

THE NAVAJO NATION



JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

February 11, 2021

Hon. Seth Damon
Office of the Speaker
Post Office Box 3390
Window Rock, AZ 86515

RE: CJA-05-21, *An Action Relating to Law and Order, Health, Education and Human Services, Naabik'iyati' Committees and the Navajo Nation Council; Amending the Navajo Nation Child Support Enforcement Act, 9 N.N.C. § 1701 ET SEQ.*

Dear Speaker Damon,

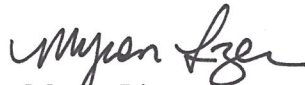
Diné Customary Law declares and teaches that it is the right and freedom of the people that every child and every elder be respected, honored and protected with a healthy physical and mental environment, free from all abuse. Navajo Nation fundamental law recognizes the importance of our children in Navajo society; they are our future and we must ensure their protection, health, and welfare.

All parents have a responsibility to raise a healthy family; however, as we are painfully aware the family structure is not as strong as it has been in the past. Our government support services are stretched to the limit supporting families and there must be a fair process for recovering a small percentage of the services provided. This is what the amendments to the Navajo Nation Child Support Enforcement Act sets out. We appreciate the Navajo Nation Council for their vote on CJA-05-21.

The Child Support Enforcement Act was long overdue for changes. We thank the many partners who contributed to the amendments and for their commitment to every Navajo child to be respected, honored, and protected. We sign CJA-05-21 into law.

Sincerely,


Jonathan Nez, President
THE NAVAJO NATION


Myron Lizer, Vice President
THE NAVAJO NATION

RESOLUTION OF THE
 NAVAJO NATION COUNCIL
 24th NAVAJO NATION COUNCIL - THIRD YEAR, 2021

AN ACTION

RELATING TO LAW AND ORDER, HEALTH, EDUCATION AND HUMAN SERVICES, NAABIK'ÍYÁTI' COMMITTEES AND THE NAVAJO NATION COUNCIL; AMENDING THE NAVAJO NATION CHILD SUPPORT ENFORCEMENT ACT, 9 N.N.C. § 1701 *ET SEQ.*

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Law and Order Committee is a standing committee of the Navajo Nation Council. 2 N.N.C. § 600(A). The committee is empowered to review and make recommendations to the Navajo Nation Council on proposed Navajo Nation Code amendments and enactments. 2 N.N.C. §§ 164 (A) (9) and 601 (B) (14).
- B. The Health, Education and Human Services Committee is a standing committee of the Navajo Nation Council. The committee is empowered to provide legislative oversight on matters involving health and social services, oversee Navajo Nation policies and priorities to optimize the delivery of social services and health services to the Navajo people, and review and recommend resolutions relating to social services and health. See 2 N.N.C. §§400 (C) (1), (4) and 401 (B) (6) (a).
- C. The Naabik'íyáti' Committee is a standing committee of the Navajo Nation Council. Proposed legislation requiring final action by the Navajo Nation Council are assigned to the Naabik'íyáti' Committee. 2 N.N.C. §§ 164 (A) (9) and 700 (A).
- D. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A). The Council must review and approve enactments or amendments or positive law. 2 N.N.C. § 164(A).

SECTION TWO. FINDINGS

- A. The Navajo Nation Child Support Enforcement Act was originally adopted by the Navajo Nation Council in 1994 (CD-111-94). Since the enactment of the Navajo Nation Child Support Enforcement Act in 1994, federal law has changed. For this and other reasons, it is necessary that the Act be updated.
- B. Amendments to the Navajo Nation Child Support Enforcement Act are necessary in respect to Service of Process provisions. The current Act requires specific, individual service rather than

more general service that has proven to be expensive and time consuming for the Department of Child Support Services. The complication in Service of Process results in delays prosecuting child support cases and delays collection of child support services for Navajo children.

- C. The Navajo Nation Child Support Enforcement Act further provides for comity to other jurisdictions. See, 9 N.N.C. § 1718. Since the adoption of the Child Support Enforcement Act, the federal government enacted the Full Faith and Credit for Child Support Act, 28 U.S.C. §1738(B). This Act requires any state or tribe taking money from the federal government under Title IV(D) of the Social Security Act must provide full faith and credit to other IV(D) programs in order to be funded. In order to properly reflect that change, the method of recognizing foreign child support orders needs to be through full faith and credit rather than comity.
- D. As Navajo children are considered the most valuable gifts of creation, it is in the best interest of the Navajo Nation that the Navajo Nation Child Support Enforcement Act be amended.

SECTION THREE. APPROVING AMENDMENTS

The Navajo Nation hereby approves amendments to the Navajo Nation Child Support Enforcement Act, at 9 N.N.C. § 1701 *et seq.*, as follows:

Title 9. Domestic Relations Chapter 17. Child Support ~~Enforcement~~ Act

§1701. **Short Title:** This Act shall be known as the Navajo Nation Child Support ~~Enforcement~~ Act, hereinafter as the "Act."

§1702. ~~Statement of Policy~~

A. This Act shall be liberally construed to effectuate the policy stated herein; and these remedies shall be in addition to, and not in lieu of, those in existing law. It is the public policy of the Navajo Nation to implement the values of Navajo common law regarding parentage and children. Children are the most valuable gift of creation. They must be loved and receive care. There is a parental duty to establish a child's parentage for identity in family and clan relations. Parents and relations have a duty to nourish and support children. Where there is disharmony in the family, parents will subordinate their interests in favor of their children.

B. Children shall be maintained, as completely as possible, from the resources of their parents. This Act establishes an quasi-judicial/administrative process for the establishment of parentage, the establishment, modification and enforcement of child support obligations; and ~~adds~~ provides remedies to those already existing for child support enforcement. ~~This Act shall be liberally construed to effectuate the policy stated herein; and these remedies shall be in addition to, and not in lieu of, those in existing law.~~

C. ~~The state of Arizona, New Mexico, and Utah which are charged with the provision of services to individuals under Title IV (D) of the Social Security Act may utilize the administrative and judicial review processes provided for in this Act, to the extent that they negotiate agreements for the performance of administrative functions by the Navajo Nation. Absent such agreements, the Navajo Nation shall have no obligation to provide services under this Act to state Title IV(D) agencies. In no manner is this Act intended, nor is it to be deemed, to relieve the States of Arizona, New Mexico and Utah from providing equal protection of the laws of their respective states and the United States to their citizens. The Navajo Nation provides child support services in accordance with Title IV (D) of the Social Security Act. Pursuant to the requirements for the provision of services conforming to Title IV (D), any judicial or administrative child support orders issued by states or tribes, exercising proper jurisdiction and providing due process, and that are providing services in a accordance with Title IV (D), must be given Full Faith and Credit in the courts and hearing tribunals of the Navajo Nation. The Navajo Nation is under no obligation to provide services under this Act to a state or tribe that is not providing child support services in accord with Title IV (D).~~

§1703. Definitions

For purposes of this Act:

A. "Absent Parent" means a parent of (a) child(ren) either during the course of marriage or outside of marriage who is not providing the custodial parent with child support for the benefit of the child(ren), or who is bound by an administrative or court order to pay a child support obligation.

B. "Administrative Order" unless otherwise indicated means an order issued by the Navajo Nation Office of Hearings and Appeals establishing ~~and/or modifying~~ parentage paternity ~~of~~ and/or liability for public debt and/or child support for any child(ren).

C. "Alleged Father" means a man named as the father of a child born to unmarried parents who has not been legally determined to be the father. The alleged father is also referred to as the putative father.

D. "Appeal" means to ask a higher court to reverse the decision of a trial court after final judgment or other legal ruling.

EE. "Child" means any person under the age of 18 who is not emancipated according to the laws of the Navajo Nation who is alleged to be the natural or adopted child(ren) offspring of an absent/non-custodial parent or custodial parent.

ED. "Child Support" means the financial obligation an absent/non-custodial parent has towards his or her child(ren), whether such obligation is established through judicial or administrative process, by stipulation of the absent/non-custodial parent, ~~or by parentage of any child(ren). The financial obligation of an absent parent shall be met through the payment of monies and/or through the provision of other goods and/or services, as ordered by the Office of Hearings and Appeals, or the courts.~~

GH. "Assignment of Child Support Rights" means the legal procedure whereby a custodial parent assigns their right to receive services and support rights, as provided under Navajo law or comparable laws of another jurisdiction, to the Navajo Nation.

HF. "Comity" means the legal principle that political entities (i.e., states, nations, tribes or courts of other jurisdictions) will mutually recognize each other's legislative, executive and judicial acts.

IE. "Court" shall mean any family court of the Navajo Nation or a court of another state or territory having jurisdiction to determine an absent/non-custodial parent's liability for child support.

JF. "Court Order" means any order, judgment, or decree of a court establishing ~~or modifying parentage~~ paternity for (a) child(ren) and/or liability for public debt and/or child support for any child(ren).

KE. "Custodial Parent" means the parent who holds legal custody of the child(ren) pursuant to a court order, or who exercises physical custody of the child(ren) on the basis of agreement between the parents or the absence of one parent. The term custodial parent shall also include a guardian or custodian appointed by a court of competent jurisdiction.

L. "Day(s)" unless otherwise indicated means business days.

M. "Department" unless otherwise indicated means the Navajo Nation Department of Child Support Services.

NH. "Division" unless otherwise indicated means the Navajo Nation Division of Human Resources, or its successor.

O. "Due Process" means the principle of fairness in legal proceedings so that a person has a right to know what action is being taken and has an opportunity to be heard.

P. "Fee Simple" means the absolute title to land, free of any other claims, which one can sell or pass to another by will or inheritance.

Q. "Foreign Orders" means any court orders from outside of Navajo Nation.

RF. "Garnishment" means the process whereby an order is directed to an employer, bank or agent, holding monies or property of an absent/non-custodial parent, to make payments or deliver property to satisfy a child support obligation debt in accordance with the order.

S. "Genetic Testing" means analysis of inherited factors to determine legal fatherhood or paternity.

T. "Gross Income" ~~is~~ means income from any source, including but not limited to, salaries, wages, commissions, bonuses, dividends, severance or retirement pay, pensions, interest, trust income, annuities, capital gains, unemployment compensation, worker's compensation, earned disability insurance benefits, tips, gifts, prizes, and alimony. This ~~It~~ includes in-kind and non-cash income, calculated at reasonable market value.

U. "Hardship" means the severity with which a proposed construction of the law would bear upon a particular case. This term applies to cases that may have extenuating circumstances where a lenient stance is taken by the court.

V. "Means-tested Assistance" means payments received by the parents which are not included in the determination of the child support obligation. This includes, but not limited to, Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI), Supplemental Nutrition Assistance Program (SNAP), General Assistance.

WK. "Income Tax Refund Interception" is means a remedy whereby any income tax refund, Federal or state, of a non-custodial/absent parent is shall be intercepted. directly from the United States, State, Navajo Nation, or other Indian Nation for the payment of public and/or support debt.

X. "In-Kind/Non-cash support" means support provided to a custodial parent for the child(ren) in lieu of cash support payments.

Y. "Modification of Child Support" means a decrease or increase of child support obligation in an order.

Z. "Income Withholding" also known as wage execution means a remedy which is included in an administrative or court order directing an employer to withhold payments from the earned wages of a non-custodial parent.

AA. "Non Compliance" means when the employer does not honor wage garnishment for child support order within one week or within the next pay period of receipt of order.

BB. "Non-Custodial Parent" refer to "absent parent."

CC. "Parent" means the natural or adoptive mother or father of a child.

DD. "Parentage" means the condition of being the natural or adoptive mother or father of any child(ren) and includes both the paternity and maternity of any child(ren).

EE. "Paternity" means the legal acknowledgement of the parental relationship between a father and his child.

N. "Public Assignment of Child Support Rights" means the assignment of child support rights by the custodial parent to the Navajo Nation, or any state or federal agency. Such assignment may be in connection with the payment of benefits under the federal titles IV A, IV E, or XIX Medicaid. Aid to Families with Dependent Children (AFDC) to or for the benefit of any child(ren) by the Navajo Nation, or any state or federal agency, as a consequence of the failure of an absent parent to provide child support to any child(ren).

FF. "Public Debt" means the debt of unpaid child support owed by a non-custodial parent that has been assigned by the Custodial Parent.

GG. "Service of Process" means the actual delivery of legal document that requires a person to respond or appear.

HHØ. "State Lottery and Indian Gaming Winnings" means any and all monies and/or goods and/or services which are awarded to an individual as a consequence of a state and/or Indian Nation gaming operation.

II. "Statute of Limitation" means the length of time a person has to take a legal action.

~~P. "Child Support Rights" means the rights of a custodial parent to receive child support from an absent parent as determined under the law of the Navajo Nation or comparable laws of any other jurisdiction or territory.~~

JJ. "Voluntary Agreement" means an agreement between parties to establish paternity and child support.

KKØ. "Wage Assignment" means a voluntary written assignment of earned wages which is submitted by an employee to an employer, authorizing the employer to pay the earned wages of the employee to or for the benefit of a child(ren).

LLR. "Wage Execution" is a remedy which can be included in an administrative or court order directing an employer to make payments to or for the benefit of a child from the earned wages of any employee.

~~§1704. Public Assignment of Child Support Rights. Establishment and Amount of Obligation~~

A. Assignment

~~A public assignment of child support rights constitutes an obligation owed by the absent parent to the Navajo Nation, or any state or federal agency. The assignment may be connected to the payment of AFDC benefits to, or for the benefit of, the child(ren).~~

~~I. A custodial parent who receives AFDC benefits in his or her own behalf or for the benefit of a child shall assign all accrued child support rights for the AFDC beneficiary child(ren), to the Navajo Nation, or other federal or state agency, which made AFDC payments to the custodial parent.~~

~~II. A custodial parent who does not receive AFDC benefits may apply for services from the Division under this Act upon their voluntary assignment of all accrued child support rights to the Navajo Nation. Provided, that the Division may charge~~

~~such non-AFDC recipient custodial parents fees for services provided under this Act, in accord with the fee schedule established pursuant to Section II of this Act. The application Navajo Nation assures the application on fee will not exceed \$25. in accordance with Tribal Final Rule 45 CFR 309.75 (e).~~

~~III1. The assignment of child support rights includes the right to prosecute any action to establish parentage paternity, and to establish, modify, and/or enforce the amount of child support obligation, pursuant to this Act or any other provision of applicable Navajo Nation law. All such actions shall be brought in the name of the Navajo Nation, or such other federal or state agency which made AFDC payments to the custodial parents.~~

~~IV2. A The custodial parent shall has have the right to refuse to assign his/her support rights to the Navajo Nation, or other federal or state agency, for good cause based upon the best interests of the child(ren).~~

B. Obligation

The absent/non-custodial parent's child support obligation shall be established through the quasi-judicial/administrative process provided in this Act, or by a voluntary agreement which meets the requirements of ~~Section 16~~ § 1716 of this Act.

~~I1. The obligation shall commence at the time of the entry of the administrative order which establishes the amount of the child support payable by the absent/non-custodial parent, or on the date on which the absent/non-custodial parent signs the voluntary agreement.~~

~~II2. If there is an administrative order, the amount of the child support obligation shall be the amount set in the administrative order.~~

~~III. Until there is an administrative order entered, the amount of the child support obligation shall be presumed to be the amount determined in writing by the Division as part of the administrative process established under this Act, in accordance with the Navajo Nation Child Support Guidelines.~~

§1705. Notice of Public Assignment of Child Support Rights

A. When the Navajo Nation ~~or any other state and/or federal agency~~ has received an assignment of child support rights, the Department Division may shall issue a Notice of Public Assignment (NPA) of Child Support Rights. Service shall be by:

1. e Certified mail, restricted delivery. ~~7 Provided, that where an attempt to serve by certified mail is unsuccessful,~~

2. Personal service in accordance to the Navajo Nation Rules of Civil Procedures. Personal service of an NPA may be made by delivering a copy of the NPA to the recipient personally or by leaving a copy at the recipient's dwelling house or usual place of abode with some person sixteen (16) years or older then residing therein. ~~shall be made by any person designated by the Division who has reached the age of eighteen (18) years, and who is neither identified as a child nor a custodial parent under the Notice of Assignment of Child Support Rights.~~

B. Refusal of Certified Mail. When Service of Process has been attempted by certified mail to the last known address of the recipient with return receipt requested and return receipt has been returned by the United States Postal Service as "refused," such shall be deemed valid service if:

1. Mail was previously sent to that address and not returned as "undeliverable;" or,

2. The address has been verified by a third party, i.e. U.S. Post Office, recipient's employer, etc.

C. The notice Notice of Public Assignment of Child Support Rights shall include:

A 1. A statement providing the name(s) and birth date(s) of the minor child(ren) for whom parentage/paternity is alleged and for whom child support is being sought, and the name of the custodial parent and alleged or putative father.

B 2. A statement of the child support obligation accrued pursuant to a court or administrative order or voluntary agreement and a demand for immediate payment. ~~7 for those cases wherein a court or administrative order has established the child support obligation; or~~

C 3. A statement of the child support obligation which the Division Department has determined to be appropriate, in accordance with the Navajo Nation Child Support Guidelines. ~~7 for those cases in which no court or administrative order has established the child support obligation;~~

D 4. A statement that if the alleged absent non-custodial parent disagrees with the claims of their parentage

~~paternity of the child(ren), the amount of the child support obligation or the periodic monthly payment required thereon, the alleged absent/non-custodial parent must file an written answer and request a for hearing, within thirty (30) days of service, with the Division, which shall immediately transmit the written answer and request for hearing to the Office of Hearings and Appeals;~~

~~E 5. A statement that if no timely written answer is received within thirty (30) days, the Office of Hearings and Appeals hearing tribunal shall enter an order in accordance with the Notice of Public Assignment of Child Support Rights. A statement indicating that the entry of default against the absent/non-custodial parent will result in the entry of a self-executing judgment for wage execution in the amount of the public debt;~~

~~F 6. A statement that as soon as an administrative order is entered, the absent/non-custodial parent's property, without further notice or hearing, will be subject to collection action, including, but not limited to; wage execution, garnishment, income tax refund interception, state and Indian gaming winnings interception, retirement, attachment and execution on real property held in fee simple, whether located within or outside the boundaries of Navajo Indian Country and personal property wheresoever located. This also includes the following:~~

- ~~a. License Suspension~~
- ~~b. Passport Denial~~
- ~~c. Bank Account Seizures~~

~~G7. A statement that the custodial parent and the absent/non-custodial parent are is responsible for notifying the Division Department of any change of address or employment;~~

~~H 8. A statement of all fees associated with the administrative child support enforcement process which may be charged against the absent/non-custodial parent;~~

~~I. A statement indicating that the entry of default against the absent parent will result in the entry of a self-executing judgment for wage execution in the amount of the public debt;~~

~~J 9. Such other information as the Division Department deems appropriate.~~

The ~~Navajo Nation Supreme Court~~ Department shall, following public hearings conducted by the ~~Division~~ Department and in accord with the requirements of 7 N.N.F.C. §601, establish a scale of minimum child support contributions. This scale shall be used to determine the amount an ~~absent~~ non-custodial parent shall pay for support of his or her child(ren) pursuant to this Act.

A. The Navajo Nation Child Support Guidelines must, at a minimum:

1. Take into consideration all gross income of the custodial and non-custodial parents; and

2. Be based on specific descriptive and numeric criteria and result in a computation of an amount of child support which is sufficient to meet the basic needs of the child(ren) for housing, clothing, food, education, health care, recreation, and goods and services required by physical and/or mental disability; and

3. Provide for the child(ren)'s health care needs, through health insurance coverage which supplements those health care goods and services provided by the ~~Federal Government~~ Indian Health Service (IHS) Health Care Facilities and Public Law 638 hospitals, where appropriate; and

4. Consider tThe circumstances which may support a written finding on the record of a judicial or administrative proceeding for the award of child support, in reducing support contributions on the basis of hardship to the absent parent or other children while ~~considering~~ balancing the best interest of the child(ren) who are the subject of the judicial or administrative proceeding, ~~and~~

5. Provide for non-cash payment for current support only; establish a specific dollar amount for support obligation; and describe types of non-cash support that will be permitted to satisfy the support order. Non-cash payments will not apply to accrued arrearages; and

6. Provide the opportunity to challenge/dispute the guidelines findings and child support amount;

7. Provide for review and revision, where appropriate, of the child support guidelines at least once every four years to ensure that the amounts provided for in the guidelines are periodically adjusted for increases or decreases in the costs associated with the care and support of children within the Navajo Nation.

B. ~~The Supreme Court of the Navajo Nation Department~~ shall accept and compile pertinent and reliable information from any available source in order to establish a scale of minimum support contributions. Copies of the scale shall be made available to the ~~Division Department~~, the Office of Hearings and Appeals, courts, prosecutors, and persons admitted to the practice of law in the Navajo Nation, and shall be considered public records of the Navajo Nation.

§1707. Adjustments to Gross Income

A. When calculating the gross income of a parent for purposes of this Act, the following adjustments to gross income shall be made as deductions from gross income:

1. Amounts of court-ordered alimony and child support actually paid; and
2. Amounts necessary for minimal costs of food, shelter, clothing, and transportation in maintenance of the parent; and
3. Amounts paid in mandatory taxes and social security deductions.

B. The provisions of § 1707, Subsection (A) notwithstanding, the best interests of the child(ren) shall take precedence. Child support amounts shall be sufficient to provide for the basic needs of the child(ren). In cases wherein adjustments to gross income of a parent under § 1707, Subsection (A) (~~++2~~), would result in insufficient child support to any of the children of the ~~absent non-custodial~~ parent, the needs of the child(ren) shall take precedence over the needs of the ~~absent non-custodial~~ parent.

§1708. Administrative Hearings

A. Scheduling of Hearing

Upon receipt of a written answer from the ~~alleged absent non-custodial~~ parent pursuant to § 1705 of this Act, ~~the Office of Hearings and Appeals shall schedule a hearing shall be scheduled before a hearing officer.~~ The administrative hearing shall be held within the judicial district in which the custodial parent resides, unless another venue is agreed upon by the parties. Telephonic administrative hearings are permitted as well as the telephonic administration of oaths. The administrative hearing shall be scheduled within thirty (30) days ~~of~~ upon the receipt of the

written answer, or unless continued for cause by any motion of the parties or by the hearing officer tribunal.

B. Issues for Determination in Administrative Hearing

1. Parentage Paternity. Unless the alleged absent parent has stipulated and/or acknowledged to his ~~or her~~ parentage/paternity of the child(ren), the hearing officer tribunal shall determine whether the alleged absent parent is the parent of the child(ren). Birth Certificates that name the person as the father creates an actionable, legal, presumption of paternity that satisfies the hearing body's obligation to establish paternity by clear and convincing evidence. The hearing officer tribunal shall make a specific finding of fact regarding whether the alleged absent parent is the parent of the child(ren). Such determination can be made without a hearing and based on documentation filed and agreed to by both parties. The standard ~~for~~ of proof of parentage shall be by clear and convincing evidence.

2. Amount of Child Support Obligation. The hearing officer tribunal shall establish the amount of the child support obligation of the ~~absent~~ non-custodial parent by using the Navajo Nation Child Support Guidelines. ~~provided in §1706.~~ The hearing officer tribunal shall make a specific finding of fact regarding the amount of the child support obligation. The standard of proof ~~for establishment of the amount of the child support obligation~~ shall be by preponderance of the evidence.

C. Procedures. The hearing shall be conducted according to procedures established by the ~~Office of Hearings and Appeals~~ hearing tribunal. These procedures shall provide due process to the parties and shall, at a minimum, authorize:

1. The inspection of property, examination and production of pertinent records, books, information, or evidence;
2. The subpoena of any person for testimony ~~under oath concerning all matters related to the establishment of parentage and child support;~~
3. The admission of pertinent relevant testimony and evidence ~~upon which the issues of parentage and child support shall be determined;~~ and
4. The making of a permanent record of the proceedings, through electronic recording or other method.

D. Default. If the alleged non-custodial absent parent fails to answer within the required time period or fails to appear at the hearing, upon a showing of valid service, the hearing officer tribunal shall enter a decision and order of parentage paternity, and child support obligation pursuant to the notice. ~~Within 20 days of the administrative hearing, the~~ The hearing officer tribunal shall enter an order stating the establishment of parentage paternity, and the child support obligation of the absent non-custodial parent.

E. Miscellaneous Content of Order

1. Each order for child support or maintenance payments shall include an order that the ~~absent~~ non-custodial parent and custodial parent notify the ~~Office of Hearings and Appeals~~ tribunal of any change of employer/unemployment or change of address within 10 days of such change.

~~2. In the event the order contains a determination of child support obligation, the order shall be in favor of the child through its custodial parent or guardian when the Navajo Nation, or other federal or state agency, is not making AFDC payments in behalf of the child.~~

~~2.~~ 2. In the event the order contains a determination of child support payments, the order shall include ~~provide~~ for garnishment, wage execution, state and Indian gaming winnings and income tax refund interception as means for execution on any unpaid child support obligation.

3. The amount to be withheld will include current child support plus an amount to be applied toward liquidation of past due child support (arrearages) if applicable.

F. Modification of Order. The child support obligation of an ~~absent~~ non-custodial parent may after entry of an administrative order, be modified prospectively upon entry of an order by the ~~Office of Hearings and Appeals~~ hearing tribunal. Either parent may petition the hearing officer tribunal for an order based on a showing of a change of circumstances requiring the other parent to appear and show cause why the decision previously entered should not be prospectively modified. ~~The order to appear and show cause together with a copy of the affidavit upon which the order is based shall be served by the petitioning parent on the other parent in the same manner as the notice under §1705 of this Act. A hearing shall be set~~ scheduled ~~not~~ more than 30 days from the date of service~~+~~. The following conditions shall be reasons for modification of existing orders including, but are not limited to:

1. Change in income
2. Change in custody
3. Disability of non-custodial parent
4. Loss or gain of employment
5. Change in child support law
6. Death of dependent
7. Emancipation of dependents

The interest of the child(ren) shall always take precedence over the needs of the parents.

§1709. Judicial Review

A. Appeal

~~1. The Navajo Nation Supreme Court shall hear appeals on the record from administrative decisions made by the Office of Hearings and Appeals pursuant to this Act.~~

21. Any party may secure judicial review of an administrative order made pursuant to this Act by filing an appeal with the Navajo Nation Supreme Court within ~~twenty~~ thirty (~~230~~) days after the administrative decision is filed ~~in by the hearing tribunal~~ Office of Hearings and Appeals.

B. Appeal on Record. The appeal to the Navajo Nation Supreme Court shall be an appeal on the record established before the ~~Office of Hearings and Appeals~~ hearing tribunal and shall be strictly limited to the issues of the ~~parentage~~ paternity of the child(ren), the amount of public debt and child support liability of the ~~absent~~ non-custodial parent.

C. Standard of Review. The Navajo Nation Supreme Court shall not reconsider questions of fact which have been determined by the ~~Office of Hearings and Appeals~~ hearing tribunal. The Navajo Supreme Court may reverse or modify the decision of the ~~Office of Hearings and Appeals~~ hearing tribunal if the administrative findings, conclusions or decisions are, as a matter of law:

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

§1710. Docketing of Order

A true copy of any an administrative order made pursuant to ~~Section 5 or 8~~ §1705 or §1708 of this Act, may be filed with the clerk of any Court in the Navajo Nation. The eClerk shall docket the order in the judgment docket. Upon docketing, the order shall have all the force and effect of a docketed order of the Family eCourt, including but not limited to the ability to enforce such an order pursuant to the Navajo Rules of Civil Procedure and the laws of the Navajo Nation.

§1711. Powers of the Division Department

A. Except where otherwise indicated, the Division Department shall have the power to promulgate rules and regulations necessary to carry out the provisions of this Act.

B. The Division Department shall have the authority to ~~conduct~~ provide a child support enforcement services program under this Act, including the authority to investigate claims of parentage paternity and child support obligation, to locate absent custodial and non-custodial parents, and to establish, enforce and modify child support obligations through the administrative process contained in this Act.

~~C. Except where otherwise indicated, the Division shall have the power to certify to official acts.~~

~~D C.~~ The Division Department shall have the power to require alleged ~~absent~~ parents to undergo blood testing and/or DNA testing, in accordance with rules and regulations promulgated by the Division Department for the purpose of obtaining evidence relevant to the parentage of child(ren). Navajo traditional and customary objections to blood testing and/or DNA testing shall not be a basis for refusal to undergo such testing. ~~The Division may require the alleged absent parent to reimburse the Division for the costs of such blood testing and/or DNA testing.~~

~~E D.~~ The Division Department shall be exempt from any filing fees required of individuals in the courts of the Navajo Nation.

~~F E.~~ The Division Department shall have the authority to report ~~the names and social security numbers of absent parents and cases and the amounts of unpaid public and/or child support debt to credit reporting bureaus, and professionals licensing agencies.~~

~~G F.~~ The Division Department shall have the power authority to set or reset the schedule of fees required on the establishment and enforcement of public debt and child support, including application fees, filing and other fees associated with the administrative process.

~~H. The Division shall have the power to utilize funds which it collects pursuant to this Act through a revolving cost account for the operation of the child support enforcement services, subject to appropriation of such funds by the Navajo Nation Council. Provided, that state and federal funds shall not be supplanted by fees collected by the Division.~~

~~§1712. Wage Execution and Garnishment Income Withholding/Wage Assignment~~

~~A. The Office of Hearings and Appeals hearing tribunal may order wage execution Income withholding in any order issued pursuant to §1705 or §1708 of this Act. Wage execution Income withholding shall be utilized in all cases, wherein an employer of an absent parent can be identified.~~

~~B. The Office of Hearings and Appeals may require garnishment of earnings to enforce a child support order pursuant to this Act in cases wherein wage execution may not be an available remedy, due to the lack of an identified employer, or for other reasons.~~

~~B. A non-custodial parent may execute a wage assignment to meet the child support obligation pursuant to § 1716 of this Act.~~

~~C. No employer shall refuse to honor a wage assignment or Income Withholding executed pursuant to this Act. An assignment and Income Withholding made pursuant to this section shall be binding upon the employer one (1) week after service upon the employer of a true copy of the assignment. Payment of monies pursuant to a wage assignment and Income Withholding shall serve as payment of all such wages assigned under any contract of employment. No employer may discharge or prejudice any employee because his/her wages have been subject to an assignment or Income Withholding for child support. Any employer not complying with the Income Withholding Order for child support or who takes action against an employee because his/her wages are garnished will be charged a fee of no more than \$500.00 for each non-compliance. An employer can contest any citation pursuant to 15 N.N.C. § 1417.~~

~~§ 1713. Wage assignments~~

~~An absent parent may execute a wage assignment as will be sufficient to meet the child support obligation calculated by reference to the order of the Office of Hearings and Appeals, or a voluntary agreement entered into pursuant to §1716 of this Act.~~

~~No employer shall refuse to honor a wage assignment executed pursuant to this Act. An assignment made pursuant to this section~~

~~shall be binding upon the employer one (1) week after service upon the employer of a true copy of the assignment. Payment of monies pursuant to a wage assignment shall serve as payment of all such wages assigned under any contract of employment. No employer may discharge or prejudice any employee because his wages have been subject to an assignment for child support.~~

§1714 1713. Exemption from limitation. Statute of limitations not applicable

No support lien, wage assignment, Income withholding, or garnishment shall be deemed invalid or nonactionable due to the expiration of the statute of limitations on any action for failure to provide child support or maintenance for any child(ren). No statute of limitations shall be effective to prevent establishment, modification and/or enforcement of parentage and/or child support for any child from birth until the child reaches the age of eighteen (18). So long as child support has been established by a hearing tribunal having proper jurisdiction and having provided due process to all parties, prior to the child/ren having attained the age of 18 years of age, any arrearages that have accumulated prior to the age of emancipation, remain subject to collection and enforcement.

§1715 1714. Government records

A. The ~~Division~~ Department may request and shall receive information from the records of all ~~divisions, departments, boards bureaus or other agencies~~ government agencies (tribal, states, and federal) and/or private businesses to locate parents subject to child support, and the same are authorized to provide such information as is necessary for this purpose. This information will be disclosed in accordance with the Navajo Nation Privacy Act and Access to Information Act 2 N.N.C. §81 et. seq.

~~B. The Division may make such information available only to those officials of the Navajo Nation which are authorized to locate parents who have failed to provide child support for their child(ren) to establish, modify, or enforce court orders for child support, or to establish parentage. This information may be given to them only upon their assurance that it will be used in connection with their official duties under the child support enforcement program.~~

~~CB. Disclosure of information under this subsection shall comply with Section (402 (a) (9)) of the Social Security Act. In all support proceedings before the Office of Hearings and Appeals hearing tribunal, there shall be compulsory disclosure by both parties of their respective financial status.~~

§ ~~1716~~ 1715. Enforceable voluntary agreement

A. Content of Agreement

A custodial parent may enter into an agreement with the ~~alleged absent~~ non-custodial parent with or without legal representation.

1. At a minimum, the agreement shall establish the ~~parentage~~ paternity of the child(ren) and the amount of child support obligation which shall be paid by the ~~absent non-custodial~~ parent to the custodial parent. ~~In no circumstance will an agreement be approved or enforced which provides for a level of child support which is less than that provided for by the Navajo Nation Child Support Guidelines established pursuant to Section 6 of this Act.~~

2. By the terms of the agreement, the ~~absent non-custodial~~ parent must personally submit ~~personally~~ to the jurisdiction of the ~~Office of Hearings and Appeals~~ hearing tribunal for enforcement and modification of the agreement, and consent to entry of an ~~administrative~~ order in accordance with the terms of the agreement. The agreement may be obtained by the parties through their own actions, or utilizing the services of the ~~Navajo Nation Peacemaker~~ Peacemaking Program of the Navajo Nation.

B. Submission and Filing of Agreement

1. The voluntary agreement shall be submitted to the Department or hearing tribunal for approval and enforcement. After said agreement is approved by the Department or the hearing tribunal, it shall be filed but judgment shall not be rendered unless there is a default in the child support payments agreed upon, where, upon motion of the Department, judgment shall be rendered and entered forthwith.

2. ~~When in the event that no request for hearing has been filed with the Office of Hearings and Appeals~~ hearing tribunal under §1705 of this Act, and no action has been filed before a court, the voluntary agreement shall be submitted to the ~~Division~~ Department for approval and filed with the ~~Division~~ Department, which shall maintain the voluntary agreement in its records for possible modification and/or enforcement under provisions of this Act.

23. ~~When in the event that an administrative hearing has been requested, from the Office of Hearings and Appeals, the~~

voluntary agreement shall be submitted to the ~~Office of Hearings and Appeals~~ hearing tribunal for its approval and enforcement under the provisions of this Act.

C. Timing of Agreement

1. Such agreement may be entered into at any time prior to the issuance of a final administrative order establishing or modifying parentage or child support obligation, either before or after service of process, or at any time while said order is still in effect. No agreement shall be entered into before the birth of the child unless the ~~Office of Hearings and Appeals~~ hearing tribunal finds that there are special circumstances making it advisable to do so.

2. ~~The voluntary agreement shall be submitted to the Division or the Office of Hearings and Appeals for approval and enforcement. After said agreement is approved by the Division or the Office of Hearings and Appeals, it shall be filed but judgment shall not be rendered unless there is a default of the child support payments agreed upon, when, upon motion of the Division judgment shall be rendered and entered forthwith.~~

~~§1717~~ 1716. Writs of Assistance, Specific Performance, and Bonds

A. Upon application by the ~~Division~~ Department, ~~the~~ Navajo Nation Family court may issue a writ of assistance to enforce any court or administrative order issued pursuant to this Act. Administrative and court orders recognized through comity have *res judicata* authority.

B. The Navajo Nation Family court may specifically enforce any agreement made pursuant to this Act and approved by the ~~Division~~ Department, ~~Office of Hearings and Appeals hearing tribunal~~, or the Peacemaking Program of the Navajo Nation.

C. The Navajo Nation Family court may require a party to submit a commercial, personal surety, or other bond to satisfy the terms of an order issued pursuant to this Act, and enforce such bond in proceedings against the principal and sureties.

D. The Navajo Nation Family court, upon a showing that an absent non-custodial parent has failed to obey an administrative or court order to pay a support or public debt, will issue an order to show cause against the absent parent.

~~§1718~~ 1717. Foreign Orders and Comity

A. Court and administrative orders, judgments or decrees of other Indian nations, states or federal agencies, which relate to child support enforcement, are enforced in the Navajo Nation under the ~~doctrine of comity~~ Full Faith and Credit for Child Support Orders Act (FFCCSOA). Authentic foreign orders will be enforced as an order of the Navajo Nation where the foreign tribunal had personal jurisdiction over the person claimed to be bound by the foreign order; personal Service of Process was made on such person; the administrative or court proceedings offered substantial justice to such person; and the order does not violate Navajo Nation public policy. For purposes of this Act, the ~~Office of Hearings and Appeals~~ hearing tribunal shall have the authority to consider court and administrative orders, judgments or decrees of a foreign jurisdiction for comity recognition.

B. A foreign order is authenticated by reasonable proof that the document tendered to the ~~Office of Hearings and Appeals~~ hearing tribunal is a true copy of the foreign order as it is recorded in the agency or court of the issuing jurisdiction. An authenticated stamp issued by a clerk of court or custodian of records, or a court seal, is sufficient evidence of authenticity.

C. Unless defects in jurisdiction or public policy are apparent on the face of the foreign order, the burden is upon the person against whom it is to be enforced to contest the validity of the order. Upon a failure to respond to notice and the opportunity to contest the order, the ~~Office of Hearings and Appeals~~ hearing tribunal may enforce it as a Navajo Nation order.

D. Where a foreign order is invalid by reason of a lack of personal jurisdiction in the agency or court of the issuing jurisdiction, the ~~Office of Hearings and Appeals~~ hearing tribunal may adopt some or all of its provisions as an original order of the Office of Hearings and Appeals.

§1719 1718. Request for Peacemaking Assistance

The ~~Division~~ Department may request the assistance of Navajo Peacemaking Program of the Navajo Nation in resolving ~~parentage~~ and child support issues, if agreed to by both the custodial parent and ~~alleged absent~~ non-custodial parent.

§1720 1719. Coordination of Peacemaking Courts Program of the Navajo Nation

Peacemakers must coordinate ~~their~~ activities with the ~~Division~~ Department. Agreements reached through the peacemaking process must meet the requirements of §17165 of this Act.

§1721 1720. Temporary Support Orders

In any action under the Domestic Abuse Violence Protection Act, 9 N.N.C. §1904 *et seq.*, any action affecting dissolution of marriage, or in any other action provided for under Navajo Nation law, wherein the Navajo Nation Family Court has made a temporary order concerning the care, custody, and suitable support or maintenance of the child(ren), the Division Department shall have the authority to enforce only those provisions of such order identifying child support obligation and paternity as set forth by the hearing tribunal or Navajo Nation Family Court.

§1722 1721. Amendments

This Act may be amended from time to time by the Navajo Nation Council upon recommendation of the Division of Human Resources Department of Child Support Services, and the Health, Education and Human Services, Health and Social Services, and Judiciary Law and Order Committees of the Navajo Nation Council.

SECTION FOUR. SAVINGS CLAUSE

Should any part of this action be determined invalid by the Navajo Nation Supreme Court or the District Courts of the Navajo Nation, without appeal to the Navajo Nation Supreme Court, portions not determined invalid shall remain the law of the Navajo Nation.

SECTION FIVE. CODIFICATION

The provisions of this action that amend or adopt new sections of the Navajo Nation Code shall be codified by the Office of Legislative Counsel. The Office of Legislative Counsel shall incorporate such amended provisions into the next codification or supplement of the Navajo Nation Code.

SECTION SIX. EFFECTIVE DATE

This action shall become effective in accord with 2 N.N.C. § 221(B).

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the 24th Navajo Nation Council at a duly called meeting in Window Rock, Navajo Nation (Arizona), at which a quorum was present and that the same was passed by a vote of 23 in Favor, and 00 Opposed, on this 28th day of January 2021.


Honorable Seth Damon, Speaker
24th Navajo Nation Council

02/05/2021
DATE

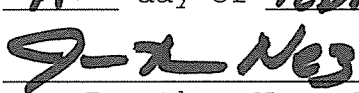
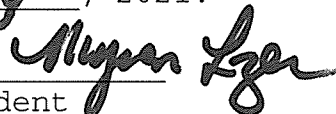
Motion: Honorable Eugenia Charles-Newton

Second: Honorable Eugene Tso

Speaker Seth Damon not voting

ACTION BY THE NAVAJO NATION PRESIDENT:

1. I, hereby, sign into law the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(10), on this 11th day of February, 2021.

 
Jonathan Nez, President
Navajo Nation

2. I, hereby, veto the foregoing legislation, pursuant to 2 N.N.C. § 1005 (C)(11), on this _____ day of _____, 2021 for the reason(s) expressed in the attached letter to the Speaker.

Jonathan Nez, President
Navajo Nation

NAVAJO NATION

658

1/28/2021

Navajo Nation Council 2021 Winter Session

01:18:09 PM

Amd# to Amd#	Legislation 0295-20: Amending	PASSED
MOT Charles-Newton	the Navajo Nation Child Support	
SEC Tso, E	Enforcement Act, 9 NNC SS1701	
	et. seq.	

Yeas : 23

Nays : 0

Excused : 0

Not Voting : 0

Yea : 23

Begay, E	Daniels	Slater, C	Tso, E
Begay, K	Freeland, M	Smith	Walker, T
Begay, P	Halona, P	Stewart, W	Wauneka, E
Brown	Henio, J	Tso	Yazzie
Charles-Newton	James, V	Tso, C	Yellowhair
Crotty	Nez, R	Tso, D	

Nay : 0

Excused : 0

Not Voting : 0

Presiding Speaker: Damon