

CHAPTER 28
STOCKBRIDGE-MUNSEE TRIBAL LAW
CHILD SUPPORT ORDER ORDINANCE

Section 28.1 Purpose and Scope

The Stockbridge-Munsee Community Tribal Council finds that the Tribal Court needs a defined process to enforce child support court orders against Class III gaming per capita payments. Further, the Tribal Council finds that the financial needs of children are not met when the child support payer is in arrears.

Section 28.2 Definitions

- (A) “Arrears” means the amount of money the payer has not paid pursuant to the most recent child support court order. Arrears do not include birth expenses, paternity tests, or fees imposed by the state or other similar fees such as process/filing fees.
- (B) “Child Support Order” means a Stockbridge-Munsee court order, or other court order from a court of competent jurisdiction relating to payment of child support.
- (C) “Court” means the Stockbridge-Munsee Tribal Court as established by the Stockbridge-Munsee Tribal Law.
- (C) “Court Order” means a Tribal Court Order.
- (D) “Judge” means a Stockbridge-Munsee Community judge.
- (E) “Per Capita Payment” means per capita payment as defined in Chapter 27.7 (A).
- (F) “Tribal Member” means enrolled member of the Stockbridge-Munsee Community, Band of Mohican Indians.
- (G) “Tribal Treasurer” means the duly elected Treasurer of the Stockbridge-Munsee Tribal Council.

Section 28.3 Petition

- (A) Any person or other tribe, state, or foreign jurisdiction that wishes to enforce a child support order against a Tribal Member’s per capita payment from Class III gaming from the Stockbridge-Munsee Community must apply to the Tribal Court by filing a petition to register and enforce the child support order.

(1) Per capita payments are not subject to attachment and this Ordinance is not applicable to per capita payments, unless the child support payer is in arrears of more than \$3000.00 and the payer has not complied with the most recent court order by missing or reducing payments within the past twelve months from the date of the Court filing.

(B) An authenticated copy of the most recent child support order shall accompany the Petition. If the child support order is from a foreign jurisdiction, the petition must comply with the requirements of Section 17.22 of Chapter 17.

(C) The Petition shall include:

- (1) The name of the petitioner.
- (2) The name of the payer.
- (3) Proof that the payer is an enrolled member of the Stockbridge-Munsee Community.
- (4) The name of the child and other children that the payer may have child support obligations.
- (5) The amount of arrears.
- (6) The date of the most recent child support court order.
- (7) The record of payment over the past twelve months.
- (8) The amount or percentage of the per capita payment sought from the petition.
- (9) The person or entity that should be paid if the petition is granted.
- (10) Any other relevant information that will aid the court.

(D) The filing fee is \$30.00 and must accompany the petition. Service shall be made in accordance with the Rules of Civil Procedure.

Section 28.4 Procedure for Recognition and Enforcement of Judgments

(A) With the exception of Section 17.23(A) of Chapter 17, the filing and recognition requirements of Section 17.22 and 17.23 must be met.

(B) With the exception of the factors in Section 17.22, the Court shall not review the merits of the underlying child support order.

(C) The petitioner, or their representative, must appear at scheduled court hearing(s). The court may allow the petitioner or their representative to appear by phone.

Section 28.5 Judgment and Enforcement

A judgment shall be considered enforceable after it is signed by the judge as a Court Order.

(A) The Court Order shall not allow any modification of the underlying child support order or otherwise change the payment percentage, or other payment amount in the underlying child support order.

(B) The Court may consult applicable Wisconsin State Child Support laws for guidance so long as the Court does not apply the Wisconsin law in contradiction to any Tribal law.

(C) The Tribal Court may also enforce the judgment for child support through a Court Order garnishing Class III gaming Per Capita Payments in accordance with Section 28.6 of this Chapter.

Section 28.6 Enforcement Against Per Capita Payments

A Court Order for garnishment of child support from Class III gaming Per Capita Payments under this Chapter shall, shall constitute a lien upon and assignment of defendant's future Per Capita Payment; provided that the judgment is delivered to the Tribal Treasurer by August 1, and the Order shall only be effective upon a subsequent Per Capita Payment.

(A) A Court Order garnishing a Per Capita Payment for child support under this Chapter shall be served upon the Tribal Treasurer by the Tribal Court Clerk.

(1) The Tribal Treasurer must withhold the specified amount from the garnishee's Per Capita check and transmit the withheld amounts pursuant to the Court Order, regardless if the Tribal member payer has chosen to deny receiving the Per Capita Payment.

(B) The maximum amount of any one Per Capita Payment subject to garnishment under Chapter 28 is fifty (50) percent of the gross amount of the Per Capita Payment, unless the Tribal Member payer has chosen to deny receiving the Per Capita Payment. The maximum amount of any one Per Capita Payment subject to garnishment under Chapter 28 is one-hundred (100) percent of the gross amount if the Tribal Member payer has chosen to deny receiving the Per Capita Payment.

(1) If the payer has multiple child support obligations the Court shall determine, if possible, the extent to which the child support payer may be in arrears on all child support obligations, and based upon the Court's determination, the Court should, as equitably as possible, divide the Court Ordered garnishment.

(2) The payer remains responsible for applicable income taxes, consistent with federal, state, or tribal income tax laws.

(C) In the event the payer owes amounts to the Tribe from a Per Capita Payment pursuant to a court order, the amounts owed to the Tribe shall be satisfied first.

Section 28.8 Multiple Year Claims.

In the event a petition and court order does not satisfy the amount of arrears, a petitioner may file a petition in future years. The petitioner must follow the requirements and procedures contained in this Chapter for all subsequent filings.

Section 28.9 Sovereign Immunity

Nothing in this Ordinance shall provide or be interpreted to provide a waiver of the Stockbridge-Munsee Community's sovereign immunity from suit.

Section 28.10 Amendments

Amendments to this Ordinance will be effective upon enactment by the Stockbridge-Munsee Community Tribal Council without further review by the Secretary of the Interior.

LEGISLATIVE HISTORY:

Adopted by Tribal Council on June 1, 2004, Resolution Number 026-04. Adoption required amendments to Chapters 17 and 27 by same resolution. Approved by BIA June 15, 2004.

Sections 28.1, 28.3(A), 28.6 are amended; sections 28.2(H), 28.5(A), 28.5(C) are deleted; sections 28.3(C) and 28.8 are created; section 28.5 is renumbered on October 5, 2004 by Tribal Council Resolution No. 052-04 to add a filing fee, clarify how the court is to notify the Treasurer, clarify that delivery to the Treasurer occurs 45 days prior to a per capita payment, add in future amendment section, and delete references to wage assignments because 28 U.S.C. §1738B requires full faith and credit of foreign child support orders. Approved by BIA November 8, 2004.

Sections 28.2(A); 28.3(C), (E); 28.4(C); 28.8 are created; sections 28.3(A)(1),(B); 28.6, 28.6(A), (A)(1), (B),(B)(1),(B)(2) are amended; sections 28.2, 28.9, 28.10 are renumbered; and sections 28.3(B)(2) and 28.4(C) are deleted by Tribal Council on September 20, 2005, Resolution No. 046-05.