

WINNEBAGO TRIBAL CODE  
TITLE 12

TITLE 12  
FAMILY RELATIONS

SUMMARY OF CONTENTS

SECTION	ARTICLE-PAGE
1. TABLE OF REVISIONS	ii
2. TABLE OF CONTENTS	iii
3. ARTICLE 1: [RESERVED]	1-1
4. ARTICLE 2: DOMESTIC AND FAMILY VIOLENCE ACT	2-1
5. ARTICLE 3: WINNEBAGO CHILD SUPPORT ENFORCEMENT IV-D PROGRAM ACT; ESTABLISHMENT AND DUTIES	3-1
6. ARTICLE 4: WINNEBAGO PARENTAGE ACT	4-1
7. ARTICLE 5: WINNEBAGO CHILD SUPPORT ACT	5-1
• PRELIMINARY PROVISIONS	5-3
• ESTABLISHMENT & MODIFICATION OF CHILD SUPPORT	5-7
• TRIBAL TANF & ASSIGNMENT OF CHILD SUPPORT PAYMENTS TO THE WTN-CSEP	5-11
• LOCATION OF A MISSING OBLIGOR, ASSETS, AND OBLIGEE BY THE WTN-CSEP	5-13
• PAYMENTS, COLLECTION, DISTRIBUTION, AND ARREARS	5-13
• CIVIL REMEDIES FOR ENFORCEMENT OF CHILD SUPPORT ORDERS	5-16
• INTERGOVERNMENTAL CHILD SUPPORT CASES – AFFORDING FULL FAITH AND CREDIT	5-24
• REGISTRATION OF FOREIGN CHILD SUPPORT ORDER FOR ENFORCEMENT	5-24
• REGISTRATION OF FOREIGN CHILD SUPPORT ORDERS FOR MODIFICATION	5-26



WINNEBAGO TRIBAL CODE  
TITLE 12

TITLE 12  
FAMILY RELATIONS

ARTICLE 1

[Reserved]

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TITLE 12  
ARTICLE 2  
DOMESTIC AND FAMILY VIOLENCE ACT  
(As amended and approved December 7, 2005)

- |        |  |        |  |
|--------|--|--------|--|
| 12-201 | Purpose and Findings.  | 12-223 | Continuing Duty to Inform Court of Other Proceedings; Effect of Other Proceedings; Delay of Relief Prohibited; Omission of Petitioner's Address. |
| 12-202 | Definitions.   | 12-224 | Emergency Order for Protection; Available Relief; Availability of Judge or Court Officer.  |
| 12-203 | Domestic or Family Violence; Crime Involving Domestic or Family Violence; Penalties; Mandatory Intervention. | 12-225 | Order for Protection; Modification of Orders; Relief Available Ex Parte; Relief Available After Hearing; Duties of the Court; Duration of Order. |
| 12-204 | Possession of a Firearm.   | 12-226 | Required Hearings; Duty When Order for Protection Denied.  |
| 12-205 | Duties of Law Enforcement to Victim; Required Notice.  | 12-227 | Effect of Action by Petitioner or Respondent on Order.   |
| 12-206 | Determination of predominant aggressor; required report.   | 12-228 | Denial of Relief Prohibited.   |
| 12-207 | Authority of Law Enforcement to Seize Weapons.   | 12-229 | Mutual Orders for Protection.  |
| 12-208 | Conditions of Release.   | 12-230 | Mandatory Arrest for Certain Violations of Orders for Protection.  |
| 12-209 | Mandatory Arrest for Violation of Conditions of Release.   | 12-231 | Violation of Certain Orders for Protection.  |
| 12-210 | Written procedures for Prosecution.  | 12-232 | Court-ordered and Court-referred Mediation Prohibited.   |
| 12-211 | Duty of Prosecutor to Notify Victim.   | 12-233 | Court Costs and Fees.  |
| 12-212 | Record of Dismissal.   | 12-234 | Court-referred Assistance to Victims of Domestic and Family Violence.  |
| 12-213 | Dismissal Prohibited Due to Civil Compromise.  | 12-235 | Registration and Enforcement of Foreign Orders for Protection; Duties of Court Clerk.  |
| 12-214 | Rights of Victims; Duty of Prosecutor to Inform.   | 12-236 | Mandatory Training.  |
| 12-215 | Spousal Privileges Inapplicable.   |        |  |
| 12-216 | Advocate-Victim Privilege.   |        |  |
| 12-217 | Residential Confinement; Visitation in Home of Victim Prohibited.  |        |  |
| 12-218 | Diversion prohibited.  |        |  |
| 12-219 | Required Policies and Procedures.  |        |  |
| 12-220 | Eligible Petitioners for Protection Orders.  |        |  |
| 12-221 | Uniform Documents for Petitions and Orders; Required Statements; Duties of Clerk.                            |        |  |
| 12-222 | Jurisdiction; venue; residency not required to petition.   |        |  |

WINNEBAGO TRIBAL CODE  
TITLE 12

TITLE 12  
ARTICLE 3  
WINNEBAGO CHILD SUPPORT ENFORCEMENT IV-D PROGRAM ACT;  
ESTABLISHMENT AND DUTIES

12-301	Act, How Cited.	12-304	Authority and Responsibility of the
12-302	Purpose.		WTN-CSE.
12-303	Definitions.	12-305	Program Participation and Funding.

---

WINNEBAGO TRIBAL CODE  
TITLE 12

TITLE 12  
ARTICLE 4  
WINNEBAGO PARENTAGE ACT

12-401	Act, How Cited.	12-431	Costs of Genetic Testing.
12-402	Purpose of Act.	12-432	Additional Genetic Testing.
12-403	Definitions.	12-433	Genetic Testing When Specimens Not Available.
12-404	Subject Matter Jurisdiction.	12-434	Deceased Individual.
12-405	Personal Jurisdiction.	12-435	Identical Brothers.
12-406	Protection of Participants.	12-436	Confidentiality of Genetic Testing.
12-407	Authorized Release of Case Records and Other Information.	12-437	Proceeding to Adjudicate the Parentage of a Child – Authorization.
12-408	Publication of Proceedings.	12-438	Standing to Maintain Proceeding.
12-409	Penalty for Unauthorized Disclosure.	12-439	Parties to Proceeding.
12-410	Notice.	12-440	No Limitation – Child Having No Presumed, Acknowledged, or Adjudicated Father.
12-411	Establishment of Parent-Child Relationship.	12-441	Limitation – Child Having Presumed Father.
12-412	No Discrimination Based on Marital Status.	12-442	Authority to Deny Motion for Genetic Testing.
12-413	Consequences of Establishment of Parentage.	12-443	Limitation – Child Having Acknowledged or Adjudicated Father.
12-414	Presumption of Paternity.	12-444	Joinder of Proceedings.
12-415	Tribal Acknowledgement and Denial of Paternity – Duties of the WTN-CSEP.	12-445	Proceeding Before Birth.
12-416	Tribal Acknowledgment of Paternity – Execution.	12-446	Child as Party – Representation.
12-417	Tribal Denial of Paternity by a Presumed Father.	12-447	Admissibility of Results of Genetic Testing – Expenses.
12-418	Rules for Tribal Acknowledgment and Denial of Paternity.	12-448	Consequences of Declining Genetic Testing.
12-419	Effect of Tribal Acknowledgment or Denial of Paternity.	12-449	Admission of Paternity Authorized.
12-420	No Filing Fee.	12-450	Temporary Order.
12-421	Proceeding for Rescission.	12-451	Rules of Adjudication of Paternity.
12-422	Challenge <u>After</u> Expiration of Period for Rescission.	12-452	Jury Prohibited.
12-423	Procedure for Rescission or Challenge.	12-453	Closed Hearings.
12-424	Full Faith and Credit.	12-454	Order on Default.
12-425	Release of Information – Tribal Acknowledgment or Denial of Paternity.	12-455	Dismissal for Want of Prosecution.
12-426	Scope of Genetic Testing.	12-456	Order Adjudicating Parentage.
12-427	Order for Genetic Testing.	12-457	Binding Effect of Determination of Parentage.
12-428	Requirements for Genetic Testing.	12-458	Liability for Collection of Support.
12-429	Report of Genetic Testing.	12-459	Application of the Winnebago Parentage Act.
12-430	Genetic Testing Results – Rebuttal.		

WINNEBAGO TRIBAL CODE  
TITLE 12

TITLE 12  
FAMILY RELATIONS  
ARTICLE 5  
WINNEBAGO CHILD SUPPORT ACT  
(As revised May 21, 2014)

PRELIMINARY PROVISIONS

12-501	Act, How Cited.	12-507	Authorized Release of Case Records and Other Information.
12-502	Findings.	12-508	Penalty for Unauthorized Disclosure.
12-503	Purpose.	12-509	Attorney Represents Tribe's Interest in the Enforcement of Child Support Obligations.
12-504	Definitions.	12-510	Notice.
12-505	Jurisdiction.		
12-506	Protection of Participants — Confidentiality of Case Records.		

ESTABLISHMENT & MODIFICATION OF CHILD SUPPORT

12-511	Duty to Support Children.	12-518	Periodic Review of Child Support Orders.
12-512	Liability of Stepparent For Support.	12-519	Notice of Periodic Review of Child Support Orders.
12-513	Termination of Parental Rights – Duty of Support.	12-520	Obligor's Duties Upon Review – Failure to Provide Information.
12-514	Support For Children After Majority – Retroactive Application.	12-521	Notice of Review Determination.
12-515	Support by Tribe – Liability of Parent's Estate.	12-522	Motion for Amendment of Child Support Order – How Made – Presumption When Obligor's Income Unknown.
12-516	Allowance to Parent for Support of Child.	12-523	Request For Review – Notice of Right to Request Review.
12-517	Duration of Child Support Obligations.		

TRIBAL TANF & ASSIGNMENT OF CHILD SUPPORT PAYMENTS TO THE WTN-CSEP

12-524	Recipients of Tribal TANF - Assignment of Support Payments.	12-528	Cooperation with Winnebago Tribe of Nebraska Child Support Enforcement Program (WTN-CSEP).
12-525	Families-First Distribution of Child Support Arrearages.	12-529	Non-Cooperation with the WTN-CSEP.
12-526	Existing Assignments.	12-530	Assignment of Rights; Judgment.
12-527	Effect of Assignment.		

LOCATION OF A MISSING OBLIGOR, ASSETS, AND OBLIGEE BY THE WTN-CSEP

12-531	Location Activities of the WTN-CSEP.
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PAYMENTS, COLLECTIONS, DISTRIBUTION, AND ARREARS

12-532	Mandatory Payment of Child Support Obligations to the WTN-CSEP.	12-535	Arrears.
12-533	Collections and Distribution – General Rule, Current Receipt of Tribal TANF, Former Receipt of Tribal TANF.	12-536	Child Support Order – Required Interest Statement on Arrears.
12-534	Overpayments.	12-537	Interest Waived on Arrearages.
		12-538	Offsets of Child Support.
		12-539	Agreements to Waive Child Support.

WINNEBAGO TRIBAL CODE  
TITLE 12

CIVIL REMEDIES FOR ENFORCEMENT OF CHILD SUPPORT ORDERS

- |        |   |        |  |
|--------|---|--------|--|
| 12-540 | Income Withholding Order.   | 12-549 | Income Withholding - Duties and Liabilities of Income Payer under Income Withholding Order.            |
| 12-541 | Immediate Income Withholding.   |        |  |
| 12-542 | Subsequent Income Withholding Order – Provision of Notice of Impact of Income Withholding Law to Obligor. | 12-550 | Requests for Information from Income Payer.  |
| 12-543 | Requests by Obligee for Income Withholding – Approval – Procedures and Standards.                         | 12-551 | Amendment – Termination of Income Withholding Order.   |
| 12-544 | Procedure – Notice to Obligor.  | 12-552 | Interstate Income Withholding – Initiation by the Winnebago Tribe of Nebraska to Another Jurisdiction. |
| 12-545 | Hearing Upon Obligor’s Request.   | 12-553 | Child Support Exempt from Process.   |
| 12-546 | Mandatory Federal Income Withholding Form – Effect of Income Withholding Order.                           | 12-554 | Administrative Seek Employment Orders.   |
| 12-547 | Voluntary Income Withholding for Child Support – Limitations.   | 12-555 | Driver’s License and Occupational License Suspension, Motor Vehicle Lien.                              |
| 12-548 | Service of Income Withholding Order on Income Payer.  | 12-556 | Contempt Proceedings for Nonpayment of Child Support.  |

INTERGOVERNMENTAL CHILD SUPPORT CASES –  
AFFORDING FULL FAITH AND CREDIT

- 12-557 Full Faith and Credit of Foreign Child Support Orders.

REGISTRATION OF FOREIGN CHILD SUPPORT ORDER FOR ENFORCEMENT

- |        |  |        |   |
|--------|--|--------|---|
| 12-558 | Registration of Foreign Child Support Order for Enforcement. | 12-561 | Notice of Registration of Order.                                  |
| 12-559 | Effect of Registration for Enforcement.                      | 12-562 | Procedure to Contest Validity or Enforcement of Registered Order. |
| 12-560 | Choice of Law.   | 12-563 | Burden on Party Contesting the Registration or Enforcement.       |

REGISTRATION OF FOREIGN CHILD SUPPORT ORDERS FOR MODIFICATION

- |        |  |        |  |
|--------|--|--------|--|
| 12-564 | Registration Child Support Order for Modification.             | 12-568 | Effect of Accepting a Transferred Case.                    |
| 12-565 | Modification of Child Support Order of Another Tribe or State. | 12-569 | Notice of Acceptance of Transferred Case.                  |
| 12-566 | Application of the Winnebago Child Support Act.                | 12-570 | Procedure to Contest the Acceptance of a Transferred Case. |
| 12-567 | Transferring of a Foreign Child Support or Custody Case.       | 12-571 | Burden on Party Contesting the Transfer of a Case.         |

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 1

TITLE 12  
ARTICLE 1

[Reserved]

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WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 2

TITLE 12  
ARTICLE 2  
DOMESTIC AND FAMILY VIOLENCE ACT  
(As amended and approved December 7, 2005)

12-201	Purpose and Findings.	12-223	Continuing Duty to Inform Court of Other Proceedings; Effect of Other Proceedings; Delay of Relief Prohibited; Omission of Petitioner's Address.
12-202	Definitions.	12-224	Emergency Order for Protection; Available Relief; Availability of Judge or Court Officer.
12-203	Domestic or Family Violence; Crime Involving Domestic or Family Violence; Penalties; Mandatory Intervention.	12-225	Order for Protection; Modification of Orders; Relief Available Ex Parte; Relief Available After Hearing; Duties of the Court; Duration of Order.
12-204	Possession of a Firearm.	12-226	Required Hearings; Duty When Order for Protection Denied.
12-205	Duties of Law Enforcement to Victim; Required Notice.	12-227	Effect of Action by Petitioner or Respondent on Order.
12-206	Determination of predominant aggressor; required report.	12-228	Denial of Relief Prohibited.
12-207	Authority of Law Enforcement to Seize Weapons.	12-229	Mutual Orders for Protection.
12-208	Conditions of Release.	12-230	Mandatory Arrest for Certain Violations of Orders for Protection.
12-209	Mandatory Arrest for Violation of Conditions of Release.	12-231	Violation of Certain Orders for Protection.
12-210	Written procedures for Prosecution.	12-232	Court-ordered and Court-referred Mediation Prohibited.
12-211	Duty of Prosecutor to Notify Victim.	12-233	Court Costs and Fees.
12-212	Record of Dismissal.	12-234	Court-referred Assistance to Victims of Domestic and Family Violence.
12-213	Dismissal Prohibited Due to Civil Compromise.	12-235	Registration and Enforcement of Foreign Orders for Protection; Duties of Court Clerk.
12-214	Rights of Victims; Duty of Prosecutor to Inform.	12-236	Mandatory Training.
12-215	Spousal Privileges Inapplicable.		
12-216	Advocate-Victim Privilege.		
12-217	Residential Confinement; Visitation in Home of Victim Prohibited.		
12-218	Diversion prohibited.		
12-219	Required Policies and Procedures.		
12-220	Eligible Petitioners for Protection Orders.		
12-221	Uniform Documents for Petitions and Orders; Required Statements; Duties of Clerk.		
12-222	Jurisdiction; venue; residency not required to petition.		

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**12-201 Purpose and Findings.** Domestic and Family Violence is conduct that is contrary to the values of the Winnebago Tribe. It is devastating to victims and to any family in which it happens. Domestic and Family Violence harms the entire community, because it endangers the physical, mental, emotional and spiritual health of everyone involved. The Tribe will not tolerate domestic violence among its people or in the lands that it governs. The Winnebago Tribal Domestic and Family Violence Code must be construed to promote:

1. The protection and safety of all victims of domestic or family violence in a fair, prompt and effective manner, and
2. The prevention of future violence in all families. [TCR 96-55, 06-26]

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 2

**12-202 Definitions.** Unless the context otherwise requires, as used in the Winnebago Tribal Code:

1. “Domestic or family violence” means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self defense:
  - a. Attempting to cause or causing physical harm to another family or household member;
  - b. Placing a family or household member in fear of physical harm;
  - c. Causing a family or household member to engage involuntarily in sexual activity by force or duress;
  - d. Intentionally engaging in a course of conduct directed at a specific person that would cause a reasonable person under the same circumstances to fear bodily injury to or the death of himself or herself or a member of his or her family or household.
2. “Family or Household Members” include:
  - a. Adults or minors who are current or former spouses;
  - b. Adults or minors who live together or who have lived together;
  - c. Adults or minors who are dating or who have dated;
  - d. Adults or minors who are engaged in or who have engaged in a sexual relationship;
  - e. Adults or minors who are related by blood or adoption;
  - f. Adults or minors who are related or formerly related by marriage;
  - g. Persons who have a child in common;
  - h. a person similarly situated to a spouse, parent or guardian of the victim; and
  - i. Minor children of a person in a relationship that is described in paragraphs (a) through (g).
3. “Crime Involving Domestic Violence” occurs when a Family or Household Member commits an offense against another Family or Household Member that is a crime under federal, state or tribal law, including:
  - a. Arson
  - b. Assault offenses (aggravated assault, simple assault, and intimidation);
  - c. Burglary, breaking and entering;
  - d. Destruction, damage or vandalism of property;
  - e. Homicide offenses (murder and non-negligent manslaughter, negligent manslaughter and justifiable homicide);
  - f. Kidnapping, abduction;
  - g. Sex offenses, forcible (forcible rape, forcible sodomy, sexual assault with an object and forcible fondling);
  - h. Stolen property offenses;
  - i. Weapons law violations;
  - j. Disorderly conduct;
  - k. Family offenses, non-violent;
  - l. Stalking;
  - m. Violations of Protection orders or Restraining Orders previously filed;
  - n. Harassment;
  - o. Criminal Trespass; or
  - p. Other crime that has an element involving the use, attempted use, or threatened use of physical force, or the use, attempted use or threatened use of a weapon;
4. “Program of Intervention for Perpetrators” means a specialized program that:
  - a. Accepts perpetrators of domestic or family violence into treatment or educational classes to satisfy court orders;
  - b. Offers treatment or re-education to perpetrators of domestic or family violence; or
  - c. Offers classes or instruction to perpetrators of domestic or family violence.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 2

5. "Program for Victims of Domestic or Family Violence" means a specialized program for victims of domestic or family violence and their children that provides advocacy, shelter referral, crisis intervention, supportive services, referral to alcohol treatment, mental health services, counseling, re-education, training or transportation.
6. "Safety Plan" means a written or oral outline of actions to be taken by a victim of domestic or family violence to secure protection and support after making an assessment of the lethality involved. [TCR 96-55, 06-26]

**12-203 Domestic or Family Violence; Crime Involving Domestic or Family Violence; Penalties; Mandatory Intervention.**

1. It shall be unlawful for a person to commit Domestic or Family Violence or to commit a Crime involving Domestic or Family Violence as defined in Section 12-202.
2. Domestic or Family Violence shall be a Class III offense.
3. The penalty for a Crime involving Domestic or Family Violence shall correspond to the penalty for that offense in the Code of the Winnebago Tribe and the defendant shall be assessed twice the regular court costs and fees.
4. The penalty for any second offense within five years of the first offense shall be enhanced by one degree above the penalty otherwise provided, unless such criminal offense is already punishable as a Class I offense.
5. An offender shall be required as a part of any sentence or probation to attend a mandatory Program of Intervention for Perpetrators. Participation in this program shall not be suspended or omitted from any sentence or condition of probation.
6. If substance abuse is involved, the offender shall be court ordered to complete a drug test and substance abuse assessment by a licensed alcohol and drug counselor and complete any recommended treatment plan.
7. The court costs and fees collected in any Domestic Violence proceeding shall be distributed to the Winnebago Domestic Violence Intervention and Family Preservation Program for use in victim and batterer support or education programs and to assist in providing mandatory Domestic Violence training for all court personnel, judges, court clerks, dispatchers, prosecutors, law enforcement, advocates, and medical personnel. [TCR 96-55, 06-26]

**12-204 Possession of a Firearm.**

1. It shall be unlawful for any person convicted of a crime of Domestic or Family Violence to ship, transport, possess, receive, sell or otherwise disposes of a firearm or ammunition.
2. Violation of this provision shall be a Class III offense. [TCR 96-55, 06-26]

**12-205 Duties of Law Enforcement to Victim; Required Notice.**

1. A law enforcement officer responding to a call of Domestic or Family Violence shall use all reasonable means to protect the victim and prevent further violence, including but not limited to:
  - a. Taking any action necessary to provide for the safety of the victim and any family or household member;
  - b. Confiscating any weapon involved in the alleged Domestic or Family Violence;
  - c. Notifying the on-call Domestic Violence Victim Advocate for transporting the victim and any child to a shelter and/or providing other support services;
  - d. Assisting the victim in removing any essential personal effects;
  - e. Assisting the victim and any child in obtaining medical treatment, including obtaining transportation to a medical facility;

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 2

- f. Giving victims immediate and adequate notice of the rights of victims and of the remedies and services available to victims of Domestic or Family Violence.
2. As part of the notice required by paragraph (f) of subsection 1, the law enforcement officer shall give a written notice to the victim substantially as follows:

“Victims of Domestic or Family Violence have the right to physical safety under the protection of the law. You have the right to request the following:

- a. That the officer assist in providing for your safety.
- b. An emergency order for protection.
- c. Assistance in obtaining your essential personal effects.
- d. Assistance from the Winnebago Domestic Violence Victim Advocate.
- e. Assistance in locating and transporting you to a safe environment such as a shelter, a family member’s or a friend’s residence, or a similar place of safety.
- f. Medical emergency transportation and treatment.
- g. A copy of the police report at no cost.
- h. Sign a Release of Information for confidentiality protection.
- i. File a Petition for Protection Order and request the prosecuting attorney to file a criminal complaint which may include any of the following orders:
  - i. An order enjoining your abuser from threatening to commit or committing further acts of Domestic or Family Violence;
  - ii. An order prohibiting your abuser from harassing, annoying, telephoning, contacting or otherwise communicating with you, directly or indirectly;
  - iii. An order removing your abuser from your residence;
  - iv. An order directing your abuser to stay away from your residence, school, place of employment, or any other specified place frequented by you and another family or household member;
  - v. An order prohibiting your abuser from using or possessing any firearm or other weapon specified by the court;
  - vi. An order granting you possession and use of the automobile and other essential personal effects;
  - vii. An order granting you custody of your child or children;
  - viii. An order denying your abuser visitation;
  - ix. An order specifying arrangements for visitation, including requiring supervised visitation; and
  - x. An order requiring your abuser to pay certain costs and fees, such as rent or mortgage payments, child support payments, medical expenses, expenses for shelter, court costs, and attorney’s fees.

The forms needed to obtain an order for protection are available from the Clerk of the Tribal Court. The resources available in this community for information relating to Domestic and Family Violence are: [list current resources]. You also have the right to seek reimbursement for losses suffered as a result of the abuse, including medical and moving expenses, loss of earnings or support, and other expenses for injuries sustained and damage to your property. This can be done without an attorney in small claims court if the total amount claimed is less than Two thousand (\$2,000.00) dollars.”

3. The written notice must not include the addresses of shelters. [TCR 96-55, 06-26]

**12-206 Determination of predominant aggressor; required report.**

1. If a law enforcement officer receives complaints of Domestic or Family Violence from two or more opposing persons, the officer shall evaluate each complaint separately to determine who is

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 2

the predominant aggressor. If the officer determines that one person is the predominant aggressor, the officer need not arrest the other person believed to have committed Domestic or Family Violence. In determining whether a person is the predominant aggressor the officer shall consider:

- a. Whether one of the persons acted in self-defense, or
  - b. History of abuse including but not limited to the following factors:
    - i. Prior complaints of Domestic or Family Violence located at the Police Department and/or Domestic Violence Victim Office;
    - ii. The relative severity of the injuries inflicted on each person; and
    - iii. The likelihood of future injury to each person.
2. A law enforcement officer shall not:
- a. Threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage requests for intervention by law enforcement by any party; or
  - b. Base the decision to arrest or not to arrest on:
    - i. The specific consent or request of the victim; or
    - ii. The officer's perception of the willingness of a victim of or witness to the Domestic or Family Violence to testify or otherwise participate in a judicial proceeding.
3. In addition to any other report required, a law enforcement officer who does not make an arrest after investigating a complaint of Domestic or Family Violence or who arrests two or more persons for a crime involving domestic or family violence must submit a written report setting forth the grounds for not arresting or for arresting both parties.
4. A copy of each police report involving Domestic or Family Violence shall be forwarded to the Domestic Violence Program whether or not the case is prosecuted, including witness statements, "excited utterances" of victims or witnesses, pictures of the victim, conditions of the scene, and a list of possible objects used as weapons. [TCR 96-55, 06-26]

**12-207 Authority of Law Enforcement to Seize Weapons.** Incident to an arrest for a crime involving domestic or family violence, a law enforcement officer:

1. Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of a crime.
2. May seize a weapon that is in the plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons. [TCR 96-55, 06-26]

**12-208 Conditions of Release.**

1. In making a decision concerning pretrial release of a person who is arrested for or charged with Domestic or Family Violence, a Crime involving Domestic or Family Violence, including a Violation of an Order for Protection, the Tribal Court shall review the defendant's previous records of convictions for Domestic Violence and Firearms and the facts of the arrest and detention of the person to determine whether the person:
  - a. Is a threat to the alleged victim or other family or household member;
  - b. Is a threat to Public safety; and
  - c. Is reasonably likely to appear in court.
2. Before releasing a person arrested for or charged, the Tribal Court shall make findings on the record if possible concerning the determination made in accordance with subsection (1) and may impose conditions of release or bail on the person to protect the alleged victim of Domestic or Family Violence and to ensure the appearance of the person at a subsequent court proceeding. The conditions may include:

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 2

- a. An order enjoining the person from threatening to commit or committing acts of Domestic or Family Violence against the alleged victim or other family or household member or against Domestic Violence Program employees.
  - b. An order prohibiting the person from harassing, annoying, telephoning, stalking, contacting, or otherwise communicating with the alleged victim, either directly or indirectly.
  - c. An order directing the person to vacate or stay away from the home of the alleged victim and to stay away from any other location where the victim is likely to be.
  - d. An order prohibiting the person from using or possessing a firearm or other weapon specified by the court especially if there has been a prior conviction of Domestic Violence or firearm regulations.
  - e. An order prohibiting the person from possession or consumption of alcohol or controlled substances.
  - f. Any other order required to protect the safety of the alleged victim and to ensure the appearance of the person in court.
3. If conditions of release are imposed, the Tribal Court shall:
- a. Issue a written order for conditional release;
  - b. Immediately distribute a copy of the order to the Winnebago Police Department; and the Domestic Violence Program; and,
  - c. Provide the Police Department with any available information concerning the location of the victim in a manner that protects the safety of the victim.
4. The Tribal court shall provide a copy of the conditions to the arrested or charged person upon his or her release. Failure to provide the person with a copy of the conditions of release does not invalidate the conditions if the arrested or charged person has notice of the conditions.
5. The conditions of release are imposed without a hearing, the arrested or charged person may request a hearing before the court to review the conditions. Upon such a request, the court shall hold a hearing within seventy (72) hours.
6. When a person who is arrested for or charged with Domestic or Family Violence, or a Crime involving Domestic or Family Violence, is released from custody, the Tribal Court shall:
- a. Use all reasonable means to immediately notify the alleged victim of the crime of the release; and
  - b. Furnish the alleged victim of the crime a certified copy of any conditions of release at no cost.
7. Release of a person who is arrested for or charged with a Domestic or Family Violence or a Crime Involving Domestic or Family Violence must not be delayed because of the requirements of subsection (6). [TCR 96-55, 06-26]

**12-209 Mandatory Arrest for Violation of Conditions of Release.** If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with section 12-208 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer. [TCR 96-55, 06-26]

**12-210 Written procedures for Prosecution.** The Tribal Court Prosecutor shall develop and put into effect written procedures for prosecution of Domestic and Family Violence to ensure the effective prosecution of such crimes and the protection and safety of victims of Domestic and Family Violence. The procedures shall include such provisions as:

1. The employment, economic educational, physical and/or mental health and political status of the alleged perpetrator and victim shall not enter into determinations for Domestic Violence crimes.
2. A “no drop” policy which prohibits victims from withdrawing charges.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 2

3. The prohibition of diversion, deferred sentencing, and other agreements not to prosecute.
4. The use or abuse of alcohol by the alleged perpetrator or victim shall not be a primary factor in determining the pursuit of domestic violence cases but shall be considered as it relates to the safety of the victim and potential lethality.
5. A process describing the utilization of Domestic Violence Victim Advocates during every phase of criminal proceedings including treatment, education and prevention for the safety of the family and children.
6. No member of the prosecution office has the authority to order the release of an alleged perpetrator prior to the procedures described in Section 12-210.
7. Prosecution will not dismiss or reduce the charge of a domestic violence case without prior consultation and review with the arresting officer and Domestic Violence Victim Advocate.
8. Prosecution shall expedite proceedings with a minimum of continuances and shall consider the present residency of the victim as it relates to continuances, especially if the victim has relocated off-reservation for safety.
9. The victim shall not be required to act as the primary witness. The prosecution shall enlist any and all evidentiary avenues, including but not limited to photographs, other witnesses, excited utterances and other law enforcement testimony, medical records, and history of past abuse, in order to effectively prosecute the case.
10. In recognizing Domestic Violence as a crime and not a relationship issue, the prosecution shall not recommend or promote any actions that require the alleged victim to engage in any type or form of mediation process with the alleged assailant such as mediation, peacemaking, alternative justice, restorative justice, family counseling, couple counseling, circle sentencing, or similar program.
11. Enhanced measures to protect victims when the perpetrator is a repeat offender, including education, treatment, trauma counseling, or mental health assessment pursuant to section 12-205. [TCR 96-55, 06-26]

**12-211 Duty of Prosecutor to Notify Victim.**

1. A prosecutor shall make reasonable efforts to notify a victim of an alleged crime involving domestic or family violence when the prosecutor has decided to decline prosecution of the crime or to dismiss the criminal charges filed against the defendant.
2. Release of a defendant from custody must not be delayed because of the requirements of subsection (1). [TCR 96-55, 06-26]

**12-212 Record of Dismissal.** When a court dismisses criminal charges or a prosecutor moves to dismiss charges against a defendant accused Domestic or Family Violence, the specific reasons for the dismissal must be recorded in the court file. The prosecutor shall indicate the specific reason why the case will not be prosecuted. [TCR 96-55, 06-26]

**12-213 Dismissal Prohibited Due to Civil Compromise.** A court shall not dismiss a Domestic or Family Violence charge for the sole reason that a civil compromise or settlement or reconciliation is reached. [TCR 96-55, 06-26]

**12-214 Rights of Victims; Duty of Prosecutor to Inform.**

1. An alleged victim of Domestic and Family Violence is entitled to all rights granted to victims of crime including but not limited to:
  - a. Be informed of all hearing dates and continuances.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 2

- b. Provide the court with a victim-impact statement, victim-opinion statement, and an assessment of the risk of further harm.
  - c. Be present at sentencing and address the court.
  - d. Advise the court of conditions of probation and/or parole required to ensure the safety of the victim and other family or household members.
  - e. Restitution for losses sustained as a direct consequence of any criminal conduct by the alleged perpetrator.
  - f. Receive notice from the Prosecutor in accordance with Section 12-210.
2. An attorney prosecuting Domestic or Family Violence shall notify the alleged victim of Domestic or Family Violence of the victim's rights set forth herein. [TCR 96-55, 06-26]

**12-215 Spousal Privileges Inapplicable.** The following evidentiary privileges do not apply in any criminal proceeding in which a spouse or other family or household member is the victim of an alleged crime involving Domestic or Family Violence perpetrated by the other spouse:

1. The privilege of confidential communication between spouses.
2. The testimonial privilege of spouses. [TCR 96-55, 06-26]

**12-216 Advocate-Victim Privilege.**

1. Except as otherwise provided in subsection (2), a victim of Domestic or Family Violence may refuse to disclose, and may prevent an advocate from disclosing, confidential oral communication between the victim and the advocate and written records and reports concerning the victim if the privilege is claimed by:
  - a. The victim; or
  - b. The individual who was the advocate at the time of the confidential communication, except that the advocate may not claim the privilege if there is no victim in existence or if the victim has waived the privilege.
2. The privilege does not relieve a person from any duty imposed pursuant to reporting of child abuse or neglect.
3. As used in this subsection, "advocate" means an employee of or volunteer for a program for victim of Domestic or Family Violence who:
  - a. Has a primary function of rendering advice, counseling, or assistance to victims of Domestic or Family Violence; supervising the employees or volunteers of the program; or administering the program;
  - b. Has undergone twenty (20) hours of related training; and
  - c. Works under the direction of a supervisor of the program, supervises employees or volunteers, or administers the program.
4. As used in this subsection, "Victim" means a person who has made an allegation of Domestic or Family Violence against a Family or Household Member or who has been subjected to Domestic or Family Violence perpetrated by a Family or Household Member. [TCR 96-55, 06-26]

**12-217 Residential Confinement; Visitation in Home of Victim Prohibited.** In cases involving Domestic or Family Violence, a court shall not order residential confinement for a perpetrator in the home of the victim; nor shall a court order visitation of children to take place in the home of the victim. [TCR 96-55, 06-26]

**12-218 Diversion prohibited.** The court shall not approve any diversionary program in lieu of conviction for a perpetrator of Domestic or Family Violence. [TCR 96-55, 06-26]

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 2

**12-219 Required Policies and Procedures.** The Winnebago Police Department shall develop and put into effect written policies and procedures concerning:

1. The effective response of the agency to cases involving Domestic and Family Violence.
2. Enforcement of this Code and other applicable statutes concerning Domestic and Family Violence.
3. Protection and safety of the victims of Domestic Violence and other family and household members.
4. Coordination with hospitals, other law enforcement agencies and Domestic Violence Intervention programs for victims of Domestic or Family Violence. [TCR 96-55, 06-26]

**12-220 Eligible Petitioners for Protection Orders.**

1. A person who is or has been a victim of Domestic or Family Violence may file a petition for an order for protection against a family or household member who commits an act of Domestic or Family Violence.
2. A parent, guardian, or other legal representative may file a petition for an order for protection on behalf of a child against a family or household member who commits an act of Domestic or Family Violence.
3. A Domestic Violence Victim Advocate, staff member or volunteer may file for a restraining order on his/her own behalf pursuant to § 2-911 et. seq. [TCR 96-55, 06-26]

**12-221 Uniform Documents for Petitions and Orders; Required Statements; Duties of Clerk.**

1. The Tribal Court shall:
  - a. Develop and adopt a standardized document for petitions and orders for protection, including but not limited to such orders issued pursuant to divorce, custody, and other domestic relations hearings; and
  - b. Provide the forms to the clerk of each court authorized to issue such orders.
2. In addition to any other required information, the petition for an order for protection must contain a statement listing each civil or criminal action involving both parties.
3. The following statements must be printed in bold-faced type or in capital letters on the order for protection:
  - a. "Violation of this order could result confinement in jail for a period up to twelve (12) months and/or a fine of five hundred (\$500) dollars or more.
  - b. The respondent is forbidden to enter or stay at the petitioner's residence even if invited to do so by the petitioner or any other person. Such invitation does not void this order for protection."
4. The clerk of the Tribal Court or other designated person shall provide to a person requesting an order for protection:
  - a. The forms adopted pursuant to subsection (1);
  - b. All other forms required to petition for an order for protection; and
  - c. Clerical assistance in filling out the forms and filing the petition.
5. Except as otherwise provided in section 12-226, a petition for an order for protection must be in writing, notarized, and subscribed to in the manner provided by tribal law.
6. All orders for protection must be issued on the form adopted in accordance with subsection (1). [TCR 96-55, 06-26]

**12-222 Jurisdiction; venue; residency not required to petition.**

1. The Tribal Court has civil jurisdiction to issue orders for protection.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 2

2. A petition for an order for protection may be filed in the tribal court:
  - a. Where the petitioner currently or temporarily resides; or
  - b. Where the respondent resides; or
  - c. Where the violence occurred.
3. There is no minimum requirement of residency to file petitions.
4. Orders of Protection will be entered into the Nebraska database by law enforcement.
5. Full Faith and Credit shall be given to Protection Orders issued by the Winnebago Tribal Court in any state or tribe in accordance with the federal Violence Against Women Act of 2000 and any subsequent amendments. The Winnebago Tribe shall also grant full faith and credit to orders issued by other tribal or state courts. [TCR 96-55, 06-26]

**12-223 Continuing Duty to Inform Court of Other Proceedings; Effect of Other Proceedings; Delay of Relief Prohibited; Omission of Petitioner's Address.**

1. At any hearing in a proceeding to obtain an order for protection, each party has a continuing duty to inform the court of each proceeding for an order for protection, any civil litigation, each proceeding in family or juvenile court, and each criminal case involving the participants, including the case name, the file number, and the county and state of the proceeding, if that information is known by the party.
2. An order for protection is in addition to and not in lieu of any other available civil or criminal proceeding. A petitioner is not barred from seeking an order because of other pending proceedings. A court shall not delay granting relief because of the existence of a pending action between the parties.
3. A petitioner may omit his or her address from all documents filed with the court. If a petitioner omits his or her address, the petitioner must provide the court a mailing address. If disclosure of petitioner's address is necessary to determine jurisdiction or consider venue, the court may order the disclosure to be made:
  - a. After receiving the petitioner's consent;
  - b. Orally and in chambers, out of the presence of the respondent and with a sealed record to be made; or
  - c. After a hearing, if the court takes into consideration the safety of the petitioner and finds such disclosure is in the interest of justice. [TCR 96-55, 06-26]

**12-224 Emergency Order for Protection; Available Relief; Availability of Judge or Court Officer.**

1. A court may issue a written or oral emergency order for protection ex parte when a law enforcement officer states to the court in person or by telephone, and the court finds reasonable grounds to believe, that an incident of Domestic or Family Violence occurred.
2. A law enforcement officer who receives an oral order for protection from a court shall:
  - a. Write and sign the order on the form required;
  - b. Serve a copy on the respondent;
  - c. Immediately provide the petitioner with a copy of the order; and
  - d. Provide the order to the court by the end of the next working day.
3. The court may grant the following relief in an emergency order for protection:
  - a. Enjoin the respondent from threatening to commit or committing acts of domestic or family violence against the petitioner and any designated family or household member; any Domestic Violence Program personnel and/or their families; or any law enforcement or court employees and/or their families.
  - b. Prohibit the respondent from harassing, annoying, telephoning, stalking, contacting, or otherwise communicating with the petitioner, directly or indirectly;

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 2

- c. Remove and exclude the respondent from the residence of the Petitioner, regardless of ownership of the residence;
  - d. Order the respondent to stay away from the residence, school, place of employment of the petitioner, or any specified place frequented by the petitioner and any designated family or household member;
  - e. Order possession and use of essential personal effects, regardless of the ownership of the essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings. Cars will be excluded if the respondent can show that the car is being used for transportation to valid place of employment;
  - f. May grant temporary custody of a minor child to the petitioner; and
  - g. Order such other relief as the court deems necessary to protect and provide for the safety of the petitioner and any designated family or household member.
4. A judge or other court officer with authority to issue an order for protection must be available twenty-four (24) hours a day to hear petitions for emergency orders for protection. [TCR 96-55, 06-26]

**12-225 Order for Protection; Modification of Orders; Relief Available Ex Parte; Relief Available After Hearing; Duties of the Court; Duration of Order.**

1. If it appears from a petition for an order for protection or a petition to modify an order for protection that Domestic or Family Violence has occurred or a modification of an order for protection is required, a court may:
  - a. Without notice or hearing, immediately issue an order for protection ex parte or modify an order for protection ex parte as it deems necessary to protect the petitioner.
  - b. Upon notice, issue an order for protection or modify an order after a hearing whether or not the respondent appears.
2. A court may grant the following relief without notice and hearing in an order for protection or a modification issued ex parte:
  - a. Enjoin the respondent from threatening to commit or committing acts of domestic or family violence against the petitioner and any designated family or household;
  - b. Prohibit the respondent from harassing, annoying, telephoning, stalking contacting, or otherwise communicating with the petitioner, directly or indirectly;
  - c. Remove and exclude the respondent from the residence of the petitioner, regardless of ownership of the residence;
  - d. Order the respondent to stay away from the residence, school, or place of employment of the petitioner, or any specified place frequented by the petitioner and any designated family or household member;
  - e. Prohibit the respondent from using or possessing a firearm or other weapon specified by the court;
  - f. Order possession and use of an automobile and other essential personal effects, unless the respondent can show that the automobile is being used for transportation for employment; regardless of the ownership of the other essential effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;
  - g. Grant temporary custody of any minor children to the petitioner; and



WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 2

- b. If respondent seeks relief concerning an issue not raised by the petitioner, the court may continue the hearing at the petitioner's request.
4. If a court denies a petition for an order for protection or a petition to modify an order for protection that is requested without notice to the respondent, the court shall inform the petitioner of his or her right to request a hearing upon notice to the respondent. [TCR 96-55; 06-26]

**12-227 Effect of Action by Petitioner or Respondent on Order.** If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to do so does not waive or nullify an order for protection. [TCR 96-55, 06-26]

**12-228 Denial of Relief Prohibited.** The court shall not deny a petitioner relief requested pursuant to section 12-224 or 12-225 solely because of a lapse of time between an act of domestic or family violence and the filing of the petition. [TCR 96-55, 06-26]

**12-229 Mutual Orders for Protection.** A court shall not grant a mutual order for protection to opposing parties, unless good cause is shown and a specific finding is made that each party is entitled to such an order. [TCR 96-55, 06-26]

**12-230 Mandatory Arrest for Certain Violations of Orders for Protection.** If a person protected provides an officer with a copy of the protection order or the officer determines that such an order exists after communicating with the local law enforcement agency or court and the law enforcement officer has probable cause to believe that a respondent has violated a protection order issued in accordance with section 12-224 (3) (a), (b), (c) or (d), section 12-225 (2) (a), (b), (c), (d) or (e), or section 12-225 (3)(a), the officer shall, without a warrant, arrest the apparent violator whether the violation was committed in or outside the presence of the officer. [TCR 96-55, 06-26]

**12-231 Violation of Certain Orders for Protection.** Violation of one of the following orders issued in accordance with section 12-223 or section 12-224 is a class III offense and subject to enhancement as set forth in Section 12-203 (4). [TCR 96-55, 06-26]

**12-232 Court-ordered and Court-referred Mediation Prohibited.** A court shall not order parties into mediation or refer them to mediation for resolution of the issues in a petition for an order for protection. [TCR 96-55, 06-26]

**12-233 Court Costs and Fees.** There shall be no fees for any proceeding seeking only the relief provided in this Article, including but not limited to filing, service of process or dismissal. [TCR 96-55, 06-26]

**12-234 Court-referred Assistance to Victims of Domestic and Family Violence.**

1. The Tribal Court shall provide assistance to victims of Domestic or Family Violence by directing the individual to any agency or organization that has a record of service to victims of Domestic or Family Violence.
2. The Winnebago Domestic Violence Intervention Program shall coordinate the provision of services with the providers of programs for victims of Domestic or Family Violence and provide a Program for Victims of Domestic or Family Violence and a Program of Intervention for Perpetrators. [TCR 96-55, 06-26]

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 2

**12-235 Registration and Enforcement of Foreign Orders for Protection; Duties of Court Clerk.**

1. A certified copy of any order for protection issued in another state, county or tribal jurisdiction may be filed in the office of the clerk of the Tribal Court.
2. An order for protection has the same effect and must be enforced in the same manner as an order for protection issued by the Winnebago Tribal Court. The clerk of the Winnebago Tribal Court shall:
  - a. Maintain a registry in which to enter certified orders for protection issued in other states or counties that are received for filing.
  - b. At the request of a court of another state or county or at the request of a person who is affected by or has a legitimate interest in an order for protection, certify and forward a copy of the order to that court or person at no cost to the requesting party. [TCR 96-55, 06-26]

**12-236 Mandatory Training.** All court personnel, judges, court clerks, dispatcher, prosecutors, law enforcement personnel, advocates, and medical personnel shall be required to attend training regarding domestic violence, sexual assault, stalking, weapons violations, and full faith and credit of protection orders on an annual basis. [TCR 96-55, 06-26]

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 3

TITLE 12  
FAMILY RELATIONS  
ARTICLE 3

WINNEBAGO CHILD SUPPORT ENFORCEMENT IV-D PROGRAM ACT;  
ESTABLISHMENT AND DUTIES

12-301	Act, How Cited.	12-304	Authority and Responsibility of the
12-302	Purpose.		WTN-CSE.
12-303	Definitions.	12-305	Program Participation and Funding.

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**12-301 Act, How Cited.** Sections 12-301 to 12-305 shall be known and may be cited as the Winnebago Child Support Enforcement IV-D Program Act. [TCR 08-79]

**12-302 Purpose.** The purpose of the Winnebago Child Support Enforcement IV-D Program Act, Title 12, Article 3, is to formally establish the Winnebago Tribe of Nebraska Child Support Enforcement IV-D Program as the Tribal agency chargeable by Tribal law for providing the full range of child support services to the Winnebago community. The WTN-CSE will work with the Winnebago Tribal Court to reaffirm Tribal sovereignty and Tribal self-determination by providing for the exercise of the greatest possible Tribal jurisdiction over the greatest number of child support cases involving Tribal children and families. [TCR 08-79]

**12-303 Definitions.** Unless the context otherwise requires, as used in the Winnebago Tribal Code:

1. “Comprehensive Tribal Plan” means the comprehensive statement prepared by the Winnebago Tribe of Nebraska Child Support Enforcement IV-D Program identifying how the Tribe is meeting federal regulations, including 45 CFR Part 309, and that describes the capacity of the Tribe to operate a child support enforcement IV-D program which meets federal objectives, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of noncustodial parents.
2. “IV-D” means Title IV-D of the Social Security Act that authorizes the Child Support Enforcement Program, including the Tribal Child Support Enforcement Program, and under which the federal government provides funds to tribes and states to administer child support enforcement IV-D programs to provide child support services to families.
3. “IV-D case” means a case where a party has applied for child support services from a Tribal or state child support enforcement IV-D agency or has assigned to the Tribe or State rights to child support because of the receipt of Tribal or state public assistance.
4. “WTN-CSE” means the Winnebago Tribe of Nebraska Child Support Enforcement IV-D Program.
5. “Winnebago Tribe of Nebraska Child Support Enforcement IV-D Program” means the Winnebago Tribal child support enforcement IV-D agency, which provides child support enforcement services to children and families and is authorized to seek:
  - a. Location of obligors or their assets and obligees;
  - b. Determination of parentage;
  - c. Establishment and modification of child support; and
  - d. Enforcement of support orders or laws relating to the duty of support. [TCR 08-79]

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 3

**12-304 Authority and Responsibility of the WTN-CSE.** The WTN-CSE has the authority and responsibility to provide child support enforcement services to the Winnebago community and to cooperate with other tribal and state child support IV-D programs. The duties of the WTN-CSE include:

1. To act as the official agency for the Winnebago Tribe of Nebraska in any child support enforcement activities not otherwise by Tribal law made the responsibility of another Tribal agency.
2. To develop, implement, and maintain the WTN-CSE Comprehensive Tribal Plan in compliance with federal child support regulations as necessary to entitle the Tribe to receive funds from the federal government under Title IV-D.
3. To ensure that the WTN-CSE continues to demonstrate its capacity to operate a Tribal IV-D Program by meeting the required elements under 45 CFR 309.65(a) and any other related federal regulations.
4. To develop, implement, and maintain policy and procedures, forms, and worksheets necessary to carry out the responsibilities of the WTN-CSE in conformity with Tribal Code, the WTN-CSE Comprehensive Tribal Plan, and all other federal and Tribal child support regulations.
5. To provide or arrange for child support services to children and families who come to the WTN-CSE for assistance. The services the WTN-CSE shall provide include establishing paternity, where necessary, locating parents who are legally liable for the support of the child, and securing and distributing support for the child.
6. To respond to and extend prompt services to other child support enforcement IV-D programs who refer IV-D cases to the WTN-CSE for assistance.
7. To administer income withholding for child support purposes.
8. To work with the Winnebago Tribe of Nebraska Finance Department for the purpose of receiving, processing, and disbursing child support payments, and for maintaining a record of payments, in all cases in which a tribal or state court has orders that payments for child support be made.
9. To create and maintain a case record which contains records necessary for the proper and efficient operation of the WTN-CSE and to ensure compliance with the WTN-CSE Comprehensive Tribal Plan. The WTN-CSE shall comply with the retention and access requirements of 45 CFR 74.53, including retaining records for at least three years. The case record must contain records with respect to:
  - a. Applications for child support services;
  - b. Efforts to locate noncustodial parents;
  - c. Actions taken to establish paternity and obtain and enforce support;
  - d. Amounts owed, arrearages, amounts and sources of support collections, and the distribution of such collections;
  - e. IV-D program expenditures;
  - f. Any fees charged and collected, if applicable; and
  - g. Statistical, fiscal, and other records necessary for reporting and accountability required by the Secretary of the U.S. Department of Health and Human Services.
10. To participate in a Tribal guidelines committee or work group formed for the purpose of reviewing the Winnebago Tribal child support guidelines and implementing revisions recommended by the guidelines committee or work group.
11. To establish and implement a set of performance measurements for paternity establishment, support order establishment, amount of current support collected, amount of past due support collected, and any other performance measurements in order to ensure the proper and efficient operation of the WTN-CSE and to incorporate into federal reports.
12. To cooperate with and seek the cooperation and involvement of all appropriate public and private agencies including other tribal and state IV-D agencies, social services, Tribal and state public assistance agencies, foster care, law enforcement and any other agency or organization providing

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 3

or concerned with child support enforcement with the goal of providing services, effectively carrying out its duties, and achieving the purposes of this Act and other laws under the Winnebago Tribe of Nebraska Tribal Code. The WTN-CSE may negotiate working agreements with other jurisdictions, political subdivisions, and private entities, subject to approval by the Winnebago Tribe of Nebraska Chief Administrative Officer.

13. To strive to provide child support services to the community with dignity, respect, and fairness. [TCR 08-79]

**12-305 Program Participation and Funding.** The WTN-CSE and the Tribal Court are authorized to participate in any approved federal, state, Tribal, and public or private agency programs to carry out the purposes of this Article, subject to approval of the Tribal Council. The Tribal Council shall work jointly with the WTN-CSE to provide supplemental agency funding subject to the discretion of the Tribal Council. [TCR 08-79]

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 4

TITLE 12  
FAMILY RELATIONS  
ARTICLE 4  
WINNEBAGO PARENTAGE ACT

12-401	Act, How Cited.	12-431	Costs of Genetic Testing.
12-402	Purpose of Act.	12-432	Additional Genetic Testing.
12-403	Definitions.	12-433	Genetic Testing When Specimens Not Available.
12-404	Subject Matter Jurisdiction.	12-434	Deceased Individual.
12-405	Personal Jurisdiction.	12-435	Identical Brothers.
12-406	Protection of Participants.	12-436	Confidentiality of Genetic Testing.
12-407	Authorized Release of Case Records and Other Information.	12-437	Proceeding to Adjudicate the Parentage of a Child – Authorization.
12-408	Publication of Proceedings.	12-438	Standing to Maintain Proceeding.
12-409	Penalty for Unauthorized Disclosure.	12-439	Parties to Proceeding.
12-410	Notice.	12-440	No Limitation – Child Having No Presumed, Acknowledged, or Adjudicated Father.
12-411	Establishment of Parent-Child Relationship.	12-441	Limitation – Child Having Presumed Father.
12-412	No Discrimination Based on Marital Status.	12-442	Authority to Deny Motion for Genetic Testing.
12-413	Consequences of Establishment of Parentage.	12-443	Limitation – Child Having Acknowledged or Adjudicated Father.
12-414	Presumption of Paternity.	12-444	Joinder of Proceedings.
12-415	Tribal Acknowledgement and Denial of Paternity – Duties of the WTN-CSEP.	12-445	Proceeding Before Birth.
12-416	Tribal Acknowledgment of Paternity – Execution.	12-446	Child as Party – Representation.
12-417	Tribal Denial of Paternity by a Presumed Father.	12-447	Admissibility of Results of Genetic Testing – Expenses.
12-418	Rules for Tribal Acknowledgment and Denial of Paternity.	12-448	Consequences of Declining Genetic Testing.
12-419	Effect of Tribal Acknowledgment or Denial of Paternity.	12-449	Admission of Paternity Authorized.
12-420	No Filing Fee.	12-450	Temporary Order.
12-421	Proceeding for Rescission.	12-451	Rules of Adjudication of Paternity.
12-422	Challenge <u>After</u> Expiration of Period for Rescission.	12-452	Jury Prohibited.
12-423	Procedure for Rescission or Challenge.	12-453	Closed Hearings.
12-424	Full Faith and Credit.	12-454	Order on Default.
12-425	Release of Information – Tribal Acknowledgment or Denial of Paternity.	12-455	Dismissal for Want of Prosecution.
12-426	Scope of Genetic Testing.	12-456	Order Adjudicating Parentage.
12-427	Order for Genetic Testing.	12-457	Binding Effect of Determination of Parentage.
12-428	Requirements for Genetic Testing.	12-458	Liability for Collection of Support.
12-429	Report of Genetic Testing.	12-459	Application of the Winnebago Parentage Act.
12-430	Genetic Testing Results – Rebuttal.		

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 4

**12-401 Act, How Cited.** Sections 12-401 to 12-459 shall be known and may be cited as the Winnebago Parentage Act. [TCR 08-79]

**12-402 Purpose of the Act.** The Winnebago Parentage Act shall be liberally interpreted and construed to promote the following:

1. Establishment of a confidential process by which the parental heritage of the children of the Winnebago Tribe of Nebraska may be identified;
2. Recognition of the right of every child to the physical, mental, emotional and monetary support of his or her parents; and
3. Tribal jurisdiction over the establishment of parentage of Tribal children. [TCR 08-79]

**12-403 Definitions.** Terms under this Article shall be liberally construed so as not to limit the jurisdiction of the Winnebago Tribal Court over Tribal children, and to facilitate the authority of the Tribal Court to act to protect the interests of Tribal children and their families. When interpreting terms not defined by this Article, the Tribal Court shall take into consideration Tribal laws and customs and may be defined according to their normal usage, or as defined in the federal regulations for Tribal Child Support Enforcement Programs found at 45 CFR § 309 et seq. Unless the context otherwise requires, as used in the Winnebago Tribal Code:

1. “Acknowledged father” means a man who has established a father-child relationship under the sections of Title 12, Article 4.
2. “Adjudicated father” means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child.
3. “Alleged father” means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. The term does not include a presumed father or a man whose parental rights have been terminated or declared not to exist.
4. “Child” means an individual of any age whose parentage may be determined under the sections of this Article.
5. “Determination of parentage” means the establishment of the parent-child relationship by the signing of an acknowledgment of paternity under the sections of this Article or adjudication by the Court.
6. “Duress” means use of physical or psychological force to coerce a person to sign an acknowledgment of paternity.
7. “Effective date” means when the acknowledgment of paternity is fully executed, by the later of the signature dates.
8. “Ethnic or racial group” means, for purposes of genetic testing, a recognized group that an individual identifies as all or part of the individual’s ancestry or that is so identified by other information.
9. “Former parent” means an acknowledged father who successfully rescinded or challenged an acknowledgment of paternity under this Article, a presumed father whose parentage was successfully rebutted under this Article, or an adjudicated father whose parentage was disestablished after an order issued under this Article was vacated.
10. “Fraud” means an intentional misrepresentation of a material fact.
11. “Genetic testing” means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. The term includes an analysis of one or a combination of the following:
  - a. Deoxyribonucleic acid, and
  - b. Blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins, or red-cell enzymes.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 4

12. “Man” means a male individual of any age.
13. “Material mistake of fact” means a mistake as to the facts that could not have been known at the time a signatory executed an acknowledgment of paternity.
14. “Parent” means an individual who has established a parent-child relationship under the sections of this Article.
15. “Parent-child relationship” means the legal relationship between a child and a parent of the child. The term includes the mother-child relationship and the father-child relationship.
16. “Paternity index” means the likelihood of paternity calculated by computing the ratio between:
  - a. The likelihood that the tested man is the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is the father of the child, and
  - b. The likelihood that the tested man is not the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is not the father of the child and that the father is of the same ethnic or racial group as the tested man.
17. “Presumed father” means a man who, by operation of law under Section 12-414 of this Article, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding.
18. “Probability of paternity” means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability.
19. “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
20. “Signatory” means an individual who authenticates a record and is bound by its terms.
21. “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.
22. “Tribal Court” means the Winnebago Tribal Court or Tribal Court of the Winnebago Tribe of Nebraska.
23. “Title IV-A” refers to title IV-A of the Social Security Act under which the federal government provides funds to tribes and states to provide temporary financial assistance to families using federal dollars.
24. “Title IV-D” means title IV-D of the Social Security Act, under which the federal government provides funds to tribes and states to administer child support programs that provide services related to child support.
25. “Title IV-E” refers to title IV-E of the Social Security Act under which the federal government provides funds to tribes and states to assist with the costs of operating foster care programs.
26. “Title XIX” refers to title XIX of the Social Security Act under which the federal government provides funds to states to provide medical care assistance through a state-operated and administered program that provides medical benefits for certain indigent or low-income persons in need of health and medical care.
27. “Tribe” means the Winnebago Tribe of Nebraska unless the context clearly indicates otherwise.
28. “WTN-CSEP” means the Winnebago Tribe of Nebraska Child Support Enforcement Program.
29. “Winnebago Tribe of Nebraska Child Support Enforcement IV-D Program” means the Tribal Child Support IV-D agency, which provides child support enforcement services to children and families and is authorized to seek:
  - a. Location of obligors or their assets and obligees;
  - b. Determination of parentage;
  - c. Establishment or modification of child support; or
  - d. Enforcement of support orders or laws relating to the duty of support. [TCR 08-79]

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 4

**12-404 Subject Matter Jurisdiction.** The Winnebago Tribal Court shall have jurisdiction over any proceeding arising under this Article and actions arising under the customs and traditions of the Winnebago Tribe of Nebraska affecting the determination of parentage in this Tribe. The Tribal Court shall apply the law and customs of this Tribe to adjudicate parentage. The applicable law does not depend on: (i) the place of birth of the child; or (ii) the past or present residence of the child. [TCR 08-79]

**12-405 Personal Jurisdiction.**

1. An individual may not be adjudicated to be a parent by the Winnebago Tribal Court unless the Tribal Court has personal jurisdiction over the individual. The Winnebago Tribal Court may exercise personal jurisdiction over a nonresident individual, or the guardian or conservator of the individual, if:
  - a. The individual is personally served with a summons within the exterior boundaries of the reservation of the Winnebago Tribe of Nebraska;
  - b. The individual submits to the jurisdiction of the Tribe by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
  - c. The individual resided with the child or the child's biological mother within the exterior boundaries of the Winnebago Reservation;
  - d. The individual resided within the exterior boundaries of the Winnebago Reservation and provided prenatal expenses or support for the child;
  - e. The child resides within the exterior boundaries of the Winnebago Reservation as a result of the acts or directives of the individual;
  - f. The individual engaged in sexual intercourse within the exterior boundaries of the Winnebago Reservation and the child may have been conceived by that act of intercourse; or
  - g. There is any other basis consistent with the constitutions of this Tribe and the United States for the exercise of personal jurisdiction.
2. Lack of jurisdiction over one individual does not preclude the Court from making an adjudication of parentage binding on another individual over whom the Court has personal jurisdiction.
3. This Article does not create, enlarge, or diminish parental rights or duties under other laws of this Tribe.
4. Whenever state, federal, and other tribal courts have jurisdiction over any of the matters provided for in this Article, the Tribal Court shall have concurrent jurisdiction over the same matters, to the extent consistent with federal law.
5. Any limitations on jurisdiction contained in this Article are not intended to reflect the Winnebago Tribe of Nebraska's view as to the legally permissible limits of Tribal jurisdiction. [TCR 08-79]

**12-406 Protection of Participants.** Proceedings under this Article are subject to the laws of this Tribe governing the health, safety, privacy, and liberty of a child or other individual who could be jeopardized by disclosure of identifying information, including address, telephone number, place of employment, social security number, and the child's day care facility and school. The case records of the Tribal Court and the WTN-CSEP concerning any actions taken under this Article must be kept confidential except as provided in this Article. The Tribal Court and the WTN-CSEP shall not release information on the whereabouts of one party or the child to another party against whom a protective order with respect to the former party or the child has been entered. The Tribal Court and the WTN-CSEP shall not release information on the whereabouts of one party or the child to another person if the Tribe has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or child. [TCR 08-79]

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 4

**12-407 Authorized Release of Case Records and Other Information.** The use or disclosure of personal information received or maintained by the WTN-CSEP and the Winnebago Tribal Court shall be limited to purposes directly connected with the WTN-CSEP and the Winnebago Tribal Court or titles IV-A, XIX, and IV-E, and for purposes prescribed by the Secretary of the U.S. Department of Health and Human Services in federal regulations codified at 45 CFR Part 309. The WTN-CSEP and Winnebago Tribal Court may limit the information disclosed to persons, agencies, and entities named in this Section to that information necessary to accomplish the purposes for which it is requested or for which it is being disclosed. Nothing in this Section gives these entities or persons the right to review or copy the complete case record. Records of the WTN-CSEP, including case notes and correspondence, may be disclosed to the following persons and entities, unless otherwise protected by this Section:

1. WTN-CSEP Staff;
2. Winnebago Tribal Court Judges;
3. Winnebago Tribal Court Clerks and Court Administrator for filing purposes;
4. Tribal Social Services agencies, including Tribal TANF;
5. State of Iowa or Nebraska IV-D employees directly connected with the administration of Titles IV-D, IV-A, IV-E, and XIX programs, as outlined in a cooperative agreement executed by the Tribe with Iowa or Nebraska;
6. A court having jurisdiction in parentage, support or abandonment proceedings or actions;
7. The legal guardian, attorney, or agent of a child;
8. An attorney requesting discovery as permissible under the laws of the Winnebago Tribe of Nebraska; or
9. An agency of the federal government or any other state or tribal child support enforcement IV-D program engaged in the establishment of paternity, a child support obligation, or the enforcement of support for a child in a case. [TCR 08-79]

**12-408 Publication of Proceedings.** When providing service by publication, the names of children in the matter shall not be disclosed. Only the child's initials shall be published. The Winnebago Tribe of Nebraska civil procedure laws are applicable to all instances of service by publication. [TCR 08-79]

**12-409 Penalty for Unauthorized Disclosure.** Any person, including but not limited to any Tribal employee, Tribal Court employees, and employees of the WTN-CSEP and Tribal TANF, who willfully discloses otherwise confidential information related to an action to determine parentage, other than expressly authorized and provided for under this Article, may be subject to a civil fine not to exceed five hundred (\$500.00) dollars in addition to any disciplinary actions authorized under the Tribal personnel policies and procedures. Actions brought under this Section may be initiated by the Prosecutor upon the filing of a sworn statement of the alleged unauthorized disclosure. [TCR 08-79]

**12-410 Notice.** All parties to a proceeding under this Article shall receive written notice of the time and place of a proceeding and shall receive written notice of their right to be heard at such a proceeding. The Winnebago Tribe of Nebraska civil procedure laws are applicable to all determination of parentage proceedings. [TCR 08-79]

**12-411 Establishment of Parent-Child Relationship.**

1. The mother-child relationship is established between a woman and a child by:
  - a. The woman having given birth to the child;
  - b. An adjudication of the woman's maternity;
  - c. Adoption of the child by the woman; or
  - d. As otherwise provided by law.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 4

2. Provisions of this Article relating to determination of paternity apply to determinations of maternity.
3. The father-child relationship is established between a man and a child by:
  - a. An un rebutted presumption of the man's paternity of the child under Section 12-414 of this Article;
  - b. An effective acknowledgment of paternity by the man under Sections 12-416 through 12-424 of this Article, unless the acknowledgment has been timely rescinded or successfully challenged;
  - c. An adjudication of the man's paternity;
  - d. Adoption of the child by the man; or
  - e. As otherwise provided by law. [TCR 08-79]

**12-412 No Discrimination Based on Marital Status.** A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other. [TCR 08-79]

**12-413 Consequences of Establishment of Parentage.** Unless parental rights are terminated, a parent-child relationship established under this Article applies for all purposes, except as otherwise provided by the laws of this Tribe. [TCR 08-79]

**12-414 Presumption of Paternity.**

1. A man is presumed to be the father of a child if:
  - a. He and the mother of the child are married to each other and the child is born during the marriage;
  - b. He and the mother of the child were married to each other and the child is born within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, dissolution of marriage or after decree of separation;
  - c. Before the birth of the child, he and the mother of the child married each other in apparent compliance with Tribal law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within three hundred (300) days after its termination by death, annulment, declaration of invalidity, a decree of separation, or dissolution of marriage;
  - d. After the birth of the child, he and the mother of the child married each other in apparent compliance with Tribal law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child, and:
    - i. The assertion is in a record filed with the Tribal Court, WTN-CSEP, tribal enrollment office, or the state registrar for vital statistics.
    - ii. He agreed to be and is named as the child's father on the child's birth certificate, or
    - iii. He promised in a record to support the child as his own; or
  - e. He openly held out the child as his own and the community accepted him as the child's father.
2. A presumption of paternity established under this Section may be rebutted only by an adjudication under Sections 12-437 through 12-459 of this Article. [TCR 08-79]

**12-415 Tribal Acknowledgment and Denial of Paternity — Duties of the WTN-CSEP.**

1. The WTN-CSEP and Winnebago Tribal Court must provide an alleged father the opportunity to voluntarily acknowledge paternity.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 4

2. The WTN-CSEP shall prescribe standard forms that parents may sign to acknowledge or deny paternity and that shall be filed with the WTN-CSEP and the Winnebago Tribal Court.
3. A valid acknowledgment of paternity, rescission of acknowledgment of paternity, or denial of paternity is not affected by a later modification of the prescribed form. [TCR 08-79]

**12-416 Tribal Acknowledgment of Paternity — Execution.**

1. The mother of a child and a man claiming to be the genetic father of the child may execute a Tribal acknowledgement of paternity with intent to establish the man's paternity.
2. A Tribal acknowledgment of paternity shall:
  - a. Be in a record;
  - b. Be signed and notarized under penalty of perjury by the mother and by the man seeking to establish his paternity;
  - c. State that the child whose paternity is being acknowledged:
    - i. Does not have a presumed father, or has a presumed father whose full name is stated, and
    - ii. Does not have another acknowledged or adjudicated father;
  - d. State whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and
  - e. State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that after the rescission period has ended a challenge to the acknowledgment is permitted only on the basis of fraud, duress, or material mistake of fact.
3. The WTN-CSEP and/or the Winnebago Tribal Court shall instruct the parties to send the notarized Tribal Acknowledgment of Paternity form to the state department of public health to request the amendment of the birth record of the child, if appropriate. [TCR 08-79]

**12-417 Tribal Denial of Paternity by a Presumed Father.** A presumed father may sign a Tribal denial of his paternity. The denial is valid only if:

1. A Tribal acknowledgment of paternity signed, or otherwise authenticated, by another man is filed pursuant to Section 12-419 of this Article;
2. The Tribal denial of paternity is in a record, and is signed, or otherwise authenticated, under penalty of perjury;
3. The denial states facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.
4. The presumed father has not previously:
  - a. Acknowledged his paternity, unless the previous acknowledgment has been rescinded pursuant to Section 12-421 of this Article or successfully challenged pursuant to Section 12-422 of this Article, or
  - b. Been adjudicated to be the father of the child. [TCR 08-79]

**12-418 Rules for Tribal Acknowledgment and Denial of Paternity.**

1. A Tribal acknowledgment of paternity and a denial of paternity may be executed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are executed.
2. A Tribal acknowledgment of paternity or a denial of paternity may be signed before the birth of the child.
3. Subject to subsection 1 of this Section, a tribal acknowledgment of paternity or denial of paternity takes effect on the birth of the child or the execution of the document, whichever occurs later.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 4

4. A Tribal acknowledgment of paternity or denial of paternity signed by a minor is valid if it is otherwise in compliance with this Article.
5. A Tribal acknowledgment or denial of paternity may be completed for a child who was not born within the exterior boundaries of the Winnebago Tribe of Nebraska. [TCR 08-79]

**12-419 Effect of Tribal Acknowledgment or Denial of Paternity.**

1. Except as otherwise provided in Sections 12-421 and 12-422 of this Article, a valid Tribal acknowledgment of paternity filed with the WTN-CSEP or the Winnebago Tribal Court is equivalent to an adjudication of paternity of a child and confers upon the acknowledged father all of the rights and duties of a parent and must be recognized as a basis for a support order in any proceeding to establish, enforce, or modify a support order.
2. Except as otherwise provided in Sections 12-421 and 12-422 of this Article, a valid Tribal denial of paternity by a presumed father filed with the WTN-CSEP or the Winnebago Tribal Court when executed in conjunction with a valid Tribal acknowledgment of paternity is equivalent to an adjudication of the nonpaternity of the presumed father and discharges the presumed father from all rights and duties of a parent. [TCR 08-79]

**12-420 No Filing Fee.** The WTN-CSEP shall not charge a fee for filing a Tribal acknowledgment of paternity, denial of paternity, rescission of acknowledgment of paternity, or rescission of denial of paternity. [TCR 08-79]

**12-421 Proceeding for Rescission.** A signatory may rescind a Tribal acknowledgment of paternity or denial of paternity by commencing a proceeding to rescind before the earlier of:

1. Sixty days after the effective date of the acknowledgment or denial, as provided in Section 12-418; or
2. Within ten days after the first hearing, in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child, including a proceeding that establishes a child support obligation. [TCR 08-79]

**12-422 Challenge After Expiration of Period for Rescission.**

1. After the period for rescission under Section 12-421 has expired, a signatory of a Tribal acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only on the basis of fraud, duress, or material mistake of fact.
2. There is no time limitation on when a party may commence a proceeding to challenge the Tribal acknowledgment or denial of paternity as provided for in subsection 1 of this Section.
3. A party challenging a Tribal acknowledgment of paternity or denial of paternity has the burden of proof. [TCR 08-79]

**12-423 Procedure for Rescission or Challenge.**

1. Every signatory to a Tribal acknowledgment of paternity and any related Tribal denial of paternity shall be made a party to a proceeding to challenge the acknowledgment or denial.
2. For the purpose of challenging a Tribal acknowledgment of paternity or a denial of paternity, a signatory submits to personal jurisdiction of this Tribe by signing the Tribal acknowledgment or denial of paternity.
3. Except for good cause shown, during the pendency of a proceeding to challenge a Tribal acknowledgment of paternity or denial of paternity, the Winnebago Tribal Court shall not

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 4

suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

4. A proceeding to challenge a Tribal acknowledgment of paternity or denial of paternity shall be conducted in the same manner as a proceeding to adjudicate parentage under this Article.
5. At the conclusion of a proceeding to rescind or challenge a Tribal acknowledgment of paternity or denial of paternity, the Winnebago Tribal Court shall instruct the parties to send the Tribal Court order to the State department of public health to request the amendment of the birth record of the child, if appropriate. [TCR 08-79]

**12-424 Full Faith and Credit.** In any proceeding in which paternity or denial of paternity of a child is alleged, the Winnebago Tribal Court shall give full faith and credit to a determination of paternity or nonpaternity by another tribe or state, made before a determination of paternity under the laws of this Tribe, whether established through voluntary acknowledgment or through administrative or judicial processes. The paternity or nonpaternity determination made by the other jurisdiction must be in compliance with the law of that jurisdiction and due process satisfied. [TCR 08-79]

**12-425 Release of Information – Tribal Acknowledgment or Denial of Paternity.** The WTN-CSEP and the Winnebago Tribal Court may release copies of the Tribal acknowledgment of paternity or denial of paternity to a signatory of the acknowledgment or denial and to appropriate state and tribal courts or other state or tribal child support IV-D agencies. [TCR 08-79]

**12-426 Scope of Genetic Testing.** Sections 12-426 through 12-436 govern genetic testing of an individual to determine parentage, whether the individual:

1. Voluntarily submits to testing; or
2. Is tested pursuant to an order of the Winnebago Tribal Court. [TCR 08-79]

**12-427 Order for Genetic Testing.**

1. The Winnebago Tribal Court may order genetic testing.
2. Except as otherwise provided in Sections 12-426 through 12-436, the Winnebago Tribal Court shall order the child and other designated individuals to submit to genetic testing if the request for testing is supported by the sworn statement of a party to the proceeding:
  - a. Alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the individuals; or
  - b. Denying paternity and stating facts establishing a possibility that sexual contact between the individuals, if any, did not result in the conception of the child.
3. If a request for genetic testing of a child is made before the birth of the child, the Winnebago Tribal Court may not order in-utero testing.
4. If two or more men are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially. [TCR 08-79]

**12-428 Requirements for Genetic Testing.**

1. Genetic testing must be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:
  - a. The American Association of Blood Banks, or a successor to its functions;
  - b. The American Society for Histocompatibility and Immunogenetics, or a successor to its functions; or
  - c. An accrediting body designated by the federal Secretary of Health and Human Services.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 4

2. A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair, or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each individual undergoing genetic testing.
3. Based on the ethnic or racial group of an individual, the testing laboratory shall determine the databases from which to select frequencies for use in calculation of the probability of paternity. If there is a disagreement as to the testing laboratory's choice, the following rules apply:
  - a. The individual objecting may require the testing laboratory, within thirty days after receipt of the report of the test, to recalculate the probability of paternity using an ethnic or racial group different from that used by the laboratory. The cost of any retesting shall be the responsibility of the individual who objected.
  - b. The individual objecting to the testing laboratory's initial choice shall:
    - i. If the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or
    - ii. Engage another testing laboratory to perform the calculations.
  - c. The testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate. If available, the testing laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.
4. If, after recalculation using a different ethnic or racial group, genetic testing does not rebuttably identify a man as the father of a child under Section 12-430, an individual who has been tested may be required to submit to additional genetic testing. [TCR 08-79]

**12-429 Report of Genetic Testing.**

1. A report of genetic testing must be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made under the requirements of Sections 12-426 through 12-436 of this Article is self-authenticating.
2. Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:
  - a. The names and photographs of the individuals whose specimens have been taken;
  - b. The names of the individuals who collected the specimens;
  - c. The places and dates the specimens were collected;
  - d. The names of the individuals who received the specimens in the testing laboratory; and
  - e. The dates the specimens were received. [TCR 08-79]

**12-430 Genetic Testing Results — Rebuttal.**

1. Under this Article, a man is rebuttably identified as the father of a child if the genetic testing complies with Sections 12-426 through 12-436 and the results disclose that:
  - a. The man has at least a ninety-nine percent probability of paternity, using a prior probability of five-tenths, as calculated by using the combined paternity index obtained in the testing; and
  - b. A combined paternity index of at least one hundred to one.
2. A man identified under subsection 1 as the father of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of Sections 12-426 through 12-436 which:
  - a. Excludes the man as a genetic father of the child; or
  - b. Identifies another man as the possible father of the child.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 4

3. Except as otherwise provided in Section 12-435, if more than one man is identified by genetic testing as the possible father of the child, the Winnebago Tribal Court shall order them to submit to further genetic testing to identify the genetic father. [TCR 08-79]

**12-431 Costs of Genetic Testing.**

1. Subject to assessment of costs under Sections 12-437 through 12-459 of this Article, the cost of initial genetic testing must be advanced:
  - a. By the WTN-CSEP in a proceeding in which the WTN-CSEP is providing services;
  - b. By the individual who made the request;
  - c. As agreed by the parties; or
  - d. As ordered by the Winnebago Tribal Court.
2. In cases in which the cost is advanced by the WTN-CSEP, the WTN-CSEP may seek reimbursement from a man who is rebuttably identified as the father. [TCR 08-79]

**12-432 Additional Genetic Testing.**

1. The Winnebago Tribal Court or the WTN-CSEP shall order additional genetic testing upon the request of a party who contests the result of the original testing.
2. If the previous genetic testing identified a man as the father of the child under Section 12-430, the Tribal Court or WTN-CSEP may not order additional testing unless the party provides advance payment for the testing. [TCR 08-79]

**12-433 Genetic Testing When Specimens Not Available.** If a genetic-testing specimen is not available from a man who may be the father of a child, for good cause and under circumstances the Winnebago Tribal Court considers to be just, the Court may accept voluntary genetic testing of the following individuals:

1. The parents of the man;
2. Brothers and sisters of the man;
3. Other children of the man and their mothers; and
4. Other relatives of the man necessary to complete genetic testing. [TCR 08-79]

**12-434 Deceased Individual.** For good cause shown, the Tribal Court may order genetic testing of a deceased individual. [TCR 08-79]

**12-435 Identical Brothers.**

1. The Winnebago Tribal Court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.
2. If each brother satisfies the requirements as the identified father of the child under Section 12-430 without consideration of another identical brother being identified as the father of the child, the Tribal Court may rely on non-genetic evidence to adjudicate which brother is the father of the child. [TCR 08-79]

**12-436 Confidentiality of Genetic Testing.** The report of genetic testing for parentage is confidential. An individual who knowingly releases an identifiable specimen of another individual for any purpose other than that relevant to the proceeding regarding parentage without a court order or the written permission of the individual who furnished the specimen is deemed to have violated the client's confidentiality and is subject to Section 12-409 of this Article. [TCR 08-79]

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 4

**12-437 Proceeding to Adjudicate the Parentage of a Child — Authorization.** A civil proceeding may be maintained to adjudicate the parentage of a child. The proceeding is governed by the Winnebago Civil Procedure Code. [TCR 08-79]

**12-438 Standing to Maintain Proceeding.** Subject to Sections 12-416 through 12-425 and Sections 12-441 and 12-443, a proceeding to adjudicate parentage may be maintained by:

1. The child;
2. The mother of the child;
3. A man whose paternity of the child is to be adjudicated;
4. The WTN-CSEP;
5. An authorized adoption agency or licensed child-placing agency; or
6. A representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated, or a minor. [TCR 08-79]

**12-439 Parties to Proceeding.** The following individuals must be joined as parties in a proceeding to adjudicate parentage:

1. The mother of the child; and
2. A man whose paternity of the child is to be adjudicated. [TCR 08-79]

**12-440 No Limitation — Child Having No Presumed, Acknowledged, or Adjudicated Father.** A proceeding to adjudicate the parentage of a child having no presumed, acknowledged, or adjudicated father may be commenced at any time, even after:

1. The child becomes an adult, but only if the child initiates the proceeding; or
2. An earlier proceeding to adjudicate paternity has been dismissed based on the application of a statute of limitation then in effect. [TCR 08-79]

**12-441 Limitation — Child Having Presumed Father.**

1. Except as otherwise provided in subsection 2 of this Section, a proceeding brought by a presumed father, the mother, or another individual to adjudicate the parentage of a child having a presumed father must be commenced not later than ten years after the birth of the child.
2. A proceeding seeking to disprove the father-child relationship between a child and the child's presumed father may be maintained at any time if the Winnebago Tribal Court determines that:
  - a. The presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception; and
  - b. The presumed father never openly held out the child as his own.
3. For purposes of this Section and Section 12-442, an action to establish support for a child is a proceeding to adjudicate parentage if the child's presumed father raises nonpaternity as a defense to the action. [TCR 08-79]

**12-442 Authority to Deny Motion for Genetic Testing.**

1. In a proceeding to adjudicate the parentage of a child having a presumed father or to challenge the paternity of a child having an acknowledged father, the Winnebago Tribal Court may deny a motion seeking an order for genetic testing of the mother, the child, and the presumed or acknowledged father if the Court determines that:

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 4

- a. The conduct of the mother or the presumed or acknowledged father estops that party from denying parentage; and
  - b. It would be inequitable to disprove the father-child relationship between the child and the presumed or acknowledged father.
2. In determining whether to deny a motion seeking an order for genetic testing under this Section, the Court shall consider the best interest of the child, including the following factors:
- a. The length of time between the proceeding to adjudicate parentage and the time that the presumed or acknowledged father was placed on notice that he might not be the genetic father;
  - b. The length of time during which the presumed or acknowledged father has assumed the role of father of the child;
  - c. The facts surrounding the presumed or acknowledged father's discovery of his possible nonpaternity;
  - d. The nature of the relationship between the child and the presumed or acknowledged father;
  - e. The age of the child;
  - f. The harm that may result to the child if presumed or acknowledged paternity is successfully disproved;
  - g. The nature of the relationship between the child and any alleged father;
  - h. The extent to which the passage of time reduces the chances of establishing the paternity of another man and a child support obligation in favor of the child; and
  - i. Other factors that may affect the qualities arising from the disruption of the father-child relationship between the child and the presumed or acknowledged father or the chance of other harm to the child.
3. In a proceeding involving the application of this Section, a minor or incapacitated child must be represented by a guardian ad litem.
4. Denial of a motion seeking an order for genetic testing must be based on clear and convincing evidence.
5. If the Court denies a motion seeking an order for genetic testing, it shall issue an order adjudicating the presumed or acknowledged father to be the father of the child. [TCR 08-79]

**12-443 Limitation — Child Having Acknowledged or Adjudicated Father.**

1. If a child has an acknowledged father, a signatory to the acknowledgment of paternity or denial of paternity may commence a proceeding seeking to rescind the acknowledgment or denial or challenge the paternity of the child only within the time allowed under Section 12-421 or 12-422.
2. If a child has an acknowledged father or an adjudicated father, an individual, other than the child, who is neither a signatory to the acknowledgment of a paternity nor a party to the adjudication and who seeks an adjudication of paternity of the child must commence a proceeding not later than ten years after the effective date of the acknowledgment or adjudication.
3. A proceeding under this Section is subject to the application of the principles of estoppel established in Section 12-442. [TCR 08-79]

**12-444 Joinder of Proceedings.** A proceeding to adjudicate parentage may be joined with a proceeding for adoption, termination of parental rights, child custody or visitation, child support, divorce, annulment, legal separation or separate maintenance, probate or administration of an estate, or other appropriate proceeding. [TCR 08-79]

**12-445 Proceeding Before Birth.** A proceeding to determine parentage may be commenced before the birth of the child, but may not be concluded until after the birth of the child. The following actions may be taken before the birth of the child:

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 4

1. Service of process;
2. Discovery; and
3. Except as prohibited by Section 12-427, collection of specimens for genetic testing. [TCR 08-79]

**12-446 Child As Party — Representation.**

1. A minor child is a permissible party, but is not a necessary party to a proceeding under Sections 12-437 through 12-459.
2. The Winnebago Tribal Court shall appoint a guardian ad litem to represent a minor or incapacitated child if the child is a party or the Court finds that the interests of the child are not adequately represented. The Court may apportion the costs of the guardian ad litem between the parties as appropriate. [TCR 08-79]

**12-447 Admissibility of Results of Genetic Testing — Expenses.**

1. Except as otherwise provided in subsection 3 of this Section, a record of a genetic-testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects to its admission within fourteen days after its receipt by the objecting party and cites specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:
  - a. Voluntarily or pursuant to an order of the Court or a support enforcement agency; or
  - b. Before or after the commencement of the proceeding.
2. A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, videoconference, deposition, or another method approved by the Tribal Court. Unless otherwise ordered by the Court, the party offering the testimony bears the expense for the expert testifying.
3. If a child has a presumed, acknowledged, or adjudicated father, the results of genetic testing are inadmissible to adjudicate parentage unless performed:
  - a. With the consent of both the mother and the presumed, acknowledged, or adjudicated father; or
  - b. Pursuant to an order of the Court under Section 12-427.
4. Copies of bills for genetic testing and for prenatal and postnatal health care for the mother and child which are furnished to the adverse party not less than ten days before the date of a hearing are admissible to establish:
  - a. The amount of the charges billed; and
  - b. That the charges were reasonable, necessary, and customary. [TCR 08-79]

**12-448 Consequences of Declining Genetic Testing.**

1. An order for genetic testing is enforceable by contempt.
2. If an individual whose paternity is being determined declines to submit to genetic testing ordered by the Winnebago Tribal Court, the Court for that reason may adjudicate parentage contrary to the position of that individual.
3. Genetic testing of the mother of a child is not a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the Court may order the testing of the child and every man whose paternity is being adjudicated. [TCR 08-79]

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 4

**12-449 Admission of Paternity Authorized.**

1. A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.
2. If the Winnebago Tribal Court finds that the admission of paternity satisfies the requirements of this Section and finds that there is no reason to question the admission, the Court shall issue an order adjudicating the child to be the child of the man admitting paternity. [TCR 08-79]

**12-450 Temporary Order.**

1. In a proceeding under Sections 12-437 through 12-459, the Winnebago Tribal Court shall issue a temporary order for support of a child if the order is appropriate and the individual ordered to pay support is:
  - a. A presumed father of the child;
  - b. Petitioning to have his paternity adjudicated;
  - c. Identified as the father through genetic testing under Section 12-430;
  - d. An alleged father who has declined to submit to genetic testing;
  - e. Shown by clear and convincing evidence to be the father of the child; or
  - f. The mother of the child.
2. A temporary order may include provisions for custody and visitation as provided by other laws of this Tribe. [TCR 08-79]

**12-451 Rules for Adjudication of Paternity.** The Winnebago Tribal Court shall apply the following rules to adjudicate the paternity of a child:

1. The paternity of a child having a presumed, acknowledged, or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man as the father of the child.
2. Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man identified as the father of a child under Section 12-430 must be adjudicated the father of the child.
3. If the Court finds that genetic testing under Section 12-430 neither identifies nor excludes a man as the father of a child, the Court may not dismiss the proceeding. In that event, the results of genetic testing, and other evidence, are admissible to adjudicate the issue of paternity.
4. Unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing must be adjudicated not to be the father of the child. [TCR 08-79]

**12-452 Jury Prohibited.** The Winnebago Tribal Court, without a jury, shall adjudicate paternity of a child. [TCR 08-79]

**12-453 Closed Hearings.** On request of a party and for good cause shown, the Winnebago Tribal Court may close a proceeding under Sections 12-437 through 12-459. [TCR 08-79]

**12-454 Order On Default.** The Winnebago Tribal Court shall issue an order adjudicating the paternity of a man who:

1. After service of process, is in default; and
2. Is found by the Court to be the father of a child. [TCR 08-79]

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 4

**12-455 Dismissal for Want of Prosecution.** The Winnebago Tribal Court may issue an order dismissing a proceeding commenced under this Article for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice. [TCR 08-79]

**12-456 Order Adjudicating Parentage.**

1. The Winnebago Tribal Court shall issue an order adjudicating whether a man alleged or claiming to be the father is the parent of the child.
2. An order adjudicating parentage must identify the child by name and date of birth.
3. The order must include the social security numbers of the child and the individuals determined to be the child's parents.
4. The order may contain any other provision in the best interest of the child, including payment of support, payment of expenses of the mother's pregnancy and confinement, custody of the child, visitation with the child, and furnishing of bond or other security for payment of support. A support order must be for a payment in an amount consistent with the Tribal child support guidelines promulgated by the Winnebago Tribal Court. All remedies for the enforcement of support, custody, and visitation orders under Title 12, Article 5 of the Winnebago Tribe of Nebraska Tribal Code apply. The Tribal Court has continuing jurisdiction to modify an order for future support of the child, subject to Title 12, Article 5 of the Winnebago Tribal Code, and for custody of and visitation of the child.
5. Except as otherwise provided in subsection 6 of this Section, the Court may assess filing fees, reasonable attorney's fees, fees for genetic testing, other costs, and necessary travel and other reasonable expenses incurred in a proceeding under Sections 12-436 through 12-459. The Court may award attorney's fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name.
6. The Court may not assess fees, costs, or expenses against the WTN-CSEP, except as provided by other law.
7. On request of a party and for good cause shown, the Court may order that the name of the child be changed.
8. If the order of the Court is at variance with the child's birth certificate, the Court shall instruct the parties of the order to send the order to the state department of public health to request an amended birth registration. An order adjudicating parentage must be filed with the state registrar of vital statistics. [TCR 08-79]

**12-457 Binding Effect of Determination of Parentage.**

1. Except as otherwise provided in subsection 2 of this Section, a determination of parentage is binding on:
  - a. All signatories to an acknowledgment or denial of paternity as provided in Sections 12-416 through 12-425; and
  - b. All parties to an adjudication by a court acting under circumstances that satisfy the jurisdictional requirements of Sections 12-404 and 12-405.
2. A child is not bound by a determination of parentage under this Article unless:
  - a. The determination was based on an unrestricted acknowledgment of paternity and the acknowledgment is consistent with the results of genetic testing;
  - b. The adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown; or
  - c. The child was a party or was represented in the proceeding determining parentage by a guardian ad litem.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 4

3. In a proceeding to dissolve a marriage, the Court is deemed to have made an adjudication of the parentage of a child if the Court acts under circumstances that satisfy the jurisdictional requirements of Sections 12-404 and 12-405 and other applicable Tribal law, and the final order:
  - a. Expressly identifies a child as a “child of the marriage,” “issue of the marriage,” or similar words indicating that the husband is the father of the child; or
  - b. Provides for support of the child, custody of the child, or visitation with the child by the husband unless paternity is specifically disclaimed in the order.
4. Except as otherwise provided in subsection 2 of this Section, a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by an individual who was not a party to the earlier proceeding.
5. A party to an adjudication of paternity may challenge the adjudication only under law of the Winnebago Tribe of Nebraska relating to appeal, vacation of judgments, or other judicial review. [TCR 08-79]

**12-458 Liability for Collection of Support.**

1. The Winnebago Tribe of Nebraska is not liable for child support that was collected from or on behalf of a former parent and disbursed to an obligee as under Title 12, Article 5, of the Winnebago Tribe of Nebraska Tribal Code.
2. The Winnebago Tribe of Nebraska is not liable for child support that was collected from or on behalf of a former parent and retained by the Tribe unless ordered by a Court after being presented with genetic test results that would otherwise be admissible under this Article showing that the former parent is not the genetic parent of the child. [TCR 08-79]

**12-459 Application of the Winnebago Parentage Act.** This Act shall govern all proceedings to acknowledge paternity or adjudicate parentage commenced *after* the effective date of this Act. [TCR 08-79]

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

TITLE 12  
FAMILY RELATIONS  
ARTICLE 5  
WINNEBAGO CHILD SUPPORT ACT  
(as revised May 21, 2014)

PRELIMINARY PROVISIONS

- |        |   |        |   |
|--------|---|--------|---|
| 12-501 | Act, How Cited.   | 12-507 | Authorized Release of Case Records and Other Information.                             |
| 12-502 | Findings.   | 12-508 | Penalty for Unauthorized Disclosure.  |
| 12-503 | Purpose.  | 12-509 | Attorney Represents Tribe's Interest in the Enforcement of Child Support Obligations. |
| 12-504 | Definitions.  | 12-510 | Notice.   |
| 12-505 | Jurisdiction.   |        |   |
| 12-506 | Protection of Participants — Confidentiality of Case Records. |        |   |

ESTABLISHMENT & MODIFICATION OF CHILD SUPPORT

- |        |  |        |   |
|--------|--|--------|---|
| 12-511 | Duty to Support Children.                                      | 12-518 | Periodic Review of Child Support Orders.  |
| 12-512 | Liability of Stepparent For Support.                           | 12-519 | Notice of Periodic Review of Child Support Orders.  |
| 12-513 | Termination of Parental Rights – Duty of Support.              | 12-520 | Obligor's Duties Upon Review – Failure to Provide Information.                                      |
| 12-514 | Support For Children After Majority – Retroactive Application. | 12-521 | Notice of Review Determination.   |
| 12-515 | Support by Tribe – Liability of Parent's Estate.               | 12-522 | Motion for Amendment of Child Support Order – How Made – Presumption When Obligor's Income Unknown. |
| 12-516 | Allowance to Parent for Support of Child.                      | 12-523 | Request For Review – Notice of Right to Request Review.   |
| 12-517 | Duration of Child Support Obligations.                         |        |   |

TRIBAL TANF & ASSIGNMENT OF CHILD SUPPORT PAYMENTS TO THE WTN-CSEP

- |        |   |        |  |
|--------|---|--------|--|
| 12-524 | Recipients of Tribal TANF - Assignment of Support Payments. | 12-528 | Cooperation with Winnebago Tribe of Nebraska Child Support Enforcement Program (WTN-CSEP). |
| 12-525 | Families-First Distribution of Child Support Arrearages.    | 12-529 | Non-Cooperation with the WTN-CSEP.   |
| 12-526 | Existing Assignments.                                       | 12-530 | Assignment of Rights; Judgment.  |
| 12-527 | Effect of Assignment.                                       |        |  |

LOCATION OF A MISSING OBLIGOR, ASSETS, AND OBLIGEE BY THE WTN-CSEP

- 12-531 Location Activities of the WTN-CSEP.

PAYMENTS, COLLECTIONS, DISTRIBUTION, AND ARREARS

- |        |   |        |   |
|--------|---|--------|---|
| 12-532 | Mandatory Payment of Child Support Obligations to the WTN-CSEP.   | 12-535 | Arrears.  |
| 12-533 | Collections and Distribution – General Rule, Current Receipt of Tribal TANF, Former Receipt of Tribal TANF. | 12-536 | Child Support Order – Required Interest Statement on Arrears. |
| 12-534 | Overpayments.   | 12-537 | Interest Waived on Arrearages.                                |
|        |   | 12-538 | Offsets of Child Support.                                     |
|        |   | 12-539 | Agreements to Waive Child Support.                            |

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

CIVIL REMEDIES FOR ENFORCEMENT OF CHILD SUPPORT ORDERS

- |        |  |        |  |
|--------|--|--------|--|
| 12-540 | Income Withholding Order.  | 12-549 | Income Withholding - Duties and Liabilities of Income Payer under Income Withholding Order.            |
| 12-541 | Immediate Income Withholding.  | 12-550 | Requests for Information from Income Payer.  |
| 12-542 | Subsequent Income Withholding Order – Provision of Notice of Impact of Income Withholding Law to Obligors. | 12-551 | Amendment – Termination of Income Withholding Order.   |
| 12-543 | Requests by Obligee for Income Withholding – Approval – Procedures and Standards.                          | 12-552 | Interstate Income Withholding – Initiation by the Winnebago Tribe of Nebraska to Another Jurisdiction. |
| 12-544 | Procedure – Notice to Obligor.   | 12-553 | Child Support Exempt from Process.   |
| 12-545 | Hearing Upon Obligor’s Request.  | 12-554 | Administrative Seek Employment Orders.   |
| 12-546 | Mandatory Federal Income Withholding Form – Effect of Income Withholding Order.                            | 12-555 | Driver’s License and Occupational License Suspension, Motor Vehicle Lien.                              |
| 12-547 | Voluntary Income Withholding for Child Support – Limitations.  | 12-556 | Contempt Proceedings for Nonpayment of Child Support.  |
| 12-548 | Service of Income Withholding Order on Income Payer.   |        |  |

INTERGOVERNMENTAL CHILD SUPPORT CASES –  
AFFORDING FULL FAITH AND CREDIT

- 12-557 Full Faith and Credit of Foreign Child Support Orders.

REGISTRATION OF FOREIGN CHILD SUPPORT ORDER FOR ENFORCEMENT

- |        |  |        |   |
|--------|--|--------|---|
| 12-558 | Registration of Foreign Child Support Order for Enforcement. | 12-561 | Notice of Registration of Order.                                  |
| 12-559 | Effect of Registration for Enforcement.                      | 12-562 | Procedure to Contest Validity or Enforcement of Registered Order. |
| 12-560 | Choice of Law.   | 12-563 | Burden on Party Contesting the Registration or Enforcement.       |

REGISTRATION OF FOREIGN CHILD SUPPORT ORDERS FOR MODIFICATION

- |        |  |        |  |
|--------|--|--------|--|
| 12-564 | Registration Child Support Order for Modification.             | 12-568 | Effect of Accepting a Transferred Case.                    |
| 12-565 | Modification of Child Support Order of Another Tribe or State. | 12-569 | Notice of Acceptance of Transferred Case.                  |
| 12-566 | Application of the Winnebago Child Support Act.                | 12-570 | Procedure to Contest the Acceptance of a Transferred Case. |
| 12-567 | Transferring of a Foreign Child Support or Custody Case.       | 12-571 | Burden on Party Contesting the Transfer of a Case.         |
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**PRELIMINARY PROVISIONS**

**12-501 Act, How Cited.** Sections 12-501 to 12-567 shall be known and may be cited as the Winnebago Child Support Act. [TCR 08-79]

**12-502 Findings.** The Winnebago Tribe of Nebraska has historically placed a great emphasis on the needs of its youth and families. Under values of the Tribe, children are viewed as sacred, and they are the Tribe's most important resource. The Tribe has a compelling interest to promote and maintain the health and well-being of Tribal children and families. The Winnebago Tribe of Nebraska acknowledges the financial difficulties and hardship facing many Tribal children due to a lack of parental support. The non-support of children by their parents is not consistent with the values of the Winnebago Tribe. The Tribe will not tolerate the non-support of its children. The Winnebago Tribe finds that it is in the best interests of the Tribe to make laws which establish a Tribal child support IV-D agency in an effort to offer the community effective, fair, accessible, and culturally appropriate child support services. [TCR 08-79]

**12-503 Purpose.** The Winnebago Child Support Act, Title 12, Article 5, has been enacted for the following purposes:

1. To ensure that children within the jurisdiction of the Winnebago Tribe of Nebraska receive adequate support from their parents;
2. To motivate parents to meet the financial and emotional needs of their children;
3. To compel, when necessary, the parent of a child to perform the moral and legal duties owed to the child;
4. To promote fairness to the children and families seeking services from the Winnebago Tribe of Nebraska Child Support Enforcement Program and who come before the Winnebago Tribal Court for actions under this Article;
5. To exercise Tribal sovereignty and open the lines of communication in working with foreign jurisdictions with the goal of providing a continuum of child support services to Tribal children whether they reside on or off the Winnebago Reservation;
6. To provide for the supervision and administration of child support functions on a Tribal-wide basis; and
7. To reaffirm Tribal sovereignty and Tribal self-determination by providing for the exercise of the greatest possible Tribal jurisdiction over the greatest number of child support cases involving Tribal children and families. [TCR 08-79]

**12-504 Definitions.** Terms under this Article shall be liberally construed so as not to limit the jurisdiction of the Winnebago Tribal Court over Tribal children, and to facilitate the authority of the Tribal Court to act to protect the interests of Tribal children and their families. When interpreting terms not defined by this Article, the Tribal Court shall take into consideration Tribal laws and customs. Unless in conflict with applicable Tribal law, terms not specifically defined in this Article shall be defined according to their normal usage, or as defined in the federal regulations for Tribal Child Support Enforcement Programs found at 45 CFR § 309 et seq. Unless the context otherwise requires, as used in this Article:

1. "Arrears Case Record: means the case record that is maintained by the WTN-CSEP and houses records related to child support arrears.
2. "Business day" means every day that is not a Saturday, Sunday or legal holiday.
3. "Child" means:
  - a. A person under 18 years of age; and
  - b. A person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a Tribe or State.
4. "Child support" means payments for the support of children, including payments for health insurance coverage or other medical support, and combined payments for the support of children

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

- and spouses or former spouses, however denominated, if the payment is required by the order of a court or other governmental agency having authority to issue such orders.
5. “Court” means the Winnebago Tribal Court of the Winnebago Tribe of Nebraska.
  6. “Delinquent” means a situation which occurs on the first working day after the day upon which a child support payment was identified as due and unpaid, and the total amount of unpaid child support is at least equal to the amount of child support payable in one month.
  7. “Disposable income” means gross income less deductions required by law for taxes and social security.
  8. “Employer” means income payer.
  9. “Health care coverage” means health care benefits that are provided by a health plan. Health care coverage does not include any form of public medical assistance.
  10. “Income” means any form of payment, regardless of source, owed to an obligor, including any earned, unearned, taxable or nontaxable income, workforce safety and insurance benefits, disability benefits, unemployment compensation benefits, annuity and retirement benefits, but excluding Tribal or State public assistance benefits.
  11. “Income payer” means any person, partnership, firm, corporation, limited liability company, association, political subdivision, or department or agency of a tribe, state, or federal government owing income to an obligor and includes an obligor if the obligor is self-employed.
  12. “Issuing state” means the state in which a tribunal issues a child support order or renders a judgment determining parentage.
  13. “Issuing tribe” means the tribe in which a tribunal issues a child support order or renders a judgment determining parentage.
  14. “Issuing tribunal” means the tribunal that issues a child support order or renders a judgment determining parentage.
  15. “Medical support” means providing health care coverage for a joint child by carrying health care coverage for the joint child or by contributing to the cost of health care coverage, public coverage, unreimbursed medical expenses, and uninsured medical expenses of the joint child.
  16. “Monthly support obligation” means an amount of child support ordered by a court in a proceeding to establish or modify a child support obligation, including amounts that are deferred for payment at a later date. The term is defined without regard to any amount of child support that an obligor is required to pay to avoid being held in contempt of court.
  17. “Obligee” means a person, including a tribe, state, or political subdivision, to whom a duty of support is owed.
  18. “Obligor” means any person owing a duty of support.
  19. “Past-due support” means child support that is not paid by the earlier of:
    - a. The date a court order established under law requires payment to be made; or
    - b. The last day of the month or other period the payment was intended to cover.
  20. “Payday” means the day upon which the income payer pays or otherwise credits the obligor.
  21. “Public assistance” means temporary financial assistance given to needy persons by a tribal or state government agency.
  22. “Public coverage” means health care benefits provided by any form of federal, state, or Tribal medical assistance. Medical benefits provided by the federal Indian Health Service (IHS) are considered public coverage.
  23. “Register” means to file a child support order or judgment determining parentage in the office of the court manager or administrator.
  24. “Registering tribunal” means a tribal or state tribunal in which a child support order is registered.
  25. “Service member” means a member of the National Guard or a reserve unit of the United States armed forces and “active duty service” means an order to active duty under United States Code title 10.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

26. “Title IV-A” refers to title IV-A of the Social Security Act, under which the federal government provides funds to tribes and states to provide temporary financial assistance to families using federal dollars.
27. “Title IV-D” means title IV-D of the Social Security Act, under which the federal government provides funds to tribes and states to administer child support programs that provide services related to child support.
28. “Title IV-E” refers to title IV-E of the Social Security Act, under which the federal government provides funds to tribes and states to assist with the costs of operating foster care programs.
29. “Title XIX” refers to title XIX of the Social Security Act, under which the federal government provides funds to states to provide medical care assistance through a state-operated and administered program that provides medical benefits for certain indigent or low-income persons in need of health and medical care.
30. “Tribal Court” means the Winnebago Tribal Court of the Winnebago Tribe of Nebraska.
31. “Tribe” means the Winnebago Tribe of Nebraska of the Winnebago Reservation.
32. “Winnebago Tribal TANF Program” means the Winnebago Tribal program charged with providing Temporary Assistance For Needy Families through Title IV-A of the Social Security Act.
33. “Tribunal” means a tribal or state court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify child support orders or to determine parentage.
34. “Uninsured medical expenses” means a child’s reasonable and necessary health-related expenses if the child is not covered by a health plan or public coverage when the expenses are incurred.
35. “Unreimbursed medical expenses” means a child’s reasonable and necessary health-related expenses if a joint child is covered by a health plan or public coverage and the plan or coverage does not pay for the total cost of the expenses when the expenses are incurred. Unreimbursed medical expenses do not include the cost of premiums. Unreimbursed medical expenses include, but are not limited to, deductibles, co-payments, and expenses for orthodontia, and prescription eyeglasses and contact lenses, but not over-the-counter medications if coverage is under a health plan.
36. “WTN-CSEP” means the Winnebago Tribe of Nebraska Child Support Enforcement Program.
37. “Winnebago Tribe of Nebraska Child Support Enforcement Program” means the Tribal Child Support Agency, which provides child support enforcement services to children and families and is authorized to seek:
  - a. Location of obligors or their assets and obligees;
  - b. Determination of parentage;
  - c. Establishment or modification of child support; or
  - d. Enforcement of support orders or laws relating to the duty of support. [TCR 08-79]

**12-505 Jurisdiction.**

1. The Winnebago Tribal Court shall have subject matter jurisdiction over any proceeding arising under this Article and actions arising under the customs and traditions of the Winnebago Tribe of Nebraska affecting the establishment, modification, and enforcement of child support. The Tribal Court shall apply the law and customs of this Tribe to set and enforce child support.
2. In a proceeding to establish, enforce, or modify a support order, the Tribal Court may assert personal jurisdiction under this Article over:
  - a. All members or persons eligible for membership in the Winnebago Tribe of Nebraska;
  - b. Any person eligible for membership in any federal or state recognized tribe coming under the jurisdiction of the Winnebago Tribe of Nebraska; or
  - c. Any person who is alleged to be a parent of a child, including any unborn child, whose parenting partner is a member or eligible for membership in the Winnebago Tribe of Nebraska, or who is a member or eligible for membership in any federal or state recognized tribe coming under the jurisdiction of the Winnebago Tribe of Nebraska.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

3. The Winnebago Tribal Court may exercise personal jurisdiction over a non-resident individual or the individual's guardian or conservator if:
  - a. The individual is personally served with a summons within the exterior boundaries of the Winnebago Reservation;
  - b. The individual submits to the jurisdiction of the Tribe by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
  - c. The individual resided with the child within the exterior boundaries of the Winnebago Reservation;
  - d. The individual resided within the exterior boundaries of the Winnebago Reservation and provided prenatal expenses or support for the child;
  - e. The child resides within the exterior boundaries of the Winnebago Reservation as a result of the acts or directives of the individual;
  - f. The individual engaged in sexual intercourse within the exterior boundaries of the Winnebago Reservation and the child may have been conceived by that act of intercourse; or
  - g. There is any other basis consistent with the constitution or laws of the Tribe and the United States for the exercise of personal jurisdiction.
4. The Tribal Court has the authority to punish for contempt, committed in or out of the Court's presence.
5. Whenever state, federal, and other tribal courts have jurisdiction over any of the matters provided for in this Article, the Tribal Court shall have concurrent jurisdiction over the same matters, to the extent consistent with federal law.
6. The limitations on jurisdiction contained in this Article are not intended to reflect the Winnebago Tribe of Nebraska's view as to the legally permissible limits of Tribal jurisdiction. [TCR 08-79]

**12-506 Protection of Participants — Confidentiality of Case Records.** The case records of the Tribal Court and the Winnebago Tribe of Nebraska Child Support Enforcement Program concerning the actions taken under this Article must be kept confidential except as provided in this Article. The Tribal Court and the Winnebago Tribe of Nebraska Child Support Enforcement Program shall not release information on the whereabouts of one party or the child to another party against whom a protective order with respect to the former party or the child has been entered. The Tribal Court and the Winnebago Tribe of Nebraska Child Support Enforcement Program shall not release information on the whereabouts of one party or the child to another person if the Tribe has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or child. [TCR 08-79]

**12-507 Authorized Release of Case Records and Other Information.**

1. The use or disclosure of personal information received or maintained by the Three Affiliated Division of Child Support Enforcement and the Winnebago Tribal Court shall be limited to purposes directly connected with the Winnebago Tribe of Nebraska Child Support Enforcement Program and the Winnebago Tribal Court or titles IV-A, XIX, and IV-E with the administration of other programs or purposes prescribed by the Secretary in regulations.
2. Records, including case notes and correspondence, may be disclosed to the following persons and entities, unless otherwise protected by this Section:
  - a. WTN-CSEP Staff;
  - b. Winnebago Tribal Court Judges;
  - c. Winnebago Tribal Court Clerks and Court Administrator for filing purposes;
  - d. Tribal Social Services agencies, including Tribal TANF;
  - e. States of Iowa and Nebraska IV-D employees directly connected with the administration of Titles IV-D, IV-A, and XIX programs, as outlined in the cooperative agreements and any addendums between the Winnebago Tribe of Nebraska and these states;

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

- f. A court having jurisdiction in parentage, support or abandonment proceedings or actions;
  - g. The legal guardian, attorney, or agent of a child;
  - h. An attorney requesting discovery as permissible under the laws of the Winnebago Tribe of Nebraska; or
  - i. An agency of the federal government or any other state or tribal child support enforcement IV-D program engaged in the establishment of paternity, a child support obligation, or the enforcement of support for a child in a case.
3. The WTN-CSEP and Winnebago Tribal Court may limit the information disclosed to persons, agencies, and entities named in this Section to that information necessary to accomplish the purposes for which it is requested or for which it is being disclosed. Nothing in this Section gives these entities or persons the right to review or copy the complete case record. [TCR 08-79]

**12-508 Penalty for Unauthorized Disclosure.** Any person, including but not limited to any Tribal employee, Tribal Court employees, and employees of the WTN-CSEP and Tribal TANF, who willfully discloses otherwise confidential information related to an action to determine parentage, other than expressly authorized and provided for under this Article, may be subject to a civil fine not to exceed five hundred (\$500.00) dollars in addition to any disciplinary actions authorized under the Tribal personnel policies and procedures. Actions brought under this Section may be initiated by the filing of a sworn statement of the alleged unauthorized disclosure. [TCR 08-79]

**12-509 Attorney Represents Tribe's Interest in the Enforcement of Child Support Obligations.** In any action brought to establish paternity, secure repayment of governmental benefits paid, to secure current or future support of children, or establish, enforce, or modify a child support obligation, the WTN-CSEP may employ or contract with a licensed attorney. An attorney so employed or contracted represents the interest of the Tribe in the enforcement of child support obligations. Nothing in this Section may be construed to modify confidentiality required of the WTN-CSEP. Representation by the employed or contracted attorney may not be construed to create an attorney-client relationship between the attorney and any party or witness to the action, other than the Tribe, regardless of the name in which the action is brought. [TCR 08-79]

**12-510 Notice.** All parties to a proceeding under this Article shall receive written notice of the time and place of a proceeding and shall receive written notice of their right to be heard at such a proceeding. The Winnebago Tribe of Nebraska civil procedure laws are applicable to all child support cases unless a more specific procedure is provided in this Article. [TCR 08-79]

**ESTABLISHMENT & MODIFICATION OF CHILD SUPPORT**

**12-511 Duty to Support Children.** Parents shall give their children support and education suitable to the child's circumstances. The Tribal Court may compel either or both of the parents to provide for the support of their children by establishing a child support order upon an application of the Tribal child support guidelines, adopted as Title 1C of the Winnebago Tribal Court Rules. [TCR 08-79]

**12-512 Liability of Stepparent For Support.** A stepparent is not bound to maintain the spouse's child(ren) unless the child is received into the stepparent's family. If the stepparent receives the child into the family, the stepparent is liable, to the extent of the stepparent's ability, to support the child during the marriage and so long thereafter as they remain in the stepparent's family. Such liability may be enforced against the stepparent by any person furnishing necessities to such children. If the children are received into the stepparent's family and supported by the stepparent, it is presumed that the stepparent does so as a parent, in which case the children are not liable to the stepparent for their support, or the stepparent to them for their services. The legal obligation of a natural or adoptive parent to support that person's children is not affected by the liability imposed upon their stepparent by this Section. [TCR 08-79]

**12-513 Termination of Parental Rights — Duty of Support.** A termination of parental rights does not terminate the duty of either parent to support the child before the child's adoption unless that duty is specially terminated by order of the Court after notice of a proposed termination or relinquishment is given to the Winnebago Tribe of Nebraska Child and Family Services in the manner appropriate for the service of process in a civil action under the laws of this Tribe. A termination of a child support obligation under this Section does not relieve a parent of the duty to pay any unpaid child support. [TCR 08-79]

**12-514 Support For Children After Majority — Retroactive Application.**

1. A judgment or order requiring the payment of child support until the child attains majority continues as to the child until the end of the month during which the child is graduated from high school or attains the age of nineteen years, whichever occurs first, if:
  - a. The child is enrolled and attending high school and is eighteen years of age prior to the date the child is expected to be graduated; and
  - b. The child resides with the person to whom the duty of support is owed.
2. A judgment or order may require payment of child support after majority under the circumstances described in subsection 1 of this Section.
3. The person to whom the duty of support is owed under either subsection 1 or 2 of this Section may file an affidavit with the Tribal Court stating that the requirements of subsection 1 are met, the school in which the child is enrolled, and the anticipated date of the child's graduation. Upon filing of the affidavit, the child support resumes pursuant to subsection 1 or pursuant to the terms of a judgment or order described in subsection 2. A fee may not be charged for filing such an affidavit.
4. The civil court clerk shall serve the affidavit by first-class mail upon the person owing the duty of support. If at any time thereafter the person owing the duty of support files a motion with the Tribal Court, supported by that person's affidavit that the child is no longer enrolled in or attending high school, the Court shall determine if the child is enrolled in and attending high school and shall enter an order accordingly.
5. This Section applies to child support orders concerning children described in subsection 1 or 2 of this Section, regardless of the date of entry of the order, provided that the affidavit described in subsection 3 of this Section is filed not later than ninety days after the child graduates from high school or reaches age nineteen, whichever occurs first.
6. This Section does not preclude the entry of an order for child support which continues after the child reaches age eighteen, if the parties agree, or if the Court determines the support to be appropriate.
7. For purposes of this Section, a child is treated as being in school during summer vacation if the child was enrolled in and attending school and did not graduate from high school at the end of the school period immediately preceding the summer vacation. [TCR 08-79]

**12-515 Support by Tribe — Liability of Parent's Estate.** If a parent chargeable with the support of a child dies leaving it chargeable upon the Tribe and leaving an estate sufficient for its support, the WTN-CSEP, in the name of the Tribe, may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditor against that estate and against the heirs, devisees, and next of kin of the parent. [TCR 08-79]

**12-516 Allowance to Parent for Support of Child.** The Tribal Court may direct an allowance to be made to a parent of a child out of the child's property for its past or future support and education on such conditions as may be proper, whenever such direction is for the child's benefit. [TCR 08-79]

**12-517 Duration of Child Support Obligations.** Unless dates for the commencement or termination of a child support obligation are specified by the Tribal Court's order, a judgment or order requiring the payment of child support is effective as to the child in the month in which the order is signed and continues until the end of the month in which the support obligation terminates. [TCR 08-79]

**12-518 Periodic Review of Child Support Orders.**

1. Each child support order must be reviewed by the WTN-CSEP no less frequently than thirty-six months after the establishment of the order or the most recent amendment or review of the order by the Tribal Court or WTN-CSEP unless:
  - a. In the case of an order with respect to which there is in effect an assignment of the child support for receipt of public assistance, the WTN-CSEP has determined that a review is not in the best interests of the child and neither the obligor nor the obligee has requested review; or
  - b. In the case of any other order neither the obligor nor the obligee has requested review.
2. Each child support order, in which there is in effect public assistance or with respect to which either the obligor or the obligee has requested review, must be reviewed by the WTN-CSEP if:
  - a. More than twelve months have passed since the establishment of the order or the most recent amendment or review of that order by the Court or the WTN-CSEP, whichever is later; and
  - b. The order provides for no child support and was based on a finding that the obligor has no ability to pay child support.
3. If, upon review, the WTN-CSEP determines that the order provides for child support payments in an amount that is inconsistent with the amount that would be required under the Winnebago Tribal Court Rules of Tribal Child Support Guidelines, the WTN-CSEP may seek an amendment of the order. If the order provides for child support payments in an amount less than eighty-five percent of the amount that would be required by those guidelines, the WTN-CSEP shall seek an amendment of the order.
4. If a child support order sought to be amended was entered at least one year before the filing of a motion or petition for amendment, the Court shall order the amendment of the child support order to conform the amount of child support payment to that required under the child support guidelines, whether or not the motion or petition for amendment arises out of a periodic review of a child support order, and whether or not a material change of circumstances has taken place, unless the presumption that the correct amount of child support would result from the application of the child support guidelines is rebutted. If a motion or petition for amendment is filed within one year of the entry of the order sought to be amended, the party seeking amendment must also show a material change of circumstances.
5. A determination that a child who is the subject of a child support order is eligible for public assistance provided by any state or tribal government agency, constitutes a material change of circumstances.
6. The availability of health insurance at reasonable cost to a child who is the subject of a child support order constitutes a material change of circumstances. The need to provide for a child's health care needs, through health insurance or other means, constitutes a material change of circumstances. [TCR 08-79]

**12-519 Notice of Periodic Review of Child Support Orders.**

1. The WTN-CSEP shall provide written notice that a child support order being enforced by the WTN-CSEP may be subject to review under Section 12-518. The notice may be sent by first-class mail to the obligor and the obligee, at the addresses they have most recently provided to the WTN-CSEP, at least thirty-five days before the commencement of the review.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

2. The notice to the obligor must inform the obligor of the duty to furnish the information required by Section 12-520 and that a failure to furnish the required information may result in the entry of an order compelling the furnishing of the information. The notice must also inform the obligor that the review determination will be mailed to the obligor following the review. The notice must be accompanied by an income report form, together with instructions for the accurate completion of the income report form. [TCR 08-79]

**12-520 Obligor's Duties Upon Review — Failure to Provide Information.**

1. The obligor shall provide information to the WTN-CSEP concerning the obligor's income, which is sufficient to accomplish the review, no later than five working days before the date of review. The information must be furnished by providing an income report, in the form and manner required by the WTN-CSEP, accurately completed and attested to by the obligor, earnings statements secured from the obligor's current income payer if the obligor changed employment after the end of the latest income tax year for which the obligor filed a return, and providing:
  - a. A verified copy of the latest income tax return, filed with the internal revenue service or any state official administering a state income tax if the obligor pays state income tax, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of the review; or
  - b. A written authorization by which the WTN-CSEP may secure a verified copy of the latest income tax return, filed with the tax commissioner, which accurately reports the obligor's income for a fiscal year ending no more than seventeen months prior to the date of review.
2. If the obligor has not produced information under subsection 1 of this Section concerning the obligor's income, sufficient to accomplish the review, the WTN-CSEP may base its review determination on the assumption that the obligor's income has increased at the rate of ten percent per year since the child support order under review was entered or last modified. [TCR 08-79]

**12-521 Notice of Review Determination.**

1. Following review, the WTN-CSEP shall promptly provide written notice of its determination on review. The notice may be sent by first-class mail to the obligor and the obligee, at the addresses they have most recently provided to the WTN-CSEP.
2. If the WTN-CSEP has made a determination that no amendment to the amount of child support should be sought, the notice must inform the obligor and the obligee of the right of each to challenge that determination by seeking an amendment to the amount of child support, from the Tribal Court, at any time before the termination of the support order.
3. If the WTN-CSEP has made a determination to seek an amendment in the amount of child support, the notice must be mailed at least thirty-five days before the date of a hearing on a motion for amendment made by the child support agency under Section 12-518, and must inform the obligor and the obligee of the right of each to challenge that determination by opposing that amendment before the Court. The notice to the obligor must be accompanied by:
  - a. A proposed modification of the child support order to provide for payment of child support in the amount required under the Winnebago Tribe of Nebraska Tribal Court Child Support Guidelines;
  - b. A document by which the obligor may consent to the proposed modification; and
  - c. An address and telephone number that the obligor may use to receive information from or schedule a meeting with the WTN-CSEP staff. [TCR 08-79]

**12-522 Motion for Amendment of Child Support Order — How Made — Presumption When Obligor’s Income Unknown.**

1. Upon a determination by the WTN-CSEP, made under Section 12-518, that it may or must seek amendment of a child support order, the WTN-CSEP may file and serve a motion and supporting documents.
2. The Tribal Court may determine the motion based upon the files, records, and evidence received in consideration of the motion. If the WTN-CSEP certifies that, despite diligent efforts to secure reliable information concerning the obligor’s income, the obligor has not produced such information, and if the obligor provides the Tribal Court with no reliable evidence concerning the obligor’s income, it is presumed that the obligor’s income has increased at the rate of ten percent per year since the child support order was entered or last modified. [TCR 08-79]

**12-523 Request For Review — Notice of Right to Request Review.**

1. An obligor or an obligee may request review under Section 12-518, by applying to the WTN-CSEP for child support services, and indicating, in the manner there provided, a desire to have a child support order reviewed. Each judgment or order issued by the Tribal Court which includes an order for child support must include a statement advising of the right to request a review under this Section.
2. If a party to a child support matter is receiving services from the WTN-CSEP and an order for current child support has issued out of that matter, the WTN-CSEP shall provide notice of the right to request a review or further review of that child support order, to the obligor and obligee, not more than three years after the most recent child support order, review of that child support order, or notice of right to request a review of that child support order. [TCR 08-79]

**TRIBAL TANF AND ASSIGNMENT OF CHILD SUPPORT PAYMENTS TO THE WTN-CSEP**

**12-524 Recipients of Tribal TANF — Assignment of Support Payments.**

1. If public assistance is provided by the Winnebago TANF Program to or on behalf of a dependent child or a dependent child’s caretaker, there is an assignment by operation of law to the Winnebago Tribal TANF Program of any and all rights in, title to, and interest in any support obligation, payment, and arrearages owed to or on behalf of the child or caretaker, not to exceed the amount of public assistance paid for or on behalf of the child or caretaker.
2. An assignment made to the Winnebago Tribal TANF Program is effective as to:
  - a. Any current child support;
  - b. Any accrued child support arrears, or the date the individual terminates assistance, whichever is later; and
  - c. Any accrued child support arrears collected under federal tax intercept. The WTN-CSEP may contact a state IV-D agency to initiate a federal income tax refund offset only where there is a specific memorandum of understanding or cooperative agreement in place between the Tribe and the state regarding federal income tax refund offsets or as permitted by federal regulations. [TCR 08-79]

**12-525 Families-First Distribution of Child Support Arrearages.** When the WTN-CSEP collects support arrearages on behalf of an individual who is receiving public assistance provided under Section 12-525, and the WTN-CSEP has the option of applying the collection to arrears permanently assigned to the Winnebago Tribal TANF Program or to arrears temporarily assigned to the Winnebago Tribal TANF Program, the WTN-CSEP shall first apply the collection to satisfy those arrears that are permanently assigned to the Winnebago Tribal TANF Program. [TCR 08-79]

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

**12-526 Existing Assignments.** Assignments based on the receipt of public assistance, are permanently assigned to the Winnebago Tribal TANF Program. [TCR 08-79]

**12-527 Effect of Assignment.** Assignments in Sections 12-525 through 12-539 take effect upon a determination that the applicant is eligible for public assistance. The amount of support assigned under this Section may not exceed the total amount of public assistance issued or the total support obligation, whichever is less. [TCR 08-79]

**12-528 Cooperation with Winnebago Tribe of Nebraska Child Support Enforcement Program (WTN-CSEP).**

1. The caregiver of a minor child receiving public assistance from the Winnebago Tribal TANF Program or another tribal or state public assistance agency must cooperate with the efforts of the WTN-CSEP to establish paternity for the purposes of establishing a child support obligation and to collect support according to this Section.
2. An individual receiving public assistance from the Winnebago Tribal TANF Program shall cooperate with the WTN-CSEP by:
  - a. Providing all known information regarding the alleged father or obligor, including name, address, date of birth, Social Security number, telephone number, place of employment or school, and the names and addresses of any relatives;
  - b. Appearing at interviews, hearings and legal proceedings;
  - c. Submitting to genetic tests including genetic testing of the child, under a judicial or administrative order; and
  - d. Providing additional information known by the individual as necessary for cooperating in good faith with the WTN-CSEP.
3. A caregiver must notify the WTN-CSEP and the Winnebago Tribal TANF Program of all support the caregiver receives during the period the assignment of child support to the Winnebago Tribal TANF Program is in effect. Any child support payment actually received by a TANF applicant between the first day of the month in which a TANF application is received and the date the application is authorized for payment of Tribal TANF benefits, and any child support payment that is received by a recipient while the TANF case is open, is considered as unearned income in determining eligibility for Tribal TANF benefits and in calculating the amount of the Tribal TANF payment for that calendar month. The amount counted as income is the amount actually received by the caregiver. A portion of any child support payment received directly by the TANF applicant or recipient after the date the case is authorized for payment must be paid by the applicant or recipient to the Winnebago Tribal TANF Program. The applicant or recipient is allowed to retain up to **\$50** of the child support received. [TCR 08-79]

**12-529 Non-Cooperation with the WTN-CSEP.**

1. After notification from a tribal or state public assistance agency, including the Winnebago Tribal TANF Program, that a dependent child's caretaker has applied for or is receiving any form of public assistance, the WTN-CSEP shall determine whether the party is cooperating with the WTN-CSEP in establishing paternity, child support, modification of an existing child support order, or enforcement of an existing child support order pursuant to Section 12-528.
2. If the WTN-CSEP determines that the caretaker is not cooperating with Section 12-528, the WTN-CSEP shall promptly notify the dependent child's caretaker and each public assistance agency providing public assistance to the caretaker that the caretaker is not cooperating with the Tribal child support agency. The public assistance agency shall notify each applicant or recipient in writing of the right to claim a good cause exemption from cooperating with the WTN-CSEP.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

A copy of the notice must be furnished to the public assistance applicant or recipient and to the WTN-CSEP. The public assistance applicant or recipient and a representative from the WTN-CSEP shall acknowledge receipt of the notice by signing and dating a copy of the notice.

3. Upon notice of non-cooperation, the caretaker shall be sanctioned in the amount determined according to the public assistance agency responsible for enforcing the sanction. [TCR 08-79]

**12-530 Assignment of Rights; Judgment.**

1. The WTN-CSEP is joined as a party in each case in which rights are assigned under Section 12-524. The Tribal Court Administrator shall enter and docket a judgment obtained by operation of law in the name of the WTN-CSEP to the extent that the obligation has been assigned. After filing notice of an assignment with the Tribal Court Administrator, who shall enter the notice in the docket, the WTN-CSEP may enforce a judgment entered before the assignment of rights as if the judgment were granted to it, and in its name, to the extent that the arrearages in that judgment are assigned.
2. The WTN-CSEP is a real party in interest in any child support IV-D case where there has been an assignment of support. In all other child support IV-D cases, the WTN-CSEP has a pecuniary interest, as well as an interest in the welfare of the children involved in those cases. The WTN-CSEP may intervene as a matter of right in those cases to ensure that child support orders are obtained and enforced which provide for an appropriate and accurate level of child support and where applicable, medical and child care support. If the WTN-CSEP participates in a child support IV-D case where the action taken by the WTN-CSEP requires the use of an attorney's services, the WTN-CSEP shall be represented by an attorney consistent with the provisions in Section 12-509 of this Article. [TCR 08-79]

**LOCATION OF A MISSING OBLIGOR, ASSETS, AND OBLIGEE BY THE WTN-CSEP**

**12-531 Location Activities of the WTN-CSEP.**

1. The WTN-CSEP must attempt to locate obligors, obligees, or sources of income and/or assets when location is required to take necessary action in a child support case.
2. Location of an obligor is deemed necessary whenever the WTN-CSEP has no verified address or employer for obligor. Location of an obligee is deemed necessary when forms mailed to the last known address of the obligee are repeatedly returned "undeliverable" with no forwarding address or when child support collections disbursed to the obligee are returned "undeliverable" from the last known address. Location of an obligor's source(s) of income may be necessary for the establishment of a child support obligation or when enforcement of a child support obligation is required.
3. All sources of locate available to the WTN-CSEP shall be used to perform locate actions. [TCR 08-79]

**PAYMENTS, COLLECTIONS, DISTRIBUTION, AND ARREARS**

**12-532 Mandatory Payment of Child Support Obligations to the WTN-CSEP.**

1. In any action in which the Tribal Court orders that payments for child support be made, including, but not limited to, a child support order establishing an order for past support or reimbursement of public assistance, the Tribal Court shall provide in its order that the payments be paid to the WTN-CSEP for remittance to the obligee.
2. Each party subject to the order shall immediately inform the WTN-CSEP of the party's:
  - a. Social security number;

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

- b. Date of birth;
  - c. Residential and mailing addresses and any change of address;
  - d. Telephone number;
  - e. Motor vehicle operator's license number;
  - f. Employer's name, address, and telephone number; and
  - g. Change of any other condition which may affect the proper administration of this Article.
3. Each order for payment of child support must notify each party of the requirements of this Section and require the party to provide the information within ten days from the date of the order or ten days after any change in the information.
  4. The requirements of this Section continue in effect until all child support obligations have been satisfied with respect to each child subject to the order.
  5. The obligor or other income payer shall identify the obligor on the check or remittance by name, income payer number, and Social Security number, and shall comply with the income withholding laws of this Article.
  6. A copy of the record of payments maintained by the WTN-CSEP is admissible evidence in court as proof of payments made through the WTN-CSEP without the need of testimony to prove authenticity. If support payments have not been disbursed to an obligee because the obligee is not located, the WTN-CSEP shall continue locate efforts following established WTN-CSEP policy and procedures for locate activities. [TCR 08-79]

**12-533 Collections and Distribution — General Rule, Current Receipt of Tribal TANF, Former Receipt of Tribal TANF.**

1. *General Rule.* Upon receipt of child support payments as provided for in Section 12-532, the WTN-CSEP must, in a timely manner:
  - a. Apply collections first to satisfy current support obligations; and
  - b. Pay all child support collections to the family unless the family is currently receiving or formerly received assistance from the Winnebago Tribal TANF program and there is an assignment of child support rights to the Tribal TANF program, or the WTN-CSEP has received a request for assistance in collecting support on behalf of the family from another tribal or state child support enforcement IV-D agency.
2. *Exception.* When the collections stem from a federal income tax refund offset, they must be applied to satisfy child support arrearages.
3. The WTN-CSEP may contact a state IV-D agency to initiate a federal income tax refund offset only where there is a specific memorandum of understanding or cooperative agreement in place between the Tribe and the State regarding federal income tax refund offsets or as permitted by federal regulations.
4. *Current Receipt of Tribal TANF.* If the family is currently receiving assistance from the Winnebago Tribal TANF program and has assigned support rights to the Tribe **and**:
  - a. There is no request for assistance in collecting support on behalf of the family from a Tribal or State IV-D agency, the WTN-CSEP may retain any child support collected for the family up to the total Tribal TANF grant amount paid to the family for the month and must pay any excess money collected to the family.
  - b. There is a request for assistance in collecting child support on behalf of the family from a Tribal or State IV-D agency, the WTN-CSEP may retain any child support collected up to the total TANF grant amount paid to the family for the month, and any excess money must be sent to the other Tribal or State IV-D agency for distribution *unless* the WTN-CSEP exercises the option to contact the requesting Tribal or State IV-D agency to determine appropriate distribution and distributes the collections as directed by the requesting agency.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

5. *Former Receipt of Tribal TANF.* If the family formerly received assistance from the Winnebago Tribal TANF program and there is an assignment of support rights to the Tribe **and**:
  - a. There is no request for assistance in collecting support from a Tribal or State IV-D agency, the WTN-CSEP shall pay current child support collections and arrearages owed to the family to the family. The WTN-CSEP may retain any excess collections, not to exceed the total amount of the Tribal TANF grant amount paid to the family. Any remaining collections must be paid to the family.
  - b. There is a request for assistance in collecting support from a Tribal or State IV-D agency, the Tribal IV-D agency shall send all support collected to the requesting Tribal or State IV-D agency for distribution *unless* the WTN-CSEP exercises the option to contact the requesting Tribal or State IV-D agency to determine appropriate distribution and distributes the collections as directed by the requesting agency.
6. If there is no assignment of support rights to the Tribe and the WTN-CSEP has received a request for assistance in collecting support on behalf of the family from another Tribal or State IV-D agency, the WTN-CSEP must send all child support collected to the requesting IV-D agency for distribution Requests for Assistance from a Tribal or State IV-D Agency *unless* the WTN-CSEP exercises the option to contact the requesting Tribal or State IV-D agency to determine appropriate distribution and distributes the collections as directed by the requesting agency. [TCR 08-79]

**12-534 Overpayments.** If child support or maintenance is not assigned and an obligor has overpaid a child support or maintenance obligation because of a modification or error in the amount owed, the WTN-CSEP shall:

1. Apply the amount of the overpayment to reduce the amount of any child support arrearages owed to the obligee; and
2. If an overpayment exists after the reduction of any arrearage, reduce the amount of the child support remitted to the obligee by an amount no greater than 20 percent of the current monthly child support obligation and remit this amount to the obligor until the overpayment is reduced to zero. [TCR 08-79]

**12-535 Arrears.**

1. Whenever there is failure to make the payments as required under Section 12-532 of this Article, the civil court clerk may, and upon request of the obligee or WTN-CSEP, shall send notice of the arrears by first-class mail, with affidavit of service, to the person required to make the payments, or request the Tribal Court judge to issue a citation for contempt of court against the person who has failed to make the payments as provided under this Article. The citation may be served on that person by first-class mail with affidavit of service to the person's last-known address.
2. Remedies available for the collection and enforcement of support in this Article apply to cases with arrearages, including those in which the child or children for whom support is owed are emancipated and the obligor owes past support or has an accumulated arrearage as of the date of the youngest child's emancipation. Child support arrearages under this Section may include arrearages for child support, and, where applicable, medical support, child care, and unreimbursed medical expenses. [TCR 08-79]

**12-536 Child Support Order — Required Interest Statement on Arrears.** Each judgment or order requiring the payment of child support must include a statement that the child support obligation will accrue interest if not timely paid at the rate of ten percent per year from the date they become delinquent, and the interest shall be collected in the same manner as the payments upon which the interest accrues.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

Accrual of interest and validity of the order are not affected by a failure to include the statement required by this Section. [TCR 08-79]

**12-537 Interest Waived on Arrearages.** The WTN-CSEP may suspend or waive judgment interest on an arrearage as part of an amnesty program, as an incentive for satisfying a child support obligation or complying with a payment plan, or if the WTN-CSEP determines that the judgment interest is not collectible through commercially reasonable efforts. Any judgment interest that is suspended or waived under this subsection may be reinstated by the Tribal Court at any time or by the WTN-CSEP if the obligor has failed to comply with a payment plan. [TCR 08-79]

**12-538 Offsets of Child Support.**

1. Notwithstanding Section 12-553, the Tribal Court may order that a specific amount of past-due child support owed by an obligor to an obligee be offset by an equal amount of past-due child support owed to the obligor by the obligee. An order for an offset is permitted under this subsection only if:
  - a. The proposed offset is limited to past-due child support and does not apply to child support owed in the current month or owed in any future month;
  - b. The proposed offset does not include any past-due child support that has been assigned;
  - c. Neither party whose past-due child support obligation will be reduced or eliminated by the proposed offset owes past-due child support to another obligee; and
  - d. The opportunity to offset past-due child support under this Section has not been used by either party as an incentive to avoid paying child support in the month in which it is due.
2. The order must include a specific finding that the proposed offset serves the best interests of the children to whom the obligor and obligee owe a duty of support.
3. The WTN-CSEP may issue an order offsetting past-due child support if neither party objects after being notified of the proposed offset.
4. Past-due child support owed by an obligor to an obligee may not be offset by past-due child support owed to the obligor by the obligee except as permitted in this Section.
5. An obligor's child support obligation for the current month or for a future month may not be offset by past-due child support or other debts owed to the obligor by an obligee unless the Tribal Court orders the offset as a method of satisfying an overpayment of child support that results from the establishment or reduction of a child support obligation.
6. An offset of child support under this Section is considered a payment of child support by both the obligor and the obligee. A copy of the order for an offset must be provided to the WTN-CSEP. [TCR 08-79]

**12-539 Agreements to Waive Child Support.** An agreement purporting to relieve an obligor of any current or future duty of child support is void and may not be enforced. An agreement purporting to waive past-due child support is void and may not be enforced unless the child support obligee and any assignee of the obligee have consented to the agreement in writing and the agreement has been approved by the Tribal Court. A copy of the order of approval must be provided to the WTN-CSEP. [TCR 08-79]

**CIVIL REMEDIES FOR ENFORCEMENT OF CHILD SUPPORT ORDERS**

**12-540 Income Withholding Order.** When a judgment or order requires the payment of child support or arrears, it may be enforced by an income withholding order, as provided in this Article, in addition to any other remedies provided by tribal law. [TCR 08-79]

**12-541 Immediate Income Withholding.**

1. Except as provided in subsection 2 of this Section, each judgment or order which requires the payment of child support subjects the income of the obligor to automatic income withholding, regardless of whether the obligor's support payments are delinquent.
2. If a party to a proceeding, who would otherwise be subject to immediate income withholding under subsection 1 of this Section, demonstrates, and the Tribal Court finds that there is good cause not to require immediate withholding, or if the parties, including any assignee of support rights, reach a written agreement that provides for an alternative arrangement for assuring the regular payment of child support, the Tribal Court need not subject the income of the obligor to immediate withholding and shall enter a written finding to this effect.
3. Notwithstanding Section 12-544, any failure to comply with an agreement under this subsection subjects the income of the obligor to income withholding under this Section.
4. A finding that there is good cause not to require immediate income withholding under subsection 2 of this Section must be based on at least:
  - a. A written determination that, and an explanation of why, implementing immediate income withholding would not be in the best interests of the child;
  - b. Proof of timely payment of previously ordered support, if any; and
  - c. A requirement that the obligor keep the civil court clerk and the WTN-CSEP informed of any employment-related health insurance to which the obligor has access.
5. A written agreement for an alternative arrangement for assuring the regular payment of child support is effective only if the agreement at least, in addition to other conditions the parties agree to:
  - a. Provides that the obligor shall keep the clerk of court and the WTN-CSEP informed of any employment-related health insurance to which the obligor has access;
  - b. Describes the provisions by which regular payment of child support is assured; and
  - c. Is reviewed and approved by the Tribal Court and entered into the Court's records. [TCR 08-79]

**12-542 Subsequent Income Withholding Order — Provision of Notice of Impact of Income Withholding Law to Obligor.** Each judgment or order issued by the Tribal Court which includes an order for support of minor children, but which does not require immediate income withholding, must include a statement that a delinquency in payment of the support due or the approved request of the obligee will result in an income withholding order being issued in accordance with this Article. [TCR 08-79]

**12-543 Requests by Obligor for Income Withholding — Approval — Procedures and Standards.**

1. An obligor may apply to the WTN-CSEP for approval of an income withholding request. The income of the obligor becomes subject to income withholding on the date an approved request is made.
2. In approving an obligor's request for income withholding, the WTN-CSEP shall consider:
  - a. An obligor's threat to discontinue child support payments;
  - b. An obligor's having made child support payments sufficient to avoid a delinquency but insufficient to conform to the ordered amount; and
  - c. Any other factor applicable to the request for income withholding.
3. Upon application of an obligor requesting income withholding, the WTN-CSEP shall promptly approve or disapprove the request. The WTN-CSEP may not approve the obligor's request in a case where the Tribal Court has determined that there is good cause not to require immediate income withholding unless the Court first changes its determination. [TCR 08-79]

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

**12-544 Procedure — Notice to Obligor.** If immediate income withholding under Section 12-541 has not been implemented and an obligor is delinquent, if an obligee's request for income withholding is approved, or if the Tribal Court changes its finding that there is no longer good cause not to require immediate income withholding, the WTN-CSEP shall serve the notice required under this Section upon the obligor whenever issuing an income withholding order. The notice must state:

1. That the obligor is delinquent in the payment of child support, that a request for withholding has been made by the obligee and approved by the WTN-CSEP, or that there is no longer good cause not to require immediate income withholding, as the case may be, and the obligor is therefore subject to an income withholding order on all income;
2. The amount of child support owed and the amount of arrearage, if any;
3. The total amount of money that will be withheld by the income payer from the obligor's income in each month as determined under the Tribal Court Child Support Guidelines;
4. That the income payer may withhold an additional sum of up to three dollars per month to cover the income payer's expenses;
5. That the income withholding order has been issued without further order of the Tribal Court;
6. That the obligor may contest the issuance of the income withholding order by filing a written request for hearing within ten days of the date of the notice made under this Section;
7. That if the obligor contests the income withholding order pursuant to Section 12-545, a hearing will be held and the Court will determine and issue an order consistent with the requirements of Section 12-545; and
8. That the income withholding order applies to any current or subsequent income payer or period of employment. [TCR 08-79]

**12-545 Hearing Upon Obligor's Request.**

1. If the obligor files a request for a hearing within ten days of the date of the notice made pursuant to Section 12-544, the Tribal Court shall hold a hearing within ten working days after the date of the request.
2. The Tribal Court may order that the income withholding order be withdrawn if at the hearing the obligor establishes:
  - a. In a case where withholding would be based on an alleged delinquency, that there has been a mistake in the identity of the obligor; or
  - b. In a case where an approved request for withholding has been made by the obligee, that the approval of the request constituted an abuse of discretion.
3. If at the hearing the obligor establishes that there is an overstatement in the amount of support stated to be owed by the obligor, the Tribal Court may amend the amount to be withheld.
4. In the absence of a finding of a mistake of fact in a case where withholding would be based on an alleged delinquency, or in the absence of an abuse of discretion in the approval of an obligee's request for withholding, the Tribal Court shall confirm the income withholding order. Payment of past-due support after issuance of notice under Section 12-544 may not be the basis for an order that the income withholding order be withdrawn.
5. An obligor is not precluded, by subsection 1, from seeking appropriate relief from a judgment or order affecting a child support obligation nor is the Tribal Court precluded from granting such relief. An obligor's request for such relief, whether made by motion under Title 2, Article 2, Winnebago Civil Procedure Code, or otherwise, may not be considered during the hearing described in subsection 1 of this Section. [TCR 08-79]

**12-546 Mandatory Federal Income Withholding Form — Effect of Income Withholding Order.** An income withholding order must be issued in the name of the Winnebago Tribe of Nebraska using the standard federal income withholding form for notice of the order prescribed by the Secretary of the

United States Department of Health and Human Services under authority of 42 U.S.C. 666(b)(6)(A)(ii), contain only the information necessary for the income payer to comply with the income withholding order, and be directed to all current and subsequent income payers of the obligor. The income withholding order is binding on the income payer until further notice by the WTN-CSEP and applies to all current and subsequent periods in which income is owed the obligor by the income payer. The income withholding order has priority over any other legal process against the same income. [TCR 08-79]

**12-547 Voluntary Income Withholding for Child Support — Limitations.** An obligor may execute a document voluntarily authorizing income withholding from current or future income due the obligor from an income payer in an amount sufficient to meet any child support obligation imposed by the Tribal Court or otherwise. An income withholding authorization made under this Section is binding on the income payer one week after service upon the income payer by first-class mail, or in any other manner agreed to by the income payer, of a true copy of the executed income withholding authorization. The income payer shall deduct the sum or sums specified and pay them as specified by the income withholding authorization and any applicable imposition of a support obligation by a court. In addition, the income payer may deduct a fee of up to three dollars per month from the obligor's income to cover expenses involved in transmitting payment. Compliance by an income payer with an income withholding authorization issued under this Section discharges the income payer's liability to the obligor for that portion of the obligor's income. The income payer may not use the income withholding authorization as a basis for any disciplinary action against the obligor. [TCR 08-79]

**12-548 Service of Income Withholding Order on Income Payer.**

1. The WTN-CSEP shall serve the income withholding order on the income payer by first-class mail or in any other manner agreed to by the income payer, and upon the obligor by first-class mail to the obligor's last-known address.
2. If the obligor is subject to immediate income withholding under Section 12-541, an income withholding order must be served on any known income payer within two business days of the date of receipt of information necessary to carry out income withholding. Subject to the provisions of Section 12-551, if service of an income withholding order has been or may have been properly made under this Section, an income withholding order must be served on any subsequently identified income payer within two business days of the date of receipt of information necessary to carry out income withholding.
3. An income withholding order may also be issued and served at the request of the obligor.
4. The income payer shall withhold a stated child support obligation as determined under the Tribal Court Child Support Guidelines from the obligor's income at the time the obligor is paid for transmittal to the WTN-CSEP within seven business days of the date the obligor is paid, together with a report of the date upon which the amount was withheld from the obligor's income.
5. If an income payer is ordered to withhold amounts to satisfy an obligor's previous past due support, the income payer may also withhold an additional amount equal to 20% of the monthly child support obligation until the arrearage is paid. The income payer may also retain an additional sum of three dollars per month from the obligor's income to cover expenses involved in transmitting payment.
6. The amount to be withheld, including amounts to cover expenses involved in transmitting payment, may not exceed fifty percent of the obligor's disposable income from this income payer as provided under the Consumer Credit Protection Act (15 U.S.C. 1673(b)), but a payment of an amount less than the ordered amount must be accompanied by a written calculation disclosing any of the obligor's income and disposable income which is payable by the income payer.
7. The income payer shall begin withholding no later than the first payday that occurs after service of the income withholding order.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

8. If the income payer is served with more than one income withholding order issued under this Article on a single obligor and the combined total amount to be paid under the income withholding orders exceeds fifty percent of the obligor's disposable income, the income payer shall withhold the maximum amount permitted under the Consumer Credit Protection Act (15 U.S.C. 1673(b)) and transmit to the WTN-CSEP that portion thereof which the obligee's claim bears to the combined total of all claims.
9. The income payer shall notify the WTN-CSEP in writing of the termination of a duty to pay income to the obligor within seven business days of the termination. The notification must include the name and address of the obligor's subsequent income payer, if known.
10. If the income payer is subject to income withholding orders for more than one obligor, the income payer may combine in a single payment the amounts for all obligors who have been ordered to pay the WTN-CSEP with identification of the amount attributed to each obligor. [TCR 08-79]

**12-549 Income Withholding — Duties and Liabilities of Income Payer under Income Withholding Order.**

1. Any income payer failing to comply with this Section or Section 12-548 may be punished for contempt of court. The Tribal Court shall first afford such income payer a reasonable opportunity to purge itself of such contempt.
2. Any income payer who fails or refuses to deliver income pursuant to an income withholding order, when such income payer has had in its possession such income, is personally liable for the amount of such income which the income payer failed or refused to deliver, together with costs, interest, and reasonable attorney's fees. If an income payer fails or refuses to deliver income for more than fourteen business days after the date an obligor is paid, the Tribal Court shall award damages in an amount equal to two hundred dollars or actual damages caused by the violation, whichever is greater, in addition to costs, interest, late fees, and reasonable attorney's fees. Any damages awarded under this subsection must be reduced by the amount of any late fees for the same payment which have been collected by the WTN-CSEP under subsection 9 of this Section. Any damages collected by the WTN-CSEP under this subsection must be paid to the WTN-CSEP for distribution under Section 12-532 and any remaining balance must be paid to the obligor. If an income payer has failed to deliver income for more than one obligor, any damages collected under this Section must be divided equally among all affected obligors.
3. Any employer who refuses to employ, dismisses, demotes, disciplines, or in any way penalizes an obligor on account of any proceeding to collect child support, on account of any order or orders entered by the Tribal Court in such proceeding, on account of the employer's compliance with such order or orders, or on account of an income withholding order, is liable to the obligor for all damages, together with costs, interest thereon, and reasonable attorney's fees resulting from the employer's action. The employer may be required to make full restitution to the aggrieved obligor, including reinstatements and backpay.
4. An income payer may be enjoined by the Tribal Court from continuing any action in violation of Section 12-548.
5. Any contempt proceeding against an income payer under this Section must be commenced within one year after the income payer's act or failure to act upon which such proceeding is based.
6. Compliance by an income payer with an income withholding order operates as a discharge of the income payer's liability to the obligor as to that portion of the obligor's income so affected.
7. Upon receipt of an order for support entered in another tribe or state and the registration of the foreign order with the Tribal Court, the WTN-CSEP shall initiate income withholding.
  - a. An income payer within the exterior boundaries of the Winnebago Reservation shall withhold income based on foreign court orders for withholding that have been registered in the Winnebago Tribal Court.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

- b. An employer receiving an income withholding notice from another tribe or state that has been registered in the Winnebago Tribal Court shall withhold and distribute the funds as directed in the withholding notice and shall apply the law of the obligor's principal place of employment when determining:
    - i. The employer's fee for processing an income withholding notice;
    - ii. The maximum amount permitted to be withheld from the obligor's income; and
    - iii. Deadlines for implementing and forwarding the child support payment.
  - c. An obligor may contest withholding under this subsection as provided for in this Section.
  - d. An employer receiving an income withholding order or notice from another tribe or state that has not been registered in the Winnebago Tribal Court must forward the order or notice to the WTN-CSEP for registration in Tribal Court before withholding and distributing the funds under the order.
8. An income payer who has been served with an income withholding order issued under Section 12-546 for an obligor which includes an amount for past-due support shall notify the WTN-CSEP before making any lump sum payment of one thousand dollars or more to the obligor. "Lump sum payment" includes pay in lieu of vacation or other leave, bonus, commission, and any other payment to an obligor but does not include periodic payments made on regular paydays as compensation for services and does not include reimbursement for expenses incurred by the obligor on behalf of the income payer.
- a. An income payer who provides notice of a lump sum payment to the WTN-CSEP under this subsection may not make more than one-half of the payment to the obligor for thirty days from the date of the notice to WTN-CSEP or until the income payer receives written authorization from the WTN-CSEP to make the lump sum payment to the obligor, whichever occurs first.
  - b. Notwithstanding paragraph A of this subsection, an income payer who provides notice of a lump sum payment to the WTN-CSEP under this subsection may not make a lump sum payment to an obligor if the income payer has been notified that an execution, garnishment, attachment, or other process has been initiated regarding the lump sum payment to satisfy a child support obligation of the obligor.
  - c. An income payer who owes a lump sum payment under this subsection is subject to the duties and liabilities in this Section unless the context indicates otherwise.
  - d. This subsection does not apply to any portion of a lump sum payment that must be paid to satisfy an income withholding order issued under Section 12-546.
9. An income payer who complies with an income withholding order that is regular on its face is not subject to civil liability to any individual or agency for conduct in compliance with the order.
10. An income payer who fails to deliver income for more than seven business days after the date one or more obligors are paid may be charged a late fee equal to twenty-five dollars per obligor for each additional business day the payment is delinquent or seventy-five dollars for each additional business day the payment is delinquent, whichever is greater. A late fee charged under this subsection is payable fifteen days after service on the employer, by first-class mail, of notice of the imposition of the late fee. Failure to pay a late fee under this subsection may be punished as a contempt of court. Any late fee collected by the WTN-CSEP under this subsection must be paid to the WTN-CSEP for distribution under Section 12-532 and any remaining balance must be paid to the obligor. If an income payer has failed to deliver income for more than one obligor, any late fees collected under this Section must be divided equally among all affected obligors.
- [TCR 08-79]

**12-550 Requests for Information from Income Payer.**

1. The WTN-CSEP may mail a request for information to the income payer in any matter in which it secures reliable information that the income payer may be indebted to an obligor. The request must identify the obligor by name, and, if known, address and social security number.
2. Within ten days after receipt of a request for information issued under subsection 1 of this Section, an income payer shall provide the requester with a written statement informing the requester whether or not the income payer is, or within the one hundred eighty days immediately preceding receipt of the request has been, an income payer with respect to that obligor. If the income payer is, or within the previous one hundred eighty days has been, an income payer with respect to that obligor, the income payer shall furnish information to the requester, including:
  - a. The amount of any income currently paid to the obligor, calculated on a monthly basis;
  - b. The total amount of income paid to the obligor in the twelve months preceding the month in which the request is received;
  - c. Information regarding any health insurance that may be made available to the obligor's children through the income payer;
  - d. The social security number under which payment of any income by the income payer to the obligor is reported;
  - e. The obligor's address; and
  - f. If the income payer is no longer an income payer with respect to that obligor, the date of last payment and any forwarding address.
3. Any income payer failing to comply with any requirements of this Section may be punished for contempt of court. The Tribal Court shall first afford such income payer a reasonable opportunity to purge itself of contempt.
4. A proceeding against an income payer under this Section may be commenced upon motion by the WTN-CSEP and must be commenced within ninety days after the income payer's act or failure to act upon which such proceeding is based. [TCR 08-79]

**12-551 Amendment — Termination of Income Withholding Order.** Upon amendment or termination of an income withholding order, the WTN-CSEP shall send appropriate notice to the income payer. An income withholding order is to be amended by the WTN-CSEP when the total amount of money to be withheld is changed by elimination of arrearages or by court-ordered change in amount of child support. An income withholding order is to be terminated when the duty to support ceases and all child support arrearages have been paid. When two or more income payers have been subjected to income withholding orders with respect to a child support obligation, the WTN-CSEP shall suspend the income withholding order directed to one or more income payers, provided that the amount of child support withheld by the remaining income payer or payers equals the child support obligation determined under the Tribal Court Child Support Guidelines. The WTN-CSEP shall immediately reinstate any suspended income withholding order should any child support obligation of the obligor thereafter become delinquent. The WTN-CSEP shall provide a copy of the reinstated income withholding order, by first-class mail, to the obligor and the income payer. [TCR 08-79]

**12-552 Interstate Income Withholding — Initiation by the Winnebago Tribe of Nebraska to Another Jurisdiction.** On application of any applicant for IV-D services from the WTN-CSEP, an obligee or an obligor of a support order issued by this Tribe, or a public assistance agency to which an obligee has assigned support rights, the WTN-CSEP shall request the child support enforcement agency of another tribe or state in which the obligor of a support order derives income to enter the order for the purpose of obtaining income withholding against such income. The WTN-CSEP shall make that request within twenty days of the later of the date income withholding is determined appropriate or the date of receipt of any information necessary to carry out withholding. The WTN-CSEP shall compile and transmit to the child support agency of the other tribe or state all documentation required to enter an order

for this purpose. The WTN-CSEP shall also transmit to the child support agency of the other tribe or state certified copies of any subsequent modifications of the support order. If the WTN-CSEP receives notice that the obligor is contesting the income withholding in another tribe or state, it shall immediately notify the individual obligee of the date, time, and place of the hearings and of the obligee's right to attend. [TCR 08-79]

**12-553 Child Support Exempt from Process.** A child support obligation owed to an obligee who is a judgment debtor may not be subject to execution, garnishment, attachment, or other process except to satisfy that child support obligation. [TCR 08-79]

**12-554 Administrative Seek Employment Orders.**

1. *Court order.* For any support order being enforced by the WTN-CSEP, the WTN-CSEP may seek a court order requiring the obligor to seek employment if:
  - a. Employment of the obligor cannot be verified;
  - b. The obligor is in arrears in court-ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly support and maintenance payments; and
  - c. The obligor is not in compliance with a written payment plan.

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

2. *Contents of order.* The order to seek employment shall:
  - a. Order that the obligor seek employment within a determinate amount of time;
  - b. Order that the obligor file with the WTN-CSEP on a weekly basis a report of at least five new attempts to find employment or of having found employment, which report must include the names, addresses, and telephone numbers of any employers or businesses with whom the obligor attempted to seek employment and the name of the individual contact to whom the obligor made application for employment or to whom an inquiry was directed;
  - c. Notify the obligor that failure to comply with the order is evidence of a willful failure to pay support under this Article;
  - d. Order that the obligor provide the WTN-CSEP with verification of any reason for noncompliance with the order; and
  - e. Specify the duration of the order, not to exceed three months. [TCR 08-79]

**12-555 Driver's License and Occupational License Suspension, Motor Vehicle Lien.** If the WTN-CSEP determines that the obligor is in arrears in court-ordered child support or maintenance payments or both in an amount equal to or greater than three times the obligor's total monthly child support payments and not in compliance with a written approved payment agreement pursuant to this Article, the WTN-CSEP is authorized to request assistance from another tribal or state child support enforcement IV-D agency in the pursuit of the suspension of the obligor's driver's license or occupational license. The WTN-CSEP is also authorized to request assistance from another tribal or state IV-D agency to seek a motor vehicle lien against the obligor. [TCR 08-79]

**12-556 Contempt Proceedings for Nonpayment of Child Support.**

1. If a person against whom an order or decree for support has been entered under this Article, or a comparable law from another jurisdiction, is in arrears in court-ordered child support payments in

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

- an amount equal to or greater than the obligor's total monthly child support payments and is not in compliance with a written payment plan approved by the Tribal Court or the WTN-CSEP, the person may be cited and punished by the Tribal Court for contempt pursuant to this Section, this Article, and other applicable tribal law.
2. Any person found in contempt of court as specified in the Winnebago Tribe of Nebraska Code, Title I, Article 5, Contempts, may be subject to a civil fine not to exceed five hundred (\$500.00) dollars and sentenced to serve no more than six (6) months in jail. A person may be subject to additional fines or jail time for subsequent violations of court orders. A person found in contempt of court for nonpayment of child support may make bond set by the Tribal Court pursuant to Section 1-806 of the Winnebago Code. The Tribal Court shall apportion the bond between the child support arrears and the court fine according to Section 1-806 of the Winnebago Code.
  3. If the Tribal Court cites a person for contempt under this Section the Court may order the performance of community service work up to 32 hours per week for six weeks for each finding of contempt if the obligor:
    - a. Is able to work full time;
    - b. Works an average of less than 32 hours per week; and
    - c. Has actual weekly gross income averaging less than 40 times the federal minimum hourly wage under United States Code, title 29, section 206(a)(1), or is voluntarily earning less than the obligor has the ability to earn, as determined by the Tribal Court.
  4. An obligor is presumed to be able to work full time. The obligor has the burden of proving inability to work full time.
  5. A person ordered to do community service work under this Section may, during the six-week period, apply to the Tribal Court or the WTN-CSEP to be released from the community service work requirement if the person:
    - a. Provides proof to the Tribal Court or the WTN-CSEP that the person is gainfully employed and submits to an order for income withholding under this Article;
    - b. Enters into a written payment plan regarding both current child support and arrearages approved by the Tribal Court and the WTN-CSEP; or
    - c. Provides proof to the Tribal Court or the WTN-CSEP that, subsequent to entry of the order, the person's circumstances have so changed that the person is no longer able to fulfill the terms of the community service order.
  6. The performance of community service work does not relieve a child support obligor of any unpaid accrued or accruing support obligation. [TCR 08-79]

**INTERGOVERNMENTAL CHILD SUPPORT CASES —  
AFFORDING FULL FAITH AND CREDIT**

**12-557 Full Faith and Credit of Foreign Child Support Orders.** The WTN-CSEP and Tribal Court shall recognize child support orders issued by other tribes and states, in accordance with the requirements under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B. The WTN-CSEP shall extend the full range of services available under its IV-D plan to respond to all requests from, and cooperate with, other tribal and state IV-D agencies. [TCR 08-79]

**REGISTRATION OF FOREIGN CHILD SUPPORT ORDER FOR ENFORCEMENT**

**12-558 Registration of Foreign Child Support Order for Enforcement.**

1. A support order or an income-withholding order issued by a tribunal of another tribe or state may be registered in the Winnebago Tribal Court for enforcement.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

2. A support order or income-withholding order of another tribe or state may be registered in the Winnebago Tribal Court by sending the following documents and information to the Winnebago Tribal Court:
  - a. A motion and affidavit to the Tribal Court from the party requesting the order be registered.
    - i. The affidavit must include a statement that a written request has been received from another tribe or state requesting the registration of a foreign order.
  - b. Two copies of all orders to be registered including any modifications of an order, one of which must be certified by the issuing court.
  - c. A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage. [TCR 08-79, 14-86]

**12-559 Effect of Registration for Enforcement.** A support order or income-withholding order issued in another tribe or state is registered when the order is filed in the Winnebago Tribal Court. A registered order issued in another tribe or state is enforceable in the same manner and is subject to the same procedures as an order issued by the Winnebago Tribal Court. Except as otherwise provided in this Article, the Winnebago Tribal Court shall recognize and enforce, but may not modify, a registered order if the tribunal that issued the order had jurisdiction. [TCR 08-79]

**12-560 Choice of Law.** The law of the tribe or state that issued the order governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order. In a proceeding for arrearages, the statute of limitation under the laws of the Winnebago Tribe of Nebraska or of the state or tribe that issued the order, whichever is longer, applies. [TCR 08-79]

**12-561 Notice of Registration of Order.** When a support order or income-withholding order issued in another tribe or state is registered in the Winnebago Tribal Court, the Winnebago Tribal Court shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order. The notice must inform the nonregistering party:

1. That a registered order is enforceable as of the date of registration in the same manner as an order issued by the Winnebago Tribal Court;
2. That a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after notice;
3. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and
4. Of the amount of any alleged arrearages.

Upon registration of an income-withholding order for enforcement, the Winnebago Tribal Court as the registering tribunal shall notify the obligor's employer pursuant to this Article. [TCR 08-79]

**12-562 Procedure to Contest Validity or Enforcement of Registered Order.**

1. A nonregistering party seeking to contest the validity or enforcement of a registered order in the Winnebago Tribal Court shall request a hearing within 20 days after notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to this Section.

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

2. If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.
3. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the Winnebago Tribal Court shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing. [TCR 08-79]

**12-563 Burden on Party Contesting the Registration or Enforcement.**

1. A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:
  - a. The issuing tribunal lacked personal jurisdiction over the contesting party;
  - b. The order was obtained by fraud;
  - c. The order has been vacated, suspended, or modified by a later order;
  - d. The issuing tribunal has stayed the order pending appeal;
  - e. There is a defense under the laws or policy of this Tribe to the remedy sought;
  - f. Full or partial payment has been made; or
  - g. The statute of limitation precludes enforcement of some or all of the arrearages.
2. If a party presents evidence establishing a full or partial defense under this Section, the Winnebago Tribal Court may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the laws of this Tribe.
3. If the contesting party does not establish a defense under this Section to the validity or enforcement of the order, the Winnebago Tribal Court shall issue an order confirming the order of the issuing tribunal.
4. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. [TCR 08-79]

**REGISTRATION OF FOREIGN CHILD SUPPORT ORDERS FOR MODIFICATION**

**12-564 Registration Child Support Order for Modification.** A party or the WTN-CSEP seeking to modify, or to modify and enforce, a child support order issued in another tribe or state shall register that order in the Winnebago Tribal Court in the same manner provided in Section 12-558 of this Article if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification. The Winnebago Tribal Court may enforce a child support order of another tribe or state registered for purposes of modification, in the same manner as if the order had been issued by the Tribal Court, but the registered order may be modified only if the requirements of this Section and Section 12-565 have been met. [TCR 08-79]

**12-565 Modification of Child Support Order of Another Tribe or State.**

1. After a child support order issued in another tribe or state has been registered in the Winnebago Tribal Court, the Tribal Court may modify that order after notice and hearing, it finds that:
  - a. The following requirements are met:
    - i. The child, the individual obligee, and the obligor do not reside within the exterior boundaries of the issuing tribe or state;
    - ii. A petitioner who is a nonresident of the Winnebago Tribe of Nebraska seeks modification; and
    - iii. The respondent is subject to the personal jurisdiction of the tribunal of the Winnebago Tribe of Nebraska; or

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

- b. The child, or a party who is an individual, is subject to the personal jurisdiction of the Winnebago Tribal Court and all of the parties who are individuals have filed written consents in the issuing tribunal for the Winnebago Tribal Court to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing tribe or state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures in this Article, the consent otherwise required of an individual residing within the external boundaries of the Winnebago Reservation is not required for the Winnebago Tribal Court to assume jurisdiction to modify the child support order.
2. Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by the Winnebago Tribal Court and the order may be enforced and satisfied in the same manner.
3. On issuance of an order modifying a child support order issued in another tribe or state, the Winnebago Tribal Court becomes the tribunal of continuing, exclusive jurisdiction.
4. The Winnebago Tribal Court shall recognize a modification of its earlier child support order by a tribunal of another tribe or state which assumed jurisdiction under the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1538B and, upon request, except as otherwise provided in this Article, shall:
  - a. Enforce the order that was modified only as to amounts accruing before the modification;
  - b. Enforce only nonmodifiable aspects of that order;
  - c. Provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and
  - d. Recognize the modifying order of the other tribe or state, upon registration, for the purpose of enforcement.
5. If all of the parties who are individuals reside within the external boundaries of the Winnebago Reservation and the child does not reside in the issuing tribe or state, the Winnebago Tribal Court has jurisdiction to enforce and to modify the issuing tribe's or state's child support order in a proceeding to register that order. The Winnebago Tribal Court exercising jurisdiction as provided in this Section shall apply the Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1538B to the enforcement or modification proceeding, and the Court shall apply the procedural and substantive law of this Tribe.

Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction. [TCR 08-79]

**12-566 Application of the Winnebago Child Support Act.** This Act shall govern all child support proceedings commenced *after* the effective date of this Act. [TCR 08-79]

**12-567 Transferring of a Foreign Child Support or Custody Case.** A support or custody case of another tribe or state may be transferred to the Winnebago Tribal Court if at least one of the parties or one of the children in the case is an enrolled member of the Winnebago Tribe of Nebraska. The following documents and information must be filed in the Winnebago Tribal Court:

1. A properly filed Motion to accept the transfer of the case with proper notice to all parties. The notice must be sent by United States Mail, with sufficient first class postage affixed, to the parties last known address. Proper notice must inform the parties of the following:

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

- a. That a transferred case is enforceable as of the date of acceptance by the Winnebago Tribal Court;
  - b. That a transferred case is enforceable in the same manner as a case that originated in the Winnebago Tribal Court;
  - c. That a hearing to contest the acceptance of the transfer of a case must be requested in writing and filed with the Winnebago Tribal Court within 20 days of the filing of the Motion;
  - d. That failure to contest the acceptance of the transfer of a case within the required time frame will result in the acceptance of said case by the Winnebago Tribal Court and precludes further contest of that case with respect to any matter that could have been asserted;
  - e. The name of the child or children for which paternity was established;
  - f. The current support obligation if any; and
  - g. The amount of any alleged arrears if any.
2. A certified copy of the order transferring the case to the Winnebago Tribal Court from the transferring tribe or state.
  3. Two copies including one certified copy of all orders including any modifications of an order.
  4. A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage. [TCR 14-86]

**12-568 Effect of Accepting a Transferred a Case.** A support or custody case from another tribe or state that is properly transferred to the Winnebago Tribal Court becomes a Winnebago Tribal Court case. The jurisdiction of the transferring tribe or state terminates upon the Winnebago Tribal Court's acceptance of the transfer. A transferred case is enforceable in the same manner and is subject to the same procedures as an order issued by the Winnebago Tribal Court. A transferred case can be modified in the same manner as an order issued by the Winnebago Tribal Court. [TCR 14-86]

**12-569 Notice of Acceptance of Transferred Case.** When a case from another tribe or state has been transferred and accepted by the Winnebago Tribal Court, the Winnebago Tribal Court shall notify the parties and the transferring tribe or state that the Winnebago Tribal Court has accepted the transferred case. The notice must be accompanied by a copy of the transferred case's order or orders and any modifications of said order or orders. [TCR 14-86]

**12-570 Procedure to Contest the Acceptance of a Transferred Case.** Any named party in the transferred case may seek to contest acceptance of the transferred case. A party wishing to contest the acceptance of the transfer of a case must:

1. File a written objection with the Winnebago Tribal Court
2. This written objection must be filed within 20 days of the filing of the Motion
3. If any party fails to contest the transfer of the case in a timely manner the case will be accepted by the Winnebago Tribal Court.
4. If a party files a written objection with the Winnebago Tribal Court in a timely manner, the Winnebago Tribal Court shall schedule the matter for hearing and give notice to the parties of the date, time and location of the hearing. [TCR 14-86]

**12-571 Burden on Party Contesting the Transfer of a Case.**

1. A party contesting the transfer of a case from another tribe or state has the burden of proving one or more of the following defenses:
  - a. The issuing tribunal lacked personal jurisdiction over the contesting party;
  - b. The order was obtained by fraud;
  - c. The order has been vacated, suspended, or modified by a later order;

WINNEBAGO TRIBAL CODE  
TITLE 12 ARTICLE 5

- d. The issuing tribunal has stayed the order pending appeal;
  - e. There is a defense under the laws or policy of the Winnebago Tribe of Nebraska to the remedy sought;
  - f. Full or partial payment has been made;
  - g. The statute of limitation precludes enforcement of some or all the arrearages.
2. If a party presents evidence establishing a full or partial defense under this Section, the Winnebago Tribal Court may stay the acceptance of the case, continue the proceedings to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the transferred case may be accepted and may be enforced by all remedies available under Winnebago Tribe of Nebraska's laws.
  3. If the contesting party does not establish a defense to the transfer of the case under this Section, the Winnebago Tribal Court shall issue an order accepting the transfer of the case.
  4. Acceptance of a transferred case whether by operation of law or after a hearing precludes further contest of the case with respect to any matter that could have been asserted at the time of the acceptance of the transfer. [TCR 14-86]