



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA
Business Committee Conference Room - 2nd Floor Norbert Hill Center
April 20, 2022
9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be Approved**
 - 1. April 6, 2022 LOC Meeting Minutes (pg. 2)
- III. Current Business**
 - 1. Elder Assistance Program Law (pg. 4)
 - 2. Oneida Nation Gaming Ordinance Amendments (pg. 15)
 - 3. Children's Code Amendments (pg. 53)
- IV. New Submissions**
- V. Additions**
- VI. Administrative Updates**
- VII. Executive Session**
- VIII. Recess/Adjourn**



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Oneida Business Committee Conference Room-2nd Floor Norbert Hill Center
April 6, 2022
9:00 a.m.

Present: David P. Jordan, Jennifer Webster, Marie Summers, Kirby Metoxen, Daniel Guzman King (Microsoft Teams)

Others Present: Clorissa N. Santiago, Carmen Vanlanen, Brooke Doxtator, Justin Nishimoto (Microsoft Teams), Eric Boulanger (Microsoft Teams), Rae Skenandore (Microsoft Teams), Amy Spears (Microsoft Teams), Rhiannon Metoxen (Microsoft Teams), Kristal Hill (Microsoft Teams),

I. Call to Order and Approval of the Agenda

David P. Jordan called the April 6, 2022, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Marie Summers to adopt the agenda as is; seconded by Jennifer Webster. Motion carried unanimously.

II. Minutes to be Approved

1. March 16, 2022 LOC Meeting Minutes

Motion by Kirby Metoxen to approve the March 16, 2022, LOC meeting minutes and forward to the Oneida Business Committee; seconded by Jennifer Webster. Motion carried unanimously.

III. Current Business

1. Wellness Court Law

Motion by Jennifer Webster to approve the public meeting packet and forward the Healing to Wellness Court law to a public meeting to be held on May 4, 2022; seconded by Marie Summers. Motion carried unanimously.

IV. New Submissions

1. Oneida Land Claims Commission Bylaws Amendments

Motion by Jennifer Webster to table this item; seconded by Kirby Metoxen. Motion carried unanimously.

V. Additions

VI. Administrative Items

VII. Executive Session



VIII. Adjourn

Motion by Marie Summers to adjourn at 9:08 a.m.; seconded by Jennifer Webster. Motion carried unanimously.



Legislative Operating Committee
April 20, 2022

Elder Assistance Program Law

Submission Date: 11/3/21	Public Meeting: N/A
LOC Sponsor: David P. Jordan	Emergency Enacted: N/A

Summary: *This request for a new law was brought forward by Councilman David P. Jordan based on a recommendation from the Chief Financial Officer during the October 20, 2021, LOC meeting. This request asks the LOC to consider developing a new law to establish an approved program under the Oneida General Welfare law which transitions the Nation's Elderly 65+ Per Capita Payment Distribution Fund, from being utilized for per capita payments to being utilized for general welfare assistance payments for elders.*

11/3/21 LOC: Motion by Marie Summers add the Elder Assistance Program law to the Active Files List with David Jordan as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

1/13/22: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Clorissa N. Santiago, Kristen Hooker, Carmen Vanlanen, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the initial draft of the Law with the LOC and prepare for the work meeting next week with Finance, Oneida Law Office, Trust Enrollment Department, and Trust Enrollment Committee.

1/19/22: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Kirby Metoxen, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill, Carl Artman, Keith Doxtator, Lawrence Barton. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to begin discussing with the Oneida Law Office, Finance, and Trust Enrollment Department the possibility of transitioning the Nation's Elderly 65+ Per Capita Payment Distribution Fund from being utilized for per capita payments to being utilized for general welfare assistance payments for elders.

2/16/22: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Marie Summers, Clorissa N. Santiago. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss next steps for moving this legislative item forward.

2/22/22: *Work Meeting.* Present: Clorissa N. Santiago, Carl Artman. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was for Carl to gain more clarification on the purpose of the memorandum he is providing the Legislative Operating Committee.

2/25/22: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the draft of the Law and determine next steps for moving this item forward.

3/2/22 LOC: Motion by Marie Summers to accept the draft of the Oneida Elder Assistance Program law and defer to a work meeting for further discussion; seconded by Jennifer Webster. Motion carried unanimously.

3/10/22: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Jennifer Webster, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was for the LOC to review and consider the input received from the Trust Enrollment Department Director and the General Manager.

3/16/22 LOC: Motion by Marie Summers to approve the updated draft of the Elder Assistance Program law and direct that a legislative analysis be developed; seconded by Jennifer Webster. Motion carried unanimously.

3/29/22: *Joint OBC and OTEC Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Jennifer Webster, Clorissa N. Santiago, Barbara Webster, Brandon Yellowbird-Stevens, Carl Artman, Geraldine Danforth, John Danforth, Keith Doxtator, Norbert Hill Jr., Sandra Skenandore, Shannon Davis, Tehassi Hill, Venessa Cardish, William Gollnick, Lisa Liggins, Terry Cornelius. This was a joint Oneida Business Committee and Oneida Trust Enrollment Committee meeting held through Microsoft Teams. The purpose of this meeting was to provide the OTEC and the OBC an opportunity to discuss and provide input on the Elder Assistance Program law.

4/14/22: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Carmen Vanlanen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was for the LOC to review the public comment period notice.

Next Steps:

- Approve the legislative analysis and public meeting packet, and forward the Elder Assistance law to a public meeting to be held on May 18, 2022.

ONEIDA NATION PUBLIC MEETING NOTICE**WEDNESDAY, MAY 18, 2022, 12:15 pm**

Norbert Hill Center-Business Committee Conference Room
 N7210 Seminary Rd., Oneida, Wisconsin

Find Public Meeting Materials at

Oneida-nsn.gov/government/register/public meetings

Send Public Comments to

LOC@oneidationation.org

Ask Questions here

LOC@oneidationation.org

920-869-4417

**ELDER ASSISTANCE PROGRAM LAW**

The purpose of this proposed law is to establish the Elder Assistance Program to govern how the Nation provides financial assistance to elders, pursuant to the principles of General Welfare Exclusion.

The Elder Assistance Program Law will:

- ♦ Establish the Elder Assistance Program as an approved program of the Nation in accordance with the Oneida General Welfare law;
- ♦ Provide how this program qualifies for general welfare exclusion;
- ♦ Provide the eligibility requirements for accessing assistance from the Elder Assistance Program – which is that a person is a member of the Nation; age sixty-five (65) or older; and submits a completed application during the designated submission timeframe;
- ♦ Provide the minimum requirements for the information that must be included on the application;
- ♦ Provide how and when funds from the Elder Assistance Program are disbursed;
- ♦ Provide for the types of expenses that shall be considered qualifying expenditures for use of assistance from the Elder Assistance Program by the recipient;
- ♦ Provide information on the funding source and who determines the amount of available funding to an eligible participant; and
- ♦ Provide the department that has the responsibilities to administer the Elder Assistance Program.

Individuals may attend the public meeting for the proposed Elder Assistance Program law in person at the Norbert Hill Center, or virtually through Microsoft Teams. If you wish to attend the public meeting through Microsoft Teams please contact LOC@oneidationation.org

PUBLIC COMMENT PERIOD CLOSES WEDNESDAY, MAY 25, 2022

During the public comment period, anyone may submit written comments, questions or input. Comments may be submitted to the Oneida Nation Secretary's Office or the Legislative Reference Office in person, by U.S. mail, interoffice mail, or e-mail.



For more information on the proposed Elder Assistance Program law please review the public meeting packet at oneida-nsn.gov/government/register/public meetings.



ELDER ASSISTANCE PROGRAM LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

REQUESTER: David P. Jordan	SPONSOR: David P. Jordan	DRAFTER: Clorissa N. Santiago	ANALYST: Carmen VanLanen
Intent of the Legislation or Amendments	It is the policy of the Nation to prioritize the general welfare needs of its elders. The Nation recognizes that its elders possess unique and irreplaceable stores of knowledge, skill, culture, and experience that enhance and enrich the lives of every member of the Nation. The interests of the Nation are advanced when its elders remain confident that their general welfare needs can be met. [10 O.C. 1002.1-2].		
Purpose	The purpose of this law is to establish the Elder Assistance Program to govern how the Nation provides financial assistance to elders, pursuant to the principles of General Welfare Exclusion. [10 O.C. 1002.1-1].		
Affected Entities	Oneida Business Committee, Oneida Trust Enrollment Department, The Nation's Elders		
Related Legislation	Oneida General Welfare Law		
Public Meeting	A public meeting has not yet been held.		
Fiscal Impact	A fiscal impact statement prepared in accordance with the Legislative Procedures Act has not yet been requested.		

SECTION 2. LEGISLATIVE DEVELOPMENT

A. **Background.** The request to develop an Elder Assistance Program Law came from Councilman David P. Jordan based on a recommendation from the Chief Financial Officer during the October 20, 2021 LOC meeting. This request asked the LOC to consider developing a new law to establish an approved program under the Oneida General Welfare law which transitions the Nation's Elderly 65+ Per Capita Payment Distribution Fund, from being utilized for per capita payments to being utilized for general welfare assistance payments for elders.

SECTION 3. CONSULTATION AND OUTREACH

A. The following departments within the Nation participated in the development of this Law and legislative analysis:

- Oneida Law Office
- Oneida Business Committee
- Oneida Finance
- Trust Enrollment Department

SECTION 4. PROCESS

A. This Law has followed the process set forth in the Legislative Procedures Act (LPA).

- On November 3, 2021, the Legislative Operating Committee added this Law to its Active Files List.
- On March 16, 2022, the Legislative Operating Committee approved the draft of this Law and directed that a legislative analysis be developed.

- B. At the time this legislative analysis was developed the following work meetings had been held regarding the development of this Law:
- January 13, 2022: LOC work meeting.
 - January 19, 2022: LOC work meeting with the Oneida Law Office, Finance, and Trust Enrollment Department.
 - February 16, 2022: LOC work meeting.
 - February 22, 2022: Work meeting with Clorissa N. Santiago and Carl Artman.
 - February 25, 2022: LOC work meeting.
 - March 29, 2022: Joint Oneida Business Committee and Oneida Trust Enrollment Committee Meeting.

SECTION 5. CONTENTS OF THE LEGISLATION

A. **Purpose and Policy.** The purpose of this law is to establish the Elder Assistance Program to govern how the Nation provides financial assistance to elders, pursuant to the principles of General Welfare Exclusion. [10 O.C. 1002.1-1]. It is the policy of the Nation to prioritize the general welfare needs of its elders. The Nation recognizes that its elders process unique and irreplaceable stores of knowledge, skill, culture, and experience that enhance and enrich the lives of every member of the Nation. The interests of the Nation are advanced when its elders remain confident that their general welfare needs can be met. [10 O.C. 1002.1-2].

B. **Establishment.** The Elder Assistance Program is hereby established as an approved program of the Nation in accordance with the Oneida General Welfare Law. The Elder Assistance Program meets the requirements of the General Test as defined in the Oneida General Welfare law; General Criteria as defined in I.R.S. Rev. Proc. 2014-35, section 5; and the requirements of the Tribal General Welfare Exclusion Act of 2014 26 U.S.C. §139E(b). [10 O.C. 1002.4-1].

C. **Guidelines and Requirements.** The Elder Assistance Program shall be open to any individuals who meet the following criteria:

- a. Is a member of the Nation;
- b. Is age sixty-five (65) or older; and
- c. Submits a completed application during the designated submission timeframe [10 O.C. 1002.5-1].

The Oneida Business Committee, in consultation with the Oneida Trust Enrollment Committee, shall set forth through the adoption of a resolution an application submission period and disbursement timeframe for a distribution of assistance from the Elder Assistance Program [10 O.C. 1002.5-2]. Any individual seeking assistance from the Elder Assistance Program shall submit an application. The Trust Enrollment Department shall make available an Elder Assistance Program application form and instructions. Assistance provided through the Elder Assistance Program Application shall be disbursed in accordance with the timeframe set through resolution by the Oneida Business Committee. Funds from the Elder Assistance Program may be disbursed through direct deposit, or check, depending on the selection made on the application by the recipient. [10 O.C. 1002.5-4].

D. **Qualifying Expenditures.** The following types of expenses shall be considered qualifying expenditures for use of assistance from the Elder Assistance Program by the recipient:

- a. costs relating to housing needs of principal residences such as:
 1. mortgage payments, rent payments, and down payments;
 2. enhancements for habitability of housing;

3. basic housing repairs or rehabilitation;
 4. improvements to adapt housing for special health needs;
 - b. costs for paying utility bills and charges, including, but not limited to, the following:
 1. water;
 2. electricity;
 3. gas;
 4. basic communication services such as:
 - A. phone
 - B. internet; and
 - C. cable;
 - c. costs associated with food security;
 - d. costs associated with home care assistance;
 - e. costs associated with vehicle payments, maintenance, repair, and insurance;
 - f. costs associated with medical care and transportation, room, and board costs for seeking medical care;
 - g. funeral and burial expenses and expenses for attending wakes, funerals, burials, bereavements, and subsequent honoring events; and
 - h. costs related to any other emergency circumstance [10 O.C. 1002.5-5].
- E. **Oversight and Records Maintenance.** The Trust Enrollment Department shall oversee the collection, review, and permitted distribution of funds from the Elder Assistance Program to the qualifying recipients and shall be responsible for maintenance of records for the Elder Assistance Program [10 O.C. 1002.5-6; 10 O.C. 1002.5-7]. The recipient shall retain receipts for the expenditure of the funds associated with the Elder Assistance Program. [10 O.C. 1002.5-7].
- F. **Funding.** The Elder Assistance program shall be funded through the Elder, Education and General Welfare Trust Fund, which is derived from the Emigrant NY Indian Claims Award 75 Trust Fund, and any other funding sources deemed necessary by the Oneida Business Committee. [10 O.C. 1002.6-1]. The Oneida Trust Enrollment Committee shall determine the amount of assistance available to an eligible recipient from the Elder Assistance Program per any permitted distribution. [10 O.C. 1002.6-2].

SECTION 6. RELATED LEGISLATION

A. **Related Legislation.** The following laws of the Nation are related to this Law:

- *Oneida General Welfare Law.* The Oneida General Welfare Law governs how the Nation provides assistance to eligible members on a non-taxable basis, pursuant to the principles of the General Welfare Exclusion to Indian Tribal governmental programs that provide benefits to Tribal members. [10 O.C. 1001.1-1].
- The Elder Assistance Program is hereby established as an approved program of the Nation in accordance with the Oneida General Welfare Law. [10 O.C. 1002.4-1]. The Elder Assistance Program meets the requirements of the General Test as defined in the Oneida General Welfare Law. [10 O.C. 1002.4-2].

SECTION 7. OTHER CONSIDERATIONS

A. **Fiscal Impact.** Please refer to the fiscal impact statement for any fiscal impacts.

- a. Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation

except emergency legislation. [1 O.C. 109.6-1].

- i. A fiscal impact statement shall be submitted by agencies as directed by the Legislative Operating Committee. [1 O.C. 109.6-1].
 - ii. Fiscal Impact statements may be prepared by any agency who may receive funding if the legislation is enacted, any agency who may administer a program if the legislation is enacted, any agency who may have financial information concerning the subject matter of the legislation, or by the Finance Office, upon request of the Legislative Operating Committee. [1 O.C. 109.6-1(a) and (b)].
 - iii. Oneida Business Committee resolution BC-10-28-20-A titled, “Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures Act,” provides further clarification on who the Legislative Operating Committee may direct complete a fiscal impact statement at various stages of the legislative process, as well as timeframes for completing the fiscal impact statement.
- b. *Conclusion.* The Legislative Operating Committee has not yet requested that a fiscal impact statement be developed for this law.

Title 10. General Welfare Exclusion - Chapter 1002
ELDER ASSISTANCE PROGRAM

1002.1. Purpose and Policy
1002.2. Adoption, Amendment, Repeal
1002.3. Definitions
1002.4. Establishment

1002.5. Guidelines and Requirements
1002.6. Funding

1002.1. Purpose and Policy

1002.1-1. *Purpose.* The purpose of this law is to establish the Elder Assistance Program to govern how the Nation provides financial assistance to elders, pursuant to the principles of General Welfare Exclusion.

1002.1-2. *Policy.* It is the policy of the Nation to prioritize the general welfare needs of its elders. The Nation recognizes that its elders possess unique and irreplaceable stores of knowledge, skill, culture, and experience that enhance and enrich the lives of every member of the Nation. The interests of the Nation are advanced when its elders remain confident that their general welfare needs can be met.

1002.2. Adoption, Amendment, Repeal

1002.2-1. This law was adopted by the Oneida Business Committee by resolution BC-__-__-__-__.

1002.2-2. This law may be amended or repealed by the Oneida Business Committee or the General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

1002.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

1002.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

1002.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

1002.3. Definitions

1002.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Approved program" means any program(s) to provide general welfare assistance that is intended to qualify as a General Welfare Exclusion, administered under specific guidelines, and is adopted by the Oneida Business Committee through resolution or law of the Nation in accordance with the Oneida General Welfare law.

(b) "Assistance" means benefits or payments under an approved program, which are paid to or on behalf of a recipient pursuant to this law. Assistance provided under an approved program shall not be considered income of the recipient.

(c) "Lavish" or "Extravagant" shall have the meaning determined by the Oneida Business Committee in its discretion and based on the circumstances, taking into account needs unique to the Nation as well as the social purpose being served by the particular assistance at hand, except as otherwise may be required for compliance with final guidance issued under 26 U.S.C. §139E following consultation between the Nation and the federal government.

(e) "Member" means an individual who is an enrolled member of the Nation.

(f) "Nation" means the Oneida Nation.

(g) "Recipient" means any member entitled to receive assistance in accordance with

approved program requirements.

1002.4. Establishment

1002.4-1. *Establishment.* The Elder Assistance Program is hereby established as an approved program of the Nation in accordance with the Oneida General Welfare law. The purpose of the Elder Assistance Program is to provide financial assistance to elders of the Nation to address the unique and compounding general welfare needs of elders.

1002.4-2. *General Welfare Exclusion.* The Elder Assistance Program meets the requirements of the General Test as defined in the Oneida General Welfare law; General Criteria as defined in I.R.S. Rev. Proc. 2014-35, section 5; and the requirements of the Tribal General Welfare Exclusion Act of 2014, 26 U.S.C. §139E(b). The assistance provided through the Elder Assistance Program is:

- (a) paid on behalf of the Nation;
- (b) pursuant to an approved program of the Nation;
- (c) does not discriminate in favor of members of the governing body of the Nation;
- (d) available to any eligible member of the Nation who meets the guidelines of the approved program;
- (e) provided for the promotion of general welfare;
- (f) not lavish or extravagant;
- (g) not compensation for services; and
- (h) not a per capita payment.

1002.5. Guidelines and Requirements

1002.5-1. *Eligibility.* The Elder Assistance Program shall be open to any individual who meets the following criteria:

- (a) is a member of the Nation;
- (b) is age sixty-five (65) or older; and
- (c) submits a completed application during the designated submission timeframe.

1002.5-2. *Distribution Period.* The Oneida Business Committee, in consultation with the Oneida Trust Enrollment Committee, shall set forth through the adoption of a resolution an application submission period and disbursement timeframe for a distribution of assistance from the Elder Assistance Program.

1002.5-3. *Application for Funds.* Any individual seeking assistance from the Elder Assistance Program shall submit an application.

- (a) The Trust Enrollment Department shall make available an Elder Assistance Program application form and instructions.

(1) The application shall require, at a minimum, the following information:

- (A) first and last name;
- (B) date of birth;
- (C) street address, city, state, zip code;
- (D) phone number;
- (E) e-mail address;
- (F) enrollment number;
- (G) bank account information for direct deposit if necessary;
- (H) declaration from the applicant that their need exists, and all information provided therein is accurate and in accordance with the laws of the Nation

and federal law; and

(I) signature of the applicant, electronic or handwritten, affirming the attestation.

(2) On the application the applicant shall designate the means by which they would like to receive their disbursement of funds from the Elder Assistance Program, either through direct deposit or check.

(b) Applicants shall complete and return the Elder Assistance Program application form to the Trust Enrollment Department by the deadline set through resolution by the Oneida Business Committee in order to be eligible for assistance from the Elder Assistance Program.

(1) The information provided in the Elder Assistance Program application form may be provided to any department, division, or personnel that processes the applications.

1002.5-4. *Disbursement of Funds.* Assistance provided through the Elder Assistance Program shall be disbursed in accordance with the timeframe set through resolution by the Oneida Business Committee. Funds from the Elder Assistance Program may be disbursed through direct deposit, or check, depending on the selection made on the application by the recipient.

1002.5-5. *Qualifying Expenditures.* The following types of expenses shall be considered qualifying expenditures for use of assistance from the Elder Assistance Program by the recipient:

(a) costs relating to housing needs of principal residences such as:

- (1) mortgage payments, rent payments, and down payments;
- (2) enhancements for habitability of housing;
- (3) basic housing repairs or rehabilitation;
- (4) improvements to adapt housing for special health needs;

(b) costs for paying utility bills and charges, including, but not limited to, the following:

- (1) water;
- (2) electricity;
- (3) gas;
- (4) basic communication services such as:
 - (A) phone;
 - (B) internet; and
 - (C) cable;

(c) costs associated with food security;

(d) costs associated with home care assistance;

(e) costs associated with vehicle payments, maintenance, repair, and insurance;

(f) costs associated with medical care and transportation, room, and board costs for seeking medical care;

(g) funeral and burial expenses and expenses for attending wakes, funerals, burials, bereavements, and subsequent honoring events; and

(h) costs related to any other emergency circumstance.

1002.5-6. *Oversight.* The Trust Enrollment Department shall oversee the collection, review, and permitted distribution of funds from the Elder Assistance Program to the qualifying recipients.

1002.5-7. *Records Maintenance.* The Trust Enrollment Department shall be responsible for maintenance of records for the Elder Assistance Program. The recipient shall retain receipts for the expenditure of the funds associated with the Elder Assistance Program.

1002.6. Funding

1002.6-1. *Funding Source.* The Elder Assistance Program shall be funded through the Elder, Education and General Welfare Trust Fund, which is derived from the Emigrant NY Indian Claims Award Docket 75 Trust Fund, and any other funding source deemed necessary by the Oneida Business Committee.

1002.6-2. *Amount of Available Funding.* The Oneida Trust Enrollment Committee shall determine the amount of assistance available to an eligible recipient from the Elder Assistance Program per any permitted distribution.

End.

Adopted – BC-__-__-__-__



Legislative Operating Committee
April 20, 2022

Oneida Nation Gaming Ordinance Amendments

Submission Date: 12/2/2020	Public Meetings: Due to the COVID-19 pandemic, public meetings were suspended by declaration of the Nation's COVID-19 Core Decision Making Team. A public comment period was still offered in accordance with the Legislative Procedures Act and held open until 4/13/22.
LOC Sponsor: Jennifer Webster	Emergency Enacted: 5/12/21, 11/10/21 Expires: 5/12/22

Summary: *This item was added to the Active Files List on December 2, 2020 per the November 10, 2020 directive of the Oneida Business Committee that the Legislative Operating Committee place the Law Enforcement Ordinance and/or the Oneida Nation Gaming Ordinance on the Active Files List to address the placement of Gaming's Internal Security Department. Following a work meeting with the Oneida Law Office, this item was designated as emergency legislation under the Legislative Procedures Act by the Legislative Operating Committee to expedite the disposal of the legal issue that exists under the current law. The Oneida Business Committee adopted the emergency amendments to the Oneida Nation Gaming Ordinance on May 12, 2021, through resolution BC-05-12-21-D. The emergency adoption of the amendments to the Oneida Nation Gaming Ordinance was set to expire on November 12, 2021. On November 10, 2021, the Oneida Business Committee extended the emergency amendments for an additional six (6) month period through the adoption of resolution BC-11-10-21-A. The emergency amendments to the Oneida Nation Gaming Ordinance Are now set to expire of May 12, 2022.*

12/2/20 LOC: Motion by Jennifer Webster to add the Oneida Nation Gaming Ordinance Amendments to the Active Files List with Jennifer Webster as the sponsor; seconded by Kirby Metoxen. Motion carried unanimously.

1/7/2021: *Work Meeting.* Present: James Bittorf, Kelly McAndrews, Kristen Hooker. This work meeting was held through Microsoft Teams. The purpose of this work meeting was to discuss the issue that is driving the need for amendments to be made to the Oneida Nation Gaming Ordinance. The next step is for the drafting attorney to schedule a meeting with the Legislative Operating Committee to convey the information that was shared during that meeting and discuss the most effective manner in which to move forward.

1/14/21: *Work Meeting.* Present: Marie Summers, David Jordan, Kirby Metoxen, Daniel Guzman-King, Kristal Hill, Clorissa Santiago, Kristen Hooker. This work meeting was held through Microsoft Teams. The purpose of this meeting was to provide the Legislative Operating Committee with additional information regarding the issue that prompted this item to be added to the Active Files List by motion of the Oneida Business Committee and to have the LOC decide whether to process the amendments relating to this issue on an emergency basis moving

forward. Per consensus of the LOC, the amendments will be processed as an emergency based on the risk of continued litigation that exists under the status quo.

- 2/19/21:** *Work Meeting.* Present: David Jordan, Kirby Metoxen, Chad Fuss, Kelly McAndrews, Jonas Hill, William Cornelius, Richard VanBoxtel, Clorissa Santiago, Michelle Braaten, Katsitsiyo Danforth, Joel Maxam, Eric Boulanger, Kristal Hill, Kristen Hooker. This work meeting was held through Microsoft Teams. The purpose of this work meeting was to provide the LOC with an opportunity to hear from various stakeholders regarding the issue of placing Internal Security for Gaming under an area other than the Oneida Police Department. The next step will be for the drafting attorney to schedule a follow-up work meeting with the LOC to have it decide where to move Internal Security so the drafting attorney can move forward with the development of emergency amendments reflective of the LOC's decision.
- 2/25/21:** *Work Meeting.* Present: Kirby Metoxen, Jennifer Webster, Daniel Guzman-King, Marie Summers, Kristal Hill, Clorissa Santiago, Kristen Hooker. This work meeting was held through Microsoft Teams. The purpose of this work meeting was to have a discussion with the LOC in follow-up to the meeting of February 19, 2021 between the LOC and the work group on the reorganization of the Internal Security Department to an area within the Nation other than under the Oneida Police Department.
- 3/11/21:** *Work Meeting.* Present: David Jordan, Kirby Metoxen, Daniel Guzman-King, Jennifer Webster, Marie Summers, Kristal Hill, Jo Anne House, Clorissa Santiago, Kristen Hooker. This work meeting was held through Microsoft Teams. The purpose of this work meeting was to finish the discussion regarding where to house the Internal Security Department on a temporary basis pending its permanent placement under a department other than the Oneida Police Department. The next step is for the LRO attorney to draft a memo to the stakeholders regarding the plan moving forward and to schedule a follow-up meeting with those stakeholders to have a final discussion on the issue.
- 4/7/21:** *Work Meeting.* Present: David Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman-King, Marie Summers, Kristen Hooker. The purpose of this work meeting was to review and discuss the submissions received in response to the memo that was sent out on March 16, 2021 per the directive of the Legislative Operating Committee during the previous work meeting of March 11, 2021. Next steps are for the Legislative Reference Office Attorney to: (1) draft a memo to the stakeholders who were sent the March 16th memo, informing them of the LOC's decision to temporarily place the Internal Security Department under the Oneida Business Committee while a more permanent placement is developed; and (2) begin processing emergency amendments to ONGO that reassign the oversight of the Internal Security Department to the Oneida Business Committee.
- 4/29/21:** *Work Meeting.* Present: David Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman-King, Marie Summers, Kristen Hooker, Kristal Hill, Rhiannon Metoxen. This work meeting was held through Microsoft Teams. The purpose of this work meeting was to go through the draft of emergency amendments to ONGO with the Legislative Operating Committee. The next step is for the Legislative Reference Office Attorney to prepare the emergency amendments adoption packet for an upcoming Legislative Operating Committee meeting.
- 5/5/21 LOC:** Motion by Marie Summers to approve the Oneida Nation Gaming Ordinance Emergency Amendments and Legislative Analysis and forward to the Oneida Business Committee for consideration; Seconded by Jennifer Webster. Motion carried.

5/12/21 OBC: Motion by Lisa Liggins to adopt resolution 05-12-21-D Emergency Amendments to the Oneida Nation Gaming Ordinance; Seconded by Jennifer Webster. Motion carried.

5/19/21: *Work Meeting.* Present: David Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman-King, Marie Summers, Kristal Hill, Kristen Hooker. The purpose of this work meeting was to develop a plan for moving forward with the permanent amendments to ONGO, which will include a permanent placement for the Gaming Security Department to be transferred to when the emergency amendment period expires. The next step is for the drafting attorney to set up a workgroup to develop amendments for the permanent re-assignment of the Gaming Security Department to a newly established Public Safety Commission that will absorb the Oneida Police Commission.

6/30/21: *Work Meeting.* Present: Mark Powless (OGC), Eric Boulanger, Kelly McAndrews, Jonas Hill, Jessica Vandekamp, Michelle Braaten, Reynold Danforth, Katsitsiyo Danforth, Kristen Hooker. This work meeting was held through Microsoft Teams. The purpose of the work meeting was to discuss with the workgroup the permanent placement of the Gaming Security Department under ONGO. Following a discussion, the consensus of the workgroup mirrored that of the LOC, which was to place the Security Department under a newly established Public Safety Commission that will absorb the currently established Oneida Police Commission.

9/1/21: *Work Meeting.* Present: David Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman-King, Marie Summers, Kristal Hill, Clorissa Santiago, Kristen Hooker, Carmen Vanlanen. This work meeting was held through Microsoft Teams. The purpose of the work meeting was to have the LOC begin making policy decisions relating to the establishment of the Public Safety Commission, which will absorb the currently established Oneida Police Commission and be the permanent place for the Gaming Security Department to be assigned under section 501.9 of ONGO.

10/6/21: *Work Meeting.* Present: David Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Marie Summers, Kristal Hill, Clorissa Santiago, Kristen Hooker, Carmen Vanlanen. This work meeting was held through Microsoft Teams. During this work meeting, the LOC went through ONGO line by line to highlight which provisions the LOC would like to see added, removed and/or revised during the amendment process. The next step is for the drafting attorney to set up a meeting with the workgroup to go through a similar process with respect to the law.

10/22/21: *Work Meeting.* Present: Mark Powless SR, William Cornelius, Richard VanBoxtel, Eric Boulanger, James Martin JR, Michelle Braaten, Carmen Vanlanen, Kristen Hooker. This work meeting was held through Microsoft Teams. The purpose of the meeting was to go through ONGO line-by-line with the workgroup to collect any information or suggestions regarding possible amendments to ONGO that the workgroup would like to have the LOC consider as it moves forward with the amendment process.

11/3/21 LOC: Motion by Jennifer Webster to approve the Oneida Nation Gaming Ordinance emergency amendments extension packet and forward to the Oneida Business Committee for consideration; Seconded by Marie Summers. Motion carried unanimously.

11/10/21 OBC: Motion by Marie Summers to adopt resolution 11-10-21-A Extension of Emergency Amendments to the Oneida Nation Gaming Ordinance; Seconded by David P. Jordan. Motion carried.

- 12/09/21:** *Work Meeting.* Present: David Jordan, Jennifer Webster, Marie Summers, Kristal Hill, Rhiannon Metoxen, Clorissa Santiago, Kristen Hooker, Carmen Vanlanen. This was a work meeting held through Microsoft Teams. The purpose of the meeting was to have the LOC review a first draft of amendments to the Oneida Law Enforcement Ordinance. For purposes of efficiency, amendments to the Ordinance should be developed and adopted simultaneous with the amendments to ONGO; specifically, those relating to the placement of the Security Department, which is now going to report directly to a Public Safety Commission once the Oneida Police Commission is re-established as such under the Oneida Law Enforcement Ordinance. The next step is for the drafting attorney to meet with the heads of the Police Department and Conservation Department to discuss possibly removing the Conservation Department from the Oneida Police Department's oversight to have it report directly to the Public Safety Commission.
- 12/15/21:** *Work Meeting.* Present: David Jordan, Marie Summers, Jennifer Webster, Daniel Guzman-King, Kristal Hill, Clorissa Santiago, Kristen Hooker, Carmen Vanlanen. This was a work meeting held through Microsoft Teams. The purpose of the meeting was to discuss the meeting scheduled for December 21, 2021 with the heads of the Oneida Police Department and the Conservation Department to discuss the transition of the Conservation Department from under the Oneida Police Department to under the Public Safety Commission.
- 12/21/21:** *Work Meeting.* Present: David Jordan, Daniel Guzman-King, Marie Summers, Kristal Hill, Eric Boulanger, Joel Maxam, Shad Webster, Terry Metoxen, Nicole Rommel, Rhiannon Metoxen, Kristen Hooker, Carmen Vanlanen. This was a work meeting held through Microsoft Teams. The purpose of the meeting was to discuss with representatives from the Oneida Police Department and Conservation Department the possibility of removing the Conservation Department from under the Police Department and placing it under the Public Safety Commission, which will be a re-established version of the Oneida Police Commission, but with enlarged oversight responsibilities. The next step is for the Police Department and Conservation Department to forward their internal policies/protocols to the LRO so it may review them in anticipation of discussing the transfer in more depth with the LOC.
- 1/28/22:** *Work Meeting.* Present: Richard Van Boxtel, Jeanette Ninham, Kristen Hooker, Carmen Vanlanen. This was a meeting held through Microsoft Teams. The purpose of the meeting was to hear from members of the Oneida Police Commission in regard to the proposal to reorganize the Commission, as well as the Conservation Department, in a manner that better suits the Nation and its members.
- 3/10/22:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Jennifer Webster, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was for the LOC to review and consider the draft and public comment period notice.
- 3/16/22:** Motion by Daniel Guzman King to approve the draft and legislative analysis of the amendments to ONGO and direct that a public comment period be held open for the proposed amendments to ONGO until April 13, 2022; seconded by Marie Summers. Motion carried unanimously.
- 4/13/22:** *Public Comment Period Closed.* One (1) submission of written comments was received during the public comment period.

Next Steps:

- Accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration.



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office, Senior Staff Attorney *CNS*
DATE: April 20, 2022
RE: Oneida Nation Gaming Ordinance Amendments: Public Comment Review

On March 16, 2022, the Legislative Operating Committee approved a public comment period for the proposed amendments to the Oneida Nation Gaming Ordinance (“ONGO”) to be held open until April 13, 2022. A public meeting for the proposed amendments to ONGO was not held due to the COVID-19 pandemic.

On March 12, 2020, Chairman Tehassi Hill signed a “*Declaration of Public Health State of Emergency*” regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allowed the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses. The Public Health State of Emergency has since been extended until May 23, 2022, through the adoption of the following resolutions: BC-03-26-20-A, BC-05-06-20-A, BC-06-10-20-A, BC-07-08-20-A, BC-08-06-20-A, BC-09-09-20-A, BC-10-08-20-A, BC-11-10-20-A, BC-12-09-20-D, BC-01-07-21-A, BC-02-10-21-A, and BC-03-10-21-D, BC-05-12-21-A, BC-06-23-21-B, BC-07-28-21-N, BC-09-22-21-A, BC-11-24-21-F, BC-01-12-22-B, and BC-03-23-22-A.

On March 27, 2020, the Nation’s COVID-19 Core Decision Making Team issued a “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration which suspended the Legislative Procedures Act's requirement to hold a public meeting during the public comment period, but allowed members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

On December 8, 2021, the Oneida Business Committee adopted resolution BC-12-08-21-B, *Updating Public Gathering Guidelines during Public Health State of Emergency—COVID-19*, which prohibits indoor public gatherings when the following conditions cannot be met:

- When COVID-19 Case Activity rates are at or below low in Brown and Outagamie Counties, or the county in which the activity is being held, as identified on the Wisconsin Department of Health Services website for the most recent period.
- When COVID-19 Percent Positive rates are at or below low in Brown and Outagamie Counties, or the county in which the activity is being held, as identified on the Wisconsin Department of Health Services website for the most recent period.
- When COVID-19 Community Transmission Rates by ZIP Code Tabulation Area are at or below low in ZIP Codes 54155, 54301, 54302 and 54303, or the ZIP Code in which the activity is being held, as identified on the Wisconsin Department of Health Services website for the most recent period.

Due to the fact that the conditions for holding an indoor public meeting had not been met in the Nation at the time this public comment period was scheduled, in accordance with resolution BC-12-08-21-B, a public meeting for the proposed amendments to the ONGO was not held, but a public comment period was still held open. Members of the community were provided an opportunity to provide written submissions of comments or questions regarding the proposed amendments to ONGO to the Legislative Operating Committee through e-mail until April 13, 2022.

Comment 1 – Elimination of the Executive Director in the ONGO:

501.6. Oneida Gaming Commission

501.6-16. *Oneida Gaming Commission Personnel.* The Commission shall hire an Executive Director who is responsible for hiring and managing the personnel of the Commission.

(a) The Executive Director shall hire such personnel as is necessary to assist the Commission to fulfill its responsibilities under this Ordinance, the IGRA, the Compact and all governing regulations, including the Oneida Gaming Minimum Internal Controls.

(b) The Executive Director and personnel of the Commission must be hired through the Nation's regular personnel procedure and are subject to its personnel policies and salary schedules.

(1) The Executive Director and personnel shall meet the requirements set forth in section 501.12-3 of this Ordinance at hiring and during employment.

Oneida Gaming Commission (written): The Oneida Gaming Commission would like to submit the following comments to the Oneida Nation Gaming Ordinance.

Removal of Executive Director from Section 501.6-16:

501.6-16. *Oneida Gaming Commission Personnel.* The Commission shall hire ~~an Executive Director who is responsible for hiring and managing~~ the personnel of the Commission.

(a) The ~~Executive Director~~ Commission shall hire such personnel as is necessary to assist the Commission to fulfill its responsibilities under this Ordinance, the IGRA, and the Compact, and all governing regulations, including the Oneida Gaming Minimum Controls.

(b) The ~~Executive Director and~~ personnel of the Commission must be hired through the Tribe's regular personnel procedure and are subject to its personnel policies and salary schedules.

(1) The ~~Executive Director and~~ personnel shall meet the requirements set forth in section 501.12-3 at hiring and during employment.

The Executive Director position was furloughed during the Nation's initial COVID-19 shut down. In the absence of the Executive Director, the Oneida Gaming Commission has performed the Executive Director's responsibilities. The Oneida Gaming Commission's initial request to bring back the Executive Director from furlough was denied.

The Oneida Gaming Commission is seeking this change to comply with the Oneida Nation Gaming Ordinance. The removal of the Executive Director from the Oneida Nation Gaming Ordinance will

allow the Oneida Gaming Commission the ability to evaluate the personnel needs of the Gaming Commission without being required to by the Gaming Ordinance.

Response

The commenter requests that the Legislative Operating Committee consider eliminating the specific reference to the Oneida Gaming Commission's Executive Director in section 501.6-16 of the Law, and that instead the Law provides a general authority for the Oneida Gaming Commission to hire personnel in an effort to allow for more flexibility in evaluating the personnel needs of the Oneida Gaming Commission.

Whether to eliminate the reference to the Oneida Gaming Commission's Executive Director in section 501.6-16 of the Law is a policy decision for the Legislative Operating Committee to make. The Legislative Operating Committee may make one of the following determinations:

1. The Law should remain as currently drafted, so the reference to the Oneida Gaming Commission's Executive Director remains.
2. The Law should be revised to eliminate the reference to the Oneida Gaming Commission's Executive Director in section 501.6-16 of the Law. If the Legislative Operating Committee makes this determination, then the following revision to the Law is recommended:

501.6-16. *Oneida Gaming Commission Personnel.* The Commission shall be responsible for the hiring ~~an Executive Director who is responsible for hiring and managing the~~ of any personnel of the Commission.

(a) The ~~Executive Director~~ Commission shall hire such personnel as is necessary to assist ~~the Commission to~~ in fulfilling its responsibilities under this Ordinance, the IGRA, the Compact and all governing regulations, including the Oneida Gaming Minimum Internal Controls.

(b) ~~The Executive Director and~~ All personnel of the Commission ~~must~~ shall be hired through the Nation's regular personnel procedures and are subject to its personnel policies and salary schedules.

(1) ~~The Executive Director and~~ All personnel of the Commission shall meet the requirements set forth in section 501.12-3 of this Ordinance at hiring and during employment.

LOC Consideration

Comment 2 – Security Reports to the Oneida Gaming Commission:

121.3. Definitions

121.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(j) "Finance Administration" means the department of the Nation which consists of

the Chief Financial Officer, Assistant Chief Financial Officer, the executive assistant to the Chief Financial Officer, and any other designated employee.

Oneida Gaming Commission (written): Changes to Section 501.9-1: The proposed changes to Section 501.9-1 remove the requirement for Security to copy all reports to the Oneida Gaming Commission. Currently, the Oneida Gaming Commission does not receive a copy of Security reports. The Oneida Gaming Commission's concern is that the Commission should have access to any reports that are regulatory. In practice, Security does not generally encounter regulatory issues, however, when they do, the Gaming Commission should be copied. This would allow the Gaming Commission the ability to investigate possible licensing issues to ensure compliance with all tribal, state and federal laws. The change should include language that allows for Security to report suspected regulatory violations.

For example, theft from the Nation would be a regulatory violation. If the Gaming Commission receives a copy of that report from Security, the Gaming Commission can investigate to verify if there are any regulatory violations. The Gaming Commission does not foresee many reports that would include possible regulatory violations.

Response

The commenter requests that the elimination of the requirement that all reports of the Gaming Security Department be copied to the Oneida Gaming Commission in section 501.9-1 of the Law be reconsidered, to at least allow for the Gaming Security Department to share reports that are regulatory in nature with the Oneida Gaming Commission.

Section 501.9-2 of the Law provides that the Gaming Security Director, Gaming General Manager, and the Oneida Gaming Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, describing their responsibilities and reporting requirements under this Ordinance. It would be appropriate for this agreement between the Gaming Security Director, Gaming General Manager, and the Oneida Gaming Commission to detail the information sharing expectations for reports of the Security Department that address regulatory issues the Oneida Gaming Commission would need to be notified of. Due to the fact that the issue of information sharing between the Oneida Gaming Commission and the Gaming Security Department can be addressed through the reporting agreement provided for in section 501.9-2 of the Law, there is no revision to the Law recommended based on this comment.

LOC Consideration



A good mind. A good heart. A strong fire.

Oneida Gaming Commission
P.O. Box 79
Oneida, WI, 54155
1-800-497-5897
(920) 497-5850
FAX: (920) 490-8048

To: The Legislative Operative Committee

From: The Oneida Gaming Commission

Date: April 11, 2022

Re: Comments to the Oneida Nation Gaming Ordinance

The Oneida Gaming Commission would like to submit the following comments to the Oneida Nation Gaming Ordinance.

Removal of Executive Director from Section 501.6-16:

501.6-16. *Oneida Gaming Commission Personnel.* The Commission shall hire ~~an Executive Director who is responsible for hiring and managing~~ the personnel of the Commission.

(a) ~~The Executive Director~~ Commission shall hire such personnel as is necessary to assist the Commission to fulfill its responsibilities under this Ordinance, the IGRA, and the Compact, and all governing regulations, including the Oneida Gaming Minimum Controls.

(b) ~~The Executive Director and~~ personnel of the Commission must be hired through the Tribe's regular personnel procedure and are subject to its personnel policies and salary schedules.

(1) ~~The Executive Director and~~ personnel shall meet the requirements set forth in section 501.12-3 at hiring and during employment.

The Executive Director position was furloughed during the Nation's initial COVID-19 shut down. In the absence of the Executive Director, the Oneida Gaming Commission has performed the Executive Director's responsibilities. The Oneida Gaming Commission's initial request to bring back the Executive Director from furlough was denied.

The Oneida Gaming Commission is seeking this change to comply with the Oneida Nation Gaming Ordinance. The removal of the Executive Director from the Oneida Nation Gaming Ordinance will allow the Oneida Gaming Commission the ability to evaluate the personnel needs of the Gaming Commission without being required to by the Gaming Ordinance.

Changes to Section 501.9-1:

The proposed changes to Section 501.9-1 remove the requirement for Security to copy all reports to the Oneida Gaming Commission. Currently, the Oneida Gaming Commission does not receive a copy of Security reports. The Oneida Gaming Commission's concern is that the Commission should have access to any reports that are regulatory. In practice, Security does not generally encounter regulatory issues, however, when they do, the Gaming Commission should be copied. This would allow the Gaming Commission the ability to investigate possible licensing issues to ensure compliance with all tribal, state and federal laws. The change should include language that allows for Security to report suspected regulatory violations.

For example, theft from the Nation would be a regulatory violation. If the Gaming Commission receives a copy of that report from Security, the Gaming Commission can investigate to verify if there are any regulatory violations. The Gaming Commission does not foresee many reports that would include possible regulatory violations.

Reynold Danforth
Vice/Chair

Title 5. Business - Chapter 501

ONEIDA NATION GAMING ORDINANCE

Thatiwi·ʔStunya·tha Olihwa·ke

Matters of interest to where they make the money

ONEIDA NATION GAMING ORDINANCE

501.1. Purpose and Policy	501.11. Licenses, Generally
501.2. Adoption, Amendment, Repeal	501.12. Gaming Employee License
501.3. Jurisdiction <u>Definitions</u>	501.13. Gaming Services Licensing and Non-Gaming Services Permitting
501.4. Definitions <u>Jurisdiction</u>	501.14. Gaming Facility License
501.5. Oneida Business Committee: Powers and Duties	501.15. Gaming Operator License
501.6. Oneida Gaming Commission	501.16. Games
501.7. Gaming Surveillance: Powers, Duties and Limitations	501.17. Allocation of Gaming Funds
501.8. [Reserved for future use.]	501.18. Audits
501.9. Gaming Security Department	501.19. Enforcement and Penalties
501.10. Background Investigations	

501.1. Purpose and Policy

501.1-1. Purpose. -The purpose of this Ordinance is to set forth the laws of the Oneida ~~Tribe of Indians of Wisconsin~~Nation regarding all Gaming Activities conducted within the jurisdiction set forth in this Ordinance. -It is intended to govern the Gaming Activities of all persons, Gaming Employees, consultants, business entities, vendors, boards, committees, commissions and hearing bodies. -This Ordinance does not authorize the operation of Gaming by a private person or private entity for gain. -This Ordinance shall govern all Gaming Activities occurring on lands under the jurisdiction set forth in this Ordinance and all individuals or entities engaged in Gaming Activities, including those providing goods or services to any person or entity engaged in Gaming Activities.

501.1-2. Policy. -It is the policy of this Ordinance to ensure that the Oneida ~~Tribe~~Nation is the primary beneficiary of its Gaming Operations and has the sole proprietary interest, ~~and~~ that Gaming Activities within the jurisdiction set forth in this Ordinance are conducted fairly and honestly; ~~and~~ that all internal departments, enterprises, officials and employees of the ~~Oneida Tribe~~Nation work cooperatively to advance the best interests of the ~~Oneida Tribe~~Nation, to protect ~~the Tribe's~~sits gaming resources, ~~to~~ protect the integrity of all Gaming Activities operated under the jurisdiction set forth in this Ordinance, ~~and~~ to ensure fairness of all games offered to the ~~Tribe's~~Nation's gaming patrons.

501.2. Adoption, Amendment, Repeal

501.2-1. ~~Adoption.~~ -This Ordinance was adopted by the Oneida General Tribal Council by resolution GTC-07-05-04-A and amended by resolutions BC-10-06-04-D, BC-3-23-05-C, BC-9-23-09-D, BC-06-25-14-B ~~and~~ BC-09-09-15-A; ~~and BC- - - -~~.

501.2-2. ~~Amendment.~~ -This Ordinance may be amended or repealed by the Oneida Business Committee ~~and/or the~~ Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

501.2-3 ~~Severability.~~ -Should a provision of this Ordinance or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Ordinance which are considered to have legal force without the invalid portions.

501.2-4. In the event of a conflict between a provision of this Ordinance and a provision of another law, the provisions of this Ordinance shall control. ~~—Provided; provided, that, this Ordinance repeals the following:~~

(a) BC-04-21-89-D (Adoption of the Oneida Gaming Control Ordinance);

- (b) ~~___~~ GTC-03-04-91-A (Establishing 7 elected Gaming Commissioners and Bingo standards);
- (c) ~~___~~ GTC-07-06-92-A (Amendments to Gaming SOP Manual);
- (d) ~~___~~ GTC-07-06-92-B (Adoption of the Comprehensive Gaming Ordinance);
- (e) ~~___~~ BC-03-16-94-A; (Comprehensive Gaming Ordinance Interpretation); and
- (f) ~~___~~ BC-04-5-95-D (Amendments to the Comprehensive Gaming Ordinance).

501.2-5. ~~___~~ This Ordinance is adopted under authority of the Constitution of the Oneida ~~Tribe of~~ ~~Indians of Wisconsin~~ Nation.

501.2-6. ~~Name. This Ordinance is to be known as the Oneida Nation Gaming Ordinance or ONGO.~~

~~501.2-7.~~ Preemptive Authority. -The Oneida Gaming Commission shall be the original hearing body authorized to hear licensing decisions as set forth in this Ordinance.

501.3. Definitions ~~Jurisdiction~~

~~501.3-1. Territorial Jurisdiction. This Ordinance extends to all land within the exterior boundaries of the Reservation of the Tribe, as established pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.~~

~~501.3-2. Subject Matter Jurisdiction. This Ordinance applies to all Gaming conducted within the territorial jurisdiction of the Oneida Tribe as set forth in section 501.3-1.~~

~~501.3-3. Personal Jurisdiction. 501.3-1. This Ordinance governs:~~

- ~~(a) the Tribe;~~
- ~~(b) tribal members; and~~
- ~~(c) individuals and businesses leasing, occupying, or otherwise using Tribal Fee Land on the Reservation and all Tribal Trust Land.~~

501.4. Definitions

~~501.4-1.~~ This section shall govern the definitions of words and phrases used within this Ordinance. Words and phrases capitalized throughout this document refer to the defined words and phrases in this section. -All words or phrases not defined herein shall be used in their ordinary and everyday sense.

(a) “Applicant” means any person or entity who has applied for a License from the Oneida Gaming Commission or the Oneida Business Committee.

(b) “Background Investigation” means a standard and thorough investigation conducted by the Oneida Tribe Nation in compliance with this Ordinance, Commission regulations, Oneida Gaming Minimum Internal Controls, the IGRA and the Compact. -Such investigations may be in cooperation with federal, state, or Tribal law enforcement agencies.

(c) “Class I Gaming” means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, Tribal ceremonies or celebrations.

(d) “Class II Gaming” means:

(1) The game of chance commonly known as bingo (whether or not electronic, computer or other technologic aids are used in connection therewith) in which:

(A) The game is played for prizes, including monetary prizes, with cards bearing numbers or other designations.

(B) The holder of the card covers such numbers or designations when

objects, similarly numbered or designated, are drawn or electronically determined.

(C) The game is won by the first person covering a previously designated arrangement of numbers or designation on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo and other games similar to bingo.

(2) Card games that:

(A) Are explicitly authorized by the laws of the State; or

(B) Are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games. ~~Class II Gaming~~ does not include any banking card games, including baccarat, chemin de fer, or blackjack (twenty-one), or electronic or electro-mechanical facsimiles of any game of chance or slot machines of any kind.

(e) “Class III Gaming” means all forms of Gaming that are not Class I or Class II Gaming.

(f) “Commission” means the Oneida Gaming Commission as established by this Ordinance.

(g) “Commissioner” means a duly elected member of the Oneida Gaming Commission.

(h) “Compact” means the 1991 Tribe-State Gaming Compact between the ~~Tribe~~Nation and the State of Wisconsin, as amended and including any future amendments or successor compact entered into by the ~~Tribe~~Nation and the State of Wisconsin and approved by the Secretary of the United States Department of Interior.

(i) “Compliance Certificate” means a certificate issued by an agency with the authority and responsibility to enforce applicable environmental, health or safety standards, which states that a Gaming Facility complies with these standards.

(j) “Environmental Assessment” means a document prepared and issued in compliance with the National Environmental Policy Act of 1969, 42 U.S.C. sec. 4321 *et seq.*, and all related ~~Federal~~federal regulations.

(k) “Fraud” means any act of trickery or deceit used to or intended to gain control or possession of the property of another.

(l) “Games, Gaming, or Gaming Activity” means all forms of any activity, operation, or game of chance that is considered Class II or Class III Gaming, provided that this definition does not include Class I Gaming.

(m) “Gaming Employee” means any person employed by a Gaming Operation.

(n) “Gaming Facility or Gaming Facilities” means any location or structure, stationary or movable, wherein Gaming is permitted, performed, conducted, or operated. Gaming Facility or Gaming Facilities does not include the site of a fair, carnival, exposition, or similar occasion.

(o) “Gaming Operation” means the conduct of Gaming Activities and related business activities in Gaming Facilities and areas where Gaming Employees are employed or assigned.

(p) “Gaming Operator” means the ~~Tribe~~Nation, an enterprise owned by the ~~Tribe~~Nation, or such other entity of the ~~Tribe~~Nation as the ~~Tribe~~Nation may from time ~~to~~time

designate as the wholly-owned entity having full authority and responsibility for the operation and management of Gaming Operations.

(q) “Gaming Services” means the provision of any goods and services, except legal services and accounting services, to a Gaming Operation, including, but not limited to, equipment, transportation, food, linens, janitorial supplies, maintenance, or security services.

(r) “Indian Gaming Regulatory Act or IGRA” means Public Law 100-497, 102 Stat. 2426, 25 U.S.C. sec. 2701, *et seq.*, as amended.

(s) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC ~~#1-01~~-07-13-B to administer the judicial authorities and responsibilities of the TribeNation.

(t) “License” means a certificate or other document that represents the grant of a revocable authorization to conduct the licensed activity. ~~A License must be supported by a physical document, badge, certification or other physical manifestation of the issuance of the revocable authorization to conduct the licensed activity.~~

(u) “Licensee” means a person or entity issued a valid License.

(v) “Nation” means the Oneida Nation.

(w) “NIGC” means the National Indian Gaming Commission.

~~(w-x)~~ “Oneida Business Committee” means the elected governing body of the Tribe exercising Nation that exercises the authority delegated ~~from it by~~ the Oneida General Tribal Council ~~of the Oneida Tribe of Indians of Wisconsin~~ under Article IV of the Constitution and By-laws ~~for of~~ the Oneida ~~Tribe of Indians of Wisconsin, approved December 21, 1936~~ Nation, as ~~thereafter may be~~ amended from time-to-time hereafter.

~~(x-y)~~ “Oneida General Tribal Council” means the Nation’s governing body, as established by the Constitution and By-laws of the Oneida ~~Tribe of Indians of Wisconsin as determined by the Tribe’s Constitution~~ Nation and as may be amended from time-to-time hereafter.

~~(y-z)~~ “Ordinance or ONGO” means the Oneida Nation Gaming Ordinance, ~~as it may be amended~~ from time ~~to~~ time be amended hereafter.

~~(z-aa)~~ “Regulatory Incident” means the occurrence of any event giving rise to a potential or alleged non-compliance with a gaming regulation, ordinance, law or policy involving any person or Licensee on the premises of a Gaming Facility.

~~(aa-bb)~~ “Remediation” means efforts taken to reduce the source and migration of environmental contaminants at a site.

~~(bb-cc)~~ “Reservation” means all lands within the exterior boundaries of the Reservation of the Oneida ~~Tribe of Indians of Wisconsin~~ Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

~~(ee-dd)~~ “Senior Gaming Management” means the gaming general manager, assistant gaming general managers, gaming directors and assistant gaming directors.

~~(dd-ee)~~ “State” means the State of Wisconsin, along with its authorized officials, agents and representatives.

~~(ee) Tribe means the Oneida Tribe of Indians of Wisconsin.~~

(ff) “Tribal Fee Land” means all land to which the TribeNation holds title in fee simple.

(gg) “Tribal Trust Land” means all land to which the United States holds title for the benefit of the TribeNation pursuant to federal law.

172
173 **501.4. Jurisdiction**

174 501.4-1. Territorial Jurisdiction. This Ordinance extends to all land within the exterior
175 boundaries of the Reservation.

176 501.4-2. Subject Matter Jurisdiction. This Ordinance applies to all Gaming conducted within
177 the territorial jurisdiction of the Nation as set forth in section 501.4-1.

178 501.4-3. Personal Jurisdiction. This Ordinance governs:

179 (a) The Nation;

180 (b) Members of the Nation; and

181 (c) Individuals and businesses leasing, occupying, or otherwise using Tribal Fee Land
182 on the Reservation and all Tribal Trust Land.

183
184 **501.5. Oneida Business Committee: Powers and Duties**

185 501.5-1. The Oneida Business Committee retains the power and duty to enter into agreements
186 or compacts with the State under the Indian Gaming Regulatory Act.

187 501.5-2. The Oneida Business Committee retains the power and duty to enter into agreements
188 with local governments and other Tribal governments for services or cooperative ventures for the
189 Gaming Operations.

190 501.5-3. The Oneida Business Committee has the exclusive power and duty to enter into
191 contracts and agreements affecting the assets of the ~~Tribe~~Nation, except for those assets that were
192 placed under the responsibility of the Oneida Land Commission under Chapter 67; ~~of the~~ Real
193 Property ~~Law~~law.

194 501.5-4. The Oneida Business Committee delegates to the Commission, ~~as set out~~ in section
195 501.6-14 ~~of this Ordinance~~, certain authorities and responsibilities for the regulation of Gaming
196 Activities, Gaming Operations, Gaming Operators, Gaming Employees, Gaming Facilities,
197 Gaming Services, and ~~the~~ enforcement of laws and regulations, ~~as identified in this Ordinance~~.

198 501.5-5. The Oneida Business Committee retains the duty and responsibility to safeguard all
199 funds generated by the Gaming Operations and all other authorities and responsibilities not
200 delegated by a specific provision of this Ordinance.

201 501.5-6. The Chairperson of the ~~Tribe~~Nation must be the designated and registered agent to
202 receive notice of violations, orders, or determinations which are issued pursuant to the Indian
203 Gaming Regulatory Act and the Compact.

204
205 **501.6. Oneida Gaming Commission**

206 501.6-1. Establishment and Purpose.— The Oneida Business Committee has established the
207 Oneida Gaming Commission for the purpose of regulating all Gaming Activities. —The
208 Commission is an elected body comprised of four (4) members, provided that, the Oneida Business
209 Committee may, upon request of the Commission, increase the number of Commissioners by
210 resolution ~~without~~with-out requiring amendment of this Ordinance.

211 501.6-2. Location and Place of Business.— The Commission shall maintain its offices and
212 principal place of business within the Reservation.

213 501.6-3. Duration and Attributes. —The Commission will have perpetual existence and
214 succession in its own name, unless dissolved by ~~Tribal~~a law— of the Nation. Operations of the
215 Commission must be conducted on behalf of the ~~Tribe~~Nation for the sole benefit of the
216 ~~Tribe~~Nation and its members. —The ~~Tribe~~Nation reserves unto itself the right to bring suit against
217 any person or entity in its own right, on behalf of the ~~Tribe~~Nation, or on behalf of the Commission,

whenever the TribeNation considers it necessary to protect the sovereignty, rights, and interests of the TribeNation or the Commission.

501.6-4. Sovereign Immunity of the ~~Tribe~~

~~(a)~~ Nation. All inherent sovereign rights of the TribeNation with ~~regard~~ respect to the existence and activities of the Commission are hereby expressly reserved.

~~(b)~~ a The TribeNation confers upon the Commission sovereign immunity from suit as set forth in the Tribe'sNation's Sovereign Immunity Ordinance ~~law~~.

~~(e)~~ b Nothing in this Ordinance nor any action of the Commission may be construed to be ~~a~~: (1) A waiver of ~~its~~ the sovereign immunity ~~or that~~ of the Tribe, Commission or ~~consent~~ the Nation;

(2) Consent by the Commission or the TribeNation to the jurisdiction of the Judiciary, the United States, ~~any~~ a state, or any other tribe; ~~or consent~~

(3) Consent by the TribeNation to any suit, cause of action, case or controversy; or the levy of any judgment, lien, or attachment upon any property of the Commission or the TribeNation.

501.6-5. Requirements of Commission Membership.

(a) Qualifications. Candidates for election or appointment to the Commission must be at least twenty-one (21) years of age on the day of the election or on the day of appointment.

~~In addition, candidates~~

(1) Candidates for election to the Commission shall further meet the following qualifications within five (5) business days after a caucus for elected positions on the Commission. Candidates for appointment to the Commission shall meet the following qualifications on the day of appointment to a vacancy on the Commission under section 501.6-13 of this Ordinance:

~~(1)~~ A Be an enrolled member of the TribeNation;

~~(2)~~ B Have a minimum of three (3) years of education experience, employment experience and/or regulatory experience in Gaming Operations related to Gaming Activity, Gaming law, Gaming control or regulation, or Gaming accounting or of any combination of the foregoing; and

~~(3)~~ C Meet all other qualifications set forth in this Ordinance.

(b) Conflict of Interest. No person may be considered for election or appointment as a Commissioner until the candidate has disclosed all conflicts of interest as defined ~~by~~ in the OneidaNation's Conflict of Interest Policy ~~law~~.

(c) Background Investigation. No person may be considered for election or appointment as a Commissioner until a preliminary Background Investigation has been completed and the person has been found to meet all qualifications.

~~(d)~~ (1) Swearing into office is subject to a Background Investigation regarding the qualifications set forth in sections 501.6-5 and 501.6-6 upon being elected or appointed to office.

501.6-6. Unless pardoned for activities under subsections (a) and/or (d) by the TribeNation, or pardoned for an activity under subsectionsubsections (a) and/or (d) by another Federally-recognized Indian Tribe for an action occurring within the jurisdiction of the Federally-recognized Indian Tribe, or pardoned for an activity under subsectionsubsections (a) and/or (d) by the State or Federal government, no individual may be eligible for election or appointment to, or to continue to serve on, the Commission, who:

(a) Has been convicted of, or entered a plea of guilty or no contest to, any of the following:¹

(1) Any gambling-related offense;

(2) Any offense involving Fraud or misrepresentation;

(3) Any offense involving a violation of any provision of ~~chs. Chapters~~ 562 or 565, ~~Wis. Stats., of the Wisconsin Statutes,~~ any rule promulgated by the State of Wisconsin Department of Administration, Division of Gaming or any rule promulgated by the Wisconsin Racing Board;

(4) A felony not addressed in paragraphs 1, 2, or 3, during the immediately preceding ten (10) years; or

(5) Any offense involving the violation of any provision of ~~Tribe~~the Nation's law regulating the conduct of Gaming Activities, or any rule or regulation promulgated pursuant thereto.

(b) Has been determined by the ~~Tribe~~Nation to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of Gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, or activities in the operation of Gaming or the carrying on of the business and financial arrangements incidental thereto;

(c) Possesses a financial interest in or management responsibility for any Gaming Activity or Gaming Services vendor;

(d) Has been convicted of a crime involving theft, Fraud, or conversion against the ~~Tribe~~Nation;

(e) Has been removed from any office pursuant to the ~~Oneida~~Nation's Removal Law within the past five (5) years; or

(f) Is a sitting Commissioner whose term is not concluded at the time of that election or appointment action.

501.6-7. Term of Office.- Commissioners shall serve five (5) year terms and shall serve until a successor takes the oath of office. ~~Terms of office must be staggered.~~

(a) Terms of office must be staggered.

501.6-8. Official Oath.- Each Commissioner shall take the official oath at a regular or special Oneida Business Committee meeting prior to assuming office.

(a) Upon being administered the oath of office, a Commissioner shall assume the duties of office and must be issued a security card setting forth his or her title and term of office.

501.6-9. ~~Full-time Status. The Commission shall identify the appropriate work schedule for its members.~~ Full-Time Status. Each Commissioner shall perform his or her duties and responsibilities on a full-time basis and shall devote his or her entire work and professional time, attention and energies to Commission business, ~~and may not.~~

(a) No Commissioner shall, during his or her tenure in office, be engaged in any other profession or business activity that may impede the Commissioner's his or her ability to perform duties on behalf of the Commission or that competes with the ~~Tribe's~~Nation's interests.

(b) The Commission shall identify the appropriate work schedule for its members.

501.6-10. Bylaws.- The Commission shall adopt bylaws subject to review and approval by the

¹ This section taken substantially from Section IX of the Tribe-State Gaming Compact.

Oneida Business Committee.

501.6-11. ~~*Budget and Compensation.*~~ –The Commission shall function pursuant to an annual budget.

(a) The Oneida Business Committee shall submit the operating budget of the Commission for approval in the same fashion as all other Tribal budgets. Compensation of Commissioners is not subject to the Tribe's Comprehensive Policy Governing Boards, Committees, and Commissions, but must be established by the Commission in a manner consistent with the Commission's internal rules and bylaws. The Commission shall adopt internal rules consistent with the existing Tribal accounting practices to verify its budgetary expenditures.

(b) Compensation of Commissioners is not subject to the Nation's Boards, Committees and Commissions law, but must be established by the Commission in a manner consistent with the Commission's internal rules and bylaws.

(1) The Commission shall adopt internal rules consistent with the Nation's existing accounting practices to verify its budgetary expenditures.

501.6-12. ~~*Removal.*~~ –Removal of Commissioners must be pursuant to the ~~Oneida~~Nation's Removal Law.

501.6-13. ~~*Vacancies.*~~ –Any vacancy in an unexpired term of office, however caused, must be filled by appointment by the Oneida Business Committee, of a person qualified ~~pursuant to~~under sections 501.6-5 and 501.6-6 ~~pursuant to~~of this Ordinance, in accordance with the ~~Comprehensive Policy Governing~~Nation's Boards, Committees and Commissions ~~law~~.

501.6-14. ~~*Authority and Responsibilities.*~~ – Subject to any restrictions contained in this Ordinance or other applicable law, the Commission is vested with powers including, but not limited to, the following:

(a) To exercise all power and authority necessary to effectuate the gaming regulatory purposes of this Ordinance, IGRA, Oneida Gaming Minimum Internal Controls, and the Compact.

(1) Unless otherwise indicated in this Ordinance or Commission regulation, or authorized by majority vote of the Commission, no Commissioner may act independently of the Commission. Any such action may constitute grounds for removal.

(b) To promote and ensure the integrity, security, honesty, and fairness of the regulation and administration of Gaming.

(c) ~~To draft, and approve, subject~~ Subject to review and adoption by the Oneida Business Committee, to draft and approve regulations pursuant to this Ordinance for the regulation of all Gaming Activity, including processes for ~~the~~ enforcement of such regulations consistent with ~~Tribal law~~the laws of the Nation.

(d) To draft and approve the Rules of Play and Oneida Gaming Minimum Internal Controls; provided ~~that, the~~ the Rules of Play and Oneida Gaming Minimum Internal Controls require review and comment by Senior Gaming Management prior to approval by the Commission and are subject to review by the Oneida Business Committee.

(1) Rules of Play and Oneida Gaming Minimum Internal Controls are minimum standards with which the Gaming Operations are required to comply and are audited against.

(2) Comments received from Senior Gaming Management must be included in any submission to the Oneida Business Committee.

(3) Rules of Play and Oneida Gaming Minimum Internal Controls are effective upon adoption by the Commission. -

(4) The Commission shall provide notice of adoption of the Rules of Play and/or Oneida Gaming Minimum Internal Controls to the Oneida Business Committee at the next available regularly scheduled Oneida Business Committee meeting following such adoption. -

(A) If the Oneida Business Committee has any concerns and/or requested revisions upon review of the Rules of Play and Oneida Gaming Minimum Internal Controls, the Commission shall work with the Oneida Business Committee to address such concerns and/or requested revisions.

(A) (i) Unless the Oneida Business Committee repeals the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission, they will remain in effect while the Commission and the Oneida Business Committee jointly work to amend the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission.

(i)-(ii) Should the Oneida Business Committee repeal the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission, the Rules of Play and/or the Oneida Gaming Minimum Internal Controls that were in effect immediately previous to those repealed will be automatically reinstated and effective immediately upon the repeal of the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission.

(B) If the Commission does not receive written notice from the Oneida Business Committee of intent to repeal or amend the Rules of Play and/or the Oneida Gaming Minimum Internal Controls within thirty (30) days of the date the Oneida Business Committee is provided notice of the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission, they will remain in effect as adopted by the Commission.

(C) Should the Oneida Business Committee pursue amendments to the Rules of Play and/or the Oneida Gaming Minimum Internal Controls adopted by the Commission, the amendments must be completed through one (1) of the following actions within six (6) months from the date the amendments are initiated by the Oneida Business Committee:

(i) if the Commission and the Oneida Business Committee reach an agreement as to the content of the amendments, the Commission must adopt revised Rules of Play and/or the Oneida Gaming Minimum Internal Controls that have been discussed with and agreed upon by the Oneida Business Committee; or

(ii) if the Commission and the Oneida Business Committee do not reach an agreement as to the content of the amendments, the Oneida Business Committee may adopt revised Rules of Play and/or the Oneida Gaming Minimum Internal Controls that incorporate the amendments it deems necessary.

(D) If revised Rules of Play and/or Oneida Gaming Minimum Internal Controls are not adopted by either the Commission or the Oneida Business

Committee within six (6) months from the date the amendments are initiated by the Oneida Business Committee, the Rules of Play and/or the Oneida Gaming Minimum Internal Controls originally adopted by the Commission will remain in effect.

(e) To prepare proposals, including budgetary and monetary proposals, which might enable the ~~Tribal~~Nation to carry out the purpose and intent of this Ordinance, and to submit the same for consideration by the Oneida Business Committee; provided, however, that no such proposal shall have any force or effect unless it is approved by the Oneida Business Committee.

(f) To monitor and enforce all laws and regulations governing the operation and conduct of all Gaming Activities, including the ongoing monitoring of Licenses, subject to this Ordinance and/or regulations setting forth hearing or enforcement processes.

(g) To monitor and investigate all Gaming Operators for compliance with internal audits, and external audits.

(h) To inspect, examine, and photocopy all papers, books, and records of Gaming Activities and any other matters necessary to carry out the duties pursuant hereto; ~~provided, that,~~ all photocopies of documents must be maintained in a confidential manner or in the same manner as the original.

(i) To grant, deny, revoke, condition, suspend or reinstate the Licenses of Gaming Employees, Gaming Services vendors, and Gaming Operators.

(j) To conduct hearings relating to Licenses issued under this Ordinance by the Commission.

(k) To review all vendors doing business with the Gaming Operator to verify that such persons or entities hold a valid License, where required, to do business with a Gaming Operator.

(l) To retain professional advisors such as attorneys, law enforcement specialists, and Gaming professionals consistent with ~~Tribal law~~the Nation's laws and practices.

(m) To arbitrate, negotiate, or settle any dispute to which it is a party, and which relates to its authorized activities.

(n) To act as the designated agent to receive all regulatory notices not included in section 501.5-6 of this Ordinance.

(o) To investigate all Regulatory Incidents.

(p) To issue warnings or notices of violation, in accordance with regulations, to Gaming Operators and Licensees for non-compliance with the Compact, Oneida Gaming Minimum Internal Controls, Rules of Play, IGRA, or this Ordinance.

(q) To make determinations regarding suitability for licensing.

(r) To establish an administrative structure by regulation to carry out its authority and responsibilities.

(s) To establish, where needed, additional processes for conducting licensing hearings by regulation.

(t) To establish and collect fees for processing License applications by regulation.

(u) To establish and impose a point system for findings of regulatory violations by any Gaming Employee by regulation.

(v) To establish and impose a fine system for findings of regulatory violations by any Gaming Services vendor or permittee by regulation.

(w) To approve procedures that provide for the fair and impartial resolution of patron

complaints.

501.6-15. ~~Reporting Requirements.~~ –The Commission shall adhere to the following reporting requirements:

(a) ~~A~~ true, complete and accurate record of all proceedings of the Commission must be kept and maintained;

(b) ~~Complete~~ and accurate minutes of all Commission meetings must be filed with the Secretary of the Oneida Business Committee within thirty (30) days of their approval by the Commission;

(c) ~~Quarterly~~, or as may be directed by the Oneida Business Committee, reports of the Commission's activities, including information regarding funding, income and expenses and any other matters to which the parties may agree, must be submitted to the Oneida Business Committee.

501.6-16. ~~Oneida Gaming Commission Personnel.~~– The Commission shall hire an Executive Director who is responsible for hiring and managing the personnel of the Commission.

(a) The Executive Director shall hire such personnel as is necessary to assist the Commission to fulfill its responsibilities under this Ordinance, the IGRA, ~~and the Compact,~~ and all ~~governing~~ regulations, including the Oneida Gaming Minimum Internal Controls.

(b) The Executive Director and personnel of the Commission must be hired through the ~~Tribe's~~ Nation's regular personnel procedure and are subject to its personnel policies and salary schedules.–

(1) The Executive Director and personnel shall meet the requirements set forth in section 501.12-3 of this Ordinance at hiring and during employment.

501.7. Gaming Surveillance: Powers, Duties and Limitations

501.7-1. ~~Purpose.~~– The purpose of Gaming Surveillance is to observe and report Regulatory Incidents to the Commission and Gaming General Manager to provide for the regulation, operation, and compliance of Gaming Activities under this Ordinance.

(a) Gaming Surveillance is a department within the Commission's administrative structure and supervision must be identified within the organizational chart adopted by the Commission; ~~provided that,~~ nothing in the designation of supervisory responsibility may be deemed to prohibit the responsibility of Gaming Surveillance to provide information and/or video and/or audio records to the parties identified in section 501.7-3 of this Ordinance.

501.7-2. Gaming Surveillance shall be responsible for all Gaming surveillance activities including, but not limited to, equipment and maintenance of equipment, observation and reporting of all persons to include Gaming Employees, customers, consultants, and Gaming Services vendors.

501.7-3. ~~Surveillance~~ personnel shall provide to Senior Gaming Management, the Commission, or Gaming Security a copy of any time-recorded video and accompanying audio (if available) within twenty-four (24) hours of request.

501.7-4. ~~Gaming Surveillance~~ shall:

(a) ~~Develop~~, implement and maintain written policies and procedures for the conduct and integrity of the Surveillance Department.

(b) ~~Develop~~, implement and maintain additional procedures governing the use and release of the surveillance recordings or reports.

(c) ~~Work~~ cooperatively with the Gaming Security Department to carry out its official

duties and to coordinate its activities in order to effectuate the protection of patrons and the assets of the Gaming Operation.

(d) Develop, implement and maintain written policies and procedures for implementation of duties and responsibilities identified with the Oneida Gaming Minimum Internal Controls, subject to approval by the Commission.

501.8. [Reserved for future use.]

501.9. Gaming Security Department

501.9-1. ~~*Purpose.* The Gaming Security Department is a department within the Oneida Police Department.~~ *Purpose.* The purpose of the Gaming Security Department is to protect Gaming assets, patrons and Gaming Employees from an activity, repeat activity, or ongoing activities which could injure or jeopardize Gaming assets, patrons and Gaming Employees and report these activities to the Oneida Police Department for further review and/or investigation. Provided that, all reports of the Gaming Security Department must be copied to the Commission.

501.9-2. *Reporting.* The Oneida Police Department Security Director, Gaming General Manager and the Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, which describes describing their responsibilities and reporting requirements under this Ordinance.

(a) When investigations involve or uncover a possible criminal or quasi-criminal activity, the Gaming Security Department shall report the activity to the Oneida Police Department for further review and investigation by the Oneida Police Department under its separate departmental authority.

501.9-3. The Gaming Security Department shall:

(a) Develop, implement and maintain written policies and procedures for the conduct and integrity of Gaming Security, as identified in the Oneida Gaming Minimum Internal Controls and subject to approval by the Commission.

(b) Develop, implement and maintain additional procedures governing the use and release of the investigation reports.

(c) Work cooperatively with Gaming Surveillance to carry out its official duties and to coordinate activities between the departments.

501.9-4. *Investigations.* This section is intended to authorize report gathering, information gathering, and preliminary review, to be conducted by the Gaming Security Department.

501.10. Background Investigations

501.10-1. The Human Resources Department and the Commission shall enter into an agreement, subject to ratification by the Oneida Business Committee, for carrying out Background Investigations for employees as required under this Ordinance.

501.10-2. Background Investigations must be conducted on all persons or entities as specified under this Ordinance. -

(a) All Background Investigations must be conducted to ensure that the ~~Tribe~~Nation in its Gaming Operations may not employ or contract with persons whose prior activities, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of Gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods in the conduct of such Gaming.

(1) The identity of any person interviewed in order to conduct a Background

Investigation must be confidential.

501.11. Licenses, Generally

501.11-1. The Commission shall adopt procedures that ensure the efficient and orderly processing of all applications for a License.

(a) All Gaming Employees, Gaming Services vendors, and Gaming Operators shall apply for a License from the Commission prior to their participation in any Gaming Activity.

(b) All Gaming Facilities must be licensed by the Oneida Business Committee.

501.11-2. *Temporary License.* All Applicants, upon receipt by the Commission of a completed application for a License and completion of a preliminary Background Investigation, may receive a temporary license for a ninety (90) day period, unless a Background Investigation of the application demonstrates grounds to disqualify the Applicant. ~~Such~~

(a) A temporary license, ~~as defined in this section,~~ permits the Licensee to engage in such activities ~~and~~ pursuant to any terms and conditions imposed and specified by the Commission. ~~The~~

(b) A temporary license is valid until either replaced by a License, the ninety (90) day temporary license period has concluded, or the temporary license is cancelled by the Commission, whichever occurs first.

501.11-3. *Revocable.* A License is revocable only in accordance with the procedures set forth in this Ordinance.

(a) A Licensee has only those rights and protections regarding a License granted in this Ordinance.

501.11-4. All Applicants:

(a) Consent to the release of any information relevant to the Applicant's Background Investigation by any person or entity in possession of such information.

(b) Consent to the jurisdiction of the ~~Tribe~~Nation and are subject to all applicable ~~Tribal~~Oneida, Federal, and State laws, regulations, ~~and/or~~ policies.

501.11-5. All Licensees are subject to ongoing review at least every two (2) years by the Commission.

501.11-6. *Status of Licenses.* The Commission shall notify the Gaming Operation of the status of all Licenses, whether temporary or permanent, including all Commission action to revoke, suspend, or condition a License.

501.11-7. *Commission Licensing Actions.* The Commission may grant, deny, revoke, condition, suspend or reinstate all Licenses, except for Gaming Facilities Licenses, in accordance with this Ordinance.

(a) Authority to place conditions on a License may be exercised only upon promulgation of regulations.

501.11-8. *Noncompliance.* The Commission may issue a notice of noncompliance when the Commission has developed regulations that identify procedures that notices of noncompliance may be issued to Licensees and permittees which provide an opportunity to correct actions.

(a) Such regulations must include procedures for appeal of such notices. ~~Regulations~~ ~~and~~ may include the ability to issue fines not to exceed one thousand dollars (\$1000.00) per violation for Gaming Services vendors and permittees.

501.12. Gaming Employee License

501.12-1. *Scope of Section.*— This section applies only to Gaming Employee Licenses and licensing actions.

501.12-2. *License Application.*— Every Applicant for a License shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified, which must certify:

(a) Applicant's full name and all other names used (oral or written), Social Security Number(s), place of birth, date of birth, citizenship, gender, and all languages (spoken or written).

(b) Currently, and for the previous five (5) years: business and employment positions held, ownership interests in those businesses, business and residence addresses, and driver's license number(s).

(c) The names and current addresses, of at least three (3) personal references, including one (1) personal reference, who ~~were~~was acquainted with the Applicant during each period of residence listed in subsection (b) above.

(d) Current business and residence telephone numbers.

(e) A description of any existing and previous business relationships with Indian Tribes, including ownership interest in those businesses.

(f) A description of any existing and previous business relationship with the Gaming industry generally, including ownership interest in those businesses.

(g) The name and address of any licensing or regulatory agency with which the Applicant has filed an application for a license or permit related to Gaming, whether or not such license or permit was granted.

(h) The name and address of any licensing or regulatory agency with which the Applicant has filed an application for an occupational license or permit, whether or not such license or permit was granted.

(i) For each felony conviction or ongoing prosecution or conviction, the charge, the name and address of the court involved, and the date and disposition, if any.

(j) For each misdemeanor or ongoing misdemeanor prosecution (excluding violations for which jail time is not part of the potential sentence) within ten (10) years of the date of the application, the name and address of the court involved, and the date and disposition.

(k) For each criminal charge (excluding charges for which jail time is not part of the potential sentence) whether or not there is a conviction, if such criminal charge is within ten (10) years of the date of the application and is not otherwise listed pursuant to ~~subsections~~sub-sections (i) or (j) of this section, the criminal charge, the name and address of the court involved and the date and disposition.

(l) A photograph.

(m) Fingerprints consistent with procedures adopted by the Commission which meet the criteria set forth in 25 C.F.R. section 522.2(h). ~~The Commission is the agency that takes the fingerprints.~~

(1) The Commission is the agency that takes the fingerprints.

(n) Any other information the Commission deems relevant for a Gaming Employee License.

(o) A statement that each Applicant has read and understands notices and the NIGC requirements relating to:

(1) The Privacy Act of 1974;

- §28 (2) Fraud and False Statements Act; and
§29 (3) Fair Credit Reporting Act.
- §30 501.12-3. *License Qualifications.* ~~No License may be granted if the Applicant:~~
- §31 (a) Is under the age of eighteen (18).
- §32 (b) Unless pardoned for activities under this subsection by the ~~Tribe~~Nation, or pardoned
§33 for activities under this subsection by another Federally-recognized Indian Tribe for an
§34 action occurring within the jurisdiction of the Federally-recognized Indian Tribe, or
§35 pardoned for activities under this subsection by the state or Federal government, has been
§36 convicted of, or entered a plea of guilty or no contest to, any of the following:
- §37 (1) Any gambling-related offense;
- §38 (2) Any offense involving Fraud or misrepresentation;
- §39 (3) Any offense involving a violation of any provision of ~~chs. Chapters~~ 562 or
§40 565, ~~Wis. Stats.,~~ of the Wisconsin Statutes, any rule promulgated by the State of
§41 Wisconsin Department of Administration, Division of Gaming, or any rule
§42 promulgated by the Wisconsin Racing Board;
- §43 (4) A felony not addressed in paragraphs (1), (2), or (3), during the immediately
§44 preceding ten (10) years; or
- §45 (5) Any offense involving the violation of any provision of ~~Tribal~~the Nation's
§46 law ~~regulating that regulates~~ the conduct of Gaming Activities, or any rule or
§47 regulation promulgated pursuant thereto.
- §48 (c) Is determined to be a person whose prior activities, criminal record, reputation, habits,
§49 or associations pose a threat to the public interest or to the effective regulation and control
§50 of Gaming or create or enhance the dangers of unsuitable, unfair, or illegal practices,
§51 methods, or activities in the operation of Gaming Activities or the carrying on of the
§52 business and financial arrangements incidental thereto.
- §53 (d) Possesses a financial interest in or management responsibility for any Gaming
§54 Activity or Gaming Services vendor, or he or she has any personal, business, or legal
§55 relationship which places him or her in a conflict of interest as defined in this Ordinance
§56 or the Nation's Conflict of Interest ~~Policy~~law.
- §57 (e) Each person licensed as a Gaming Employee has a continuing obligation to inform
§58 the Commission immediately upon the existence of any circumstance or the occurrence of
§59 any event which may disqualify him or her from being licensed as a Gaming Employee.
- §60 (1) Failure to report any such occurrence may result in suspension or revocation
§61 of the Gaming Employee's License.
- §62 501.12-4. *Initial Eligibility Determination.*
- §63 (a) Based on the results of the preliminary Background Investigation, the Commission
§64 shall make an initial determination regarding an Applicant's eligibility and either:
- §65 (1) Grant a temporary license, with or without conditions, to the Applicant; or
§66 (2) Deny the License application and provide notice to the Applicant that he or
§67 she may request a hearing regarding the decision consistent with subsection (b)
§68 below.
- §69 (b) If the Commission determines that an Applicant is ineligible for a License, the
§70 Commission shall notify the Applicant.
- §71 (1) The Commission shall set forth regulations for an Applicant to review any
§72 information discovered during the preliminary Background Investigation prior to
§73 scheduling a hearing under section 501.12-10. ~~The suspension or revocation~~

~~hearing provisions set forth at section 501.12-9 do not apply to Initial Eligibility Determinations of this Ordinance.~~

~~(2) The suspension or revocation hearing provisions set forth at section 501.12-9 of this Ordinance do not apply to Initial Eligibility Determinations.~~

501.12-5. *Eligibility Determination and Notification to NIGC.* -When a Gaming Employee begins employment at a Gaming Operation, the Commission shall:

(a) ~~Require the Gaming Employee to submit a completed application for employment that contains the notices and information listed in section 501.12-2~~ of this Ordinance;

(b) ~~Review the Background Investigation of the Gaming Employee-;~~

~~(1)~~ (1) Within sixty (60) days after a Gaming Employee begins employment at a Gaming Facility under a temporary license, the Commission shall make an eligibility determination regarding whether the Gaming Employee may receive a License based upon the results of the Background Investigation.

(c) ~~Create an investigative report based on each Background Investigation performed-;~~

~~(1)~~ (1) The investigative report must include the steps in conducting the Background Investigation, results obtained, conclusions reached and the basis for those conclusions.

(d) ~~Prior to issuing a License to a Gaming Employee and within sixty (60) days after the Gaming Employee begins employment at a Gaming Facility, submit a notice of results of the Background Investigation to the NIGC for inclusion in the Indian Gaming Individual Record System-; and~~

~~(1)~~ (1) The notice of results must include the following, provided that any additional or alternate information must be forwarded as directed in regulations or rules adopted by ~~the~~ NIGC:

~~(1)-A)~~ (1)-A) The Gaming Employee's name, date of birth, and ~~social security number~~ Social Security Number;

~~(2)-B)~~ (2)-B) The date on which the Gaming Employee began employment-;

~~(3)-C)~~ (3)-C) A summary of the information presented in the investigative report, including:

~~(A)-i)~~ (A)-i) License(s) that have previously been denied;

~~(B)-ii)~~ (B)-ii) Gaming licenses that have been revoked, even if subsequently reinstated;

~~(C)iii)~~ (C)iii) Every known criminal charge brought against the Gaming Employee within the last ten (10) years of the date of the application; and

~~(D)iv)~~ (D)iv) Every felony of which the Gaming Employee has been convicted or any ongoing prosecution.

~~(4)-a~~ (4)-a ~~(D)~~ (D) A copy of the eligibility determination made under section 501.12-5

~~(b)-)~~ (b)-) of this Ordinance.

(e) ~~All applications, Background Investigations, investigative reports, suitability determinations, findings and decisions of the Commission must be retained in the Commission's files for a period of at least three (3) years from the date the Gaming Employee's employment is terminated.~~

501.12-6. *License Issuance.* -The Commission may issue a License to a Gaming Employee at any time after providing ~~the~~ NIGC with a notice of results as required under section 501.12-5(d); of this Ordinance; however, a Gaming Employee who does not have a License ninety (90) days after

the start of employment must have his or her employment terminated.

(a) The Commission shall notify the NIGC of the issuance or denial of a License to a Gaming Employee within thirty (30) days after the License is issued or denied.

~~(a)~~ (b) Any Gaming Employee License issued under this section is effective from the date of issuance and must contain the Gaming Employee's photograph, the Gaming Employee's name, and the date that the License became effective.

(1) If a Gaming Employee is promoted, transferred, reassigned, or the position is reclassified, the Gaming Employee shall notify in writing the Commission, and the Commission shall review the Gaming Employee's License.

(c) The Commission retains the right to grant, deny, revoke, condition, suspend, or reinstate Licenses subject to the right to appeal the decision under the processes set forth in this Ordinance.

501.12-7. *Requirement to Wear License.* -During working hours, all Licensees shall wear their License in a conspicuous place that is plainly visible by all employees, the Nation's Gaming patrons and surveillance.

501.12-8. *NIGC Review.*

(a) During a thirty (30) day period, beginning when the NIGC receives a notice of results submitted pursuant to section 501.12-5(d) above, the Chairman of the NIGC may request additional information from the Commission concerning the Gaming Employee.

(1) Such a request suspends the thirty (30) day period until the Chairman receives the additional information.

(b) If, within the thirty (30) day period after the NIGC receives the notice of results, the NIGC notifies the Commission that it has no objection to the issuance of a License, and the Commission has not yet issued a License to the Gaming Employee, the Commission may grant the License to the Gaming Employee.

(c) If, within the thirty (30) day period after the NIGC receives the notice of results, the NIGC provides the Commission with a statement itemizing objections to the issuance of a License, the Commission shall reconsider the application, taking into account the objections itemized by the NIGC.

(1) The Commission shall make the final decision whether to issue a License to the Gaming Employee, or if the Gaming Employee has already been licensed, whether to suspend or revoke the License in accordance with section 501.12-9 of this Ordinance.

(d) Upon receipt of notification from the NIGC that a Gaming Employee who has already been licensed is not eligible for employment, the Commission shall immediately suspend the License in accordance with section 501.12-9 of this Ordinance.

501.12-9. *Suspension or Revocation of Licenses.* -Except as provided in section 501.12-8(d) or 501.12-9(c), of this Ordinance, no License may be suspended or revoked except after notice and opportunity for hearing.

(a) *Basis for Licensing Action.* -The Commission may suspend, condition, or revoke any License issued under this Ordinance if:

(1) After the issuance of a License, the Commission receives from the NIGC or other source reliable information indicating that a Gaming Employee is not eligible for a License under section 501.12-3 of this Ordinance; or such information would justify the denial of the renewal of any License, the Commission shall issue a written notice of suspension.

(2) The Commission issues a written notice of suspension demonstrating that the Licensee:

(A) Has knowingly made a materially false or misleading statement in any application for a License, in any amendment thereto, or in response to a request by the Commission for supplemental information or in connection with any investigation of the Commission;

(B) Has knowingly promoted, played, or participated in any ~~gaming activity~~ Gaming Activity operated in violation of the Compact, ~~Tribal~~ Oneida or federal law, and this Ordinance;

(C) Has bribed ~~or~~ attempted to bribe, or has received a bribe from, a Commissioner or any other person in an attempt to avoid or circumvent any applicable law;

(D) Has falsified any books or records relating to any transaction connected with the operation of a Gaming Activity;

(E) Has refused to comply with any lawful directive of the ~~Tribe,~~ the Nation, Federal government, or any court of competent jurisdiction; or

(F) Has been convicted of, or entered a plea of guilty or no contest to, a crime involving the sale of illegal narcotics or controlled substances.

(b) *Suspension Notice.* - The Commission's notice of suspension must be in writing and must, at a minimum, notify the Licensee of the following:

(1) The Licensee's right to review a file prior to any hearing regarding the notice of suspension, and to make copies of any documents contained in that file;

(2) The Licensee's right to request a hearing on the proposed licensing action, to present documents and witness testimony at that hearing, and to be represented by counsel;

(3) The specific grounds upon which the proposed licensing action is based, including citations to relevant sections of this Ordinance, the IGRA, and any applicable ~~Regulations~~ regulations and/or the Compact; and

(4) The time and place set by the Commission for the Licensee's hearing.

(c) *Immediate Suspension.* - If, in the judgment of the Commission, the public interest, and effective regulation and control of Gaming Activities requires the immediate exclusion of a Licensee, the Commission may immediately suspend a License prior to the conduct of a hearing on the matter.

 (1) Such an immediate suspension may take effect upon service of the notice of immediate suspension.

(d) Any notice of suspension or notice of immediate suspension must set forth the times and dates for when the Licensee may review his or her file and the date for a hearing on any proposed licensing action.

(e) Within fifteen (15) business days after a hearing, the Commission shall issue a final written licensing decision and decide whether to suspend, uphold an immediate suspension, revoke, or take other action concerning a License. -

 (1) If the License was suspended, conditioned or revoked based on information from the NIGC or other source under section 501.12-8(d) or 501.12-9(a)(1) of this Ordinance, the Commission shall forward a copy of its decision to the NIGC within forty-five (45) days of receiving the NIGC's or the other source's notification indicating that a Gaming Employee is not eligible for a License.

(f) If a Licensee fails to appear for his or her hearing before the Commission, that right is deemed to have been waived and the Commission will proceed on the proposed licensing action by default.

(g) Unless identified in this Ordinance or regulations of the Commission, the hearing processes set forth in the ~~Tribe's administrative procedures law~~ Nation's Administrative Procedures Act shall apply.

501.12-10. ~~Original Hearing Body.~~ Any person aggrieved by a licensing decision of the Commission may appeal the decision by filing a request for an original hearing before the Commission.

 (a) The Licensee may file any such request with the Commission in writing on or before the fifteenth (15th) day following receipt of the Commission's decision.

 (b) The Commission shall certify the record, developed in accordance with section 501.12-4 or 501.12-9(a), of this Ordinance, within thirty (30) days of the date of the filing of the request for an original hearing. ~~The~~

 (c) ~~Those~~ Commissioners serving on the original hearing body may not include the Commissioners who participated in the licensing decision from which the original hearing is scheduled.

 (d) The Commission may ~~determine~~ decide to review the decision solely on the licensing decision record and briefs filed regarding the request for reconsideration. -

 (1) The Commission may also, in its sole discretion, grant oral ~~argument.~~ arguments.

 (e) The Commission shall issue a written decision determining whether to uphold the Commission's licensing decision, including whether to revoke or reinstate a License, within one hundred twenty (120) days from receipt of the request for the original hearing.

 (1) The Commission's decision is considered an original hearing decision and an appeal may be made to the Judiciary as an appeal of an original hearing body.

501.12-11. ~~Notice to Oneida Business Committee.~~ Prior to any suspension or revocation of a License of the ~~gaming general manager~~ Gaming General Manager, the Commission shall provide notice to the Oneida Business Committee twenty-four (24) hours prior to the issuance of the suspension or revocation.

501.12-12. ~~Record of Proceedings.~~ The Commission shall maintain a complete and accurate record of all licensure proceedings.

501.12-13. ~~Revocation of a License is solely limited to the licensing matter.~~ Employment related processes resulting from revocation of a License are determined solely through the personnel processes and procedures of the ~~Tribe~~ Nation and are not licensing matters governed by this Ordinance.

501.13. Gaming Services Licensing and Non-Gaming Services Permitting

501.13-1. Scope of Section. This section applies to all individuals and entities providing Gaming Services.

 (a) The requirements of this Section are in addition to, and do not alter or amend any requirements imposed by the ~~Oneida~~ Nation's Vendor Licensing ~~Law~~ law.²

501.13-2. Gaming Services License or Non-Gaming Services Permit Required.

² See also Appendix 1. Vendor Licensing/Permit.

(a) Gaming Services License.– Any Gaming Services vendor providing Gaming related contract goods or services as defined under Article VII(A) of the Compact to the Gaming Operation shall possess a valid Gaming Services License.

(b) Non-Gaming Services Permit.– Any vendor providing non-gaming related goods or services to the Gaming Operation shall possess a valid Non-Gaming Services permit.

(c) Determinations regarding the issuance of a License or permit under this section must be made by the Commission which may be subject to requests for reconsideration by the Gaming Services vendor within fourteen (14) business days of receipt by the Gaming Services vendor of the notice of License or permit determination.

501.13-3. Approved Gaming Services Vendor List.– The Commission shall maintain an updated and complete list of all Gaming Services vendors that possess current and valid Gaming Services Licenses or Non-Gaming Services permits from the Commission, which is known as the Approved License and Permit List.

(a) Gaming Operations may only do business with vendors that possess valid and current Gaming Services Licenses or Non-Gaming Services permits and who appear on the Approved License and Permit List.

501.13-4. Gaming Services License/Permit Application.– Every Applicant for a License or permit shall file with the Commission a written application in the form prescribed by the Commission, duly executed and verified, which must provide and certify the following. ~~Provided that;~~ provided, Non-Gaming Services vendors with less than two thousand five hundred dollars (\$2,500.00) in services for the prior fiscal year are only required to file a notice of doing business with the Commission.;

(a) The Applicant's name and mailing address;

(b) The names and addresses of each officer or management official of the Applicant;

(c) A copy of the Applicant's articles of incorporation and ~~by laws~~ bylaws, or if not a corporation, the Applicant's organizational documents;

(d) Identification of an agent of service for the Applicant;

(e) The name and address of each person having a direct or indirect financial interest in the Applicant;

(f) The nature of the License or permit applied for, describing the activity to be engaged in under the License or permit;

(g) Explicit and detailed disclosure of any criminal record, including any delinquent taxes owed to the United States, or any state, of the Applicant, any person involved in the organization, and any person of interest whose name appears or is required to appear on the application;

(h) Whether the Applicant is or has been licensed by the ~~state~~ State of Wisconsin Office of Indian Gaming Regulation and Compliance and, if applicable, proof of current licensure;

(i) Whether the Applicant has been licensed in the ~~state~~ State of New Jersey, Nevada, or by any other gaming jurisdiction, including any Indian Tribe or Tribal governmental organization and, if so, proof of such licensure and the status of any such License;

(j) Whether the Applicant has been denied a License by any gaming jurisdiction and, if so, the identity of the jurisdiction, the date of such decision and the circumstances surrounding that decision;

(k) Whether any License held by the Applicant has been refused renewal, conditioned, suspended or revoked by an issuing authority and, if so, the circumstances surrounding that action;

(l) A statement of waiver allowing the ~~Tribe~~Nation to conduct a Background Investigation of the Applicant and any person whose name appears or is required to appear on the application;

(m) Whether the Applicant or any person whose name appears or is required to appear on the application has or has had any business with the ~~Tribe~~Nation or any business or personal relationship with any of the ~~Tribe's~~Nation's officers or employees;

(n) The name and contact information for all Tribes or Tribal organizations with whom the Applicant or any person whose name appears or is required to appear on the application has done business;

(o) Whether the Applicant or any person whose name appears or is required to appear on the application maintains any involvement in the business of wholesale distribution of alcoholic beverages;

(p) A statement that the Applicant has read and understands notices and ~~the~~ NIGC requirements relating to:

(1) The Privacy Act of 1974;

(2) False statements; and

(3) The Fair Credit Reporting Act.

(q) All additional information necessary to allow the Commission to investigate the Applicant and any person whose name appears or is required to appear on the application.

501.13-5. Signature on Application. - Applications for Licenses or permits must be signed by the following person:

(a) For companies and corporations (both for profit and non-profit), the highest ranking official of the corporation, or ~~another~~other person to whom the authority to execute the ~~Application~~application has been properly delegated.

(b) For a sole proprietorship, the principal owner.

(c) For a partnership, all partners.

(d) For a limited partnership, the general partner or partners.

501.13-6. Incomplete Applications. - Applications that do not contain all information requested, including proper signatures, will be considered incomplete. -

(a) Incomplete applications will not be considered by the Commission.

(b) The Commission shall notify an Applicant if an application is incomplete and what additional information is necessary to complete the application.

(1) If an Applicant who has submitted an incomplete application, and been notified of the deficiency in that application, fails to provide the information requested by the Commission, the application will be returned to the Applicant and the file closed.

501.13-7. Supplemental Information. -The Commission may, in its discretion, request supplemental information from the Applicant.

(a) Supplemental information requested by the Commission must be promptly submitted by the Applicant.

(1) An Applicant's failure or refusal to submit supplemental information requested by the Commission may constitute grounds for the denial of the application.

501.13-8. Continuing Duty to Provide Information. - Applicants, permittees, and Licensees owe a continuing duty to provide the Commission with information and materials relevant to the Applicant's, permittee's, or Licensee's character or fitness to be licensed, including but not limited

to any change in the licensing or permitting status of the Applicant, permittee, or Licensee in any foreign jurisdiction.

(a) An Applicant's, permittee's, or Licensee's failure to notify the Commission promptly of inaccuracies on an application or new information or materials relevant to ~~the Applicant~~him or her may constitute grounds to deny, suspend or revoke a License or permit.

501.13-9. Background Investigations. ~~Background Investigations for Gaming Services vendors must be conducted as follows:~~

(a) Gaming Related Equipment Gaming Services Vendors under Fifty Thousand Dollars (\$50,000.00) in Goods and/or Services Annually. ~~The Commission shall conduct the Background Investigations that are sufficient to determine the eligibility for licensing of all Gaming Services vendors that provide or anticipate providing under fifty thousand dollars (\$50,000.00) in goods and services annually.~~

(b) Gaming Related Equipment Gaming Services Vendors over Fifty Thousand Dollars (\$50,000.00) in Goods and/or Services Annually. ~~The Commission shall review the background investigation conducted by the Wisconsin Office of Indian Gaming Regulation, and shall conduct any necessary additional Background Investigation to ensure that the~~ state~~State~~ background investigation is complete and current.

(c) Other Non-Gaming Related Goods and/or Services Gaming Services Vendors. ~~The Commission shall conduct Background Investigations on a sufficient number of randomly selected applications in order to verify the accuracy of all applications. The random selection process must be identified by regulation of the Commission.~~

(1) The random selection process must be identified by regulation of the Commission.

501.13-10. Licensing Action in a Foreign Jurisdiction. ~~If the~~ states~~States~~ of Wisconsin, New Jersey, Nevada or any other gaming jurisdiction ~~refuses~~refuse to renew a License or permit, or conditions, suspends, or revokes the License or permit of an Applicant, permittee, or Licensee, such action may constitute grounds for similar action by the Commission.

501.13-11. Claim of Privilege. ~~At any time during the licensing or permitting process, the Applicant may claim any privilege afforded by law.~~

(a) An Applicant's claim of privilege with respect to the production of requested information or documents or the provision of required testimony or evidence may constitute grounds for the denial, suspension or revocation of a License or permit.

501.13-12. Withdrawal of an Application. ~~An Applicant may request to withdraw an application by submitting a written request to the Commission.~~

(a) The Commission retains the right, in its exclusive discretion, to grant or deny a request for withdrawal.

(b) An Applicant who withdraws an application is precluded from ~~reapplying~~re-applying for a Gaming Services License or Non-Gaming Services permit for a period of one (1) year from the date the application was withdrawn.

501.13-13. Suspension or Revocation of Gaming Services Licenses or Permits. ~~Except as provided in section 501.13-13(c), of this Ordinance,~~ no License or permit may be suspended or revoked except after notice and opportunity for hearing.

(a) Basis for Licensing or Permitting Action. ~~The Commission may suspend, modify, or revoke any Gaming Services License or Non-Gaming Services permit issued under this Ordinance if, after issuance of the License or permit, the Commission receives reliable~~

information that would justify denial of the issuance or renewal of a License or permit, or if the Commission determines that the Licensee or permittee has:

- (1) Knowingly made a materially false or misleading statement in any application for a License or permit, in any amendment thereto, or in response to a request by the Commission for supplemental information or in connection with any investigation of the Commission;
- (2) Knowingly promoted, played, or participated in any Gaming Activity operated in violation of the Compact, or any Tribal law of the Nation, or other applicable law;
- (3) Bribed or attempted to bribe a Commissioner or any other person in an attempt to avoid or circumvent any applicable law;
- (4) Falsified any books or records relating to any transaction connected with operation of a Gaming Activity;
- (5) Refused to comply with a lawful directive of the TribeNation, the federal government, or any court of competent jurisdiction; or
- (6) Been convicted of, or entered a plea of guilty or no contest to, a crime involving the sale of illegal narcotics or controlled substances.

(b) Suspension Notice.— The Commission shall provide a Licensee or permittee with written notice of suspension, which must, at a minimum, notify the Licensee or permittee of the following:

- (1) The Licensee's or permittee's right to conduct a file review prior to any hearing regarding the notice of suspension, and to make copies of any documents in that file;
- (2) The Licensee's or permittee's right to present documents and witness testimony at the hearing and to be represented by counsel;
- (3) The specific grounds upon which the suspension is based, including citations to relevant sections of this Ordinance, the IGRA, any applicable regulations and/or the Compact; and
- (4) The time and place set by the Commission for the Licensee's or permittee's file review and hearing.

(c) Immediate Suspension. —If, in the judgment of the Commission, the public interest, and effective regulation and control of others require the immediate exclusion of a Licensee or permittee, the Commission may immediately suspend a License or permit prior to a hearing on the matter. ~~Such an immediate suspension takes effect upon service of the notice of immediate suspension.~~

- (1) Such an immediate suspension takes effect upon service of the notice of immediate suspension.

(d) File Review and Hearing.— Any notice of suspension or notice of immediate suspension must set forth the time and date for the Licensee or permittee to conduct a file review and for a hearing.

(e) Final Written Decision.— Within fifteen (15) business days after a hearing, the Commission shall issue a final written decision and decide whether to suspend, uphold an immediate suspension, revoke, or take other action concerning a License or permit.

(f) Default.— If a Licensee or permittee fails to appear for his or her hearing before the Commission, that right is deemed to have been waived and the Commission will proceed on the proposed licensing action by default.

(g) Unless identified in this Ordinance or regulations of the Commission, the hearing processes set forth in the ~~Oneida Nation's~~ Administrative Procedures Act shall apply.

501.13-14. *Original Hearing Body.* - Any person aggrieved by a licensing or permitting decision of the Commission may appeal the decision by filing a request for an original hearing before the Commission.

(a) The Applicant, Licensee or permittee may file such request with the Commission in writing on or before the fifteenth (15th) day following the receipt of the Commission's decision.

(b) The Commission shall certify the record, developed in accordance with section 501.13-9 or 501. 13 -13(a~~;~~) of this Ordinance, within thirty (30) days of the date of the filing ~~on~~of the request for an original hearing. ~~The~~

(1) ~~Those~~ Commissioners participating in the initial licensing or permitting decision may not participate in the original hearing.

(c) The Commission may determine to review the decision solely on the licensing or permitting decision record and briefs filed regarding the request for reconsideration.

(1) The Commission may also, in its sole discretion, grant oral ~~argument.~~ arguments.

(d) The Commission shall issue a written decision within one hundred twenty (120) days from receipt of the request for the original hearing.

(1) The Commission's decision is considered an original hearing decision and an appeal may be made to the Judiciary as an appeal of an original hearing body.

501.14. Gaming Facility License

501.14-1. The construction and maintenance of any Gaming Facility, and the operation of Gaming Activities, must be conducted in a manner which adequately protects the environment and the public health and safety, and must comply with requirements of the Compact and all other applicable health, safety, and environmental standards.

501.14-2. The Oneida Business Committee must receive, review and grant or deny any application for licensing any Gaming Facilities located within the Reservation. Applicants shall provide the Oneida Business Committee sufficient information to show the following:

(a) The Gaming Facility meets all applicable ~~Federal and Tribal~~ health and safety standards of the Nation and Federal government.

(1) To show compliance with applicable health and safety standards, Gaming Operator shall submit certified copies of Compliance Certificates issued by the agencies responsible for the enforcement of the health and safety standards.

(2) If health and safety standards are not met, proof must be submitted by Gaming Operator that the Gaming Facility is in the process of improvements which will place the Gaming Facility in compliance with the applicable standards.

(b) The Gaming Facility meets applicable ~~federal and Tribal~~ environmental standards of the Nation and Federal government.

(1) To show compliance with applicable environmental standards, Gaming Operator shall submit certified copies of an Environmental Assessment of the Gaming Facility which were prepared by the agency responsible for the enforcement of applicable environmental standards.

(2) If the applicable environmental standards are not met, proof must be submitted by Gaming Operator that Remediation of the Gaming Facility is being

actively sought which will place the Gaming Facility in compliance with the applicable standards.

501.14-3. Upon receipt and review of the above information, the Oneida Business Committee shall deliberate and either grant or deny for failure to meet the requirements of protecting the health and safety of patrons, public and employees of a Gaming Facility License to the Applicant.

(a) The Oneida Business Committee shall submit to the NIGC a copy of each Gaming Facility License issued.

501.14-4. If the Oneida Environmental, Health and Safety Department notifies the Oneida Business Committee that a Gaming Facility will be closed by a governmental agency with proper authority due to environmental, health or safety concerns, the Oneida Business Committee shall suspend the License of the Gaming Facility.

(a) The Oneida Business Committee shall re-License the Gaming Facility after receiving the information required in section 501.14-2 of this Ordinance.

501.15. Gaming Operator License

501.15-1. Consent to Jurisdiction. ~~The application for License and the conduct of Gaming within the jurisdiction of the TribeNation is considered consent to the jurisdiction of the TribeNation in all matters arising from the conduct of Gaming, and all matters arising under any of the provisions of this Ordinance or other Tribal laws of the Nation.~~

501.15-2. License Required. ~~No Gaming Operator may conduct Gaming Activity unless such entity holds a valid and current Gaming Operator License issued by the Commission.~~

501.15-3. Types of Licenses. ~~The Commission may issue each of the following types of Gaming Operator Licenses:~~

(a) Tribally-Owned or Tribally-Operated Class II. ~~This License is required of all Tribally-owned or Tribally-operated Gaming Operations operating one or more Class II Gaming Activities.~~

(b) Tribally-Owned or Tribally-Operated Class III. ~~This License is required for all Tribally-owned or Tribally-operated Gaming Operations operating one or more Class III Gaming Activities.~~

501.15-4. Gaming Operator License Qualifications. ~~The Commission shall issue a Gaming Operator License to any Gaming Operation if:~~

(a) The Gaming Operation is to be located within the Reservation, or land taken into trust after October 17, 1988, for Gaming purposes;

(b) The Gaming Activity proposed to be played at the Gaming Operation is Class II or Class III Gaming as defined by this Ordinance and IGRA; and

(c) The proposed Gaming Operation is authorized by a resolution of the Oneida Business Committee.

501.15-5. Provisions of General Applicability to All Gaming Operators.

(a) Site and Gaming Operator Specified. ~~Each Gaming Operator License may be applicable only to one (1) Gaming Operation and the Gaming Facility named on the License.~~

(b) License Not Assignable. ~~No Gaming Operator License may be sold, lent, assigned or otherwise transferred.~~

(c) Regulations Posted or Available. ~~Each Gaming Operator must have a copy of this Ordinance and any regulations promulgated thereunder available for inspection by any person at each Gaming Facility.~~

(d) *Display of License.* -Each Gaming Operator must prominently display its License at each Gaming Facility.

501.15-6. *Grandfathered Gaming Facilities.* - All Gaming Operators operating on the effective date of July 5, 2007, are hereby granted a License under this section.

501.15-7. *License Application Fees and License Taxes.* -No application fees or License taxes may be required by the ~~Tribe~~Nation for a Gaming Operator License.

501.15-8. *Closure of a Gaming Operation.* - If the Commission finds that any Gaming Operation is operating in violation of this Ordinance, or otherwise presents a threat to the public, the Commission shall immediately notify the Oneida Business Committee.

(a) The Oneida Business Committee may close any Gaming Operation temporarily or permanently at any time with or without cause, at its sole discretion.

501.16. Games

501.16-1. *Class II and Class III Games* are hereby authorized by this Ordinance.

501.16-2. *Gaming Procedures.* - Games operated under this Ordinance must be consistent with the Compact and any amendments thereto and the Internal Control Standards and Rules of Play of the Gaming Operation.

501.16-3. *Who May Not Play.* -It is the policy of the ~~Tribe~~Nation that particular Gaming Employees, employees of the Commission, particular governmental officials, and consultants who directly advise the Commission or employees at Gaming Facilities regarding gaming related activities may not participate in Gaming Activities conducted at Gaming Operations.

(a) At a minimum, members of the Oneida Business Committee, the Commission, the ~~gaming general manager~~Gaming General Manager, assistant gaming general managers, directors of individual Games and assistant directors of individual Games may not participate in any Gaming Activity within the Reservation.

~~(a-b)~~ The Oneida Business Committee may identify by resolution additional positions restrictions on Gaming Activity conducted at Gaming Facilities. ~~Such resolution must be on file with the Commission.~~

~~(b)~~ (1) Such resolution must be on file with the Commission.

(c) The Commission and Senior Gaming Management shall each develop and maintain their own standard operating procedure identifying other positions and any applicable restrictions on Gaming Activity conducted at Gaming Facilities.

(1) The standard operating procedure and the list of positions must be on file with the Commission.

501.17. Allocation of Gaming Funds

501.17-1. *Net Gaming revenues* may only be used for the following purposes:

(a) *To fund* ~~Tribal~~ government operations, programs, or services ~~of the Nation;~~

(b) *To provide for the general welfare of the* ~~Tribe~~Nation and its members; provided, that per capita payments may only be made pursuant to an approved revenue allocation plan;

(c) *To promote* ~~Tribal~~ economic development ~~of the Nation;~~

(d) *To contribute to charitable organizations;*

(e) *To assist in funding operations of other local governments;*

(f) *To fund programs designed to provide education, referrals, and treatment of Gaming addiction disorders; and*

(g) ~~Any~~ For any other purpose as determined by the Oneida General Tribal Council

or the Oneida Business Committee which is not inconsistent with the Oneida Nation Constitution ~~of the Tribe~~ and IGRA.

501.18. Audits

501.18-1. Annual Audit. - An annual audit of each Gaming Operation must be conducted by an independent, certified public accounting firm according to generally accepted accounting principles. ~~Copies of the annual audit must be provided to the Oneida Business Committee, the Oneida Audit Committee, the Commission, and the NIGC by said certified public accounting firm.~~

~~(a)~~ (a) Copies of the annual audit must be provided to the Oneida Business Committee, the Nation's Audit Committee, the Commission, and the NIGC by said certified public accounting firm.

(b) All contracts for supplies, services, or concessions for the Gaming Operations in excess of twenty-five thousand dollars (\$25,000.00) are subject to audit as prescribed in this section. ~~Contracts for legal services and accounting services are exempt from this requirement of the Ordinance.~~

(1) Contracts for legal services and accounting services are exempt from this requirement.

501.18-2. Other Audits. -All audits, other than the annual audit under section 501.18-1 of this Ordinance, must be conducted pursuant to the Oneida Nation's Internal Audit Law or any other applicable law of the Tribe Nation, and other audits authorized under the Compact.

501.18-3. Request for Audits. -Any audit, except the annual audit ~~which that~~ is mandated by IGRA, may be authorized at any time by the Oneida General Tribal Council, the Oneida Business Committee or the Oneida Nation's Audit Committee.

501.19. Enforcement and Penalties

501.19-1. No individual or entity may own or operate a Gaming Facility unless specifically authorized to do so pursuant to this Ordinance.

501.19-2. Violations/Prosecutions. -Violators of this Ordinance may be subject to disciplinary action ~~and, as well as~~ civil and/or criminal prosecutions.

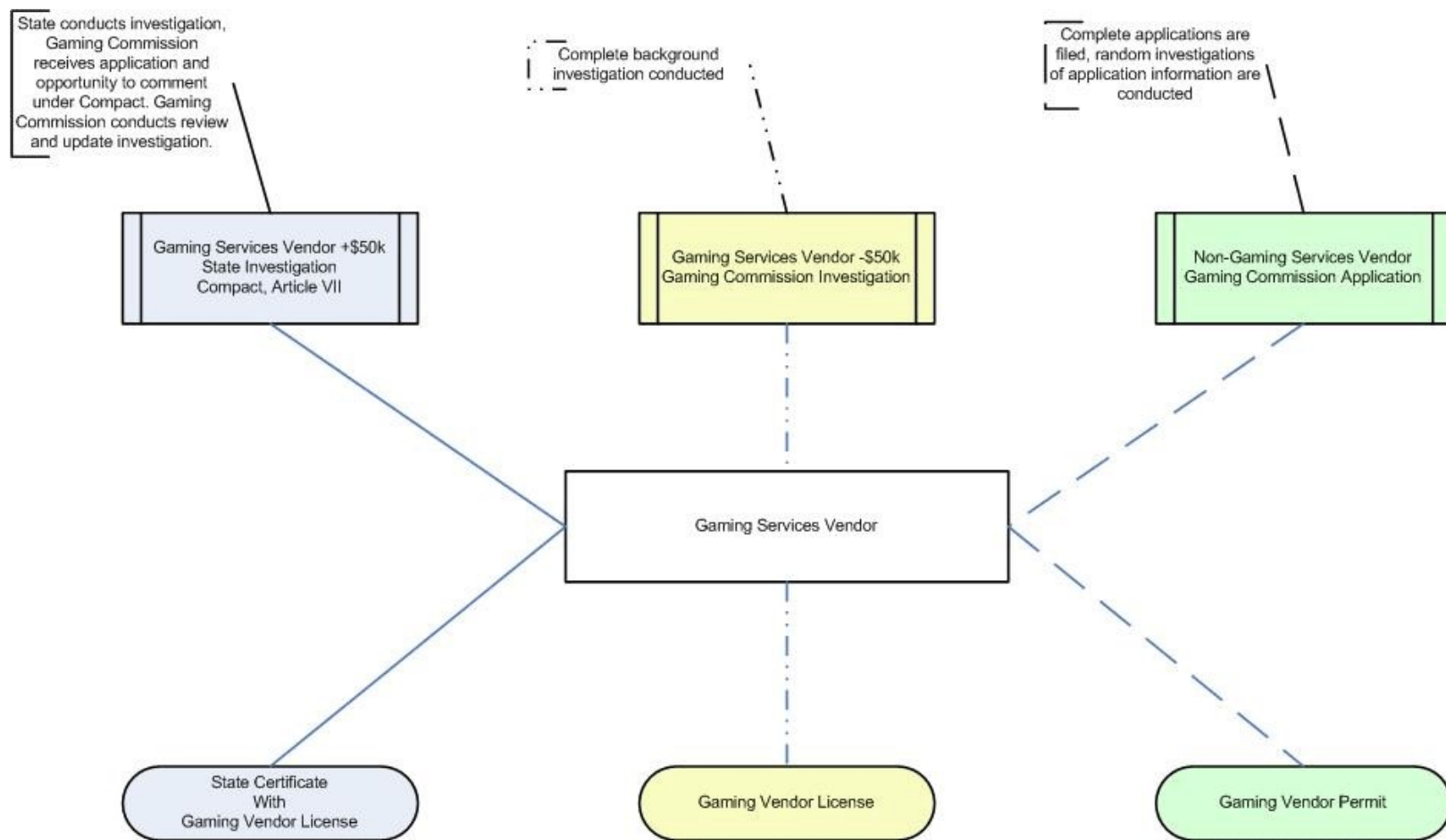
501.19-3. Remedies. - The Oneida Business Committee may authorize commencement of an action in any court of competent jurisdiction to recover losses, restitution, and forfeitures resulting from violations of this Ordinance.

End.

Adopted	GTC-7-05-04-A
Emergency Amended	BC-7-14-04-A
Amendment	BC-10-06-04-D
Emergency Amended	BC-11-03-04-A
Permanent Adoption	BC-3-23-05-C
Amended	BC-9-23-09-D
Amended	BC-06-25-14-C (effective 11 01 2014)
Emergency Amended	BC-10-08-14-C (effective 11 01 2014)
Amended	BC-09-09-15-A (effective 09 09 2015)
<u>Emergency Amended</u>	<u>BC-05-12-21-D</u>
<u>Emergency Extended</u>	<u>BC-11-10-21-A</u>
<u>Amended</u>	<u>BC- - - -</u>

Draft 1 (Redline to Last Permanent Law BC-09-09-15-A)
2022 03 16

Appendix 1. Vendor License/Permit





Legislative Operating Committee
April 20, 2022

Children's Code Amendments

Submission Date: 10/7/20	Public Meeting: N/A
LOC Sponsor: David P. Jordan	Emergency Enacted: N/A

Summary: *This item was carried over from last term. On August 25, 2020, the Oneida Law Office and Indian Child Welfare Department requested that emergency amendments be made to the Children's Code to address customary adoption. The departments were seeking that customary adoption be changed to a suspension of rights rather than a termination of rights in order to allow for the adopting family to be eligible for Adoption Assistance with the State. On August 28, 2020, the LOC considered this request and determined that it did not meet the standard for emergency amendments provided by the Legislative Procedures Act, but that the LOC would add this item to the AFL for amendments to be made via the normal legislative process.*

10/7/20 LOC: Motion by Kirby Metoxen to add the Children's Code Amendments to the Active Files List with David Jordan as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

10/13/20: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Tina Jorgenson, Jennifer Berg-Hargrove, Heather Lee, Alebra Cornelius, Peggy Schneider, Rhiannon Metoxen, Kristal Hill. This work meeting was held over Microsoft Teams. On July 22, 2020, the OBC was asked to consider amending resolution BC-07-26-17-J to permanently adopt the policy set forth by the March 20, 2020, COVID-19 Core Decision Making Team's "Suspension of Transfer of Cases in Resolution# BC-07-26-17-J, Adoption of the Children's Code and the Nation's Indian Child Welfare Act Policy" declaration. The OBC adopted a motion to accept the request as information and send to the LOC for processing. The purpose of this work meeting was to allow the ICW Department and Law Office an opportunity to provide the LOC with more information on why this change should be made on a permanent basis beyond the Public Health State of Emergency. The LOC decided to pursue this change, and directed the LRO Attorney to draft a resolution which amends the policy on the transfer of cases.

3/3/21 LOC: Motion by Jennifer Webster to deny the request for emergency amendments due to the fact that it does not meet the standard for emergency legislation provided by the Legislative Procedures Act which is that it is necessary for the immediate preservation of the public health, safety, and general welfare of the Reservation population, and move this item from a medium priority to a high priority with direction that this be worked on as expeditiously as possible; seconded by Daniel Guzman King. Motion carried unanimously.

4/12/21: *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Hon. Robert Collins, Kristina Denny, Patricia DeGrand, Rhiannon Metoxen. This work meeting was held over Microsoft Teams. The purpose of this work meeting was for the Family Court to provide a "Children's Code 101" and then for the workgroup to begin reviewing the Children's Code line-by-line and discussing potential amendments to the law.

- 4/12/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Jennifer Berg-Hargrove, Alebra Cornelius, Heather Lee, Michael Hoeft, Peggy Schneider, Lydia Witte, Kristal Hill, Rhiannon Metoxen. This work meeting was held over Microsoft Teams. The purpose of this work meeting was for the Indian Child Welfare (ICW) Department to provide a “Children’s Code 101” and then for the workgroup to begin reviewing the Children’s Code line-by-line and discussing potential amendments to the law.
- 4/26/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Hon. Robert Collins, Hon. Marcus Zielinski, Kristina Denny, Patricia DeGrand, Rhiannon Metoxen, Kristal Hill. This work meeting was held over Microsoft Teams. The purpose of this work meeting was for the workgroup to continue reviewing the Children’s Code line-by-line and discussing potential amendments to the law.
- 6/4/21:** *Work Meeting.* Present: Clorissa N. Santiago, Jennifer Berg-Hargrove, Alebra Cornelius, Heather Lee, Michael Hoeft, Peggy Schneider, Lydia Witte, Kristal Hill. This work meeting was held over Microsoft Teams. The purpose of this work meeting was to review and discuss potential amendments to the law.
- 2/16/22:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Lydia Witte. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to allow Attorney Lydia Witte to introduce herself to the LOC and provide some background on the amendments the ICW Department is requesting.
- 4/12/22:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen, Lydia Witte, Peggy Van Gheem, Jennifer Berg-Hargrove, Heather Lee, Alebra Metoxen, Michael Hoeft, Hon. Robert Collins II, Hon. Rodney Dequaine, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the initial draft of proposed amendments to the Children’s Code.

Next Steps:

- Approve the draft of the Children’s Code amendments and direct that a legislative analysis be developed.

Title 7. Children, Elders and Family - Chapter 708

~~CHILDREN'S CODE~~

Latiksaʔshúha Laotilihwa'ke

the children – their issues

CHILDREN'S CODE

708.1.	Purpose and Policy	708.26.	Revision of Dispositional Orders
708.2.	Adoption, Amendment, Repeal	708.27.	Extension of Dispositional Orders
708.3.	Definitions	708.28.	Continuation of Dispositional Orders
708.4.	Scope	708.29.	Guardianship for Certain Children in Need of Protection or Services
708.5.	Jurisdiction	708.30.	Revisions of Guardianship Order
708.6.	Nation's Child Welfare Attorney	708.31.	Termination of Guardianship
708.7.	Indian Child Welfare Department Duties and Responsibilities	708.32.	<u>Suspension or</u> Termination of Parental Rights
708.8.	Guardian ad litem	708.33.	Voluntary <u>Suspension or</u> Termination of Parental Rights
708.9.	Advocate	708.34.	Grounds for Involuntary <u>Suspension or</u> Termination of Parental Rights
708.10.	Cultural Wellness Facilitator and Healer	708.35.	Petition for <u>Suspension or</u> Termination of Parental Rights
708.11.	Order of Placement Preferences	708.36.	Initial Hearing on the <u>Suspension or</u> Termination of Parental Rights Petition
708.12.	Notice of Petition	708.37.	Fact Finding Hearing for a <u>Suspension or</u> Termination of Parental Rights
708.13.	Hearings (General)	708.38.	Department's <u>Suspension or</u> Termination of Parental Rights Report
708.14.	Discovery and Records	708.39.	Standards and Factors
708.15.	Taking a Child into Custody	708.40.	Dispositional Hearings for <u>Suspension or</u> Termination of Parental Rights
708.16.	Emergency Custody Hearing	708.41.	Adoption
708.17.	Petition for a Child in Need of Protection or Services	708.42.	Adoption Criteria and Eligibility
708.18.	Consent Decree	708.43.	Adoption Procedure
708.19.	Plea Hearing for a Child in Need of Protection or Services	708.44.	Non-Compliance with a Residual Rights Agreement
708.20.	Fact-finding Hearing for a Child in Need of Protection or Services	708.45.	Peacemaking and Mediation
708.21.	Department's Disposition Report for a Child in Need of Protection or Services	708.46.	Appeals
708.22.	Dispositional Hearing for a Child in Need of Protection or Services	708.47.	Liability
708.23.	Permanency Plans		
708.24.	Change in Placement		
708.25.	Trial Reunification		

708.1. Purpose and Policy

708.1-1. *Purpose.* The purpose of this law is to provide for the welfare, care, and protection of Oneida children through the preservation of the family unit, while recognizing that in some circumstances it may be in the child's best interest to not be reunited with his or her family. Furthermore, this law strengthens family life by assisting parents in fulfilling their responsibilities as well as facilitating the return of Oneida children to the jurisdiction of the Nation and acknowledging the customs and traditions of the Nation when raising an Oneida child.

708.1-2. *Policy.* It is the policy of the Nation to ensure there is a standard process for conducting judicial proceedings and other procedures in which children and all other interested parties are provided fair hearings in addition to ensuring their legal rights are recognized and enforced, while protecting the public safety.

708.2. Adoption, Amendment, Repeal

708.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-26-17-J₂ and amended by resolution BC- - - - .

708.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

708.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

708.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, this law repeals the following:

- (a) Resolution # BC-09-25-81 *Oneida Child Protective Board Ordinance*;
- (b) Resolution # BC-10-07-81-A *Appointing Members to the Oneida Child Protective Board*;
- (c) Resolution # BC-05-24-84-C *Definition of Extended Family Member*;
- (d) Resolution # BC-01-14-15-A *Amendment of Oneida Child Protective Board Ordinance*;
- (e) Resolution # BC-05-13-15 *Indian Child Welfare Act Policy*; and
- (f) Resolution # BC-12 -10-03-A *Oneida Child Protective Boards Stipends*.

708.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

708.3. Definitions

708.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Abuse” means any of the following:
 - (1) Physical injury inflicted on a child by other than accidental means;
 - (2) Sexual assault;
 - (3) Sexual exploitation of a child;
 - (4) Prostitution or trafficking of a child;
 - (5) Causing a child to view or listen to sexual activity or sexually explicit materials;
 - (6) Exposing a child to the manufacture, sale, or use of controlled substances; and/or
 - (7) Emotional damage for which the child’s parent, guardian, or legal custodian has neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment or take steps to address the issue.
- (b) “Advocate” means a person who is a non-attorney presented to the Court as the representative or advisor to a party.
- (c) “Alcohol and other drug abuse impairment” means a condition of a person which is exhibited by characteristics of habitual lack of self-control in the use of alcoholic beverages or controlled substances to the extent that the person’s health is substantially affected or endangered or the person’s social or economic functioning is substantially disrupted.
- (d) “Attorney” means a person trained and licensed to represent another person in Court, to prepare documents and to give advice or counsel on matters of law.
- (e) “Best interest of the child” means the interest of a child to:
 - (1) Have a full, meaningful, and loving relationship with both parents and family as much as possible;
 - (2) Be free from physical, sexual and emotional abuse;
 - (3) Be raised in conditions that foster and encourage the happiness, security, safety, welfare, physical and mental health, and emotional development of the child;
 - (4) Receive appropriate medical care;

- 63 (5) Receive appropriate education;
64 (6) Be raised in conditions which maximize the chances of the child becoming a
65 contributing member of society; and
66 (7) Be raised in an environment that is respectful of the child's race(s), culture(s),
67 and heritage(s).
- 68 (f) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding
69 holidays recognized by the Nation.
- 70 (g) "Child" means a person who is less than eighteen (18) years of age.
- 71 (h) "Clear and convincing evidence" means that a particular fact is substantially more
72 likely than not to be true.
- 73 (i) "Counsel" means an attorney or advocate presented to the Court as the representative
74 or advisor to a party.
- 75 (j) "Court" means the Oneida Nation Family Court, which is the branch of the Oneida
76 Nation Judiciary that has the designated responsibility to oversee family matters.
- 77 (k) "Court of competent jurisdiction" means a state or tribal court that has jurisdiction and
78 authority to do a certain act or hear a certain dispute.
- 79 (l) "Department" means the Oneida Nation Indian Child Welfare Department.
- 80 (m) "Disposition" means the Court's final ruling or decision on a case or legal issue.
- 81 (n) "Dispositional hearing" means a hearing for the Court to make its final determination
82 of a case or issue.
- 83 (o) "Emotional damage" means harm to a child's psychological or intellectual
84 functioning evidenced by one (1) or more of the following characteristics exhibited to a
85 severe degree:
- 86 (1) anxiety;
87 (2) depression;
88 (3) withdrawal;
89 (4) outward aggressive behavior; and/or
90 (5) a substantial and observable change in behavior, emotional response, or
91 cognition that is not within the normal range for the child's age and stage of
92 development.
- 93 (p) "Expert" means a person with special training, experience, or expertise in a field
94 beyond the knowledge of an ordinary person.
- 95 (q) "Extended family" means a person who has reached the age of eighteen (18) and who
96 is the child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece,
97 nephew, first, second, third or fourth cousin, or stepparent.
- 98 (r) "Fact-finding hearing" means a hearing for the Court to determine if the allegations in
99 a petition under this law are proved by clear and convincing evidence.
- 100 (s) "Fictive kin" means any person or persons who, to the biological parents of the child
101 at issue, have an emotional tie to that parent wherein they are like family.
- 102 (t) "Foster home" means any home which is licensed by ~~the~~ Department ~~and~~/or applicable
103 licensing agency and maintained by any individual(s) suitable for placement of children
104 when taken into custody or pending court matters.
- 105 (u) "Good cause" means adequate or substantial grounds or reason to take a certain action,
106 or to fail to take an action.

(v) “Group home” means any facility operated by a person required to be licensed by the Department and/or applicable licensing agency for the care and maintenance of five (5) to eight (8) children.

(w) “Guardian” means any person, agency or department appointed by the Court to care for and manage the child in a particular case before the Court. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.

(x) “Guardian ad litem” means a person appointed by the Court to appear at any peacemaking, mediation, or hearing and tasked with representing the best interest of the person appointed for.

(y) “Holiday” means any holiday recognized by the Nation as identified in the Nation’s laws, rules and policies governing employment.

(z) “Imminent danger” means a risk of harm or injury that will occur immediately.

~~(z)(aa)~~ (aa) “Indian Child Welfare Worker” means a person employed by the Nation in the Indian Child Welfare Department tasked with the responsibility to carry out the duties, objectives and provisions of this law ~~as codified at 25 USC 1901.~~

(bb) “Informal disposition” means a written agreement with all the parties describing the conditions and obligations that must be met to ensure the child is protected and to alleviate the condition that led to the referral to the Department. An informal disposition is utilized by the Department when the Department determines that the interest of the child does not require a formal Court intervention to provide protection and services to the child.

~~(aa)~~ (cc) “Legal custodian” means any person other than a parent or guardian to whom legal custody of a child has been granted by court order and has the rights and responsibilities for the following:

(1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;

(2) To protect, educate and discipline the child so long as it is in the child’s best interest; and

(3) To provide the child with adequate food, shelter, education, ordinary medical care and other basic needs, according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs.

~~(bb)~~ (dd) “Mediation” means a method of dispute resolution that involves a neutral third party who tries to help disputing parties reach an agreement.

~~(ee)~~ (ee) “Nation” means the Oneida Nation.

~~(dd)~~ (ff) “Neglect” means failure, refusal, or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.

~~(ee)~~ (gg) “Parent” means the biological or adoptive parent of a child.

(hh) “Parties” means the parent(s), guardian(s), and legal custodian(s) of the child who is the subject of the proceedings, the guardian ad litem if one has been appointed by the Court.

~~(ff)~~ (ii) “Peacemaking” means a method of dispute resolution that is based on traditional methods of resolving disputes and addresses the needs of rebuilding relationships between people.

~~(gg)~~(jj) “Permanency Plan” means a plan designed to ensure that a child is reunified with his or her family whenever appropriate, or that the child quickly attains a placement or home providing long-term stability.

~~(hh)~~(kk) “Physical injury” includes, but is not limited to, any of the following:

- (1) lacerations;
- (2) fractured bones;
- (3) burns;
- (4) internal injuries;
- (5) severe or frequent bruising;
- (6) bodily injury which creates a substantial risk of death;
- (7) bodily injury which causes serious permanent disfigurement;
- (8) bodily injury which causes a permanent or protracted loss or impairment of the function of any bodily member or organ; or
- (9) any other serious bodily injury.

~~(ii)~~(ll) “Plea hearing” means a hearing to determine whether any party wishes to contest a petition filed under this law.

~~(jj)~~(mm) “Probable cause” means there are sufficient facts and circumstances that would lead a reasonable person to believe that something is true.

~~(nn)~~ - “Protective plan” means immediate short-term action that protects a child from present danger threats in order to allow completion of the initial assessment and investigation and, if needed, the implementation of a safety plan.

~~(kk)~~(oo) “Reasonable effort” means an earnest and conscientious effort to take good faith steps to provide the services ordered by the Court which takes into consideration the characteristics of the parent or child, the level of cooperation of the parent and other relevant circumstances of the case.

~~(H)~~(pp) “Relative” means any person connected with a child by blood, marriage or adoption.

~~(mm)~~(qq) “Reservation” means all the land within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.

~~(nn)~~(rr) “Shelter care facility” means a non-secure place of temporary care and physical custody for children, licensed by the Department and/or applicable licensing agency.

~~(oo)~~(ss) “Social history” means the social, economic, cultural and familial aspects of a person and how those aspects affect the person’s functioning and situation in life.

~~(pp)~~(tt) “Special treatment or care” means professional services which need to be provided to a child or family to protect the well-being of the child, prevent out-of-home placement, or meet the needs of the child.

~~(qq)~~(uu) “Stepparent” means the spouse or ex-spouse of a child’s parent who is not a biological parent of the child.

~~(rr)~~(vv) “Stipulation” means a formal legal acknowledgement and agreement made between opposing parties prior to a pending hearing or trial.

~~(ss)~~(ww) “Substantial parental relationship” means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of a child.

~~(tt)~~ - “Termination of parental rights” means that, pursuant to a court order, all rights, powers, privileges, immunities, duties and obligations existing between parent and child are permanently severed.

~~(uu)~~(xx) ~~“Treatment~~“Service plan” means a plan or set of conditions ordered by the Court identifying concerns and behaviors of a parent, guardian or legal custodian that resulted in a child to be in need of protection or services, and the treatment services, goals and objectives to address and remedy the concerns and behaviors of the parent, guardian or legal custodian.

~~(vv)~~(yy) “Warrant” means an order issued by a court commanding a law enforcement officer to perform some act incident to the administration of justice.

708.4. Scope

708.4-1. This law shall apply to all child welfare cases and legal proceedings in which the Nation has jurisdiction. Nothing in this law is meant to restrict or limit another court of competent jurisdiction from hearing a matter involving an Indian child.

708.5. Jurisdiction

708.5-1. *Personal Jurisdiction.* The Court shall have personal jurisdiction over the following individuals:

(a) *Jurisdiction over an Oneida Child.* The Court shall have personal jurisdiction over any child who is present or resides within the boundaries of Brown and Outagamie County and is enrolled or eligible for enrollment in the Nation.

(b) *Jurisdiction over a Non-Oneida Child.* The Court shall have personal jurisdiction over any child not enrolled or eligible for enrollment in the Nation who is present or resides within the boundaries of the Reservation and is a sibling of a child that is enrolled or eligible for enrollment in the Nation if the child’s parent(s), guardian or legal custodian consents to the jurisdiction of the Court. Consent to the jurisdiction of the Court can be given by any of the following:

(1) The parent(s), guardian or legal custodian knowingly and voluntarily provides the Court with written consent to the jurisdiction of the Court; or

(2) The Court establishes on the record that the parent(s), guardian or legal custodian knowingly and voluntarily provides the Court with verbal consent to the jurisdiction of the Court.

708.5-2. *Jurisdiction over Children Alleged to be in Need of Protection or Services.* The Court shall have jurisdiction over a child alleged to be in need of protection or services if personal jurisdiction has been established and the child:

(a) is without a parent or guardian;

(b) has been abandoned;

(c) has a parent that relinquished custody of the child pursuant to the Nation’s laws or state law and has no other parent available to provide necessary care;

(d) has been the victim of abuse, including injury that is self-inflicted or inflicted by another;

(e) is at substantial risk of becoming the victim of abuse, including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;

(f) has a parent~~or~~, guardian, or legal custodian who signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child, and the child has no other parent available to provide necessary care;

- (g) has a guardian or legal custodian who is unable or needs assistance to care for or provide necessary special treatment or care for the child, but is unwilling or unable to sign the petition requesting jurisdiction under this subsection;
- (h) has been placed for care or adoption in violation of the Nation's laws or state law;
- (i) is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;
- (j) is at least twelve (12) years of age, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;
- (k) has a parent, guardian or legal custodian who neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;
- (l) has a parent, guardian or legal custodian who is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;
- (m) is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to improve the symptoms;
- (n) is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or
- (o) is non-compliant with the Nation's or State's immunization laws.

708.5-3. *Jurisdiction over other Matters Relating to Children.* If jurisdiction has been established under section 708.5-1 and section 708.5-2 all requirements of this law have been met the Court may:

- (a) terminate or suspend parental rights to a child;
- (b) appoint, revise, and/or remove a guardian; and
- (c) hold adoption proceedings.

708.5-4. *Transfer of Cases from other Courts.* If personal jurisdiction has been established the Court has jurisdiction over any action transferred to the Court from any court of competent jurisdiction.

- (a) While a case is being transferred to the Court from another court, any time limits established by this law shall be tolled until the next hearing on the matter before the Court.

708.5-5. *Transfer of Cases to other Courts.* The Court may transfer a case under this law to a court of competent jurisdiction where the other court has a significant interest in the child and the transfer would be in the best interest of the child.

708.5-6. Any orders made by the Court under this law, or any orders made by a court of competent jurisdiction regarding child welfare matters, shall supersede any other order made by this Court or a court of competent jurisdiction regarding custody or placement of child.

708.6. Nation's Child Welfare Attorney

708.6-1. A Child Welfare attorney shall represent the Nation in all proceedings under this law. The Child Welfare attorney shall be one of the following:

- (a) An attorney from the Oneida Law Office;
- (b) An attorney contracted by the Oneida Law Office; or
- (c) An attorney contracted by the Department.

708.7. Indian Child Welfare Department Duties and Responsibilities

708.7-1. *Indian Child Welfare Worker*. The Indian Child Welfare Worker shall carry out the duties and responsibilities set forth in this law which include, but are not limited to the following:

- (a) Receive, examine, and investigate complaints and allegations that a child is in need of protection or services for the purpose of determining the appropriate response under this law, which may include notifying law enforcement;
- (b) Receive referral information, conduct intake inquiries, and determine whether to initiate child welfare proceedings;
- (c) Determine whether a child should be held pursuant to the emergency provisions of this law;
- (d) Make appropriate referrals of cases to other agencies when appropriate, and share information with other agencies if their assistance appears to be needed or desirable;
- (e) Maintain records;
- (f) Enter into informal dispositions or protective plans with families;
- (g) Refer counseling or any other functions or services to the child and/or family as designated by the Court;
- (h) Identify and develop resources within the community that may be utilized by the Department and Court;
- (i) Make reasonable efforts to obtain necessary services for the child and family and investigate and develop resources for the child and family to utilize;
- (j) Accept legal custody of children when ordered by the Court;
- (k) Make reports and recommendations to the Court;
- (l) Make recommendations to the Nation's Child Welfare attorney;
- (m) Request transfer from state court to the Nation's court when appropriate;
- (n) Perform any other functions ordered by the Court within the limitations of the law;
- (o) Develop appropriate plans and conduct reviews;
- (p) Negotiate agreements for services, record sharing, referral, and funding for child family service records within the Department;
- (q) Provide measures and procedures for preserving the confidential nature of child and family service records within the Department;
- (r) Participate in continuing training, conferences and workshops pertinent to child welfare issues;
- (s) Explain the court proceedings to the child in language and terms appropriate to the child's age and maturity level when a guardian ad litem is not appointed for a child; and
- (t) Maintain a knowledge and understanding of all relevant laws and regulations.

708.7-2. *Department*. In performing the duties set forth in this law, the Department shall:

- (a) Identify and refer parties to resources in the community calculated to resolve the problems presented in petitions filed in Court, such as the various psychiatric,

psychological, therapeutic, counseling, and other social services available within and outside the Nation when necessary;

(b) Identify and refer parties to resources in the community designed to enhance the child's potential as a member of the Nation;

(c) Investigate, inspect, and license foster homes, and monitor and supervise foster homes and children in foster care;

(d) Adhere to the placement preference order stated in section 708.10; ~~and 11;~~

(e) Enter into memorandums of understanding ~~and/or~~ agreement with the Oneida Trust Enrollment Committee ~~and/or~~ Department, Oneida Police Department, Oneida Nation Child Support Agency and any other appropriate department in order to carry out the provisions of this law; ~~and~~

(f) Share information with other social service ~~and agencies,~~ law enforcement agencies, and other entities of the Nation as it pertains to children under the jurisdiction of this law.

708.8. Guardian ad litem

708.8-1. *Appointment.* The appointment of a guardian ad litem shall be as follows:

(a) The Court may appoint a guardian ad litem for any child who is the subject of a child in need of protection or services proceeding;

(b) The Court shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate ~~or suspend~~ parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding, and for a child who is the subject of a contested guardianship proceeding;

(c) The Court shall appoint a guardian ad litem for a minor parent petitioning for the voluntary termination of their parental rights; and

(d) A guardian ad litem may be appointed for any other circumstance the Court deems necessary.

708.8-2. *Qualifications.*

(a) A guardian ad litem shall be an adult who:

(1) is at least twenty one (21) years of age;

(2) is currently certified as a guardian ad litem and in good standing;

(3) has never been convicted of a felony unless the person received a pardon or forgiveness; and

(4) has never been convicted of any crime against a child.

(b) No person shall be appointed guardian ad litem in that proceeding who:

(1) has a personal interest in the outcome of the case, a party to the proceeding, or any other interest that has the potential to corrupt a person's motivation or decision making, because of an actual or potential divergence between the person's self-interests, and the best interests of the case;

(2) appears as counsel or an advocate in the proceeding on behalf of any party; or

(3) is related to a party of the proceeding, the Judge for the proceeding, or an appointing Judge by blood, marriage, adoption or related by a social tie that could be reasonably interpreted as a conflict of interest.

(c) A guardian ad litem may be recognized as certified by the Court if he or she:

(1) has completed guardian ad litem training provided by the Court, another Indian tribe, or a state; or

(2) is recognized as a certified guardian ad litem by another jurisdiction.

708.8-3. *Responsibilities.* The guardian ad litem has none of the rights or duties of a general guardian. The guardian ad litem shall:

- (a) investigate and review all relevant information, records and documents, as well as interview the child, parent(s), social workers, ~~teachers~~ and all other relevant persons to gather facts when appropriate;
- (b) consider the importance of the child's culture, heritage and traditions;
- (c) consider, but shall not be bound by, the wishes of the child or the positions of others as to the best interests of the child;
- (d) explain the role of the guardian ad litem and the court proceedings to the child in language and terms appropriate to the child's age and maturity level;
- (e) provide a written or oral report to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based;
- (f) recommend evaluations, assessments, services and treatment of the child and the child's family when appropriate;
- (g) inform the court of any concerns or possible issues ~~regard~~regarding the child or the child's family;
- (h) represent the best interests of the child;
- (i) perform other duties as directed by the Court; and
- (j) comply with all laws, policies and rules of the Nation governing the conduct of a guardian ad litem.

708.8-4. *Compensation.* The guardian ad litem shall be compensated at a rate that the Court determines is reasonable. The Court shall compensate the guardian ad litem for his or her fees. The parties shall reimburse the Court for the guardian ad litem fees. The Court may apportion the amount of reimbursement each party shall pay based on the ability to pay or assess the cost equally between the parties. The Court may determine an appropriate time frame for the reimbursement to occur. The Court may waive the guardian ad litem expense if the cost of the guardian ad litem will impose an immediate and substantial hardship on the parties.

708.9. Advocate

708.9-1. The parent, guardian and legal custodian of a child has the right to obtain an advocate to represent and advise him or her throughout any proceeding under this law at his or her own expense.

708.9-2. *Qualifications.*

- (a) An advocate shall be an adult who:
 - (1) is at least twenty one (21) years of age;
 - (2) is admitted to practice before the Oneida Judiciary;
 - (2) has never been convicted of a felony unless the person received a pardon or forgiveness; and
 - (3) has never been convicted of any crime against a child.

708.9-3. An advocate shall comply with all laws, rules and policies of the Nation governing advocates.

708.10 Cultural Wellness Facilitator and Healer

708.10-1. The Department may utilize a Cultural Wellness Facilitator and Healer, or similar position, throughout all child welfare proceedings.

708.10-2. The Cultural Wellness Facilitator and Healer may provide:

- (a) wellness sessions utilizing culturally based and appropriate healing methods;
- (b) training on Oneida culture, language and traditions; and
- (c) ~~and~~ any other service that may be necessary.

708.11. Order of Placement Preferences

708.11-1. The following order of placement preferences shall be followed when it is necessary to place a child outside of the home under this law:

- (a) A member of the child's immediate or extended family;
- (b) A family clan member;
- (c) A member of the Nation;
- (d) Descendants of the Nation;
- (e) A member of another federally recognized tribe;
- (f) Fictive kin within the Nation community;
- (g) Fictive kin outside the Nation community; or
- (h) Any other person or persons not listed above.

708.11-2. The order of placement preferences listed in section 708.11-1. are prioritized from the most preference given to a child placed in a home in accordance with section 708.11-1(a) and the least amount of preference given to a child placed in a home in accordance with section 708.11-1(h).

708.11-3. In order to deviate from the placement preferences listed in section 708.11-1, the Court shall consider the best interest of the child when determining whether there is good cause to go outside the placement preference.

- (a) Good cause to go outside the placement preferences shall be determined based on any of the following:

- (1) When appropriate, the request from the child's parent or the child, when the child is age twelve (12) or older;
- (2) Any extraordinary physical, mental or emotional health needs of the child requiring highly specialized treatment services as established by an expert;
- (3) The unavailability of a suitable placement after diligent efforts have been made to place the child in the placement preference listed in section 708.11-1; or
- (4) Any other reason deemed by the Court to be in the best interest of the child.

- (b) The party requesting to deviate from the placement preferences listed in 708.11-1 has the burden of establishing good cause.

708.12. ~~Notice of Petition;~~ **General Terms**

708.12-1. ~~Petitions alleging that a child is in need~~ **Service** of ~~protection or services may be given to the parties directly by the Nation's Child Welfare attorney or the Indian Child Welfare Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.~~

~~documents~~ **708.12-2. Petitions for termination of parental rights, guardianship, and adoption notices shall be as specified in this law. If a method of service is not specified in this law, then service** shall be ~~served on all other parties pursuant to the Oneida Judiciary Rules of Civil Procedure.~~

~~708.12-3. All parties shall be notified of all subsequent hearings under this law~~ by first-class mail to the recently verified last-known address of the party. **If a party's whereabouts are unknown and cannot be found after diligent effort, service shall be by publication as described in the Oneida Judiciary Rules of Civil Procedure.**

473 708.12-2. The Court shall provide the parties with notice of all hearings at least seven (7) days
474 prior to the hearing, with the purpose of providing the parties an opportunity to be heard.

475 (a) Exception. In circumstances where a hearing is required by law to be scheduled in less
476 than seven (7) days, the Court shall make an appropriate effort to notice all parties of the
477 hearing.

478 708.12-3. When the Department is required to perform personal service, the Indian Child Welfare
479 Worker may deliver the document(s) directly to the party(s) if such service is appropriate and safe
480 under the circumstances. In the alternative, personal service may be accomplished according to the
481 Oneida Judiciary Rules of Civil Procedure.

482 483 **708.13. Hearings (General)**

484 708.13-1. If the Court finds that it is in the best interest of the child, the Court may exclude the
485 child from participating in a hearing conducted in accordance with this law.

486 708.13-2. The Oneida Judiciary Rules of Evidence are not binding at emergency custody hearings,
487 dispositional hearings, or a hearing about changes in placement, revision of dispositional orders,
488 extension of dispositional orders, or termination of guardianship orders. At those hearings, the
489 Court shall admit all testimony having reasonable probative value, but shall exclude immaterial,
490 irrelevant, or unduly repetitious testimony. Hearsay evidence may be admitted if it has
491 demonstrable circumstantial guarantees of trustworthiness. The Court shall give effect to the rules
492 of privilege recognized by laws of the Nation. The Court shall apply the basic principles of
493 relevancy, materiality, and probative value to proof of all questions of fact.

494 708.13-3. If an alleged father appears at a hearing under this law, the Court may order the
495 Department to refer the matter to the Oneida Nation Child Support Agency to adjudicate paternity.
496 The Court may also order that the Department is able to sign documents on behalf of the child for
497 the purpose of a paternity action. While paternity is being established, the Court shall enter an
498 order finding good cause to suspend the time limits established under this law.

499 708.13-4. At any time, the Court or the Department may refer the matter to the Nation's Child
500 Support Agency.

501 502 **708.14. Discovery and Records**

503 708.14-1. Upon written request, the parties and their counsel shall have the right to inspect, copy
504 or photograph social, psychiatric, psychological, medical, and school reports, and records
505 concerning the child including reports of preliminary inquiries, predisposition studies and
506 supervision records relating to the child which are in the possession of the Nation's Child Welfare
507 attorney or the Department that pertain to any case under this law.

508 708.14-2. If a request for discovery is refused, the person may submit an application to the Court
509 requesting an order granting discovery. Motions for discovery shall certify that a request for
510 discovery has been made and refused.

511 708.14-3. If the discovery violates a privileged communication or a work product rule, the Court
512 may deny, in whole or part, otherwise limit or set conditions on the discovery authorized.

513 708.14-4. The identity of the individual that initiated the investigation by contacting the
514 Department, shall be redacted in all documents that are made available to the parties.

515 708.14-5. In addition to the discovery procedures permitted under this law, the discovery
516 procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all
517 proceedings under this law.

708.14-6. The Department may make an ex parte request to the Court to prevent the release of records regarding the child if the Department believes the release of the records may result in a risk of harm to the child. The Court shall then review the records in camera in order to decide whether to order the records released.

708.15. Taking a Child into Custody

708.15-1. *Grounds for Taking a Child into Custody.* A child may be taken into custody without a Court order by an Indian Child Welfare Worker or law enforcement officer if there are reasonable grounds to believe:

- (a) A warrant for the child's apprehension has been issued by the Court or another court of competent jurisdiction to take the child into custody;
- (b) The child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary; and/or
- (c) The child has violated the conditions of an order issued pursuant to this law.

708.15-2. The Court may enter an order directing that a child be taken into custody upon a showing satisfactory to the judge that the welfare of the child demands that the child be immediately removed from his or her present custody.

708.15-3. A person taking the child into custody, under this section, shall immediately attempt to notify the parent(s), guardian(s), and legal custodian(s) of the child by the most practical means. Attempts to satisfy notification shall continue until either the parent(s), guardian(s), and legal custodian(s) of the child is notified, or the child is delivered to an Indian Child Welfare Worker, whichever occurs first. If the child is delivered to the Indian Child Welfare Worker before the parent(s), guardian(s), and legal custodian(s) is notified, the Indian Child Welfare Worker, or another person at his or her direction, shall continue the attempt to notify until the parent(s), guardian(s), and legal custodian(s) of the child is notified.

708.15-4. Once the child is taken into custody and turned over to the care of the Department, the Department shall make every effort to release the child immediately to the child's parent(s), guardian(s), and legal custodian(s), so long as it is in the child's best interest and the parent(s), guardian(s), and legal custodian(s) is willing to receive the child.

708.15-5. *Probable Cause for Taking a Child into Custody.* A child may be held in custody if the Indian Child Welfare Worker determines the child is within the jurisdiction of the Court and probable cause exists to believe any of the following if the child is not held in custody:

- (a) The child will cause injury to himself or herself or be subject to injury by others;
- (b) The child will be subject to injury by others, based on a determination that if another child in the home is not held that child will be subject to injury by others;
- (c) The parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care, and that services to ensure the child's safety and well-being are not available or would be inadequate;
- (d) The child meets the criteria for probable cause for taking a child into custody specified in section 708.15-5(c), based on a determination that another child in the home meets any of the criteria; or
- (e) The child will run away or be taken away so as to be unavailable for proceedings of the Court.

708.15-6. *Holding a Child in Custody.* A child held in custody may be held in any of the following places as long as the places are in the child's best interest and all people residing or regularly visiting the premises have cleared a background check:

(a) The home of a relative, except that a child may not be held in the home of a relative that has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child, or any crime against a child, and the conviction has not been pardoned, forgiven, reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. ~~The person making the custody decision shall consider the wishes of the child in making that determination;~~

(b) A licensed foster home;

(c) A licensed group home;

(d) A non-secure facility operated by a licensed child welfare agency;

(e) A licensed private or public shelter care facility; ~~or~~

(f) A hospital or other medical or mental health facility; or

~~(g)~~ (g) The home of a person not a relative, if the placement does not exceed thirty (30) days, though the placement may be extended for up to an additional thirty (30) days by the Indian Child Welfare Worker, and if the person has not had a child care license refused, revoked, or suspended within the last two (2) years.

708.15-7. When holding a child in custody for emergency placement the use of the preferences for placement stated in section 708.10-1 are preferred, but not mandatory. If the preferences for placement are not followed, the Department shall try to transition that child into a home that fits the order of preferences for placement as quickly as deemed appropriate by the Department.

708.15-8. If a child is held in custody, the Indian Child Welfare Worker shall notify the child's parent(s), guardian(s), and legal custodian(s) of the reasons for holding the child and of the child's whereabouts except when the Indian Child Welfare Worker believes that notice would present imminent danger to the child. If the parent, guardian, or legal custodian is not immediately available, the Indian Child Welfare Worker or another person designated by the worker shall provide notice as soon as possible.

708.15-9. The Indian Child Welfare Worker shall also notify the parent, guardian, and legal custodian of the following:

(a) the date, time and place of the emergency custody hearing;

(b) the nature and possible outcomes of the hearing;

(c) the right to present and cross-examine witnesses; and

(d) the right to retain counsel at his or her own expense.

708.15-10. When the child is age twelve (12) or older, the Indian Child Welfare Worker shall notify the child of the date, time, and place and the nature and possible outcomes of the emergency custody hearing.

708.16. Emergency Custody Hearing

708.16-1. If a child who has been taken into custody under section 708.15-5 is not released, a hearing to determine whether the child shall continue to be held in custody under the criteria of probable cause for taking a child into custody under section 708.15-5(a)-(e) shall be conducted by ~~the~~ Court as soon as possible but no later than seventy-two (72) hours ~~after~~ the time the decision to hold the child was made, excluding Saturdays, Sundays, and holidays. By the time of the hearing, a petition for a child in need of protection or services under section 708.17 shall be filed

unless the Department seeks and receives an extension pursuant to section 708.16-2. -The child shall be released from custody if a hearing is not held within the specified timelines.

708.16-2. If no petition has been filed by the time of the hearing, a child may be held in custody with approval of the Court for an additional seventy-two (72) hours from the time of the hearing, excluding Saturdays, Sundays, and holidays, only if, as a result of the facts brought forth at the hearing, the Court determines that probable cause exists to believe any of the following:

- (a) That additional time is required to determine whether the filing of a petition initiating proceedings under this law is necessary;
- (b) That the child is an imminent danger to himself or herself or to others; or
- (c) The parent, guardian, and legal custodian of the child or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care.

708.16-3. The Court may grant a one-time extension under section 708.16-2 for a petition. In the event a petition is not filed within the extension period, the Court shall order the child's immediate release from custody. For any parties not present at the hearing, the Department shall serve the petition on those parties by certified mail, return receipt requested.

~~708.16-4. Prior to the start of the hearing, the Court shall provide a copy of the petition to the parent, guardian, and legal custodian if present, and to the child if he or she is twelve (12) years of age or older.~~

~~708.16-5.~~708.16-4. Prior to the start of the hearing, the Court shall inform the parent, guardian, or legal custodian of the following:

- (a) allegations that have been made or may be made;
- (b) the nature and possible outcomes of the hearing and possible future hearings;
- (c) the right to present and cross-examine witnesses; and
- (d) the right to retain counsel at his or her own expense.

708.16-~~6~~5. If present at the hearing, the Court may permit the parent to provide the names and other identifying information of three (3) relatives of the child or other individuals eighteen (18) years of age or older whose homes the parent wishes the Court to consider as placements for the child. If the parent does not provide this information at the hearing, the Department shall permit the parent to provide the information at a later date.

708.16-~~7~~6. All orders to hold a child in custody shall be in writing ~~and shall include all of the following:~~

(a) All orders to hold a child in custody shall include all of the following:

- ~~(a)~~ (1) A finding that continued placement of the child in his or her home would be contrary to the best interests of the child;
- ~~(b)~~ (2) A finding that the Department and/or anyone else providing services to the child had reasonable grounds to remove the child from the home based on the child's best interest;
- ~~(c)~~ (3) A finding that the Department- has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best ~~interest~~interests are the paramount concerns;
- ~~(d)~~ (4) The Department made reasonable efforts to make it possible for the child to return safely home; and
- ~~(e)~~ (5) If the child has one (1) or more siblings, who have also been removed from the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that a joint placement would be contrary to the safety

or well-being of the child or any of those siblings, in which case the Court shall order the Department make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the safety or well-being of the child or any of those siblings.

(b) An order to hold a child in custody may include the following:

(1) an award of legal custody of the child and the ability to make medical decisions on behalf of the child to the Department.

708.16-~~8~~7. An order to hold a child in custody remains in effect until a dispositional order is granted, the petition is withdrawn or dismissed, or the order is modified or terminated by further order of the Court.

708.16-~~9~~8. An order to hold a child in custody may be re-heard upon motion of any party if, in the Court's discretion, good cause is found, whether or not counsel was present.

708.17. Petition for a Child in Need of Protection or Services

708.17-1. The Nation's Child Welfare attorney or the Department shall initiate proceedings under this section by filing a petition with the Court, signed by a person who has knowledge of the facts alleged or is informed of them and believes them to be true. Upon filing with the Court, the Department shall provide a copy of the petition to the parties by personal service or, if personal service is not possible, by certified mail with return receipt requested.

708.17-2. The petition shall include the following:

(a) The name, birth date, address, and tribal affiliation of the child;

(b) The names, birth dates, addresses, and tribal affiliation of the child's parent, guardian, legal custodian or spouse, if any; or if no such person can be identified, the name and address of the nearest relative;

(c) Whether the child is in custody, and, if so, the place where the child is being held and the date and time he or she was taken into custody unless there is reasonable cause to believe that such disclosure would result in imminent danger to the child or legal custodian;

(d) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit;

(e) A plain and concise statement of facts upon which the allegations are based, including the dates, times, and location at which the alleged acts occurred. If the child is being held in custody outside his or her home, the statement shall include information showing that continued placement of the child in the home would be contrary to the welfare of the child and the efforts that were made to prevent the removal of the child, while assuring that the child's health, welfare, and safety are the paramount concerns; and

(f) Any other information as deemed necessary by the Court.

708.17-3. The petition shall state if any of the facts required for a petition are not known or cannot be ascertained by the petitioner.

708.17-4. A petition may be amended at any time at the discretion of the Court. ~~An~~ Upon filing with the Court, the Department shall provide a copy of the amended petition ~~may be given~~ to the parties ~~directly by the Nation's Child Welfare attorney or the Indian Child Welfare Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure~~ certified mail with return receipt requested.

708.18. Consent Decree

708.18-1. *Consent Decree.* At any time after the filing of a petition pursuant to section 708.17 and before the entry of judgment, the Court may suspend the proceedings and place the child under supervision in the home or present placement of the child. The Court may establish terms and conditions applicable to the child and the child's parent, guardian or legal custodian. The order under this section shall be known as a consent decree and must be agreed to by the child who is twelve (12) years of age or older, the parent, guardian or legal custodian, and the person filing the petition. The consent decree shall be reduced to writing and given to the parties.

708.18-2. *Requirements of a Consent Decree.* If at the time the consent decree is entered into the child is placed outside the home and if the consent decree maintains the child in that placement, the consent decree shall include all of the following:

- (a) A finding that placement of the child in his or her home would be contrary to the welfare of the child;
- (b) A finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety and best interests are the paramount concerns;
- (c) If a permanency plan has previously been prepared for the child, a finding as to whether the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan; and
- (d) If the child has one or more siblings who have also been removed from the home, the consent decree shall include a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that the placement of the siblings together would be contrary to the safety, well-being and best interests of the child or any of those siblings, in which case the Court shall order the department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the safety, well-being or best interests of the child or any of those siblings.

708.18-3. *Time Limits of Consent Decree.* A consent decree shall remain in effect up to six (6) months unless the child, parent, guardian, or legal custodian is discharged sooner by the Court. The time limits under this law shall be tolled during the pendency of the consent decree.

708.18-4. *Extension of a Consent Decree.* Upon the motion of the Court or the request of the child, parent, guardian, legal custodian, child's guardian ad litem, or the Department, the Court may, after giving notice to the parties to the consent decree, extend the decree for up to an additional six (6) months in the absence of objection to the extension by the parties to the initial consent decree. If the child, parent, guardian, legal custodian, or child's guardian ad litem objects to the extension, the Court shall schedule a hearing and make a determination on the issue of extension.

708.18-5. If, prior to discharge by the Court, or the expiration of the consent decree, the Court finds after conducting a hearing that the child, parent, guardian, or legal custodian has failed to fulfill the express terms and conditions of the consent decree, the hearing under which the child was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

708.19. Plea Hearing for a Child in Need of Protection or Services

708.19-1. A plea hearing shall take place on a date which allows reasonable time for the parties to prepare but is within forty-five (45) days after the filing of a petition, unless the Court enters an order finding good cause to go outside of the time limits.

708.19-2. If a petition is not contested, the Court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is within forty-five (45) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits. If all the parties agree and the Department has submitted a court report pursuant to section 708.21, the Court may proceed immediately with the dispositional hearing.

708.19-3. If the petition is contested, the Court shall set a date for the fact-finding hearing which allows reasonable time for the parties to prepare but is within sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

708.19-4. Before accepting an admission or plea of no contest of the alleged facts in a petition, the Court shall:

(a) Address the parties present and determine that the plea of no contest or admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes;

(b) Establish whether any promises or threats were made to elicit the plea of no contest or admission; and

(c) Make inquiries that establish a factual basis for the plea of no contest or admission.

708.19-5. At the plea hearing the Department may request placement of the child outside of the child's home in accordance with the placement preferences in section 708.11-1, if notice of the Department's intent to seek out of home placement of the child was provided to the parties. In the request for placement of the child outside of the child's home the Department shall present as evidence specific information showing all of the following:

(a) That continued placement of the child in his or her home would be contrary to the best interests of the child;

(b) That the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;

(c) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, that the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the Department shall present as evidence specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and

(d) If a recommendation is made that the child and his or her siblings not be placed together, that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the Department shall present as evidence specific information showing that such visitation or interaction would be contrary to the best interests of the child or any of those siblings.

708.19-6. If the Court orders the out of home placement of the child, the order shall be in writing and shall contain:

(a) Where the child will be placed;

(1) If the Court finds that disclosing identifying information related to placement of the child would result in imminent danger to the child or anyone else, the Court may order the name and address of whom the child is placed with withheld from the parent or guardian.

(b) A finding that continued placement of the child in his or her home would be contrary to the welfare of the child;

(c) If the child is placed outside the home under the supervision of the Department, an order ordering the child into the placement and care responsibility of the Department and assigning the Department primary responsibility for providing services to the child and family;

(d) If the child is placed outside the home has one (1) or more siblings who have also been placed outside the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that placement of the children together would be contrary to the best interests of the child or any of those siblings, in which case the Court shall order the Department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the best interests of the child or any of those siblings.

708.20. Fact finding Hearing for a Child in Need of Protection or Services

708.20-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that the child is in need of protection or services.

708.20-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.20-3. At the close of the fact-finding hearing, the Court shall set a date for the dispositional hearing which allows a reasonable time for the parties to prepare but is no more than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits. If all the parties agree and the Department has submitted court report pursuant to section 708.21, the Court may proceed immediately with the dispositional hearing.

708.21. Department's Disposition Report for a Child in Need of Protection or Services

708.21-1. Before the dispositional hearing, the Department shall submit a written report to the Court, with a copy provided to the parties by first-class mail at least seven (7) days prior to the hearing, which shall contain all of the following:

(a) The social history of the child and family;

(b) A strategic plan for the care of and assistance to the child and family calculated to resolve the concerns presented in the petition;

(c) A detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child and family under the proposed plan; and

(d) If an out-of-home placement is being recommended, specific reasons for recommending that placement.

708.21-2. If the Department is recommending out-of-home placement, the written report shall include all of the following:

(a) The location of the placement and where it fits within the placement preferences.

(b) A recommendation as to whether the Court should establish a child support obligation for the parents;

(c) Specific information showing that continued placement of the child in his or her home would be contrary to the best interests of the child and specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;

(d) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, specific information showing that Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the report shall include specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and

(e) If a recommendation is made that the child and his or her siblings not be placed together specific information showing that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the report shall include specific information showing that such visitation or interaction would be contrary to best interests of the child or any of those siblings;

708.21-3. The Department may ~~request the Court to~~ withhold ~~the placement provider's~~ identifying information from the child's parent, guardian or legal custodian in the dispositional report if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else.

708.22. Dispositional Hearing for a Child in Need of Protection or Services

708.22-1. At a dispositional hearing, any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations.

708.22-2. During a dispositional hearing, if the Department is recommending placement of the child outside of the child's home in accordance with the placement preferences in section 708.11-1, the Department shall present as evidence specific information showing all of the following:

(a) That continued placement of the child in his or her home would be contrary to the best interests of the child;

(b) That the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;

(c) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, that the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the Department shall present as evidence specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and

(d) If a recommendation is made that the child and his or her siblings not be placed together, that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the Department shall

present as evidence specific information showing that such visitation or interaction would be contrary to the best interests of the child or any of those siblings.

708.22-3. The Court's dispositional order shall employ those means necessary to maintain and protect the best interests of the child which are the least restrictive of the rights of the parent and child and which assure the care, treatment or rehabilitation of the child and the family consistent with the protection of the public. When appropriate, and, in cases of child abuse or neglect when it is consistent with the best interest of the child in terms of physical safety and physical health, the family unit shall be preserved and there shall be a policy of transferring custody of a child from the parent only when there is no less drastic alternative. If there is no less drastic alternative for a child than transferring custody from the parent, the Court shall consider transferring custody pursuant to the preferences for placement set forth in section 708.11-1.

708.22-4. *Dispositional Orders*. The Court's dispositional order shall be in writing and shall contain:

(a) The ~~treatment~~service plan and specific services to be provided to the child and family, and if custody of the child is to be transferred to effect the ~~treatment~~service plan, the identity of the legal custodian;

(b) If the child is placed outside the home, where the child will be placed. If the Court finds that disclosing identifying information related to placement of the child would result in imminent danger to the child or anyone else, the Court may order the name and address of whom the child is placed with withheld from the parent or guardian;

(c) The date of the expiration of the court's order;

(1) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child in his or her home shall terminate one (1) year after the date on which the order is granted unless the Court specifies a shorter period of time or the Court terminates the order sooner.

(2) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child outside of the home shall terminate on the latest of the following dates, unless the Court specifies a shorter period or the Court terminates the order sooner:

(A) The date on which the child attains eighteen (18) years of age;

(B) The date that is one (1) year after the date on which the order is granted; and

(C) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age.

(d) If the child is placed outside the home, a finding that continued placement of the child in his or her home would be contrary to the welfare of the child and a finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns. The Court shall make the findings specified in this ~~subdivision~~subsection on a case-by-case basis based on circumstances specific to the child;

(e) If the child is placed outside the home under the supervision of the Department, an order ordering the child into the placement and care responsibility of the Department and

assigning the Department primary responsibility for providing services to the child and family;

(f) If the child is placed outside the home and if the child has one (1) or more siblings who have also been placed outside the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that placement of the children together would be contrary to the best interests of the child or any of those siblings, in which case the Court shall order the Department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the best interests of the child or any of those siblings;

(g) A statement of the conditions with which the parties are required to comply; and

(h) If the Court finds that it would be in the best interest of the child, the Court may set reasonable rules of parental visitation.

(1) If the Court denies a parent visitation, the Court shall enter conditions that shall be met by the parent in order for the parent to be granted visitation.

708.22-5. ~~Treatment Plans~~Service plans and Conditions. In a proceeding in which a child has been found to be in need of protection or services, the Court may order the child's parent, guardian and legal custodian to comply with any conditions and/or ~~treatment~~service plan determined by the Court to be necessary for the child's welfare.

(a) The ~~treatment~~service plan or conditions ordered by the Court shall contain the following information:

(1) The identification of the problems or conditions that resulted in the abuse or neglect of a child;

(2) The treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the ~~treatment~~service plan must include, but is not limited to, the conditions or requirements that must be established for the safe return of the child to the family;

(3) The specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the ~~treatment~~service plan, including the Department's specific responsibilities to make reasonable efforts to assist the parent, guardian or legal custodian in their efforts toward reunification with the child; and

(4) A notice that completion of a ~~treatment~~service plan does not guarantee the return of a child and that completion of a ~~treatment~~service plan without a change in behavior that caused removal in the first instance may result in the child remaining outside the home.

(b) A ~~treatment~~service plan may include recommendations and the dispositional order may require the child's parent, guardian and legal custodian to participate in:

(1) Outpatient mental health treatment;

(2) Substance abuse treatment;

(3) Anger management;

(4) Individual or family counseling;

(5) Parent training and education;

(6) Cultural wellness treatment and training; and/or

(7) Any other treatment as deemed appropriate by the Court.

708.22-6. If the Court finds that the parent was convicted of committing a crime against the life and bodily security of a child or a crime against a child, contained within Chapters 940 and 948 of the Wisconsin Statutes or another similar law in another jurisdiction, the Court may find that the Department is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

708.22-7. The Court shall provide a copy of the dispositional order to the child's parent, guardian, and legal custodian, and other parties to the action, ~~and the child if the child is age twelve (12) or older.~~

708.22-8. Whenever the Court orders a child to be placed outside his or her home or denies a parent visitation because the child is in need of protection or services, the Court shall orally inform the parent who appears in Court of any grounds for termination of parental rights which may be applicable and of the conditions necessary for the child to be returned to the home or for the parent to be granted visitation. The Court shall also include this information in the written dispositional order provided to the parent.

708.23. Permanency Plans

708.23-1. The Department shall prepare a written permanency plan anytime a child is placed outside the home pursuant to dispositional order that finds the child is in need of protection or services. ~~The permanency plan shall include all of the following:~~

(a) The permanency plan shall include all of the following:

(1) The name, birth date, address, and tribal affiliation of the child;

(~~b~~2) The names, birth dates, addresses, and tribal affiliation of the child's parent(s), guardian(s), and legal custodian(s);

(~~c~~3) The date on which the child was removed from the home;

(~~d~~4) A statement as to the availability of a safe and appropriate placement with an extended family member;

(~~e~~5) The goal(s) of the permanency plan which may include one or more of the following: reunification, adoption, guardianship, placement with a fit and willing relative, or long-term foster care;

(~~f~~6) Date by which it is likely the goal(s) of the permanency plan will likely be achieved;

(~~g~~7) A description of the services offered and any services provided in an effort to prevent removal of the child from the home or to return the child to the home, while assuring that the best interests of the child are the paramount concerns;

(~~h~~8) If the child has one (1) or more siblings who have been removed from the home, a description of the efforts made to place the child in a placement that enables the sibling group to remain together. If a decision is made to not place the siblings together, a description of the efforts made to provide for frequent and ongoing visitation or other ongoing interaction between the child and siblings;

(~~i~~9) Information about the child's education; and

(~~j~~10) Any other appropriate information as deemed necessary by the Court or the Department.

(b) The Department may withhold the placement provider's identifying information from the child's parent, guardian or legal custodian in the permanency plan if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else.

708.23-2. The Department shall file the initial permanency plan with the Court within sixty (60) days after the date the child was first removed from the home unless the child is returned to the home within that time period.

708.23-3. The Court shall hold a hearing to review the permanency plan no later than six (6) months after the date on which the child was first removed from the home and every six months thereafter for as long as the child is placed outside the home and is found to be in need of protection or services.

(a) At least ~~five (5) business~~seven (7) days before the date of the hearing, the Department shall ~~provide a copy of~~file the updated permanency plan ~~to~~with the Court and provide a copy to the parties by first-class mail.

(b) All parties, including foster parent(s) shall have a right to be heard at the permanency plan hearing. Any party may submit written comments to the Court no less than three (3) business days prior to the hearing date.

708.23-4. After the hearing, the Court shall enter a written order addressing the following:

(a) The continuing necessity for and the safety and appropriateness of the placement;

(b) The compliance with the permanency plan by the Department and any other service providers, the child's parent(s), and the child;

(c) Efforts taken to involve appropriate service providers and Department staff in meeting the special needs of the child and the child's parent(s);

(d) The progress toward eliminating the causes for the child's placement outside the home and returning the child safely to the home or obtaining a permanent placement for the child;

(e) The date by which it is likely that the child will be returned to the home or placed for adoption, with a guardian, with a fit and willing relative, or in some other permanent living arrangement;

(f) Whether reasonable efforts were made by the Department to achieve the permanency plan goal(s);

(g) Whether reasonable efforts were made by the Department to place the child in a placement that enables the sibling group to remain together or have frequent visitation or other ongoing interaction; and

(h) The date of the next review hearing, if appropriate.

708.24. Change in Placement

708.24-1. The Department, the Nation's Child Welfare attorney, or a party to the dispositional order may request a change in the placement of the child who is the subject of the dispositional order by filing a motion with the Court. The Court may also propose a change in placement on its own motion.

708.24-2. The request for a change in placement shall contain the name and address of the new placement requested and shall state what new information is available that affects the advisability of the current placement.

708.24-3. If the proposed change in placement moves the child outside of his or her home, the request shall contain specific information showing that continued placement of the child in the home would be contrary to the best interests of the child and if the Department is making the request, specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns.

1060 708.24-4. ~~Written notice~~ Upon filing with the Court, the Department shall provide a copy of the
1061 ~~proposed request for a~~ change in placement ~~shall be sent to all of the parties pursuant to the Oneida~~
1062 ~~Judiciary Rules of Civil Procedure~~ by first-class mail.

1063 (a) The Department shall schedule a hearing prior to placing the child outside of the home,
1064 unless emergency conditions that necessitate an immediate change in the placement of a
1065 child apply.

1066 (b) A hearing is not required when the child currently placed outside the home transfers to
1067 another out-of-home placement.

1068 (1) A party may request a hearing when the child is transferred to a different out-
1069 of-home placement by submitting a written request to the Court within ten (10)
1070 days of being served with the notice of the proposed change.

1071 708.24-5. If a hearing is held, any party may present evidence relevant to the issue of the change
1072 in placement. In addition, the Court shall give a foster parent or other legal custodian a right to be
1073 heard at the hearing by permitting the foster parent or other legal custodian to make a written or
1074 oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to
1075 the issue of change in placement.

1076 708.24-6. *Emergency Change in Placement.* If emergency conditions necessitate an immediate
1077 change in the placement of a child, the Department may remove the child to a new placement,
1078 whether or not authorized by the existing dispositional order. ~~Notice~~ The Department shall notify
1079 ~~the parties~~ of the emergency change in placement ~~shall be sent to the parties~~ by personal service as
1080 soon as possible but no later than seventy-two (72) hours after the emergency change in placement
1081 excluding Saturdays, Sundays, and holidays. If the emergency conditions necessitate an
1082 immediate change in placement of a child placed in the home to a placement outside the home, the
1083 Department shall schedule the matter for a hearing as soon as possible but no later than seventy-
1084 two (72) hours after the emergency change in placement is made, excluding Saturdays, Sundays,
1085 and holidays.

1086 708.24-7. The parties may agree to a change in placement by signing a stipulation and filing it
1087 with the Court for approval.

1088 708.24-8. No change in placement may extend the expiration date of the original dispositional
1089 order, except that if the change in placement is from a placement in the child's home to a placement
1090 outside the home the Court may extend the expiration date of the original dispositional order to
1091 the latest of the following dates, unless the Court specifies a shorter period:

1092 (a) The date on which the child reaches eighteen (18) years of age;

1093 (b) The date that is one (1) year after the date on which the change-in-placement order is
1094 granted; or

1095 (c) The date on which the child is granted a high school or high school equivalency
1096 diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs
1097 first, if the child is a full-time student at a secondary school or its vocational or technical
1098 equivalent and is reasonably expected to complete the program before reaching nineteen
1099 (19) years of age.

1100 708.24-9. If the change in placement is from a placement outside the home to a placement in the
1101 child's home and if the expiration date of the original dispositional order is more than one (1) year
1102 after the date on which the change-in-placement order is granted, the Court shall shorten the
1103 expiration date of the original dispositional order to the date that is one (1) year after the date on
1104 which the change-in-placement order is granted or to an earlier date as specified by the Court.
1105

708.25. Trial Reunification

708.25-1. The Department or the Nation's Child Welfare attorney may request the Court to order a trial reunification. A trial reunification occurs when a child placed in an out-of-home placement resides in the home of a parent, guardian, or legal custodian from which the child was removed for a period of seven (7) consecutive days or longer, but not exceeding one hundred fifty (150) days, for the purpose of determining the appropriateness of changing the placement of the child to that home. A trial reunification is not a change in placement under section 708.24.

708.25-2. *Request for Trial Reunification.* The Department or the Nation's Child Welfare attorney shall include the following in the request for a trial reunification:

- (a) The name and address of the requested trial reunification home;
- (b) A statement describing why the trial reunification is in the best interests of the child; and
- (c) A statement describing how the trial reunification satisfies the objective of the child's permanency plan.

708.25-3. *Emergency Removal of a Child.* A request for a trial reunification may not be made on the sole grounds that an emergency condition necessitates an immediate removal of the child from the child's out-of-home placement. If an emergency condition necessitates such an immediate removal, the Department shall proceed with an emergency change in placement as described in section 708.24-6.

708.25-4. *Notice.* The Department or Nation's Child Welfare attorney shall submit the request to the Court ~~and. Upon filing with the Court and at least seven (7) days before the date of reunification, the Department~~ shall provide the parent, guardian, legal custodian, and any other party written notice ~~pursuant to the Oneida Judiciary Rules of Civil Procedure of the proposed reunification by first-class mail.~~ The notice shall contain the information that is required to be included in the request under section 708.25-2.

708.25-5. *Trial Reunification Hearing.* Any party who is entitled to receive notice of a requested trial reunification may obtain a hearing on the matter by filing an objection with the Court within ten (10) days after the trial reunification request was filed with the Court.

- (a) If no objection against the trial reunification is filed, the Court may issue an order for the trial reunification.
- (b) If an objection is filed, a hearing shall be held within forty five (45) days after the request was filed with the Court. A trial reunification shall not occur until after the hearing. Not less than three (3) business days before the hearing the ~~Department or the~~ Court shall provide notice of the hearing to all parties ~~with a request for the trial reunification attached to the notice.~~

- (1) If a hearing is held and the trial reunification would remove a child from a foster home or other placement with a legal custodian, the Court shall give the foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or legal custodian to make a written or oral statement relating to the child and the requested trial reunification.

- (2) The Court may appoint a guardian ad litem for the child during the trial reunification hearing.

708.25-6. *Order.* If the Court finds that the trial reunification is in the best interest of the child and that the trial reunification satisfies the objectives of the child's permanency plan, the Court shall order the trial reunification. The trial reunification shall terminate ninety (90) days after the date of the order, unless the Court specifies a shorter period in the order, or extends or revokes the

trial reunification. No trial reunification order may extend the expiration date of the original dispositional order or any extension of the dispositional order.

708.25-7. *Extension of Trial Reunification.* The Department may request an extension of a trial reunification.

(a) *Extension Request.* The request shall contain a statement describing how the trial reunification continues to be in the best interests of the child. No later than ~~ten (10)~~seven (7) days prior to the expiration of the trial reunification, the Department shall submit the request to the Court and shall cause notice of the request to be provided to all parties by first-class mail.

(b) *Extension Hearing.* Any party may obtain a hearing on the requested extension by filing an objection with the Court within ten (10) days after the extension request was filed with the Court.

(1) If no objection is filed, the Court may order an extension of the trial reunification.

(2) If an objection is filed, the Court shall schedule a hearing on the matter. If the Court is unable to conduct a hearing on the matter before the trial reunification expires, the trial reunification shall remain in effect until the Court is able hold the hearing. Not less than three (3) business days before the hearing the ~~Department or the~~ Court shall provide notice of the hearing to all parties ~~with a copy of the extension request attached~~.

(c) *Extension Order.* If the Court finds that the trial reunification continues to be in the best interests of the child, the Court shall grant an order extending the trial reunification for a period specified by the Court. Any number of extensions may be granted, but the total period for a trial reunification may not exceed one hundred and fifty (150) days.

708.25-8. *End of Trial Reunification Period.* When a trial reunification period ends, the Department shall do one (1) of the following:

(a) Return the child to his or her out-of-home placement. The Department may do so without further order of the Court, but within five (5) days after the return of the child to his or her out-of-home placement the Department shall provide the parties with written notice of the following by first-class mail:

(1) the date of the return of the child to the out-of-home placement; and

(2) the address of that placement to all parties, unless providing the address would present imminent danger to the child;

(b) Request a change in placement under section 708.24 to place the child in a new out-of-home placement; or

(c) Request a change in placement under section 708.24 to place the child in the trial reunification home.

708.25-9. *Revocation of Trial Reunification.* The Department may determine that a trial reunification is no longer in the best interests of the child and revoke the trial reunification before the specified trial reunification period ends.

(a) *Revocation Request.* If the Department determines that the trial reunification is no longer in the best interests of the child, the Department, without prior order by the Court, may remove the child from the trial reunification home and place the child in the child's previous out-of-home placement or place the child in a new out-of-home placement.

(1) If the Department places the child in the child's previous out-of-home placement, within three (3) business days of removing the child from the trial

reunification home, the Department shall submit a request for revocation of the trial reunification to the Court and shall provide notice of the request to all parties ~~by first-class mail~~. The request shall contain the following information:

(A) the date on which the child was removed from the trial reunification home;

(B) the address of the child's current placement, unless providing the address would present imminent danger to the child; and

(C) the reasons for the proposed revocation.

(2) If the Department places the child in a new out-of-home placement, within three (3) business days of removing the child from the trial reunification home, the Department shall request a change in placement under section 708.22. The procedures specified in section 708.24, including all notice procedures, apply to a change in placement requested under this ~~subdivision~~subsection, except that the request shall include the date on which the child was removed from the trial reunification home in addition to the information required in 708.24-2. The trial reunification is revoked when the change in placement order is granted.

(b) *Revocation Hearing*. Any party may obtain a hearing on the matter by filing an objection with the Court within ten (10) days after the request was filed with the Court.

(1) If no objection is filed, the Court may issue a revocation order.

(2) If an objection is filed, the Court shall schedule a hearing on the matter. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing ~~together with a copy of the request for the revocation~~, to all parties.

(c) *Revocation Order*. If the Court finds that the trial reunification is no longer in the best interests of the child who has been placed in his or her previous out-of-home placement, the Court shall grant an order revoking the trial reunification.

708.25-10. *Prohibited Trial Reunifications*. The Court may not order a trial reunification in the home of an adult who has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child or any crime against a child, if the conviction has not been reversed, set aside, vacated or pardoned. If a parent in whose home a child is placed for a trial reunification is convicted of homicide or a crime against a child, and the conviction has not been reversed, set aside, vacated or pardoned, the Court shall revoke the trial reunification and the child shall be returned to his or her previous out-of-home placement, or placed in a new out-of-home placement.

(a) *Exception*. A prohibition against trial reunifications based on homicide of a parent or a crime against a child does not apply if the Court determines by clear and convincing evidence that the placement would be in the best interests of the child.

708.26. Revision of Dispositional Orders

708.26-1. A party, or the Court on its own motion, may request a revision in the dispositional order that does not involve a change in placement.

708.26-2. The request or Court proposal shall set forth in detail the nature of the proposed revision and what new information is available that affects the advisability of the Court's disposition. The request for revision shall be filed with the Court with notice provided ~~by the parties pursuant to the Oneida Judiciary Rules of Civil Procedure~~to the parties by first-class mail.

708.26-3. The Court shall hold a hearing on the matter prior to any revision of the dispositional order if the request or Court proposal indicates that new information is available that affects the

advisability of the Court's dispositional order, unless the parties file a signed stipulation and the Court approves.

708.26-4. If a hearing is held, any party may present evidence relevant to the issue of revision of the dispositional order. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of revision.

708.27. Extension of Dispositional Orders

708.27-1. A party, or the Court on its own motion, may request an extension of a dispositional order. The request shall be filed with the Court with notice to the parties ~~pursuant to the Oneida Judiciary Rules of Civil Procedure~~ by first-class mail.

708.27-2. No order may be extended without a hearing, unless the parties file a signed stipulation and the Court approves.

708.27-3. Any party may present evidence relevant to the issue of extension. If the child is placed outside of his or her home, the Department shall present as evidence specific information showing that the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of extension.

708.27-4. The Court shall make findings of fact and conclusions of law based on the evidence. The findings of fact shall include a finding as to whether reasonable efforts were made by the Department to achieve the permanency goal of the child's permanency plan if applicable.

708.27-5. If a request to extend a dispositional order is made prior to the termination of the order, but the Court is unable to conduct a hearing on the request prior to the termination date, the order shall remain in effect until such time as an extension hearing is conducted.

708.28. Continuation of Dispositional Orders

708.28-1. If a petition for suspension or termination of parental rights or guardianship is filed or an appeal from a suspension or termination of parental rights or guardianship judgment is filed during the year in which a child in need of protection or services dispositional order is in effect, the dispositional order shall remain in effect until all proceedings related to the petition or appeal are concluded.

708.29. Guardianship for Certain Children in Need of Protection or Services

708.29-1. *Conditions for Guardianship*. The Court may appoint a guardian for a child if the Court finds all of the following:

(a) That the child has been found to be in need of protection or services under this law and has been placed outside of his or her home pursuant to one (1) or more Court orders, or that the child has been found to be in need of protection or services and placement of the child in the home of a guardian under this section has been recommended by the Department at the dispositional hearing;

(b) That the person nominated as the guardian of the child is a person with whom the child has been placed or in whose home placement of the child is recommended by the

Department and that it is likely that the child will continue to be placed with that person for an extended period of time or until the child attains the age of eighteen (18) years;

(c) That, if appointed, it is likely that the person would be willing and able to serve as the child's guardian for an extended period of time or until the child attains the age of eighteen (18) years;

(d) That it is not in the best interests of the child that a petition to suspend or terminate parental rights be filed with respect to the child;

(e) That the child's parents are neglecting, refusing or unable to carry out the duties of a guardian; and

(f) That the Department has made reasonable efforts to make it possible for the child to return to his or her home, while assuring that the child's best interests are the paramount concerns, but that reunification of the child with the child's parent(s) is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are contrary to the best interests of the child or that the Department has made reasonable efforts to prevent the removal of the child from his or her home, while assuring the child's best interests, but that continued placement of the child in the home would be contrary to the best interests of the child.

708.29-2. *Who May File a Petition for Guardianship.* Any of the following persons may file a petition for the appointment of a guardian for a child under this section:

(a) The child;

(b) The child's guardian ad litem;

(c) The child's parent;

(d) The person with whom the child is placed or in whose home placement of the child is recommended by the Department;

(e) The Department; or

(f) The Nation's Child Welfare attorney.

708.29-3. *Petition for Guardianship.* A proceeding for the appointment of a guardian for a child shall be initiated by a petition which shall include the following:

(a) The name, birth date, address, and tribal affiliation of the child;

(b) The names, birth dates, addresses, and tribal affiliation of the child's parents;

(c) A copy of the order adjudicating the child to be in need of protection or services and the order placing the child outside of the parental home; and

(d) A statement of the facts and circumstances which the petitioner alleges establish that the conditions for guardianship specified in section 708.27-1(a)-(f) are met.

~~708.29-4.~~ 708.29-4. *Notice of Petition for Guardianship.* Upon filing with the Court and at least seven (7) days prior the plea hearing, the party that filed the guardianship petition shall provide a copy of the petition to the other parties by personal service or, if personal service is not possible, by certified mail with return receipt requested.

~~708.29-5.~~ 708.29-5. *Presence of the Proposed Guardian.* The proposed guardian shall be present at all guardianship hearings. The Court may waive the appearance requirement for the proposed guardian if the Court determines there is good cause.

~~708.29-56.~~ 708.29-56. *Plea Hearing for Guardianship.* A plea hearing to determine whether any party wishes to contest a petition for guardianship shall take place no sooner than ten (10) days after the filing of the petition. At the hearing, the non-petitioning parties shall state whether they wish to contest the petition. Before accepting an admission or a plea of no contest to the allegations in the petition, the Court shall do all of the following:

(a) Address the parties present and determine that the admission or plea of no contest is made voluntarily and with understanding of the nature of the facts alleged in the petition, the nature of the potential outcomes and possible dispositions by the Court and the nature of the legal consequences of that disposition;

(b) Establish whether any promises or threats were made to elicit the admission or plea of no contest; and

(c) Make inquiries to establish to the satisfaction of the Court that there is a factual basis for the admission or plea of no contest.

708.29-~~6~~7. If the petition is not contested and if the Court accepts the admission or plea of no contest, the Court may immediately proceed to a dispositional hearing unless an adjournment is requested.

708.29-~~7~~8. If the petition is contested or if the Court does not accept the admission or plea of no contest, the Court shall set a date for a fact-finding hearing which allows reasonable time for the parties to prepare but is not more than sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

(a) If the petition is contested, the Court shall order the Department to file with the Court a report containing as much information relating to the appointment of a guardian as is reasonably ascertainable, including an assessment of the conditions for guardianship specified in section 708.29-1(a)-(f). ~~The~~ Upon filing with the Court and at least seven (7) days prior to the hearing, the Department shall ~~file its report with the Court prior to the fact-finding hearing and shall~~ provide the parent, guardian, legal custodian, proposed guardian, and any other parties with a written copy of the report ~~at least three (3) business days prior to the hearing~~ by first-class mail.

708.29-~~8~~9. *Fact Finding Hearing for Guardianship.* The Court shall hold a fact-finding hearing on the petition at which any party may present evidence relevant to the issue of whether the conditions for guardianship have been met. If the Court, at the conclusion of the fact-finding hearing, finds by clear and convincing evidence that the conditions for guardianship specified in section 708.29-1(a)-(f) have been met, the Court shall immediately proceed to a dispositional hearing unless an adjournment is requested.

708.29-~~9~~10. *Dispositional Hearing for Guardianship.* The Court shall hold a dispositional hearing at which any party may present evidence, including expert testimony, relevant to the disposition. In determining the appropriate disposition for guardianship, the Court shall use the best interests of the child as the prevailing factor to be considered by the Court. In making a decision about the appropriate disposition, the Court shall consider any report submitted by the Department and shall consider, but not be limited to, all of the following:

(a) Whether the person would be a suitable guardian of the child;

(b) The willingness and ability of the person to serve as the child's guardian for an extended period of time or until the child reaches the age of eighteen (18) years; and

(c) The wishes of the child, if the child has the capacity to express their wishes.

708.29-~~10~~11. *Dispositional Order for Guardianship.* After receiving any evidence relating to the disposition, the Court shall enter one of the following dispositions and issue a written decision consistent the Oneida Judiciary Rules of Civil Procedure:

(a) A disposition dismissing the petition if the Court determines that appointment of the person as the child's guardian is not in the best interests of the child; or

(b) A disposition ordering that the proposed guardian be appointed as the child's guardian if the Court determines that such an appointment is in the best interests of the child.

708.29-~~11~~121. If the Court appoints a guardian for the child, the Court may dismiss the dispositional order finding that the child is in need of protection or services.

708.30. Revisions of Guardianship Order

708.30-1. Any person authorized to file a guardianship petition or the Court, on its own motion may request a revision in a guardianship order.

708.30-2. The motion or Court proposal shall set forth in detail the nature of the proposed revision, shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and that the proposed revision would be in the best interests of the child and shall allege any other information that affects the advisability of the Court's disposition. The motion for the revision shall be filed with the Court ~~with notice and, upon filing, a written copy shall be~~ provided ~~by the~~to all parties ~~pursuant to the Oneida Judiciary Rules of Civil Procedure.~~ by first-class mail.

~~(a)~~ (a) The Court may order the Department to file with the Court a report containing as much information relating to the revision of the guardianship as is reasonably ascertainable. ~~The~~ Upon filing with the Court and at least seven (7) days prior to the revision hearing, the Department shall ~~file its report with the Court prior to the hearing on the revision of guardianship and shall~~ provide the parties with a written copy of the report ~~at least three (3) business days prior to the hearing~~by first-class mail.

708.30-3. The Court shall hold a hearing on the matter prior to any revision of the guardianship order if the motion or Court proposal indicates that new information is available which affects the advisability of the Court's guardianship order, unless the parties file a signed stipulation and the Court approves.

708.31. Termination of Guardianship

708.31-1. A guardianship under this law shall continue until any of the following are met, whichever occurs earlier:

- (a) The date on which the child attains eighteen (18) years of age;
- (b) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age; or
- (c) The date on which the Court terminates the guardianship order.

708.31-2. A parent of the child may request that a guardianship order be terminated. The request shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered, that the parent is willing and able to carry out the duties of a guardian and that the proposed termination of guardianship would be in the best interests of the child. The Court shall hold a hearing on the matter unless the parties file a signed stipulation and the Court approves.

(a) The Court may order the Department to file with the Court a report containing as much information relating to the termination of the guardianship as is reasonably ascertainable, including a re-assessment of the conditions for guardianship specified in section 708.29-1(a)-(f). ~~The~~ Upon filing with the Court and at least seven (7) days prior to the termination hearing, the Department shall ~~file its report with the Court prior to the hearing on the~~

~~termination of guardianship and shall~~ provide the parties with a written copy of the report
~~at least three (3) business days prior to the hearing~~ by first-class mail.

708.31-3. Any person authorized to file a petition ~~under~~ for guardianship may request that ~~an~~
 appointed guardian be removed for cause or the Court may, on its own motion, propose such a
 removal. The request or Court proposal shall allege facts sufficient to show that the guardian is or
 has been neglecting, is or has been refusing, or is or has been unable to discharge the guardian's
 trust and may allege facts relating to any other information that affects the advisability of the
 Court's disposition. The Court shall hold a hearing on the matter.

708.31-4. A guardian appointed under this law may resign at any time if the resignation is accepted
 by the Court.

708.32. Suspension or Termination of Parental Rights

~~708.32-1.~~ 708.32-1. It is the philosophy of the Nation that children deserve a sense of permanency
 and belonging throughout their lives and at the same time they deserve to have knowledge about
 their unique cultural heritage including their tribal customs, history, language, religion and values.

~~708.32-2.~~ It is the philosophy of the Nation that a united and complete family unit is of the utmost
 value to the community and the individual family members, and that the parent-child relationship
 is of such vital importance that it should be suspended or terminated only as a last resort when all
 efforts have failed to avoid suspension or termination and it is in the best interests of the child
 concerned to proceed with the suspension or termination of parental rights.

~~708.32-3.~~ 708.32-2. Suspension of Parental Rights. The suspension of parental rights is the
 permanent suspension of the rights of biological parents to provide for the care, custody, and
 control of their child.

~~708.32-4.~~ Termination of Parental Rights. The termination of parental rights means that all rights,
 powers, privileges, immunities, duties and obligations existing between biological parent and child
 are permanently severed.

~~708.32-5.~~ The Court may suspend or terminate a parent's rights on a voluntary or involuntary
 basis.

~~708.32-6.~~ ~~708.32-3.~~ An order suspending or terminating parental rights permanently severs all
 legal rights and duties between the parent whose parental rights are suspended or terminated and
 the child.

~~(a) An order terminating parental rights does not affect a child's relationship with the
 child's extended biological family unless the Court expressly finds that it is in the child's
 best interest to terminate the child's relationship with his or her extended biological family.~~

708.32-~~4~~7. The suspension or termination of parental rights shall not adversely affect the child's
 rights and privileges as a member of the Nation, nor as a member of any tribe to which the child
 is entitled to membership, nor shall it affect the child's enrollment status with the Nation, nor shall
 it interfere with the child's cultural level and traditional and spiritual growth as a member of the
 Nation.

708.33. Voluntary Suspension or Termination of Parental Rights

708.33-1. The Court may suspend or terminate the parental rights of a parent after the parent has
 given his or her consent. When such voluntary consent is given and the Department has submitted
 a court report pursuant to section 708.38, the Court may proceed immediately to a dispositional
 hearing.

1471 708.33-2. The Court may accept a voluntary consent to suspension or termination of parental
1472 rights only if the parent appears personally at the hearing and gives his or her consent to the
1473 suspension or termination of his or her parental rights. The Court may accept the consent only after
1474 the judge has explained the effect of suspension or termination of parental rights and has
1475 questioned the parent, and/or has permitted counsel who represents any of the parties to question
1476 the parent, and is satisfied that the consent is informed and voluntary. If the Court finds that it
1477 would be difficult or impossible for the parent to appear in person at the hearing, the Court may
1478 allow the parent to appear by telephone or live audiovisual means.

1479 708.33-3. If in any proceeding to suspend or terminate parental rights voluntarily any party has
1480 reason to doubt the capacity of a parent to give informed and voluntary consent to the suspension
1481 or termination, he or she shall so inform the Court. The Court shall then inquire into the capacity
1482 of that parent in any appropriate way and shall make a finding as to whether or not the parent is
1483 capable of giving informed and voluntary consent to the suspension or termination. If in the
1484 Court's discretion a person is found incapable of knowingly and voluntarily consenting to the
1485 suspension or termination of their parental rights, the Court shall dismiss the voluntary proceedings
1486 without prejudice. That dismissal shall not preclude an involuntary suspension or termination of
1487 the parent's rights.

1488 708.33-4. A parent who has executed a consent under this section may withdraw the consent for
1489 any reason at any time prior to the entry of a final order suspending or terminating parental rights.

1490 708.33-5. Any consent given under this section prior to or within ten (10) days after the birth of
1491 the child is not valid.

1492 708.33-6. The parties, and the placement provider or adoptive resource, may agree to attend
1493 peacemaking to establish an agreement regarding post-voluntary suspension or termination of
1494 parental rights contact with a birth parent, birth sibling, or other birth relative of the child.

1495 (a) Any party to a post-voluntary suspension or termination contact agreement or the
1496 child who is the subject of the proceedings may petition the Court that approved the
1497 agreement to compel any person who is bound by the agreement to comply with the
1498 agreement. The petition shall allege facts sufficient to show that a person who is bound
1499 by the agreement is not in compliance with the agreement and that the petitioner, before
1500 filing the petition, attempted in good faith to resolve the dispute giving rise to the filing
1501 of the petition. The petition may also allege facts showing that the noncompliance with
1502 the agreement is not in the best interests of the child.

1503 (b) After receiving a petition for action regarding a post-voluntary suspension or
1504 termination contact agreement the Court shall set a date and time for a hearing on the
1505 petition and shall provide notice of the hearing to all parties to the agreement and may
1506 reappoint a guardian ad litem for the child.

1507 (c) If the Court finds, after hearing, that any person bound by the agreement is not in
1508 compliance with the agreement and that the petitioner, before filing the petition,
1509 attempted in good faith to resolve the dispute giving rise to the filing of the petition,
1510 the Court shall issue an order requiring the person to comply with the agreement and
1511 may find a party in contempt.

1512 (d) The Court may not revoke a suspension or termination of parental rights order or
1513 an order of adoption because an adoptive parent or other custodian of the child or a
1514 birth parent, birth sibling, or other birth relative of the child fails to comply with a post-
1515 voluntary suspension or termination contact agreement; however, the parties may

return to peacemaking to revise the agreement, or the Court may amend an order if it finds an amendment to the order is in the best interests of the child.

708.34. Grounds for Involuntary Suspension or Termination of Parental Rights

708.34-1. Grounds for suspension or termination of parental rights shall be any of the following:

(a) *Abandonment*. Abandonment occurs when a parent either deserts a child without any regard for the child's physical health, safety or welfare and with the intention of wholly abandoning the child, or in some instances, fails to provide necessary care for their child.

(1) Abandonment shall be established by proving any of the following:

(A) That the child has been left without provision for the child's care or support, the petitioner has investigated the circumstances surrounding the matter and for sixty (60) consecutive days the petitioner has been unable to find either parent;

(B) That the child has been left by the parent without provision for the child's care or support in a place or manner that exposes the child to substantial risk of great bodily harm or death;

(C) That a court of competent jurisdiction has found any of the following:

(i) That a child has been abandoned under Wis. Stat. 48.13 (2) or under a law of any other state or a federal law that is comparable to the state law;

(ii) That the child was abandoned when the child was under one (1) year of age or has found that the parent abandoned the child when the child was under one (1) year of age in violation of Wis. Stat. 948.20 or in violation of the law of any other state or federal law, if that violation would be a violation of abandonment of a child under Wis. Stat. 948.20 if committed in this state;

(D) That the child has been placed, or continued in a placement, outside the parent's home by a Court order containing the required notice and the parent has failed to visit or communicate with the child for a period of three (3) months or longer; or

(E) The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of six (6) consecutive months or longer.

(2) Incidental contact between parent and child shall not preclude the Court from finding that the parent has failed to visit or communicate with the child. The time periods under sections 708.34-1(a)(1)(D) and 708.34-1(a)(1)(E) shall not include any periods during which the parent has been prohibited by Court order from visiting or communicating with the child.

(3) Abandonment is not established under sections 708.34-1(a)(1)(D) and 708.34-1(a)(1)(E) if the parent proves all of the following by clear and convincing evidence:

(A) That the parent had good cause for having failed to visit with the child throughout the three (3) or six (6) month time period alleged in the petition.

(B) That the parent had good cause for having failed to communicate with the child throughout the three (3) or six (6) month time period alleged in the petition.

(C) If the parent proves good cause under section 708.34-1(a)(3)(B), including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one (1) of the following occurred:

(i) The parent communicated about the child with the person or persons who had physical custody of the child during the three (3) or six (6) month time period alleged in the petition, whichever is applicable, or, with the Department during the three (3) month time period alleged in the petition.

(ii) The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the Department throughout the three (3) or six (6) month time period alleged in the petition.

(b) *Relinquishment*. Relinquishment occurs when a parent gives up or abandons their child and all rights to their child. Relinquishment shall be established by proving that a court of competent jurisdiction has found that the parent has relinquished custody of the child when the child was seventy-two (72) hours old or younger.

(c) *Continuing Need of Protection or Services*. Continuing need of protection or services shall be established by proving any of the following:

(1) That the child has been found to be in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one (1) or more dispositional orders containing the notice required by section 708.22-78;

(2) That the Department has made a reasonable effort to provide the services ordered by the Court;

(3) That the child has been outside the home for a cumulative total period of six (6) months or longer pursuant to such orders; and that the parent has failed to meet the conditions established for the safe return of the child to the home and, if the child has been placed outside the home for less than fifteen (15) of the most recent twenty-two (22) months, that there is a substantial likelihood that the parent will not meet these conditions within the nine (9) months as of the date on which the child will have been placed outside the home for fifteen (15) of the most recent twenty-two (22) months, not including any period following the termination of parental rights fact-finding hearing during which the child was a runaway from the out-of-home placement or was residing in a trial reunification home.

(d) *Continuing Parental Disability*. Continuing parental disability shall be established by proving that:

(1) The parent is presently, and for a cumulative total period of at least two (2) years within the five (5) years immediately prior to the filing of the petition has been, an inpatient at one (1) or more hospitals as defined in either the Nation's laws or state law;

(2) The condition of the parent is likely to continue indefinitely; and

(3) The child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or a guardian.

(e) *Continuing Denial of Periods of Physical Placement or Visitation.* Continuing denial of periods of physical placement or visitation shall be established by proving all of the following:

(1) The parent has been denied periods of physical placement by Court order in an action affecting the family or has been denied visitation under a dispositional order containing the notice required by section 708.20-722-8, Wis. Stat. 48.356-~~(2)~~,(2), or Wis. Stat. 938.356 (2); and

(2) A Court order has denied the parent periods of physical placement or visitation for at least one (1) year.

(f) *Child Abuse.* Child abuse shall be established by proving that the parent has committed child abuse against the child who is the subject of the petition and proving either of the following:

(1) That the parent has caused death or injury to a child resulting in a felony conviction; or

(2) That a child has previously been removed from the parent's home pursuant to a dispositional order after an adjudication that the child is in need of protection or services.

(g) *Failure to Assume Parental Responsibility.* Failure to assume parental responsibility shall be established by proving that the parent or the person(s) who may be the parent of the child have not had a substantial parental relationship with the child.

(1) In evaluating whether the person has had a substantial parental relationship with the child, the Court may consider such factors, including, but not limited to, the following:

(A) Whether the person has expressed concern for or interest in the support, care or well-being of the child;

(B) Whether the person has neglected or refused to provide care or support for the child; and

(C) Whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

(h) *Incestuous Parenthood.* Incestuous parenthood shall be established by proving that the person whose parental rights are sought to be terminated is also related, either by blood or adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

(i) *Homicide or Solicitation to Commit Homicide of a Parent.* Homicide or solicitation to commit homicide of a parent, which shall be established by proving that a parent of the child has been a victim of first-degree intentional homicide, first-degree reckless homicide or 2nd-degree intentional homicide or a crime under federal law or the law of any other state that is comparable to any of those crimes, or has been the intended victim of a solicitation to commit first-degree intentional homicide or a crime under federal law or the law of any other state that is comparable to that crime, and that the person whose parental rights are sought to be terminated has been convicted of that intentional or reckless homicide, solicitation or crime as evidenced by a final judgment of conviction.

(j) *Parenthood as a Result of Sexual Assault.*

(1) Parenthood as a result of sexual assault shall be established by proving that the child was conceived as a result of one of the following:

(A) First degree sexual assault [under Wis. Stats. 940.225(1)];

- (B) Second degree sexual assault [under Wis. Stat. 940.225 (2)];
- (C) Third degree sexual assault [under Wis. Stat. 940.225(3)];
- (D) First degree sexual assault of a child [under Wis. Stat. 948.02(1)];
- (E) Second degree sexual assault of a child [under Wis. Stat. 948.02 (2)];
- (F) Engaging in repeated acts of sexual assault of the same child [under Wis. Stat. 948.025]; or
- (G) Sexual assault of a child placed in substitute care [under Wis. Stat. 948.085].

(2) Conception as a result of sexual assault may be proved by a final judgment of conviction or other evidence produced at a suspension or termination of parental rights fact-finding hearing indicating that the person who may be the parent of the child committed, during a possible time of conception, a sexual assault as specified in this section against the other parent of the child.

(3) If the conviction or other evidence indicates that the child was conceived as a result of a sexual assault in violation of Wis. Stat. 948.02 (1) or (2) or 948.085, the parent of the child may be heard on his or her desire for the suspension or termination of the other parent's parental rights.

(k) *Commission of a Felony Against a Child.*

(1) Commission of a serious felony against the child, shall be established by proving that the child was the victim of a serious felony and parent was convicted of that serious felony.

~~(2) Commission of a violation of trafficking of a child under Wis. Stat. 948.051 involving any child or a violation of the law of any other state or federal law, if that violation would be a violation of Wis. Stat. 948.051 involving any child if committed in this state.~~

~~(3)~~(2) In this subsection, "serious felony" means any of the following:

(A) The commission of, the aiding or abetting of, or the solicitation, conspiracy or attempt to commit, a violation of any of the following:

- (i) First degree intentional homicide [under Wis. Stat. 940.01];
- (ii) First degree reckless homicide [under Wis. Stat. 940.02];
- (iii) Felony murder [under Wis. Stat. 940.03];
- (iv) Second-degree intentional homicide [under Wis. Stat. 940.05]; or
- (v) A violation of the law of any other state or federal law, if that violation would be a violation of the above-mentioned felonies if committed in Wisconsin.

(B) The commission of a violation of any of the following:

- (i) Battery, substantial battery, aggravated battery [under Wis. Stat. 940.19 (3), 1708 stats., or Wis. Stats. 940.19 (2), (4) or (5)];
- (ii) Sexual assault [under Wis. Stat. 940.225 (1) or (2)];
- (iii) Sexual assault of a child [under Wis. Stat. 948.02 (1) or (2)];
- (iv) Engaging in repeated acts of sexual assault of the same child [under Wis. Stat. 948.025];
- (v) Physical abuse of a child [under Wis. Stats. 948.03 (2) (a), (3) (a), or (5) (a) 1., 2., or 3.];
- (vi) Sexual ~~exploration~~exploitation of a child [under Wis. Stat. 948.05];
- (vii) Trafficking of a child [under Wis. Stat. 948.051];

- (viii) Incest with a child [under Wis. Stat. 948.06];
- (ix) Soliciting a child for prostitution [under Wis. Stat. 948.08];
- (x), Human trafficking [under Wis. Stat. 940.302 (2) if Wis. Stat. 940.302 (2) (a) 1. b. applies]; or
- (xi) A violation of the law of any other state or federal law, if that violation would be a violation listed under the above listed felonies if committed in Wisconsin.

(C) The commission of a violation of neglecting a child under Wis. Stat. 948.21 or a violation of the law of any other state or federal law, if that violation would be a violation of Wis. Stat. 948.21 if committed in this state, that resulted in the death of the victim.

(l) *Prior Involuntary Suspension or Termination of Parental Rights of Another Child.*
Prior involuntary suspension or termination of parental rights to another child shall be established by proving all of the following:

- (1) That the child who is the subject of the petition is in need of protection or services under section 708.5-2(b), (d), or (k); or that the child who is the subject of the petition was born after the filing of a petition under this subsection whose subject is a sibling of the child; and
- (2) That, within three (3) years prior to the date the Court determined the child to be in need of protection or services as specified in section 708.34-1 (l) (1) or, in the case of a child born after the filing of a petition as specified in section 708.34-1 (l) (1), within three (3) years prior to the date of birth of the child, a Court has ordered the suspension or termination of parental rights with respect to another child of the person whose parental rights are sought to be suspended or terminated on one or more of the grounds specified in this section.

708.35. Petition for Suspension or Termination of Parental Rights

708.35-1. *Who May File a Petition for Suspension or Termination of Parental Rights.* A petition for the suspension or termination of parental rights shall be filed by the:

- (a) Nation's Child Welfare attorney, ~~the~~;
- (b) Department; ~~the~~ or
- (c) child's parent in the case of a step-parent adoption.

708.35-2. A petition for the suspension or termination of parental rights may be filed when the child has been placed outside of his or her home for fifteen (15) of the most recent twenty-two (22) months or if grounds exist for suspension or termination of parental rights unless any of the following applies:

- (a) The child is being cared for by a fit and willing relative of the child;
- (b) The child's permanency plan indicates and provides documentation that suspension or termination of parental rights to the child is not in the best interests of the child;
- (c) The Department, if required by a dispositional order, failed to make reasonable efforts to make it possible for the child to return safely to his or her home, or did not provide or refer services to the family of the child for the safe return of the child to his or her home that were consistent with the ~~time period in the child's~~ permanency plan; or
- (d) Grounds for an involuntary suspension or termination of parental rights do not exist.

708.35-3. A petition for the suspension or termination of parental rights shall include the following information:

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- (c) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit; and
- (d) One (1) of the following:

(1) A statement that consent will be given to voluntary suspension or termination of parental rights as provided in section 708.33; or

(2) A statement of the grounds for involuntary suspension or termination of parental rights under section 708.34 and a statement of the facts and circumstances which the petitioner alleges establish these grounds.

708.35-4. *Temporary Order and Injunction Prohibiting Contact.* If the petition includes a statement of the grounds for involuntary suspension or termination of parental rights, the petitioner may, at the time the petition is filed, also petition the Court for a temporary order and an injunction prohibiting the person whose parental rights are sought to be suspended or terminated from visiting or contacting the child who is the subject of the petition. Any petition under this section shall allege facts sufficient to show that prohibiting visitation or contact would be in the best interests of the child.

- (a) The Court may grant an injunction prohibiting the respondent from visiting or contacting the child if the Court determines that the prohibition would be in the best interests of the child. An injunction under this subsection is effective according to its terms but may not remain in effect beyond the date the Court dismisses the petition for suspension or termination of parental rights or issues an order suspending or terminating parental rights.

708.35-5. ~~The~~ Upon filing with the Court and at least seven (7) days prior to the initial hearing, the petitioner shall ~~ensure~~serve the summons and petition ~~are served~~ upon the following persons ~~pursuant to the Oneida Judiciary Rules of Civil Procedure~~ by personal service or, if personal service is not possible, by certified mail, return receipt requested:

- ~~(a)~~ (a) The parent(s) of the child, including an alleged father if paternity has not been established; and

- ~~(b)~~ (b) The child's foster parent, guardian or legal custodian, if applicable. If the address has been marked confidential by the Court, the Court shall send a copy of the summons and petition to the home in which the child is placed via first-class U.S. mail; and.

- ~~(c) The Nation's Child Welfare attorney and the Department, if the petition is filed by anyone other than the Nation's Child Welfare attorney or the Department.~~

708.36. Initial Hearing on the Suspension or Termination of Parental Rights Petition

708.36-1. The initial hearing on the petition to suspend or terminate parental rights shall be held within forty-five (45) days after the petition is filed. At the hearing the Court shall determine whether any party wishes to contest the petition and inform the parties of their rights.

708.36-2. If the petition is contested, the Court shall set a date for a fact-finding hearing to be held within sixty (60) days after the hearing on the petition, unless the Court enters an order finding good cause to go outside the time limits.

708.36-3. If the petition is not contested, the Court shall hear testimony in support of the allegations in the petition and may proceed immediately with a dispositional hearing if the parties agree. Before accepting an admission of the alleged facts in a petition, the Court shall:

- (a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes and possible dispositions by the Court;
- (b) Establish whether any promises or threats were made to elicit an admission; and
- (c) Make such inquiries to establish a factual basis for the admission.

708.37. Fact Finding Hearing for a Suspension or Termination of Parental Rights

708.37-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that grounds exist for the suspension or termination of parental rights.

708.37-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.37-3. If grounds for the suspension or termination of parental rights are found by the Court, the Court shall find the parent(s) unfit. -A finding of unfitness shall not prevent a dismissal of a suspension or termination of parental rights petition.- Unless the parties agree to proceed immediately with the dispositional hearing and the Court accepts, the Court shall set a date for a dispositional hearing no later than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits.

708.38. Department's Suspension or Termination of Parental Rights Report

708.38-1. In any case that the Department is a party, the Department shall submit a written report to the Court prior to any dispositional hearing, with a copy to the parties by first-class mail no later than seven (7) days prior to the hearing, which shall contain all of the following:

- (a) The social history of the child and family, including any relevant medical conditions;
- (b) A statement of the facts supporting the need for suspension or termination of parental rights;
- (c) If the child has been previously adjudicated to be in need of protection or services, a statement of the steps the Department has taken to remedy the conditions responsible for Court intervention and the parent's response to and cooperation with these services. -If the child has been removed from the home, the report shall also include a statement of the reasons why the child cannot be returned safely to the family and the steps the Department has taken to effect this return;
- (d) A statement applying the standards and factors identified in sections 708.39-2 and 708.39-3 regarding the case before the Court; and
- (e) If the report recommends that the parental rights of both of the child's parents or the child's only living or known parent are to be suspended or terminated, the report shall contain a statement of the likelihood that the child will be adopted.- This statement shall include a presentation of the factors that might prevent adoption, those that may facilitate adoption, and the Department shall be responsible for accomplishing the adoption.
- (1) If the Department determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting. The plan shall include a recommendation for the appointment of a guardian for the child.

708.38-2. The Court may order a report as specified under this section to be prepared by the Department in those cases where the Department is not a party.

708.39. Standards and Factors

708.39-1. In making a decision about the appropriate disposition for suspension or termination of parental rights, the Court shall consider the standards and factors enumerated in this section and any report submitted by the Department.

708.39-2. The best interests of the child shall be the prevailing standard considered by the Court in determining the disposition of all suspension and termination of parental rights proceedings.

708.39-3. In considering the best interests of the child the Court shall also consider, but not be limited to, the following factors:

- (a) The likelihood of the child's adoption after suspension or termination;
- (b) Whether the child will be raised in an environment that is respectful of the child's race(s), culture(s), and heritage(s);
- (c) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home;
- (d) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships;
- (e) The wishes of the child, if the child has the capacity to express their wishes;
- (f) The duration of the separation of the parent from the child; and
- (g) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the suspension or termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

708.40. Dispositional Hearings for Suspension or Termination of Parental Rights

708.40-1. Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the Court. After receiving any evidence related to the disposition, the Court shall enter a disposition and issue a written decision consistent with the Oneida Judiciary Rules of Civil Procedure.

- (a) The Court shall give the foster parent or other legal custodian a right to be heard at the dispositional hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the dispositional hearing, or to submit a written statement prior to disposition, relevant to the issue of disposition.

708.40-2. The Court shall enter one (1) of the following dispositions:

- (a) The Court may dismiss the petition if it finds the evidence does not warrant the suspension or termination of parental rights or if the Court finds that a parent is attempting to voluntarily suspend or terminate their parental rights for the sole purpose of avoiding a child support obligation; or
- (b) The Court may enter an order suspending or terminating the parental rights of one or both parents.

708.40-3. If the rights of both parents, or of the only living parent, are suspended or terminated and if a guardian has not been appointed, the Court shall do one (1) of the following while adhering to the placement preferences pursuant to section 708.11-1 when possible:

- (a) Transfer guardianship and custody of the child pending adoptive placement to:
 - (1) A tribal or county department authorized to accept guardianship;
 - (2) A child welfare agency licensed to accept guardianship;
 - (3) The State of Wisconsin upon written confirmation from the State that they are willing to accept guardianship;

- 1882 (4) A relative with whom the child resides, if the relative has filed a petition to
1883 adopt the child or if the relative is a kinship care relative or is receiving payments
1884 for providing care and maintenance for the child; or
1885 (5) An individual who has been appointed guardian of the child by a court of a
1886 competent jurisdiction; or
1887 (b) Appoint a guardian and transfer guardianship and custody of the child to the guardian.
1888 708.40-4. The written Court order shall include the following:
1889 (a) If the Court dismisses the petition, the order shall contain the reasons for dismissal; or
1890 (b) If the disposition is for the suspension or termination of parental rights, the order shall
1891 contain all of the following:
1892 (1) The identity of any agency, department, or individual that has received
1893 guardianship of the child;
1894 (2) If an agency or department receives guardianship and custody of the child, an
1895 order ordering the child into the placement and care responsibility of the agency or
1896 department and assigning the agency or department primary responsibility for
1897 providing services to the child; and
1898 (3) A finding that the suspension or termination of parental rights is in the best
1899 interests of the child.
1900 (c) If the disposition is for the suspension or termination of parental rights, the order may
1901 contain all of the following:
1902 (1) A termination of the right of the parent to have contact with the minor child
1903 including contact in person, by mail, by telephone, or through third parties or the
1904 order may allow for a residual rights agreement agreed upon by the parties to be
1905 ordered by the Court;
1906 (2) Order restraining a parent from contacting the minor child, the child's foster
1907 parent, the child's adoptive parent and/or the social services agency or agencies
1908 possessing information regarding the child, or by an agreement;
1909 (3) Order that the biological parents' obligation to pay child support, except for
1910 arrears, is hereby terminated;
1911 (4) Order that any prior court order for custody, visitation, or contact, with the
1912 minor child is hereby terminated; and
1913 (5) Order that the parent shall have no standing to appear at any future legal
1914 proceedings involving the child, notwithstanding proceedings regarding a residual
1915 rights agreement.
1916 708.40-5. If an order is entered ~~to terminate a parent's~~ involuntarily suspending or terminating
1917 parental rights, the Court shall orally inform the parent(s) who appear in Court or place in the
1918 written order the ground(s) for suspension or termination of their parental rights specified in
1919 section 708.34-1. Additionally, the Court shall inform the parents(s) that section 708.34-1(l)
1920 provides that prior involuntary suspension or termination of parental rights of another child is a
1921 ground for suspension or termination of parental rights.
1922 708.40-6. If the Court suspends or terminates parental rights, the Department, or the Court if the
1923 Department is not a party to the action, ~~shall~~ may forward the following information to the State of
1924 Wisconsin:
1925 (a) The name, date of birth, and tribal affiliation of the child whose birth parent's rights
1926 have been suspended or terminated;

(b) The names and current addresses of the child's birth parents, guardian and legal custodian; and

(c) Any medical or genetic information received by the Department.

708.40-7. If only one (1) parent consents ~~for~~to a voluntary suspension or termination of parental rights or if the grounds for involuntary suspension or termination of parental rights are found to exist as to only one (1) parent, the rights of only that parent may be suspended or terminated without affecting the rights of the other parent if the Court finds such suspension or termination to be in the best interest of the child.

708.41. Adoption

708.41-1. Adoptions under this law shall take the form of customary adoptions ~~unless~~when the Court ~~determines there is good cause for~~has granted a petition to suspend parental rights. When the Court grants a petition to terminate parental rights the adoption ~~to~~shall be closed.

708.41-2. *Customary Adoptions.* The purpose of customary adoption is not to permanently deprive the adopted child of connections to, or knowledge of, the adopted child's biological family, but to provide the adopted child a permanent home. The following shall apply to all customary adoptions and shall be contained in all adoptive orders and decrees:

(a) The relationship between an adoptive parent and ~~adoptive~~adopted child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The ~~adoptive~~adopted child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family and his or her Oneida heritage, if applicable. The adopted child may obtain adoption information from files maintained by the Court or Department;

(c) Adoption shall not prevent an ~~adoptive~~adopted child from inheriting from a biological parent in the same manner as any other biological child. The biological parents shall not be entitled to inherit from an ~~adoptive~~adopted child in the same manner as parents would otherwise be entitled to inherit. An ~~adoptive~~adopted child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as if biological parents and child;

(d) Although parental rights have been ~~terminated~~suspended, the biological parent may retain certain residual parental rights when appropriate as determined by agreement between the adoptive parent and biological parent made through peacemaking, or by order of the Court. Such residual parental rights may include:

(1) The right to communication;

(2) The right to visitation;

(3) The right or obligation to contribute to support or education;

(4) The right to be consulted regarding the adopted child's religious affiliation, major medical treatment, marriage, or other matters of major importance in the child's life; and/or

(5) Such other residual rights the Court may deem appropriate, considering the circumstances.

(e) Adoption does not extinguish the relationships between the adopted child and the adopted child's extended biological family. ~~The~~The adopted child's extended biological family retains the right to reasonable communication and visitation with the adopted child, subject to reasonable controls of the adoptive parents.

1972 708.41-3. *Closed Adoptions*. Closed adoptions occur in situations where ~~a~~an adopted child needs
1973 a permanent home and it is necessary to sever all ties between the adopted child and his or her
1974 biological family. The following shall apply to all closed adoptions:

- 1975 (a) The relationship between an adoptive parent and ~~adoptive~~adopted child shall have all
1976 the same rights, responsibilities, and other legal consequences as the relationship between
1977 a biological child and parent;
1978 (b) The relationship between the adopted child and all persons whose relationship to the
1979 adopted child is derived through the biological parents shall be completely altered and all
1980 the rights, duties, and other legal consequences of those relationships shall cease to exist;
1981 (c) The adopted child's biological family shall not be entitled to or have access to any
1982 information regarding said child;
1983 (d) The adopted child shall be entitled to information and knowledge regarding his or her
1984 culture and heritage; and
1985 (e) The adopted child shall be entitled to information regarding his or her biological family
1986 upon reaching the age of majority. The adopted child may obtain adoption information
1987 from files maintained by the Court or Department.
1988

1989 **708.42. Adoption Criteria and Eligibility**

1990 708.42-1. *Criteria for Adoption*. Any child who is subject to this law may be adopted if any of the
1991 following criteria are met:

- 1992 (a) Both of the child's parents are deceased;
1993 (b) The parental rights of both of the child's parents with respect to the child have been
1994 suspended or terminated;
1995 (c) The parental rights of one of the child's parents with respect to the child have been
1996 suspended or terminated and the child's other parent is deceased; or
1997 (d) The person filing the petition for adoption is the spouse of the child's parent and either
1998 of the following applies:
1999 (1) The child's other parent is deceased; or
2000 (2) The parental rights of the child's other parent with respect to the child have been
2001 suspended or terminated.

2002 708.42-2. *Eligibility*. The following persons are eligible to adopt a child who falls under the
2003 jurisdiction of this law pending the successful clearing of a background check:

- 2004 (a) A married adult couple;
2005 (b) Either spouse if the other spouse is a parent of the child; or
2006 (c) An unmarried adult.

2007 708.42-3. If the person proposing to adopt the child cannot successfully clear a background check,
2008 and any convictions the person may possess have not been pardoned, forgiven, reversed, set aside
2009 or vacated, the Court may still deem the person eligible to adopt if the Court determines by clear
2010 and convincing evidence that the adoption would be in the best interests of the child.
2011

2012 **708.43. Adoption Procedure**

2013 708.43-1. *Petition for Adoption*. A person proposing to adopt or the Department, shall initiate a
2014 proceeding for the adoption of a child by filing a petition with the Court. The petition shall include
2015 the following information:

- 2016 (a) The name, birth date, address, and tribal affiliation of the petitioner;
2017 (b) The name, birth date, address, and tribal affiliation of the child;

- (c) The names, birth dates, addresses, and tribal affiliation of the child's biological parents;
(d) The name by which the child shall be known if the petition is granted;
(e) The relationship of the petitioner to the child; and
(f) A copy of the order suspending or terminating parental rights of the child's biological parent(s).

708.43-2. Upon the filing of a petition for adoption, the Court shall schedule a hearing within sixty (60) days. ~~Notice of the hearing shall be served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.~~

708.43-3. When a petition for adoption is filed, the Court shall order an investigation to determine whether the child is a proper subject for adoption and whether the petitioner's home is suitable for the child. ~~The Court shall order one (1) of the following to conduct the investigation:~~

(a) The Court shall order one (1) of the following to conduct the investigation:

~~(a)~~ (1) If the Department, or another agency or department, has guardianship of the child, the agency or department that has guardianship; or

~~(b)~~ (2) If no agency or department has guardianship of the child and a relative, including a stepparent, has filed the petition for adoption, the Department.

(b) If the Court orders the Department to conduct the investigation, the Department may contract with a third-party agency to conduct the investigation.

708.43-4. The Department or other agency or department making the investigation shall file its report with the Court prior to the hearing on the petition and shall provide ~~the parties with~~ a copy of the report to the parties by first-class mail at least ~~three (3) business~~seven (7) days prior to the hearing.

708.43-5. If the report of the investigation is unfavorable or if it discloses a situation which, in the opinion of the Court, raises a serious question as to the suitability of the proposed adoption, the Court may appoint a guardian ad litem for the child whose adoption is proposed.

708.43-6. During the hearing the parties may agree to attend peacemaking to establish an agreement regarding residual rights of a birth parent, birth sibling, or other birth relative of the child.

708.43-7. If after the hearing and a study of the report required by section 708.43-3 the Court is satisfied that the adoption is in the best interests of the child, the Court shall make an order granting the adoption. The order may change the name of the child to that requested by petitioners.

708.43-8. After the order of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent thereafter exists between the adopted child and the adoptive parents. The relationship between the adopted child and biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist, excluding any residual rights granted to the biological parents and extended family through customary adoption. If the biological parent is the spouse of the adoptive parent, the relationship shall be completely altered and those rights, duties, and other legal consequences shall cease to exist only with respect to the biological parent who is not the spouse of the adoptive parent.

708.43-9. ~~After~~Within five (5) days after entry of the order granting ~~the~~a closed adoption, the Department shall ~~promptly~~ mail a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish any additional data needed for the issuance of a new birth certificate.

708.44. Non-Compliance with a Residual Rights Agreement

708.44-1. Any party to a residual rights agreement or the child who is the subject of the proceedings may petition the Court that approved the agreement to compel any person who is bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to show that a person who is bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition. The petition may also allege facts showing that the noncompliance with the agreement is not in the best interests of the child.

708.44-2. After receiving a petition for action regarding a residual rights contact agreement the Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing to all parties to the agreement and may reappoint a guardian ad litem for the child.

708.44-3. If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

708.44-4. The Court may not revoke a suspension or termination of parental rights order or an order of customary adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a residual rights agreement; however, the parties may return to peacemaking to revise the agreement, or the Court may amend an order if it finds an amendment to the order is in the best interests of the child.

708.45. Peacemaking and Mediation

708.45-1. The Court may refer the parties to peacemaking or mediation if the parties agree to attend peacemaking or mediation. The Court shall not refer the parties to peacemaking or mediation if attending the session will cause undue hardship or would endanger the health or safety of a party.

708.45-2. When the parties attend peacemaking or mediation based on a referral from the Court, the Court shall enter an order finding good cause to suspend the time limits established under this law.

708.46. Appeals

708.46-1. Appeals of all orders issued under this law shall be heard by the Nation's Court of Appeals in accordance with the Rules of Appellate Procedure.

708.47. Liability

708.47-1. No liability shall attach to the Department, Indian Child Welfare Worker, the Nation's Child Welfare Attorney or any person acting under their authority for statements, acts or omissions made in good faith while in the course of activities taken under this law.

End.

Adopted – BC-07-26-17-J

Amended – BC- - - -

Title 7. Children, Elders and Family - Chapter 708
Latiksa'shúha Laotilihwa'ke
the children – their issues
CHILDREN'S CODE

708.1.	Purpose and Policy	708.26.	Revision of Dispositional Orders
708.2.	Adoption, Amendment, Repeal	708.27.	Extension of Dispositional Orders
708.3.	Definitions	708.28.	Continuation of Dispositional Orders
708.4.	Scope	708.29.	Guardianship for Certain Children in Need of Protection or Services
708.5.	Jurisdiction	708.30.	Revisions of Guardianship Order
708.6.	Nation's Child Welfare Attorney	708.31.	Termination of Guardianship
708.7.	Indian Child Welfare Department Duties and Responsibilities	708.32.	Suspension or Termination of Parental Rights
708.8.	Guardian ad litem	708.33.	Voluntary Suspension or Termination of Parental Rights
708.9.	Advocate	708.34.	Grounds for Involuntary Suspension or Termination of Parental Rights
708.10.	Cultural Wellness Facilitator and Healer	708.35.	Petition for Suspension or Termination of Parental Rights
708.11.	Order of Placement Preferences	708.36.	Initial Hearing on the Suspension or Termination of Parental Rights Petition
708.12.	Notice of Petition	708.37.	Fact Finding Hearing for a Suspension or Termination of Parental Rights
708.13.	Hearings (General)	708.38.	Department's Suspension or Termination of Parental Rights Report
708.14.	Discovery and Records	708.39.	Standards and Factors
708.15.	Taking a Child into Custody	708.40.	Dispositional Hearings for Suspension or Termination of Parental Rights
708.16.	Emergency Custody Hearing	708.41.	Adoption
708.17.	Petition for a Child in Need of Protection or Services	708.42.	Adoption Criteria and Eligibility
708.18.	Consent Decree	708.43.	Adoption Procedure
708.19.	Plea Hearing for a Child in Need of Protection or Services	708.44.	Non-Compliance with a Residual Rights Agreement
708.20.	Fact-finding Hearing for a Child in Need of Protection or Services	708.45.	Peacemaking and Mediation
708.21.	Department's Disposition Report for a Child in Need of Protection or Services	708.46.	Appeals
708.22.	Dispositional Hearing for a Child in Need of Protection or Services	708.47.	Liability
708.23.	Permanency Plans		
708.24.	Change in Placement		
708.25.	Trial Reunification		

1

2 **708.1. Purpose and Policy**

3 708.1-1. *Purpose.* The purpose of this law is to provide for the welfare, care, and protection of
4 Oneida children through the preservation of the family unit, while recognizing that in some
5 circumstances it may be in the child's best interest to not be reunited with his or her family.
6 Furthermore, this law strengthens family life by assisting parents in fulfilling their responsibilities
7 as well as facilitating the return of Oneida children to the jurisdiction of the Nation and
8 acknowledging the customs and traditions of the Nation when raising an Oneida child.

9 708.1-2. *Policy.* It is the policy of the Nation to ensure there is a standard process for conducting
10 judicial proceedings and other procedures in which children and all other interested parties are
11 provided fair hearings in addition to ensuring their legal rights are recognized and enforced, while
12 protecting the public safety.

13

14 **708.2. Adoption, Amendment, Repeal**

15 708.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-26-17-J,
16 and amended by resolution BC-__-__-__-__.

17 708.2-2. This law may be amended or repealed by the Oneida Business Committee and/or Oneida
18 General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

708.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

708.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control. Provided that, this law repeals the following:

- (a) Resolution # BC-09-25-81 *Oneida Child Protective Board Ordinance*;
- (b) Resolution # BC-10-07-81-A *Appointing Members to the Oneida Child Protective Board*;
- (c) Resolution # BC-05-24-84-C *Definition of Extended Family Member*;
- (d) Resolution # BC-01-14-15-A *Amendment of Oneida Child Protective Board Ordinance*;
- (e) Resolution # BC-05-13-15 *Indian Child Welfare Act Policy*; and
- (f) Resolution # BC-12 -10-03-A *Oneida Child Protective Boards Stipends*.

708.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

708.3. Definitions

708.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Abuse” means any of the following:
 - (1) Physical injury inflicted on a child by other than accidental means;
 - (2) Sexual assault;
 - (3) Sexual exploitation of a child;
 - (4) Prostitution or trafficking of a child;
 - (5) Causing a child to view or listen to sexual activity or sexually explicit materials;
 - (6) Exposing a child to the manufacture, sale, or use of controlled substances; and/or
 - (7) Emotional damage for which the child’s parent, guardian, or legal custodian has neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment or take steps to address the issue.
- (b) “Advocate” means a person who is a non-attorney presented to the Court as the representative or advisor to a party.
- (c) “Alcohol and other drug abuse impairment” means a condition of a person which is exhibited by characteristics of habitual lack of self-control in the use of alcoholic beverages or controlled substances to the extent that the person’s health is substantially affected or endangered or the person’s social or economic functioning is substantially disrupted.
- (d) “Attorney” means a person trained and licensed to represent another person in Court, to prepare documents and to give advice or counsel on matters of law.
- (e) “Best interest of the child” means the interest of a child to:
 - (1) Have a full, meaningful, and loving relationship with both parents and family as much as possible;
 - (2) Be free from physical, sexual and emotional abuse;
 - (3) Be raised in conditions that foster and encourage the happiness, security, safety, welfare, physical and mental health, and emotional development of the child;
 - (4) Receive appropriate medical care;
 - (5) Receive appropriate education;

- (6) Be raised in conditions which maximize the chances of the child becoming a contributing member of society; and
- (7) Be raised in an environment that is respectful of the child's race(s), culture(s), and heritage(s).
- (f) "Business day" means Monday through Friday from 8:00 a.m. to 4:30 p.m., excluding holidays recognized by the Nation.
- (g) "Child" means a person who is less than eighteen (18) years of age.
- (h) "Clear and convincing evidence" means that a particular fact is substantially more likely than not to be true.
- (i) "Counsel" means an attorney or advocate presented to the Court as the representative or advisor to a party.
- (j) "Court" means the Oneida Nation Family Court, which is the branch of the Oneida Nation Judiciary that has the designated responsibility to oversee family matters.
- (k) "Court of competent jurisdiction" means a state or tribal court that has jurisdiction and authority to do a certain act or hear a certain dispute.
- (l) "Department" means the Oneida Nation Indian Child Welfare Department.
- (m) "Disposition" means the Court's final ruling or decision on a case or legal issue.
- (n) "Dispositional hearing" means a hearing for the Court to make its final determination of a case or issue.
- (o) "Emotional damage" means harm to a child's psychological or intellectual functioning evidenced by one (1) or more of the following characteristics exhibited to a severe degree:
- (1) anxiety;
 - (2) depression;
 - (3) withdrawal;
 - (4) outward aggressive behavior; and/or
 - (5) a substantial and observable change in behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development.
- (p) "Expert" means a person with special training, experience, or expertise in a field beyond the knowledge of an ordinary person.
- (q) "Extended family" means a person who has reached the age of eighteen (18) and who is the child's grandparent, aunt, uncle, brother, sister, brother-in-law, sister-in-law, niece, nephew, first, second, third or fourth cousin, or stepparent.
- (r) "Fact-finding hearing" means a hearing for the Court to determine if the allegations in a petition under this law are proved by clear and convincing evidence.
- (s) "Fictive kin" means any person or persons who, to the biological parents of the child at issue, have an emotional tie to that parent wherein they are like family.
- (t) "Foster home" means any home which is licensed by the Department or applicable licensing agency and maintained by any individual(s) suitable for placement of children when taken into custody or pending court matters.
- (u) "Good cause" means adequate or substantial grounds or reason to take a certain action, or to fail to take an action.
- (v) "Group home" means any facility operated by a person required to be licensed by the Department and/or applicable licensing agency for the care and maintenance of five (5) to eight (8) children.

(w) “Guardian” means any person, agency or department appointed by the Court to care for and manage the child in a particular case before the Court. A guardian has the right to make major decisions affecting a child including education, religious and cultural upbringing, the right to consent to marriage, to enlistment in the armed forces, to major surgery and medical treatment and to adoption, or make recommendations as to adoption.

(x) “Guardian ad litem” means a person appointed by the Court to appear at any peacemaking, mediation, or hearing and tasked with representing the best interest of the person appointed for.

(y) “Holiday” means any holiday recognized by the Nation as identified in the Nation’s laws, rules and policies governing employment.

(z) “Imminent danger” means a risk of harm or injury that will occur immediately.

(aa) “Indian Child Welfare Worker” means a person employed by the Nation in the Indian Child Welfare Department tasked with the responsibility to carry out the duties, objectives and provisions of this law.

(bb) “Informal disposition” means a written agreement with all the parties describing the conditions and obligations that must be met to ensure the child is protected and to alleviate the condition that led to the referral to the Department. An informal disposition is utilized by the Department when the Department determines that the interest of the child does not require a formal Court intervention to provide protection and services to the child.

(cc) “Legal custodian” means any person other than a parent or guardian to whom legal custody of a child has been granted by court order and has the rights and responsibilities for the following:

- (1) To have physical custody of the child as determined by the Court, if physical custody is not with the person having legal custody;
- (2) To protect, educate and discipline the child so long as it is in the child’s best interest; and
- (3) To provide the child with adequate food, shelter, education, ordinary medical care and other basic needs, according to court order. In an emergency situation, a custodian shall have the authority to consent to surgery as well as any other emergency medical care needs.

(dd) “Mediation” means a method of dispute resolution that involves a neutral third party who tries to help disputing parties reach an agreement.

(ee) “Nation” means the Oneida Nation.

(ff) “Neglect” means failure, refusal, or inability on the part of a caregiver, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care, or shelter so as to seriously endanger the physical health of the child.

(gg) “Parent” means the biological or adoptive parent of a child.

(hh) “Parties” means the parent(s), guardian(s), and legal custodian(s) of the child who is the subject of the proceedings, the guardian ad litem if one has been appointed by the Court.

(ii) “Peacemaking” means a method of dispute resolution that is based on traditional methods of resolving disputes and addresses the needs of rebuilding relationships between people.

(jj) “Permanency Plan” means a plan designed to ensure that a child is reunified with his or her family whenever appropriate, or that the child quickly attains a placement or home providing long-term stability.

- (kk) “Physical injury” includes, but is not limited to, any of the following:
- (1) lacerations;
 - (2) fractured bones;
 - (3) burns;
 - (4) internal injuries;
 - (5) severe or frequent bruising;
 - (6) bodily injury which creates a substantial risk of death;
 - (7) bodily injury which causes serious permanent disfigurement;
 - (8) bodily injury which causes a permanent or protracted loss or impairment of the function of any bodily member or organ; or
 - (9) any other serious bodily injury.
- (ll) “Plea hearing” means a hearing to determine whether any party wishes to contest a petition filed under this law.
- (mm) “Probable cause” means there are sufficient facts and circumstances that would lead a reasonable person to believe that something is true.
- (nn) “Protective plan” means immediate short-term action that protects a child from present danger threats in order to allow completion of the initial assessment and investigation and, if needed, the implementation of a safety plan.
- (oo) “Reasonable effort” means an earnest and conscientious effort to take good faith steps to provide the services ordered by the Court which takes into consideration the characteristics of the parent or child, the level of cooperation of the parent and other relevant circumstances of the case.
- (pp) “Relative” means any person connected with a child by blood, marriage or adoption.
- (qq) “Reservation” means all the land within the exterior boundaries of the Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.
- (rr) “Shelter care facility” means a non-secure place of temporary care and physical custody for children, licensed by the Department and/or applicable licensing agency.
- (ss) “Social history” means the social, economic, cultural and familial aspects of a person and how those aspects affect the person’s functioning and situation in life.
- (tt) “Special treatment or care” means professional services which need to be provided to a child or family to protect the well-being of the child, prevent out-of-home placement, or meet the needs of the child.
- (uu) “Stepparent” means the spouse or ex-spouse of a child’s parent who is not a biological parent of the child.
- (vv) “Stipulation” means a formal legal acknowledgement and agreement made between opposing parties prior to a pending hearing or trial.
- (ww) “Substantial parental relationship” means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of a child.
- (xx) “Service plan” means a plan or set of conditions ordered by the Court identifying concerns and behaviors of a parent, guardian or legal custodian that resulted in a child to be in need of protection or services, and the treatment services, goals and objectives to address and remedy the concerns and behaviors of the parent, guardian or legal custodian.
- (yy) “Warrant” means an order issued by a court commanding a law enforcement officer to perform some act incident to the administration of justice.

708.4. Scope

708.4-1. This law shall apply to all child welfare cases and legal proceedings in which the Nation has jurisdiction. Nothing in this law is meant to restrict or limit another court of competent jurisdiction from hearing a matter involving an Indian child.

708.5. Jurisdiction

708.5-1. *Personal Jurisdiction.* The Court shall have personal jurisdiction over the following individuals:

(a) *Jurisdiction over an Oneida Child.* The Court shall have personal jurisdiction over any child who is present or resides within the boundaries of Brown and Outagamie County and is enrolled or eligible for enrollment in the Nation.

(b) *Jurisdiction over a Non-Oneida Child.* The Court shall have personal jurisdiction over any child not enrolled or eligible for enrollment in the Nation who is present or resides within the boundaries of the Reservation and is a sibling of a child that is enrolled or eligible for enrollment in the Nation if the child's parent(s), guardian or legal custodian consents to the jurisdiction of the Court. Consent to the jurisdiction of the Court can be given by any of the following:

(1) The parent(s), guardian or legal custodian knowingly and voluntarily provides the Court with written consent to the jurisdiction of the Court; or

(2) The Court establishes on the record that the parent(s), guardian or legal custodian knowingly and voluntarily provides the Court with verbal consent to the jurisdiction of the Court.

708.5-2. *Jurisdiction over Children Alleged to be in Need of Protection or Services.* The Court shall have jurisdiction over a child alleged to be in need of protection or services if personal jurisdiction has been established and the child:

(a) is without a parent or guardian;

(b) has been abandoned;

(c) has a parent that relinquished custody of the child pursuant to the Nation's laws or state law and has no other parent available to provide necessary care;

(d) has been the victim of abuse, including injury that is self-inflicted or inflicted by another;

(e) is at substantial risk of becoming the victim of abuse, including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;

(f) has a parent, guardian, or legal custodian who signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child, and the child has no other parent available to provide necessary care;

(g) has a guardian or legal custodian who is unable or needs assistance to care for or provide necessary special treatment or care for the child, but is unwilling or unable to sign the petition requesting jurisdiction under this subsection;

(h) has been placed for care or adoption in violation of the Nation's laws or state law;

(i) is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;

(j) is at least twelve (12) years of age, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;

(k) has a parent, guardian or legal custodian who neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;

(l) has a parent, guardian or legal custodian who is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;

(m) is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to improve the symptoms;

(n) is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or

(o) is non-compliant with the Nation's or State's immunization laws.

708.5-3. *Jurisdiction over other Matters Relating to Children.* If jurisdiction has been established under section 708.5-1 and all requirements of this law have been met the Court may:

(a) terminate or suspend parental rights to a child;

(b) appoint, revise, and/or remove a guardian; and

(c) hold adoption proceedings.

708.5-4. *Transfer of Cases from other Courts.* If personal jurisdiction has been established the Court has jurisdiction over any action transferred to the Court from any court of competent jurisdiction.

(a) While a case is being transferred to the Court from another court, any time limits established by this law shall be tolled until the next hearing on the matter before the Court.

708.5-5. *Transfer of Cases to other Courts.* The Court may transfer a case under this law to a court of competent jurisdiction where the other court has a significant interest in the child and the transfer would be in the best interest of the child.

708.5-6. Any orders made by the Court under this law, or any orders made by a court of competent jurisdiction regarding child welfare matters, shall supersede any other order made by this Court or a court of competent jurisdiction regarding custody or placement of child.

708.6. Nation's Child Welfare Attorney

708.6-1. A Child Welfare attorney shall represent the Nation in all proceedings under this law. The Child Welfare attorney shall be one of the following:

(a) An attorney from the Oneida Law Office;

(b) An attorney contracted by the Oneida Law Office; or

(c) An attorney contracted by the Department.

708.7. Indian Child Welfare Department Duties and Responsibilities

708.7-1. *Indian Child Welfare Worker.* The Indian Child Welfare Worker shall carry out the duties and responsibilities set forth in this law which include, but are not limited to the following:

- (a) Receive, examine, and investigate complaints and allegations that a child is in need of protection or services for the purpose of determining the appropriate response under this law, which may include notifying law enforcement;
- (b) Receive referral information, conduct intake inquiries, and determine whether to initiate child welfare proceedings;
- (c) Determine whether a child should be held pursuant to the emergency provisions of this law;
- (d) Make appropriate referrals of cases to other agencies when appropriate, and share information with other agencies if their assistance appears to be needed or desirable;
- (e) Maintain records;
- (f) Enter into informal dispositions or protective plans with families;
- (g) Refer counseling or any other functions or services to the child and/or family as designated by the Court;
- (h) Identify and develop resources within the community that may be utilized by the Department and Court;
- (i) Make reasonable efforts to obtain necessary services for the child and family and investigate and develop resources for the child and family to utilize;
- (j) Accept legal custody of children when ordered by the Court;
- (k) Make reports and recommendations to the Court;
- (l) Make recommendations to the Nation's Child Welfare attorney;
- (m) Request transfer from state court to the Nation's court when appropriate;
- (n) Perform any other functions ordered by the Court within the limitations of the law;
- (o) Develop appropriate plans and conduct reviews;
- (p) Negotiate agreements for services, record sharing, referral, and funding for child family service records within the Department;
- (q) Provide measures and procedures for preserving the confidential nature of child and family service records within the Department;
- (r) Participate in continuing training, conferences and workshops pertinent to child welfare issues;
- (s) Explain the court proceedings to the child in language and terms appropriate to the child's age and maturity level when a guardian ad litem is not appointed for a child; and
- (t) Maintain a knowledge and understanding of all relevant laws and regulations.

708.7-2. *Department.* In performing the duties set forth in this law, the Department shall:

- (a) Identify and refer parties to resources in the community calculated to resolve the problems presented in petitions filed in Court, such as the various psychiatric, psychological, therapeutic, counseling, and other social services available within and outside the Nation when necessary;
- (b) Identify and refer parties to resources in the community designed to enhance the child's potential as a member of the Nation;
- (c) Investigate, inspect, and license foster homes, and monitor and supervise foster homes and children in foster care;
- (d) Adhere to the placement preference order stated in section 708.11;

(e) Enter into memorandums of understanding or agreement with the Oneida Trust Enrollment Committee or Department, Oneida Police Department, Oneida Nation Child Support Agency and any other appropriate department in order to carry out the provisions of this law; and

(f) Share information with other social service agencies, law enforcement agencies, and other entities of the Nation as it pertains to children under the jurisdiction of this law.

708.8. Guardian ad litem

708.8-1. *Appointment.* The appointment of a guardian ad litem shall be as follows:

(a) The Court may appoint a guardian ad litem for any child who is the subject of a child in need of protection or services proceeding;

(b) The Court shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate or suspend parental rights, whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding, and for a child who is the subject of a contested guardianship proceeding;

(c) The Court shall appoint a guardian ad litem for a minor parent petitioning for the voluntary termination of their parental rights; and

(d) A guardian ad litem may be appointed for any other circumstance the Court deems necessary.

708.8-2. *Qualifications.*

(a) A guardian ad litem shall be an adult who:

(1) is at least twenty one (21) years of age;

(2) is currently certified as a guardian ad litem and in good standing;

(3) has never been convicted of a felony unless the person received a pardon or forgiveness; and

(4) has never been convicted of any crime against a child.

(b) No person shall be appointed guardian ad litem in that proceeding who:

(1) has a personal interest in the outcome of the case, a party to the proceeding, or any other interest that has the potential to corrupt a person's motivation or decision making, because of an actual or potential divergence between the person's self-interests, and the best interests of the case;

(2) appears as counsel or an advocate in the proceeding on behalf of any party; or

(3) is related to a party of the proceeding, the Judge for the proceeding, or an appointing Judge by blood, marriage, adoption or related by a social tie that could be reasonably interpreted as a conflict of interest.

(c) A guardian ad litem may be recognized as certified by the Court if he or she:

(1) has completed guardian ad litem training provided by the Court, another Indian tribe, or a state; or

(2) is recognized as a certified guardian ad litem by another jurisdiction.

708.8-3. *Responsibilities.* The guardian ad litem has none of the rights or duties of a general guardian. The guardian ad litem shall:

(a) investigate and review all relevant information, records and documents, as well as interview the child, parent(s), social workers, and all other relevant persons to gather facts when appropriate;

(b) consider the importance of the child's culture, heritage and traditions;

(c) consider, but shall not be bound by, the wishes of the child or the positions of others as to the best interests of the child;

- (d) explain the role of the guardian ad litem and the court proceedings to the child in language and terms appropriate to the child's age and maturity level;
- (e) provide a written or oral report to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based;
- (f) recommend evaluations, assessments, services and treatment of the child and the child's family when appropriate;
- (g) inform the court of any concerns or possible issues regarding the child or the child's family;
- (h) represent the best interests of the child;
- (i) perform other duties as directed by the Court; and
- (j) comply with all laws, policies and rules of the Nation governing the conduct of a guardian ad litem.

708.8-4. *Compensation.* The guardian ad litem shall be compensated at a rate that the Court determines is reasonable. The Court shall compensate the guardian ad litem for his or her fees. The parties shall reimburse the Court for the guardian ad litem fees. The Court may apportion the amount of reimbursement each party shall pay based on the ability to pay or assess the cost equally between the parties. The Court may determine an appropriate time frame for the reimbursement to occur. The Court may waive the guardian ad litem expense if the cost of the guardian ad litem will impose an immediate and substantial hardship on the parties.

708.9. Advocate

708.9-1. The parent, guardian and legal custodian of a child has the right to obtain an advocate to represent and advise him or her throughout any proceeding under this law at his or her own expense.

708.9-2. Qualifications.

(a) An advocate shall be an adult who:

- (1) is at least twenty one (21) years of age;
- (2) is admitted to practice before the Oneida Judiciary;
- (2) has never been convicted of a felony unless the person received a pardon or forgiveness; and
- (3) has never been convicted of any crime against a child.

708.9-3. An advocate shall comply with all laws, rules and policies of the Nation governing advocates.

708.10 Cultural Wellness Facilitator and Healer

708.10-1. The Department may utilize a Cultural Wellness Facilitator and Healer, or similar position, throughout all child welfare proceedings.

708.10-2. The Cultural Wellness Facilitator and Healer may provide:

- (a) wellness sessions utilizing culturally based and appropriate healing methods;
- (b) training on Oneida culture, language and traditions; and
- (c) any other service that may be necessary.

708.11. Order of Placement Preferences

708.11-1. The following order of placement preferences shall be followed when it is necessary to place a child outside of the home under this law:

- (a) A member of the child's immediate or extended family;

- (b) A family clan member;
- (c) A member of the Nation;
- (d) Descendants of the Nation;
- (e) A member of another federally recognized tribe;
- (f) Fictive kin within the Nation community;
- (g) Fictive kin outside the Nation community; or
- (h) Any other person or persons not listed above.

708.11-2. The order of placement preferences listed in section 708.11-1. are prioritized from the most preference given to a child placed in a home in accordance with section 708.11-1(a) and the least amount of preference given to a child placed in a home in accordance with section 708.11-1(h).

708.11-3. In order to deviate from the placement preferences listed in section 708.11-1, the Court shall consider the best interest of the child when determining whether there is good cause to go outside the placement preference.

(a) Good cause to go outside the placement preferences shall be determined based on any of the following:

- (1) When appropriate, the request from the child's parent or the child, when the child is age twelve (12) or older;
- (2) Any extraordinary physical, mental or emotional health needs of the child requiring highly specialized treatment services as established by an expert;
- (3) The unavailability of a suitable placement after diligent efforts have been made to place the child in the placement preference listed in section 708.11-1; or
- (4) Any other reason deemed by the Court to be in the best interest of the child.

(b) The party requesting to deviate from the placement preferences listed in 708.11-1 has the burden of establishing good cause.

708.12. Notice; General Terms

708.12-1. Service of documents and notices shall be as specified in this law. If a method of service is not specified in this law, then service shall be by first-class mail to the recently verified last-known address of the party. If a party's whereabouts are unknown and cannot be found after diligent effort, service shall be by publication as described in the Oneida Judiciary Rules of Civil Procedure.

708.12-2. The Court shall provide the parties with notice of all hearings at least seven (7) days prior to the hearing, with the purpose of providing the parties an opportunity to be heard.

(a) *Exception.* In circumstances where a hearing is required by law to be scheduled in less than seven (7) days, the Court shall make an appropriate effort to notice all parties of the hearing.

708.12-3. When the Department is required to perform personal service, the Indian Child Welfare Worker may deliver the document(s) directly to the party(s) if such service is appropriate and safe under the circumstances. In the alternative, personal service may be accomplished according to the Oneida Judiciary Rules of Civil Procedure.

708.13. Hearings (General)

708.13-1. If the Court finds that it is in the best interest of the child, the Court may exclude the child from participating in a hearing conducted in accordance with this law.

708.13-2. The Oneida Judiciary Rules of Evidence are not binding at emergency custody hearings, dispositional hearings, or a hearing about changes in placement, revision of dispositional orders, extension of dispositional orders, or termination of guardianship orders. At those hearings, the Court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant, or unduly repetitious testimony. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The Court shall give effect to the rules of privilege recognized by laws of the Nation. The Court shall apply the basic principles of relevancy, materiality, and probative value to proof of all questions of fact.

708.13-3. If an alleged father appears at a hearing under this law, the Court may order the Department to refer the matter to the Oneida Nation Child Support Agency to adjudicate paternity. The Court may also order that the Department is able to sign documents on behalf of the child for the purpose of a paternity action. While paternity is being established, the Court shall enter an order finding good cause to suspend the time limits established under this law.

708.13-4. At any time, the Court or the Department may refer the matter to the Nation's Child Support Agency.

708.14. Discovery and Records

708.14-1. Upon written request, the parties and their counsel shall have the right to inspect, copy or photograph social, psychiatric, psychological, medical, and school reports, and records concerning the child including reports of preliminary inquiries, predisposition studies and supervision records relating to the child which are in the possession of the Nation's Child Welfare attorney or the Department that pertain to any case under this law.

708.14-2. If a request for discovery is refused, the person may submit an application to the Court requesting an order granting discovery. Motions for discovery shall certify that a request for discovery has been made and refused.

708.14-3. If the discovery violates a privileged communication or a work product rule, the Court may deny, in whole or part, otherwise limit or set conditions on the discovery authorized.

708.14-4. The identity of the individual that initiated the investigation by contacting the Department, shall be redacted in all documents that are made available to the parties.

708.14-5. In addition to the discovery procedures permitted under this law, the discovery procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all proceedings under this law.

708.14-6. The Department may make an ex parte request to the Court to prevent the release of records regarding the child if the Department believes the release of the records may result in a risk of harm to the child. The Court shall then review the records in camera in order to decide whether to order the records released.

708.15. Taking a Child into Custody

708.15-1. *Grounds for Taking a Child into Custody.* A child may be taken into custody without a Court order by an Indian Child Welfare Worker or law enforcement officer if there are reasonable grounds to believe:

- (a) A warrant for the child's apprehension has been issued by the Court or another court of competent jurisdiction to take the child into custody;
- (b) The child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary; and/or
- (c) The child has violated the conditions of an order issued pursuant to this law.

708.15-2. The Court may enter an order directing that a child be taken into custody upon a showing satisfactory to the judge that the welfare of the child demands that the child be immediately removed from his or her present custody.

708.15-3. A person taking the child into custody, under this section, shall immediately attempt to notify the parent(s), guardian(s), and legal custodian(s) of the child by the most practical means. Attempts to satisfy notification shall continue until either the parent(s), guardian(s), and legal custodian(s) of the child is notified, or the child is delivered to an Indian Child Welfare Worker, whichever occurs first. If the child is delivered to the Indian Child Welfare Worker before the parent(s), guardian(s), and legal custodian(s) is notified, the Indian Child Welfare Worker, or another person at his or her direction, shall continue the attempt to notify until the parent(s), guardian(s), and legal custodian(s) of the child is notified.

708.15-4. Once the child is taken into custody and turned over to the care of the Department, the Department shall make every effort to release the child immediately to the child's parent(s), guardian(s), and legal custodian(s), so long as it is in the child's best interest and the parent(s), guardian(s), and legal custodian(s) is willing to receive the child.

708.15-5. *Probable Cause for Taking a Child into Custody.* A child may be held in custody if the Indian Child Welfare Worker determines the child is within the jurisdiction of the Court and probable cause exists to believe any of the following if the child is not held in custody:

- (a) The child will cause injury to himself or herself or be subject to injury by others;
- (b) The child will be subject to injury by others, based on a determination that if another child in the home is not held that child will be subject to injury by others;
- (c) The parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care, and that services to ensure the child's safety and well-being are not available or would be inadequate;
- (d) The child meets the criteria for probable cause for taking a child into custody specified in section 708.15-5(c), based on a determination that another child in the home meets any of the criteria; or
- (e) The child will run away or be taken away so as to be unavailable for proceedings of the Court.

708.15-6. *Holding a Child in Custody.* A child held in custody may be held in any of the following places as long as the places are in the child's best interest and all people residing or regularly visiting the premises have cleared a background check:

- (a) The home of a relative, except that a child may not be held in the home of a relative that has been convicted of the first-degree intentional homicide or the second-degree intentional homicide of a parent of the child, or any crime against a child, and the conviction has not been pardoned, forgiven, reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination;
- (b) A licensed foster home;
- (c) A licensed group home;
- (d) A non-secure facility operated by a licensed child welfare agency;
- (e) A licensed private or public shelter care facility;
- (f) A hospital or other medical or mental health facility; or

(g) The home of a person not a relative, if the placement does not exceed thirty (30) days, though the placement may be extended for up to an additional thirty (30) days by the Indian Child Welfare Worker, and if the person has not had a child care license refused, revoked, or suspended within the last two (2) years.

708.15-7. When holding a child in custody for emergency placement the use of the preferences for placement stated in section 708.11-1 are preferred, but not mandatory. If the preferences for placement are not followed, the Department shall try to transition that child into a home that fits the order of preferences for placement as quickly as deemed appropriate by the Department.

708.15-8. If a child is held in custody, the Indian Child Welfare Worker shall notify the child's parent(s), guardian(s), and legal custodian(s) of the reasons for holding the child and of the child's whereabouts except when the Indian Child Welfare Worker believes that notice would present imminent danger to the child. If the parent, guardian, or legal custodian is not immediately available, the Indian Child Welfare Worker or another person designated by the worker shall provide notice as soon as possible.

708.15-9. The Indian Child Welfare Worker shall also notify the parent, guardian, and legal custodian of the following:

- (a) the date, time and place of the emergency custody hearing;
- (b) the nature and possible outcomes of the hearing;
- (c) the right to present and cross-examine witnesses; and
- (d) the right to retain counsel at his or her own expense.

708.15-10. When the child is age twelve (12) or older, the Indian Child Welfare Worker shall notify the child of the date, time, and place and the nature and possible outcomes of the emergency custody hearing.

708.16. Emergency Custody Hearing

708.16-1. If a child who has been taken into custody under section 708.15-5 is not released, a hearing to determine whether the child shall continue to be held in custody under the criteria of probable cause for taking a child into custody under section 708.15-5(a)-(e) shall be conducted by the Court as soon as possible but no later than seventy-two (72) hours after the time the decision to hold the child was made, excluding Saturdays, Sundays, and holidays. By the time of the hearing, a petition for a child in need of protection or services under section 708.17 shall be filed unless the Department seeks and receives an extension pursuant to section 708.16-2. The child shall be released from custody if a hearing is not held within the specified timelines.

708.16-2. If no petition has been filed by the time of the hearing, a child may be held in custody with approval of the Court for an additional seventy-two (72) hours from the time of the hearing, excluding Saturdays, Sundays, and holidays, only if, as a result of the facts brought forth at the hearing, the Court determines that probable cause exists to believe any of the following:

- (a) That additional time is required to determine whether the filing of a petition initiating proceedings under this law is necessary;
- (b) That the child is an imminent danger to himself or herself or to others; or
- (c) The parent, guardian, and legal custodian of the child or other responsible adult is neglecting, refusing, unable, or unavailable to provide adequate supervision and care.

708.16-3. The Court may grant a one-time extension under section 708.16-2 for a petition. In the event a petition is not filed within the extension period, the Court shall order the child's immediate release from custody. For any parties not present at the hearing, the Department shall serve the petition on those parties by certified mail, return receipt requested.

708.16-4. Prior to the start of the hearing, the Court shall inform the parent, guardian, or legal custodian of the following:

- (a) allegations that have been made or may be made;
- (b) the nature and possible outcomes of the hearing and possible future hearings;
- (c) the right to present and cross-examine witnesses; and
- (d) the right to retain counsel at his or her own expense.

708.16-5. If present at the hearing, the Court may permit the parent to provide the names and other identifying information of three (3) relatives of the child or other individuals eighteen (18) years of age or older whose homes the parent wishes the Court to consider as placements for the child. If the parent does not provide this information at the hearing, the Department shall permit the parent to provide the information at a later date.

708.16-6. All orders to hold a child in custody shall be in writing.

(a) All orders to hold a child in custody shall include all of the following:

- (1) A finding that continued placement of the child in his or her home would be contrary to the best interests of the child;
- (2) A finding that the Department and/or anyone else providing services to the child had reasonable grounds to remove the child from the home based on the child's best interest;
- (3) A finding that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;
- (4) The Department made reasonable efforts to make it possible for the child to return safely home; and
- (5) If the child has one (1) or more siblings, who have also been removed from the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that a joint placement would be contrary to the safety or well-being of the child or any of those siblings, in which case the Court shall order the Department make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the safety or well-being of the child or any of those siblings.

(b) An order to hold a child in custody may include the following:

- (1) an award of legal custody of the child and the ability to make medical decisions on behalf of the child to the Department.

708.16-7. An order to hold a child in custody remains in effect until a dispositional order is granted, the petition is withdrawn or dismissed, or the order is modified or terminated by further order of the Court.

708.16-8. An order to hold a child in custody may be re-heard upon motion of any party if, in the Court's discretion, good cause is found, whether or not counsel was present.

708.17. Petition for a Child in Need of Protection or Services

708.17-1. The Nation's Child Welfare attorney or the Department shall initiate proceedings under this section by filing a petition with the Court, signed by a person who has knowledge of the facts alleged or is informed of them and believes them to be true. Upon filing with the Court, the

Department shall provide a copy of the petition to the parties by personal service or, if personal service is not possible, by certified mail with return receipt requested.

708.17-2. The petition shall include the following:

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parent, guardian, legal custodian or spouse, if any; or if no such person can be identified, the name and address of the nearest relative;
- (c) Whether the child is in custody, and, if so, the place where the child is being held and the date and time he or she was taken into custody unless there is reasonable cause to believe that such disclosure would result in imminent danger to the child or legal custodian;
- (d) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit;
- (e) A plain and concise statement of facts upon which the allegations are based, including the dates, times, and location at which the alleged acts occurred. If the child is being held in custody outside his or her home, the statement shall include information showing that continued placement of the child in the home would be contrary to the welfare of the child and the efforts that were made to prevent the removal of the child, while assuring that the child's health, welfare, and safety are the paramount concerns; and
- (f) Any other information as deemed necessary by the Court.

708.17-3. The petition shall state if any of the facts required for a petition are not known or cannot be ascertained by the petitioner.

708.17-4. A petition may be amended at any time at the discretion of the Court. Upon filing with the Court, the Department shall provide a copy of the amended petition to the parties by certified mail with return receipt requested.

708.18. Consent Decree

708.18-1. *Consent Decree.* At any time after the filing of a petition pursuant to section 708.17 and before the entry of judgment, the Court may suspend the proceedings and place the child under supervision in the home or present placement of the child. The Court may establish terms and conditions applicable to the child and the child's parent, guardian or legal custodian. The order under this section shall be known as a consent decree and must be agreed to by the child who is twelve (12) years of age or older, the parent, guardian or legal custodian, and the person filing the petition. The consent decree shall be reduced to writing and given to the parties.

708.18-2. *Requirements of a Consent Decree.* If at the time the consent decree is entered into the child is placed outside the home and if the consent decree maintains the child in that placement, the consent decree shall include all of the following:

- (a) A finding that placement of the child in his or her home would be contrary to the welfare of the child;
- (b) A finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety and best interests are the paramount concerns;
- (c) If a permanency plan has previously been prepared for the child, a finding as to whether the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan; and
- (d) If the child has one or more siblings who have also been removed from the home, the consent decree shall include a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together,

unless the Court determines that the placement of the siblings together would be contrary to the safety, well-being and best interests of the child or any of those siblings, in which case the Court shall order the department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the safety, well-being or best interests of the child or any of those siblings.

708.18-3. *Time Limits of Consent Decree.* A consent decree shall remain in effect up to six (6) months unless the child, parent, guardian, or legal custodian is discharged sooner by the Court. The time limits under this law shall be tolled during the pendency of the consent decree.

708.18-4. *Extension of a Consent Decree.* Upon the motion of the Court or the request of the child, parent, guardian, legal custodian, child's guardian ad litem, or the Department, the Court may, after giving notice to the parties to the consent decree, extend the decree for up to an additional six (6) months in the absence of objection to the extension by the parties to the initial consent decree. If the child, parent, guardian, legal custodian, or child's guardian ad litem objects to the extension, the Court shall schedule a hearing and make a determination on the issue of extension.

708.18-5. If, prior to discharge by the Court, or the expiration of the consent decree, the Court finds after conducting a hearing that the child, parent, guardian, or legal custodian has failed to fulfill the express terms and conditions of the consent decree, the hearing under which the child was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

708.19. Plea Hearing for a Child in Need of Protection or Services

708.19-1. A plea hearing shall take place on a date which allows reasonable time for the parties to prepare but is within forty-five (45) days after the filing of a petition, unless the Court enters an order finding good cause to go outside of the time limits.

708.19-2. If a petition is not contested, the Court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is within forty-five (45) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits. If all the parties agree and the Department has submitted a court report pursuant to section 708.21, the Court may proceed immediately with the dispositional hearing.

708.19-3. If the petition is contested, the Court shall set a date for the fact-finding hearing which allows reasonable time for the parties to prepare but is within sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

708.19-4. Before accepting an admission or plea of no contest of the alleged facts in a petition, the Court shall:

(a) Address the parties present and determine that the plea of no contest or admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes;

(b) Establish whether any promises or threats were made to elicit the plea of no contest or admission; and

(c) Make inquiries that establish a factual basis for the plea of no contest or admission.

708.19-5. At the plea hearing the Department may request placement of the child outside of the child's home in accordance with the placement preferences in section 708.11-1, if notice of the Department's intent to seek out of home placement of the child was provided to the parties. In the

request for placement of the child outside of the child's home the Department shall present as evidence specific information showing all of the following:

(a) That continued placement of the child in his or her home would be contrary to the best interests of the child;

(b) That the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;

(c) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, that the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the Department shall present as evidence specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and

(d) If a recommendation is made that the child and his or her siblings not be placed together, that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the Department shall present as evidence specific information showing that such visitation or interaction would be contrary to the best interests of the child or any of those siblings.

708.19-6. If the Court orders the out of home placement of the child, the order shall be in writing and shall contain:

(a) Where the child will be placed;

(1) If the Court finds that disclosing identifying information related to placement of the child would result in imminent danger to the child or anyone else, the Court may order the name and address of whom the child is placed with withheld from the parent or guardian.

(b) A finding that continued placement of the child in his or her home would be contrary to the welfare of the child;

(c) If the child is placed outside the home under the supervision of the Department, an order ordering the child into the placement and care responsibility of the Department and assigning the Department primary responsibility for providing services to the child and family;

(d) If the child is placed outside the home has one (1) or more siblings who have also been placed outside the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that placement of the children together would be contrary to the best interests of the child or any of those siblings, in which case the Court shall order the Department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the best interests of the child or any of those siblings.

708.20. Fact finding Hearing for a Child in Need of Protection or Services

708.20-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that the child is in need of protection or services.

708.20-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.20-3. At the close of the fact-finding hearing, the Court shall set a date for the dispositional hearing which allows a reasonable time for the parties to prepare but is no more than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits. If all the parties agree and the Department has submitted court report pursuant to section 708.21, the Court may proceed immediately with the dispositional hearing.

708.21. Department's Disposition Report for a Child in Need of Protection or Services

708.21-1. Before the dispositional hearing, the Department shall submit a written report to the Court, with a copy provided to the parties by first-class mail at least seven (7) days prior to the hearing, which shall contain all of the following:

- (a) The social history of the child and family;
- (b) A strategic plan for the care of and assistance to the child and family calculated to resolve the concerns presented in the petition;
- (c) A detailed explanation showing the necessity for the proposed plan of disposition and the benefits to the child and family under the proposed plan; and
- (d) If an out-of-home placement is being recommended, specific reasons for recommending that placement.

708.21-2. If the Department is recommending out-of-home placement, the written report shall include all of the following:

- (a) The location of the placement and where it fits within the placement preferences.
- (b) A recommendation as to whether the Court should establish a child support obligation for the parents;
- (c) Specific information showing that continued placement of the child in his or her home would be contrary to the best interests of the child and specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;
- (d) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, specific information showing that Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the report shall include specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and
- (e) If a recommendation is made that the child and his or her siblings not be placed together specific information showing that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the report shall include specific information showing that such visitation or interaction would be contrary to best interests of the child or any of those siblings;

708.21-3. The Department may withhold the placement provider's identifying information from the child's parent, guardian or legal custodian in the dispositional report if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else.

708.22. Dispositional Hearing for a Child in Need of Protection or Services

708.22-1. At a dispositional hearing, any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations.

708.22-2. During a dispositional hearing, if the Department is recommending placement of the child outside of the child's home in accordance with the placement preferences in section 708.11-1, the Department shall present as evidence specific information showing all of the following:

(a) That continued placement of the child in his or her home would be contrary to the best interests of the child;

(b) That the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns;

(c) If the child has one (1) or more siblings who have been removed from the home or for whom an out-of-home placement is recommended, that the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Department recommends that the child and his or her siblings not be placed together, in which case the Department shall present as evidence specific information showing that placement of the children together would be contrary to the best interests of the child or any of those siblings; and

(d) If a recommendation is made that the child and his or her siblings not be placed together, that the Department has made reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Department recommends that such visitation or interaction not be provided, in which case the Department shall present as evidence specific information showing that such visitation or interaction would be contrary to the best interests of the child or any of those siblings.

708.22-3. The Court's dispositional order shall employ those means necessary to maintain and protect the best interests of the child which are the least restrictive of the rights of the parent and child and which assure the care, treatment or rehabilitation of the child and the family consistent with the protection of the public. When appropriate, and, in cases of child abuse or neglect when it is consistent with the best interest of the child in terms of physical safety and physical health, the family unit shall be preserved and there shall be a policy of transferring custody of a child from the parent only when there is no less drastic alternative. If there is no less drastic alternative for a child than transferring custody from the parent, the Court shall consider transferring custody pursuant to the preferences for placement set forth in section 708.11-1.

708.22-4. *Dispositional Orders*. The Court's dispositional order shall be in writing and shall contain:

(a) The service plan and specific services to be provided to the child and family, and if custody of the child is to be transferred to effect the service plan, the identity of the legal custodian;

(b) If the child is placed outside the home, where the child will be placed. If the Court finds that disclosing identifying information related to placement of the child would result in imminent danger to the child or anyone else, the Court may order the name and address of whom the child is placed with withheld from the parent or guardian;

(c) The date of the expiration of the court's order;

(1) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child in his or her home shall terminate one (1) year after the date on which the order is granted unless the Court specifies a shorter period of time or the Court terminates the order sooner.

(2) A dispositional order made before the child reaches eighteen (18) years of age that places or continues the placement of the child outside of the home shall terminate on the latest of the following dates, unless the Court specifies a shorter period or the Court terminates the order sooner:

(A) The date on which the child attains eighteen (18) years of age;

(B) The date that is one (1) year after the date on which the order is granted; and

(C) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age.

(d) If the child is placed outside the home, a finding that continued placement of the child in his or her home would be contrary to the welfare of the child and a finding as to whether the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns. The Court shall make the findings specified in this subsection on a case-by-case basis based on circumstances specific to the child;

(e) If the child is placed outside the home under the supervision of the Department, an order ordering the child into the placement and care responsibility of the Department and assigning the Department primary responsibility for providing services to the child and family;

(f) If the child is placed outside the home and if the child has one (1) or more siblings who have also been placed outside the home, a finding as to whether the Department has made reasonable efforts to place the child in a placement that enables the sibling group to remain together, unless the Court determines that placement of the children together would be contrary to the best interests of the child or any of those siblings, in which case the Court shall order the Department to make reasonable efforts to provide for frequent visitation or other ongoing interaction between the child and the siblings, unless the Court determines that such visitation or interaction would be contrary to the best interests of the child or any of those siblings;

(g) A statement of the conditions with which the parties are required to comply; and

(h) If the Court finds that it would be in the best interest of the child, the Court may set reasonable rules of parental visitation.

(1) If the Court denies a parent visitation, the Court shall enter conditions that shall be met by the parent in order for the parent to be granted visitation.

708.22-5. *Service plans and Conditions.* In a proceeding in which a child has been found to be in need of protection or services, the Court may order the child's parent, guardian and legal custodian to comply with any conditions and/or service plan determined by the Court to be necessary for the child's welfare.

(a) The service plan or conditions ordered by the Court shall contain the following information:

(1) The identification of the problems or conditions that resulted in the abuse or neglect of a child;

(2) The treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the service plan must include, but is not limited to, the conditions or requirements that must be established for the safe return of the child to the family;

(3) The specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the service plan, including the Department's specific responsibilities to make reasonable efforts to assist the parent, guardian or legal custodian in their efforts toward reunification with the child; and

(4) A notice that completion of a service plan does not guarantee the return of a child and that completion of a service plan without a change in behavior that caused removal in the first instance may result in the child remaining outside the home.

(b) A service plan may include recommendations and the dispositional order may require the child's parent, guardian and legal custodian to participate in:

(1) Outpatient mental health treatment;

(2) Substance abuse treatment;

(3) Anger management;

(4) Individual or family counseling;

(5) Parent training and education;

(6) Cultural wellness treatment and training; and/or

(7) Any other treatment as deemed appropriate by the Court.

708.22-6. If the Court finds that the parent was convicted of committing a crime against the life and bodily security of a child or a crime against a child, contained within Chapters 940 and 948 of the Wisconsin Statutes or another similar law in another jurisdiction, the Court may find that the Department is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

708.22-7. The Court shall provide a copy of the dispositional order to the child's parent, guardian, and legal custodian, and other parties to the action.

708.22-8. Whenever the Court orders a child to be placed outside his or her home or denies a parent visitation because the child is in need of protection or services, the Court shall orally inform the parent who appears in Court of any grounds for termination of parental rights which may be applicable and of the conditions necessary for the child to be returned to the home or for the parent to be granted visitation. The Court shall also include this information in the written dispositional order provided to the parent.

708.23. Permanency Plans

708.23-1. The Department shall prepare a written permanency plan anytime a child is placed outside the home pursuant to dispositional order that finds the child is in need of protection or services.

(a) The permanency plan shall include all of the following:

(1) The name, birth date, address, and tribal affiliation of the child;

(2) The names, birth dates, addresses, and tribal affiliation of the child's parent(s), guardian(s), and legal custodian(s);

(3) The date on which the child was removed from the home;

(4) A statement as to the availability of a safe and appropriate placement with an extended family member;

(5) The goal(s) of the permanency plan which may include one or more of the following: reunification, adoption, guardianship, placement with a fit and willing relative, or long-term foster care;

(6) Date by which it is likely the goal(s) of the permanency plan will likely be achieved;

(7) A description of the services offered and any services provided in an effort to prevent removal of the child from the home or to return the child to the home, while assuring that the best interests of the child are the paramount concerns;

(8) If the child has one (1) or more siblings who have been removed from the home, a description of the efforts made to place the child in a placement that enables the sibling group to remain together. If a decision is made to not place the siblings together, a description of the efforts made to provide for frequent and ongoing visitation or other ongoing interaction between the child and siblings;

(9) Information about the child's education; and

(10) Any other appropriate information as deemed necessary by the Court or the Department.

(b) The Department may withhold the placement provider's identifying information from the child's parent, guardian or legal custodian in the permanency plan if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else.

708.23-2. The Department shall file the initial permanency plan with the Court within sixty (60) days after the date the child was first removed from the home unless the child is returned to the home within that time period.

708.23-3. The Court shall hold a hearing to review the permanency plan no later than six (6) months after the date on which the child was first removed from the home and every six months thereafter for as long as the child is placed outside the home and is found to be in need of protection or services.

(a) At least seven (7) days before the date of the hearing, the Department shall file the updated permanency plan with the Court and provide a copy to the parties by first-class mail.

(b) All parties, including foster parent(s) shall have a right to be heard at the permanency plan hearing. Any party may submit written comments to the Court no less than three (3) business days prior to the hearing date.

708.23-4. After the hearing, the Court shall enter a written order addressing the following:

(a) The continuing necessity for and the safety and appropriateness of the placement;

(b) The compliance with the permanency plan by the Department and any other service providers, the child's parent(s), and the child;

(c) Efforts taken to involve appropriate service providers and Department staff in meeting the special needs of the child and the child's parent(s);

(d) The progress toward eliminating the causes for the child's placement outside the home and returning the child safely to the home or obtaining a permanent placement for the child;

(e) The date by which it is likely that the child will be returned to the home or placed for adoption, with a guardian, with a fit and willing relative, or in some other permanent living arrangement;

(f) Whether reasonable efforts were made by the Department to achieve the permanency plan goal(s);

- (g) Whether reasonable efforts were made by the Department to place the child in a placement that enables the sibling group to remain together or have frequent visitation or other ongoing interaction; and
(h) The date of the next review hearing, if appropriate.

708.24. Change in Placement

708.24-1. The Department, the Nation's Child Welfare attorney, or a party to the dispositional order may request a change in the placement of the child who is the subject of the dispositional order by filing a motion with the Court. The Court may also propose a change in placement on its own motion.

708.24-2. The request for a change in placement shall contain the name and address of the new placement requested and shall state what new information is available that affects the advisability of the current placement.

708.24-3. If the proposed change in placement moves the child outside of his or her home, the request shall contain specific information showing that continued placement of the child in the home would be contrary to the best interests of the child and if the Department is making the request, specific information showing that the Department has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's best interests are the paramount concerns.

708.24-4. Upon filing with the Court, the Department shall provide a copy of the request for a change in placement to the parties by first-class mail.

(a) The Department shall schedule a hearing prior to placing the child outside of the home, unless emergency conditions that necessitate an immediate change in the placement of a child apply.

(b) A hearing is not required when the child currently placed outside the home transfers to another out-of-home placement.

(1) A party may request a hearing when the child is transferred to a different out-of-home placement by submitting a written request to the Court within ten (10) days of being served with the notice of the proposed change.

708.24-5. If a hearing is held, any party may present evidence relevant to the issue of the change in placement. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of change in placement.

708.24-6. *Emergency Change in Placement.* If emergency conditions necessitate an immediate change in the placement of a child, the Department may remove the child to a new placement, whether or not authorized by the existing dispositional order. The Department shall notify the parties of the emergency change in placement by personal service as soon as possible but no later than seventy-two (72) hours after the emergency change in placement excluding Saturdays, Sundays, and holidays. If the emergency conditions necessitate an immediate change in placement of a child placed in the home to a placement outside the home, the Department shall schedule the matter for a hearing as soon as possible but no later than seventy-two (72) hours after the emergency change in placement is made, excluding Saturdays, Sundays, and holidays.

708.24-7. The parties may agree to a change in placement by signing a stipulation and filing it with the Court for approval.

708.24-8. No change in placement may extend the expiration date of the original dispositional order, except that if the change in placement is from a placement in the child's home to a placement outside the home the Court may extend the expiration date of the original dispositional order to the latest of the following dates, unless the Court specifies a shorter period:

- (a) The date on which the child reaches eighteen (18) years of age;
- (b) The date that is one (1) year after the date on which the change-in-placement order is granted; or
- (c) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age.

708.24-9. If the change in placement is from a placement outside the home to a placement in the child's home and if the expiration date of the original dispositional order is more than one (1) year after the date on which the change-in-placement order is granted, the Court shall shorten the expiration date of the original dispositional order to the date that is one (1) year after the date on which the change-in-placement order is granted or to an earlier date as specified by the Court.

708.25. Trial Reunification

708.25-1. The Department or the Nation's Child Welfare attorney may request the Court to order a trial reunification. A trial reunification occurs when a child placed in an out-of-home placement resides in the home of a parent, guardian, or legal custodian from which the child was removed for a period of seven (7) consecutive days or longer, but not exceeding one hundred fifty (150) days, for the purpose of determining the appropriateness of changing the placement of the child to that home. A trial reunification is not a change in placement under section 708.24.

708.25-2. *Request for Trial Reunification.* The Department or the Nation's Child Welfare attorney shall include the following in the request for a trial reunification:

- (a) The name and address of the requested trial reunification home;
- (b) A statement describing why the trial reunification is in the best interests of the child; and
- (c) A statement describing how the trial reunification satisfies the objective of the child's permanency plan.

708.25-3. *Emergency Removal of a Child.* A request for a trial reunification may not be made on the sole grounds that an emergency condition necessitates an immediate removal of the child from the child's out-of-home placement. If an emergency condition necessitates such an immediate removal, the Department shall proceed with an emergency change in placement as described in section 708.24-6.

708.25-4. *Notice.* The Department or Nation's Child Welfare attorney shall submit the request to the Court. Upon filing with the Court and at least seven (7) days before the date of reunification, the Department shall provide the parent, guardian, legal custodian, and any other party written notice of the proposed reunification by first-class mail. The notice shall contain the information that is required to be included in the request under section 708.25-2.

708.25-5. *Trial Reunification Hearing.* Any party who is entitled to receive notice of a requested trial reunification may obtain a hearing on the matter by filing an objection with the Court within ten (10) days after the trial reunification request was filed with the Court.

(a) If no objection against the trial reunification is filed, the Court may issue an order for the trial reunification.

(b) If an objection is filed, a hearing shall be held within forty five (45) days after the request was filed with the Court. A trial reunification shall not occur until after the hearing. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing to all parties.

(1) If a hearing is held and the trial reunification would remove a child from a foster home or other placement with a legal custodian, the Court shall give the foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or legal custodian to make a written or oral statement relating to the child and the requested trial reunification.

(2) The Court may appoint a guardian ad litem for the child during the trial reunification hearing.

708.25-6. *Order.* If the Court finds that the trial reunification is in the best interest of the child and that the trial reunification satisfies the objectives of the child's permanency plan, the Court shall order the trial reunification. The trial reunification shall terminate ninety (90) days after the date of the order, unless the Court specifies a shorter period in the order, or extends or revokes the trial reunification. No trial reunification order may extend the expiration date of the original dispositional order or any extension of the dispositional order.

708.25-7. *Extension of Trial Reunification.* The Department may request an extension of a trial reunification.

(a) *Extension Request.* The request shall contain a statement describing how the trial reunification continues to be in the best interests of the child. No later than seven (7) days prior to the expiration of the trial reunification, the Department shall submit the request to the Court and shall cause notice of the request to be provided to all parties by first-class mail.

(b) *Extension Hearing.* Any party may obtain a hearing on the requested extension by filing an objection with the Court within ten (10) days after the extension request was filed with the Court.

(1) If no objection is filed, the Court may order an extension of the trial reunification.

(2) If an objection is filed, the Court shall schedule a hearing on the matter. If the Court is unable to conduct a hearing on the matter before the trial reunification expires, the trial reunification shall remain in effect until the Court is able hold the hearing. Not less than three (3) business days before the hearing the Court shall provide notice of the hearing to all parties.

(c) *Extension Order.* If the Court finds that the trial reunification continues to be in the best interests of the child, the Court shall grant an order extending the trial reunification for a period specified by the Court. Any number of extensions may be granted, but the total period for a trial reunification may not exceed one hundred and fifty (150) days.

708.25-8. *End of Trial Reunification Period.* When a trial reunification period ends, the Department shall do one (1) of the following:

(a) Return the child to his or her out-of-home placement. The Department may do so without further order of the Court, but within five (5) days after the return of the child to his or her out-of-home placement the Department shall provide the parties with written notice of the following by first-class mail:

- 1156 (1) the date of the return of the child to the out-of-home placement; and
1157 (2) the address of that placement to all parties, unless providing the address would
1158 present imminent danger to the child;
1159 (b) Request a change in placement under section 708.24 to place the child in a new out-of-
1160 home placement; or
1161 (c) Request a change in placement under section 708.24 to place the child in the trial
1162 reunification home.

1163 708.25-9. *Revocation of Trial Reunification.* The Department may determine that a trial
1164 reunification is no longer in the best interests of the child and revoke the trial reunification before
1165 the specified trial reunification period ends.

- 1166 (a) *Revocation Request.* If the Department determines that the trial reunification is no
1167 longer in the best interests of the child, the Department, without prior order by the Court,
1168 may remove the child from the trial reunification home and place the child in the child's
1169 previous out-of-home placement or place the child in a new out-of-home placement.

1170 (1) If the Department places the child in the child's previous out-of-home
1171 placement, within three (3) business days of removing the child from the trial
1172 reunification home, the Department shall submit a request for revocation of the trial
1173 reunification to the Court and shall provide notice of the request to all parties by
1174 first-class mail. The request shall contain the following information:

1175 (A) the date on which the child was removed from the trial reunification
1176 home;

1177 (B) the address of the child's current placement, unless providing the
1178 address would present imminent danger to the child; and

1179 (C) the reasons for the proposed revocation.

1180 (2) If the Department places the child in a new out-of-home placement, within
1181 three (3) business days of removing the child from the trial reunification home, the
1182 Department shall request a change in placement under section 708.22. The
1183 procedures specified in section 708.24, including all notice procedures, apply to a
1184 change in placement requested under this subsection, except that the request shall
1185 include the date on which the child was removed from the trial reunification home
1186 in addition to the information required in 708.24-2. The trial reunification is
1187 revoked when the change in placement order is granted.

- 1188 (b) *Revocation Hearing.* Any party may obtain a hearing on the matter by filing an
1189 objection with the Court within ten (10) days after the request was filed with the Court.

1190 (1) If no objection is filed, the Court may issue a revocation order.

1191 (2) If an objection is filed, the Court shall schedule a hearing on the matter. Not
1192 less than three (3) business days before the hearing the Court shall provide notice
1193 of the hearing to all parties.

- 1194 (c) *Revocation Order.* If the Court finds that the trial reunification is no longer in the best
1195 interests of the child who has been placed in his or her previous out-of-home placement,
1196 the Court shall grant an order revoking the trial reunification.

1197 708.25-10. *Prohibited Trial Reunifications.* The Court may not order a trial reunification in the
1198 home of an adult who has been convicted of the first-degree intentional homicide or the second-
1199 degree intentional homicide of a parent of the child or any crime against a child, if the conviction
1200 has not been reversed, set aside, vacated or pardoned. If a parent in whose home a child is placed
1201 for a trial reunification is convicted of homicide or a crime against a child, and the conviction has

not been reversed, set aside, vacated or pardoned, the Court shall revoke the trial reunification and the child shall be returned to his or her previous out-of-home placement, or placed in a new out-of-home placement.

(a) *Exception.* A prohibition against trial reunifications based on homicide of a parent or a crime against a child does not apply if the Court determines by clear and convincing evidence that the placement would be in the best interests of the child.

708.26. Revision of Dispositional Orders

708.26-1. A party, or the Court on its own motion, may request a revision in the dispositional order that does not involve a change in placement.

708.26-2. The request or Court proposal shall set forth in detail the nature of the proposed revision and what new information is available that affects the advisability of the Court's disposition. The request for revision shall be filed with the Court with notice provided to the parties by first-class mail.

708.26-3. The Court shall hold a hearing on the matter prior to any revision of the dispositional order if the request or Court proposal indicates that new information is available that affects the advisability of the Court's dispositional order, unless the parties file a signed stipulation and the Court approves.

708.26-4. If a hearing is held, any party may present evidence relevant to the issue of revision of the dispositional order. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of revision.

708.27. Extension of Dispositional Orders

708.27-1. A party, or the Court on its own motion, may request an extension of a dispositional order. The request shall be filed with the Court with notice to the parties by first-class mail.

708.27-2. No order may be extended without a hearing, unless the parties file a signed stipulation and the Court approves.

708.27-3. Any party may present evidence relevant to the issue of extension. If the child is placed outside of his or her home, the Department shall present as evidence specific information showing that the Department has made reasonable efforts to achieve the permanency goal of the child's permanency plan. In addition, the Court shall give a foster parent or other legal custodian a right to be heard at the hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of extension.

708.27-4. The Court shall make findings of fact and conclusions of law based on the evidence. The findings of fact shall include a finding as to whether reasonable efforts were made by the Department to achieve the permanency goal of the child's permanency plan if applicable.

708.27-5. If a request to extend a dispositional order is made prior to the termination of the order, but the Court is unable to conduct a hearing on the request prior to the termination date, the order shall remain in effect until such time as an extension hearing is conducted.

708.28. Continuation of Dispositional Orders

708.28-1. If a petition for suspension or termination of parental rights or guardianship is filed or an appeal from a suspension or termination of parental rights or guardianship judgment is filed

during the year in which a child in need of protection or services dispositional order is in effect, the dispositional order shall remain in effect until all proceedings related to the petition or appeal are concluded.

708.29. Guardianship for Certain Children in Need of Protection or Services

708.29-1. *Conditions for Guardianship.* The Court may appoint a guardian for a child if the Court finds all of the following:

- (a) That the child has been found to be in need of protection or services under this law and has been placed outside of his or her home pursuant to one (1) or more Court orders, or that the child has been found to be in need of protection or services and placement of the child in the home of a guardian under this section has been recommended by the Department at the dispositional hearing;
- (b) That the person nominated as the guardian of the child is a person with whom the child has been placed or in whose home placement of the child is recommended by the Department and that it is likely that the child will continue to be placed with that person for an extended period of time or until the child attains the age of eighteen (18) years;
- (c) That, if appointed, it is likely that the person would be willing and able to serve as the child's guardian for an extended period of time or until the child attains the age of eighteen (18) years;
- (d) That it is not in the best interests of the child that a petition to suspend or terminate parental rights be filed with respect to the child;
- (e) That the child's parents are neglecting, refusing or unable to carry out the duties of a guardian; and
- (f) That the Department has made reasonable efforts to make it possible for the child to return to his or her home, while assuring that the child's best interests are the paramount concerns, but that reunification of the child with the child's parent(s) is unlikely or contrary to the best interests of the child and that further reunification efforts are unlikely to be made or are contrary to the best interests of the child or that the Department has made reasonable efforts to prevent the removal of the child from his or her home, while assuring the child's best interests, but that continued placement of the child in the home would be contrary to the best interests of the child.

708.29-2. *Who May File a Petition for Guardianship.* Any of the following persons may file a petition for the appointment of a guardian for a child under this section:

- (a) The child;
- (b) The child's guardian ad litem;
- (c) The child's parent;
- (d) The person with whom the child is placed or in whose home placement of the child is recommended by the Department;
- (e) The Department; or
- (f) The Nation's Child Welfare attorney.

708.29-3. *Petition for Guardianship.* A proceeding for the appointment of a guardian for a child shall be initiated by a petition which shall include the following:

- (a) The name, birth date, address, and tribal affiliation of the child;
- (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- (c) A copy of the order adjudicating the child to be in need of protection or services and the order placing the child outside of the parental home; and

(d) A statement of the facts and circumstances which the petitioner alleges establish that the conditions for guardianship specified in section 708.29-1(a)-(f) are met.

708.29-4. *Notice of Petition for Guardianship.* Upon filing with the Court and at least seven (7) days prior the plea hearing, the party that filed the guardianship petition shall provide a copy of the petition to the other parties by personal service or, if personal service is not possible, by certified mail with return receipt requested.

708.29-5. *Presence of the Proposed Guardian.* The proposed guardian shall be present at all guardianship hearings. The Court may waive the appearance requirement for the proposed guardian if the Court determines there is good cause.

708.29-6. *Plea Hearing for Guardianship.* A plea hearing to determine whether any party wishes to contest a petition for guardianship shall take place no sooner than ten (10) days after the filing of the petition. At the hearing, the non-petitioning parties shall state whether they wish to contest the petition. Before accepting an admission or a plea of no contest to the allegations in the petition, the Court shall do all of the following:

(a) Address the parties present and determine that the admission or plea of no contest is made voluntarily and with understanding of the nature of the facts alleged in the petition, the nature of the potential outcomes and possible dispositions by the Court and the nature of the legal consequences of that disposition;

(b) Establish whether any promises or threats were made to elicit the admission or plea of no contest; and

(c) Make inquiries to establish to the satisfaction of the Court that there is a factual basis for the admission or plea of no contest.

708.29-7. If the petition is not contested and if the Court accepts the admission or plea of no contest, the Court may immediately proceed to a dispositional hearing unless an adjournment is requested.

708.29-8. If the petition is contested or if the Court does not accept the admission or plea of no contest, the Court shall set a date for a fact-finding hearing which allows reasonable time for the parties to prepare but is not more than sixty (60) days after the plea hearing, unless the Court enters an order finding good cause to go outside the time limits.

(a) If the petition is contested, the Court shall order the Department to file with the Court a report containing as much information relating to the appointment of a guardian as is reasonably ascertainable, including an assessment of the conditions for guardianship specified in section 708.29-1(a)-(f). Upon filing with the Court and at least seven (7) days prior to the hearing, the Department shall provide the parent, guardian, legal custodian, proposed guardian, and any other parties a written copy of the report by first-class mail.

708.29-9. *Fact Finding Hearing for Guardianship.* The Court shall hold a fact-finding hearing on the petition at which any party may present evidence relevant to the issue of whether the conditions for guardianship have been met. If the Court, at the conclusion of the fact-finding hearing, finds by clear and convincing evidence that the conditions for guardianship specified in section 708.29-1(a)-(f) have been met, the Court shall immediately proceed to a dispositional hearing unless an adjournment is requested.

708.29-10. *Dispositional Hearing for Guardianship.* The Court shall hold a dispositional hearing at which any party may present evidence, including expert testimony, relevant to the disposition. In determining the appropriate disposition for guardianship, the Court shall use the best interests of the child as the prevailing factor to be considered by the Court. In making a decision about the

appropriate disposition, the Court shall consider any report submitted by the Department and shall consider, but not be limited to, all of the following:

- (a) Whether the person would be a suitable guardian of the child;
- (b) The willingness and ability of the person to serve as the child's guardian for an extended period of time or until the child reaches the age of eighteen (18) years; and
- (c) The wishes of the child, if the child has the capacity to express their wishes.

708.29-11. *Dispositional Order for Guardianship.* After receiving any evidence relating to the disposition, the Court shall enter one of the following dispositions and issue a written decision consistent the Oneida Judiciary Rules of Civil Procedure:

- (a) A disposition dismissing the petition if the Court determines that appointment of the person as the child's guardian is not in the best interests of the child; or
- (b) A disposition ordering that the proposed guardian be appointed as the child's guardian if the Court determines that such an appointment is in the best interests of the child.

708.29-121. If the Court appoints a guardian for the child, the Court may dismiss the dispositional order finding that the child is in need of protection or services.

708.30. Revisions of Guardianship Order

708.30-1. Any person authorized to file a guardianship petition or the Court, on its own motion may request a revision in a guardianship order.

708.30-2. The motion or Court proposal shall set forth in detail the nature of the proposed revision, shall allege facts sufficient to show that there has been a substantial change in circumstances since the last order affecting the guardianship was entered and that the proposed revision would be in the best interests of the child and shall allege any other information that affects the advisability of the Court's disposition. The motion for the revision shall be filed with the Court and, upon filing, a written copy shall be provided to all parties by first-class mail.

- (a) The Court may order the Department to file with the Court a report containing as much information relating to the revision of the guardianship as is reasonably ascertainable. Upon filing with the Court and at least seven (7) days prior to the revision hearing, the Department shall provide the parties with a written copy of the report by first-class mail.

708.30-3. The Court shall hold a hearing on the matter prior to any revision of the guardianship order if the motion or Court proposal indicates that new information is available which affects the advisability of the Court's guardianship order, unless the parties file a signed stipulation and the Court approves.

708.31. Termination of Guardianship

708.31-1. A guardianship under this law shall continue until any of the following are met, whichever occurs earlier:

- (a) The date on which the child attains eighteen (18) years of age;
- (b) The date on which the child is granted a high school or high school equivalency diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs first, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching nineteen (19) years of age; or
- (c) The date on which the Court terminates the guardianship order.

708.31-2. A parent of the child may request that a guardianship order be terminated. The request shall allege facts sufficient to show that there has been a substantial change in circumstances since

the last order affecting the guardianship was entered, that the parent is willing and able to carry out the duties of a guardian and that the proposed termination of guardianship would be in the best interests of the child. The Court shall hold a hearing on the matter unless the parties file a signed stipulation and the Court approves.

(a) The Court may order the Department to file with the Court a report containing as much information relating to the termination of the guardianship as is reasonably ascertainable, including a re-assessment of the conditions for guardianship specified in section 708.29-1(a)-(f). Upon filing with the Court and at least seven (7) days prior to the termination hearing, the Department shall provide the parties with a written copy of the report by first-class mail.

708.31-3. Any person authorized to file a petition for guardianship may request that an appointed guardian be removed for cause or the Court may, on its own motion, propose such a removal. The request or Court proposal shall allege facts sufficient to show that the guardian is or has been neglecting, is or has been refusing, or is or has been unable to discharge the guardian's trust and may allege facts relating to any other information that affects the advisability of the Court's disposition. The Court shall hold a hearing on the matter.

708.31-4. A guardian appointed under this law may resign at any time if the resignation is accepted by the Court.

708.32. Suspension or Termination of Parental Rights

708.32-1. It is the philosophy of the Nation that children deserve a sense of permanency and belonging throughout their lives and at the same time they deserve to have knowledge about their unique cultural heritage including their tribal customs, history, language, religion and values.

708.32-2. It is the philosophy of the Nation that a united and complete family unit is of the utmost value to the community and the individual family members, and that the parent-child relationship is of such vital importance that it should be suspended or terminated only as a last resort when all efforts have failed to avoid suspension or termination and it is in the best interests of the child concerned to proceed with the suspension or termination of parental rights.

708.32-3. *Suspension of Parental Rights.* The suspension of parental rights is the permanent suspension of the rights of biological parents to provide for the care, custody, and control of their child.

708.32-4. *Termination of Parental Rights.* The termination of parental rights means that all rights, powers, privileges, immunities, duties and obligations existing between biological parent and child are permanently severed.

708.32-5. The Court may suspend or terminate a parent's rights on a voluntary or involuntary basis.

708.32-6. An order suspending or terminating parental rights permanently severs all legal rights and duties between the parent whose parental rights are suspended or terminated and the child.

708.32-7. The suspension or termination of parental rights shall not adversely affect the child's rights and privileges as a member of the Nation, nor as a member of any tribe to which the child is entitled to membership, nor shall it affect the child's enrollment status with the Nation, nor shall it interfere with the child's cultural level and traditional and spiritual growth as a member of the Nation.

708.33. Voluntary Suspension or Termination of Parental Rights

708.33-1. The Court may suspend or terminate the parental rights of a parent after the parent has given his or her consent. When such voluntary consent is given and the Department has submitted a court report pursuant to section 708.38, the Court may proceed immediately to a dispositional hearing.

708.33-2. The Court may accept a voluntary consent to suspension or termination of parental rights only if the parent appears personally at the hearing and gives his or her consent to the suspension or termination of his or her parental rights. The Court may accept the consent only after the judge has explained the effect of suspension or termination of parental rights and has questioned the parent, and/or has permitted counsel who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary. If the Court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the Court may allow the parent to appear by telephone or live audiovisual means.

708.33-3. If in any proceeding to suspend or terminate parental rights voluntarily any party has reason to doubt the capacity of a parent to give informed and voluntary consent to the suspension or termination, he or she shall so inform the Court. The Court shall then inquire into the capacity of that parent in any appropriate way and shall make a finding as to whether or not the parent is capable of giving informed and voluntary consent to the suspension or termination. If in the Court's discretion a person is found incapable of knowingly and voluntarily consenting to the suspension or termination of their parental rights, the Court shall dismiss the voluntary proceedings without prejudice. That dismissal shall not preclude an involuntary suspension or termination of the parent's rights.

708.33-4. A parent who has executed a consent under this section may withdraw the consent for any reason at any time prior to the entry of a final order suspending or terminating parental rights.

708.33-5. Any consent given under this section prior to or within ten (10) days after the birth of the child is not valid.

708.33-6. The parties, and the placement provider or adoptive resource, may agree to attend peacemaking to establish an agreement regarding post-voluntary suspension or termination of parental rights contact with a birth parent, birth sibling, or other birth relative of the child.

(a) Any party to a post-voluntary suspension or termination contact agreement or the child who is the subject of the proceedings may petition the Court that approved the agreement to compel any person who is bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to show that a person who is bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition. The petition may also allege facts showing that the noncompliance with the agreement is not in the best interests of the child.

(b) After receiving a petition for action regarding a post-voluntary suspension or termination contact agreement the Court shall set a date and time for a hearing on the

petition and shall provide notice of the hearing to all parties to the agreement and may reappoint a guardian ad litem for the child.

(c) If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

(d) The Court may not revoke a suspension or termination of parental rights order or an order of adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a post-voluntary suspension or termination contact agreement; however, the parties may return to peacemaking to revise the agreement, or the Court may amend an order if it finds an amendment to the order is in the best interests of the child.

708.34. Grounds for Involuntary Suspension or Termination of Parental Rights

708.34-1. Grounds for suspension or termination of parental rights shall be any of the following:

(a) *Abandonment*. Abandonment occurs when a parent either deserts a child without any regard for the child's physical health, safety or welfare and with the intention of wholly abandoning the child, or in some instances, fails to provide necessary care for their child.

(1) Abandonment shall be established by proving any of the following:

(A) That the child has been left without provision for the child's care or support, the petitioner has investigated the circumstances surrounding the matter and for sixty (60) consecutive days the petitioner has been unable to find either parent;

(B) That the child has been left by the parent without provision for the child's care or support in a place or manner that exposes the child to substantial risk of great bodily harm or death;

(C) That a court of competent jurisdiction has found any of the following:

(i) That a child has been abandoned under Wis. Stat. 48.13 (2) or under a law of any other state or a federal law that is comparable to the state law;

(ii) That the child was abandoned when the child was under one (1) year of age or has found that the parent abandoned the child when the child was under one (1) year of age in violation of Wis. Stat. 948.20 or in violation of the law of any other state or federal law, if that violation would be a violation of abandonment of a child under Wis. Stat. 948.20 if committed in this state;

(D) That the child has been placed, or continued in a placement, outside the parent's home by a Court order containing the required notice and the parent has failed to visit or communicate with the child for a period of three (3) months or longer; or

(E) The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of six (6) consecutive months or longer.

(2) Incidental contact between parent and child shall not preclude the Court from finding that the parent has failed to visit or communicate with the child. The time periods under sections 708.34-1(a)(1)(D) and 708.34-1(a)(1)(E) shall not include any periods during which the parent has been prohibited by Court order from visiting or communicating with the child.

(3) Abandonment is not established under sections 708.34-1(a)(1)(D) and 708.34-1(a)(1)(E) if the parent proves all of the following by clear and convincing evidence:

(A) That the parent had good cause for having failed to visit with the child throughout the three (3) or six (6) month time period alleged in the petition.

(B) That the parent had good cause for having failed to communicate with the child throughout the three (3) or six (6) month time period alleged in the petition.

(C) If the parent proves good cause under section 708.34-1(a)(3)(B), including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one (1) of the following occurred:

(i) The parent communicated about the child with the person or persons who had physical custody of the child during the three (3) or six (6) month time period alleged in the petition, whichever is applicable, or, with the Department during the three (3) month time period alleged in the petition.

(ii) The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the Department throughout the three (3) or six (6) month time period alleged in the petition.

(b) *Relinquishment*. Relinquishment occurs when a parent gives up or abandons their child and all rights to their child. Relinquishment shall be established by proving that a court of competent jurisdiction has found that the parent has relinquished custody of the child when the child was seventy-two (72) hours old or younger.

(c) *Continuing Need of Protection or Services*. Continuing need of protection or services shall be established by proving any of the following:

(1) That the child has been found to be in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one (1) or more dispositional orders containing the notice required by section 708.22-8;

(2) That the Department has made a reasonable effort to provide the services ordered by the Court;

(3) That the child has been outside the home for a cumulative total period of six (6) months or longer pursuant to such orders; and that the parent has failed to meet the conditions established for the safe return of the child to the home and, if the child has been placed outside the home for less than fifteen (15) of the most recent twenty-two (22) months, that there is a substantial likelihood that the parent will not meet these conditions as of the date on which the child will have been placed outside the home for fifteen (15) of the most recent twenty-two (22) months, not including any period during which the child was a runaway from the out-of-home placement or was residing in a trial reunification home.

(d) *Continuing Parental Disability.* Continuing parental disability shall be established by proving that:

- (1) The parent is presently, and for a cumulative total period of at least two (2) years within the five (5) years immediately prior to the filing of the petition has been, an inpatient at one (1) or more hospitals as defined in either the Nation's laws or state law;
- (2) The condition of the parent is likely to continue indefinitely; and
- (3) The child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or a guardian.

(e) *Continuing Denial of Periods of Physical Placement or Visitation.* Continuing denial of periods of physical placement or visitation shall be established by proving all of the following:

- (1) The parent has been denied periods of physical placement by Court order in an action affecting the family or has been denied visitation under a dispositional order containing the notice required by section 708.22-8, Wis. Stat. 48.356(2), or Wis. Stat. 938.356 (2); and
- (2) A Court order has denied the parent periods of physical placement or visitation for at least one (1) year.

(f) *Child Abuse.* Child abuse shall be established by proving that the parent has committed child abuse against the child who is the subject of the petition and proving either of the following:

- (1) That the parent has caused death or injury to a child resulting in a felony conviction; or
- (2) That a child has previously been removed from the parent's home pursuant to a dispositional order after an adjudication that the child is in need of protection or services.

(g) *Failure to Assume Parental Responsibility.* Failure to assume parental responsibility shall be established by proving that the parent or the person(s) who may be the parent of the child have not had a substantial parental relationship with the child.

(1) In evaluating whether the person has had a substantial parental relationship with the child, the Court may consider such factors, including, but not limited to, the following:

- (A) Whether the person has expressed concern for or interest in the support, care or well-being of the child;
- (B) Whether the person has neglected or refused to provide care or support for the child; and
- (C) Whether, with respect to a person who is or may be the father of the child, the person has expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

(h) *Incestuous Parenthood.* Incestuous parenthood shall be established by proving that the person whose parental rights are sought to be terminated is also related, either by blood or adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

(i) *Homicide or Solicitation to Commit Homicide of a Parent.* Homicide or solicitation to commit homicide of a parent, which shall be established by proving that a parent of the child has been a victim of first-degree intentional homicide, first-degree reckless homicide or 2nd-degree intentional homicide or a crime under federal law or the law of any other

state that is comparable to any of those crimes, or has been the intended victim of a solicitation to commit first-degree intentional homicide or a crime under federal law or the law of any other state that is comparable to that crime, and that the person whose parental rights are sought to be terminated has been convicted of that intentional or reckless homicide, solicitation or crime as evidenced by a final judgment of conviction.

(j) *Parenthood as a Result of Sexual Assault.*

(1) Parenthood as a result of sexual assault shall be established by proving that the child was conceived as a result of one of the following:

(A) First degree sexual assault [under Wis. Stats. 940.225(1)];

(B) Second degree sexual assault [under Wis. Stat. 940.225 (2)];

(C) Third degree sexual assault [under Wis. Stat. 940.225(3)];

(D) First degree sexual assault of a child [under Wis. Stat. 948.02(1)];

(E) Second degree sexual assault of a child [under Wis. Stat. 948.02 (2)];

(F) Engaging in repeated acts of sexual assault of the same child [under Wis. Stat. 948.025]; or

(G) Sexual assault of a child placed in substitute care [under Wis. Stat. 948.085].

(2) Conception as a result of sexual assault may be proved by a final judgment of conviction or other evidence produced at a suspension or termination of parental rights fact-finding hearing indicating that the person who may be the parent of the child committed, during a possible time of conception, a sexual assault as specified in this section against the other parent of the child.

(3) If the conviction or other evidence indicates that the child was conceived as a result of a sexual assault in violation of Wis. Stat. 948.02 (1) or (2) or 948.085, the parent of the child may be heard on his or her desire for the suspension or termination of the other parent's parental rights.

(k) *Commission of a Felony Against a Child.*

(1) Commission of a serious felony against the child, shall be established by proving that the child was the victim of a serious felony and parent was convicted of that serious felony.

(2) In this subsection, "serious felony" means any of the following:

(A) The commission of, the aiding or abetting of, or the solicitation, conspiracy or attempt to commit, a violation of any of the following:

(i) First degree intentional homicide [under Wis. Stat. 940.01];

(ii) First degree reckless homicide [under Wis. Stat. 940.02];

(iii) Felony murder [under Wis. Stat. 940.03];

(iv) Second-degree intentional homicide [under Wis. Stat. 940.05]; or

(v) A violation of the law of any other state or federal law, if that violation would be a violation of the above-mentioned felonies if committed in Wisconsin.

(B) The commission of a violation of any of the following:

(i) Battery, substantial battery, aggravated battery [under Wis. Stat. 940.19 (3), 1708 stats., or Wis. Stats. 940.19 (2), (4) or (5)];

(ii) Sexual assault [under Wis. Stat. 940.225 (1) or (2)];

(iii) Sexual assault of a child [under Wis. Stat. 948.02 (1) or (2)];

- (iv) Engaging in repeated acts of sexual assault of the same child [under Wis. Stat. 948.025];
- (v) Physical abuse of a child [under Wis. Stats. 948.03 (2) (a), (3) (a), or (5) (a) 1., 2., or 3.];
- (vi) Sexual exploitation of a child [under Wis. Stat. 948.05];
- (vii) Trafficking of a child [under Wis. Stat. 948.051];
- (viii) Incest with a child [under Wis. Stat. 948.06];
- (ix) Soliciting a child for prostitution [under Wis. Stat. 948.08];
- (x), Human trafficking [under Wis. Stat. 940.302 (2) if Wis. Stat. 940.302 (2) (a) 1. b. applies]; or
- (xi) A violation of the law of any other state or federal law, if that violation would be a violation listed under the above listed felonies if committed in Wisconsin.

(C) The commission of a violation of neglecting a child under Wis. Stat. 948.21 or a violation of the law of any other state or federal law, if that violation would be a violation of Wis. Stat. 948.21 if committed in this state, that resulted in the death of the victim.

(l) *Prior Involuntary Suspension or Termination of Parental Rights of Another Child.* Prior involuntary suspension or termination of parental rights to another child shall be established by proving all of the following:

- (1) That the child who is the subject of the petition is in need of protection or services under section 708.5-2(b), (d), or (k); or that the child who is the subject of the petition was born after the filing of a petition under this subsection whose subject is a sibling of the child; and
- (2) That, within three (3) years prior to the date the Court determined the child to be in need of protection or services as specified in section 708.34-1 (l) (1) or, in the case of a child born after the filing of a petition as specified in section 708.34-1 (l) (1), within three (3) years prior to the date of birth of the child, a Court has ordered the suspension or termination of parental rights with respect to another child of the person whose parental rights are sought to be suspended or terminated on one or more of the grounds specified in this section.

708.35. Petition for Suspension or Termination of Parental Rights

708.35-1. *Who May File a Petition for Suspension or Termination of Parental Rights.* A petition for the suspension or termination of parental rights shall be filed by the:

- (a) Nation's Child Welfare attorney;
- (b) Department; or
- (c) child's parent in the case of a step-parent adoption.

708.35-2. A petition for the suspension or termination of parental rights may be filed when the child has been placed outside of his or her home for fifteen (15) of the most recent twenty-two (22) months or if grounds exist for suspension or termination of parental rights unless any of the following applies:

- (a) The child is being cared for by a fit and willing relative of the child;
- (b) The child's permanency plan indicates and provides documentation that suspension or termination of parental rights to the child is not in the best interests of the child;

(c) The Department, if required by a dispositional order, failed to make reasonable efforts to make it possible for the child to return safely to his or her home or did not provide or refer services to the family of the child for the safe return of the child to his or her home that were consistent with the permanency plan; or

(d) Grounds for an involuntary suspension or termination of parental rights do not exist.

708.35-3. A petition for the suspension or termination of parental rights shall include the following information:

(a) The name, birth date, address, and tribal affiliation of the child;

(b) The names, birth dates, addresses, and tribal affiliation of the child's parents;

(c) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit; and

(d) One (1) of the following:

(1) A statement that consent will be given to voluntary suspension or termination of parental rights as provided in section 708.33; or

(2) A statement of the grounds for involuntary suspension or termination of parental rights under section 708.34 and a statement of the facts and circumstances which the petitioner alleges establish these grounds.

708.35-4. *Temporary Order and Injunction Prohibiting Contact.* If the petition includes a statement of the grounds for involuntary suspension or termination of parental rights, the petitioner may, at the time the petition is filed, also petition the Court for a temporary order and an injunction prohibiting the person whose parental rights are sought to be suspended or terminated from visiting or contacting the child who is the subject of the petition. Any petition under this section shall allege facts sufficient to show that prohibiting visitation or contact would be in the best interests of the child.

(a) The Court may grant an injunction prohibiting the respondent from visiting or contacting the child if the Court determines that the prohibition would be in the best interests of the child. An injunction under this subsection is effective according to its terms but may not remain in effect beyond the date the Court dismisses the petition for suspension or termination of parental rights or issues an order suspending or terminating parental rights.

708.35-5. Upon filing with the Court and at least seven (7) days prior to the initial hearing, the petitioner shall serve the summons and petition upon the following persons by personal service or, if personal service is not possible, by certified mail, return receipt requested:

(a) The parent(s) of the child, including an alleged father if paternity has not been established; and

(b) The child's foster parent, guardian or legal custodian, if applicable. If the address has been marked confidential by the Court, the Court shall send a copy of the summons and petition to the home in which the child is placed via first-class U.S. mail.

708.36. Initial Hearing on the Suspension or Termination of Parental Rights Petition

708.36-1. The initial hearing on the petition to suspend or terminate parental rights shall be held within forty-five (45) days after the petition is filed. At the hearing the Court shall determine whether any party wishes to contest the petition and inform the parties of their rights.

708.36-2. If the petition is contested, the Court shall set a date for a fact-finding hearing to be held within sixty (60) days after the hearing on the petition, unless the Court enters an order finding good cause to go outside the time limits.

708.36-3. If the petition is not contested, the Court shall hear testimony in support of the allegations in the petition and may proceed immediately with a dispositional hearing if the parties agree. Before accepting an admission of the alleged facts in a petition, the Court shall:

- (a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential outcomes and possible dispositions by the Court;
- (b) Establish whether any promises or threats were made to elicit an admission; and
- (c) Make such inquiries to establish a factual basis for the admission.

708.37. Fact Finding Hearing for a Suspension or Termination of Parental Rights

708.37-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there is clear and convincing evidence to establish that grounds exist for the suspension or termination of parental rights.

708.37-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of Civil Procedure except that the Court may exclude the child from the hearing.

708.37-3. If grounds for the suspension or termination of parental rights are found by the Court, the Court shall find the parent(s) unfit. A finding of unfitness shall not prevent a dismissal of a suspension or termination of parental rights petition. Unless the parties agree to proceed immediately with the dispositional hearing and the Court accepts, the Court shall set a date for a dispositional hearing no later than forty-five (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go outside the time limits.

708.38. Department's Suspension or Termination of Parental Rights Report

708.38-1. In any case that the Department is a party, the Department shall submit a written report to the Court prior to any dispositional hearing, with a copy to the parties by first-class mail no later than seven (7) days prior to the hearing, which shall contain all of the following:

- (a) The social history of the child and family, including any relevant medical conditions;
- (b) A statement of the facts supporting the need for suspension or termination of parental rights;
- (c) If the child has been previously adjudicated to be in need of protection or services, a statement of the steps the Department has taken to remedy the conditions responsible for Court intervention and the parent's response to and cooperation with these services. If the child has been removed from the home, the report shall also include a statement of the reasons why the child cannot be returned safely to the family and the steps the Department has taken to effect this return;
- (d) A statement applying the standards and factors identified in sections 708.39-2 and 708.39-3 regarding the case before the Court; and
- (e) If the report recommends that the parental rights of both of the child's parents or the child's only living or known parent are to be suspended or terminated, the report shall contain a statement of the likelihood that the child will be adopted. This statement shall include a presentation of the factors that might prevent adoption, those that may facilitate adoption, and the Department shall be responsible for accomplishing the adoption.
 - (1) If the Department determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting. The plan shall include a recommendation for the appointment of a guardian for the child.

708.38-2. The Court may order a report as specified under this section to be prepared by the Department in those cases where the Department is not a party.

708.39. Standards and Factors

708.39-1. In making a decision about the appropriate disposition for suspension or termination of parental rights, the Court shall consider the standards and factors enumerated in this section and any report submitted by the Department.

708.39-2. The best interests of the child shall be the prevailing standard considered by the Court in determining the disposition of all suspension and termination of parental rights proceedings.

708.39-3. In considering the best interests of the child the Court shall also consider, but not be limited to, the following factors:

- (a) The likelihood of the child's adoption after suspension or termination;
- (b) Whether the child will be raised in an environment that is respectful of the child's race(s), culture(s), and heritage(s);
- (c) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home;
- (d) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships;
- (e) The wishes of the child, if the child has the capacity to express their wishes;
- (f) The duration of the separation of the parent from the child; and
- (g) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the suspension or termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

708.40. Dispositional Hearings for Suspension or Termination of Parental Rights

708.40-1. Any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the Court. After receiving any evidence related to the disposition, the Court shall enter a disposition and issue a written decision consistent with the Oneida Judiciary Rules of Civil Procedure.

- (a) The Court shall give the foster parent or other legal custodian a right to be heard at the dispositional hearing by permitting the foster parent or other legal custodian to make a written or oral statement during the dispositional hearing, or to submit a written statement prior to disposition, relevant to the issue of disposition.

708.40-2. The Court shall enter one (1) of the following dispositions:

- (a) The Court may dismiss the petition if it finds the evidence does not warrant the suspension or termination of parental rights or if the Court finds that a parent is attempting to voluntarily suspend or terminate their parental rights for the sole purpose of avoiding a child support obligation; or

(b) The Court may enter an order suspending or terminating the parental rights of one or both parents.

708.40-3. If the rights of both parents, or of the only living parent, are suspended or terminated and if a guardian has not been appointed, the Court shall do one (1) of the following while adhering to the placement preferences pursuant to section 708.11-1 when possible:

- (a) Transfer guardianship and custody of the child pending adoptive placement to:
 - (1) A tribal or county department authorized to accept guardianship;

- 1833 (2) A child welfare agency licensed to accept guardianship;
1834 (3) The State of Wisconsin upon written confirmation from the State that they are
1835 willing to accept guardianship;
1836 (4) A relative with whom the child resides, if the relative has filed a petition to
1837 adopt the child or if the relative is a kinship care relative or is receiving payments
1838 for providing care and maintenance for the child; or
1839 (5) An individual who has been appointed guardian of the child by a court of a
1840 competent jurisdiction; or
1841 (b) Appoint a guardian and transfer guardianship and custody of the child to the guardian.
1842 708.40-4. The written Court order shall include the following:
1843 (a) If the Court dismisses the petition, the order shall contain the reasons for dismissal; or
1844 (b) If the disposition is for the suspension or termination of parental rights, the order shall
1845 contain all of the following:
1846 (1) The identity of any agency, department, or individual that has received
1847 guardianship of the child;
1848 (2) If an agency or department receives guardianship and custody of the child, an
1849 order ordering the child into the placement and care responsibility of the agency or
1850 department and assigning the agency or department primary responsibility for
1851 providing services to the child; and
1852 (3) A finding that the suspension or termination of parental rights is in the best
1853 interests of the child.
1854 (c) If the disposition is for the suspension or termination of parental rights, the order may
1855 contain all of the following:
1856 (1) A termination of the right of the parent to have contact with the minor child
1857 including contact in person, by mail, by telephone, or through third parties or the
1858 order may allow for a residual rights agreement agreed upon by the parties to be
1859 ordered by the Court;
1860 (2) Order restraining a parent from contacting the minor child, the child's foster
1861 parent, the child's adoptive parent and/or the social services agency or agencies
1862 possessing information regarding the child, or by an agreement;
1863 (3) Order that the biological parents' obligation to pay child support, except for
1864 arrearages, is hereby terminated;
1865 (4) Order that any prior court order for custody, visitation, or contact, with the
1866 minor child is hereby terminated; and
1867 (5) Order that the parent shall have no standing to appear at any future legal
1868 proceedings involving the child, notwithstanding proceedings regarding a residual
1869 rights agreement.
1870 708.40-5. If an order is entered involuntarily suspending or terminating parental rights, the Court
1871 shall orally inform the parent(s) who appear in Court or place in the written order the ground for
1872 suspension or termination of their parental rights specified in section 708.34-1. Additionally, the
1873 Court shall inform the parents(s) that section 708.34-1(l) provides that prior involuntary
1874 suspension or termination of parental rights of another child is a ground for suspension or
1875 termination of parental rights.
1876 708.40-6. If the Court suspends or terminates parental rights, the Department, or the Court if the
1877 Department is not a party to the action, may forward the following information to the State of
1878 Wisconsin:

(a) The name, date of birth, and tribal affiliation of the child whose birth parent's rights have been suspended or terminated;

(b) The names and current addresses of the child's birth parents, guardian and legal custodian; and

(c) Any medical or genetic information received by the Department.

708.40-7. If only one (1) parent consents to a voluntary suspension or termination of parental rights or if the grounds for involuntary suspension or termination of parental rights are found to exist as to only one (1) parent, the rights of only that parent may be suspended or terminated without affecting the rights of the other parent if the Court finds such suspension or termination to be in the best interest of the child.

708.41. Adoption

708.41-1. Adoptions under this law shall take the form of customary adoptions when the Court has granted a petition to suspend parental rights. When the Court grants a petition to terminate parental rights the adoption shall be closed.

708.41-2. *Customary Adoptions*. The purpose of customary adoption is not to permanently deprive the adopted child of connections to, or knowledge of, the adopted child's biological family, but to provide the adopted child a permanent home. The following shall apply to all customary adoptions and shall be contained in all adoptive orders and decrees:

(a) The relationship between an adoptive parent and adopted child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The adopted child shall have an absolute right, absent a convincing and compelling reason to the contrary, to information and knowledge about his or her biological family and his or her Oneida heritage, if applicable. The adopted child may obtain adoption information from files maintained by the Court or Department;

(c) Adoption shall not prevent an adopted child from inheriting from a biological parent in the same manner as any other biological child. The biological parents shall not be entitled to inherit from an adopted child in the same manner as parents would otherwise be entitled to inherit. An adopted child shall be entitled to inherit from adoptive parents, and vice versa, in the same manner as if biological parents and child;

(d) Although parental rights have been suspended, the biological parent may retain certain residual parental rights when appropriate as determined by agreement between the adoptive parent and biological parent made through peacemaking, or by order of the Court. Such residual parental rights may include:

(1) The right to communication;

(2) The right to visitation;

(3) The right or obligation to contribute to support or education;

(4) The right to be consulted regarding the adopted child's religious affiliation, major medical treatment, marriage, or other matters of major importance in the child's life; and/or

(5) Such other residual rights the Court may deem appropriate, considering the circumstances.

(e) Adoption does not extinguish the relationships between the adopted child and the adopted child's extended biological family. The adopted child's extended biological family

retains the right to reasonable communication and visitation with the adopted child, subject to reasonable controls of the adoptive parents.

708.41-3. *Closed Adoptions.* Closed adoptions occur in situations where an adopted child needs a permanent home and it is necessary to sever all ties between the adopted child and his or her biological family. The following shall apply to all closed adoptions:

(a) The relationship between an adoptive parent and adopted child shall have all the same rights, responsibilities, and other legal consequences as the relationship between a biological child and parent;

(b) The relationship between the adopted child and all persons whose relationship to the adopted child is derived through the biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist;

(c) The adopted child's biological family shall not be entitled to or have access to any information regarding said child;

(d) The adopted child shall be entitled to information and knowledge regarding his or her culture and heritage; and

(e) The adopted child shall be entitled to information regarding his or her biological family upon reaching the age of majority. The adopted child may obtain adoption information from files maintained by the Court or Department.

708.42. Adoption Criteria and Eligibility

708.42-1. *Criteria for Adoption.* Any child who is subject to this law may be adopted if any of the following criteria are met:

(a) Both of the child's parents are deceased;

(b) The parental rights of both of the child's parents with respect to the child have been suspended or terminated;

(c) The parental rights of one of the child's parents with respect to the child have been suspended or terminated and the child's other parent is deceased; or

(d) The person filing the petition for adoption is the spouse of the child's parent and either of the following applies:

(1) The child's other parent is deceased; or

(2) The parental rights of the child's other parent with respect to the child have been suspended or terminated.

708.42-2. *Eligibility.* The following persons are eligible to adopt a child who falls under the jurisdiction of this law pending the successful clearing of a background check:

(a) A married adult couple;

(b) Either spouse if the other spouse is a parent of the child; or

(c) An unmarried adult.

708.42-3. If the person proposing to adopt the child cannot successfully clear a background check, and any convictions the person may possess have not been pardoned, forgiven, reversed, set aside or vacated, the Court may still deem the person eligible to adopt if the Court determines by clear and convincing evidence that the adoption would be in the best interests of the child.

708.43. Adoption Procedure

708.43-1. *Petition for Adoption.* A person proposing to adopt, or the Department, shall initiate a proceeding for the adoption of a child by filing a petition with the Court. The petition shall include the following information:

- (a) The name, birth date, address, and tribal affiliation of the petitioner;
- (b) The name, birth date, address, and tribal affiliation of the child;
- (c) The names, birth dates, addresses, and tribal affiliation of the child's biological parents;
- (d) The name by which the child shall be known if the petition is granted;
- (e) The relationship of the petitioner to the child; and
- (f) A copy of the order suspending or terminating parental rights of the child's biological parent(s).

708.43-2. Upon the filing of a petition for adoption, the Court shall schedule a hearing within sixty (60) days.

708.43-3. When a petition for adoption is filed, the Court shall order an investigation to determine whether the child is a proper subject for adoption and whether the petitioner's home is suitable for the child.

- (a) The Court shall order one (1) of the following to conduct the investigation:
 - (1) If the Department, or another agency or department, has guardianship of the child, the agency or department that has guardianship; or
 - (2) If no agency or department has guardianship of the child and a relative, including a stepparent, has filed the petition for adoption, the Department.
- (b) If the Court orders the Department to conduct the investigation, the Department may contract with a third-party agency to conduct the investigation.

708.43-4. The Department or other agency or department making the investigation shall file its report with the Court prior to the hearing on the petition and shall provide a copy of the report to the parties by first-class mail at least seven (7) days prior to the hearing.

708.43-5. If the report of the investigation is unfavorable or if it discloses a situation which, in the opinion of the Court, raises a serious question as to the suitability of the proposed adoption, the Court may appoint a guardian ad litem for the child whose adoption is proposed.

708.43-6. During the hearing the parties may agree to attend peacemaking to establish an agreement regarding residual rights of a birth parent, birth sibling, or other birth relative of the child.

708.43-7. If after the hearing and a study of the report required by section 708.43-3 the Court is satisfied that the adoption is in the best interests of the child, the Court shall make an order granting the adoption. The order may change the name of the child to that requested by petitioners.

708.43-8. After the order of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent thereafter exists between the adopted child and the adoptive parents. The relationship between the adopted child and biological parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist, excluding any residual rights granted to the biological parents and extended family through customary adoption. If the biological parent is the spouse of the adoptive parent, the relationship shall be completely altered and those rights, duties, and other legal consequences shall cease to exist only with respect to the biological parent who is not the spouse of the adoptive parent.

708.43-9. Within five (5) days after entry of the order granting a closed adoption, the Department shall mail a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish any additional data needed for the issuance of a new birth certificate.

708.44. Non-Compliance with a Residual Rights Agreement

708.44-1. Any party to a residual rights agreement or the child who is the subject of the proceedings may petition the Court that approved the agreement to compel any person who is bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to show that a person who is bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition. The petition may also allege facts showing that the noncompliance with the agreement is not in the best interests of the child.

708.44-2. After receiving a petition for action regarding a residual rights contact agreement the Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing to all parties to the agreement and may reappoint a guardian ad litem for the child.

708.44-3. If the Court finds, after hearing, that any person bound by the agreement is not in compliance with the agreement and that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order requiring the person to comply with the agreement and may find a party in contempt.

708.44-4. The Court may not revoke a suspension or termination of parental rights order or an order of customary adoption because an adoptive parent or other custodian of the child or a birth parent, birth sibling, or other birth relative of the child fails to comply with a residual rights agreement; however, the parties may return to peacemaking to revise the agreement, or the Court may amend an order if it finds an amendment to the order is in the best interests of the child.

708.45. Peacemaking and Mediation

708.45-1. The Court may refer the parties to peacemaking or mediation if the parties agree to attend peacemaking or mediation. The Court shall not refer the parties to peacemaking or mediation if attending the session will cause undue hardship or would endanger the health or safety of a party.

708.45-2. When the parties attend peacemaking or mediation based on a referral from the Court, the Court shall enter an order finding good cause to suspend the time limits established under this law.

708.46. Appeals

708.46-1. Appeals of all orders issued under this law shall be heard by the Nation's Court of Appeals in accordance with the Rules of Appellate Procedure.

708.47. Liability

708.47-1. No liability shall attach to the Department, Indian Child Welfare Worker, the Nation's Child Welfare Attorney or any person acting under their authority for statements, acts or omissions made in good faith while in the course of activities taken under this law.

End.

Adopted – BC-07-26-17-J

Amended – BC-__-__-__-__

April 2022

April 2022

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May 2022

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SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Mar 27	28	29	30	31	Apr 1	2
3	4	5	6 8:30am LOC Prep (BC_Conf_Room) - Clorissa N. Santiago 9:00am LOC Meeting (BC_Conf_Room) - LOC	7	8	9
10	11	12 9:00am Children's Code Amendments Work Meeting (Microsoft Teams Meeting) -	13	14 1:00pm LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Santiago	15	16
17	18	19	20 8:30am LOC Prep (BC_Conf_Room) - Clorissa N. Santiago 9:00am LOC Meeting (BC_Conf_Room) - LOC	21	22	23
24	25	26	27	28 2:00pm LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Santiago	29	30