MCN"* means the Muscogee (Creek) Nation.

KK. *"Past-due support"* see Arrearage.

LL. *"Payment Plan"* means, but is not limited to, a plan approved by a judicial court or a child support enforcement agency to make periodic payments of past due support to reduce the obligor's arrearage. A payment plan usually consists of a monthly payment plan that includes current support and past due support. The plan may provide for an income assignment or similar plan to ensure the past due support will be paid.

MM. *"Payor"* means any person or entity paying monies, income, wages or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person.

NN. *"Procedures"* means a written set of instructions which describe in detail the step by step actions to be taken by child support enforcement personnel in the performance of a specific function under a tribe or state's IV-D plan. The IV-D agency may issue general instructions on one or more functions, and delegate responsibility for the detailed procedures to the office, agency, or political subdivisions actually performing the function.

OO. *"Parent"* shall mean the biological or adoptive mother or father of a child.

PP. *"Public Assistance"* means benefits granted from tribal, federal or state programs to aid eligible recipients (eligibility requirements vary between particular programs). Applicants for certain types of public assistance (e.g., TANF) are automatically referred to their tribal or state IV-D agency for child support services.

QQ. *"Signatory"* means an individual who authenticates a record and is bound by its terms.

RR. *"State"* means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

SS. *"Support"* means payments or other child support obligations owed to the custodial parent or other public entity under a child support order.

TT. "Support for a prior period" means the amount of child support ordered under the child support guidelines under this chapter in paternity and/or establishment orders for past months when no child support order was in effect.

UU. "Title IV-D" refers to the title of the Social Security Act that establishes and authorizes the Child Support Enforcement Program, including the Tribal Child Support Enforcement Program.

VV. "Title IV-D Agency" means the organization unit in the Tribe or Tribal organization that has the authority for administering or supervising the Tribal IV-D program under Section 455(f) of the Social Security Act.

WW. "Temporary Assistance for Needy Families (TANF)" means the federal program that provides temporary assistance to families in need as found in Section 401 *et seq.* of the Social Security Act (42 U.S.C. 601 *et seq.*)

**§ 6-110. Authority of the Muscogee (Creek) Nation Office of Child Support Enforcement to Establish, Modify and Enforce Child Support.**

A. The Muscogee (Creek) Nation Office of Child Support Enforcement (CSE) is the tribal agency authorized under the Muscogee (Creek) Nation Child Support Code to perform child support services and activities in accordance with Title IV, Part D, 42 U.S.C. 651, *et seq.*, as amended, and applicable rules and regulations.

B. Under Title IV, Part D, 42 U.S.C. 651, *et seq.*, as amended, the CSE shall have the authority to enforce, establish and modify child support orders; establish paternity; and locate custodial and non-custodial parents and their assets; collect and distribute child support payments; and any other child support establishment and enforcement actions allowed by Title IV-D laws and regulations.

**§ 6-111. Authority of Muscogee (Creek) Nation Office of Child Support Enforcement (CSE).**

A. The Muscogee (Creek) Nation Office of Child Support Enforcement (CSE) is an independent tribal agency within the Department of Justice.

B. The Attorney General shall set the guidelines for the organization and management of the CSE and set the qualifications and duties of the CSE personnel.

C. The Muscogee Creek Nation Office of Child Support Enforcement (CSE) shall have the authority to:

1. Conduct child support services as allowed under Title IV, Part D, 42 U.S.C., *et seq.*, as amended;
2. To initiate legal actions including appeals through appropriate tribal and state judicial and administrative courts for the following, but not limited to: the authority to establish paternity and child support obligations; to locate non-custodial and custodial parents and their financial assets; and in the enforcement, establishment and modification of child support obligations, pursuant to Title IV-D laws and regulations;
3. Establish rules, regulations, policies and procedures necessary to carry out the provisions of the Muscogee (Creek) Nation Child Support Code and the Muscogee (Creek) Nation Parentage Determination Code, except where otherwise provided and subject to the Nation's approval process;
4. Conduct genetic testing of a mother and alleged father(s) and their child(ren) in accordance with the Muscogee (Creek) Nation Parentage Determination Code;
5. Report the names and social security numbers of obligors and the amounts of unpaid public and/or support debt to credit reporting bureaus, driver license and recreational licensing agencies and professional licensing agencies and boards pursuant to Title IV-D laws and regulations;
6. Set or reset the schedule of fees required on the establishment and enforcement of public debt and child support actions, including application fees, filing and other fees associated with the process. In accordance with 45 CFR 309, the CSE may not charge more than twenty-five dollars (\$25.00) for an application fee;
7. Request and receive information from the following entities, but not limited to: other state IV-D agencies, other tribal IV-D agencies, municipal authorities, public utilities, cable companies and financial institutions, in order to locate custodial and non-custodial parent(s) or obligor(s) and their assets; and in establishing and enforcing court orders;
8. Utilize funds, which it collects pursuant to this Code through a revolving cost account for the operation of child support services, subject to authorization for expenditure of such funds through the Nation's policies; provided that state and federal funds shall not be supplanted by fees collected by CSE;
9. Negotiate cooperative agreements and/or contracts as necessary to implement the provisions of this Code and the Parentage

- Determination Code under Title 7, subject to the approval of the Principal Chief;
10. Request the court to issue a subpoena in order to obtain the names, addresses, employment information and all other necessary data regarding non-custodial parent(s) or obligor(s);
  11. Establish or enforce through administrative proceedings the following child support actions: the establishment of paternity; the establishment, modification and enforcement of child support orders; the collection and distribution of child support; and parent and asset location services; and,
  12. To conduct any other child support activities pursuant to Title IV, Part D, 42 U.S.C. 651, *et seq.*

**§ 6-112. The Office of Child Support Enforcement (CSE), Termination of Services.**

A. The CSE shall provide the following child support services in accordance with this Code and pursuant to Title IV, Part D, 42 U.S.C. 651, *et seq.*

1. **Locate Service.** CSE shall assist in the location of custodial and non-custodial parents and their financial assets and resources through available local, state and federal sources;
2. **Establish Paternity.** CSE shall establish paternity of a child pursuant to the Muscogee (Creek) Nation Parentage Determination Code;
3. **Establish Child Support.** CSE shall establish child support in accordance with this Code through judicial and administrative processes, including establishing temporary orders;
4. **Enforcement of Child Support Orders.** The CSE shall enforce child support judicial and administrative orders of the Muscogee (Creek) Nation and other valid tribal and state child support orders;
5. **Request for Assistance of Services by Another Child Support Agency.** Upon the request of another tribal or state child support agency for child support services, the CSE shall assist other tribal and state child support agencies;
6. **Modification of Child Support Orders.** The CSE shall conduct modifications of child support orders.
7. **Collection and Distribution of Child Support.** The CSE shall provide for the collection and distribution of child support payments;

8. **Record Maintenance.** The CSE shall maintain child support records and files;
9. **Notice of Support Collected.** CSE shall provide an annual notice of support collected to families receiving services during the prior year; and
10. **Other Services.** The CSE shall provide other services and functions as required by Title IV-D child support laws and regulations.

B. The CSE shall not provide services prohibited by tribal or federal child support laws and shall not provide services for the following actions, including but not limited to: the establishment or modification of visitation rights; the establishment or modification of custody or spousal support; dissolution of a marriage; and enforcement of marital property or settlements.

**§ 6-113. Termination of Services.**

The CSE may terminate child support services: when a minor child emancipates by age or marriage; by an order of the court; when a child support applicant requests in writing that the CSE terminate the child support services and there is no public assistance money owed; when an applicant violates any terms for receiving child support services or refuses to cooperate with the CSE for receiving child support services, or if the child enlists in the military.

**§ 6-114. Application.**

Child support services must be provided to any custodial or non-custodial person who submits a completed child support application, pursuant to Title IV laws and regulations.

**§ 6-115. Address of Record, Proof of Service.**

A. Each party to a child support proceeding shall provide to the CSE an address of record and a physical address for service of process. A party who has any change of an address of record or a physical address shall provide the CSE with the new address within thirty (30) days

B. The address of record may be subject to disclosure to a party upon request pursuant to tribal and federal child support laws and procedures. If there is evidence of

domestic violence or child abuse and disclosure could be harmful to a party or child, the address of record and physical address shall not be disclosed by the CSE.

C. Proof of service shall be made through personal service or certified mail, unless otherwise provided.

**§ 6 -116. Reimbursement for Services.**

The CSE may seek reimbursements for child support service costs in a judicial or administrative proceeding against a party for the establishment of paternity; and establishment, modification and enforcement of a child support order that includes the following, but are not limited to: the cost of a genetic test fees, court filing fees, process server fees, and mailing costs.

**§ 6-117. Record Maintenance, Disclosure of Information.**

A. The CSE shall maintain the files and records as required by federal Title IV-D child support laws and regulations. Child support records are confidential, except as otherwise provided for child support services and in accordance with federal child support laws and regulations.

B. The CSE 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.

C. The CSE shall not release information on the whereabouts of one party or the child to another person if the Nation has reason to believe that the release of information to that person may result in physical or emotional harm to the party or child.

D. Information may be disclosed and shared by and between federal, state and tribal agencies as necessary in the collection of child support pursuant to Title IV-D laws and regulations.

E. The unauthorized use or disclosure of information is a misdemeanor punishable by a \$1,000 fine per offense. An unauthorized release of information by an employee shall also be cause for disciplinary action including the immediate termination of the employee who releases such information.

**§ 6-118. Attorney Representation.**

A. An attorney employed or under contract with the CSE represents the Nation and does not represent the interests of any other party when providing child support services under Title IV-D, 42 U.S.C., §651 *et seq.*, as amended.

B. The attorney representation on behalf of the CSE does not create an attorney-client relationship with any party. Each party to a child support action may be informed that he or she may seek and hire an attorney at his or her own expense for representation.

**§ 6-119. Assignment of Child Support.**

A. Child support or any claim thereto shall not be directly or indirectly assigned, except as provided otherwise in this Code and Title IV-D laws and regulations.

B. Child support may be assigned to an attorney for the purpose of providing legal representation in child support proceedings. The assignment shall be consistent with the Oklahoma Rules of Professional Conduct and shall not exceed fifty percent (50%) of the net amount of the child support collected and remitted to the obligee.

**§ 6-120. Closure of Child Support Cases.**

A. An applicant may request his or her case be closed provided there is no state or tribal public assistance monies owed to a state or tribe or past due support which accrued under a support order. An applicant whose case is subsequently closed, may request at a later date the case be reopened if there is a change in circumstances which lead to the case being closed. To reopen a case, the applicant shall complete a new application for child support services.

B. The CSE shall not close a case when there is court-ordered support owed to a state or tribal agency and the support is being paid through an income assignment.

C. After a case has been closed, the CSE shall retain child support files and records for a minimum of three years.

D. The CSE shall establish policy and procedures for the closure of a child support case pursuant to child support laws and regulations.

**§ 6-121. Requests From Another Governmental Agency.**

The CSE shall comply with another tribal and state child support agency who requests child support services pursuant to Title IV-D laws and regulations.

**§ 6-122. Transfer of Child Support Cases.**

The CSE may accept a transfer case from another tribal or state child support agency and may transfer a case to the appropriate tribal or state child support agency in accordance with Title IV-D statutes and regulations.

**§ 6-123. Expedited Processes.**

A. In accordance with the MCN Child Support Code and MCN Parentage Determination Code, the CSE under the signature of the Director may take the following actions relating to the establishment of paternity or the establishment, modification or enforcement of a child support order, without the necessity of obtaining an additional signature or order from a district or administrative court.

1. To subpoena any financial or other information needed to establish, modify or enforce a support order.
2. In cases where there is support arrearages, to secure assets to satisfy any current support obligation and the arrearage by:
  - a. intercepting or seizing periodic or lump-sum payments from:
    - i. a state or tribal agency, including unemployment compensation, workers' compensation, and other benefits, and
    - ii. by attaching judgments, settlements, and lotteries;
    - iii. attaching and seizing assets of the obligor held in financial institutions;
    - iv. attaching public and private retirement funds, and
    - v. imposing liens in accordance with this Code.

B. To obtain access, subject to safeguards on privacy and information security, and subject to the non-liability of entities that afford such access under this subparagraph, to information contained in the following records;

1. Records of other state and local government agencies, including:
  - a. vital statistics, including records of marriage, birth and divorce;
  - b. state and local tax and revenue records, including information on residence address, employer, income, and assets;
  - c. records concerning real and titled personal property;
  - d. records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnership and other business entities;
  - e. employment security records;
  - f. records of agencies administering public assistance programs;
  - g. records of the motor vehicle; and
  - h. corrections records.
2. Certain records held by private entities with respect to individuals who owe or are owed support consisting of:
3.
  - a. the names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities and cable television companies, pursuant to an administrative subpoena; and
  - b. information on such individuals held by financial institutions.

C. In cases where paternity has not been established, the CSE may require both parents to appear for genetic testing in accordance with the MCN Parentage Determination Code.

D. To initiate income withholding if not so ordered by a judicial or administrative court in accordance with this Code. For court-ordered child support, the Director may sign the standard income withholding order based on the child support order.

E. For the purpose of securing overdue support, to increase the amount of monthly support payments to include amounts for the arrearage, not to exceed five (5) percent of the total child support order. The increase may not be made more than once every twelve (12) months.

F. The expedited processes authorized in this section shall be subject to due process safeguards, including (as appropriate) requirements for notice, opportunity to contest the action and opportunity for appeal.

**§ 6-124. Payment of Public Assistance Monies Creates Public Debt, Assignment of Child Support Rights.**

A. Any payment of public assistance monies by a state or tribe for the benefit of any dependent child may create a debt due and owing to the state by the natural or adoptive parents who are responsible for the support of said child in an amount equal to the amount of public assistance money expended for the benefit of the said child. When public assistance monies are expended, the state or tribe may become a necessary party for the adjudication of the debt due and owing.

B. The CSE shall have the right to petition the appropriate court for modification of a court order on the same grounds as a party to said cause. The CSE shall be subrogated to the right of said child(ren) to prosecute or maintain any support action or execute any administrative remedy existing under the laws of State of Oklahoma or Nation to obtain reimbursement of money thus expended.

C. The CSE shall not proceed to collect any debt under this section from a parent or other person who is a recipient of public assistance for the benefit of a minor dependent child while they are currently receiving such assistance.

D. A parent or other person who receives public assistance monies, for the benefit of a child shall assign child support rights to the CSE pursuant to Title IV-D laws and regulations.

E. The noncooperation of a custodial parent in the assignment of child support right to the CSE shall be reported to the issuing tribal or state agency issuing the benefits pursuant to Title IV-D laws and regulations.

F. The CSE may issue a notice of the public assignment of child support rights, and may develop such policies and forms for the issuance of a notice that includes the requirements for notice, opportunity to contest the action, and an opportunity for appeal.

## **CHAPTER 2. CHILD SUPPORT GUIDELINES**

### **§ 6-201. General.**

A. A child shall be entitled to support by the parents until the child reaches eighteen (18) years of age. If a child order is established and said child is regularly enrolled in and attending high school, other means of high school education, or an alternative high school education program as a full time student, said child shall be entitled to support by the parents until the child graduates from high school or until the age of twenty (20) years, whichever occurs first. No hearing or further order is required to extend support after the child reaches the age of eighteen (18) years.

B. The CSE may initiate a child support establishment action up to the time a minor child reaches the age of eighteen (18).

C. Child support obligations are made for the parents' natural, legal or legally adopted minor children. A stepchild is not eligible for child support and shall not be considered in the computation for establishment of a child support order.

D. The amount of a child support order shall not be construed to be an amount per child unless specified by the District or administrative court order. A child reaching the age of majority or otherwise ceasing to be entitled to support pursuant to the support order shall constitute a material change in circumstances, but shall not automatically serve to modify the order. When the last child of the parents ceases to be entitled to support, the child support obligation is automatically terminated as to prospective child support only.

E. An individual who has been judicially determined to be the father of a child shall be ordered to pay all or a portion of the costs of the birth and the reasonable expenses of providing for the child for prior months from the date of the birth of the child to the filing date of the petition for establishment of paternity, not to exceed five (5) years.

F. In a proceeding to establish or modify a child support order, each party shall completely disclose his or her financial status.

**§ 6-202. Termination of Parental Rights.**

The termination of parental rights shall not terminate the duty or obligation of either parent to support the child.

**§ 6-203. Adoption of a Child.**

A. Parties, who adopt a child, shall be responsible for the support of any adopted child in the same manner, as any biological children.

B. Child support orders shall remain in effect until the District Trial Court Family Division receives notice that the final decree of adoption has been entered. Any past due child support is due and owing until paid in full, unless waived by the parties and approved by the District Trial Court Family Division.

**§ 6-204. Minor Child as Parent.**

Minor parents of a child shall be responsible for the financial support of their child. The court may deviate from the guidelines if the minor parents are attending high school. If the court deviates from the guidelines, when the minor parent is emancipated, the District Trial Court Family Division may modify the order in accordance with this Code.

**§ 6-205. Disclosure of Social Security Numbers.**

A person who is a party to an action to establish paternity or to establish or modify a child support order shall disclose his or her social security number to the CSE or District Trial Court Family Division. The person's social security number is placed in child support records and is confidential and shall not be open to the public. The social security number may be disclosed pursuant Title IV-D laws and regulations for child support services.

**§ 6-206. Rebuttable presumption child support award is the correct amount.**

There shall be a rebuttable presumption in any judicial or administrative proceeding for the award of child support that the amount of the award, which would result from the application of the guidelines, is the correct amount of child support to be awarded.

**§ 6-207. Definitions.**

A. "Adjusted Gross Income" means the net determination of the income of a parent, calculated by modifying the gross income of the parent as follows:

1. adding to the gross income of the parent any social security benefit paid to the child on the account of the parent,
2. Deducting from gross income the amount of any support alimony arising in a prior case to the extent that payment is actually made,
3. Deducting from gross income any deductions as set forth for other children or whom the parent is legally responsible and is actually supporting, pursuant to this code, and,
4. Deducting the amount of reasonable expenses of the parties attributable to debt serve for preexisting, jointly acquired debt of the parents

B. "Base Child Support Obligation" means the amount of support displayed on the Schedule of Basic Child Support Obligations which corresponds to the combined AGI of both parents and the number of children for whom support is being determined. This amount is rebuttably presumed to the appropriate amount of basic child support to be provided by both parents in the case immediately under consideration, prior to consideration of any adjustments for medical and child care costs, and any other additional expenses;

C. "Current Monthly Child Support Obligation" means the base child support obligation and the proportional share of any health insurance and annualized child care costs;

D. "Custodial Person" means a parent or third-party caretaker who has physical custody of a child more than 182 days per year

E. "Noncustodial Person" means a parent who has physical custody of a child one hundred eighty-two (182) days per year or less;

F. "Obligor" means the person who is required to make payments under an order for support;

G. "Obligee" or "person entitled" means;

1. A person to whom a support debt or support obligation is owed,
2. Another public state or tribal agency that has the right to receive current or accrued support payments or that is providing support enforcement services, or
3. a person designated in a support order or otherwise specified by the court;

H. "Other contributions" means recurring monthly medical expenses and visitation transportation costs that are not included in the current monthly child support obligation.

I. "Overnight" means the child is in the physical custody and control of a parent for an overnight period of at least twelve (12) hours, and that parent has made a reasonable expenditure of resources for the care of the child.

J. "Parenting Time Adjustment" means an adjustment to the base child support amount based upon parenting time; and

K. "Payor" means any person or entity paying monies, income or earnings to an obligor. In the case of a self-employed person the "payor" and the "obligor" may be the same person.

**§ 6-208. Computation of Gross Income, Imputed Income, Self-Employment Income, Social Security Title II.**

A. As used in this chapter:

1. "Gross Income," includes Earned and Passive Income from any source, except as excluded in this section.
2. "Earned Income" is defined as income received from labor or the sale of goods or services and includes, but is not limited to, income from: salaries, wages, tips, commissions, bonuses, and severance

- pay and military pay, including hostile fire or imminent danger pay, combat pay, family separation pay, or hardship duty location pay.
3. "Passive Income" is defined as all other income and includes, but is not limited to income from: dividends, pensions, rent, interest income, trust income, support alimony being received from someone other than the other parent in the case, annuities, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, gambling winnings, lottery winnings, accounts and royalties.
  4. Specifically excluded from Income are:
    - a. Actual child support received for children not before the court,
    - b. Adoption Assistance subsidy paid by a state or tribe,
    - c. Benefits received from means-tested public assistance programs including, but not limited to:
      - i. Temporary Assistance for Needy Families, TANF;
      - ii. Supplemental Security Income (SSI);
      - iii. Food Stamps;
      - iv. General Assistance and State Supplemental Payments for Aged, Blind, and the Disabled;
    - d. The income of the child from any source, including, but not limited to, trust income and social security benefits drawn on the disability of the child; and
    - e. Payments received by the parent for the care of foster children.
- B.
1. For purposes of computing gross income of the parents, gross income may include for each parent, whichever is most equitable:
    - a. All actual monthly income described in this section, plus such overtime and supplemental income as the court deems equitable;
    - b. The average of the gross monthly income for the time actually employed during the previous three (3) years;

- c. The minimum wage paid for a forty-hour week; or
    - d. Gross monthly income imputed as set forth in subsection C of this section.
  - 2. If a parent is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income.
- C. Imputed income.
- 1. Instead of using the actual or average income of a parent, the District Trial Court Family Division may impute gross income to a parent under the provisions of this section if equitable.
  - 2. The following factors may be considered by the District Trial Court Family Division when making a determination of willful and voluntary underemployment or unemployment.
    - a. Whether a parent has been determined by the District Trial Court Family Division to be willfully or voluntarily underemployed or unemployed, including whether underemployment or underemployment for the purpose of pursuing additional training or education is reasonable in light of the obligation of the parent to support his or her children and, to this end, whether the training or education will ultimately benefit the child in the case immediately under consideration by increasing the parent's level of support for that child in the future;
    - b. When there is no reliable evidence of income;
    - c. The past and present employment of the parent;
    - d. The education, training and ability to work of the parent;
    - e. The lifestyle of the parent, including ownership of valuable assets and resources, whether in the name of the parent or the current spouse of the parent, that appears inappropriate or unreasonable for the income claimed by the parent;
    - f. The role of the parent as caretaker of a handicapped or seriously ill child of that parent, or any other handicapped or seriously ill relative for whom that parent has assumed the role of caretaker which eliminates or substantially reduces

the ability of the parent to work outside the home, and the need of that parent to continue in that role in the future; or

- g. Any additional factors deemed relevant to the particular circumstances in the case.

**D. Self-employment Income.**

1. Income from self-employment includes income from, but not limited to, business operations, work as an independent contractor or consultant, sale of goods or services, and rental properties, less ordinary and reasonable expenses necessary to produce such income.
2. A determination of business income for tax purposes shall not control for purposes of determining a child support obligation. Amounts allowed by the Internal Revenue Service for accelerated depreciation or investment tax credits shall not be considered reasonable expenses.
3. The District Trial Court Family Division shall deduct from self-employment gross income an amount equal to the employer contribution for F.I.C.A. tax which an employer would withhold from an employee's earnings on an equivalent gross income amount.

**E. Fringe Benefits.**

1. Fringe Benefits for inclusion as income or in-kind remuneration received by a parent in the course of employment, or operation of a trade or business, shall be counted as income if they significantly reduce personal living expenses.
2. Such fringe benefits might include, but are not limited to, company car, housing, or room and board.
3. Basic allowance for housing, basic allowance for subsistence, and variable housing allowances for service members are considered income for the purposes of determining child support.
4. Fringe benefits do not include employee benefits that are typically added to the salary, wage, or other compensation that a parent may receive as a standard added benefit, such as employer

contributions to portions of health insurance premiums or employer contributions to a retirement or pension fund.

**F. Social Security Title II benefits.**

1. Social Security Title II benefits received by a child shall be included as income to the parent on whose account the benefit of the child is drawn and applied against the support obligation ordered to be paid by that parent. If the benefit of the child is drawn from the disability of the child, the benefit of the child is not added to the income of either parent and not deducted from the obligation of either parent.
2. Child support greater than social security benefit.
  - a. If the child support award due after calculating the child support guidelines is greater than the social security benefit received on behalf of the child, the obligor shall be required to pay the amount exceeding the social security benefit as part of the child support award in the case.
3. Child support equal to or less than social security benefits.
  - a. If the child support award due after calculating the child support guidelines is less than or equal to the social security benefit received on behalf of the child, the child support obligation of that parent is met and no additional child support amount must be paid by that parent.
  - b. Any social security benefit amounts which are greater than the support ordered by the court shall be retained by the caretaker for the benefit of the child and shall not be used as a reason for decreasing the child support order or reducing arrearages.
  - c. The child support computation form shall include a notation regarding the use of social security benefits as offset.
4. General social security provisions.

- a. Calculation of child support as provided in subsection F of this section shall be effective no earlier than the date on which the motion to modify was filed.
- b. The court may determine if, under the circumstances of the case, it is appropriate to credit social security benefits paid to the custodial person prior to a modification of child support against the past-due child support obligation of the non-custodial parent.
- c. The non-custodial parent shall not receive credit for any social security benefits paid directly to the child.
- d. Any credit granted by the court pursuant to subparagraph b of this paragraph shall be limited to the time period during which the social security benefit was paid, or the time period covered by a lump sum for past social security benefits.

**§ 6-209. Deductions from Gross Income for Qualified Other Children.**

A. Deductions for other children of either parent who are qualified under this section may be considered by the District Trial Court Family Division for the purpose of reducing the gross income of the parent. Adjustments are available for a child:

1. Who is the biological, legal, or adopted child of the parent;
2. Who was born prior to the child in the case under consideration;
3. Whom the parent is actually supporting, and
4. Who is not before the court to set, modify, or enforce support in the case immediately under consideration.

B. Children for whom support is being determined in the case under consideration, stepchildren, and other minors in the home that the parent has no legal obligation to support shall not be considered in the calculation of the deduction.

C. If the District Trial Court Family Division finds a parent-child relationship with the child not before the court, the court may grant a deduction for that child as set forth in subsection D of this section

D. Calculation of deduction for qualified other children.

**1. Out-of-home children.**

- a.** To receive a deduction against gross income for child support provided pursuant to a court order for qualified other children whose primary residence is not in the home of the parent seeking deduction, the parent shall establish the existence of a support order and provide documented proof of support paid for the other child consistently over a reasonable and extended period of time prior to the initiation of the proceeding that is immediately under consideration by the tribunal, but in any event, such time period shall not be less than twelve (12) months.
- b.** Documented proof of support includes:
  - i.** Physical evidence of monetary payments to the caretaker of the child, such as cancelled checks or money orders, and
  - ii.** Evidence of payment of child support under another child support order, such as payment history from a tribunal clerk or a state or tribal child support office.
- c.** The available deduction against gross income for either parent's qualified children not in the home of the parent is the actual documented court-ordered current monthly child support obligation of the qualified other children, averaged to a monthly amount of support paid over the most recent twelve-month period.

**2. In-home children.**

- a.** To receive a deduction against gross income for qualified prior-born other children whose primary residence is with the parent seeking deduction, but who are not part of the case being determined, the parent must establish a legal duty of support and that the child resides with the parent more than fifty percent (50%) of the year. Documents that may be used to establish that the parent and child share the same residence include the school or medical records showing the

address of the child and the utility bills of the parents mailed to the same address, court orders reflecting the parent is the primary residential parent or that the parent shares the parenting time of the child fifty percent (50%) of the time.

b. The deduction for other qualified children shall be computed as a hypothetical child support order calculated using the deduction worksheet, the gross income of the parents, the total number of qualified other children living in the home of the parent, and the Child Support Guideline Schedule. The deduction worksheet shall be prepared by CSE or may use applicable tribal or state worksheets.

b. The available deduction against gross income for the qualified in-home children of either parent is seventy-five percent (75%) of a hypothetical support order calculated according to these Guidelines, using the Deduction Worksheet, the gross income of the parent less any self-employment taxes paid, the total number of qualified other children living in the home of the parents, and the Child Support Guidelines Schedule.

**§ 6-210. Computation of Child Support Obligation, Percentage of Combined Gross Income of Both Parents, Computation for Each Parent Required, Transportation Expenses.**

A. All child support shall be computed as a percentage of the combined gross income of both parents. The State of Oklahoma Child Support Guideline Schedule shall be used for such computation. The child support obligation of each parent shall be computed. The share of the obligor shall be paid monthly to the obligee and shall be due on a specific date.

B. In cases in which one parent has sole physical custody, the adjusted monthly gross income of both parents shall be added together and the Child Support Guideline Schedule consulted for the total combined base monthly obligation for child support.

C. After the total combined child support is determined, the percentage share of each parent shall be allocated by computing the percentage contribution of each parent to the combined adjusted gross income and allocating that same percentage to the child support obligation to determine the base child support obligation of each parent.

D.

1. In cases of split custody, where each parent is awarded physical custody of at least one of the children for whom the parents are responsible, the child support obligation for each parent shall be calculated by application of the child support guidelines for each custodial arrangement.
2. The parent with the larger child support obligation shall pay the difference between the two amounts to the parent with the smaller child support obligation.

E. Child support shall be computed as set forth in subsections A through D of this section in every case, regardless of whether the custodial arrangement is designated as sole custody or joint custody.

F. The court, to the extent reasonably possible, shall make provision in an order for prospective adjustment of support to address any foreseen changes including, but not limited to, changes in medical insurance, child care expenses, medical expenses, extraordinary costs, and the satisfaction of jointly acquired debt of the parents used as a deduction from the gross income of a parent.

G. Transportation expenses of a child between the homes of the parents may be divided between the parents in proportion to their adjusted gross income, so long as the payment of such expenses does not significantly reduce the ability of the custodial parent to provide for the basic needs of the child.

**§ 6-211. Parenting Time Adjustment.**

A. Parenting time adjustment.

1. The adjustment may be granted based upon a court order or agreement that the non-custodial parent is granted at least one

hundred twenty-one (121) overnights of parenting time per twelve-month period with the children in the case under consideration.

2. Average parenting time. If there are multiple children for whom support is being calculated, and the parent seeking the parenting time adjustment is spending a different amount of time with each child, then an annual average of parenting time with all of the children shall be calculated.

B. In cases of split physical custody, either parent may be eligible for a parenting time adjustment.

C. Parenting time adjustments are not mandatory, but presumptive. The presumption may be rebutted in a case where the circumstances indicate the adjustment is not in the best interest of the child or that the increased parenting time by the non-custodial parent does not result in greater expenditures which would justify a reduction in the support obligation.

D. Reduction in child support obligation for additional parenting time.

1. If the parent receiving the parenting time adjustment is granted one hundred twenty-one (121) or more overnights of parenting time per twelve-month period with a child, or an average of one hundred twenty-one (121) overnights with all applicable children, a reduction to the child support obligation of the parent may be made as set forth in this section.
2. A parenting time adjustment shall be made to the base monthly child support obligation by the following formula: The total combined base monthly child support obligation shall be multiplied by a factor determined by the number of overnights granted to the non-custodial parent. The result shall be designated the adjusted combined child support obligation. In a case where the non-custodial parent is granted:
  - a. one hundred twenty-one (121) overnights to one hundred thirty-one (131) overnights, the factor shall be two (2),

- b. one hundred thirty-two (132) overnights to one hundred forty-three (143) overnights, the factor shall be one and three-quarters (1.75), or
  - c. one hundred forty-four (144) or more overnights, the factor shall be one and one-half (1.5).
3. To determine the adjusted child support obligation of each parent, the adjusted combined child support obligation shall be divided between the parents in proportion to their respective adjusted gross incomes.
- 4.
- a. The percentage of time a child spends with each parent shall be calculated by determining the number of overnights for each parent and dividing that number by three hundred sixty-five (365).
  - b. The share of the adjusted combined child support obligation for each parent shall then be multiplied by the percentage of time the child spends with the other parent to determine the base child support obligation owed to the other parent.
  - c. The respective adjusted base child support obligations for each parent are then offset, with the parent owing more base child support paying the difference between the two amounts to the other parent. The base child support obligation of the parent owing the lesser amount is then set at zero dollars (\$0.00).
5. The parent owing the greater amount of base child support shall pay the difference between the two amounts as a child support order. In no event shall the provisions of this paragraph be construed to authorize or allow the payment of child support by a parent having more than two hundred five (205) overnights.

**E.**

1. Failure to exercise or exercising more than the number of overnights upon which the parenting time adjustment is based, is a material change of circumstances.

2. If the District Trial Court Family Division finds that the obligor has failed to exercise a significant number of the overnights provided in the court order necessary to receive the parenting time adjustment, in a proceeding to modify the child support order, the court may establish the amount that the obligor has underpaid due to the application of the parenting time adjustment as a child support judgment that may be enforced in the same manner as any other child support judgment.
3. The District Trial Court Family Division may rule that the obligor will not receive the parenting time adjustment for the next twelve-month period. After a twelve-month period during which the obligor did not receive the parenting time adjustment, the obligor may petition the court to modify the child support order. The obligor may be granted a prospective parenting time adjustment upon a showing that the obligor has actually exercised the threshold number of overnights in the preceding twelve months. No retroactive modification or credit from the child support guidelines amount shall be granted based on this section.

**§ 6-212. Medical Support.**

A. The District Trial Court Family Division shall enter a medical support order in any case in which an ongoing child support order is entered or modified. Medical support, for the purpose of this section, is defined as health insurance.

1. "Health insurance" includes: fee for service, health maintenance organization, preferred provider organization, and other types of coverage, including, but not limited to: the Indian Health Services or Defense Eligibility Enrollment Reporting System (DEERS), which is available to either parent under which medical services could be provided to the dependent children.
2. Indian Health Service may be used as health insurance if the parents do not have health insurance in accordance with subsection C of this section and/or in accordance with § 6-213.

B. On entering a final order, the District Trial Court Family Division shall:

1. Make specific orders with respect to the manner in which health care coverage is to be provided for the child, in accordance with the priorities identified in subsection E of this section; and
2. Require the parent ordered to provide health care coverage for the child as provided under this section to produce evidence to the court's satisfaction that the parent has applied for or secured health insurance or has otherwise taken necessary action to provide for health care coverage for the child, as ordered by the court.

C. When the District Trial Court Family Division enters a medical support order, the medical support order must be reasonable in cost and accessible.

1. "Reasonable in cost" means that the actual premium cost paid by the insured does not exceed five percent (5%) of the gross income of the responsible parent. To calculate the actual premium cost of the health insurance, the court shall:
  - a. Deduct from the total insurance premium the cost of coverage for the parent and any other adults in the household,
  - b. Divide the remainder by the number of dependent children being covered, and
  - c. Multiply the amount per child by the number of children in the child support case under consideration.
2. "Accessible health insurance" means that:
  - a. There are available providers appropriate to meet the primary individual health care needs of the children no more than sixty (60) miles one way from the primary residence of the children.
  - b. If a parent has available health coverage which includes an option that would be available to the child, but the parent has not currently enrolled in that option, the District Trial Court Family Division may require the parent to change existing coverage to an option that is accessible to the child.

D. The District Trial Court Family Division shall consider the cost and quality of health insurance coverage available to the parties and shall give priority to health insurance coverage available through the employment of one of the parties if the coverage meets the standards in subsection C of this section. If both parents have coverage available, the court shall give priority to the preference of the custodial person.

E. In determining the manner in which health care coverage for the child is to be ordered, the District Trial Court Family Division may enter an order in accordance with the following priorities and subsection C of this section, unless a party shows good cause why a particular order would not be in the best interest of the child:

1. If health insurance is available for the child through the employment of a parent or membership in a union, trade association, or other organization, the District Trial Court Family Division shall order that parent to enroll the child in the health insurance of the parent.
2. If health insurance is not available for the child under paragraph 1 of this subsection but is available to a parent from another source, the District Trial Court Family Division may order that parent to provide health insurance for the child.

F.

1. The actual health insurance premium for the child shall be allocated between the parents in the same proportional share as their adjusted gross income and shall be added to the base child support obligation.
2. If the obligor pays the health insurance premium, the obligor shall receive credit against the base child support obligation for the allocated share of the health insurance premium for which the obligee is responsible.
3. If the obligee pays the health insurance premium, the obligor shall pay the allocated share of the health insurance premium to the obligee in addition to the base child support obligation.
4. The parent providing the health insurance coverage shall furnish to the other parent and to the CSE, if services are being provided pursuant to Title IV, Part D of the Social Security Act, 42 U.S.C. § 601 *et seq.*, with timely written documentation of any change in the

amount of the health insurance cost premium, carrier, or benefits within thirty (30) days of the date of the change. Upon receiving timely notification of the change of cost, the other parent is responsible for his or her percentage share of the charged cost of the health insurance.

5. If the District Trial Court Family Division finds that the obligor has underpaid child support due to changes in the cost of health insurance, the amount of underpayment may be established by the court and enforced in the same manner as any other delinquent child support judgment. If the court finds that the obligor has overpaid due to changes in health insurance coverage cost, the overpayment shall be satisfied:
  - a. By offset against any past-due child support owed to the obligee, or
  - b. By adjustment to the future child support amount over a thirty-six-month period.

G. Reasonable and necessary medical, dental, orthodontic, optometric, psychological, or any other physical or mental health expenses of the child incurred by either parent and not paid or reimbursed by insurance shall be allocated in the same proportion as the adjusted gross income of the parents as separate items that are not added to the base child support obligation. If reimbursement is required, the parent who incurs the expense shall provide the other parent with proof of the expense within forty-five (45) days of receiving the Explanation of Benefits from the insurance provider or other proof of the expense if the expense is not covered by insurance. The parent responsible for reimbursement shall pay his or her portion of the expense within forty-five (45) days of receipt of documentation of the expense.

H. In addition to any other sanctions ordered by the District Trial Court Family Division, a parent incurring uninsured dependent health expenses or increased insurance premiums may be denied the right to receive credit or reimbursement for the expense or increased premium if that parent fails to comply with subsections F and G of this section.

I. The parent desiring an adjustment to the ongoing child support order due to a change in the amount of dependent health insurance premium shall initiate a review of the order in accordance with this child support code.

**§ 6-213. Indian Health Service.**

If neither party has insurance available as specified in § 6-212, Indian Health Services may be used for medical support for the dependent child until such time reasonable insurance is acquired by an obligee or obligor. If Indian Health Service is used for health insurance, each party shall be responsible for their proportionate share of the out-of-pocket expenses under § 6-212 G.

**§ 6-214. Annualized Child Care Expenses.**

A. The District Trial Court Family Division shall determine the actual annualized child care expenses reasonably necessary to enable either or both parents to:

1. Be employed;
2. Seek employment; or
3. Attend school or training to enhance employment income.

B. When a parent is participating in a state or tribal child care subsidy program, the Child Care Eligibility/Rates Schedule established by the state or tribal subsidy program shall be used to determine the amount to be treated as actual child care costs incurred. When applying the schedule to determine the family share copayment amount, the share of the base monthly obligation for child support of the non-responsible parent and the gross income of the obligee shall be considered as the monthly income of the obligee. The actual child care costs incurred shall be the family share copayment amount indicated on the schedule which shall be allocated and paid monthly in the same proportion as base child support.

C. The actual annualized child care costs authorized in this section shall be allocated and added to the base child support order, and shall be the final child support order.

D. The parent incurring child care expenses shall notify the obligor within forty-five (45) days of any change in the amount of the child care costs that would affect the annualized child care amount as determined in the child support order.

E. A parent may be allowed to provide child care incurred during employment, employment search, or while the other parent is attending school or training if the District Trial Court Family Division determines it would lead to a significant reduction in the actual annualized child care cost.

**§ 6-215. Deviations.**

A. No deviation in the amount of the child support obligation shall be made which seriously impairs the ability of the obligee in the case under consideration to maintain minimally adequate housing, food, and clothing for the child(ren) being supported by the order or to provide other basic necessities, as determined by the District Trial Court Family Division.

B. The District Trial Court Family Division may deviate from the amount of child support indicated by the child support guidelines if the deviation is in the best interests of the child; and

1. The amount of support so indicated is unjust or inappropriate under the circumstances;
2. The parties are represented by counsel and have agreed to a different disposition, or
3. One party is represented by counsel and the deviation benefits the unrepresented party.

C. If the District Trial Court Family Division deviates from the amount of child support indicated by the child support guidelines, the court shall make specific findings of fact supporting such action. The findings of fact shall include:

1. The reasons for the deviation from the presumptive child support that would have been paid pursuant to the guidelines, and
2. The amount of child support that would have been required under the guidelines if the presumptive amount had not been rebutted, and
3. A finding by the court that states how in its determination:

- a. The best interests of the child who is the subject to the support award is served by a deviation from the presumptive guideline amount, and
- b. Application of the guidelines would be unjust or inappropriate in the particular case before the court.

D. In instances of extreme economic hardship, deviation from the guidelines may be considered when the District Trial Court Family Division finds the deviation is supported by the evidence and is not detrimental to the best interests of the child before the court.

E. If a parent is residing with a child with extraordinary medical needs not covered by insurance or other special needs, the District Trial Court Family Division must consider all resources available for meeting such needs, including those available from public agencies and other responsible adults.

F. In cases where the child is in the legal custody of the Muscogee (Creek) Nation or other state or tribe or territory, the child protection or foster care agency of another tribe, or state or territory, or any other child-caring entity, public or private, the District Trial Court Family Division may consider a deviation from the presumptive child support guidelines if the deviation will assist in accomplishing a permanency plan or foster care plan for the child that has a goal of returning the child to the parent, and the parents need to establish an adequate household or to otherwise adequately prepare herself or himself for the return of the child clearly justifies a deviation for this purpose.

G. Extraordinary educational expenses.

1. Extraordinary educational expenses may be added to the presumptive child support as a deviation. Extraordinary educational expenses include, but are not limited to, tuition, room and board, books, fees, and other reasonable and necessary expenses associated with special needs education for a child with a disability under the Individuals with Disabilities Educational Act that are appropriate to the financial abilities of the parent.
2. In determining the amount of deviation for extraordinary educational expenses, scholarships, grants, stipends, and other

cost-reducing programs received by or on behalf of the child shall be considered.

**H. Special expenses.**

1. Special expenses incurred for child rearing which can be quantified may be added to the child support obligation as a deviation from the current monthly child support obligation. Such expenses include, but are not limited to, private school tuition, camp, music or art lessons, travel, school-sponsored extra-curricular activities, such as band, clubs, and athletics, and other activities intended to enhance the athletic, social or cultural development of a child, but that are not otherwise required to be used in calculating the child support order as are health insurance premiums and work-related child care costs.
2. Some factors the court may consider in determining whether to deviate for such extraordinary expenses include: a history of expenditure for such activities, the financial ability of the parents to provide such activities, and that the child has exhibited an extraordinary aptitude for the activity.
3. In determining the amount of deviation for extraordinary educational expenses, scholarships, grants, stipends, and other cost-reducing programs received by or on behalf of the child shall be considered.

**§ 6-216. Child Support Guideline Schedule, Review of Schedule.**

A. The child support guideline schedule used shall be the State of Oklahoma child support guidelines and if such guidelines change, the CSE shall follow the most current state guidelines for child support computation.

B. If combined gross monthly income exceeds Fifteen Thousand Dollars (\$15,000.00), the child support shall be that amount computed for a monthly income of Fifteen Thousand Dollars (\$15,000.00) and an additional amount determined by the court.

C. If there are more than six children, the child support shall be that amount computed for six children and an additional amount determined by the court.

D. Parents may establish child support through a voluntary agreement in accordance with the child support guidelines herein.

**§ 6-217. Review of Child Support Guidelines.**

The guidelines must be reviewed at least once every four years by the CSE to ensure that the amounts provided for in the guidelines are adequate for the care and support of children within the Muscogee (Creek) Nation.

**§ 6-218. Past Due Child Support Included in Order With Payment Plan.**

The child support order shall include the amount of past due child support and a payment schedule for the past due amount, this is in addition to the monthly obligation set in the child support order. Failure to state a past due amount in the child support order does not bar collection of the past due amount.

**§ 6-219. No Retroactive Modification of a Child Support Order.**

A child support order shall not be modified retroactively regardless of whether support was ordered in a temporary order, a decree of divorce, an order establishing paternity, modification of an order of support, or other action to establish or to enforce support.

**§ 6-220. Judges Signature Required on Child Support Computation Form.**

The child support computation form shall be signed by a judge and incorporated as a part of all orders which establish or modify a child support obligation.

**§ 6-221. Life Insurance.**

The court may require the non-custodial parent to provide life insurance on themselves, by obtaining it through their employer or a private agency, at a reasonable cost and designating the minor child(ren) as the beneficiary(ies) of the policy, or to a trust established for the benefit of the child(ren).

**§ 6-222. Interest.**

A. MCN court-ordered child support payments shall not draw interest on past due child support payments.

1. For MCN child support orders entered before the enactment of this Code, the interest accumulated will still be due and payable, unless waived by the obligee or by District Trial Court Family Division.
2. If the order is established under another jurisdiction's laws, interest shall accrue based on the law of the issuing jurisdiction.
3. Private interest may be waived by the custodial parent/obligee and/or by the Court Trial Court Family Division. State-owed interest can only be waived by the state.

**§ 6-223. Security or Bond.**

The District Trial Court Family Division may order a person obligated to support a minor child to post a security, bond or other guarantee in a form and amount satisfactory to the court to ensure the payment of child support.

**§ 6-224. Temporary Orders, Agreed Orders.**

A. The District Trial Court Family Division may establish temporary orders in accordance with the child support guidelines. Temporary orders shall terminate when a final judgment is entered when establishes support or when the action is dismissed.

B. If both parties are in agreement to the child support order, pursuant to the child support guidelines, the parties may submit an agreed order subject to approval by the District Trial Court Family Division.

**§ 6-225. Public auction for support of deceased parent's child.**

If a parent chargeable with the support of a child dies, leaving it chargeable upon the Nation, township or county, and leaving an estate sufficient for its support, CSE may petition the Court for an award of child support pursuant to the provisions of this Code from the parent's estate, and for this purpose may have the same remedies as any creditors against the estate, and against the heirs. Child support owed to a child(ren) shall be paid before any creditors or heirs.

**§ 6-226. Change of Physical Custody of Minor Child.**

If an obligee relinquishes his or her physical custody of the child to another custodian

without a modification of the child support order or order to change custody, the relinquishment transfers the child support obligation pursuant to the child support order to the new custodian. The transfer shall terminate when the new custodian no longer has physical custody of the child, except for the amount of unpaid child support due to the custodian.

**§ 6-227. Child Support Payments, Collection and Distribution.**

A. The District Trial Court Family Division may order child support payments to be made directly to the custodial parent or to the CSE. If the CSE is providing services, the payment must be made to the CSE.

B. The CSE shall have the authority to negotiate a lump sum payment of a child support arrearage, subject to the approval of the obligee and District Trial Court Family Division.

C. The collection and disbursement of child support payments to an obligee or recipient of payment shall be made pursuant to Title IV-D laws and regulations.

D. A record of child support payments certified by the CSE is admissible into evidence in the District Trial Court Family Division or an administrative proceeding as self-authenticated.

**§ 6-228. Payment to Child Considered Gift.**

When an obligor gives money to his or her child, the money shall be considered a gift to the child and not child support.

**§ 6-229. Overpayment.**

If an obligor overpays a child support obligation, the CSE shall recover the overpayment and shall establish procedures for the collection of an overpayment from the obligee.

**§ 6-230. Non-Cash Payment.**

A child support obligation may be paid with a non-cash payment for a child support obligation or past due support, subject to the approval of the District Trial Court Family Division. Both parties shall agree on the amount and the type of non-cash payment to be paid toward the child support obligation. When a non-cash payment is used for a portion of a child support obligation, the child support order shall describe the type of non-cash

support that will be permitted to satisfy the underlying specific dollar amount of the support obligation. Non-cash payments shall not be permitted to satisfy assigned support obligations.

**§ 6-231. Waiver of Past Due Child Support.**

An obligee may waive all or some of the past due child support of an obligor through a written statement that waives a specific dollar amount of past due support, the written statement must then be approved by the District Trial Court Family Division and memorialized in a court order. State or tribal public assistance monies, if any, shall not be waived by an obligee or CSE, only a state or tribe may waive any monies expended for the benefit of the child.

**§ 6-232. Modification of a Child Support Order.**

A. Child support orders may be modified upon a material change of circumstances which includes, but is not limited to: an increase or decrease in the needs of the child, an increase or decrease in the income of the parents, changes in actual annualized child care expenses, changes in the cost of medical or dental insurance, or when one of the children in the child support order reaches the age of majority or otherwise ceases to be entitled to support pursuant to the child support order.

B. Modification of the Child Support Guidelines Schedule shall not alone be a material change in circumstances for child support orders.

C. An order of modification shall be effective from the first day of the month immediately following the filing of the motion for modification with the court, unless the parties agree to the contrary subject to the approval of the District Trial Court Family Division, or the court makes a specific finding of fact that the material change did not occur until a later date.

D. The CSE shall develop the guidelines and rules for the modification of a child support order. For a modification to be considered, there shall be a 15% increase or decrease in the income of either party.

**§ 6-233. Review of Child Support Orders.**

A. The CSE may conduct a review of child support orders every three years and if the CSE determines that the child support obligation is not in accordance with the child support guidelines, the CSE may initiate proceedings established under this Code

to modify the child support order.

B. A party to a child support action may request a review and shall submit the request in writing to the CSE for a review. A request for a review by the CSE shall be limited to one per year.

**§ 6-234. Informal Review.**

A. When a child support order is entered or modified, the parents may agree or the District Trial Court Family Division may require a periodic exchange of information for an informal review and adjustment process. An exchange of requested information may occur once a year or less often, by regular mail.

B. If an existing child support order does not contain a provision for an informal review and adjustment process, either parent may request the other parent to provide the information necessary for the informal review and adjustment process. Information shall be provided to the requesting parent within forty-five (45) days of the request.

**CHAPTER 3. INCOME ASSIGNMENTS AND WITHHOLDING**

**§ 6-301. Immediate Income Assignment and Income Withholding.**

A. All orders for child support or a modification of a child support order shall provide for an immediate income assignment that withholds the current monthly child support obligation, regardless of whether support payments by the obligor are in arrears. In addition to the amount to be withheld to pay the current month's obligation, the amount withheld may include an amount to be applied toward a judgment entered for any overdue child support.

B. The total amount to be withheld under paragraph a of this section shall not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b), but may be set at a lower amount.

C. Income may not be subject to withholding in a case where:

1. Either the custodial or non-custodial parent demonstrates and the court finds that there is good cause not to require an immediate income withholding; or
2. A signed written agreement is reached between the non-custodial and custodial parent, which provides for an alternative arrangement.

D. The CSE shall promptly seek a refund when income has been improperly withheld.

E. The CSE shall promptly terminate an income assignment when there is no longer a current order for support and all past due support has been paid in full.

F. The CSE shall allocate withheld amounts across multiple withholding orders to ensure that in no case shall the allocation result in a withholding for one of the support obligations not being implemented.

G. An obligor may execute a voluntary income assignment at any time and shall take effect after service on the employer.

H. The CSE is responsible for receiving and processing income withholding orders from states and tribes to ensure orders are properly and promptly served on employers within the Muscogee (Creek) Nation's jurisdiction.

I. All income assignments from another state or tribe shall be registered with the District Trial Court Family Division. To register an income withholding order issued by another state or tribe, a copy of the support order shall be submitted to the CSE. The registration of another state or tribes income assignment is for the sole purpose of obtaining jurisdiction for enforcement of the order and it does not confer jurisdiction on the court or CSE for any other purpose (such as modification of the underlying order or original support order).

**§ 6-302. Income Withholding.**

A. Notice of the income withholding shall be sent to the payor using the standard federal form prescribed by United States Secretary of Health and Human Services. Service of the notice may be by first-class mail or by certified mail. If an obligor is an employee of the Muscogee (Creek) Nation, the CSE may hand-deliver the notice to the personnel office.

B. The income withholding shall not exceed the limits permitted under §303(b) of the Consumer Credit Protection Act, 15 U.S.C. §1673 (b), including any fee under this section.

C. A payor shall withhold the income in accordance with the notice on the next pay period of the obligor. The amounts withheld shall be sent to the Muscogee (Creek) Nation Child Support Services within seven (7) business days after the date the obligor is paid. The payor shall include a statement with each payment that reports the date and amount that was withheld from the obligor's income.

D. If the payor fails to withhold the child support amount pursuant to the provisions of the income withholding order, the payor shall be liable for the accumulated amount the payor should have withheld and paid from the obligor's income.

E. When an obligor terminates employment and is no longer employed, the payor shall notify the CSE the obligor is no longer employed and shall provide the obligor's last known address and the name and address of the obligor's new employer, if known.

F. The payor may not discipline, suspend, discharge or refuse to promote an obligor because of the income assignment executed by CSE. Any payer who violates this section shall be subject to a fine of \$1,000 per offense for discharging a non-custodial parent from employment, refusing to employ or taking disciplinary action against any non-custodial parent because of the withholding.

G. The payor may combine withheld amounts from two or more obligors' income in a single payment to the CSE or other child support agency and separately identify the portion of the single payment that is attributed to each individual obligor.

H. The income assignment shall be binding on the payor until released by the CSE or by order of the District Trial Court Family Division.

I. A child support income assignment shall have priority over any other subsequent garnishments against the same income.

J. The payor may deduct from the obligor's income a sum not exceeding Five Dollars (\$5.00) per pay period, but not to exceed Ten Dollars (\$10.00) per month as reimbursements for costs incurred by the payor for the income withholding.

K. The child support income withholding applies to any current or subsequent payor.

L. A payor who complies with an income withholding notice that is regular on its face shall not be subject to civil liability to any individual or agency for conduct in compliance with the notice.

M. The income withholding remains in effect so long as current support is due and all arrearages have been paid for past due support.

**§ 6-303. Modification, Suspension, Termination of Income Assignment.**

A. A person obligated to pay support or the person entitled to the support may make a written request to CSE to:

1. Modify, suspend or terminate the order for income assignment because of a modification, suspension, or termination of the underlying order for support; or
2. Modify the amount of income to be withheld to reflect payment in full of the delinquency by income assignment or otherwise; or
3. Suspend the order for income assignment because of inability to deliver income withheld to the person entitled to support payments due to the failure of the person entitled to support to provide a mailing address or other means of delivery.

**CHAPTER 4: CHILD SUPPORT ENFORCEMENT**

**§ 6-401. General.**

A. When CSE is providing child support services, the CSE shall initiate enforcement proceedings in accordance with this chapter and Title IV-D laws and regulations to collect past due child support and other court ordered child support obligations.

B. The CSE may enforce a spousal support obligation if the CSE is enforcing a child support order of a child living with the parent who is under the spousal support order.

**§ 6-402. Past Due Payment of Child Support Is A Judgment by Operation of Law.**

A. Any payment or installment of support under any child support order is, on and after the date it is due:

1. A judgment by operation of law, with the full force and effect of any other judgment of the Nation, including the ability to be enforced by actions allowed under the laws of the Nation to enforce and collect money judgments; and
2. Entitled to as a judgment to full faith and credit in the Nation and in any other tribe or state; and
3. Not subject to retroactive modification by the Nation or any other state or tribe; except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent to the obligor or (where the oblige is the petitioner) to the obligor.

B. A payment schedule for a judgment must be reasonable. The District Trial Court Family Division in setting a payment schedule may consider the reasonable support obligation of either parent for other children in the custody of the parent.

C. A judgment for past due child support shall be enforceable until paid in full.

D. A judgment for child support shall not become dormant for any purpose; the recording, servicing and extending a judgment shall follow applicable tribal, state and federal law. The execution of a lien shall follow applicable state, tribe and federal law.

E. A judgment for child support may be enforced by indirect civil contempt proceedings and other enforcement actions allowed by the Nation and Title IV-D law and regulations.

**§ 6-403. Liens.**

A. An arrearage in payment of child support reduced to an order of the court or any past due payment or installment of child support that is a judgment and lien by operation of law may be a lien against the real and personal property of the person ordered to make the support payments.

B. Past due amounts shall become a lien by operation of law upon the real and personal property of the person ordered to make the payments at the time they become past due.

C. A judgment or order providing for the payment of current support or an arrearage of child support shall be a lien upon real property owned by the person obligated to pay support or upon any real property, which may be acquired by the person prior to release of the lien. Notice of the lien on real property shall be given by the filing of a statement of judgment with the county clerk in the county where the property is located. The CSE shall follow the applicable tribal and state law regarding the recording and servicing of a lien.

D. The judgment or order shall not become a lien for any sums prior to the date they severally become due and payable. In the State of Oklahoma, a child support judgment becomes dormant as a lien upon real property five (5) years from the date the statement of judgment is filed with the county clerk unless the judgment lien is extended in accordance with state law.

E. The provisions of this section shall not authorize a forced sale of any property to enforce a lien, which is otherwise exempted by tribal, state or federal law.

F. A lien shall be released upon the full payment of the amount of the arrearage.

G. The CSE or obligee shall have the authority to enforce the lien and the CSE or the obligee may execute a release or partial release of the liens.

H. The CSE shall use the amount reflected in its official payment records as the amount of lien on the obligor's real property regardless of the amount in the statement of judgment.

I. A judgment for a child support arrearage or the accrual of past due child support shall become a lien upon the benefits payable as a lump sum received from a personal injury, wrongful death or workers' compensation claim of the obligor and shall not be subject to the exemptions from attachment of state or tribal law. The lien shall be effective upon the filing of a notice of lien with the court in which a proceeding for personal injury, wrongful death or worker's compensation has been initiated by or on behalf of the obligor. A lien upon a personal injury, wrongful death or workers' compensation claim shall follow applicable tribal and state law and procedure for filing and serving of the lien.

**§ 6-404. Initiated Income Assignment.**

A. The CSE shall initiate an income assignment, if not already established by a court order, at the earliest, on the date on which the payments which the obligor has failed to make under a child support order are at least equal to the support payable for one month and without regard to whether there is past due support. The payment of any support monies will not prevent an income assignment from taking effect.

B. The income withholding shall occur without the need for any amendment to the support order involved or any other action by the court or CSE other than that required or permitted under the Muscogee (Creek) Nation Child Support Code.

C. When CSE initiates an income assignment, CSE shall send notice to the obligor that withholding has commenced. The notice shall contain the procedures necessary to contest the initiated income assignment. The only basis for contesting a withholding under this section is a mistake of fact which means an error in the amount of current or overdue support or in the identity of the obligor

D. The order shall be a final judgment for purposes of an appeal.

E. An obligor may voluntarily request an income assignment be initiated for the next due date, or earlier if so requested.

**§ 6-405. Payment Plan.**

A. An obligor may enter into a payment plan to pay past due child support. When setting a payment plan, the District Trial Court Family Division may consider the reasonable support obligation of either parent for other children in the custody of the parent. The past due support is to be paid in addition to the current monthly support.

B. The parties may submit a stipulated payment plan for the past due support, subject to approval by the District Trial Court Family Division.

C. Failure to comply with a payment plan shall be grounds for enforcement proceedings in accordance with this Code.

**§ 6-406. Work Order.**

A. The CSE may seek an order that requires an unemployed or under employed obligor to participate in an educational training, job-finding programs,

counseling and/or treatment program. "Underemployment" means being employed less than full-time, or in an occupation which pays less than employment which someone with the skills and education of the obligor could be reasonably expected to earn, so that the obligor cannot meet his/her child support payments.

B. Notice shall be given to the obligor that the CSE has reason to believe the obligor is unemployed or underemployed.

C. At the hearing, if the District Trial Court Family Division finds the obligor is underemployed or unemployed, the court shall set forth the findings of the court and require that the obligor participate in counseling, treatment, educational training, employment training or job-finding programs and accept available employment. The obligor is responsible for any costs associated with the order.

D. If the obligor fails to appear at a hearing, the court shall enter an order determining if the obligor is unemployed, underemployed or in need of treatment program or counseling services.

E. The obligor may show good cause why an order should not be entered requiring the obligor to participate in counseling, treatment, educational training, employment training or job-finding programs and accept available employment. "Good cause" is defined as establishing by expert medical opinion that the person is mentally or physically unable to work or such other grounds as the CSE determines constitutes good cause.

**§ 6-407. Passport, Licenses, Consumer Reporting, and Tax Intercept Enforcement Actions.**

A. The CSE is authorized to seek the following enforcement actions of child support orders as allowed by Title IV-D laws and regulations, and include the following, but is not limited to:

1. The denial, revocation or limitation of a passport of an obligor whose past due child support payments exceeds the amount allowed by federal law (42 U.S.C. 652(k)). The CSE shall follow applicable federal laws in the denial, revocation or limitation of a passport.
2. To initiate proceeding for the revocation, suspension or denial of professional, occupational, fishing, recreational and/or driver's licenses through the appropriate state or tribal court;

3. To release the name of an obligor who owes past due child support to a consumer-reporting agency as defined in 15 U.S.C. §1681a(f);
4. To seek the collection of past due child support through state and/or federal income tax intercepts and/or federal administrative offset programs.

B. In each remedy listed under (A) in this section, notice shall be sent to the obligor of the enforcement action being pursued. The notice shall contain the procedures necessary to contest the action being pursued, and a contest shall be limited to a mistake in the amount of the past due support or a mistake in the identity of the obligor.

C. The CSE may charge a consumer-reporting agency a reasonable fee for providing information available under this section pursuant to federal law and regulations. Information shall not be provided to a consumer reporting agency that has not submitted satisfactory proof that it is a consumer reporting agency or to an agency that does not have sufficient capability to systematically make use of the information for child support purposes in accordance with federal law and regulations.

**§ 6-408. Reinstatement of Suspended or Revoked License.**

A. An obligor whose license is revoked or suspended may make a written request to the CSE that his or her license be reinstated. The CSE may initiate action to reinstate the license if the obligor has:

1. Paid an amount of support equivalent to three months of child support and arrearage payments that includes the current monthly child support and arrearage payments and two months immediately preceding; and
2. Complied with all subpoenas and orders relating to paternity or child support proceedings; and
3. Complied with all orders to submit to genetic testing; and
4. Disclosed all employment and address information; and
5. Disclosed all information on health insurance coverage and maintenance of health insurance.

B. The CSE shall schedule a hearing on the matter with the appropriate state or tribal court. If the court reinstates a license, a copy of the order shall be sent to the obligor and the appropriate licensing agency. The obligor is responsible for

submitting the order to the appropriate licensing agency to reinstate his or her license as well as the cost associated with the reinstatement.

C. If the obligor again fails to make monthly child support payments or fails to comply with a child support order or actions regarding paternity, the CSE may initiate action again to revoke or suspend the obligors license.

D. The CSE shall proceed to reinstate a license when the obligor has paid his or her child support arrearage in full in accordance with this section.

E. When an action is initiated to reinstate a suspended or revoked license, the obligee shall be sent notice of an action to reinstate the obligor's license. The notice may be sent by first-class mail with a certificate of mailing.

**§ 6-409. Levy.**

A. The CSE shall issue a levy on the financial account(s) of an obligor who is past due on his child support for the amount of the past due child support, unless after review it is found a levy would be inappropriate under the circumstances and there is full and timely compliance with a court ordered payment plan.

B. Notice shall be sent to the obligor of the levy within three days after the levy notice is sent to the financial institution. The notice shall contain the procedures necessary to contest the levy and the contest is limited to a mistake in the amount of the past due support or a mistake in the identity of the obligor. If there is another name on the account, it shall be the responsibility of the obligor to notify any and all account holders.

C. A levy shall be released once the past due child support is paid.

D. The CSE or obligee may authorize a partial release of a levy.

E. The issuance of a levy shall follow applicable federal and state laws and regulations.

**§ 6-410. Publication of Names.**

The CSE may publish the name of an obligor's in an electronic publication or newspaper of local circulation if an obligor is at least three months in arrears in paying current child support or owes \$5,000 or more in unpaid child support.

**§ 6-411. Bond or Security Payment for Past Due Child Support.**

The District Trial Court Family Division may require that an obligor post a bond, security or give some other guarantee to secure payment of past due child support.

**§ 6-412. Indirect Contempt Proceedings.**

A. A child support order, if willfully disobeyed, may be enforced by indirect contempt proceedings against the obligor by either the CSE or obligee. The District Trial Court Family Division shall hear indirect contempt proceedings initiated by the CSE or obligee.

B. Punishment for indirect contempt shall be the imposition of a fine in a sum not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in jail not exceeding six (6) months, or by both, at the discretion of the District Trial Court Family Division.

C. In a proceeding for indirect civil contempt, prima facie evidence of an indirect civil contempt of court shall be held when:

1. Proof that :

- a. The child support order was made, filed and served on the obligor; or
- b. The obligor had actual knowledge of the existence of the order; or
- c. The order was granted by default after proper notice to the obligor; or
- d. The obligor was present in court at the time the order was announced.

D. When an obligor is found guilty of indirect contempt of court for failure to pay child support or other court ordered child support expenses such as child care, medical and dental expenses, psychological, optometric, orthodontic, or any other physical or mental health as required by the child support order, the obligor may purge the contempt by:

1. Making reasonable monthly payments for the past due child support or by making a lump sum payment to pay off the arrearage, and
2. Continuing to make all future payments for child support and other court-ordered support.

E. A reasonable monthly payment schedule shall be set for the past due support that considers the financial circumstances of the obligor. An obligor may also pay off the arrearage in a lump sum payment.

F. All payments made pursuant to purge shall be applied to reduce the amount of child support arrearage. When all the arrearage has been paid which is the subject of the contempt, the contempt shall be deemed purged.

G. If the obligor fails to comply with the conditions set for purging the contempt, the obligor may be found in contempt under this section and punishment imposed.

H. If an obligor is committed to the custody of the sheriff to serve a jail sentence, the jailed obligor may only be released from the custody of the sheriff:

1. Upon full payment of the adjudicated arrearage;
2. Upon serving the full sentence; or
3. Upon a subsequent agreement between the obligor and obligee for payment of the adjudicated arrearage and approved by the District Trial Court Family Division, and the court releases the obligor from the custody of the sheriff with the balance of the sentence to be conditionally suspended, subject to performance of the terms of the agreement and terms of the court order for release. Persons incarcerated pursuant to this section shall serve flat time in all cases and shall not be entitled to credit for good time, blood time or trustee time.

**§ 6-413. Tribal Alternatives to Incarceration Program.**

A. An obligor who is found guilty of contempt may be referred to child support alternatives to incarceration program, if available, or any other such program the District Trial Court Family Division may order the obligor to attend, in lieu of jail time. If the obligor fails to meet the requirements of the program, they will be referred back to the court for non-compliance, at which time the District Trial Court Family Division may accelerate the sentence previously entered.

B. Any such costs associated with the program shall be incurred by the obligor.

**§ 6-414. Paternity and Support of Alleged or Adjudicated Deprived Child - Support Orders and Payments - Rules**

- A.
1. When paternity of an alleged or adjudicated deprived child has not been established, the District Trial Court Family Division, within six (6) months after the filing of a deprived petition, shall either

establish paternity or defer the issue of paternity establishment to Muscogee (Creek) Nation Child Support Services (CSE) for any child for whom paternity has not been legally established according to the Muscogee (Creek) Nation Paternity Code.

2. When paternity is at issue, an alleged father and mother of the child named in a deprived petition shall be given notice in the petition and summons that paternity may be established in the deprived action. CSE shall proceed with paternity establishment for any case deferred to the District Trial Court Family Division under this subsection.
3. After the establishment of paternity, the court shall address current child support pursuant to subsection B of this section. In addition, the court may:
  - a. Order the father to pay child support for past months when no child support order was in effect in accordance with this Code, or
  - b. Reserve or refer the issue of prior support to CSE.
4. The order establishing paternity shall be filed as a separate document and shall not be confidential. The court clerk of the District Trial Court Family Division where the paternity order has been filed shall provide, upon request, a copy of the order establishing paternity to a representative of CSE. A court order for the release of the order establishing paternity or other information contained in the court record pertaining to paternity and child support shall not be required. The order may be captioned with a different case style in order to establish and enforce a child support order in an action other than the deprived proceeding.

**B.**

1. Each parent of any child named in a deprived petition shall be given notice in the petition and summons that child support may be ordered or modified in the deprived action.
2. Within six (6) months after the filing of a deprived petition, the court shall address the issue of child support or defer the issue of establishment or enforcement of child support to the District Trial Court Family Division. CSE shall proceed with the establishment or enforcement of child support orders for any case deferred to the District Trial Court Family Division provided, CSE shall enforce all child support orders entered by the Court.
3.
  - a. If there is an existing order for child support, the existing order shall remain in effect unless the Court finds the

- existing order is not in the best interests of the child or children involved.
- b. The District Trial Court Family Division shall use the child support guidelines as provided for in the Muscogee (Creek) Nation Child Support Code in determining the amount each parent is to pay for care and maintenance of a child and issue an order describing the finding of the court.
  - c. The District Trial Court Family Division may deviate from the child support guidelines when it is determined necessary in order for the parent to meet the obligations of a court-imposed individualized service plan or for other reasons as the court deems appropriate. If the court deviates from the amount of child support indicated by the child support guidelines, the Court shall make specific findings of fact supporting such action.
  - d. Each parent shall be individually ordered to pay his or her percentage of the total monthly child support obligation including parents who reside together.
  - e. The Court shall order the parent to provide medical insurance whenever the parent has insurance available through employment or other group plan at reasonable cost, regardless of whether insurance is available at the time the order is entered.
  - f. The child support order shall contain an immediate income assignment provision pursuant to Muscogee (Creek) Nation Child Support Code.
  - g. A child support computation form shall be completed by the court, counsel of record, or may be referred to CSE for completion. Upon being signed by the judge, the computation form shall be incorporated as a part of the child support order.
  - h.
    - i. A standard child support order form shall be used in the deprived action.
    - ii. The child support order shall be filed as a separate document and shall not be confidential.
    - iii. The court clerk of the District Trial Court Family Division where the child support order has been filed shall provide, upon request, a copy of the support order to a representative of Muscogee (Creek) Nation Child Support Services. A court order for the release of the

child support order or other information contained in the court record pertaining to child support shall not be required.

iv. The order may be captioned with a different case style in order to enforce the child support order in an action other than the deprived proceeding.

i. The child support order may be modified upon a material change in circumstances.

j. The child support order may be enforced by any method allowed by law.

k. After a deprived action is dismissed, the most recent child support order entered in the deprived action shall remain in full force and effect, unless the judge presiding over the deprived action orders otherwise. If there was no prior administrative or District Trial Court Family Division case, the deprived action child support order shall be docketed and filed and enforced for current child support and arrearages. If the judge presiding over the deprived action modified a preexisting child support order or if there was an existing administrative or District Trial Court Family Division case, the child support order entered in the deprived action shall be filed in the existing case and enforced for current child support and arrearages. The child support order may be modified after being docketed in District Trial Court Family Division.

C. All child support payments shall be paid through the CSE.

D. When a child's custody is changed from one parent or caretaker, the change in custody shall transfer child support payments to the new caretaker unless the caretaker is receiving foster care payments or Temporary Assistance to Needy Families payments for the care of the child. Child support payments to the caretaker shall terminate when the child no longer resides with the caretaker.

#### **§ 6-415. Judicial Review**

A. The Supreme Court shall hear appeals.

B. Any party may secure judicial review of a Court order made pursuant to this act by filing an appeal with the Supreme Court within ten (10) days after the decision is filed in the District Trial Court Family Division.

C. The appeal to the Supreme Court shall be an appeal to the record established before the District Trial Court Family Division and shall be strictly limited to the issues of the paternity of a child, the amount of past due support, public debt and child support of the absent parent or obligor.

D. The Supreme Court shall not consider questions of facts, which have been determined by the District Trial Court Family Division. The Supreme Court may reverse or modify the decision of the District Trial Court Family Division if the findings are, as a matter of law:

1. Clearly erroneous in view of the reliable, probative and substantial evidence in the record, when viewed in its entirety; or
2. Arbitrary and capricious or characterized by abuse of discretion.

**§ 6-416. Full Faith and Credit.**

A. The CSE shall comply with a request from another tribe or state to enforce a tribe or state child support order pursuant to the Full Faith and Credit for Child Support Orders Act (FFCCSOA) (28 U.S.C. 1738B).

B. The child support order shall be registered with the District Trial Court Family Division. A foreign order is certified by reasonable proof that the document is a true order of the administrative or judicial court of the issuing jurisdiction. A certified stamp issued by the clerk of the court or custodian of record, or a court seal, is sufficient evidence of authenticity.

C. If the order is contested, the burden of proof is upon the person contesting the order.

**§ 6-417. Statute of Limitations.**

No statute of limitations shall apply to any action to enforce a child support order to satisfy an unpaid child support debt. All child support is due and payable until paid in full.

**CHAPTER 5. MISCELLANEOUS**

**§ 6-501. Bankruptcy.**

All current and past due child support, owed on behalf of a child, shall not be discharged by bankruptcy.

**§ 6-502. Severability.**

If a provision of this Code or its application to an individual or circumstance is held invalid, the invalidity does not affect other provisions or application of this Code which can be given effect without the invalid provision or application.

**§ 6-503. Transitional Provision.**

A child support proceeding which was commenced before the effective date of this Code is governed by the law in effect at the time the proceeding was commenced.

**SECTION FOUR. EFFECTIVE DATE.** The provisions of this Code shall become effective immediately upon proper approval and execution in accordance with the requirements of the Muscogee (Creek) Nation Constitution.

**ENACTED** by the Muscogee (Creek) National Council on this 15<sup>th</sup> day of December, 2012.

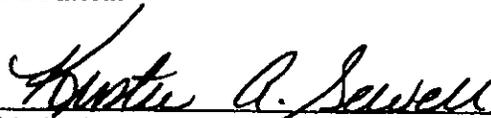
**IN WITNESS WHEREOF**, the Speaker of the Muscogee (Creek) National Council has hereto attached his signature.



\_\_\_\_\_  
Samuel S. Alexander, Speaker  
National Council  
Muscogee (Creek) Nation

**CERTIFICATION**

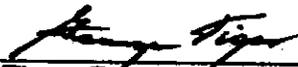
I, the undersigned, certify that the foregoing is a true extract from the minutes of the Muscogee (Creek) National Council comprised of Eighteen members with Sixteen members attending this meeting on the 15<sup>th</sup> day of December, 2012 and that the above is in conformity with the provisions therein adopted by a vote of 15 in favor, 0 against, and that said Law has not been rescinded or amended in any way and the above is the signature of the Speaker of the National Council.



\_\_\_\_\_  
Kristie A. Sewell, Recording Secretary  
Muscogee (Creek) National Council

APPROVAL

I, the Principal Chief of the Muscogee (Creek) Nation, hereby affix my signature on this 20<sup>th</sup> day of Dec, 2012 to the above Law, NCA 12-238 authorizing it to become a Law under Article VI., Section VI., of the Constitution of the Muscogee (Creek) Nation.

  
\_\_\_\_\_  
George Tiger, Principal Chief  
Muscogee (Creek) Nation

