

# ONEIDA NATION PUBLIC MEETING NOTICE

**WEDNESDAY, JUNE 15, 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](http://Oneida-nsn.gov/government/register/public%20meetings)

Send Public Comments to

[LOC@oneidanation.org](mailto:LOC@oneidanation.org)

Ask Questions here

[LOC@oneidanation.org](mailto:LOC@oneidanation.org)

920-869-4417



## CHILDREN'S CODE AMENDMENTS

The purpose of the Children's Code 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.

### The amendments to the Children's Code will:

- ◆ Provide that any orders made by the Family Court under this law, or any orders made by a court of competent jurisdiction regarding child welfare matters, shall supersede any other Court order regarding custody or placement of a child until the Children's Code or other child welfare orders are dismissed;
- ◆ Update the general notice provisions in the Children's Code to provide greater clarification on providing notice in child welfare matters;
- ◆ Allow the ICW Department to withhold the placement provider's identifying information from the child's parent, guardian, or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else, but allow for a parent, guardian, or legal custodian to request judicial review of the decision to withhold the identifying information;
- ◆ Allow the ICW Department to make an ex parte request to the Court to conduct an in-camera review to determine what information should and should not be released to the parties and their counsel;
- ◆ Allow a child to be held in custody in a hospital or other medical or mental health facility;
- ◆ Allow the ICW Department to request the placement of the child outside of the child's home at the plea hearing;
- ◆ Allow for the suspension of parental rights in addition to the termination of parental rights;
- ◆ Clarify that an adoption under this law shall take the form of customary adoption when the Court has granted a petition to suspend parental rights, and take the form of a closed adoption when the Court has granted a petition to terminate parental rights; and
- ◆ Make other drafting revisions throughout the Children's Code.

Individuals may attend the public meeting for the proposed amendments to the Children's Code 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@oneidanation.org](mailto:LOC@oneidanation.org)

## PUBLIC COMMENT PERIOD CLOSSES WEDNESDAY, JUNE 22, 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 amendments to the Children's Code please review the public meeting packet at [oneida-nsn.gov/government/register/public meetings](http://oneida-nsn.gov/government/register/public%20meetings).



## CHILDREN’S CODE AMENDMENTS LEGISLATIVE ANALYSIS

### SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Amendments	<ul style="list-style-type: none"><li>▪ Provide that 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 a child until the Children’s Code or other child welfare orders are dismissed [7 O.C. 708.5-6];</li><li>▪ Provide that the Department may enter into a protective plan with a family [7 O.C. 708.7-1(f)];</li><li>▪ Update the general notice provisions in the Children’s Code, as well as notice provisions throughout the Children’s Code to provide greater clarification on providing notice in child welfare matters [7 O.C. 708.12];</li><li>▪ Allow the Department to withhold the placement provider’s identifying information from the child’s parent, guardian, or legal custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to the child or anyone else, but that a parent, guardian, or legal custodian may request judicial review of the decision to withhold the identifying information [7 O.C. 708.12-4];</li><li>▪ Provide clarification on how a matter is referred to the Oneida Nation Child Support Agency for initiating a paternity action, and allow the Department may sign documents required by the Oneida Nation Child Support Agency on behalf of the family for the limited purpose of initiating a paternity action [7 O.C. 708.13-3];</li><li>▪ Allow the Department to make an ex parte request to the Court to conduct an in-camera review to determine what information should and should not be released to the parties and their counsel [7 O.C. 708.14-6];</li><li>▪ Allow a child to be held in custody in a hospital or other medical or mental health facility [7 O.C. 708.15-6(f)];</li><li>▪ Provide information that may be, but is not required to be, included in the Court’s order to hold a child in custody [7 O.C. 7008.16-6(b)];</li><li>▪ Allow the Department to request the placement of the child outside of the child’s home at the plea hearing [7 O.C. 708.19-5];</li><li>▪ Allow for the suspension of parental rights in addition to the termination of parental rights [7 O.C. 708.32];</li><li>▪ Update the continuing need of protection or services ground for involuntary suspension or termination of parental rights to be consistent with recent revisions to State statute [7 O.C. 708.34-1(c)];</li><li>▪ Provide information that may be, but is not required to be, included in the Court’s order of disposition for the suspension or termination of parental rights [7 O.C. 708.40-4(c)];</li><li>▪ Clarify that an adoption under this law shall take the form of customary adoption when the Court has granted a petition to suspend parental rights, and take the form of a closed adoption when the Court has granted a petition to terminate parental rights [7 O.C. 708.41-1];</li></ul>

	<ul style="list-style-type: none"> <li>▪ Allow the Department to contract with a third-party agency to conduct an adoption investigation that may have been ordered by the Court/[7 O.C. 708.43-3(b)]; and</li> <li>▪ Make other minor drafting revisions throughout the Children’s Code.</li> </ul>
<b>Purpose</b>	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. [7 O.C. 708.1-1].
<b>Affected Entities</b>	Indian Child Welfare Department (“the Department”), Oneida Family Court (“the Court”), Oneida Law Office
<b>Related Legislation</b>	Oneida Judiciary Rules of Civil Procedure, Oneida Judiciary Rules of Evidence, Family Court law, Paternity law, Child Support law
<b>Public Meeting</b>	A public comment period has not yet been held.
<b>Fiscal Impact</b>	A fiscal impact statement has not yet been requested.

**SECTION 2. LEGISLATIVE DEVELOPMENT**

- 1  
2 **A. *Background.*** The Children’s Code was adopted by the Oneida Business Committee on July 26, 2017,  
3 through the adoption of resolution BC-07-26-17-J for the purpose of providing for the welfare, care,  
4 and protection of Oneida children through the preservation of the family unit, while recognizing that in  
5 some circumstances it may be in the child’s best interest to not be reunited with his or her family.  
6 Furthermore, the Children’s Code strengthens family life by assisting parents in fulfilling their  
7 responsibilities 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. [7 O.C. 708.1-  
9 1]. It is the policy of the Nation to ensure there is a standard process for conducting judicial proceedings  
10 and other procedures in which children and all other interested parties are provided fair hearings in  
11 addition to ensuring their legal rights are recognized and enforced, while protecting the public safety.  
12 [7 O.C. 708.1-2].
- 13 **B. *Request for Amendments.*** On August 25, 2020, the Oneida Law Office and Indian Child Welfare  
14 Department requested that emergency amendments be made to the Children’s Code to address  
15 customary adoption. The departments were seeking amendments to the Children’s Code regarding  
16 customary adoption be changed to allow for a suspension of rights rather than a termination of rights  
17 to allow for the adopting family to be eligible for Adoption Assistance with the State. On August 28,  
18 2020, the LOC considered this request and determined that it did not meet the standard for emergency  
19 amendments provided by the Legislative Procedures Act, but that the LOC would add this item to the  
20 AFL for amendments to be made via the normal legislative process. The Legislative Operating  
21 Committee added the Children’s Code amendments to its Active Files List on October 7, 2020.
- 22 **C.** The Legislative Operating Committee is now seeking amendments to the Children’s Code.

**SECTION 3. CONSULTATION AND OUTREACH**

- 24 **A.** Representatives from the following departments or entities participated in the development of the  
25 amendments to the Children’s Code and this legislative analysis:  
26

- 27           ▪ Oneida Law Office;
- 28           ▪ Indian Child Welfare Department; and
- 29           ▪ Oneida Family Court.

30 **B.** The following laws were reviewed in the drafting of this analysis:

- 31           ▪ Oneida Judiciary Rules of Civil Procedure;
- 32           ▪ Family Court Law;
- 33           ▪ Paternity law; and
- 34           ▪ Child Support law.

35

## 36 **SECTION 4. PROCESS**

37 **A.** The development of the proposed amendments to the Children’s Code complies with the process set  
38 forth in the Legislative Procedures Act (LPA).

- 39           ▪ On October 7, 2020, the Legislative Operating Committee added the Law to its Active Files  
40 List.
- 41           ▪ On April 20, 2022, the Legislative Operating Committee approved the draft of the proposed  
42 amendments to the Children’s Code and directed that a legislative analysis be developed.
- 43           ▪ On May 4, 2022, the Legislative Operating Committee approved the updated draft and the  
44 legislative analysis for Children’s Code amendments.

45 **B.** At the time this legislative analysis was developed the following work meetings had been held  
46 regarding the development of this Law:

- 47           ▪ October 13, 2020: LOC work session with the Indian Child Welfare Department and Oneida  
48 Law Office.
- 49           ▪ April 12, 2021: LOC work session with the Oneida Family Court.
- 50           ▪ April 12, 2021: LOC work session with the Indian Child Welfare Department and Oneida Law  
51 Office.
- 52           ▪ April 26, 2021: LOC work session with the Oneida Family Court.
- 53           ▪ June 4, 2021: Work session with the Indian Child Welfare Department and the Oneida Law  
54 Office.
- 55           ▪ February 16, 2022: LOC work session with Oneida Law Office.
- 56           ▪ April 12, 2022: LOC work session with the Indian Child Welfare Department, Oneida Law  
57 Office, and the Oneida Family Court.
- 58           ▪ May 12, 2022: LOC work session.

59

## 60 **SECTION 5. CONTENTS OF THE LEGISLATION**

61 **A. *Hierarchy of Child Welfare Court Orders.*** A new provision added to the Children’s Code through  
62 these amendments provides that any orders made by the Court under this law, or any orders made by a  
63 court of competent jurisdiction regarding child welfare matters, shall supersede any other order made  
64 by this Court or a court of competent jurisdiction regarding custody or placement of a child until the  
65 Children’s Code or other child welfare orders are dismissed. [7 O.C. 708.5-6].

- 66           ▪ *Effect.* The overall purpose of this provision is to provide clarification that any orders made by the  
67 Court under this law, or any orders made by a court of competent jurisdiction regarding child  
68 welfare matters, shall supersede any other order made by this Court or a court of competent  
69 jurisdiction regarding custody or placement of a child until the Children’s Code or other child

70 welfare orders are dismissed. This clarification was added to prevent an individual from seeking a  
71 custody or placement order for a child in this Court or a court of competent jurisdiction in an attempt  
72 to trump a child welfare order.

73 **B. *Protective Plans.*** The Children’s Code provides the various duties and responsibilities of the Indian  
74 Child Welfare Worker. [7 O.C. 708.7-1]. The Children’s Code provides that an Indian Child Welfare  
75 worker may enter into informal dispositions with families. [7 O.C. 708.7-1(f)]. The proposed  
76 amendments to the Children’s Code revise the responsibilities and duties of the Indian Child Welfare  
77 work to include that they also may enter into a protective plan with a family. *Id.* Definitions for both  
78 informal dispositions and protective plans were then added to the Children’s Code. Informal disposition  
79 is defined in the Children’s Code as a written agreement with all the parties describing the conditions  
80 and obligations that must be met to ensure the child is protected and to alleviate the condition that led  
81 to the referral to the Department. [7 O.C. 708.3-1(bb)]. An informal disposition is utilized by the  
82 Department when the Department determines that the interest of the child does not require a formal  
83 Court intervention to provide protection and services to the child. *Id.* Protective plan is defined as an  
84 immediate short-term action that protects a child from present danger threats in order to allow for  
85 completion of the initial assessment, investigation and, if needed, the implementation of a safety plan.  
86 [7 O.C. 708.3-1(nn)].

87 ■ *Effect.* The proposed amendments to the Children’s Code provide greater clarification as to the  
88 duties and responsibilities of the Indian Child Welfare workers.

89 **C. *General Notice Provisions.*** The proposed amendments to the Children’s Code update the general  
90 notice provisions in the Children’s Code. The proposed amendments to the Children’s Code provide  
91 that service of documents and notices shall be as specified in this law, and if a method of service is not  
92 specified in this law then service shall be by first-class mail to the recently verified last-known address  
93 of the party. [7 O.C. 708.12-1]. If a party’s whereabouts are unknown and cannot be found after diligent  
94 effort, service shall be by publication as described in the Oneida Judiciary Rules of Civil Procedure. *Id.*  
95 The proposed amendments provide that the Court shall provide the parties with notice of all hearings  
96 at least seven (7) days prior to the hearing, with the purpose of providing the parties an opportunity to  
97 be heard, except in situations where a hearing is scheduled and it is not possible to provide notice at  
98 least seven (7) days prior to the hearing, the Court shall make an appropriate effort to notice all parties  
99 of the hearing. [7 O.C. 708.12-2]. Additionally, the proposed amendments provide that when the  
100 Department is required to perform personal service, the Indian Child Welfare Worker may deliver the  
101 document(s) directly to the party(s) if such service is appropriate and safe under the circumstances, and  
102 in the alternative, personal service may be accomplished according to the Oneida Judiciary Rules of  
103 Civil Procedure. The proposed amendments also include a new provision which provides that in all  
104 proceedings under this law, the Department may withhold the placement provider’s identifying  
105 information from the child’s parent, guardian, or legal custodian if there are reasonable grounds to  
106 believe that disclosure would result in imminent danger to the child or anyone else, but that a parent,  
107 guardian, or legal custodian may request judicial review of the decision to withhold the identifying  
108 information. [7 O.C. 708.12-4]. Previously the Children’s Code provided general provisions on the  
109 notice of petitions, and provided that petitions alleging that a child is in need of protection or services  
110 may be given to the parties directly by the Nation’s Child Welfare attorney or the Indian Child Welfare  
111 Worker or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure. While  
112 petitions for termination of parental rights, guardianship, and adoption shall be served on all other  
113 parties pursuant to the Oneida Judiciary Rules of Civil Procedure. The Children’s previously provided

114 that all parties shall be notified of all subsequent hearings under this law by first-class mail to the  
115 recently verified last-known address of the party.

116 ■ *Effect.* Updates were made to the general notice provisions in the Children’s Code to provide  
117 greater clarification on how notice is provided to the parties involved in child welfare matters. The  
118 prior simple reference to following the Oneida Judiciary Rules of Civil Procedure did not provide  
119 the Indian Child Welfare Department and the Oneida Law Office the guidance they needed in how  
120 notice should occur, because the Oneida Judiciary Rules of Civil Procedures did not address the  
121 notice of particular documents or processes contained in the Children’s Code. The new provisions  
122 provide the necessary clarification to guide notice practices under the Children’s Code.

123 **D. Notice Provisions Throughout the Law.** In addition to the general notice provisions that have been  
124 amended in section 708.12, notice provisions have been clarified and updated throughout the Children’s  
125 Code including:

- 126 ■ *Section 708.16-3.* The proposed amendments to the Children’s Code remove a provision  
127 which states that prior to the start of a hearing for emergency custody, the Court shall  
128 provide a copy of the petition to the parent, guardian, and legal custodian, if present, and  
129 to the child if he or she is twelve (12) years of age or older. Instead, the proposed  
130 amendments now provide that for any parties not present at the hearing, the Department  
131 shall serve the petition on those parties by verified mail, return receipt requested.
- 132 ■ *Section 708.17-1.* The proposed amendments to the Children’s Code provide that upon  
133 filing with the Court, the Department shall provide a copy of the petition for a child in need  
134 of protection or services to the parties by personal service or, if personal service is not  
135 possible, by certified mail with return receipt requested.
- 136 ■ *Section 708.17-4.* The proposed amendments to the Children’s Code provide that upon  
137 filing with the Court, the Department shall provide a copy of the amended petition to the  
138 parties by certified mail with return receipt requested. Previously, this section of the  
139 Children’s Code provided that an amended petition may be given to the parties directly by  
140 the Nation’s Child Welfare attorney or the Indian Child Welfare Worker or served on the  
141 parties pursuant to the Oneida Judiciary Rules of Civil Procedure.
- 142 ■ *Section 708.21-1.* The Children’s Code provides that before the dispositional hearing, the  
143 Department shall submit a written report to the Court, with a copy provided to the parties  
144 at least seven (7) days prior to the hearing. The proposed amendments to the Children’s  
145 Code clarify that the copy of the written report shall be provided to the parties by first-class  
146 mail.
- 147 ■ *Section 708.23-3.* The proposed amendments to the Children’s Code provide that at least  
148 seven (7) days before the date of the permanency plan hearing, the Department shall file  
149 the updated permanency plan with the Court and provide a copy to the parties by first-class  
150 mail. Previously, this section of the Children’s Code required that at least five (5) business  
151 days before the date of the hearing the Department shall provide a copy of the updated  
152 permanency plan to the Court and the parties.
- 153 ■ *Section 708.24-4.* The proposed amendments to the Children’s Code provide that upon  
154 filing with the Court, the Department shall provide a copy of the request for a change in  
155 placement to the parties by first-class mail. Previously, this section of the Children’s Code  
156 provided that written notice of the proposed change in placement shall be sent to all of the  
157 parties pursuant to the Oneida Judiciary Rules of Civil Procedure.

- 158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201
- *Section 708.24-6.* The proposed amendments to the Children’s Code provide that 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. Previously, this section of the Children’s Code provided that notice of the emergency change in placement shall be sent to the parties as soon as possible but no later than seventy-two (72) hours after the emergency change in placement excluding Saturdays, Sundays, and holidays.
  - *Section 708.25-4.* The proposed amendments to the Children’s Code provide that upon filing a request for trial reunification 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. Previously, this section of the Children’s Code provided that Department or Nation’s Child Welfare attorney shall provide the parent, guardian, legal custodian, and any other party written notice pursuant to the Oneida Judiciary Rules of Civil Procedure.
  - *Section 708.24-7.* The proposed amendments to the Children’s Code provide that no later than seven (7) days prior to the expiration of the trial reunification, the Department shall submit the request for an extension of the trial reunification to the Court and shall cause notice of the request to be provided to all parties by first-class mail. Previously, this section of the Children’s Code provided that no later than ten (10) 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.
  - *Section 708.25-8.* The proposed amendments to the Children’s Code clarify that the Department is required to provide written notice of the end of a trial reunification period to the parties by first-class mail.
  - *Section 708.25-9(a)(1).* The proposed amendments to the Children’s Code clarify that the Department’s request for revocation of the trial reunification is required to be provided by first-class mail.
  - *Section 708.26-2.* The proposed amendments to the Children’s Code clarify that the Department’s request for a revision of the dispositional order is required to be provided to the parties by first-class mail. Previously, this section of the Children’s Code provided that notice be provided to the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.
  - *Section 708.27-1.* The proposed amendments to the Children’s Code clarify that the Department’s request for an extension of the dispositional order is required to be provided to the parties by first-class mail. Previously, this section of the Children’s Code provided that notice be provided to the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.
  - *Section 708.29.4.* The proposed amendments to the Children’s Code provide that upon filing with the Court and at least seven (7) days prior to 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.
  - *Section 708.29-8(a).* The proposed amendments to the Children’s Code provide that upon filing with the Court and at least seven (7) days prior to the fact-finding 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. Previously, this section of the

- 202 Children’s Code provided that the Department shall file its report with the Court prior to  
203 the fact-finding hearing and shall provide the parties with a copy of the report at least three  
204 (3) business days prior to the hearing.
- 205 ■ *Section 708.30-2.* The proposed amendments to the Children’s Code provide that the  
206 motion for a revision of guardianship shall be filed with the Court and, upon filing, a written  
207 copy shall be provided to all parties by first-class mail. Previously, the notice of revision  
208 was required to be filed with the Court with notice provided to the parties pursuant to the  
209 Oneida Judiciary Rules of Civil Procedure. Additionally, the proposed amendments to  
210 subsection (a) of 708.30-2 provide that upon filing with the Court and at least seven (7)  
211 days prior to the revision hearing, the Department shall provide the parties with a written  
212 copy of their report by first-class mail. Previously, subsection (a) provided that the  
213 department shall file its report with the Court prior to the hearing on the revision of  
214 guardianship and shall provide the parties with a copy of the report at least three (3)  
215 business days prior to the hearing.
  - 216 ■ *Section 708.31-2(a).* The proposed amendments to the Children’s Code provide that upon  
217 filing with the Court and at least seven (7) days prior to the termination hearing, the  
218 Department shall provide the parties with a written copy of the report for the termination  
219 of a guardianship by first class mail. Previously, the Children’s Code provided that the  
220 Department shall file its report with the Court prior to the hearing on the termination of  
221 guardianship and shall provide the parties with a copy of the report at least three (3)  
222 business days prior to the hearing.
  - 223 ■ *Section 708.35-5.* The proposed amendments to the Children’s Code provide that upon  
224 filing with the Court and at least seven (7) days prior to the initial hearing, the petitioner  
225 shall serve the summons and petition upon the following persons by personal service or, if  
226 personal service is not possible, by certified mail, return receipt requested: The parent(s)  
227 of the child, including an alleged father if paternity has not been established; and The  
228 child’s foster parent, guardian or legal custodian, if applicable. Previously, the Children’s  
229 Code provided that the petitioner shall ensure the summons and petition are served upon  
230 the following persons pursuant to the Oneida Judiciary Rules of Civil Procedure: The  
231 parent(s) of the child, including an alleged father if paternity has not been established; The  
232 child’s foster parent, guardian or legal custodian, if applicable; and The Nation’s Child  
233 Welfare attorney and the Department, if the petition is filed by anyone other than the  
234 Nation’s Child Welfare attorney or the Department.
  - 235 ■ *Section 708.43-4.* The proposed amendments to the Children’s Code provide that the  
236 Department or other agency or department making the adoption investigation shall file its  
237 report with the Court prior to the hearing on the petition and shall provide a copy of the  
238 report to the parties by first-class mail at least seven (7) days prior to the hearing.  
239 Previously, this section of the Law provided that the Department or other agency or  
240 department making the investigation shall file its report with the Court prior to the hearing  
241 on the petition and shall provide the parties with a copy of the report at least three (3)  
242 business days prior to the hearing.
  - 243 ■ *Section 708.43-9.* The proposed amendments to the Children’s Code provide that within  
244 five (5) days after entry of the order granting a closed adoption, the Department shall mail  
245 a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish any



246 additional data needed for the issuance of a new birth certificate. Previously this section  
247 provided that after entry of the order granting the adoption, the Department shall promptly  
248 mail a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish  
249 any additional data needed for the issuance of a new birth certificate.

250 ■ *Effect.* Revisions to specific notice requirements throughout the Children’s Code were made to  
251 provide greater clarification on how notice shall occur.

252 **E. *Referral of a Paternity Action to the Oneida Nation Child Support Agency.*** The proposed  
253 amendments to the Children’s Code addresses referrals for paternity actions. The proposed amendments  
254 provides that if an alleged father appears at a hearing under this law, the Court may order the  
255 Department to refer the matter to the Oneida Nation Child Support Agency to adjudicate paternity. [7  
256 *O.C. 708.13-3*]. There is a new provision added to the that that provides that if the Court enters such  
257 an order, then the Department may sign documents required by the Oneida Nation Child Support  
258 Agency on behalf of the family for the limited purpose of initiating a paternity action. *Id.* While  
259 paternity is being established, the Court shall enter an order finding good cause to suspend the time  
260 limits established under this law. *Id.* Previously, the Children’s Code provided that if an alleged father  
261 appears at a hearing under this law, the Court may refer the matter to the Oneida Nation Child Support  
262 Agency to adjudicate paternity.

263 ■ *Effect.* The proposed amendments to the Children’s Code provide greater clarification on how a  
264 referral to the Oneida Nation Child Support Agency occurs – that the Court may order the  
265 Department to refer the matter to the Oneida Nation Child Support Agency – so it is not the Court  
266 itself that refers the matter to the Oneida Nation Child Support Agency. Authority was given to the  
267 Department to sign documents required by the Oneida Nation Child Support Agency on behalf of  
268 the family for the limited purpose of initiating a paternity action, so that a situation could be avoided  
269 where a paternity action is unable to be initiated because the mother of the child is unable to or not  
270 around to sign the necessary documents.

271 **F. *Withholding the Release of Information.*** The proposed amendments add a new provision to the  
272 Children’s Code which provides that the Department may make an ex parte request to the Court to  
273 conduct an in-camera review to determine what information should and should not be released to the  
274 parties and their counsel. [7 *O.C. 708.14-6*]. In making that determination, the Court is required to  
275 balance what is necessary to a fair determination of the child welfare legal matter, including access to  
276 records, against the interest in protecting the child from the risk of harm. *Id.* After the Court conducts  
277 the in-camera review, the decision regarding the release of records shall be provided to the parties in  
278 writing. *Id.*

279 ■ *Effect.* The Children’s Code provides that upon written request, the parties and their counsel shall  
280 have the right to inspect, copy or photograph social, psychiatric, psychological, medical, and school  
281 reports, and records concerning the child including reports of preliminary inquiries, predisposition  
282 studies and supervision records relating to the child which are in the possession of the Nation’s  
283 Child Welfare attorney or the Department that pertain to any case under this law. [708.14-1]. The  
284 Indian Child Welfare Department expressed concerns that the Department may have certain records  
285 which if released could cause harm to the child. This provision was added to give the Department  
286 a method to seek intervention by the Court to determine if certain records can be withheld in the  
287 interest in protecting the child.

288 **G. *Holding a Child in Custody.*** The Children’s Code provides a list of options for where a child may be  
289 held in custody as long as the place is in the best interest of the child and all people residing or regularly

290 visiting the premises have cleared a background check. [7 O.C. 708.15-6]. The proposed amendments  
291 to the Children’s Code add a new option to the list of where a child may be held in custody at, which  
292 is a hospital or other medical or mental health facility. [7 O.C. 708.15-6].

- 293 ■ *Effect.* The option to hold a child in custody in a hospital or other medical or mental health facility  
294 was added to address child welfare cases where the child may need to be hospitalized or held in a  
295 medical facility. This provides greater flexibility in determining where a child should be held in  
296 custody that best meets the needs and interests of the child.

297 **H. *Order for Holding a Child in Custody at an Emergency Custody Hearing.*** The Children’s Code  
298 provides that all orders to hold a child in custody at an emergency custody hearing shall be in writing  
299 and provides what information is required to be included in the order. [7 O.C. 7008.16-6(a)]. The  
300 proposed amendments to the Children’s Code will now include the addition of information that may  
301 be, but not required to be, included in the order to hold a child in custody. [7 O.C. 7008.16-6(b)]. Now  
302 an order to hold a child in custody may include a transfer of the legal custody of the child, including  
303 decisions about health care and education.

- 304 ■ *Effect.* Allowing an order to hold a child in custody at an emergency custody hearing to include a  
305 transfer of the legal custody of the child, including decisions about health care and education, allow  
306 for legal custody to be transferred to the Department or the other parent, if necessary, especially if  
307 medical decisions need to be made on behalf of the child.

308 **I. *Request for Out of Home Placement of the Child at the Plea Hearing.*** The proposed amendments to  
309 the Children’s Code provide that at the plea hearing the Department may request placement of the child  
310 outside of the child’s home in accordance with the placement preferences in section 708.11-1, if notice  
311 of the Department’s intent to seek out of home placement of the child was provided to the parties prior  
312 to the hearing in substantial compliance with section 708.15-9. [7 O.C. 708.19-5]. The Children’s Code  
313 will not require that in the request for placement of the child outside of the child’s home the Department  
314 shall present as evidence specific information as outlined in 708.16-6(a)(1)-(5). *Id.* If the Court orders  
315 the out of home placement of the child, the order shall be in writing and shall contain the information  
316 required by section 708.16-6(a)(1)-(5). [7 O.C. 708.19-6]. Previously, the Children’s Code did not  
317 allow for the Department to request the out of home placement of a child at the plea hearing.

- 318 ■ *Effect.* The proposed amendments to the Children’s Code will allow for the Department to request  
319 the placement of a child outside of the child’s home at the plea hearing. Currently, it has been  
320 interpreted that a request for the placement of the child outside of the child’s home can only occur  
321 at an emergency custody hearing or at the dispositional hearing for a child in need of protection or  
322 services. The Department requested this amendment so that the Department would have the ability  
323 to avoid taking a child into emergency custody when the parents are already in agreement with a  
324 protective plan and the child is already staying out of home under the protective plan. This allows  
325 the Department to avoid unnecessary litigation and pressure to the family if the emergency custody  
326 hearing can be skipped, and the department can file a petition for a child in need of protection or  
327 services and request the ordered out of home placement at the time of the plea hearing. A protective  
328 plan is a safety tool the Department can implement during the Initial Assessment stage of a case.  
329 Initial Assessment lasts sixty (60) days and during that time the Indian Child Welfare Department  
330 workers gather information, and a determination is made whether a petition for a child in need of  
331 protection or services needs to be filed. Parents have to agree to a protective plan and the plan can  
332 only last for sixty (60) days. There isn’t a formal order placing the child out of home within a  
333 protective plan because a protective plan is temporary and agreed to by the parents. When the sixty

334 (60) days for the initial assessment ends, if it is clear that a petition for a child in need of protection  
335 or services needs to be filed, then the Department would like the ability to skip a contentious  
336 emergency custody hearing and simply file a petition and ask for an order for out of home  
337 placement at the first hearing, which is the plea hearing. An emergency custody hearing is also not  
338 the best option in these situations because an “emergency” does not necessarily exist because the  
339 child is safe under the protective plan and staying out of the home.

340 **J. *Withholding Identifying Information in the Dispositional Report.*** The proposed amendments to the  
341 Children’s Code eliminated section 708.21-3 of the Code which provided that the Department may  
342 request the Court to withhold identifying information from the child's parent, guardian, or legal  
343 custodian if there are reasonable grounds to believe that disclosure would result in imminent danger to  
344 the child or anyone else.

345 ■ *Effect.* Section 708.21-3 of the Children’s Code- which provided that the Department may request  
346 the Court to withhold identifying information in the dispositional report from the child's parent,  
347 guardian or legal custodian if there are reasonable grounds to believe that disclosure would result  
348 in imminent danger to the child or anyone else - was eliminated from the Children’s Code because  
349 it was duplicative of section 708.12-4 – a new, more general, addition to the Code – which provides  
350 that in all proceedings under this law, the Department may withhold the placement provider’s  
351 identifying information from the child’s parent, guardian, or legal custodian if there are reasonable  
352 grounds to believe that disclosure would result in imminent danger to the child or anyone else.  
353 Section 708.12-4 then allows a parent, guardian, or legal custodian may request judicial review of  
354 the decision to withhold the identifying information.

355 **K. *Copy of the Dispositional Order to the Child.*** The proposed amendments to the Children’s Code  
356 remove the requirement to provide a copy of the dispositional order to the child is the child is age twelve  
357 (12) or older.

358 ■ *Effect.* After much discussion between the Indian Child Welfare Department, Oneida Law Office,  
359 and Oneida Family Court it was determined that it may not be appropriate to provide a child age  
360 twelve (12) or older a copy of the dispositional order due to the nature of the information that may  
361 be included in the dispositional order and therefore this provision of the Children’s Code should be  
362 removed.

363 **L. *Capacity of the Child to Express their Wishes.*** The Children’s Code provides that in making a decision  
364 about the appropriate disposition, the Court shall consider any report submitted by the Department and  
365 shall consider, but not be limited to, whether the person would be a suitable guardian of the child, the  
366 willingness and ability of the person to serve as the child's guardian for an extended period of time or  
367 until the child reaches the age of eighteen (18) years, and the wishes of the child. The proposed  
368 amendments to the Children’s Code clarify that the wishes of the child should only be considered when  
369 the child has the capacity to express their wishes. This same revision occurs in section 708.39-3 of the  
370 Children’s Code.

371 ■ *Effect.* The proposed amendments provide clarification that the wishes of the child should be taken  
372 into consideration by the Court when the child has the capacity to express their wishes.

373 **M. *Suspension of Parental Rights.*** The proposed amendments to the Children’s Code now allow for the  
374 suspension of parental rights in addition to the termination of parental rights. The suspension of parental  
375 rights is the permanent suspension of the rights of biological parents to provide for the care, custody,  
376 and control of their child. [7 O.C. 708.32-3]. It is the philosophy of the Nation that children deserve a  
377 sense of permanency and belonging throughout their lives and at the same time they deserve to have

378 knowledge about their unique cultural heritage including their tribal customs, history, language,  
379 religion, and values. [7 O.C. 708.32-1]. Much like the termination of parental rights, the suspension of  
380 parental rights should only be used as a last resort when all efforts have failed to avoid suspension or  
381 termination and it is in the best interests of the child concerned to proceed with the suspension or  
382 termination of parental rights. [7 O.C. 708.32-2]. The suspension of parental rights can occur on a  
383 voluntary or involuntary basis. [7 O.C. 708.32-5]. An order suspending or terminating parental rights  
384 permanently severs all legal rights and duties between the parent whose parental rights are suspended  
385 or terminated and the child. [7 O.C. 708.32-6]. The suspension or termination of parental rights shall  
386 not adversely affect the child’s rights and privileges as a member of the Nation, nor as a member of any  
387 tribe to which the child is entitled to membership, nor shall it affect the child’s enrollment status with  
388 the Nation, nor shall it interfere with the child’s cultural level and traditional and spiritual growth as a  
389 member of the Nation. [7 O.C. 708.32-6]. The suspension of parental rights is handled the same way  
390 as the termination of parental rights in regard to the process for the voluntary suspension or termination  
391 [7 O.C. 708.33], grounds for involuntary suspension or termination [7 O.C. 708.34], the petition for  
392 the suspension or termination [7 O.C. 708.35], the initial hearing on the suspension or termination [7  
393 O.C. 708.36], the fact-finding hearing for the suspension or termination [7 O.C. 708.37], the  
394 Department’s suspension or termination of parental rights report [7 O.C. 708.38], standards and factors  
395 to be utilized by the Court when making a decision [7 O.C. 708.39], and the dispositional hearing for  
396 the suspension or termination of parental rights [7 O.C. 708.40].

- 397 ■ **Effect.** The proposed amendments to the Children’s Code add in provision regarding the  
398 suspension of parental rights, in addition to the termination of parental rights that was already  
399 included in the Children’s Code. This provides one more option for finding the best solution to a  
400 child welfare matter to best meet the needs of the child.

401 **N. Continuing Need of Protection or Services as a Ground for Involuntary Suspension or Termination**

402 **of Parental Rights.** The Children’s Code provides various grounds for suspension or termination of  
403 parental rights. [7 O.C. 708.34-1]. Specifically, the Children’s Code provides what needs to be proved  
404 to demonstrate that the child is in continuing need of protection or services – which is a ground for the  
405 suspension or termination of parental rights. [7 O.C. 708.34-1(c)]. The proposed amendments to the  
406 Children’s Code provides that it must be provided that the child has been outside the home for a  
407 cumulative total period of six (6) months or longer pursuant to such orders; and that the parent has  
408 failed to meet the conditions established for the safe return of the child to the home and, if the child has  
409 been placed outside the home for less than fifteen (15) of the most recent twenty-two (22) months, that  
410 there is a substantial likelihood that the parent will not meet these conditions as of the date on which  
411 the child will have been placed outside the home for fifteen (15) of the most recent twenty-two (22)  
412 months, not including any period during which the child was a runaway from the out-of-home  
413 placement or was residing in a trial reunification home. [7 O.C. 708.34-1(c)(3)]. Previously the  
414 Children’s required that it be proved that the child has been outside the home for a cumulative total  
415 period of six (6) months or longer pursuant to such orders; and that the parent has failed to meet the  
416 conditions established for the safe return of the child to the home and there is a substantial likelihood  
417 that the parent will not meet these conditions within the nine (9) month period following the termination  
418 of parental rights fact-finding hearing.

- 419 ■ **Effect.** This proposed revision to the Children’s Code was made to be consistent with recent  
420 revisions to Wis. Stat. §48.415(2). Although the Nation is under no obligation to amend its laws to  
421 be consistent with laws of the State, concern was expressed that it may be beneficial to ensure the

422 Nation’s grounds for suspension or termination of parental rights are consistent with the State’s  
423 grounds so that if a case transfers after being filed in State court, we are not in a position where we  
424 have to dismiss the petition if the grounds pled in State court are different from the grounds found  
425 in the Children’s Code, causing the Department to have to refile, assuming they have a factual basis  
426 to do so.

427 **O. Order of Disposition for the Suspension or Termination of Parental Rights.** The Children’s Code  
428 provides that if the disposition of the Court is for the suspension or termination of parental rights, the  
429 order shall be in writing, and the Children’s Code then provides the information that is required to be  
430 included in that order.[7 O.C. 708.40-4(b)]. The proposed amendments to the Children’s Code now  
431 provide what the order for the disposition for the suspension or termination of parental rights may, but  
432 is not required, to include. [7 O.C. 708.40-4(c)]. If the disposition is for the suspension or termination  
433 of parental rights, the order may contain a termination of the right of the parent to have contact with  
434 the minor child including contact in person, by mail, by telephone, or through third parties; an order  
435 restraining a parent from contacting the minor child, the child’s foster parent, the child’s adoptive parent  
436 and/or the social services agency or agencies possessing information regarding the child; an order that  
437 the biological parents’ obligation to pay child support, except for arrearages, is hereby terminated; and  
438 an order that any prior court order for custody, visitation, or contact, with the minor child is hereby  
439 terminated. [7 O.C. 708.40-4(c)(1)-(4)]. The proposed amendments now also require that the Court  
440 provide a copy of the order suspending or terminating parental rights to the child’s parent, guardian,  
441 and legal custodian; the other parties to the action; and the current or future foster parents for the  
442 purpose of pursuing adoption.

443 ■ *Effect.* The purpose of this proposed amendment to the Children’s Code is to provide greater  
444 clarification as to what information may be included in the Court’s order for the disposition for the  
445 suspension or termination of parental rights but is not required to be included. Additionally,  
446 requiring that the Court provide a copy of the order suspending or terminating parental rights to the  
447 child’s parent, guardian, and legal custodian; the other parties to the action; and the current or future  
448 foster parents for the purpose of pursuing adoption ensures that foster parents or relative placement  
449 providers – particularly those no licensed by Nation – have as method to obtain a copy of the  
450 suspension or termination of parental rights order order that they will need to attach to the petition  
451 for adoption, since they may not have access to the Department’s records otherwise.

452 **P. Form of Adoption.** The proposed amendments to the Children’s Code provide clarification on adoption  
453 now that suspension of parental rights is available. The amendments provide that an adoption under  
454 this law shall take the form of customary adoption when the Court has granted a petition to suspend  
455 parental rights. [7 O.C. 708.41-1]. When the Court grants a petition to terminate parental rights, the  
456 adoption shall be closed. *Id.* Previously, the Law provided that adoptions shall take the form of  
457 customary adoptions unless the Court determines there is good cause for the adoption to be closed.

458 ■ *Effect.* Previously, the Children’s Code only provided for the termination of parental rights. Now  
459 that the suspension of parental rights is also allowed under the Children’s Code, this proposed  
460 amendment provides guidance on what form of adoption should be sought and utilized based on  
461 whether a suspension or termination of parental rights occur. The Department sought amendments  
462 to the Children’s Code so that customary adoptions would occur when a suspension of parental  
463 rights occurs, rather than a termination of parental rights. The Department sought this amendment  
464 because in order to qualify for Adoption Assistance with the State, for a customary adoption, it had  
465 to be a suspension of parental rights that occurred and not a termination of parental rights. The

466 Department wanted to ensure that adopting families under the Children’s Code had access to  
467 support and financial assistance under the State.

468 **Q. *Adoption Investigations.*** The Children’s Code provides that when a petition for adoption is filed, the  
469 Court shall order an investigation to determine whether the child is a proper subject for adoption and  
470 whether the petitioner's home is suitable for the child. [7 O.C. 708.43-3]. The Court shall order one of  
471 the following to conduct the investigation: if the Department, or another agency or department, has  
472 guardianship of the child, the agency or department that has guardianship; or if no agency or department  
473 has guardianship of the child and a relative, including a stepparent, has filed the petition for adoption,  
474 the Department. [7 O.C. 708.43-3(a)(1)-(2)]. The proposed amendment to the Law clarifies that if the  
475 Court orders the Department to conduct the investigation, the Department may contract with a third-  
476 party agency to conduct the investigation. [7 O.C. 708.43-3(b)].

477 ■ *Effect.* The proposed amendment to the Children’s Code allows the Department to contract with a  
478 third-party agency to conduct an adoption investigation that may have been ordered by the Court.  
479 This provides greater flexibility to the Department in balancing their resources and time when  
480 ordered to conduct an investigation.

481 **R. *Other Revisions.*** Other minor drafting revisions are made throughout the Children’s Code

482

## 483 **SECTION 6. EXISTING LEGISLATION**

484 **A. *Related Legislation.*** The following laws of the Nation are related to the Children’s Code:

485 ■ *Paternity Law.* The purpose of the Paternity law is to establish paternity of Oneida children and  
486 other Indian children in order to protect the best interest of these children regarding such  
487 matters as enrollment, customs and traditions of the Tribe, survivorship and inheritance, health,  
488 support, and social security benefits. [7 O.C. 703.1-1]. It is the policy of this law to legally  
489 establish paternity in order to recognize and identify the father of Oneida children and other  
490 Indian children, when necessary. [7 O.C. 703.1-2].

491 ■ The Children’s Code provides that if an alleged father appears at a hearing under this  
492 law, the Court may order the Department to refer the matter to the Oneida Nation Child  
493 Support Agency to adjudicate paternity. [7 O.C. 708.13-3]. If the Court enters such an  
494 order, then the Department may sign documents required by the Oneida Nation Child  
495 Support Agency on behalf of the family for the limited purpose of initiating a paternity  
496 action. *Id.* While paternity is being established, the Court shall enter an order finding  
497 good cause to suspend the time limits established under this law. *Id.*

498 ■ The process for adjudicating paternity is then provided by the Paternity law.  
499 [7 O.C. 703.1-6].

500 ■ *Oneida Judiciary Rules of Civil Procedure.* The Oneida Judiciary Rules of Civil Procedure  
501 governs all civil actions that fall under the jurisdiction of the Nation to ensure that there is a  
502 consistent set of rules governing the process for civil claims, in order to ensure equal and fair  
503 treatment to all persons who come before the Tribal Courts to have their disputes resolved. [8  
504 O.C. 803.1-1, 803.1-2].

505 ■ The Children’s Code provides that service of documents and notices shall be as  
506 specified in this law. If a method of service is not specified in this law, then service  
507 shall be by first-class mail to the recently verified last-known address of the party. If a  
508 party’s whereabouts are unknown and cannot be found after diligent effort, service

- 509 shall be by publication as described in the Oneida Judiciary Rules of Civil Procedure.  
510 *[7 O.C. 708.12-1]*.
- 511     ▪ The Oneida Judiciary Rules of Civil Procedure provides that when the other  
512 party’s whereabouts are unknown and cannot be found after diligent effort,  
513 service may be completed by publication. The publication shall be in the Tribal  
514 newspaper or in a newspaper of general circulation in the area of the party’s  
515 last known address and shall be designated as “Legal Notice.” This notice shall  
516 be published at least two (2) times within a thirty (30) day period. The two (2)  
517 notices shall be published at least ten (10) days before the hearing. Copies of  
518 the two (2) published notices and an affidavit of service stating the facts  
519 surrounding the failure of personal and mail service shall be filed with the  
520 Court as proof of service. The Court may, on its own, order different time  
521 limits for service by publication. *[8 O.C. 803.5-6(c)]*.
  - 522     ▪ The Children’s Code provides that when the Department is required to perform  
523 personal service, the Indian Child Welfare Worker may deliver the document(s)  
524 directly to the party(s) if such service is appropriate and safe under the circumstances.  
525 In the alternative, personal service may be accomplished according to the Oneida  
526 Judiciary Rules of Civil Procedure. *[7 O.C. 708.12-3]*.
  - 527     ▪ The Oneida Judiciary Rules of Civil Procedure provides that personal service  
528 shall consist of delivering to the party a copy of the paper being served by a  
529 law enforcement officer or other person, who is not a party to the action and  
530 who is at least eighteen (18) years of age. An affidavit of service shall be filed  
531 with the Court as proof of service. Personal service shall be completed by hand  
532 delivering the required papers to any of the following: The party named in the  
533 action or proceeding; An individual residing at the party’s home or usual place  
534 of abode, so long as the person signing for delivery is at least eighteen (18)  
535 years of age; An officer, manager, agent, or partner of a non-individual party;  
536 or an attorney or advocate of the party, if represented. *[8 O.C. 803.5-6(a)]*.
  - 537     ▪ The Children’s Code provides that in addition to the discovery procedures permitted  
538 under this law, the discovery procedures permitted under the Oneida Judiciary Rules  
539 of Civil Procedure shall apply in all proceedings under this law. *[7 O.C. 708.14-5]*.
  - 540     ▪ The Oneida Judiciary Rules of Civil Procedure provides procedures for  
541 discovery including the scope, required disclosures, limitations, time for  
542 required disclosures, required pretrial disclosures, protective orders,  
543 supplementing disclosures and responses, signatures required and the effect of  
544 signatures, failure to disclose and information produced. *[8 O.C. 803.14]*.
  - 545     ▪ The Children’s Code provides that the fact-finding hearing for a child in need of  
546 protection or services shall be conducted according to the Oneida Judiciary Rules of  
547 Civil Procedure except that the Court may exclude the child from the hearing. *[7 O.C.*  
548 *708.20-2]*.
  - 549     ▪ The Oneida Judiciary Rules of Civil Procedure provides general hearing  
550 procedures. *[8 O.C. 803.38]*.
  - 551     ▪ The Children’s Code provides that after receiving any evidence relating to the  
552 disposition for guardianship, the Court shall enter a disposition and issue a written

- 553 decision consistent with the Oneida Judiciary Rules of Civil Procedure. [7 O.C. 708.29-  
554 11].
- 555       ▪ The Oneida Judiciary Rules of Civil Procedure provides procedure for entering  
556       and enforcing a judgment of the Court. [8 O.C. 803.31].
  - 557       ▪ The Children’s Code provides that the fact-finding hearing for the suspension or  
558       termination of parental rights shall be conducted according to the Oneida Judiciary  
559       Rules of Civil Procedure except that the Court may exclude the child from the hearing.  
560       [7 O.C. 708.37-2].
  - 561       ▪ The Oneida Judiciary Rules of Civil Procedure provides general hearing  
562       procedures. [8 O.C. 803.38].
  - 563       ▪ The Children’s Code provides that after receiving any evidence relating to the  
564       disposition for the suspension or termination of parental rights, the Court shall enter a  
565       disposition and issue a written decision consistent with the Oneida Judiciary Rules of  
566       Civil Procedure. [7 O.C. 708.40-1].
  - 567       ▪ The Oneida Judiciary Rules of Civil Procedure provides procedure for entering  
568       and enforcing a judgment of the Court. [8 O.C. 803.31].
  - 569       ▪ *Family Court Law.* The purpose of the Family Court law is to establish a Family Court, and to  
570       provide for the administration of law, justice, judicial procedures and practices by the Oneida  
571       Tribe as a sovereign nation by exercising the inherent power to make, execute, apply, and  
572       enforce its own law, and to apply its own customs and traditions in matters affecting the Oneida  
573       people as it pertains to the family and/or to our children.
  - 574       ▪ The Children’s Code provides that the Court has personal jurisdiction over an Oneida  
575       Child, and over a non-Oneida child in certain circumstances. [7 O.C. 708.5-1].  
576       Additionally, the Children’s Code provides that the Court has jurisdiction over a child  
577       alleged to be in need of protection or services if personal jurisdiction has been  
578       established and the child meets certain requirements. [7 O.C. 708.5-2]. Court is defined  
579       in the Children’s Code as the Oneida Nation Family Court, which is the branch of the  
580       Oneida Nation Judiciary that has the designated responsibility to oversee family  
581       matters. [7 O.C. 708.3-1(j)].
  - 582       ▪ The Family Court law provides that there is a Family Court, which shall  
583       administer the judicial authorities and responsibilities of the Tribe over all  
584       matters pertaining to the family, children, and elders, except for probate  
585       matters. [8 O.C. 806.4-1]. The Family Court shall have subject matter  
586       jurisdiction over cases and controversies arising under the following: Tribal  
587       laws which specifically authorize the Court to exercise jurisdiction, and the  
588       Constitution. [8 O.C. 806.5-2]. The Family Court law then describes when the  
589       Family Court has personal jurisdiction of an individual including Indians and  
590       non-Indians. [8 O.C. 806.5-3].
  - 591       ▪ *Oneida Judiciary Rules of Evidence.* The Oneida Judiciary Rules of Evidence establishes rules  
592       of evidence to apply in proceedings held in the Trial court and Family Court of the Oneida  
593       Judiciary administer Court proceedings fairly, eliminate unjustifiable expense and delay, and  
594       promote the development of evidence law, by obtaining the truth and securing a just  
595       determination. [8 O.C. 804.1-1, 804.1-2].



- 596                   ▪ The Children’s Code provides that the Oneida Judiciary Rules of Evidence are not  
597 binding at emergency custody hearings, dispositional hearings, or a hearing about  
598 changes in placement, revision of dispositional orders, extension of dispositional  
599 orders, or termination of guardianship orders. At those hearings, the Court shall admit  
600 all testimony having reasonable probative value, but shall exclude immaterial,  
601 irrelevant, or unduly repetitious testimony. Hearsay evidence may be admitted if it has  
602 demonstrable circumstantial guarantees of trustworthiness. The Court shall give effect  
603 to the rules of privilege recognized by laws of the Nation. The Court shall apply the  
604 basic principles of relevancy, materiality, and probative value to proof of all questions  
605 of fact. [7 O.C. 708.13-2].
- 606                   ▪ *Child Support Law.* The purpose of the Child Support law is to establish the legal responsibility  
607 of parents to provide financially for their children’s general well-being; make support payments  
608 more equitable by ensuring consistent treatment of persons in similar circumstances; make  
609 support payments based on the real earning capability of parents; and improve the efficiency  
610 of child support establishment and enforcement. [7 O.C. 704.1-1].
- 611                   ▪ The Children’s Code provides that at any time, the Court or the Department may refer  
612 the matter to the Nation’s Child Support Agency. [7 O.C. 708.13-4].
- 613

614 **SECTION 7. OTHER CONSIDERATIONS**

- 615 A. *Fiscal Impact.* Under the Legislative Procedures Act, a fiscal impact statement is required for all  
616 legislation except emergency legislation [1 O.C. 109.6-1]. Oneida Business Committee resolution BC-  
617 10-28-20-A titled, “*Further Interpretation of ‘Fiscal Impact Statement’ in the Legislative Procedures*  
618 *Act,*” provides further clarification on who the Legislative Operating Committee may direct complete  
619 a fiscal impact statement at various stages of the legislative process, as well as timeframes for  
620 completing the fiscal impact statement.
- 621                   ▪ *Conclusion.* The Legislative Operating Committee has not yet directed that a fiscal impact  
622 statement for the proposed amendments to the Children’s Code be prepared.

623

**Title 7. Children, Elders and Family - Chapter 708**

~~CHILDREN’S CODE~~

**Latiksa’shúha Laotilihwá’ke**

*the children – their issues*

CHILDREN’S CODE

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

1

**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-J-2, 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.

19 708.2-3. Should a provision of this law or the application thereof to any person or circumstances  
20 be held as invalid, such invalidity shall not affect other provisions of this law which are considered  
21 to have legal force without the invalid portions.

22 708.2-4. In the event of a conflict between a provision of this law and a provision of another law,  
23 the provisions of this law shall control. Provided that, this law repeals the following:

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

32 708.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.  
33

### 34 **708.3. Definitions**

35 708.3-1. This section shall govern the definitions of words and phrases used within this law. All  
36 words not defined herein shall be used in their ordinary and everyday sense.

- 37 (a) “Abuse” means any of the following:
  - 38 (1) Physical injury inflicted on a child by other than accidental means;
  - 39 (2) Sexual assault;
  - 40 (3) Sexual exploitation of a child;
  - 41 (4) Prostitution or trafficking of a child;
  - 42 (5) Causing a child to view or listen to sexual activity or sexually explicit materials;
  - 43 (6) Exposing a child to the manufacture, sale, or use of controlled substances;
  - 44 and/or
  - 45 (7) Emotional damage for which the child’s parent, guardian, or legal custodian has  
46 neglected, refused, or been unable for reasons other than poverty to obtain the  
47 necessary treatment or take steps to address the issue.
- 48 (b) “Advocate” means a person who is a non-attorney presented to the Court as the  
49 representative or advisor to a party.
- 50 (c) “Alcohol and other drug abuse impairment” means a condition of a person which is  
51 exhibited by characteristics of habitual lack of self-control in the use of alcoholic beverages  
52 or controlled substances to the extent that the person’s health is substantially affected or  
53 endangered or the person’s social or economic functioning is substantially disrupted.
- 54 (d) “Attorney” means a person trained and licensed to represent another person in Court,  
55 to prepare documents and to give advice or counsel on matters of law.
- 56 (e) “Best interest of the child” means the interest of a child to:
  - 57 (1) Have a full, meaningful, and loving relationship with both parents and family  
58 as much as possible;
  - 59 (2) Be free from physical, sexual and emotional abuse;
  - 60 (3) Be raised in conditions that foster and encourage the happiness, security, safety,  
61 welfare, physical and mental health, and emotional development of the child;
  - 62 (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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

147 (hh) “Parties” means the parent(s), guardian(s), and legal custodian(s) of the child who  
 148 is the subject of the proceedings; the Department, in cases where they are the petitioner; a  
 149 guardian ad litem, if one has been appointed by the Court; and anyone else permitted to  
 150 file a petition under this law.

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

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

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

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

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

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

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

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

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

181 ~~(mm)~~(qq) \_\_\_\_\_ “Reservation” means all the land within the exterior boundaries of the  
 182 Reservation of the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida,  
 183 7 Stat. 566, and any lands added thereto pursuant to federal law.

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

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

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

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

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

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

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

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

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

#### 207 208 **708.4. Scope**

209 708.4-1. This law shall apply to all child welfare cases and legal proceedings in which the Nation  
 210 has jurisdiction. Nothing in this law is meant to restrict or limit another court of competent  
 211 jurisdiction from hearing a matter involving an Indian child.

#### 212 213 **708.5. Jurisdiction**

214 708.5-1. *Personal Jurisdiction.* The Court shall have personal jurisdiction over the following  
 215 individuals:

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

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

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

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

230 708.5-2. *Jurisdiction over Children Alleged to be in Need of Protection or Services.* The Court  
 231 shall have jurisdiction over a child alleged to be in need of protection or services if personal  
 232 jurisdiction has been established and the child:

233 (a) is without a parent or guardian;

234 (b) has been abandoned;

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

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

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

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

246 (g) has a guardian or legal custodian who is unable or needs assistance to care for or  
 247 provide necessary special treatment or care for the child, but is unwilling or unable to sign  
 248 the petition requesting jurisdiction under this subsection;

249 (h) has been placed for care or adoption in violation of the Nation’s laws or state law;

250 (i) is receiving inadequate care during the period of time a parent is missing, incarcerated,  
 251 hospitalized or institutionalized;

252 (j) is at least twelve (12) years of age, signs the petition requesting jurisdiction under this  
 253 subsection and is in need of special treatment or care which the parent, guardian or legal  
 254 custodian is unwilling, neglecting, unable or needs assistance to provide;

255 (k) has a parent, guardian or legal custodian who neglects, refuses or is unable for reasons  
 256 other than poverty to provide necessary care, food, clothing, medical or dental care or  
 257 shelter so as to seriously endanger the physical health of the child;

258 (l) has a parent, guardian or legal custodian who is at substantial risk of neglecting,  
 259 refusing or being unable for reasons other than poverty to provide necessary care, food,  
 260 clothing, medical or dental care or shelter so as to endanger seriously the physical health  
 261 of the child, based on reliable and credible information that the child's parent, guardian or  
 262 legal custodian has neglected, refused or been unable for reasons other than poverty to  
 263 provide necessary care, food, clothing, medical or dental care or shelter so as to endanger  
 264 seriously the physical health of another child in the home;

265 (m) is suffering emotional damage for which the parent, guardian or legal custodian has  
 266 neglected, refused or been unable and is neglecting, refusing or unable, for reasons other  
 267 than poverty, to obtain necessary treatment or to take necessary steps to improve the  
 268 symptoms;

269 (n) is suffering from an alcohol and other drug abuse impairment, exhibited to a severe  
 270 degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable  
 271 to provide treatment; or

272 (o) is non-compliant with the Nation’s or State’s immunization laws.

273 708.5-3. *Jurisdiction over other Matters Relating to Children.* If jurisdiction has been established  
 274 under section 708.5-1 and ~~section 708.5-2~~ all requirements of this law have been met the Court  
 275 may:

276 (a) terminate or suspend parental rights to a child;

277 (b) appoint, revise, and/or remove a guardian; and

278 (c) hold adoption proceedings.

279 708.5-4. *Transfer of Cases from other Courts.* If personal jurisdiction has been established the  
 280 Court has jurisdiction over any action transferred to the Court from any court of competent  
 281 jurisdiction.

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

284 708.5-5. *Transfer of Cases to other Courts.* The Court may transfer a case under this law to a court  
 285 of competent jurisdiction where the other court has a significant interest in the child and the transfer  
 286 would be in the best interest of the child.



287 708.5-6. Any orders made by the Court under this law, or any orders made by a court of competent  
 288 jurisdiction regarding child welfare matters, shall supersede any other order made by this Court or  
 289 a court of competent jurisdiction regarding custody or placement of a child until the Children’s  
 290 Code or other child welfare orders are dismissed.

291

## 292 **708.6. Nation’s Child Welfare Attorney**

293 708.6-1. A Child Welfare attorney shall represent the Nation in all proceedings under this law.  
 294 The Child Welfare attorney shall be one of the following:

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

298

## 299 **708.7. Indian Child Welfare Department Duties and Responsibilities**

300 708.7-1. *Indian Child Welfare Worker.* The Indian Child Welfare Worker shall carry out the duties  
 301 and responsibilities set forth in this law which include, but are not limited to the following:

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

- 333 (t) Maintain a knowledge and understanding of all relevant laws and regulations.
- 334 708.7-2. *Department.* In performing the duties set forth in this law, the Department shall:
- 335 (a) Identify and refer parties to resources in the community calculated to resolve the
- 336 problems presented in petitions filed in Court, such as the various psychiatric,
- 337 psychological, therapeutic, counseling, and other social services available within and
- 338 outside the Nation when necessary;
- 339 (b) Identify and refer parties to resources in the community designed to enhance the child's
- 340 potential as a member of the Nation;
- 341 (c) Investigate, inspect, and license foster homes, and monitor and supervise foster homes
- 342 and children in foster care;
- 343 (d) Adhere to the placement preference order stated in section 708.10; ~~and~~ 11;
- 344 (e) Enter into memorandums of understanding ~~and~~/or agreement with the Oneida Trust
- 345 Enrollment Committee ~~and~~/or Department, Oneida Police Department, Oneida Nation
- 346 Child Support Agency and any other appropriate department in order to carry out the
- 347 provisions of this law; ~~and~~
- 348 (f) Share information with other social service ~~and~~agencies, law enforcement agencies, ~~;~~
- 349 and other entities of the Nation as it pertains to children under the jurisdiction of this law.

350

351 **708.8. Guardian ad litem**352 708.8-1. *Appointment.* The appointment of a guardian ad litem shall be as follows:

- 353 (a) The Court may appoint a guardian ad litem for any child who is the subject of a child
- 354 in need of protection or services proceeding;
- 355 (b) The Court shall appoint a guardian ad litem for any child who is the subject of a
- 356 proceeding to terminate ~~or suspend~~ parental rights, whether voluntary or involuntary, for a
- 357 child who is the subject of a contested adoption proceeding, and for a child who is the
- 358 subject of a contested guardianship proceeding;
- 359 (c) The Court shall appoint a guardian ad litem for a minor parent petitioning for the
- 360 voluntary termination of their parental rights; and
- 361 (d) A guardian ad litem may be appointed for any other circumstance the Court deems
- 362 necessary.

363 708.8-2. *Qualifications.*

- 364 (a) A guardian ad litem shall be an adult who:
- 365 (1) is at least twenty one (21) years of age;
- 366 (2) is currently certified as a guardian ad litem and in good standing;
- 367 (3) has never been convicted of a felony unless the person received a pardon or
- 368 forgiveness; and
- 369 (4) has never been convicted of any crime against a child.
- 370 (b) No person shall be appointed guardian ad litem in that proceeding who:
- 371 (1) has a personal interest in the outcome of the case, a party to the proceeding, or
- 372 any other interest that has the potential to corrupt a person's motivation or decision
- 373 making, because of an actual or potential divergence between the person's self-interests,
- 374 and the best interests of the case;
- 375 (2) appears as counsel or an advocate in the proceeding on behalf of any party; or
- 376 (3) is related to a party of the proceeding, the Judge for the proceeding, or an
- 377 appointing Judge by blood, marriage, adoption or related by a social tie that could
- 378 be reasonably interpreted as a conflict of interest.
- 379 (c) A guardian ad litem may be recognized as certified by the Court if he or she:

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

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

383 708.8-3. *Responsibilities.* The guardian ad litem has none of the rights or duties of a general  
384 guardian. The guardian ad litem shall:

385 (a) investigate and review all relevant information, records and documents, as well as  
386 interview the child, parent(s), social workers, ~~teachers~~ and all other relevant persons to  
387 gather facts when appropriate;

388 (b) consider the importance of the child’s culture, heritage and traditions;

389 (c) consider, but shall not be bound by, the wishes of the child or the positions of others  
390 as to the best interests of the child;

391 (d) explain the role of the guardian ad litem and the court proceedings to the child in  
392 language and terms appropriate to the child’s age and maturity level;

393 (e) provide a written or oral report to the Court regarding the best interests of the child,  
394 including conclusions and recommendations and the facts upon which they are based;

395 (f) recommend evaluations, assessments, services and treatment of the child and the child’s  
396 family when appropriate;

397 (g) inform the court of any concerns or possible issues ~~regard~~regarding the child or the  
398 child’s family;

399 (h) represent the best interests of the child;

400 (i) perform other duties as directed by the Court; and

401 (j) comply with all laws, policies and rules of the Nation governing the conduct of a  
402 guardian ad litem.

403 708.8-4. *Compensation.* The guardian ad litem shall be compensated at a rate that the Court  
404 determines is reasonable. The Court shall compensate the guardian ad litem for his or her fees. The  
405 parties shall reimburse the Court for the guardian ad litem fees. The Court may apportion the  
406 amount of reimbursement each party shall pay based on the ability to pay or assess the cost equally  
407 between the parties. The Court may determine an appropriate time frame for the reimbursement to  
408 occur. The Court may waive the guardian ad litem expense if the cost of the guardian ad litem will  
409 impose an immediate and substantial hardship on the parties.

410

### 411 **708.9. Advocate**

412 708.9-1. The parent, guardian and legal custodian of a child has the right to obtain an advocate to  
413 represent and advise him or her throughout any proceeding under this law at his or her own  
414 expense.

415 708.9-2. *Qualifications.*

416 (a) An advocate shall be an adult who:

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

418 (2) is admitted to practice before the Oneida Judiciary;

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

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

422 708.9-3. An advocate shall comply with all laws, rules and policies of the Nation governing  
423 advocates.

424

### 425 **708.10 Cultural Wellness Facilitator and Healer**

426 708.10-1. The Department may utilize a Cultural Wellness Facilitator and Healer, or similar  
 427 position, throughout all child welfare proceedings.

428 708.10-2. The Cultural Wellness Facilitator and Healer may provide:

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

432

### 433 **708.11. Order of Placement Preferences**

434 708.11-1. The following order of placement preferences shall be followed when it is necessary to  
 435 place a child outside of the home under this law:

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

444 708.11-2. The order of placement preferences listed in section 708.11-1. are prioritized from the  
 445 most preference given to a child placed in a home in accordance with section 708.11-1(a) and the  
 446 least amount of preference given to a child placed in a home in accordance with section 708.11-  
 447 1(h).

448 708.11-3. In order to deviate from the placement preferences listed in section 708.11-1, the Court  
 449 shall consider the best interest of the child when determining whether there is good cause to go  
 450 outside the placement preference.

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

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

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

462

### 463 **708.12. ~~Notice of Petition; General Terms~~**

464 708.12-1. ~~Petitions alleging that a child is in need~~Service of ~~protection or services may be given~~  
 465 ~~to the parties directly by the Nation’s Child Welfare attorney or the Indian Child Welfare Worker~~  
 466 ~~or served on the parties pursuant to the Oneida Judiciary Rules of Civil Procedure.~~

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

471 ~~708.12-3. All parties shall be notified of all subsequent hearings under this law~~ by first-class mail  
472 to the recently verified last-known address of the party. If a party's whereabouts are unknown and  
473 cannot be found after diligent effort, service shall be by publication as described in the Oneida  
474 Judiciary Rules of Civil Procedure.

475 708.12-2. The Court shall provide the parties with notice of all hearings at least seven (7) days  
476 prior to the hearing, with the purpose of providing the parties an opportunity to be heard.

477 (a) Exception. In circumstances where a hearing is scheduled and it is not possible to  
478 provide notice at least seven (7) days prior to the hearing, the Court shall make an  
479 appropriate effort to notice all parties of the hearing.

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

484 708.12-4. In all proceedings under this law, the Department may withhold the placement  
485 provider's identifying information from the child's parent, guardian, or legal custodian if there are  
486 reasonable grounds to believe that disclosure would result in imminent danger to the child or  
487 anyone else. A parent, guardian, or legal custodian may request judicial review of the decision to  
488 withhold the identifying information.

### 489 **708.13. Hearings (General)**

491 708.13-1. If the Court finds that it is in the best interest of the child, the Court may exclude the  
492 child from participating in a hearing conducted in accordance with this law.

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

501 708.13-3. If an alleged father appears at a hearing under this law, the Court may order the  
502 Department to refer the matter to the Oneida Nation Child Support Agency to adjudicate paternity.  
503 If the Court enters such an order, then the Department may sign documents required by the Oneida  
504 Nation Child Support Agency on behalf of the family for the limited purpose of initiating a  
505 paternity action. While paternity is being established, the Court shall enter an order finding good  
506 cause to suspend the time limits established under this law.

507 708.13-4. At any time, the Court or the Department may refer the matter to the Nation's Child  
508 Support Agency.

### 509 **708.14. Discovery and Records**

511 708.14-1. Upon written request, the parties and their counsel shall have the right to inspect, copy  
512 or photograph social, psychiatric, psychological, medical, and school reports, and records  
513 concerning the child including reports of preliminary inquiries, predisposition studies and  
514 supervision records relating to the child which are in the possession of the Nation's Child Welfare  
515 attorney or the Department that pertain to any case under this law.

516 708.14-2. If a request for discovery is refused, the person may submit an application to the Court  
517 requesting an order granting discovery. Motions for discovery shall certify that a request for  
518 discovery has been made and refused.

519 708.14-3. If the discovery violates a privileged communication or a work product rule, the Court  
520 may deny, in whole or part, otherwise limit or set conditions on the discovery authorized.

521 708.14-4. The identity of the individual that initiated the investigation by contacting the  
522 Department, shall be redacted in all documents that are made available to the parties.

523 708.14-5. In addition to the discovery procedures permitted under this law, the discovery  
524 procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all  
525 proceedings under this law.

526 708.14-6. The Department may make an ex parte request to the Court to conduct an in camera  
527 review to determine what information should and should not be released to the parties and their  
528 counsel. In making that determination, the Court shall balance what is necessary to a fair  
529 determination of the child welfare legal matter, including access to records, against the interest in  
530 protecting the child from the risk of harm. After the Court conducts the in camera review, the  
531 decision regarding the release of records shall be provided to the parties in writing.  
532

### 533 **708.15. Taking a Child into Custody**

534 708.15-1. *Grounds for Taking a Child into Custody.* A child may be taken into custody without  
535 a Court order by an Indian Child Welfare Worker or law enforcement officer if there are reasonable  
536 grounds to believe:

537 (a) A warrant for the child's apprehension has been issued by the Court or another court of  
538 competent jurisdiction to take the child into custody;

539 (b) The child is suffering from illness or injury or is in immediate danger from his or her  
540 surroundings and removal from those surroundings is necessary; and/or

541 (c) The child has violated the conditions of an order issued pursuant to this law.

542 708.15-2. The Court may enter an order directing that a child be taken into custody upon a showing  
543 satisfactory to the judge that the welfare of the child demands that the child be immediately  
544 removed from his or her present custody.

545 708.15-3. A person taking the child into custody, under this section, shall immediately attempt to  
546 notify the parent(s), guardian(s), and legal custodian(s) of the child by the most practical means.  
547 Attempts to satisfy notification shall continue until either the parent(s), guardian(s), and legal  
548 custodian(s) of the child is notified, or the child is delivered to an Indian Child Welfare Worker,  
549 whichever occurs first. If the child is delivered to the Indian Child Welfare Worker before the  
550 parent(s), guardian(s), and legal custodian(s) is notified, the Indian Child Welfare Worker, or  
551 another person at his or her direction, shall continue the attempt to notify until the parent(s),  
552 guardian(s), and legal custodian(s) of the child is notified.

553 708.15-4. Once the child is taken into custody and turned over to the care of the Department, the  
554 Department shall make every effort to release the child immediately to the child's parent(s),  
555 guardian(s), and legal custodian(s), so long as it is in the child's best interest and the parent(s),  
556 guardian(s), and legal custodian(s) is willing to receive the child.

557 708.15-5. *Probable Cause for Taking a Child into Custody.* A child may be held in custody if the  
558 Indian Child Welfare Worker determines the child is within the jurisdiction of the Court and  
559 probable cause exists to believe any of the following if the child is not held in custody:

560 (a) The child will cause injury to himself or herself or be subject to injury by others;

561 (b) The child will be subject to injury by others, based on a determination that if another  
562 child in the home is not held that child will be subject to injury by others;

563 (c) The parent, guardian or legal custodian of the child or other responsible adult is  
564 neglecting, refusing, unable or unavailable to provide adequate supervision and care, and  
565 that services to ensure the child's safety and well-being are not available or would be  
566 inadequate;

567 (d) The child meets the criteria for probable cause for taking a child into custody specified  
568 in section 708.15-5(c), based on a determination that another child in the home meets any  
569 of the criteria; or

570 (e) The child will run away or be taken away so as to be unavailable for proceedings of the  
571 Court.

572 708.15-6. *Holding a Child in Custody.* A child held in custody may be held in any of the following  
573 places as long as the places are in the child's best interest and all people residing or regularly  
574 visiting the premises have cleared a background check:

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

582 (b) A licensed foster home;

583 (c) A licensed group home;

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

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

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

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

591 708.15-7. When holding a child in custody for emergency placement the use of the preferences  
592 for placement stated in section 708.~~10~~11-1 are preferred, but not mandatory. If the preferences for  
593 placement are not followed, the Department shall try to transition that child into a home that fits  
594 the order of preferences for placement as quickly as deemed appropriate by the Department.

595 708.15-8. If a child is held in custody, the Indian Child Welfare Worker shall notify the child's  
596 parent(s), guardian(s), and legal custodian(s) of the reasons for holding the child and of the child's  
597 whereabouts except when the Indian Child Welfare Worker believes that notice would present  
598 imminent danger to the child. If the parent, guardian, or legal custodian is not immediately  
599 available, the Indian Child Welfare Worker or another person designated by the worker shall  
600 provide notice as soon as possible.

601 708.15-9. The Indian Child Welfare Worker shall also notify the parent, guardian, and legal  
602 custodian of the following:

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

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

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

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

607 708.15-10. When the child is age twelve (12) or older, the Indian Child Welfare Worker shall  
 608 notify the child of the date, time, and place and the nature and possible outcomes of the emergency  
 609 custody hearing.

610

611 **708.16. Emergency Custody Hearing**

612 708.16-1. If a child who has been taken into custody under section 708.15-5 is not released, a  
 613 hearing to determine whether the child shall continue to be held in custody under the criteria of  
 614 probable cause for taking a child into custody under section 708.15-5(a)-(e) shall be conducted by  
 615 the Court as soon as possible but no later than seventy-two (72) hours ~~or~~after the time the decision  
 616 to hold the child was made, excluding Saturdays, Sundays, and holidays. By the time of the  
 617 hearing, a petition for a child in need of protection or services under section 708.17 shall be filed  
 618 unless the Department seeks and receives an extension pursuant to section 708.16-2. ~~The~~ child  
 619 shall be released from custody if a hearing is not held within the specified timelines.

620 708.16-2. If no petition has been filed by the time of the hearing, a child may be held in custody  
 621 with approval of the Court for an additional seventy-two (72) hours from the time of the hearing,  
 622 excluding Saturdays, Sundays, and holidays, only if, as a result of the facts brought forth at the  
 623 hearing, the Court determines that probable cause exists to believe any of the following:

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

629 708.16-3. The Court may grant a one-time extension under section 708.16-2 for a petition. In the  
 630 event a petition is not filed within the extension period, the Court shall order the child's immediate  
 631 release from custody. For any parties not present at the hearing, the Department shall serve the  
 632 petition on those parties by certified mail, return receipt requested.

633 ~~708.16-4. Prior to the start of the hearing, the Court shall provide a copy of the petition to the~~  
 634 ~~parent, guardian, and legal custodian if present, and to the child if he or she is twelve (12) years of~~  
 635 ~~age or older.~~

636 ~~708.16-5.~~708.16-4. Prior to the start of the hearing, the Court shall inform the parent, guardian, or  
 637 legal custodian of the following:

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

642 708.16-~~6~~5. If present at the hearing, the Court may permit the parent to provide the names and  
 643 other identifying information of three (3) relatives of the child or other individuals eighteen (18)  
 644 years of age or older whose homes the parent wishes the Court to consider as placements for the  
 645 child. If the parent does not provide this information at the hearing, the Department shall permit  
 646 the parent to provide the information at a later date.

647 708.16-~~7~~6. All orders to hold a child in custody shall be in writing ~~and shall include all of the~~  
 648 ~~following.~~

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

- 650 ~~(a)~~ (1) A finding that continued placement of the child in his or her home would  
 651 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 transfer of the legal custody of the child, including decisions about health care and education.

708.16-~~87~~. 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-~~98~~. 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

697 and the efforts that were made to prevent the removal of the child, while assuring that the  
698 child's health, welfare, and safety are the paramount concerns; and

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

700 708.17-3. The petition shall state if any of the facts required for a petition are not known or cannot  
701 be ascertained by the petitioner.

702 708.17-4. A petition may be amended at any time at the discretion of the Court. ~~An~~ Upon filing  
703 with the Court, the Department shall provide a copy of the amended petition ~~may be given~~ to the  
704 parties ~~directly by the Nation's Child Welfare attorney or the Indian Child Welfare Worker or served on~~  
705 ~~the parties pursuant to the Oneida Judiciary Rules of Civil Procedure~~ certified mail with return receipt  
706 requested.

707

### 708 708.18. Consent Decree

709 708.18-1. *Consent Decree.* At any time after the filing of a petition pursuant to section 708.17  
710 and before the entry of judgment, the Court may suspend the proceedings and place the child under  
711 supervision in the home or present placement of the child. The Court may establish terms and  
712 conditions applicable to the child and the child's parent, guardian or legal custodian. The order  
713 under this section shall be known as a consent decree and must be agreed to by the child who is  
714 twelve (12) years of age or older, the parent, guardian or legal custodian, and the person filing the  
715 petition. The consent decree shall be reduced to writing and given to the parties.

716 708.18-2. *Requirements of a Consent Decree.* If at the time the consent decree is entered into the  
717 child is placed outside the home and if the consent decree maintains the child in that placement,  
718 the consent decree shall include all of the following:

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

721 (b) A finding as to whether the Department has made reasonable efforts to prevent the  
722 removal of the child from the home, while assuring that the child's health and safety and  
723 best interests are the paramount concerns;

724 (c) If a permanency plan has previously been prepared for the child, a finding as to whether  
725 the Department has made reasonable efforts to achieve the permanency goal of the child's  
726 permanency plan; and

727 (d) If the child has one or more siblings who have also been removed from the home, the  
728 consent decree shall include a finding as to whether the Department has made reasonable  
729 efforts to place the child in a placement that enables the sibling group to remain together,  
730 unless the Court determines that the placement of the siblings together would be contrary  
731 to the safety, well-being and best interests of the child or any of those siblings, in which  
732 case the Court shall order the department to make reasonable efforts to provide for frequent  
733 visitation or other ongoing interaction between the child and the siblings, unless the Court  
734 determines that such visitation or interaction would be contrary to the safety, well-being or  
735 best interests of the child or any of those siblings.

736 708.18-3. *Time Limits of Consent Decree.* A consent decree shall remain in effect up to six (6)  
737 months unless the child, parent, guardian, or legal custodian is discharged sooner by the  
738 Court. The time limits under this law shall be tolled during the pendency of the consent decree.

739 708.18-4. *Extension of a Consent Decree.* Upon the motion of the Court or the request of the  
740 child, parent, guardian, legal custodian, child's guardian ad litem, or the Department, the Court  
741 may, after giving notice to the parties to the consent decree, extend the decree for up to an  
742 additional six (6) months in the absence of objection to the extension by the parties to the initial

743 consent decree. If the child, parent, guardian, legal custodian, or child's guardian ad litem objects  
744 to the extension, the Court shall schedule a hearing and make a determination on the issue of  
745 extension.

746 708.18-5. If, prior to discharge by the Court, or the expiration of the consent decree, the Court  
747 finds after conducting a hearing that the child, parent, guardian, or legal custodian has failed to  
748 fulfill the express terms and conditions of the consent decree, the hearing under which the child  
749 was placed on supervision may be continued to conclusion as if the consent decree had never been  
750 entered.

751

### 752 **708.19. Plea Hearing for a Child in Need of Protection or Services**

753 708.19-1. A plea hearing shall take place on a date which allows reasonable time for the parties to  
754 prepare but is within forty-five (45) days after the filing of a petition, unless the Court enters an  
755 order finding good cause to go outside of the time limits.

756 708.19-2. If a petition is not contested, the Court shall set a date for the dispositional hearing  
757 which allows reasonable time for the parties to prepare but is within forty-five (45) days after the  
758 plea hearing, unless the Court enters an order finding good cause to go outside the time limits. If  
759 all the parties agree and the Department has submitted a court report pursuant to section 708.21,  
760 the Court may proceed immediately with the dispositional hearing.

761 708.19-3. If the petition is contested, the Court shall set a date for the fact-finding hearing which  
762 allows reasonable time for the parties to prepare but is within sixty (60) days after the plea hearing,  
763 unless the Court enters an order finding good cause to go outside the time limits.

764 708.19-4. Before accepting an admission or plea of no contest of the alleged facts in a petition,  
765 the Court shall:

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

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

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

772 708.19-5. At the plea hearing the Department may request placement of the child outside of the  
773 child's home in accordance with the placement preferences in section 708.11-1, if notice of the  
774 Department's intent to seek out of home placement of the child was provided to the parties prior  
775 to the hearing in substantial compliance with section 708.15-9. In the request for placement of the  
776 child outside of the child's home the Department shall present as evidence specific information as  
777 outlined in 708.16-6(a)(1)-(5).

778 708.19-6. If the Court orders the out of home placement of the child, the order shall be in writing  
779 and shall contain the information required by section 708.16-6(a)(1)-(5).

780

### 781 **708.20. Fact finding Hearing for a Child in Need of Protection or Services**

782 708.20-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there  
783 is clear and convincing evidence to establish that the child is in need of protection or services.

784 708.20-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of  
785 Civil Procedure except that the Court may exclude the child from the hearing.

786 708.20-3. At the close of the fact-finding hearing, the Court shall set a date for the dispositional  
787 hearing which allows a reasonable time for the parties to prepare but is no more than forty-five  
788 (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go

789 outside the time limits. If all the parties agree and the Department has submitted court report  
790 pursuant to section 708.21, the Court may proceed immediately with the dispositional hearing.

791

792 **708.21. Department’s Disposition Report for a Child in Need of Protection or Services**

793 708.21-1. Before the dispositional hearing, the Department shall submit a written report to the  
794 Court, with a copy provided to the parties by first-class mail at least seven (7) days prior to the  
795 hearing, which shall contain all of the following:

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

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

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

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

803 708.21-2. If the Department is recommending out-of-home placement, the written report shall  
804 include all of the following:

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

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

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

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

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

825 ~~708.21-3. The Department may request the Court to withhold identifying information from the~~  
826 ~~child's parent, guardian or legal custodian if there are reasonable grounds to believe that disclosure~~  
827 ~~would result in imminent danger to the child or anyone else.~~

828

829 **708.22. Dispositional Hearing for a Child in Need of Protection or Services**

830 708.22-1. At a dispositional hearing, any party may present evidence relevant to the issue of  
831 disposition, including expert testimony, and may make alternative dispositional recommendations.

832 708.22-2. During a dispositional hearing, if the Department is recommending placement of the  
833 child outside of the child’s home in accordance with the placement preferences in section 708.11-  
834 1, the Department shall present as evidence specific information showing all of the following:

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

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

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

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

852 708.22-3. The Court's dispositional order shall employ those means necessary to maintain and  
853 protect the best interests of the child which are the least restrictive of the rights of the parent and  
854 child and which assure the care, treatment or rehabilitation of the child and the family consistent  
855 with the protection of the public. When appropriate, and, in cases of child abuse or neglect when  
856 it is consistent with the best interest of the child in terms of physical safety and physical health,  
857 the family unit shall be preserved and there shall be a policy of transferring custody of a child from  
858 the parent only when there is no less drastic alternative. If there is no less drastic alternative for a  
859 child than transferring custody from the parent, the Court shall consider transferring custody  
860 pursuant to the preferences for placement set forth in section 708.11-1.

861 708.22-4. *Dispositional Orders*. The Court's dispositional order shall be in writing and shall  
862 contain:

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

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

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

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

875 (2) A dispositional order made before the child reaches eighteen (18) years of age  
876 that places or continues the placement of the child outside of the home shall  
877 terminate on the latest of the following dates, unless the Court specifies a shorter  
878 period or the Court terminates the order sooner:

879 (A) The date on which the child attains eighteen (18) years of age;

880 (B) The date that is one (1) year after the date on which the order is granted;  
881 and

882 (C) The date on which the child is granted a high school or high school  
883 equivalency diploma or the date on which the child reaches nineteen (19)  
884 years of age, whichever occurs first, if the child is a full-time student at a  
885 secondary school or its vocational or technical equivalent and is reasonably  
886 expected to complete the program before reaching nineteen (19) years of  
887 age.

888 (d) If the child is placed outside the home, a finding that continued placement of the child  
889 in his or her home would be contrary to the welfare of the child and a finding as to whether  
890 the Department has made reasonable efforts to prevent the removal of the child from the  
891 home, while assuring that the child's best interests are the paramount concerns. The Court  
892 shall make the findings specified in this ~~subdivision~~subsection on a case-by-case basis  
893 based on circumstances specific to the child;

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

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

907 (g) A statement of the conditions with which the parties are required to comply; and

908 (h) If the Court finds that it would be in the best interest of the child, the Court may set  
909 reasonable rules of parental visitation.

910 (1) If the Court denies a parent visitation, the Court shall enter conditions that shall  
911 be met by the parent in order for the parent to be granted visitation.

912 708.22-5. ~~Treatment Plans~~Service plans and Conditions. In a proceeding in which a child has  
913 been found to be in need of protection or services, the Court may order the child's parent, guardian  
914 and legal custodian to comply with any conditions and/or ~~treatment~~service plan determined by the  
915 Court to be necessary for the child's welfare.

916 (a) The ~~treatment~~service plan or conditions ordered by the Court shall contain the  
917 following information:

918 (1) The identification of the problems or conditions that resulted in the abuse or  
919 neglect of a child;

920 (2) The treatment goals and objectives for each condition or requirement  
921 established in the plan. If the child has been removed from the home, the  
922 ~~treatment~~service plan must include, but is not limited to, the conditions or  
923 requirements that must be established for the safe return of the child to the family;

924 (3) The specific treatment objectives that clearly identify the separate roles and  
925 responsibilities of all parties addressed in the ~~treatment~~service plan, including the

926 Department's specific responsibilities to make reasonable efforts to assist the  
 927 parent, guardian or legal custodian in their efforts toward reunification with the  
 928 child; and

929 (4) A notice that completion of a ~~treatment~~service plan does not guarantee the  
 930 return of a child and that completion of a ~~treatment~~service plan without a change in  
 931 behavior that caused removal in the first instance may result in the child remaining  
 932 outside the home.

933 (b) A ~~treatment~~service plan may include recommendations and the dispositional order may  
 934 require the child's parent, guardian and legal custodian to participate in:

935 (1) Outpatient mental health treatment;

936 (2) Substance abuse treatment;

937 (3) Anger management;

938 (4) Individual or family counseling;

939 (5) Parent training and education;

940 (6) Cultural wellness treatment and training; and/or

941 (7) Any other treatment as deemed appropriate by the Court.

942 708.22-6. If the Court finds that the parent was convicted of committing a crime against the life  
 943 and bodily security of a child or a crime against a child, contained within Chapters 940 and 948 of  
 944 the Wisconsin Statutes or another similar law in another jurisdiction, the Court may find that the  
 945 Department is not required to make reasonable efforts with respect to the parent to make it possible  
 946 for the child to return safely to his or her home.

947 708.22-7. The Court shall provide a copy of the dispositional order to the child's parent, guardian,  
 948 and legal custodian, and other parties to the action, ~~and the child if the child is age twelve (12) or~~  
 949 ~~older.~~

950 708.22-8. Whenever the Court orders a child to be placed outside his or her home or denies a  
 951 parent visitation because the child is in need of protection or services, the Court shall orally inform  
 952 the parent who appears in Court of any grounds for suspension or termination of parental rights  
 953 which may be applicable and of the conditions necessary for the child to be returned to the home  
 954 or for the parent to be granted visitation. The Court shall also include this information in the written  
 955 dispositional order provided to the parent.

956

### 957 **708.23. Permanency Plans**

958 708.23-1. The Department shall prepare a written permanency plan anytime a child is placed  
 959 outside the home pursuant to dispositional order that finds the child is in need of protection or  
 960 services. ~~The permanency plan shall include all of the following:~~

961 (a) The permanency plan shall include all of the following:

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

963 (2) The names, birth dates, addresses, and tribal affiliation of the child's parent(s),  
 964 guardian(s), and legal custodian(s);

965 (3) The date on which the child was removed from the home;

966 (4) A statement as to the availability of a safe and appropriate placement with an  
 967 extended family member;

968 (5) The goal(s) of the permanency plan which may include one or more of the  
 969 following: reunification, adoption, guardianship, placement with a fit and willing  
 970 relative, or long-term foster care;

971 (6) Date by which it is likely the goal(s) of the permanency plan will likely be  
 972 achieved;

- 973 (~~g~~7) A description of the services offered and any services provided in an effort to  
 974 prevent removal of the child from the home or to return the child to the home, while  
 975 assuring that the best interests of the child are the paramount concerns;  
 976 (~~h~~8) If the child has one (1) or more siblings who have been removed from the  
 977 home, a description of the efforts made to place the child in a placement that enables  
 978 the sibling group to remain together. If a decision is made to not place the siblings  
 979 together, a description of the efforts made to provide for frequent and ongoing  
 980 visitation or other ongoing interaction between the child and siblings;  
 981 (~~i~~9) Information about the child’s education; and  
 982 (~~j~~10) Any other appropriate information as deemed necessary by the Court or the  
 983 Department.

984 708.23-2. The Department shall file the initial permanency plan with the Court within sixty (60)  
 985 days after the date the child was first removed from the home unless the child is returned to the  
 986 home within that time period.

987 708.23-3. The Court shall hold a hearing to review the permanency plan no later than six (6)  
 988 months after the date on which the child was first removed from the home and every six months  
 989 thereafter for as long as the child is placed outside the home and is found to be in need of protection  
 990 or services.

991 (a) At least ~~five (5) business~~~~seven (7)~~ days before the date of the hearing, the Department  
 992 shall ~~provide a copy of~~~~file~~ the updated permanency plan ~~to~~~~with~~ the Court and provide a  
 993 copy to the parties by first-class mail.

994 (b) All parties, including foster parent(s) shall have a right to be heard at the permanency  
 995 plan hearing. Any party may submit written comments to the Court no less than three (3)  
 996 business days prior to the hearing date.

997 708.23-4. After the hearing, the Court shall enter a written order addressing the following:

- 998 (a) The continuing necessity for and the safety and appropriateness of the placement;  
 999 (b) The compliance with the permanency plan by the Department and any other service  
 1000 providers, the child’s parent(s), and the child;  
 1001 (c) Efforts taken to involve appropriate service providers and Department staff in meeting  
 1002 the special needs of the child and the child’s parent(s);  
 1003 (d) The progress toward eliminating the causes for the child’s placement outside the home  
 1004 and returning the child safely to the home or obtaining a permanent placement for the child;  
 1005 (e) The date by which it is likely that the child will be returned to the home or placed for  
 1006 adoption, with a guardian, with a fit and willing relative, or in some other permanent living  
 1007 arrangement;  
 1008 (f) Whether reasonable efforts were made by the Department to achieve the permanency  
 1009 plan goal(s);  
 1010 (g) Whether reasonable efforts were made by the Department to place the child in a  
 1011 placement that enables the sibling group to remain together or have frequent visitation or  
 1012 other ongoing interaction; and  
 1013 (h) The date of the next review hearing, if appropriate.

#### 1014 **708.24. Change in Placement**

1015 708.24-1. The Department, the Nation’s Child Welfare attorney, or a party to the dispositional  
 1016 order may request a change in the placement of the child who is the subject of the dispositional  
 1017



1018 order by filing a motion with the Court. The Court may also propose a change in placement on its  
1019 own motion.

1020 708.24-2. The request for a change in placement shall contain the name and address of the new  
1021 placement requested and shall state what new information is available that affects the advisability  
1022 of the current placement.

1023 708.24-3. If the proposed change in placement moves the child outside of his or her home, the  
1024 request shall contain specific information showing that continued placement of the child in the  
1025 home would be contrary to the best interests of the child and if the Department is making the  
1026 request, specific information showing that the Department has made reasonable efforts to prevent  
1027 the removal of the child from the home, while assuring that the child's best interests are the  
1028 paramount concerns.

1029 708.24-4. ~~Written notice~~Upon filing with the Court, the Department shall provide a copy of the  
1030 ~~proposed request for a~~ change in placement ~~shall be sent to all of the parties pursuant to the Oneida~~  
1031 ~~Judiciary Rules of Civil Procedure~~by first-class mail.

1032 (a) The Department shall schedule a hearing prior to placing the child outside of the home,  
1033 unless emergency conditions that necessitate an immediate change in the placement of a  
1034 child apply.

1035 (b) A hearing is not required when the child currently placed outside the home transfers to  
1036 another out-of-home placement.

1037 (1) A party may request a hearing when the child is transferred to a different out-  
1038 of-home placement by submitting a written request to the Court within ten (10)  
1039 days of being served with the notice of the proposed change.

1040 708.24-5. If a hearing is held, any party may present evidence relevant to the issue of the change  
1041 in placement. In addition, the Court shall give a foster parent or other legal custodian a right to be  
1042 heard at the hearing by permitting the foster parent or other legal custodian to make a written or  
1043 oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to  
1044 the issue of change in placement.

1045 708.24-6. *Emergency Change in Placement.* If emergency conditions necessitate an immediate  
1046 change in the placement of a child, the Department may remove the child to a new placement,  
1047 whether or not authorized by the existing dispositional order. ~~Notice~~The Department shall notify  
1048 the parties of the emergency change in placement ~~shall be sent to the parties~~by personal service as  
1049 soon as possible but no later than seventy-two (72) hours after the emergency change in placement  
1050 excluding Saturdays, Sundays, and holidays. If the emergency conditions necessitate an  
1051 immediate change in placement of a child placed in the home to a placement outside the home, the  
1052 Department shall schedule the matter for a hearing as soon as possible but no later than seventy-  
1053 two (72) hours after the emergency change in placement is made, excluding Saturdays, Sundays,  
1054 and holidays.

1055 708.24-7. The parties may agree to a change in placement by signing a stipulation and filing it  
1056 with the Court for approval.

1057 708.24-8. No change in placement may extend the expiration date of the original dispositional  
1058 order, except that if the change in placement is from a placement in the child's home to a placement  
1059 outside the home the Court may extend the expiration date of the original dispositional order to  
1060 the latest of the following dates, unless the Court specifies a shorter period:

1061 (a) The date on which the child reaches eighteen (18) years of age;

1062 (b) The date that is one (1) year after the date on which the change-in-placement order is  
1063 granted; or

1064 (c) The date on which the child is granted a high school or high school equivalency  
 1065 diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs  
 1066 first, if the child is a full-time student at a secondary school or its vocational or technical  
 1067 equivalent and is reasonably expected to complete the program before reaching nineteen  
 1068 (19) years of age.

1069 708.24-9. If the change in placement is from a placement outside the home to a placement in the  
 1070 child's home and if the expiration date of the original dispositional order is more than one (1) year  
 1071 after the date on which the change-in-placement order is granted, the Court shall shorten the  
 1072 expiration date of the original dispositional order to the date that is one (1) year after the date on  
 1073 which the change-in-placement order is granted or to an earlier date as specified by the Court.  
 1074

### 1075 **708.25. Trial Reunification**

1076 708.25-1. The Department or the Nation's Child Welfare attorney may request the Court to order  
 1077 a trial reunification. A trial reunification occurs when a child placed in an out-of-home placement  
 1078 resides in the home of a parent, guardian, or legal custodian from which the child was removed for  
 1079 a period of seven (7) consecutive days or longer, but not exceeding one hundred fifty (150) days,  
 1080 for the purpose of determining the appropriateness of changing the placement of the child to that  
 1081 home. A trial reunification is not a change in placement under section 708.24.

1082 708.25-2. *Request for Trial Reunification.* The Department or the Nation's Child Welfare attorney  
 1083 shall include the following in the request for a trial reunification:

- 1084 (a) The name and address of the requested trial reunification home;
- 1085 (b) A statement describing why the trial reunification is in the best interests of the child;  
 1086 and
- 1087 (c) A statement describing how the trial reunification satisfies the objective of the child's  
 1088 permanency plan.

1089 708.25-3. *Emergency Removal of a Child.* A request for a trial reunification may not be made on  
 1090 the sole grounds that an emergency condition necessitates an immediate removal of the child from  
 1091 the child's out-of-home placement. If an emergency condition necessitates such an immediate  
 1092 removal, the Department shall proceed with an emergency change in placement as described in  
 1093 section 708.24-6.

1094 708.25-4. *Notice.* The Department or Nation's Child Welfare attorney shall submit the request to  
 1095 the Court ~~and. Upon filing with the Court and at least seven (7) days before the date of~~  
 1096 ~~reunification, the Department~~ shall provide the parent, guardian, legal custodian, and any other  
 1097 party written notice ~~pursuant to the Oneida Judiciary Rules of Civil Procedure of the proposed~~  
 1098 ~~reunification by first-class mail.~~ The notice shall contain the information that is required to be  
 1099 included in the request under section 708.25-2.

1100 708.25-5. *Trial Reunification Hearing.* Any party who is entitled to receive notice of a requested  
 1101 trial reunification may obtain a hearing on the matter by filing an objection with the Court within  
 1102 ten (10) days after the trial reunification request was filed with the Court.

1103 (a) If no objection against the trial reunification is filed, the Court may issue an order for  
 1104 the trial reunification.

1105 (b) If an objection is filed, a hearing shall be held within forty five (45) days after the  
 1106 request was filed with the Court. A trial reunification shall not occur until after the hearing.  
 1107 Not less than three (3) business days before the hearing the ~~Department or the~~ Court shall  
 1108 provide notice of the hearing to all parties ~~with a request for the trial reunification attached~~  
 1109 ~~to the notice.~~

1110 (1) If a hearing is held and the trial reunification would remove a child from a foster  
 1111 home or other placement with a legal custodian, the Court shall give the foster  
 1112 parent or other legal custodian a right to be heard at the hearing by permitting the  
 1113 foster parent or legal custodian to make a written or oral statement relating to the  
 1114 child and the requested trial reunification.

1115 (2) The Court may appoint a guardian ad litem for the child during the trial  
 1116 reunification hearing.

1117 708.25-6. *Order.* If the Court finds that the trial reunification is in the best interest of the child  
 1118 and that the trial reunification satisfies the objectives of the child’s permanency plan, the Court  
 1119 shall order the trial reunification. The trial reunification shall terminate ninety (90) days after the  
 1120 date of the order, unless the Court specifies a shorter period in the order, or extends or revokes the  
 1121 trial reunification. No trial reunification order may extend the expiration date of the original  
 1122 dispositional order or any extension of the dispositional order.

1123 708.25-7. *Extension of Trial Reunification.* The Department may request an extension of a trial  
 1124 reunification.

1125 (a) *Extension Request.* The request shall contain a statement describing how the trial  
 1126 reunification continues to be in the best interests of the child. No later than ~~ten (10)~~seven  
 1127 (7) days prior to the expiration of the trial reunification, the Department shall submit the  
 1128 request to the Court and shall cause notice of the request to be provided to all parties by  
 1129 first-class mail.

1130 (b) *Extension Hearing.* Any party may obtain a hearing on the requested extension by  
 1131 filing an objection with the Court within ten (10) days after the extension request was filed  
 1132 with the Court.

1133 (1) If no objection is filed, the Court may order an extension of the trial  
 1134 reunification.

1135 (2) If an objection is filed, the Court shall schedule a hearing on the matter. If the  
 1136 Court is unable to conduct a hearing on the matter before the trial reunification  
 1137 expires, the trial reunification shall remain in effect until the Court is able hold the  
 1138 hearing. Not less than three (3) business days before the hearing the ~~Department or~~  
 1139 ~~the~~ Court shall provide notice of the hearing to all parties ~~with a copy of the~~  
 1140 ~~extension request attached~~.

1141 (c) *Extension Order.* If the Court finds that the trial reunification continues to be in the  
 1142 best interests of the child, the Court shall grant an order extending the trial reunification  
 1143 for a period specified by the Court. Any number of extensions may be granted, but the total  
 1144 period for a trial reunification may not exceed one hundred and fifty (150) days.

1145 708.25-8. *End of Trial Reunification Period.* When a trial reunification period ends, the  
 1146 Department shall do one (1) of the following:

1147 (a) Return the child to his or her out-of-home placement. The Department may do so  
 1148 without further order of the Court, but within five (5) days after the return of the child to  
 1149 his or her out-of-home placement the Department shall provide the parties with written  
 1150 notice of the following by first-class mail:

1151 (1) the date of the return of the child to the out-of-home placement; and

1152 (2) the address of that placement to all parties, unless providing the address would  
 1153 present imminent danger to the child;

1154 (b) Request a change in placement under section 708.24 to place the child in a new out-of-  
 1155 home placement; or

1156 (c) Request a change in placement under section 708.24 to place the child in the trial  
1157 reunification home.

1158 708.25-9. *Revocation of Trial Reunification.* The Department may determine that a trial  
1159 reunification is no longer in the best interests of the child and revoke the trial reunification before  
1160 the specified trial reunification period ends.

1161 (a) *Revocation Request.* If the Department determines that the trial reunification is no  
1162 longer in the best interests of the child, the Department, without prior order by the Court,  
1163 may remove the child from the trial reunification home and place the child in the child’s  
1164 previous out-of-home placement or place the child in a new out-of-home placement.

1165 (1) If the Department places the child in the child’s previous out-of-home  
1166 placement, within three (3) business days of removing the child from the trial  
1167 reunification home, the Department shall submit a request for revocation of the trial  
1168 reunification to the Court and shall provide notice of the request to all parties: by  
1169 first-class mail. The request shall contain the following information:

1170 (A) the date on which the child was removed from the trial reunification  
1171 home;

1172 (B) the address of the child’s current placement, unless providing the  
1173 address would present imminent danger to the child; and

1174 (C) the reasons for the proposed revocation.

1175 (2) If the Department places the child in a new out-of-home placement, within  
1176 three (3) business days of removing the child from the trial reunification home, the  
1177 Department shall request a change in placement under section 708.22. The  
1178 procedures specified in section 708.24, including all notice procedures, apply to a  
1179 change in placement requested under this subdivision subsection, except that the  
1180 request shall include the date on which the child was removed from the trial  
1181 reunification home in addition to the information required in 708.24-2. The trial  
1182 reunification is revoked when the change in placement order is granted.

1183 (b) *Revocation Hearing.* Any party may obtain a hearing on the matter by filing an  
1184 objection with the Court within ten (10) days after the request was filed with the Court.

1185 (1) If no objection is filed, the Court may issue a revocation order.

1186 (2) If an objection is filed, the Court shall schedule a hearing on the matter. Not  
1187 less than three (3) business days before the hearing the Court shall provide notice  
1188 of the hearing together with a copy of the request for the revocation, to all parties.

1189 (c) *Revocation Order.* If the Court finds that the trial reunification is no longer in the best  
1190 interests of the child who has been placed in his or her previous out-of-home placement,  
1191 the Court shall grant an order revoking the trial reunification.

1192 708.25-10. *Prohibited Trial Reunifications.* The Court may not order a trial reunification in the  
1193 home of an adult who has been convicted of the first-degree intentional homicide or the second-  
1194 degree intentional homicide of a parent of the child or any crime against a child, if the conviction  
1195 has not been reversed, set aside, vacated or pardoned. If a parent in whose home a child is placed  
1196 for a trial reunification is convicted of homicide or a crime against a child, and the conviction has  
1197 not been reversed, set aside, vacated or pardoned, the Court shall revoke the trial reunification and  
1198 the child shall be returned to his or her previous out-of-home placement, or placed in a new out-  
1199 of-home placement.

1200 (a) *Exception.* A prohibition against trial reunifications based on homicide of a parent or  
1201 a crime against a child does not apply if the Court determines by clear and convincing  
1202 evidence that the placement would be in the best interests of the child.  
1203

#### 1204 **708.26. Revision of Dispositional Orders**

1205 708.26-1. A party, or the Court on its own motion, may request a revision in the dispositional  
1206 order that does not involve a change in placement.

1207 708.26-2. The request or Court proposal shall set forth in detail the nature of the proposed revision  
1208 and what new information is available that affects the advisability of the Court's disposition. The  
1209 request for revision shall be filed with the Court with notice provided ~~by the parties pursuant to~~  
1210 ~~the Oneida Judiciary Rules of Civil Procedure~~ to the parties by first-class mail.

1211 708.26-3. The Court shall hold a hearing on the matter prior to any revision of the dispositional  
1212 order if the request or Court proposal indicates that new information is available that affects the  
1213 advisability of the Court's dispositional order, unless the parties file a signed stipulation and the  
1214 Court approves.

1215 708.26-4. If a hearing is held, any party may present evidence relevant to the issue of revision of  
1216 the dispositional order. In addition, the Court shall give a foster parent or other legal custodian a  
1217 right to be heard at the hearing by permitting the foster parent or other legal custodian to make a  
1218 written or oral statement during the hearing, or to submit a written statement prior to the hearing,  
1219 relevant to the issue of revision.  
1220

#### 1221 **708.27. Extension of Dispositional Orders**

1222 708.27-1. A party, or the Court on its own motion, may request an extension of a dispositional  
1223 order. The request shall be filed with the Court with notice to the parties ~~pursuant to the Oneida~~  
1224 ~~Judiciary Rules of Civil Procedure~~ by first-class mail.

1225 708.27-2. No order may be extended without a hearing, unless the parties file a signed stipulation  
1226 and the Court approves.

1227 708.27-3. Any party may present evidence relevant to the issue of extension. If the child is placed  
1228 outside of his or her home, the Department shall present as evidence specific information showing  
1229 that the Department has made reasonable efforts to achieve the permanency goal of the child's  
1230 permanency plan. In addition, the Court shall give a foster parent or other legal custodian a right  
1231 to be heard at the hearing by permitting the foster parent or other legal custodian to make a written  
1232 or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant  
1233 to the issue of extension.

1234 708.27-4. The Court shall make findings of fact and conclusions of law based on the evidence.  
1235 The findings of fact shall include a finding as to whether reasonable efforts were made by the  
1236 Department to achieve the permanency goal of the child's permanency plan ~~- if applicable.~~

1237 708.27-5. If a request to extend a dispositional order is made prior to the termination of the order,  
1238 but the Court is unable to conduct a hearing on the request prior to the termination date, the order  
1239 shall remain in effect until such time as an extension hearing is conducted.  
1240

#### 1241 **708.28. Continuation of Dispositional Orders**

1242 708.28-1. If a petition for suspension or termination of parental rights or guardianship is filed or  
1243 an appeal from a suspension or termination of parental rights or guardianship judgment is filed  
1244 during the year in which a child in need of protection or services dispositional order is in effect,

1245 the dispositional order shall remain in effect until all proceedings related to the petition or appeal  
1246 are concluded.

1247

1248 **708.29. Guardianship for Certain Children in Need of Protection or Services**

1249 708.29-1. *Conditions for Guardianship.* The Court may appoint a guardian for a child if the Court  
1250 finds all of the following:

1251 (a) That the child has been found to be in need of protection or services under this law and  
1252 has been placed outside of his or her home pursuant to one (1) or more Court orders, or  
1253 that the child has been found to be in need of protection or services and placement of the  
1254 child in the home of a guardian under this section has been recommended by the  
1255 Department at the dispositional hearing;

1256 (b) That the person nominated as the guardian of the child is a person with whom the child  
1257 has been placed or in whose home placement of the child is recommended by the  
1258 Department and that it is likely that the child will continue to be placed with that person  
1259 for an extended period of time or until the child attains the age of eighteen (18) years;

1260 (c) That, if appointed, it is likely that the person would be willing and able to serve as the  
1261 child's guardian for an extended period of time or until the child attains the age of eighteen  
1262 (18) years;

1263 (d) That it is not in the best interests of the child that a petition to suspend or terminate  
1264 parental rights be filed with respect to the child;

1265 (e) That the child's parents are neglecting, refusing or unable to carry out the duties of a  
1266 guardian; and

1267 (f) That the Department has made reasonable efforts to make it possible for the child to  
1268 return to his or her home, while assuring that the child's best interests are the paramount  
1269 concerns, but that reunification of the child with the child's parent(s) is unlikely or contrary  
1270 to the best interests of the child and that further reunification efforts are unlikely to be made  
1271 or are contrary to the best interests of the child or that the Department has made reasonable  
1272 efforts to prevent the removal of the child from his or her home, while assuring the child's  
1273 best interests, but that continued placement of the child in the home would be contrary to  
1274 the best interests of the child.

1275 708.29-2. *Who May File a Petition for Guardianship.* Any of the following persons may file a  
1276 petition for the appointment of a guardian for a child under this section:

1277 (a) The child;

1278 (b) The child's guardian ad litem;

1279 (c) The child's parent;

1280 (d) The person with whom the child is placed or in whose home placement of the child is  
1281 recommended by the Department;

1282 (e) The Department; or

1283 (f) The Nation's Child Welfare attorney.

1284 708.29-3. *Petition for Guardianship.* A proceeding for the appointment of a guardian for a child  
1285 shall be initiated by a petition which shall include the following:

1286 (a) The name, birth date, address, and tribal affiliation of the child;

1287 (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;

1288 (c) A copy of the order adjudicating the child to be in need of protection or services and  
1289 the order placing the child outside of the parental home; and

1290 (d) A statement of the facts and circumstances which the petitioner alleges establish that  
 1291 the conditions for guardianship specified in section 708.2729-1(a)-(f) are met.

1292 ~~708.29-4~~708.29-4. *Notice of Petition for Guardianship.* Upon filing with the Court and at least  
 1293 seven (7) days prior to the plea hearing, the party that filed the guardianship petition shall provide  
 1294 a copy of the petition to the other parties by personal service or, if personal service is not possible,  
 1295 by certified mail with return receipt requested.

1296 ~~708.29-5~~708.29-5. *Presence of the Proposed Guardian.* The proposed guardian shall be present at all  
 1297 guardianship hearings. The Court may waive the appearance requirement for the proposed  
 1298 guardian if the Court determines there is good cause.

1299 ~~708.29-56~~708.29-56. *Plea Hearing for Guardianship.* A plea hearing to determine whether any party wishes  
 1300 to contest a petition for guardianship shall take place no sooner than ten (10) days after the filing  
 1301 of the petition. At the hearing, the non-petitioning parties shall state whether they wish to contest  
 1302 the petition. Before accepting an admission or a plea of no contest to the allegations in the petition,  
 1303 the Court shall do all of the following:

1304 (a) Address the parties present and determine that the admission or plea of no contest is  
 1305 made voluntarily and with understanding of the nature of the facts alleged in the petition,  
 1306 the nature of the potential outcomes and possible dispositions by the Court and the nature  
 1307 of the legal consequences of that disposition;

1308 (b) Establish whether any promises or threats were made to elicit the admission or plea of  
 1309 no contest; and

1310 (c) Make inquiries to establish to the satisfaction of the Court that there is a factual basis  
 1311 for the admission or plea of no contest.

1312 ~~708.29-67~~708.29-67. If the petition is not contested and if the Court accepts the admission or plea of no  
 1313 contest, the Court may immediately proceed to a dispositional hearing unless an adjournment is  
 1314 requested.

1315 ~~708.29-78~~708.29-78. If the petition is contested or if the Court does not accept the admission or plea of no  
 1316 contest, the Court shall set a date for a fact-finding hearing which allows reasonable time for the  
 1317 parties to prepare but is not more than sixty (60) days after the plea hearing, unless the Court enters  
 1318 an order finding good cause to go outside the time limits.

1319 (a) If the petition is contested, the Court shall order the Department to file with the Court  
 1320 a report containing as much information relating to the appointment of a guardian as is  
 1321 reasonably ascertainable, including an assessment of the conditions for guardianship  
 1322 specified in section 708.29-1(a)-(f). ~~The~~ Upon filing with the Court and at least seven (7)  
 1323 days prior to the hearing, the Department shall ~~file its report with the Court prior to the~~  
 1324 ~~fact-finding hearing and shall~~ provide the parent, guardian, legal custodian, proposed  
 1325 guardian, and any other parties with a written copy of the report ~~at least three (3) business~~  
 1326 ~~days prior to the hearing~~ by first-class mail.

1327 ~~708.29-89~~708.29-89. *Fact Finding Hearing for Guardianship.* The Court shall hold a fact-finding hearing  
 1328 on the petition at which any party may present evidence relevant to the issue of whether the  
 1329 conditions for guardianship have been met. If the Court, at the conclusion of the fact-finding  
 1330 hearing, finds by clear and convincing evidence that the conditions for guardianship specified in  
 1331 section 708.29-1(a)-(f) have been met, the Court shall immediately proceed to a dispositional  
 1332 hearing unless an adjournment is requested.

1333 ~~708.29-910~~708.29-910. *Dispositional Hearing for Guardianship.* The Court shall hold a dispositional  
 1334 hearing at which any party may present evidence, including expert testimony, relevant to the  
 1335 disposition. In determining the appropriate disposition for guardianship, the Court shall use the

1336 best interests of the child as the prevailing factor to be considered by the Court. In making a  
 1337 decision about the appropriate disposition, the Court shall consider any report submitted by the  
 1338 Department and shall consider, but not be limited to, all of the following:

- 1339 (a) Whether the person would be a suitable guardian of the child;
- 1340 (b) The willingness and ability of the person to serve as the child's guardian for an extended  
 1341 period of time or until the child reaches the age of eighteen (18) years; and
- 1342 (c) The wishes of the child, if the child has the capacity to express their wishes.

1343 ~~708.29-10. Disposition~~ 11. Dispositional Order for Guardianship. After receiving any evidence  
 1344 relating to the disposition, the Court shall enter one of the following dispositions and issue a written  
 1345 decision consistent with the Oneida Judiciary Rules of Civil Procedure:

- 1346 (a) A disposition dismissing the petition if the Court determines that appointment of the  
 1347 person as the child's guardian is not in the best interests of the child; or
- 1348 (b) A disposition ordering that the proposed guardian be appointed as the child's guardian  
 1349 if the Court determines that such an appointment is in the best interests of the child.

1350 ~~708.29-11~~ 12. If the Court appoints a guardian for the child, the Court may dismiss the  
 1351 dispositional order finding that the child is in need of protection or services.

### 1352 **708.30. Revisions of Guardianship Order**

1353 708.30-1. Any person authorized to file a guardianship petition or the Court, on its own motion  
 1354 may request a revision in a guardianship order.

1355 708.30-2. The motion or Court proposal shall set forth in detail the nature of the proposed revision,  
 1356 shall allege facts sufficient to show that there has been a substantial change in circumstances since  
 1357 the last order affecting the guardianship was entered and that the proposed revision would be in  
 1358 the best interests of the child and shall allege any other information that affects the advisability of  
 1359 the Court's disposition. The motion for the revision shall be filed with the Court with notice and,  
 1360 upon filing, a written copy shall be provided by the to all parties pursuant to the Oneida Judiciary  
 1361 Rules of Civil Procedure. by first-class mail.

- 1362 ~~(a)~~ (a) The Court may order the Department to file with the Court a report containing  
 1363 as much information relating to the revision of the guardianship as is reasonably  
 1364 ascertainable. ~~The~~ Upon filing with the Court and at least seven (7) days prior to the  
 1365 revision hearing, the Department shall file its report with the Court prior to the hearing on  
 1366 the revision of guardianship and shall provide the parties with a written copy of the report  
 1367 at least three (3) business days prior to the hearing by first-class mail.

1368 708.30-3. The Court shall hold a hearing on the matter prior to any revision of the guardianship  
 1369 order if the motion or Court proposal indicates that new information is available which affects the  
 1370 advisability of the Court's guardianship order, unless the parties file a signed stipulation and the  
 1371 Court approves.

### 1372 **708.31. Termination of Guardianship**

1373 708.31-1. A guardianship under this law shall continue until any of the following are met,  
 1374 whichever occurs earlier:

- 1375 (a) The date on which the child attains eighteen (18) years of age;
- 1376 (b) The date on which the child is granted a high school or high school equivalency  
 1377 diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs  
 1378 first, if the child is a full-time student at a secondary school or its vocational or technical  
 1379



1381 equivalent and is reasonably expected to complete the program before reaching nineteen  
1382 (19) years of age; or

1383 (c) The date on which the Court terminates the guardianship order.

1384 708.31-2. A parent of the child may request that a guardianship order be terminated. The request  
1385 shall allege facts sufficient to show that there has been a substantial change in circumstances since  
1386 the last order affecting the guardianship was entered, that the parent is willing and able to carry  
1387 out the duties of a guardian and that the proposed termination of guardianship would be in the best  
1388 interests of the child. The Court shall hold a hearing on the matter unless the parties file a signed  
1389 stipulation and the Court approves.

1390 (a) The Court may order the Department to file with the Court a report containing as much  
1391 information relating to the termination of the guardianship as is reasonably ascertainable,  
1392 including a re-assessment of the conditions for guardianship specified in section 708.29-  
1393 1(a)-(f). ~~The~~ Upon filing with the Court and at least seven (7) days prior to the termination  
1394 hearing, the Department shall ~~file its report with the Court prior to the hearing on the~~  
1395 ~~termination of guardianship and shall~~ provide the parties with a written copy of the report  
1396 at least three (3) business days prior to the hearing by first-class mail.

1397 708.31-3. Any person authorized to file a petition ~~under~~ for guardianship may request that ~~an~~  
1398 appointed guardian be removed for cause or the Court may, on its own motion, propose such a  
1399 removal. The request or Court proposal shall allege facts sufficient to show that the guardian is or  
1400 has been neglecting, is or has been refusing, or is or has been unable to discharge the guardian's  
1401 trust and may allege facts relating to any other information that affects the advisability of the  
1402 Court's disposition. The Court shall hold a hearing on the matter.

1403 708.31-4. A guardian appointed under this law may resign at any time if the resignation is accepted  
1404 by the Court.

1405

1406 **708.32. Suspension or Termination of Parental Rights**

1407 ~~708.32-1.~~ 708.32-1. It is the philosophy of the Nation that children deserve a sense of permanency  
1408 and belonging throughout their lives and at the same time they deserve to have knowledge about  
1409 their unique cultural heritage including their tribal customs, history, language, religion and values.

1410 708.32-2. It is the philosophy of the Nation that a united and complete family unit is of the utmost  
1411 value to the community and the individual family members, and that the parent-child relationship  
1412 is of such vital importance that it should be suspended or terminated only as a last resort when all  
1413 efforts have failed to avoid suspension or termination and it is in the best interests of the child  
1414 concerned to proceed with the suspension or termination of parental rights.

1415 ~~708.32-3.~~ 708.32-2. *Suspension of Parental Rights.* The suspension of parental rights is the  
1416 permanent suspension of the rights of biological parents to provide for the care, custody, and  
1417 control of their child.

1418 708.32-4. *Termination of Parental Rights.* The termination of parental rights means that all rights,  
1419 powers, privileges, immunities, duties and obligations existing between biological parent and child  
1420 are permanently severed.

1421 708.32-5. The Court may suspend or terminate a parent's rights on a voluntary or involuntary  
1422 basis.

1423 ~~708.32-6.~~ ~~708.32-3.~~ An order suspending or terminating parental rights permanently severs all  
1424 legal rights and duties between the parent whose parental rights are suspended or terminated and  
1425 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.~~

708.32-47. 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.

1472 (b) After receiving a petition for action regarding a post-voluntary suspension or  
 1473 termination contact agreement the Court shall set a date and time for a hearing on the  
 1474 petition and shall provide notice of the hearing to all parties to the agreement and may  
 1475 reappoint a guardian ad litem for the child.

1476 (c) If the Court finds, after hearing, that any person bound by the agreement is not in  
 1477 compliance with the agreement and that the petitioner, before filing the petition,  
 1478 attempted in good faith to resolve the dispute giving rise to the filing of the petition,  
 1479 the Court shall issue an order requiring the person to comply with the agreement and  
 1480 may find a party in contempt.

1481 (d) The Court may not revoke a suspension or termination of parental rights order or  
 1482 an order of adoption because an adoptive parent or other custodian of the child or a  
 1483 birth parent, birth sibling, or other birth relative of the child fails to comply with a post-  
 1484 voluntary suspension or termination contact agreement; however, the parties may  
 1485 return to peacemaking to revise the agreement, or the Court may amend an order if it  
 1486 finds an amendment to the order is in the best interests of the child.

1487  
 1488 **708.34. Grounds for Involuntary Suspension or Termination of Parental Rights**

1489 708.34-1. Grounds for suspension or termination of parental rights shall be any of the following:

1490 (a) *Abandonment.* Abandonment occurs when a parent either deserts a child without any  
 1491 regard for the child’s physical health, safety or welfare and with the intention of wholly  
 1492 abandoning the child, or in some instances, fails to provide necessary care for their child.

1493 (1) Abandonment shall be established by proving any of the following:

1494 (A) That the child has been left without provision for the child's care or  
 1495 support, the petitioner has investigated the circumstances surrounding the  
 1496 matter and for sixty (60) consecutive days the petitioner has been unable to  
 1497 find either parent;

1498 (B) That the child has been left by the parent without provision for the  
 1499 child's care or support in a place or manner that exposes the child to  
 1500 substantial risk of great bodily harm or death;

1501 (C) That a court of competent jurisdiction has found any of the  
 1502 following:

1503 (i) That a child has been abandoned under Wis. Stat. 48.13 (2) or  
 1504 under a law of any other state or a federal law that is comparable to  
 1505 the state law;

1506 (ii) That the child was abandoned when the child was under one (1)  
 1507 year of age or has found that the parent abandoned the child when  
 1508 the child was under one (1) year of age in violation of Wis. Stat.  
 1509 948.20 or in violation of the law of any other state or federal law, if  
 1510 that violation would be a violation of abandonment of a child under  
 1511 Wis. Stat. 948.20 if committed in this state;

1512 (D) That the child has been placed, or continued in a placement, outside the  
 1513 parent's home by a Court order containing the required notice and the parent  
 1514 has failed to visit or communicate with the child for a period of three (3)  
 1515 months or longer; or

1516 (E) The child has been left by the parent with any person, the parent knows  
 1517 or could discover the whereabouts of the child and the parent has failed to

1518 visit or communicate with the child for a period of six (6) consecutive  
1519 months or longer.

1520 (2) Incidental contact between parent and child shall not preclude the Court from  
1521 finding that the parent has failed to visit or communicate with the child. The time  
1522 periods under sections 708.34-1(a)(1)(D) and 708.34-1(a)(1)(E) shall not include  
1523 any periods during which the parent has been prohibited by Court order from  
1524 visiting or communicating with the child.

1525 (3) Abandonment is not established under sections 708.34-1(a)(1)(D) and 708.34-  
1526 1(a)(1)(E) if the parent proves all of the following by clear and convincing  
1527 evidence:

1528 (A) That the parent had good cause for having failed to visit with the child  
1529 throughout the three (3) or six (6) month time period alleged in the petition.

1530 (B) That the parent had good cause for having failed to communicate with  
1531 the child throughout the three (3) or six (6) month time period alleged in the  
1532 petition.

1533 (C) If the parent proves good cause under section 708.34-1(a)(3)(B),  
1534 including good cause based on evidence that the child's age or condition  
1535 would have rendered any communication with the child meaningless, that  
1536 one (1) of the following occurred:

1537 (i) The parent communicated about the child with the person or  
1538 persons who had physical custody of the child during the three (3) or  
1539 six (6) month time period alleged in the petition, whichever is  
1540 applicable, or, with the Department during the three (3) month time  
1541 period alleged in the petition.

1542 (ii) The parent had good cause for having failed to communicate about  
1543 the child with the person or persons who had physical custody of the  
1544 child or the Department throughout the three (3) or six (6) month time  
1545 period alleged in the petition.

1546 (b) *Relinquishment*. Relinquishment occurs when a parent gives up or abandons their child  
1547 and all rights to their child. Relinquishment shall be established by proving that a court of  
1548 competent jurisdiction has found that the parent has relinquished custody of the child when  
1549 the child was seventy-two (72) hours old or younger.

1550 (c) *Continuing Need of Protection or Services*. Continuing need of protection or services  
1551 shall be established by proving any of the following:

1552 (1) That the child has been found to be in need of protection or services and placed,  
1553 or continued in a placement, outside his or her home pursuant to one (1) or more  
1554 dispositional orders containing the notice required by section 708.22-~~78~~;

1555 (2) That the Department has made a reasonable effort to provide the services  
1556 ordered by the Court;

1557 (3) That the child has been outside the home for a cumulative total period of six (6)  
1558 months or longer pursuant to such orders; and that the parent has failed to meet the  
1559 conditions established for the safe return of the child to the home and, if the child  
1560 has been placed outside the home for less than fifteen (15) of the most recent  
1561 twenty-two (22) months, that there is a substantial likelihood that the parent will  
1562 not meet these conditions within the nine (9) months as of the date on which the child  
1563 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.

1609 (i) *Homicide or Solicitation to Commit Homicide of a Parent.* Homicide or solicitation to  
 1610 commit homicide of a parent, which shall be established by proving that a parent of the  
 1611 child has been a victim of first-degree intentional homicide, first-degree reckless homicide  
 1612 or 2nd-degree intentional homicide or a crime under federal law or the law of any other  
 1613 state that is comparable to any of those crimes, or has been the intended victim of a  
 1614 solicitation to commit first-degree intentional homicide or a crime under federal law or the  
 1615 law of any other state that is comparable to that crime, and that the person whose parental  
 1616 rights are sought to be terminated has been convicted of that intentional or reckless  
 1617 homicide, solicitation or crime as evidenced by a final judgment of conviction.

1618 (j) *Parenthood as a Result of Sexual Assault.*

1619 (1) Parenthood as a result of sexual assault shall be established by proving that the  
 1620 child was conceived as a result of one of the following:

1621 (A) First degree sexual assault [under Wis. Stats. 940.225(1)];

1622 (B) Second degree sexual assault [under Wis. Stat. 940.225 (2)];

1623 (C) Third degree sexual assault [under Wis. Stat. 940.225(3)];

1624 (D) First degree sexual assault of a child [under Wis. Stat. 948.02(1)];

1625 (E) Second degree sexual assault of a child [under Wis. Stat. 948.02 (2)];

1626 (F) Engaging in repeated acts of sexual assault of the same child [under Wis.  
 1627 Stat. 948.025]; or

1628 (G) Sexual assault of a child placed in substitute care [under Wis. Stat.  
 1629 948.085].

1630 (2) Conception as a result of sexual assault may be proved by a final judgment of  
 1631 conviction or other evidence produced at a suspension or termination of parental  
 1632 rights fact-finding hearing indicating that the person who may be the parent of the  
 1633 child committed, during a possible time of conception, a sexual assault as specified  
 1634 in this section against the other parent of the child.

1635 (3) If the conviction or other evidence indicates that the child was conceived as a  
 1636 result of a sexual assault in violation of Wis. Stat. 948.02 (1) or (2) or 948.085, the  
 1637 parent of the child may be heard on his or her desire for the suspension or  
 1638 termination of the other parent’s parental rights.

1639 (k) *Commission of a Felony Against a Child.*

1640 (1) Commission of a serious felony against the child, shall be established by  
 1641 proving that the child was the victim of a serious felony and parent was convicted  
 1642 of that serious felony.

1643 ~~(2) Commission of a violation of trafficking of a child under Wis. Stat. 948.051~~  
 1644 ~~involving any child or a violation of the law of any other state or federal law, if that~~  
 1645 ~~violation would be a violation of Wis. Stat. 948.051 involving any child if~~  
 1646 ~~committed in this state.~~

1647 ~~(3)~~(2) In this subsection, “serious felony” means any of the following:

1648 (A) The commission of, the aiding or abetting of, or the solicitation,  
 1649 conspiracy or attempt to commit, a violation of any of the following:

1650 (i) First degree intentional homicide [under Wis. Stat. 940.01];

1651 (ii) First degree reckless homicide [under Wis. Stat. 940.02];

1652 (iii) Felony murder [under Wis. Stat. 940.03];

1653 (iv) Second-degree intentional homicide [under Wis. Stat. 940.05]; or

1654 (v) A violation of the law of any other state or federal law, if that  
 1655 violation would be a violation of the above-mentioned felonies if  
 1656 committed in Wisconsin.

1657 (B) The commission of a violation of any of the following:

1658 (i) Battery, substantial battery, aggravated battery [under Wis. Stat.  
 1659 940.19 (3), 1708 stats., or Wis. Stats. 940.19 (2), (4) or (5)];

1660 (ii) Sexual assault [under Wis. Stat. 940.225 (1) or (2)];

1661 (iii) Sexual assault of a child [under Wis. Stat. 948.02 (1) or (2)];

1662 (iv) Engaging in repeated acts of sexual assault of the same child [under  
 1663 Wis. Stat. 948.025];

1664 (v) Physical abuse of a child [under Wis. Stats. 948.03 (2) (a), (3) (a),  
 1665 or (5) (a) 1., 2., or 3.];

1666 (vi) Sexual ~~exploration~~ exploitation of a child [under Wis. Stat. 948.05];

1667 (vii) Trafficking of a child [under Wis. Stat. 948.051];

1668 (viii) Incest with a child [under Wis. Stat. 948.06];

1669 (ix) Soliciting a child for prostitution [under Wis. Stat. 948.08];

1670 (x), Human trafficking [under Wis. Stat. 940.302 (2) if Wis. Stat.  
 1671 940.302 (2) (a) 1. b. applies]; or

1672 (xi) A violation of the law of any other state or federal law, if that  
 1673 violation would be a violation listed under the above listed felonies if  
 1674 committed in Wisconsin.

1675 (C) The commission of a violation of neglecting a child under Wis. Stat.  
 1676 948.21 or a violation of the law of any other state or federal law, if that  
 1677 violation would be a violation of Wis. Stat. 948.21 if committed in this state,  
 1678 that resulted in the death of the victim.

1679 (l) *Prior Involuntary Suspension or Termination of Parental Rights of Another Child.*  
 1680 Prior involuntary suspension or termination of parental rights to another child shall be  
 1681 established by proving all of the following:

1682 (1) That the child who is the subject of the petition is in need of protection or  
 1683 services under section 708.5-2(b), (d), or (k); or that the child who is the subject of  
 1684 the petition was born after the filing of a petition under this subsection whose  
 1685 subject is a sibling of the child; and

1686 (2) That, within three (3) years prior to the date the Court determined the child to  
 1687 be in need of protection or services as specified in section 708.34-1 (l) (1) or, in the  
 1688 case of a child born after the filing of a petition as specified in section 708.34-1 (l)  
 1689 (1), within three (3) years prior to the date of birth of the child, a Court has ordered  
 1690 the suspension or termination of parental rights with respect to another child of the  
 1691 person whose parental rights are sought to be suspended or terminated on one or  
 1692 more of the grounds specified in this section.

1693

1694 **708.35. Petition for Suspension or Termination of Parental Rights**

1695 708.35-1. *Who May File a Petition for Suspension or Termination of Parental Rights.* A petition  
 1696 for the suspension or termination of parental rights shall be filed by the:

1697 (a) Nation's Child Welfare attorney, ~~the~~;

1698 (b) Department; ~~the~~ or ~~the~~

1699 (c) child's parent in the case of a step-parent adoption.

1700 708.35-2. A petition for the suspension or termination of parental rights ~~may~~shall be filed when  
 1701 the child has been placed outside of his or her home for fifteen (15) of the most recent twenty-two  
 1702 (22) months or if grounds exist for suspension or termination of parental rights unless any of the  
 1703 following applies:

- 1704 (a) The child is being cared for by a fit and willing relative of the child;
- 1705 (b) The child's permanency plan indicates and provides documentation that suspension or  
 1706 termination of parental rights to the child is not in the best interests of the child;
- 1707 (c) The Department, if required by a dispositional order, failed to make reasonable efforts  
 1708 to make it possible for the child to return safely to his or her home; or did not provide or  
 1709 refer services to the family of the child for the safe return of the child to his or her home  
 1710 that were consistent with the time period in the child's permanency plan; or
- 1711 (d) Grounds for an involuntary suspension or termination of parental rights do not exist.

1712 708.35-3. A petition for the suspension or termination of parental rights shall include the following  
 1713 information:

- 1714 (a) The name, birth date, address, and tribal affiliation of the child;
- 1715 (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- 1716 (c) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit; and
- 1717 (d) One (1) of the following:
  - 1718 (1) A statement that consent will be given to voluntary suspension or termination  
 1719 of parental rights as provided in section 708.33; or
  - 1720 (2) A statement of the grounds for involuntary suspension or termination of  
 1721 parental rights under section 708.34 and a statement of the facts and circumstances  
 1722 which the petitioner alleges establish these grounds.

1723 708.35-4. *Temporary Order and Injunction Prohibiting Contact.* If the petition includes a  
 1724 statement of the grounds for involuntary suspension or termination of parental rights, the petitioner  
 1725 may, at the time the petition is filed, also petition the Court for a temporary order and an injunction  
 1726 prohibiting the person whose parental rights are sought to be suspended or terminated from visiting  
 1727 or contacting the child who is the subject of the petition. Any petition under this section shall  
 1728 allege facts sufficient to show that prohibiting visitation or contact would be in the best interests  
 1729 of the child.

- 1730 (a) The Court may grant an injunction prohibiting the respondent from visiting or  
 1731 contacting the child if the Court determines that the prohibition would be in the best  
 1732 interests of the child. An injunction under this subsection is effective according to its terms  
 1733 but may not remain in effect beyond the date the Court dismisses the petition for suspension  
 1734 or termination of parental rights or issues an order suspending or terminating parental  
 1735 rights.

1736 708.35-5. The Upon filing with the Court and at least seven (7) days prior to the initial hearing,  
 1737 the petitioner shall ensureserve the summons and petition are served upon the following persons  
 1738 pursuant to the Oneida Judiciary Rules of Civil Procedure by personal service or, if personal service  
 1739 is not possible, by certified mail, return receipt requested:

- 1740 ~~(a)~~ (a) The parent(s) of the child, including an alleged father if paternity has not been  
 1741 established; and
- 1742 ~~(b)~~ (b) The child's foster parent, guardian or legal custodian, if applicable. If the  
 1743 address has been marked confidential by the Court, the Court shall send a copy of the  
 1744 summons and petition to the home in which the child is placed via first-class U.S. mail;  
 1745 and.



~~(e) 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;

1791 (d) A statement applying the standards and factors identified in sections 708.39-2 and  
1792 708.39-3 regarding the case before the Court; and

1793 (e) If the report recommends that the parental rights of both of the child's parents or the  
1794 child's only living or known parent are to be suspended or terminated, the report shall  
1795 contain a statement of the likelihood that the child will be adopted.- This statement shall  
1796 include a presentation of the factors that might prevent adoption, those that may facilitate  
1797 adoption, and the Department shall be responsible for accomplishing the adoption.

1798 (1) If the Department determines that it is unlikely that the child will be adopted,  
1799 or if adoption would not be in the best interests of the child, the report shall include  
1800 a plan for placing the child in a permanent family setting. The plan shall include a  
1801 recommendation for the appointment of a guardian for the child.

1802 708.38-2. The Court may order a report as specified under this section to be prepared by the  
1803 Department in those cases where the Department is not a party.

1804

### 1805 **708.39. Standards and Factors**

1806 708.39-1. In making a decision about the appropriate disposition for suspension or termination of  
1807 parental rights, the Court shall consider the standards and factors enumerated in this section and  
1808 any report submitted by the Department.

1809 708.39-2. The best interests of the child shall be the prevailing standard considered by the Court  
1810 in determining the disposition of all suspension and termination of parental rights proceedings.

1811 708.39-3. In considering the best interests of the child the Court shall also consider, but not be  
1812 limited to, the following factors:

1813 (a) The likelihood of the child's adoption after suspension or termination;

1814 (b) Whether the child will be raised in an environment that is respectful of the child's  
1815 race(s), culture(s), and heritage(s);

1816 (c) The age and health of the child, both at the time of the disposition and, if applicable, at  
1817 the time the child was removed from the home;

1818 (d) Whether the child has substantial relationships with the parent or other family  
1819 members, and whether it would be harmful to the child to sever these relationships;

1820 (e) The wishes of the child, if the child has the capacity to express their wishes;

1821 (f) The duration of the separation of the parent from the child; and

1822 (g) Whether the child will be able to enter into a more stable and permanent family  
1823 relationship as a result of the suspension or termination, taking into account the conditions  
1824 of the child's current placement, the likelihood of future placements and the results of prior  
1825 placements.

1826

### 1827 **708.40. Dispositional Hearings for Suspension or Termination of Parental Rights**

1828 708.40-1. Any party may present evidence relevant to the issue of disposition, including expert  
1829 testimony, and may make alternative dispositional recommendations to the Court. After receiving  
1830 any evidence related to the disposition, the Court shall enter a disposition and issue a written  
1831 decision consistent with the Oneida Judiciary Rules of Civil Procedure.

1832 (a) The Court shall give the foster parent or other legal custodian a right to be heard at the  
1833 dispositional hearing by permitting the foster parent or other legal custodian to make a  
1834 written or oral statement during the dispositional hearing, or to submit a written statement  
1835 prior to disposition, relevant to the issue of disposition.

1836 708.40-2. The Court shall enter one (1) of the following dispositions:

1837 (a) The Court may dismiss the petition if it finds the evidence does not warrant the  
 1838 suspension or termination of parental rights or if the Court finds that a parent is attempting  
 1839 to voluntarily suspend or terminate their parental rights for the sole purpose of avoiding a  
 1840 child support obligation; or

1841 (b) The Court may enter an order suspending or terminating the parental rights of one or  
 1842 both parents.

1843 708.40-3. If the rights of both parents, or of the only living parent, are suspended or terminated  
 1844 and if a guardian has not been appointed, the Court shall do one (1) of the following while adhering  
 1845 to the placement preferences pursuant to section 708.11-1 when possible:

1846 (a) Transfer guardianship and custody of the child pending adoptive placement to:

1847 (1) A tribal or county department authorized to accept guardianship;

1848 (2) A child welfare agency licensed to accept guardianship;

1849 (3) The State of Wisconsin upon written confirmation from the State that they are  
 1850 willing to accept guardianship;

1851 (4) A relative with whom the child resides, if the relative has filed a petition to  
 1852 adopt the child or if the relative is a kinship care relative or is receiving payments  
 1853 for providing care and maintenance for the child; or

1854 (5) An individual who has been appointed guardian of the child by a court of a  
 1855 competent jurisdiction; or

1856 (b) Appoint a guardian and transfer guardianship and custody of the child to the guardian.

1857 708.40-4. The written Court order shall include the following:

1858 (a) If the Court dismisses the petition, the order shall contain the reasons for dismissal; or

1859 (b) If the disposition is for the suspension or termination of parental rights, the order shall  
 1860 contain all of the following:

1861 (1) The identity of any agency, department, or individual that has received  
 1862 guardianship of the child;

1863 (2) If an agency or department receives guardianship and custody of the child, an  
 1864 order ordering the child into the placement and care responsibility of the agency or  
 1865 department and assigning the agency or department primary responsibility for  
 1866 providing services to the child; and

1867 (3) A finding that the suspension or termination of parental rights is in the best  
 1868 interests of the child.

1869 ~~708.40-5. If an order is entered to terminate a parent's~~ (c) If the disposition is for the  
 1870 suspension or termination of parental rights, the order may contain all of the following:

1871 (1) A termination of the right of the parent to have contact with the minor child  
 1872 including contact in person, by mail, by telephone, or through third parties;

1873 (2) Order restraining a parent from contacting the minor child, the child's foster  
 1874 parent, the child's adoptive parent and/or the social services agency or agencies  
 1875 possessing information regarding the child;

1876 (3) Order that the biological parents' obligation to pay child support, except for  
 1877 arreages, is hereby terminated; and

1878 (4) Order that any prior court order for custody, visitation, or contact, with the  
 1879 minor child is hereby terminated.

1880 708.40-5. The Court shall provide a copy of the order suspending or terminating parental rights  
 1881 to the child's parent, guardian, and legal custodian; the other parties to the action; and the current  
 1882 or future foster parents for the purpose of pursuing adoption.

1883 708.40-6. If an order is entered involuntarily suspending or terminating parental rights, the Court  
 1884 shall orally inform the parent(s) who appear in Court or place in the written order the ground(s)  
 1885 for suspension or termination of their parental rights specified in section 708.34-1(1), which  
 1886 provides that a prior involuntary suspension or termination of parental rights, under certain  
 1887 circumstances, is a ground for the suspension or termination of parental rights for another child.

1888 708.40-~~6~~7. If the Court suspends or terminates parental rights, the Department, or the Court if the  
 1889 Department is not a party to the action, ~~shall~~may forward the following information to the State of  
 1890 Wisconsin:

1891 (a) The name, date of birth, and tribal affiliation of the child whose birth parent's rights  
 1892 have been suspended or terminated;

1893 (b) The names and current addresses of the child's birth parents, guardian and legal  
 1894 custodian; and

1895 (c) Any medical or genetic information received by the Department.

1896 708.40-~~7~~8. If only one (1) parent consents ~~for~~to a voluntary suspension or termination of parental  
 1897 rights or if the grounds for involuntary suspension or termination of parental rights are found to  
 1898 exist as to only one (1) parent, the rights of only that parent may be suspended or terminated  
 1899 without affecting the rights of the other parent if the Court finds such suspension or termination to  
 1900 be in the best interest of the child.

#### 1901 **708.41. Adoption**

1902 708.41-1. Adoptions under this law shall take the form of customary adoptions ~~unless~~when the  
 1903 Court ~~determines there is good cause for~~has granted a petition to suspend parental rights. When  
 1904 the Court grants a petition to terminate parental rights the adoption ~~to~~shall be closed.

1905 708.41-2. *Customary Adoptions.* The purpose of customary adoption is not to permanently deprive  
 1906 the adopted child of connections to, or knowledge of, the adopted child's biological family, but to  
 1907 provide the adopted child a permanent home. The following shall apply to all customary adoptions  
 1908 and shall be contained in all adoptive orders and decrees:

1909 (a) The relationship between an adoptive parent and ~~adoptive~~adopted child shall have all  
 1910 the same rights, responsibilities, and other legal consequences as the relationship between  
 1911 a biological child and parent;

1912 (b) The ~~adoptive~~adopted child shall have an absolute right, absent a convincing and  
 1913 compelling reason to the contrary, to information and knowledge about his or her biological  
 1914 family and his or her Oneida heritage, if applicable. The adopted child may obtain adoption  
 1915 information from files maintained by the Court or Department;

1916 (c) Adoption shall not prevent an ~~adoptive~~adopted child from inheriting from a biological  
 1917 parent in the same manner as any other biological child. The biological parents shall not  
 1918 be entitled to inherit from an ~~adoptive~~adopted child in the same manner as parents would  
 1919 otherwise be entitled to inherit. An ~~adoptive~~adopted child shall be entitled to inherit from  
 1920 adoptive parents, and vice versa, in the same manner as if biological parents and child;

1921 (d) Although parental rights have been ~~terminated~~suspended, the biological parent may  
 1922 retain certain residual parental rights when appropriate as determined by agreement  
 1923 between the adoptive parent and biological parent made through peacemaking, or by order  
 1924 of the Court. Such residual parental rights may include:

1925 (1) The right to communication;

1926 (2) The right to visitation;

1927 (3) The right or obligation to contribute to support or education;

1929 (4) The right to be consulted regarding the adopted child’s religious affiliation,  
 1930 major medical treatment, marriage, or other matters of major importance in the  
 1931 child’s life; and/or

1932 (5) Such other residual rights the Court may deem appropriate, considering the  
 1933 circumstances.

1934 (e) Adoption does not extinguish the relationships between the adopted child and the  
 1935 adopted child’s extended biological family. –The adopted child’s extended biological  
 1936 family retains the right to reasonable communication and visitation with the adopted child,  
 1937 subject to reasonable controls of the adoptive parents.

1938 708.41-3. *Closed Adoptions*. Closed adoptions occur in situations where ~~a~~an adopted child needs  
 1939 a permanent home and it is necessary to sever all ties between the adopted child and his or her  
 1940 biological family. The following shall apply to all closed adoptions:

1941 (a) The relationship between an adoptive parent and ~~adoptive~~adopted child shall have all  
 1942 the same rights, responsibilities, and other legal consequences as the relationship between  
 1943 a biological child and parent;

1944 (b) The relationship between the adopted child and all persons whose relationship to the  
 1945 adopted child is derived through the biological parents shall be completely altered and all  
 1946 the rights, duties, and other legal consequences of those relationships shall cease to exist;

1947 (c) The adopted child’s biological family shall not be entitled to or have access to any  
 1948 information regarding said child;

1949 (d) The adopted child shall be entitled to information and knowledge regarding his or her  
 1950 culture and heritage; and

1951 (e) The adopted child shall be entitled to information regarding his or her biological family  
 1952 upon reaching the age of majority. The adopted child may obtain adoption information  
 1953 from files maintained by the Court or Department.

#### 1954 1955 **708.42. Adoption Criteria and Eligibility**

1956 708.42-1. *Criteria for Adoption*. Any child who is subject to this law may be adopted if any of the  
 1957 following criteria are met:

1958 (a) Both of the child's parents are deceased;

1959 (b) The parental rights of both of the child's parents with respect to the child have been  
 1960 suspended or terminated;

1961 (c) The parental rights of one of the child's parents with respect to the child have been  
 1962 suspended or terminated and the child's other parent is deceased; or

1963 (d) The person filing the petition for adoption is the spouse of the child's parent and either  
 1964 of the following applies:

1965 (1) The child's other parent is deceased; or

1966 (2) The parental rights of the child's other parent with respect to the child have been  
 1967 suspended or terminated.

1968 708.42-2. *Eligibility*. The following persons are eligible to adopt a child who falls under the  
 1969 jurisdiction of this law pending the successful clearing of a background check:

1970 (a) A married adult couple;

1971 (b) Either spouse if the other spouse is a parent of the child; or

1972 (c) An unmarried adult.

1973 708.42-3. If the person proposing to adopt the child cannot successfully clear a background check,  
 1974 and any convictions the person may possess have not been pardoned, forgiven, reversed, set aside

1975 or vacated, the Court may still deem the person eligible to adopt if the Court determines by clear  
 1976 and convincing evidence that the adoption would be in the best interests of the child.

1977

### 1978 **708.43. Adoption Procedure**

1979 708.43-1. *Petition for Adoption.* A person proposing to adopt or the Department, shall initiate a  
 1980 proceeding for the adoption of a child by filing a petition with the Court. The petition shall include  
 1981 the following information:

- 1982 (a) The name, birth date, address, and tribal affiliation of the petitioner;  
 1983 (b) The name, birth date, address, and tribal affiliation of the child;  
 1984 (c) The names, birth dates, addresses, and tribal affiliation of the child's biological parents;  
 1985 (d) The name by which the child shall be known if the petition is granted;  
 1986 (e) The relationship of the petitioner to the child; and  
 1987 (f) A copy of the order suspending or terminating parental rights of the child's biological  
 1988 parent(s).

1989 708.43-2. Upon the filing of a petition for adoption, the Court shall schedule a hearing within  
 1990 sixty (60) days. ~~Notice of the hearing shall be served on the parties pursuant to the Oneida~~  
 1991 ~~Judiciary Rules of Civil Procedure.~~

1992 708.43-3. When a petition for adoption is filed, the Court shall order an investigation to determine  
 1993 whether the child is a proper subject for adoption and whether the petitioner's home is suitable for  
 1994 the child. ~~The Court shall order one (1) of the following to conduct the investigation:~~

- 1995 (a) The Court shall order one (1) of the following to conduct the investigation:  
 1996 ~~(a)~~ (1) If the Department, or another agency or department, has guardianship  
 1997 of the child, the agency or department that has guardianship; or  
 1998 ~~(b)~~ (2) If no agency or department has guardianship of the child and a relative,  
 1999 including a stepparent, has filed the petition for adoption, the Department.  
 2000 (b) If the Court orders the Department to conduct the investigation, the Department may  
 2001 contract with a third-party agency to conduct the investigation.

2002 708.43-4. The Department or other agency or department making the investigation shall file its  
 2003 report with the Court prior to the hearing on the petition and shall provide ~~the parties with~~ a copy  
 2004 of the report to the parties by first-class mail at least ~~three (3) business~~ seven (7) days prior to the  
 2005 hearing.

2006 708.43-5. If the report of the investigation is unfavorable or if it discloses a situation which, in the  
 2007 opinion of the Court, raises a serious question as to the suitability of the proposed adoption, the  
 2008 Court may appoint a guardian ad litem for the child whose adoption is proposed.

2009 708.43-6. During the hearing the parties may agree to attend peacemaking to establish an  
 2010 agreement regarding residual rights of a birth parent, birth sibling, or other birth relative of the  
 2011 child.

2012 708.43-7. If after the hearing and a study of the report required by section 708.43-3 the Court is  
 2013 satisfied that the adoption is in the best interests of the child, the Court shall make an order granting  
 2014 the adoption. The order may change the name of the child to that requested by petitioners.

2015 708.43-8. After the order of adoption is entered the relation of parent and child and all the rights,  
 2016 duties and other legal consequences of the natural relation of child and parent thereafter exists  
 2017 between the adopted child and the adoptive parents. The relationship between the adopted child  
 2018 and biological parents shall be completely altered and all the rights, duties, and other legal  
 2019 consequences of those relationships shall cease to exist, excluding any residual rights granted to  
 2020 the biological parents and extended family through customary adoption. If the biological parent

2021 is the spouse of the adoptive parent, the relationship shall be completely altered and those rights,  
2022 duties, and other legal consequences shall cease to exist only with respect to the biological parent  
2023 who is not the spouse of the adoptive parent.

2024 708.43-9. ~~After~~Within five (5) days after entry of the order granting ~~thea~~ closed adoption, the  
2025 Department shall ~~promptly~~ mail a copy of the order to the State of Wisconsin Bureau of Vital  
2026 Statistics and furnish any additional data needed for the issuance of a new birth certificate.

2027

#### 2028 **708.44. Non-Compliance with a Residual Rights Agreement**

2029 708.44-1. Any party to a residual rights agreement or the child who is the subject of the  
2030 proceedings may petition the Court that approved the agreement to compel any person who is  
2031 bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to  
2032 show that a person who is bound by the agreement is not in compliance with the agreement and  
2033 that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving  
2034 rise to the filing of the petition. The petition may also allege facts showing that the noncompliance  
2035 with the agreement is not in the best interests of the child.

2036 708.44-2. After receiving a petition for action regarding a residual rights contact agreement the  
2037 Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing  
2038 to all parties to the agreement and may reappoint a guardian ad litem for the child.

2039 708.44-3. If the Court finds, after hearing, that any person bound by the agreement is not in  
2040 compliance with the agreement and that the petitioner, before filing the petition, attempted in good  
2041 faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order  
2042 requiring the person to comply with the agreement and may find a party in contempt.

2043 708.44-4. The Court may not revoke a suspension or termination of parental rights order or an  
2044 order of customary adoption because an adoptive parent or other custodian of the child or a birth  
2045 parent, birth sibling, or other birth relative of the child fails to comply with a residual rights  
2046 agreement; however, the parties may return to peacemaking to revise the agreement, or the Court  
2047 may amend an order if it finds an amendment to the order is in the best interests of the child.

2048

#### 2049 **708.45. Peacemaking and Mediation**

2050 708.45-1. The Court may refer the parties to peacemaking or mediation if the parties agree to  
2051 attend peacemaking or mediation. The Court shall not refer the parties to peacemaking or  
2052 mediation if attending the session will cause undue hardship or would endanger the health or safety  
2053 of a party.

2054 708.45-2. When the parties attend peacemaking or mediation based on a referral from the Court,  
2055 the Court shall enter an order finding good cause to suspend the time limits established under this  
2056 law.

2057

#### 2058 **708.46. Appeals**

2059 708.46-1. Appeals of all orders issued under this law shall be heard by the Nation's Court of  
2060 Appeals in accordance with the Rules of Appellate Procedure.

2061

#### 2062 **708.47. Liability**

2063 708.47-1. No liability shall attach to the Department, Indian Child Welfare Worker, the Nation's  
2064 Child Welfare Attorney or any person acting under their authority for statements, acts or omissions  
2065 made in good faith while in the course of activities taken under this law.

2066

2067 *End.*

2068 Adopted – BC-07-26-17-J  
2069 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.

19 708.2-3. Should a provision of this law or the application thereof to any person or circumstances  
20 be held as invalid, such invalidity shall not affect other provisions of this law which are considered  
21 to have legal force without the invalid portions.

22 708.2-4. In the event of a conflict between a provision of this law and a provision of another law,  
23 the provisions of this law shall control. Provided that, this law repeals the following:

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

32 708.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.  
33

### 34 **708.3. Definitions**

35 708.3-1. This section shall govern the definitions of words and phrases used within this law. All  
36 words not defined herein shall be used in their ordinary and everyday sense.

- 37 (a) “Abuse” means any of the following:
  - 38 (1) Physical injury inflicted on a child by other than accidental means;
  - 39 (2) Sexual assault;
  - 40 (3) Sexual exploitation of a child;
  - 41 (4) Prostitution or trafficking of a child;
  - 42 (5) Causing a child to view or listen to sexual activity or sexually explicit materials;
  - 43 (6) Exposing a child to the manufacture, sale, or use of controlled substances;
  - 44 and/or
  - 45 (7) Emotional damage for which the child’s parent, guardian, or legal custodian has  
46 neglected, refused, or been unable for reasons other than poverty to obtain the  
47 necessary treatment or take steps to address the issue.
- 48 (b) “Advocate” means a person who is a non-attorney presented to the Court as the  
49 representative or advisor to a party.
- 50 (c) “Alcohol and other drug abuse impairment” means a condition of a person which is  
51 exhibited by characteristics of habitual lack of self-control in the use of alcoholic beverages  
52 or controlled substances to the extent that the person’s health is substantially affected or  
53 endangered or the person’s social or economic functioning is substantially disrupted.
- 54 (d) “Attorney” means a person trained and licensed to represent another person in Court,  
55 to prepare documents and to give advice or counsel on matters of law.
- 56 (e) “Best interest of the child” means the interest of a child to:
  - 57 (1) Have a full, meaningful, and loving relationship with both parents and family  
58 as much as possible;
  - 59 (2) Be free from physical, sexual and emotional abuse;
  - 60 (3) Be raised in conditions that foster and encourage the happiness, security, safety,  
61 welfare, physical and mental health, and emotional development of the child;
  - 62 (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 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.
- 107 (v) “Group home” means any facility operated by a person required to be licensed by the  
108 Department and/or applicable licensing agency for the care and maintenance of five (5) to  
109 eight (8) children.

- 110 (w) “Guardian” means any person, agency or department appointed by the Court to care for  
111 and manage the child in a particular case before the Court. A guardian has the right to  
112 make major decisions affecting a child including education, religious and cultural  
113 upbringing, the right to consent to marriage, to enlistment in the armed forces, to major  
114 surgery and medical treatment and to adoption, or make recommendations as to adoption.  
115 (x) “Guardian ad litem” means a person appointed by the Court to appear at any  
116 peacemaking, mediation, or hearing and tasked with representing the best interest of the  
117 person appointed for.  
118 (y) “Holiday” means any holiday recognized by the Nation as identified in the Nation’s  
119 laws, rules and policies governing employment.  
120 (z) “Imminent danger” means a risk of harm or injury that will occur immediately.  
121 (aa) “Indian Child Welfare Worker” means a person employed by the Nation in the Indian  
122 Child Welfare Department tasked with the responsibility to carry out the duties, objectives  
123 and provisions of this law.  
124 (bb) “Informal disposition” means a written agreement with all the parties describing the  
125 conditions and obligations that must be met to ensure the child is protected and to alleviate  
126 the condition that led to the referral to the Department. An informal disposition is utilized  
127 by the Department when the Department determines that the interest of the child does not  
128 require a formal Court intervention to provide protection and services to the child.  
129 (cc) “Legal custodian” means any person other than a parent or guardian to whom legal  
130 custody of a child has been granted by court order and has the rights and responsibilities  
131 for the following:  
132 (1) To have physical custody of the child as determined by the Court, if physical  
133 custody is not with the person having legal custody;  
134 (2) To protect, educate and discipline the child so long as it is in the child’s best  
135 interest; and  
136 (3) To provide the child with adequate food, shelter, education, ordinary medical  
137 care and other basic needs, according to court order. In an emergency situation, a  
138 custodian shall have the authority to consent to surgery as well as any other  
139 emergency medical care needs.  
140 (dd) “Mediation” means a method of dispute resolution that involves a neutral third party  
141 who tries to help disputing parties reach an agreement.  
142 (ee) “Nation” means the Oneida Nation.  
143 (ff) “Neglect” means failure, refusal, or inability on the part of a caregiver, for reasons  
144 other than poverty, to provide necessary care, food, clothing, medical or dental care, or  
145 shelter so as to seriously endanger the physical health of the child.  
146 (gg) “Parent” means the biological or adoptive parent of a child.  
147 (hh) “Parties” means the parent(s), guardian(s), and legal custodian(s) of the child who  
148 is the subject of the proceedings; the Department, in cases where they are the petitioner; a  
149 guardian ad litem, if one has been appointed by the Court; and anyone else permitted to  
150 file a petition under this law.  
151 (ii) “Peacemaking” means a method of dispute resolution that is based on traditional  
152 methods of resolving disputes and addresses the needs of rebuilding relationships between  
153 people.

- 154 (jj) “Permanency Plan” means a plan designed to ensure that a child is reunified with his  
155 or her family whenever appropriate, or that the child quickly attains a placement or home  
156 providing long-term stability.
- 157 (kk) “Physical injury” includes, but is not limited to, any of the following:  
158 (1) lacerations;  
159 (2) fractured bones;  
160 (3) burns;  
161 (4) internal injuries;  
162 (5) severe or frequent bruising;  
163 (6) bodily injury which creates a substantial risk of death;  
164 (7) bodily injury which causes serious permanent disfigurement;  
165 (8) bodily injury which causes a permanent or protracted loss or impairment of the  
166 function of any bodily member or organ; or  
167 (9) any other serious bodily injury.
- 168 (ll) “Plea hearing” means a hearing to determine whether any party wishes to contest a  
169 petition filed under this law.
- 170 (mm) “Probable cause” means there are sufficient facts and circumstances that would lead  
171 a reasonable person to believe that something is true.
- 172 (nn) “Protective plan” means an immediate short-term action that protects a child from  
173 present danger threats in order to allow for completion of the initial assessment,  
174 investigation and, if needed, the implementation of a safety plan.
- 175 (oo) “Reasonable effort” means an earnest and conscientious effort to take good faith  
176 steps to provide the services ordered by the Court which takes into consideration the  
177 characteristics of the parent or child, the level of cooperation of the parent and other  
178 relevant circumstances of the case.
- 179 (pp) “Relative” means any person connected with a child by blood, marriage or adoption.
- 180 (qq) “Reservation” means all the land within the exterior boundaries of the Reservation of  
181 the Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and  
182 any lands added thereto pursuant to federal law.
- 183 (rr) “Shelter care facility” means a non-secure place of temporary care and physical  
184 custody for children, licensed by the Department and/or applicable licensing agency.
- 185 (ss) “Social history” means the social, economic, cultural and familial aspects of a person  
186 and how those aspects affect the person’s functioning and situation in life.
- 187 (tt) “Special treatment or care” means professional services which need to be provided to  
188 a child or family to protect the well-being of the child, prevent out-of-home placement, or  
189 meet the needs of the child.
- 190 (uu) “Stepparent” means the spouse or ex-spouse of a child’s parent who is not a  
191 biological parent of the child.
- 192 (vv) “Stipulation” means a formal legal acknowledgement and agreement made between  
193 opposing parties prior to a pending hearing or trial.
- 194 (ww) “Substantial parental relationship” means the acceptance and exercise of significant  
195 responsibility for the daily supervision, education, protection and care of a child.
- 196 (xx) “Service plan” means a plan or set of conditions ordered by the Court identifying  
197 concerns and behaviors of a parent, guardian or legal custodian that resulted in a child to  
198 be in need of protection or services, and the treatment services, goals and objectives to  
199 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;

- 245 (i) is receiving inadequate care during the period of time a parent is missing, incarcerated,  
246 hospitalized or institutionalized;
- 247 (j) is at least twelve (12) years of age, signs the petition requesting jurisdiction under this  
248 subsection and is in need of special treatment or care which the parent, guardian or legal  
249 custodian is unwilling, neglecting, unable or needs assistance to provide;
- 250 (k) has a parent, guardian or legal custodian who neglects, refuses or is unable for reasons  
251 other than poverty to provide necessary care, food, clothing, medical or dental care or  
252 shelter so as to seriously endanger the physical health of the child;
- 253 (l) has a parent, guardian or legal custodian who is at substantial risk of neglecting,  
254 refusing or being unable for reasons other than poverty to provide necessary care, food,  
255 clothing, medical or dental care or shelter so as to endanger seriously the physical health  
256 of the child, based on reliable and credible information that the child's parent, guardian or  
257 legal custodian has neglected, refused or been unable for reasons other than poverty to  
258 provide necessary care, food, clothing, medical or dental care or shelter so as to endanger  
259 seriously the physical health of another child in the home;
- 260 (m) is suffering emotional damage for which the parent, guardian or legal custodian has  
261 neglected, refused or been unable and is neglecting, refusing or unable, for reasons other  
262 than poverty, to obtain necessary treatment or to take necessary steps to improve the  
263 symptoms;
- 264 (n) is suffering from an alcohol and other drug abuse impairment, exhibited to a severe  
265 degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable  
266 to provide treatment; or
- 267 (o) is non-compliant with the Nation's or State's immunization laws.

268 **708.5-3. Jurisdiction over other Matters Relating to Children.** If jurisdiction has been established  
269 under section 708.5-1 and all requirements of this law have been met the Court may:

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

273 **708.5-4. Transfer of Cases from other Courts.** If personal jurisdiction has been established the  
274 Court has jurisdiction over any action transferred to the Court from any court of competent  
275 jurisdiction.

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

278 **708.5-5. Transfer of Cases to other Courts.** The Court may transfer a case under this law to a court  
279 of competent jurisdiction where the other court has a significant interest in the child and the transfer  
280 would be in the best interest of the child.

281 **708.5-6.** Any orders made by the Court under this law, or any orders made by a court of competent  
282 jurisdiction regarding child welfare matters, shall supersede any other order made by this Court or  
283 a court of competent jurisdiction regarding custody or placement of a child until the Children's  
284 Code or other child welfare orders are dismissed.

285  
286 **708.6. Nation's Child Welfare Attorney**

287 **708.6-1.** A Child Welfare attorney shall represent the Nation in all proceedings under this law.  
288 The Child Welfare attorney shall be one of the following:

- 289 (a) An attorney from the Oneida Law Office;  
290 (b) An attorney contracted by the Oneida Law Office; or

291 (c) An attorney contracted by the Department.  
292

293 **708.7. Indian Child Welfare Department Duties and Responsibilities**

294 *708.7-1. Indian Child Welfare Worker.* The Indian Child Welfare Worker shall carry out the duties  
295 and responsibilities set forth in this law which include, but are not limited to the following:

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

328 *708.7-2. Department.* In performing the duties set forth in this law, the Department shall:

- 329 (a) Identify and refer parties to resources in the community calculated to resolve the  
330 problems presented in petitions filed in Court, such as the various psychiatric,  
331 psychological, therapeutic, counseling, and other social services available within and  
332 outside the Nation when necessary;
- 333 (b) Identify and refer parties to resources in the community designed to enhance the child’s  
334 potential as a member of the Nation;
- 335 (c) Investigate, inspect, and license foster homes, and monitor and supervise foster homes  
336 and children in foster care;



- 337 (d) Adhere to the placement preference order stated in section 708.11;
- 338 (e) Enter into memorandums of understanding or agreement with the Oneida Trust
- 339 Enrollment Committee or Department, Oneida Police Department, Oneida Nation Child
- 340 Support Agency and any other appropriate department in order to carry out the provisions
- 341 of this law; and
- 342 (f) Share information with other social service agencies, law enforcement agencies, and
- 343 other entities of the Nation as it pertains to children under the jurisdiction of this law.
- 344

345 **708.8. Guardian ad litem**

346 708.8-1. *Appointment.* The appointment of a guardian ad litem shall be as follows:

- 347 (a) The Court may appoint a guardian ad litem for any child who is the subject of a child
- 348 in need of protection or services proceeding;
- 349 (b) The Court shall appoint a guardian ad litem for any child who is the subject of a
- 350 proceeding to terminate or suspend parental rights, whether voluntary or involuntary, for a
- 351 child who is the subject of a contested adoption proceeding, and for a child who is the
- 352 subject of a contested guardianship proceeding;
- 353 (c) The Court shall appoint a guardian ad litem for a minor parent petitioning for the
- 354 voluntary termination of their parental rights; and
- 355 (d) A guardian ad litem may be appointed for any other circumstance the Court deems
- 356 necessary.

357 708.8-2. *Qualifications.*

- 358 (a) A guardian ad litem shall be an adult who:
  - 359 (1) is at least twenty one (21) years of age;
  - 360 (2) is currently certified as a guardian ad litem and in good standing;
  - 361 (3) has never been convicted of a felony unless the person received a pardon or
  - 362 forgiveness; and
  - 363 (4) has never been convicted of any crime against a child.
- 364 (b) No person shall be appointed guardian ad litem in that proceeding who:
  - 365 (1) has a personal interest in the outcome of the case, a party to the proceeding, or
  - 366 any other interest that has the potential to corrupt a person’s motivation or decision
  - 367 making, because of an actual or potential divergence between the person’s self-interests,
  - 368 and the best interests of the case;
  - 369 (2) appears as counsel or an advocate in the proceeding on behalf of any party; or
  - 370 (3) is related to a party of the proceeding, the Judge for the proceeding, or an
  - 371 appointing Judge by blood, marriage, adoption or related by a social tie that could
  - 372 be reasonably interpreted as a conflict of interest.
- 373 (c) A guardian ad litem may be recognized as certified by the Court if he or she:
  - 374 (1) has completed guardian ad litem training provided by the Court, another Indian
  - 375 tribe, or a state; or
  - 376 (2) is recognized as a certified guardian ad litem by another jurisdiction.

377 708.8-3. *Responsibilities.* The guardian ad litem has none of the rights or duties of a general

378 guardian. The guardian ad litem shall:

- 379 (a) investigate and review all relevant information, records and documents, as well as
- 380 interview the child, parent(s), social workers, and all other relevant persons to gather facts
- 381 when appropriate;
- 382 (b) consider the importance of the child’s culture, heritage and traditions;

- 383 (c) consider, but shall not be bound by, the wishes of the child or the positions of others  
384 as to the best interests of the child;  
385 (d) explain the role of the guardian ad litem and the court proceedings to the child in  
386 language and terms appropriate to the child’s age and maturity level;  
387 (e) provide a written or oral report to the Court regarding the best interests of the child,  
388 including conclusions and recommendations and the facts upon which they are based;  
389 (f) recommend evaluations, assessments, services and treatment of the child and the child’s  
390 family when appropriate;  
391 (g) inform the court of any concerns or possible issues regarding the child or the child’s  
392 family;  
393 (h) represent the best interests of the child;  
394 (i) perform other duties as directed by the Court; and  
395 (j) comply with all laws, policies and rules of the Nation governing the conduct of a  
396 guardian ad litem.

397 708.8-4. *Compensation.* The guardian ad litem shall be compensated at a rate that the Court  
398 determines is reasonable. The Court shall compensate the guardian ad litem for his or her fees. The  
399 parties shall reimburse the Court for the guardian ad litem fees. The Court may apportion the  
400 amount of reimbursement each party shall pay based on the ability to pay or assess the cost equally  
401 between the parties. The Court may determine an appropriate time frame for the reimbursement to  
402 occur. The Court may waive the guardian ad litem expense if the cost of the guardian ad litem will  
403 impose an immediate and substantial hardship on the parties.

404  
405 **708.9. Advocate**

406 708.9-1. The parent, guardian and legal custodian of a child has the right to obtain an advocate to  
407 represent and advise him or her throughout any proceeding under this law at his or her own  
408 expense.

409 708.9-2. *Qualifications.*

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

416 708.9-3. An advocate shall comply with all laws, rules and policies of the Nation governing  
417 advocates.

418  
419 **708.10 Cultural Wellness Facilitator and Healer**

420 708.10-1. The Department may utilize a Cultural Wellness Facilitator and Healer, or similar  
421 position, throughout all child welfare proceedings.

422 708.10-2. The Cultural Wellness Facilitator and Healer may provide:

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

426

427 **708.11. Order of Placement Preferences**

428 708.11-1. The following order of placement preferences shall be followed when it is necessary to  
429 place a child outside of the home under this law:

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

438 708.11-2. The order of placement preferences listed in section 708.11-1. are prioritized from the  
439 most preference given to a child placed in a home in accordance with section 708.11-1(a) and the  
440 least amount of preference given to a child placed in a home in accordance with section 708.11-  
441 1(h).

442 708.11-3. In order to deviate from the placement preferences listed in section 708.11-1, the Court  
443 shall consider the best interest of the child when determining whether there is good cause to go  
444 outside the placement preference.

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

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

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

456  
457 **708.12. Notice; General Terms**

458 708.12-1. Service of documents and notices shall be as specified in this law. If a method of service  
459 is not specified in this law, then service shall be by first-class mail to the recently verified last-  
460 known address of the party. If a party’s whereabouts are unknown and cannot be found after  
461 diligent effort, service shall be by publication as described in the Oneida Judiciary Rules of Civil  
462 Procedure.

463 708.12-2. The Court shall provide the parties with notice of all hearings at least seven (7) days  
464 prior to the hearing, with the purpose of providing the parties an opportunity to be heard.

465 (a) *Exception.* In circumstances where a hearing is scheduled and it is not possible to  
466 provide notice at least seven (7) days prior to the hearing, the Court shall make an  
467 appropriate effort to notice all parties of the hearing.

468 708.12-3. When the Department is required to perform personal service, the Indian Child Welfare  
469 Worker may deliver the document(s) directly to the party(s) if such service is appropriate and safe  
470 under the circumstances. In the alternative, personal service may be accomplished according to the  
471 Oneida Judiciary Rules of Civil Procedure.

472 708.12-4. In all proceedings under this law, the Department may withhold the placement  
473 provider’s identifying information from the child’s parent, guardian, or legal custodian if there are  
474 reasonable grounds to believe that disclosure would result in imminent danger to the child or  
475 anyone else. A parent, guardian, or legal custodian may request judicial review of the decision to  
476 withhold the identifying information.

477

### 478 **708.13. Hearings (General)**

479 708.13-1. If the Court finds that it is in the best interest of the child, the Court may exclude the  
480 child from participating in a hearing conducted in accordance with this law.

481 708.13-2. The Oneida Judiciary Rules of Evidence are not binding at emergency custody hearings,  
482 dispositional hearings, or a hearing about changes in placement, revision of dispositional orders,  
483 extension of dispositional orders, or termination of guardianship orders. At those hearings, the  
484 Court shall admit all testimony having reasonable probative value, but shall exclude immaterial,  
485 irrelevant, or unduly repetitious testimony. Hearsay evidence may be admitted if it has  
486 demonstrable circumstantial guarantees of trustworthiness. The Court shall give effect to the rules  
487 of privilege recognized by laws of the Nation. The Court shall apply the basic principles of  
488 relevancy, materiality, and probative value to proof of all questions of fact.

489 708.13-3. If an alleged father appears at a hearing under this law, the Court may order the  
490 Department to refer the matter to the Oneida Nation Child Support Agency to adjudicate paternity.  
491 If the Court enters such an order, then the Department may sign documents required by the Oneida  
492 Nation Child Support Agency on behalf of the family for the limited purpose of initiating a  
493 paternity action. While paternity is being established, the Court shall enter an order finding good  
494 cause to suspend the time limits established under this law.

495 708.13-4. At any time, the Court or the Department may refer the matter to the Nation’s Child  
496 Support Agency.

497

### 498 **708.14. Discovery and Records**

499 708.14-1. Upon written request, the parties and their counsel shall have the right to inspect, copy  
500 or photograph social, psychiatric, psychological, medical, and school reports, and records  
501 concerning the child including reports of preliminary inquiries, predisposition studies and  
502 supervision records relating to the child which are in the possession of the Nation’s Child Welfare  
503 attorney or the Department that pertain to any case under this law.

504 708.14-2. If a request for discovery is refused, the person may submit an application to the Court  
505 requesting an order granting discovery. Motions for discovery shall certify that a request for  
506 discovery has been made and refused.

507 708.14-3. If the discovery violates a privileged communication or a work product rule, the Court  
508 may deny, in whole or part, otherwise limit or set conditions on the discovery authorized.

509 708.14-4. The identity of the individual that initiated the investigation by contacting the  
510 Department, shall be redacted in all documents that are made available to the parties.

511 708.14-5. In addition to the discovery procedures permitted under this law, the discovery  
512 procedures permitted under the Oneida Judiciary Rules of Civil Procedure shall apply in all  
513 proceedings under this law.

514 708.14-6. The Department may make an ex parte request to the Court to conduct an in camera  
515 review to determine what information should and should not be released to the parties and their  
516 counsel. In making that determination, the Court shall balance what is necessary to a fair  
517 determination of the child welfare legal matter, including access to records, against the interest in  
518 protecting the child from the risk of harm. After the Court conducts the in camera review, the  
519 decision regarding the release of records shall be provided to the parties in writing.

520

521 **708.15. Taking a Child into Custody**

522 708.15-1. *Grounds for Taking a Child into Custody.* A child may be taken into custody without  
523 a Court order by an Indian Child Welfare Worker or law enforcement officer if there are reasonable  
524 grounds to believe:

525 (a) A warrant for the child's apprehension has been issued by the Court or another court of  
526 competent jurisdiction to take the child into custody;

527 (b) The child is suffering from illness or injury or is in immediate danger from his or her  
528 surroundings and removal from those surroundings is necessary; and/or

529 (c) The child has violated the conditions of an order issued pursuant to this law.

530 708.15-2. The Court may enter an order directing that a child be taken into custody upon a showing  
531 satisfactory to the judge that the welfare of the child demands that the child be immediately  
532 removed from his or her present custody.

533 708.15-3. A person taking the child into custody, under this section, shall immediately attempt to  
534 notify the parent(s), guardian(s), and legal custodian(s) of the child by the most practical means.  
535 Attempts to satisfy notification shall continue until either the parent(s), guardian(s), and legal  
536 custodian(s) of the child is notified, or the child is delivered to an Indian Child Welfare Worker,  
537 whichever occurs first. If the child is delivered to the Indian Child Welfare Worker before the  
538 parent(s), guardian(s), and legal custodian(s) is notified, the Indian Child Welfare Worker, or  
539 another person at his or her direction, shall continue the attempt to notify until the parent(s),  
540 guardian(s), and legal custodian(s) of the child is notified.

541 708.15-4. Once the child is taken into custody and turned over to the care of the Department, the  
542 Department shall make every effort to release the child immediately to the child's parent(s),  
543 guardian(s), and legal custodian(s), so long as it is in the child's best interest and the parent(s),  
544 guardian(s), and legal custodian(s) is willing to receive the child.

545 708.15-5. *Probable Cause for Taking a Child into Custody.* A child may be held in custody if the  
546 Indian Child Welfare Worker determines the child is within the jurisdiction of the Court and  
547 probable cause exists to believe any of the following if the child is not held in custody:

548 (a) The child will cause injury to himself or herself or be subject to injury by others;

549 (b) The child will be subject to injury by others, based on a determination that if another  
550 child in the home is not held that child will be subject to injury by others;

551 (c) The parent, guardian or legal custodian of the child or other responsible adult is  
552 neglecting, refusing, unable or unavailable to provide adequate supervision and care, and  
553 that services to ensure the child's safety and well-being are not available or would be  
554 inadequate;

555 (d) The child meets the criteria for probable cause for taking a child into custody specified  
556 in section 708.15-5(c), based on a determination that another child in the home meets any  
557 of the criteria; or

558 (e) The child will run away or be taken away so as to be unavailable for proceedings of the  
559 Court.

560 708.15-6. *Holding a Child in Custody.* A child held in custody may be held in any of the following  
561 places as long as the places are in the child’s best interest and all people residing or regularly  
562 visiting the premises have cleared a background check:

- 563 (a) The home of a relative, except that a child may not be held in the home of a relative  
564 that has been convicted of the first-degree intentional homicide or the second-degree  
565 intentional homicide of a parent of the child, or any crime against a child, and the  
566 conviction has not been pardoned, forgiven, reversed, set aside or vacated, unless the  
567 person making the custody decision determines by clear and convincing evidence that the  
568 placement would be in the best interests of the child. The person making the custody  
569 decision shall consider the wishes of the child in making that determination;
- 570 (b) A licensed foster home;
- 571 (c) A licensed group home;
- 572 (d) A non-secure facility operated by a licensed child welfare agency;
- 573 (e) A licensed private or public shelter care facility;
- 574 (f) A hospital or other medical or mental health facility; or
- 575 (g) The home of a person not a relative, if the placement does not exceed thirty (30) days,  
576 though the placement may be extended for up to an additional thirty (30) days by the Indian  
577 Child Welfare Worker, and if the person has not had a child care license refused, revoked,  
578 or suspended within the last two (2) years.

579 708.15-7. When holding a child in custody for emergency placement the use of the preferences  
580 for placement stated in section 708.11-1 are preferred, but not mandatory. If the preferences for  
581 placement are not followed, the Department shall try to transition that child into a home that fits  
582 the order of preferences for placement as quickly as deemed appropriate by the Department.

583 708.15-8. If a child is held in custody, the Indian Child Welfare Worker shall notify the child’s  
584 parent(s), guardian(s), and legal custodian(s) of the reasons for holding the child and of the child’s  
585 whereabouts except when the Indian Child Welfare Worker believes that notice would present  
586 imminent danger to the child. If the parent, guardian, or legal custodian is not immediately  
587 available, the Indian Child Welfare Worker or another person designated by the worker shall  
588 provide notice as soon as possible.

589 708.15-9. The Indian Child Welfare Worker shall also notify the parent, guardian, and legal  
590 custodian of the following:

- 591 (a) the date, time and place of the emergency custody hearing;
- 592 (b) the nature and possible outcomes of the hearing;
- 593 (c) the right to present and cross-examine witnesses; and
- 594 (d) the right to retain counsel at his or her own expense.

595 708.15-10. When the child is age twelve (12) or older, the Indian Child Welfare Worker shall  
596 notify the child of the date, time, and place and the nature and possible outcomes of the emergency  
597 custody hearing.

598

### 599 **708.16. Emergency Custody Hearing**

600 708.16-1. If a child who has been taken into custody under section 708.15-5 is not released, a  
601 hearing to determine whether the child shall continue to be held in custody under the criteria of  
602 probable cause for taking a child into custody under section 708.15-5(a)-(e) shall be conducted by  
603 the Court as soon as possible but no later than seventy-two (72) hours after the time the decision  
604 to hold the child was made, excluding Saturdays, Sundays, and holidays. By the time of the  
605 hearing, a petition for a child in need of protection or services under section 708.17 shall be filed

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

608 708.16-2. If no petition has been filed by the time of the hearing, a child may be held in custody  
609 with approval of the Court for an additional seventy-two (72) hours from the time of the hearing,  
610 excluding Saturdays, Sundays, and holidays, only if, as a result of the facts brought forth at the  
611 hearing, the Court determines that probable cause exists to believe any of the following:

612 (a) That additional time is required to determine whether the filing of a petition initiating  
613 proceedings under this law is necessary;

614 (b) That the child is an imminent danger to himself or herself or to others; or

615 (c) The parent, guardian, and legal custodian of the child or other responsible adult is  
616 neglecting, refusing, unable, or unavailable to provide adequate supervision and care.

617 708.16-3. The Court may grant a one-time extension under section 708.16-2 for a petition. In the  
618 event a petition is not filed within the extension period, the Court shall order the child's immediate  
619 release from custody. For any parties not present at the hearing, the Department shall serve the  
620 petition on those parties by certified mail, return receipt requested.

621 708.16-4. Prior to the start of the hearing, the Court shall inform the parent, guardian, or legal  
622 custodian of the following:

623 (a) allegations that have been made or may be made;

624 (b) the nature and possible outcomes of the hearing and possible future hearings;

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

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

627 708.16-5. If present at the hearing, the Court may permit the parent to provide the names and other  
628 identifying information of three (3) relatives of the child or other individuals eighteen (18) years  
629 of age or older whose homes the parent wishes the Court to consider as placements for the child.  
630 If the parent does not provide this information at the hearing, the Department shall permit the  
631 parent to provide the information at a later date.

632 708.16-6. All orders to hold a child in custody shall be in writing.

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

634 (1) A finding that continued placement of the child in his or her home would be  
635 contrary to the best interests of the child;

636 (2) A finding that the Department and/or anyone else providing services to the  
637 child had reasonable grounds to remove the child from the home based on the  
638 child's best interest;

639 (3) A finding that the Department has made reasonable efforts to prevent the  
640 removal of the child from the home, while assuring that the child's best interests  
641 are the paramount concerns;

642 (4) The Department made reasonable efforts to make it possible for the child to  
643 return safely home; and

644 (5) If the child has one (1) or more siblings, who have also been removed from the  
645 home, a finding as to whether the Department has made reasonable efforts to place  
646 the child in a placement that enables the sibling group to remain together, unless  
647 the Court determines that a joint placement would be contrary to the safety or well-  
648 being of the child or any of those siblings, in which case the Court shall order the  
649 Department make reasonable efforts to provide for frequent visitation or other  
650 ongoing interaction between the child and the siblings, unless the Court determines

651 that such visitation or interaction would be contrary to the safety or well-being of  
652 the child or any of those siblings.

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

654 (1) an transfer of the legal custody of the child, including decisions about health  
655 care and education.

656 708.16-7. An order to hold a child in custody remains in effect until a dispositional order is  
657 granted, the petition is withdrawn or dismissed, or the order is modified or terminated by further  
658 order of the Court.

659 708.16-8. An order to hold a child in custody may be re-heard upon motion of any party if, in the  
660 Court's discretion, good cause is found, whether or not counsel was present.

661

### 662 **708.17. Petition for a Child in Need of Protection or Services**

663 708.17-1. The Nation's Child Welfare attorney or the Department shall initiate proceedings under  
664 this section by filing a petition with the Court, signed by a person who has knowledge of the facts  
665 alleged or is informed of them and believes them to be true. Upon filing with the Court, the  
666 Department shall provide a copy of the petition to the parties by personal service or, if personal  
667 service is not possible, by certified mail with return receipt requested.

668 708.17-2. The petition shall include the following:

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

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

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

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

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

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

684 708.17-3. The petition shall state if any of the facts required for a petition are not known or cannot  
685 be ascertained by the petitioner.

686 708.17-4. A petition may be amended at any time at the discretion of the Court. Upon filing with  
687 the Court, the Department shall provide a copy of the amended petition to the parties by certified  
688 mail with return receipt requested.

689

### 690 **708.18. Consent Decree**

691 708.18-1. *Consent Decree.* At any time after the filing of a petition pursuant to section 708.17  
692 and before the entry of judgment, the Court may suspend the proceedings and place the child under  
693 supervision in the home or present placement of the child. The Court may establish terms and  
694 conditions applicable to the child and the child's parent, guardian or legal custodian. The order  
695 under this section shall be known as a consent decree and must be agreed to by the child who is



696 twelve (12) years of age or older, the parent, guardian or legal custodian, and the person filing the  
697 petition. The consent decree shall be reduced to writing and given to the parties.

698 708.18-2. *Requirements of a Consent Decree.* If at the time the consent decree is entered into the  
699 child is placed outside the home and if the consent decree maintains the child in that placement,  
700 the consent decree shall include all of the following:

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

703 (b) A finding as to whether the Department has made reasonable efforts to prevent the  
704 removal of the child from the home, while assuring that the child's health and safety and  
705 best interests are the paramount concerns;

706 (c) If a permanency plan has previously been prepared for the child, a finding as to whether  
707 the Department has made reasonable efforts to achieve the permanency goal of the child's  
708 permanency plan; and

709 (d) If the child has one or more siblings who have also been removed from the home, the  
710 consent decree shall include a finding as to whether the Department has made reasonable  
711 efforts to place the child in a placement that enables the sibling group to remain together,  
712 unless the Court determines that the placement of the siblings together would be contrary  
713 to the safety, well-being and best interests of the child or any of those siblings, in which  
714 case the Court shall order the department to make reasonable efforts to provide for frequent  
715 visitation or other ongoing interaction between the child and the siblings, unless the Court  
716 determines that such visitation or interaction would be contrary to the safety, well-being or  
717 best interests of the child or any of those siblings.

718 708.18-3. *Time Limits of Consent Decree.* A consent decree shall remain in effect up to six (6)  
719 months unless the child, parent, guardian, or legal custodian is discharged sooner by the  
720 Court. The time limits under this law shall be tolled during the pendency of the consent decree.

721 708.18-4. *Extension of a Consent Decree.* Upon the motion of the Court or the request of the  
722 child, parent, guardian, legal custodian, child's guardian ad litem, or the Department, the Court  
723 may, after giving notice to the parties to the consent decree, extend the decree for up to an  
724 additional six (6) months in the absence of objection to the extension by the parties to the initial  
725 consent decree. If the child, parent, guardian, legal custodian, or child's guardian ad litem objects  
726 to the extension, the Court shall schedule a hearing and make a determination on the issue of  
727 extension.

728 708.18-5. If, prior to discharge by the Court, or the expiration of the consent decree, the Court  
729 finds after conducting a hearing that the child, parent, guardian, or legal custodian has failed to  
730 fulfill the express terms and conditions of the consent decree, the hearing under which the child  
731 was placed on supervision may be continued to conclusion as if the consent decree had never been  
732 entered.

733

### 734 **708.19. Plea Hearing for a Child in Need of Protection or Services**

735 708.19-1. A plea hearing shall take place on a date which allows reasonable time for the parties to  
736 prepare but is within forty-five (45) days after the filing of a petition, unless the Court enters an  
737 order finding good cause to go outside of the time limits.

738 708.19-2. If a petition is not contested, the Court shall set a date for the dispositional hearing  
739 which allows reasonable time for the parties to prepare but is within forty-five (45) days after the  
740 plea hearing, unless the Court enters an order finding good cause to go outside the time limits. If

741 all the parties agree and the Department has submitted a court report pursuant to section 708.21,  
742 the Court may proceed immediately with the dispositional hearing.

743 708.19-3. If the petition is contested, the Court shall set a date for the fact-finding hearing which  
744 allows reasonable time for the parties to prepare but is within sixty (60) days after the plea hearing,  
745 unless the Court enters an order finding good cause to go outside the time limits.

746 708.19-4. Before accepting an admission or plea of no contest of the alleged facts in a petition,  
747 the Court shall:

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

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

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

754 708.19-5. At the plea hearing the Department may request placement of the child outside of the  
755 child's home in accordance with the placement preferences in section 708.11-1, if notice of the  
756 Department's intent to seek out of home placement of the child was provided to the parties prior  
757 to the hearing in substantial compliance with section 708.15-9. In the request for placement of the  
758 child outside of the child's home the Department shall present as evidence specific information as  
759 outlined in 708.16-6(a)(1)-(5).

760 708.19-6. If the Court orders the out of home placement of the child, the order shall be in writing  
761 and shall contain the information required by section 708.16-6(a)(1)-(5).

762

763 **708.20. Fact finding Hearing for a Child in Need of Protection or Services**

764 708.20-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there  
765 is clear and convincing evidence to establish that the child is in need of protection or services.

766 708.20-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of  
767 Civil Procedure except that the Court may exclude the child from the hearing.

768 708.20-3. At the close of the fact-finding hearing, the Court shall set a date for the dispositional  
769 hearing which allows a reasonable time for the parties to prepare but is no more than forty-five  
770 (45) days after the fact-finding hearing, unless the Court enters an order finding good cause to go  
771 outside the time limits. If all the parties agree and the Department has submitted court report  
772 pursuant to section 708.21, the Court may proceed immediately with the dispositional hearing.

773

774 **708.21. Department's Disposition Report for a Child in Need of Protection or Services**

775 708.21-1. Before the dispositional hearing, the Department shall submit a written report to the  
776 Court, with a copy provided to the parties by first-class mail at least seven (7) days prior to the  
777 hearing, which shall contain all of the following:

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

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

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

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

785 708.21-2. If the Department is recommending out-of-home placement, the written report shall  
786 include all of the following:

- 787 (a) The location of the placement and where it fits within the placement preferences.  
788 (b) A recommendation as to whether the Court should establish a child support obligation  
789 for the parents;  
790 (c) Specific information showing that continued placement of the child in his or her home  
791 would be contrary to the best interests of the child and specific information showing that  
792 the Department has made reasonable efforts to prevent the removal of the child from the  
793 home, while assuring that the child's best interests are the paramount concerns;  
794 (d) If the child has one (1) or more siblings who have been removed from the home or for  
795 whom an out-of-home placement is recommended, specific information showing that  
796 Department has made reasonable efforts to place the child in a placement that enables the  
797 sibling group to remain together, unless the Department recommends that the child and his  
798 or her siblings not be placed together, in which case the report shall include specific  
799 information showing that placement of the children together would be contrary to the best  
800 interests of the child or any of those siblings; and  
801 (e) If a recommendation is made that the child and his or her siblings not be placed together  
802 specific information showing that the Department has made reasonable efforts to provide  
803 for frequent visitation or other ongoing interaction between the child and the siblings,  
804 unless the Department recommends that such visitation or interaction not be provided, in  
805 which case the report shall include specific information showing that such visitation or  
806 interaction would be contrary to best interests of the child or any of those siblings;  
807

808 **708.22. Dispositional Hearing for a Child in Need of Protection or Services**

809 708.22-1. At a dispositional hearing, any party may present evidence relevant to the issue of  
810 disposition, including expert testimony, and may make alternative dispositional recommendations.

811 708.22-2. During a dispositional hearing, if the Department is recommending placement of the  
812 child outside of the child's home in accordance with the placement preferences in section 708.11-  
813 1, the Department shall present as evidence specific information showing all of the following:

- 814 (a) That continued placement of the child in his or her home would be contrary to the best  
815 interests of the child;  
816 (b) That the Department has made reasonable efforts to prevent the removal of the child  
817 from the home, while assuring that the child's best interests are the paramount concerns;  
818 (c) If the child has one (1) or more siblings who have been removed from the home or for  
819 whom an out-of-home placement is recommended, that the Department has made  
820 reasonable efforts to place the child in a placement that enables the sibling group to remain  
821 together, unless the Department recommends that the child and his or her siblings not be  
822 placed together, in which case the Department shall present as evidence specific  
823 information showing that placement of the children together would be contrary to the best  
824 interests of the child or any of those siblings; and  
825 (d) If a recommendation is made that the child and his or her siblings not be placed together,  
826 that the Department has made reasonable efforts to provide for frequent visitation or other  
827 ongoing interaction between the child and the siblings, unless the Department recommends  
828 that such visitation or interaction not be provided, in which case the Department shall  
829 present as evidence specific information showing that such visitation or interaction would  
830 be contrary to the best interests of the child or any of those siblings.

831 708.22-3. The Court's dispositional order shall employ those means necessary to maintain and  
832 protect the best interests of the child which are the least restrictive of the rights of the parent and

833 child and which assure the care, treatment or rehabilitation of the child and the family consistent  
834 with the protection of the public. When appropriate, and, in cases of child abuse or neglect when  
835 it is consistent with the best interest of the child in terms of physical safety and physical health,  
836 the family unit shall be preserved and there shall be a policy of transferring custody of a child from  
837 the parent only when there is no less drastic alternative. If there is no less drastic alternative for a  
838 child than transferring custody from the parent, the Court shall consider transferring custody  
839 pursuant to the preferences for placement set forth in section 708.11-1.

840 708.22-4. *Dispositional Orders*. The Court’s dispositional order shall be in writing and shall  
841 contain:

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

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

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

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

854 (2) A dispositional order made before the child reaches eighteen (18) years of age  
855 that places or continues the placement of the child outside of the home shall  
856 terminate on the latest of the following dates, unless the Court specifies a shorter  
857 period or the Court terminates the order sooner:

858 (A) The date on which the child attains eighteen (18) years of age;

859 (B) The date that is one (1) year after the date on which the order is granted;  
860 and

861 (C) The date on which the child is granted a high school or high school  
862 equivalency diploma or the date on which the child reaches nineteen (19)  
863 years of age, whichever occurs first, if the child is a full-time student at a  
864 secondary school or its vocational or technical equivalent and is reasonably  
865 expected to complete the program before reaching nineteen (19) years of  
866 age.

867 (d) If the child is placed outside the home, a finding that continued placement of the child  
868 in his or her home would be contrary to the welfare of the child and a finding as to whether  
869 the Department has made reasonable efforts to prevent the removal of the child from the  
870 home, while assuring that the child's best interests are the paramount concerns. The Court  
871 shall make the findings specified in this subsection on a case-by-case basis based on  
872 circumstances specific to the child;

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

877 (f) If the child is placed outside the home and if the child has one (1) or more siblings who  
878 have also been placed outside the home, a finding as to whether the Department has made

879 reasonable efforts to place the child in a placement that enables the sibling group to remain  
880 together, unless the Court determines that placement of the children together would be  
881 contrary to the best interests of the child or any of those siblings, in which case the Court  
882 shall order the Department to make reasonable efforts to provide for frequent visitation or  
883 other ongoing interaction between the child and the siblings, unless the Court determines  
884 that such visitation or interaction would be contrary to the best interests of the child or any  
885 of those siblings;

886 (g) A statement of the conditions with which the parties are required to comply; and  
887 (h) If the Court finds that it would be in the best interest of the child, the Court may set  
888 reasonable rules of parental visitation.

889 (1) If the Court denies a parent visitation, the Court shall enter conditions that shall  
890 be met by the parent in order for the parent to be granted visitation.

891 708.22-5. *Service plans and Conditions.* In a proceeding in which a child has been found to be in  
892 need of protection or services, the Court may order the child's parent, guardian and legal custodian  
893 to comply with any conditions and/or service plan determined by the Court to be necessary for the  
894 child's welfare.

895 (a) The service plan or conditions ordered by the Court shall contain the following  
896 information:

897 (1) The identification of the problems or conditions that resulted in the abuse or  
898 neglect of a child;

899 (2) The treatment goals and objectives for each condition or requirement  
900 established in the plan. If the child has been removed from the home, the service  
901 plan must include, but is not limited to, the conditions or requirements that must be  
902 established for the safe return of the child to the family;

903 (3) The specific treatment objectives that clearly identify the separate roles and  
904 responsibilities of all parties addressed in the service plan, including the  
905 Department's specific responsibilities to make reasonable efforts to assist the  
906 parent, guardian or legal custodian in their efforts toward reunification with the  
907 child; and

908 (4) A notice that completion of a service plan does not guarantee the return of a  
909 child and that completion of a service plan without a change in behavior that caused  
910 removal in the first instance may result in the child remaining outside the home.

911 (b) A service plan may include recommendations and the dispositional order may require  
912 the child's parent, guardian and legal custodian to participate in:

913 (1) Outpatient mental health treatment;

914 (2) Substance abuse treatment;

915 (3) Anger management;

916 (4) Individual or family counseling;

917 (5) Parent training and education;

918 (6) Cultural wellness treatment and training; and/or

919 (7) Any other treatment as deemed appropriate by the Court.

920 708.22-6. If the Court finds that the parent was convicted of committing a crime against the life  
921 and bodily security of a child or a crime against a child, contained within Chapters 940 and 948 of  
922 the Wisconsin Statutes or another similar law in another jurisdiction, the Court may find that the  
923 Department is not required to make reasonable efforts with respect to the parent to make it possible  
924 for the child to return safely to his or her home.

925 708.22-7. The Court shall provide a copy of the dispositional order to the child's parent, guardian,  
926 and legal custodian, and other parties to the action.

927 708.22-8. Whenever the Court orders a child to be placed outside his or her home or denies a  
928 parent visitation because the child is in need of protection or services, the Court shall orally inform  
929 the parent who appears in Court of any grounds for suspension or termination of parental rights  
930 which may be applicable and of the conditions necessary for the child to be returned to the home  
931 or for the parent to be granted visitation. The Court shall also include this information in the written  
932 dispositional order provided to the parent.

933

934 **708.23. Permanency Plans**

935 708.23-1. The Department shall prepare a written permanency plan anytime a child is placed  
936 outside the home pursuant to dispositional order that finds the child is in need of protection or  
937 services.

938 (a) The permanency plan shall include all of the following:

- 939 (1) The name, birth date, address, and tribal affiliation of the child;  
940 (2) The names, birth dates, addresses, and tribal affiliation of the child's parent(s),  
941 guardian(s), and legal custodian(s);  
942 (3) The date on which the child was removed from the home;  
943 (4) A statement as to the availability of a safe and appropriate placement with an  
944 extended family member;  
945 (5) The goal(s) of the permanency plan which may include one or more of the  
946 following: reunification, adoption, guardianship, placement with a fit and willing  
947 relative, or long-term foster care;  
948 (6) Date by which it is likely the goal(s) of the permanency plan will likely be  
949 achieved;  
950 (7) A description of the services offered and any services provided in an effort to  
951 prevent removal of the child from the home or to return the child to the home, while  
952 assuring that the best interests of the child are the paramount concerns;  
953 (8) If the child has one (1) or more siblings who have been removed from the home,  
954 a description of the efforts made to place the child in a placement that enables the  
955 sibling group to remain together. If a decision is made to not place the siblings  
956 together, a description of the efforts made to provide for frequent and ongoing  
957 visitation or other ongoing interaction between the child and siblings;  
958 (9) Information about the child's education; and  
959 (10) Any other appropriate information as deemed necessary by the Court or the  
960 Department.

961 708.23-2. The Department shall file the initial permanency plan with the Court within sixty (60)  
962 days after the date the child was first removed from the home unless the child is returned to the  
963 home within that time period.

964 708.23-3. The Court shall hold a hearing to review the permanency plan no later than six (6)  
965 months after the date on which the child was first removed from the home and every six months  
966 thereafter for as long as the child is placed outside the home and is found to be in need of protection  
967 or services.

968 (a) At least seven (7) days before the date of the hearing, the Department shall file the  
969 updated permanency plan with the Court and provide a copy to the parties by first-class  
970 mail.

971 (b) All parties, including foster parent(s) shall have a right to be heard at the permanency  
972 plan hearing. Any party may submit written comments to the Court no less than three (3)  
973 business days prior to the hearing date.

974 708.23-4. After the hearing, the Court shall enter a written order addressing the following:

- 975 (a) The continuing necessity for and the safety and appropriateness of the placement;  
976 (b) The compliance with the permanency plan by the Department and any other service  
977 providers, the child’s parent(s), and the child;  
978 (c) Efforts taken to involve appropriate service providers and Department staff in meeting  
979 the special needs of the child and the child’s parent(s);  
980 (d) The progress toward eliminating the causes for the child’s placement outside the home  
981 and returning the child safely to the home or obtaining a permanent placement for the child;  
982 (e) The date by which it is likely that the child will be returned to the home or placed for  
983 adoption, with a guardian, with a fit and willing relative, or in some other permanent living  
984 arrangement;  
985 (f) Whether reasonable efforts were made by the Department to achieve the permanency  
986 plan goal(s);  
987 (g) Whether reasonable efforts were made by the Department to place the child in a  
988 placement that enables the sibling group to remain together or have frequent visitation or  
989 other ongoing interaction; and  
990 (h) The date of the next review hearing, if appropriate.

991

992 **708.24. Change in Placement**

993 708.24-1. The Department, the Nation’s Child Welfare attorney, or a party to the dispositional  
994 order may request a change in the placement of the child who is the subject of the dispositional  
995 order by filing a motion with the Court. The Court may also propose a change in placement on its  
996 own motion.

997 708.24-2. The request for a change in placement shall contain the name and address of the new  
998 placement requested and shall state what new information is available that affects the advisability  
999 of the current placement.

1000 708.24-3. If the proposed change in placement moves the child outside of his or her home, the  
1001 request shall contain specific information showing that continued placement of the child in the  
1002 home would be contrary to the best interests of the child and if the Department is making the  
1003 request, specific information showing that the Department has made reasonable efforts to prevent  
1004 the removal of the child from the home, while assuring that the child's best interests are the  
1005 paramount concerns.

1006 708.24-4. Upon filing with the Court, the Department shall provide a copy of the request for a  
1007 change in placement to the parties by first-class mail.

1008 (a) The Department shall schedule a hearing prior to placing the child outside of the home,  
1009 unless emergency conditions that necessitate an immediate change in the placement of a  
1010 child apply.

1011 (b) A hearing is not required when the child currently placed outside the home transfers to  
1012 another out-of-home placement.

1013 (1) A party may request a hearing when the child is transferred to a different out-  
1014 of-home placement by submitting a written request to the Court within ten (10)  
1015 days of being served with the notice of the proposed change.

1016 708.24-5. If a hearing is held, any party may present evidence relevant to the issue of the change  
1017 in placement. In addition, the Court shall give a foster parent or other legal custodian a right to be  
1018 heard at the hearing by permitting the foster parent or other legal custodian to make a written or  
1019 oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to  
1020 the issue of change in placement.

1021 708.24-6. *Emergency Change in Placement.* If emergency conditions necessitate an immediate  
1022 change in the placement of a child, the Department may remove the child to a new placement,  
1023 whether or not authorized by the existing dispositional order. The Department shall notify the  
1024 parties of the emergency change in placement by personal service as soon as possible but no later  
1025 than seventy-two (72) hours after the emergency change in placement excluding Saturdays,  
1026 Sundays, and holidays. If the emergency conditions necessitate an immediate change in placement  
1027 of a child placed in the home to a placement outside the home, the Department shall schedule the  
1028 matter for a hearing as soon as possible but no later than seventy-two (72) hours after the  
1029 emergency change in placement is made, excluding Saturdays, Sundays, and holidays.

1030 708.24-7. The parties may agree to a change in placement by signing a stipulation and filing it  
1031 with the Court for approval.

1032 708.24-8. No change in placement may extend the expiration date of the original dispositional  
1033 order, except that if the change in placement is from a placement in the child's home to a placement  
1034 outside the home the Court may extend the expiration date of the original dispositional order to  
1035 the latest of the following dates, unless the Court specifies a shorter period:

- 1036 (a) The date on which the child reaches eighteen (18) years of age;  
1037 (b) The date that is one (1) year after the date on which the change-in-placement order is  
1038 granted; or  
1039 (c) The date on which the child is granted a high school or high school equivalency  
1040 diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs  
1041 first, if the child is a full-time student at a secondary school or its vocational or technical  
1042 equivalent and is reasonably expected to complete the program before reaching nineteen  
1043 (19) years of age.

1044 708.24-9. If the change in placement is from a placement outside the home to a placement in the  
1045 child's home and if the expiration date of the original dispositional order is more than one (1) year  
1046 after the date on which the change-in-placement order is granted, the Court shall shorten the  
1047 expiration date of the original dispositional order to the date that is one (1) year after the date on  
1048 which the change-in-placement order is granted or to an earlier date as specified by the Court.

1049

### 1050 **708.25. Trial Reunification**

1051 708.25-1. The Department or the Nation's Child Welfare attorney may request the Court to order  
1052 a trial reunification. A trial reunification occurs when a child placed in an out-of-home placement  
1053 resides in the home of a parent, guardian, or legal custodian from which the child was removed for  
1054 a period of seven (7) consecutive days or longer, but not exceeding one hundred fifty (150) days,  
1055 for the purpose of determining the appropriateness of changing the placement of the child to that  
1056 home. A trial reunification is not a change in placement under section 708.24.

1057 708.25-2. *Request for Trial Reunification.* The Department or the Nation's Child Welfare attorney  
1058 shall include the following in the request for a trial reunification:

- 1059 (a) The name and address of the requested trial reunification home;  
1060 (b) A statement describing why the trial reunification is in the best interests of the child;  
1061 and



1062 (c) A statement describing how the trial reunification satisfies the objective of the child’s  
1063 permanency plan.

1064 708.25-3. *Emergency Removal of a Child.* A request for a trial reunification may not be made on  
1065 the sole grounds that an emergency condition necessitates an immediate removal of the child from  
1066 the child’s out-of-home placement. If an emergency condition necessitates such an immediate  
1067 removal, the Department shall proceed with an emergency change in placement as described in  
1068 section 708.24-6.

1069 708.25-4. *Notice.* The Department or Nation’s Child Welfare attorney shall submit the request to  
1070 the Court. Upon filing with the Court and at least seven (7) days before the date of reunification,  
1071 the Department shall provide the parent, guardian, legal custodian, and any other party written  
1072 notice of the proposed reunification by first-class mail. The notice shall contain the information  
1073 that is required to be included in the request under section 708.25-2.

1074 708.25-5. *Trial Reunification Hearing.* Any party who is entitled to receive notice of a requested  
1075 trial reunification may obtain a hearing on the matter by filing an objection with the Court within  
1076 ten (10) days after the trial reunification request was filed with the Court.

1077 (a) If no objection against the trial reunification is filed, the Court may issue an order for  
1078 the trial reunification.

1079 (b) If an objection is filed, a hearing shall be held within forty five (45) days after the  
1080 request was filed with the Court. A trial reunification shall not occur until after the hearing.  
1081 Not less than three (3) business days before the hearing the Court shall provide notice of  
1082 the hearing to all parties.

1083 (1) If a hearing is held and the trial reunification would remove a child from a foster  
1084 home or other placement with a legal custodian, the Court shall give the foster  
1085 parent or other legal custodian a right to be heard at the hearing by permitting the  
1086 foster parent or legal custodian to make a written or oral statement relating to the  
1087 child and the requested trial reunification.

1088 (2) The Court may appoint a guardian ad litem for the child during the trial  
1089 reunification hearing.

1090 708.25-6. *Order.* If the Court finds that the trial reunification is in the best interest of the child  
1091 and that the trial reunification satisfies the objectives of the child’s permanency plan, the Court  
1092 shall order the trial reunification. The trial reunification shall terminate ninety (90) days after the  
1093 date of the order, unless the Court specifies a shorter period in the order, or extends or revokes the  
1094 trial reunification. No trial reunification order may extend the expiration date of the original  
1095 dispositional order or any extension of the dispositional order.

1096 708.25-7. *Extension of Trial Reunification.* The Department may request an extension of a trial  
1097 reunification.

1098 (a) *Extension Request.* The request shall contain a statement describing how the trial  
1099 reunification continues to be in the best interests of the child. No later than seven (7) days  
1100 prior to the expiration of the trial reunification, the Department shall submit the request to  
1101 the Court and shall cause notice of the request to be provided to all parties by first-class  
1102 mail.

1103 (b) *Extension Hearing.* Any party may obtain a hearing on the requested extension by  
1104 filing an objection with the Court within ten (10) days after the extension request was filed  
1105 with the Court.

1106 (1) If no objection is filed, the Court may order an extension of the trial  
1107 reunification.

1108 (2) If an objection is filed, the Court shall schedule a hearing on the matter. If the  
1109 Court is unable to conduct a hearing on the matter before the trial reunification  
1110 expires, the trial reunification shall remain in effect until the Court is able hold the  
1111 hearing. Not less than three (3) business days before the hearing the Court shall  
1112 provide notice of the hearing to all parties.

1113 (c) *Extension Order.* If the Court finds that the trial reunification continues to be in the  
1114 best interests of the child, the Court shall grant an order extending the trial reunification  
1115 for a period specified by the Court. Any number of extensions may be granted, but the total  
1116 period for a trial reunification may not exceed one hundred and fifty (150) days.

1117 708.25-8. *End of Trial Reunification Period.* When a trial reunification period ends, the  
1118 Department shall do one (1) of the following:

1119 (a) Return the child to his or her out-of-home placement. The Department may do so  
1120 without further order of the Court, but within five (5) days after the return of the child to  
1121 his or her out-of-home placement the Department shall provide the parties with written  
1122 notice of the following by first-class mail:

1123 (1) the date of the return of the child to the out-of-home placement; and

1124 (2) the address of that placement to all parties, unless providing the address would  
1125 present imminent danger to the child;

1126 (b) Request a change in placement under section 708.24 to place the child in a new out-of-  
1127 home placement; or

1128 (c) Request a change in placement under section 708.24 to place the child in the trial  
1129 reunification home.

1130 708.25-9. *Revocation of Trial Reunification.* The Department may determine that a trial  
1131 reunification is no longer in the best interests of the child and revoke the trial reunification before  
1132 the specified trial reunification period ends.

1133 (a) *Revocation Request.* If the Department determines that the trial reunification is no  
1134 longer in the best interests of the child, the Department, without prior order by the Court,  
1135 may remove the child from the trial reunification home and place the child in the child's  
1136 previous out-of-home placement or place the child in a new out-of-home placement.

1137 (1) If the Department places the child in the child's previous out-of-home  
1138 placement, within three (3) business days of removing the child from the trial  
1139 reunification home, the Department shall submit a request for revocation of the trial  
1140 reunification to the Court and shall provide notice of the request to all parties by  
1141 first-class mail. The request shall contain the following information:

1142 (A) the date on which the child was removed from the trial reunification  
1143 home;

1144 (B) the address of the child's current placement, unless providing the  
1145 address would present imminent danger to the child; and

1146 (C) the reasons for the proposed revocation.

1147 (2) If the Department places the child in a new out-of-home placement, within  
1148 three (3) business days of removing the child from the trial reunification home, the  
1149 Department shall request a change in placement under section 708.22. The  
1150 procedures specified in section 708.24, including all notice procedures, apply to a  
1151 change in placement requested under this subsection, except that the request shall  
1152 include the date on which the child was removed from the trial reunification home

1153 in addition to the information required in 708.24-2. The trial reunification is  
1154 revoked when the change in placement order is granted.

1155 (b) *Revocation Hearing.* Any party may obtain a hearing on the matter by filing an  
1156 objection with the Court within ten (10) days after the request was filed with the Court.

1157 (1) If no objection is filed, the Court may issue a revocation order.

1158 (2) If an objection is filed, the Court shall schedule a hearing on the matter. Not  
1159 less than three (3) business days before the hearing the Court shall provide notice  
1160 of the hearing to all parties.

1161 (c) *Revocation Order.* If the Court finds that the trial reunification is no longer in the best  
1162 interests of the child who has been placed in his or her previous out-of-home placement,  
1163 the Court shall grant an order revoking the trial reunification.

1164 **708.25-10. Prohibited Trial Reunifications.** The Court may not order a trial reunification in the  
1165 home of an adult who has been convicted of the first-degree intentional homicide or the second-  
1166 degree intentional homicide of a parent of the child or any crime against a child, if the conviction  
1167 has not been reversed, set aside, vacated or pardoned. If a parent in whose home a child is placed  
1168 for a trial reunification is convicted of homicide or a crime against a child, and the conviction has  
1169 not been reversed, set aside, vacated or pardoned, the Court shall revoke the trial reunification and  
1170 the child shall be returned to his or her previous out-of-home placement, or placed in a new out-  
1171 of-home placement.

1172 (a) *Exception.* A prohibition against trial reunifications based on homicide of a parent or  
1173 a crime against a child does not apply if the Court determines by clear and convincing  
1174 evidence that the placement would be in the best interests of the child.

1175

1176 **708.26. Revision of Dispositional Orders**

1177 708.26-1. A party, or the Court on its own motion, may request a revision in the dispositional  
1178 order that does not involve a change in placement.

1179 708.26-2. The request or Court proposal shall set forth in detail the nature of the proposed revision  
1180 and what new information is available that affects the advisability of the Court's disposition. The  
1181 request for revision shall be filed with the Court with notice provided to the parties by first-class  
1182 mail.

1183 708.26-3. The Court shall hold a hearing on the matter prior to any revision of the dispositional  
1184 order if the request or Court proposal indicates that new information is available that affects the  
1185 advisability of the Court's dispositional order, unless the parties file a signed stipulation and the  
1186 Court approves.

1187 708.26-4. If a hearing is held, any party may present evidence relevant to the issue of revision of  
1188 the dispositional order. In addition, the Court shall give a foster parent or other legal custodian a  
1189 right to be heard at the hearing by permitting the foster parent or other legal custodian to make a  
1190 written or oral statement during the hearing, or to submit a written statement prior to the hearing,  
1191 relevant to the issue of revision.

1192

1193 **708.27. Extension of Dispositional Orders**

1194 708.27-1. A party, or the Court on its own motion, may request an extension of a dispositional  
1195 order. The request shall be filed with the Court with notice to the parties by first-class mail.

1196 708.27-2. No order may be extended without a hearing, unless the parties file a signed stipulation  
1197 and the Court approves.

1198 708.27-3. Any party may present evidence relevant to the issue of extension. If the child is placed  
1199 outside of his or her home, the Department shall present as evidence specific information showing  
1200 that the Department has made reasonable efforts to achieve the permanency goal of the child's  
1201 permanency plan. In addition, the Court shall give a foster parent or other legal custodian a right  
1202 to be heard at the hearing by permitting the foster parent or other legal custodian to make a written  
1203 or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant  
1204 to the issue of extension.

1205 708.27-4. The Court shall make findings of fact and conclusions of law based on the evidence.  
1206 The findings of fact shall include a finding as to whether reasonable efforts were made by the  
1207 Department to achieve the permanency goal of the child's permanency plan if applicable.

1208 708.27-5. If a request to extend a dispositional order is made prior to the termination of the order,  
1209 but the Court is unable to conduct a hearing on the request prior to the termination date, the order  
1210 shall remain in effect until such time as an extension hearing is conducted.

1211

1212 **708.28. Continuation of Dispositional Orders**

1213 708.28-1. If a petition for suspension or termination of parental rights or guardianship is filed or  
1214 an appeal from a suspension or termination of parental rights or guardianship judgment is filed  
1215 during the year in which a child in need of protection or services dispositional order is in effect,  
1216 the dispositional order shall remain in effect until all proceedings related to the petition or appeal  
1217 are concluded.

1218

1219 **708.29. Guardianship for Certain Children in Need of Protection or Services**

1220 708.29-1. *Conditions for Guardianship.* The Court may appoint a guardian for a child if the Court  
1221 finds all of the following:

1222 (a) That the child has been found to be in need of protection or services under this law and  
1223 has been placed outside of his or her home pursuant to one (1) or more Court orders, or  
1224 that the child has been found to be in need of protection or services and placement of the  
1225 child in the home of a guardian under this section has been recommended by the  
1226 Department at the dispositional hearing;

1227 (b) That the person nominated as the guardian of the child is a person with whom the child  
1228 has been placed or in whose home placement of the child is recommended by the  
1229 Department and that it is likely that the child will continue to be placed with that person  
1230 for an extended period of time or until the child attains the age of eighteen (18) years;

1231 (c) That, if appointed, it is likely that the person would be willing and able to serve as the  
1232 child's guardian for an extended period of time or until the child attains the age of eighteen  
1233 (18) years;

1234 (d) That it is not in the best interests of the child that a petition to suspend or terminate  
1235 parental rights be filed with respect to the child;

1236 (e) That the child's parents are neglecting, refusing or unable to carry out the duties of a  
1237 guardian; and

1238 (f) That the Department has made reasonable efforts to make it possible for the child to  
1239 return to his or her home, while assuring that the child's best interests are the paramount  
1240 concerns, but that reunification of the child with the child's parent(s) is unlikely or contrary  
1241 to the best interests of the child and that further reunification efforts are unlikely to be made  
1242 or are contrary to the best interests of the child or that the Department has made reasonable  
1243 efforts to prevent the removal of the child from his or her home, while assuring the child's

1244 best interests, but that continued placement of the child in the home would be contrary to  
1245 the best interests of the child.

1246 708.29-2. *Who May File a Petition for Guardianship.* Any of the following persons may file a  
1247 petition for the appointment of a guardian for a child under this section:

- 1248 (a) The child;
- 1249 (b) The child's guardian ad litem;
- 1250 (c) The child's parent;
- 1251 (d) The person with whom the child is placed or in whose home placement of the child is
- 1252 recommended by the Department;
- 1253 (e) The Department; or
- 1254 (f) The Nation's Child Welfare attorney.

1255 708.29-3. *Petition for Guardianship.* A proceeding for the appointment of a guardian for a child  
1256 shall be initiated by a petition which shall include the following:

- 1257 (a) The name, birth date, address, and tribal affiliation of the child;
- 1258 (b) The names, birth dates, addresses, and tribal affiliation of the child's parents;
- 1259 (c) A copy of the order adjudicating the child to be in need of protection or services and
- 1260 the order placing the child outside of the parental home; and
- 1261 (d) A statement of the facts and circumstances which the petitioner alleges establish that
- 1262 the conditions for guardianship specified in section 708.29-1(a)-(f) are met.

1263 708.29-4. *Notice of Petition for Guardianship.* Upon filing with the Court and at least seven (7)  
1264 days prior to the plea hearing, the party that filed the guardianship petition shall provide a copy of  
1265 the petition to the other parties by personal service or, if personal service is not possible, by  
1266 certified mail with return receipt requested.

1267 708.29-5. *Presence of the Proposed Guardian.* The proposed guardian shall be present at all  
1268 guardianship hearings. The Court may waive the appearance requirement for the proposed  
1269 guardian if the Court determines there is good cause.

1270 708.29-6. *Plea Hearing for Guardianship.* A plea hearing to determine whether any party wishes  
1271 to contest a petition for guardianship shall take place no sooner than ten (10) days after the filing  
1272 of the petition. At the hearing, the non-petitioning parties shall state whether they wish to contest  
1273 the petition. Before accepting an admission or a plea of no contest to the allegations in the petition,  
1274 the Court shall do all of the following:

- 1275 (a) Address the parties present and determine that the admission or plea of no contest is
- 1276 made voluntarily and with understanding of the nature of the facts alleged in the petition,
- 1277 the nature of the potential outcomes and possible dispositions by the Court and the nature
- 1278 of the legal consequences of that disposition;
- 1279 (b) Establish whether any promises or threats were made to elicit the admission or plea of
- 1280 no contest; and
- 1281 (c) Make inquiries to establish to the satisfaction of the Court that there is a factual basis
- 1282 for the admission or plea of no contest.

1283 708.29-7. If the petition is not contested and if the Court accepts the admission or plea of no  
1284 contest, the Court may immediately proceed to a dispositional hearing unless an adjournment is  
1285 requested.

1286 708.29-8. If the petition is contested or if the Court does not accept the admission or plea of no  
1287 contest, the Court shall set a date for a fact-finding hearing which allows reasonable time for the  
1288 parties to prepare but is not more than sixty (60) days after the plea hearing, unless the Court enters  
1289 an order finding good cause to go outside the time limits.

1290 (a) If the petition is contested, the Court shall order the Department to file with the Court  
1291 a report containing as much information relating to the appointment of a guardian as is  
1292 reasonably ascertainable, including an assessment of the conditions for guardianship  
1293 specified in section 708.29-1(a)-(f). Upon filing with the Court and at least seven (7) days  
1294 prior to the hearing, the Department shall provide the parent, guardian, legal custodian,  
1295 proposed guardian, and any other parties a written copy of the report by first-class mail.

1296 708.29-9. *Fact Finding Hearing for Guardianship.* The Court shall hold a fact-finding hearing  
1297 on the petition at which any party may present evidence relevant to the issue of whether the  
1298 conditions for guardianship have been met. If the Court, at the conclusion of the fact-finding  
1299 hearing, finds by clear and convincing evidence that the conditions for guardianship specified in  
1300 section 708.29-1(a)-(f) have been met, the Court shall immediately proceed to a dispositional  
1301 hearing unless an adjournment is requested.

1302 708.29-10. *Dispositional Hearing for Guardianship.* The Court shall hold a dispositional hearing  
1303 at which any party may present evidence, including expert testimony, relevant to the disposition.  
1304 In determining the appropriate disposition for guardianship, the Court shall use the best interests  
1305 of the child as the prevailing factor to be considered by the Court. In making a decision about the  
1306 appropriate disposition, the Court shall consider any report submitted by the Department and shall  
1307 consider, but not be limited to, all of the following:

- 1308 (a) Whether the person would be a suitable guardian of the child;
- 1309 (b) The willingness and ability of the person to serve as the child's guardian for an extended  
1310 period of time or until the child reaches the age of eighteen (18) years; and
- 1311 (c) The wishes of the child, if the child has the capacity to express their wishes.

1312 708.29-11. *Dispositional Order for Guardianship.* After receiving any evidence relating to the  
1313 disposition, the Court shall enter one of the following dispositions and issue a written decision  
1314 consistent with the Oneida Judiciary Rules of Civil Procedure:

- 1315 (a) A disposition dismissing the petition if the Court determines that appointment of the  
1316 person as the child's guardian is not in the best interests of the child; or
- 1317 (b) A disposition ordering that the proposed guardian be appointed as the child's guardian  
1318 if the Court determines that such an appointment is in the best interests of the child.

1319 708.29-12. If the Court appoints a guardian for the child, the Court may dismiss the dispositional  
1320 order finding that the child is in need of protection or services.

1321

### 1322 **708.30. Revisions of Guardianship Order**

1323 708.30-1. Any person authorized to file a guardianship petition or the Court, on its own motion  
1324 may request a revision in a guardianship order.

1325 708.30-2. The motion or Court proposal shall set forth in detail the nature of the proposed revision,  
1326 shall allege facts sufficient to show that there has been a substantial change in circumstances since  
1327 the last order affecting the guardianship was entered and that the proposed revision would be in  
1328 the best interests of the child and shall allege any other information that affects the advisability of  
1329 the Court's disposition. The motion for the revision shall be filed with the Court and, upon filing,  
1330 a written copy shall be provided to all parties by first-class mail.

- 1331 (a) The Court may order the Department to file with the Court a report containing as much  
1332 information relating to the revision of the guardianship as is reasonably ascertainable. Upon  
1333 filing with the Court and at least seven (7) days prior to the revision hearing, the  
1334 Department shall provide the parties with a written copy of the report by first-class mail.

1335 708.30-3. The Court shall hold a hearing on the matter prior to any revision of the guardianship  
1336 order if the motion or Court proposal indicates that new information is available which affects the  
1337 advisability of the Court's guardianship order, unless the parties file a signed stipulation and the  
1338 Court approves.  
1339

1340 **708.31. Termination of Guardianship**

1341 708.31-1. A guardianship under this law shall continue until any of the following are met,  
1342 whichever occurs earlier:

- 1343 (a) The date on which the child attains eighteen (18) years of age;  
1344 (b) The date on which the child is granted a high school or high school equivalency  
1345 diploma or the date on which the child reaches nineteen (19) years of age, whichever occurs  
1346 first, if the child is a full-time student at a secondary school or its vocational or technical  
1347 equivalent and is reasonably expected to complete the program before reaching nineteen  
1348 (19) years of age; or  
1349 (c) The date on which the Court terminates the guardianship order.

1350 708.31-2. A parent of the child may request that a guardianship order be terminated. The request  
1351 shall allege facts sufficient to show that there has been a substantial change in circumstances since  
1352 the last order affecting the guardianship was entered, that the parent is willing and able to carry  
1353 out the duties of a guardian and that the proposed termination of guardianship would be in the best  
1354 interests of the child. The Court shall hold a hearing on the matter unless the parties file a signed  
1355 stipulation and the Court approves.

- 1356 (a) The Court may order the Department to file with the Court a report containing as much  
1357 information relating to the termination of the guardianship as is reasonably ascertainable,  
1358 including a re-assessment of the conditions for guardianship specified in section 708.29-  
1359 1(a)-(f). Upon filing with the Court and at least seven (7) days prior to the termination  
1360 hearing, the Department shall provide the parties with a written copy of the report by first-  
1361 class mail.

1362 708.31-3. Any person authorized to file a petition for guardianship may request that an appointed  
1363 guardian be removed for cause or the Court may, on its own motion, propose such a removal. The  
1364 request or Court proposal shall allege facts sufficient to show that the guardian is or has been  
1365 neglecting, is or has been refusing, or is or has been unable to discharge the guardian's trust and  
1366 may allege facts relating to any other information that affects the advisability of the Court's  
1367 disposition. The Court shall hold a hearing on the matter.

1368 708.31-4. A guardian appointed under this law may resign at any time if the resignation is accepted  
1369 by the Court.  
1370

1371 **708.32. Suspension or Termination of Parental Rights**

1372 708.32-1. It is the philosophy of the Nation that children deserve a sense of permanency and  
1373 belonging throughout their lives and at the same time they deserve to have knowledge about their  
1374 unique cultural heritage including their tribal customs, history, language, religion and values.

1375 708.32-2. It is the philosophy of the Nation that a united and complete family unit is of the utmost  
1376 value to the community and the individual family members, and that the parent-child relationship  
1377 is of such vital importance that it should be suspended or terminated only as a last resort when all  
1378 efforts have failed to avoid suspension or termination and it is in the best interests of the child  
1379 concerned to proceed with the suspension or termination of parental rights.

1380 708.32-3. *Suspension of Parental Rights.* The suspension of parental rights is the permanent  
1381 suspension of the rights of biological parents to provide for the care, custody, and control of their  
1382 child.

1383 708.32-4. *Termination of Parental Rights.* The termination of parental rights means that all rights,  
1384 powers, privileges, immunities, duties and obligations existing between biological parent and child  
1385 are permanently severed.

1386 708.32-5. The Court may suspend or terminate a parent’s rights on a voluntary or involuntary  
1387 basis.

1388 708.32-6. An order suspending or terminating parental rights permanently severs all legal rights  
1389 and duties between the parent whose parental rights are suspended or terminated and the child.

1390 708.32-7. The suspension or termination of parental rights shall not adversely affect the child’s  
1391 rights and privileges as a member of the Nation, nor as a member of any tribe to which the child  
1392 is entitled to membership, nor shall it affect the child’s enrollment status with the Nation, nor shall  
1393 it interfere with the child’s cultural level and traditional and spiritual growth as a member of the  
1394 Nation.

1395

1396 **708.33. Voluntary Suspension or Termination of Parental Rights**

1397 708.33-1. The Court may suspend or terminate the parental rights of a parent after the parent has  
1398 given his or her consent. When such voluntary consent is given and the Department has submitted  
1399 a court report pursuant to section 708.38, the Court may proceed immediately to a dispositional  
1400 hearing.

1401 708.33-2. The Court may accept a voluntary consent to suspension or termination of parental  
1402 rights only if the parent appears personally at the hearing and gives his or her consent to the  
1403 suspension or termination of his or her parental rights. The Court may accept the consent only after  
1404 the judge has explained the effect of suspension or termination of parental rights and has  
1405 questioned the parent, and/or has permitted counsel who represents any of the parties to question  
1406 the parent, and is satisfied that the consent is informed and voluntary. If the Court finds that it  
1407 would be difficult or impossible for the parent to appear in person at the hearing, the Court may  
1408 allow the parent to appear by telephone or live audiovisual means.

1409 708.33-3. If in any proceeding to suspend or terminate parental rights voluntarily any party has  
1410 reason to doubt the capacity of a parent to give informed and voluntary consent to the suspension  
1411 or termination, he or she shall so inform the Court. The Court shall then inquire into the capacity  
1412 of that parent in any appropriate way and shall make a finding as to whether or not the parent is  
1413 capable of giving informed and voluntary consent to the suspension or termination. If in the  
1414 Court’s discretion a person is found incapable of knowingly and voluntarily consenting to the  
1415 suspension or termination of their parental rights, the Court shall dismiss the voluntary proceedings



1416 without prejudice. That dismissal shall not preclude an involuntary suspension or termination of  
1417 the parent's rights.

1418 708.33-4. A parent who has executed a consent under this section may withdraw the consent for  
1419 any reason at any time prior to the entry of a final order suspending or terminating parental rights.

1420 708.33-5. Any consent given under this section prior to or within ten (10) days after the birth of  
1421 the child is not valid.

1422 708.33-6. The parties, and the placement provider or adoptive resource, may agree to attend  
1423 peacemaking to establish an agreement regarding post-voluntary suspension or termination of  
1424 parental rights contact with a birth parent, birth sibling, or other birth relative of the child.

1425 (a) Any party to a post-voluntary suspension or termination contact agreement or the  
1426 child who is the subject of the proceedings may petition the Court that approved the  
1427 agreement to compel any person who is bound by the agreement to comply with the  
1428 agreement. The petition shall allege facts sufficient to show that a person who is bound  
1429 by the agreement is not in compliance with the agreement and that the petitioner, before  
1430 filing the petition, attempted in good faith to resolve the dispute giving rise to the filing  
1431 of the petition. The petition may also allege facts showing that the noncompliance with  
1432 the agreement is not in the best interests of the child.

1433 (b) After receiving a petition for action regarding a post-voluntary suspension or  
1434 termination contact agreement the Court shall set a date and time for a hearing on the  
1435 petition and shall provide notice of the hearing to all parties to the agreement and may  
1436 reappoint a guardian ad litem for the child.

1437 (c) If the Court finds, after hearing, that any person bound by the agreement is not in  
1438 compliance with the agreement and that the petitioner, before filing the petition,  
1439 attempted in good faith to resolve the dispute giving rise to the filing of the petition,  
1440 the Court shall issue an order requiring the person to comply with the agreement and  
1441 may find a party in contempt.

1442 (d) The Court may not revoke a suspension or termination of parental rights order or  
1443 an order of adoption because an adoptive parent or other custodian of the child or a  
1444 birth parent, birth sibling, or other birth relative of the child fails to comply with a post-  
1445 voluntary suspension or termination contact agreement; however, the parties may  
1446 return to peacemaking to revise the agreement, or the Court may amend an order if it  
1447 finds an amendment to the order is in the best interests of the child.

1448

1449 **708.34. Grounds for Involuntary Suspension or Termination of Parental Rights**

1450 708.34-1. Grounds for suspension or termination of parental rights shall be any of the following:

1451 (a) *Abandonment*. Abandonment occurs when a parent either deserts a child without any  
1452 regard for the child's physical health, safety or welfare and with the intention of wholly  
1453 abandoning the child, or in some instances, fails to provide necessary care for their child.

1454 (1) Abandonment shall be established by proving any of the following:

1455 (A) That the child has been left without provision for the child's care or  
1456 support, the petitioner has investigated the circumstances surrounding the  
1457 matter and for sixty (60) consecutive days the petitioner has been unable to  
1458 find either parent;

1459 (B) That the child has been left by the parent without provision for the  
1460 child's care or support in a place or manner that exposes the child to  
1461 substantial risk of great bodily harm or death;

- 1462 (C) That a court of competent jurisdiction has found any of the  
1463 following:
- 1464 (i) That a child has been abandoned under Wis. Stat. 48.13 (2) or  
1465 under a law of any other state or a federal law that is comparable to  
1466 the state law;
- 1467 (ii) That the child was abandoned when the child was under one (1)  
1468 year of age or has found that the parent abandoned the child when  
1469 the child was under one (1) year of age in violation of Wis. Stat.  
1470 948.20 or in violation of the law of any other state or federal law, if  
1471 that violation would be a violation of abandonment of a child under  
1472 Wis. Stat. 948.20 if committed in this state;
- 1473 (D) That the child has been placed, or continued in a placement, outside the  
1474 parent's home by a Court order containing the required notice and the parent  
1475 has failed to visit or communicate with the child for a period of three (3)  
1476 months or longer; or
- 1477 (E) The child has been left by the parent with any person, the parent knows  
1478 or could discover the whereabouts of the child and the parent has failed to  
1479 visit or communicate with the child for a period of six (6) consecutive  
1480 months or longer.
- 1481 (2) Incidental contact between parent and child shall not preclude the Court from  
1482 finding that the parent has failed to visit or communicate with the child. The time  
1483 periods under sections 708.34-1(a)(1)(D) and 708.34-1(a)(1)(E) shall not include  
1484 any periods during which the parent has been prohibited by Court order from  
1485 visiting or communicating with the child.
- 1486 (3) Abandonment is not established under sections 708.34-1(a)(1)(D) and 708.34-  
1487 1(a)(1)(E) if the parent proves all of the following by clear and convincing  
1488 evidence:
- 1489 (A) That the parent had good cause for having failed to visit with the child  
1490 throughout the three (3) or six (6) month time period alleged in the petition.
- 1491 (B) That the parent had good cause for having failed to communicate with  
1492 the child throughout the three (3) or six (6) month time period alleged in the  
1493 petition.
- 1494 (C) If the parent proves good cause under section 708.34-1(a)(3)(B),  
1495 including good cause based on evidence that the child's age or condition  
1496 would have rendered any communication with the child meaningless, that  
1497 one (1) of the following occurred:
- 1498 (i) The parent communicated about the child with the person or  
1499 persons who had physical custody of the child during the three (3) or  
1500 six (6) month time period alleged in the petition, whichever is  
1501 applicable, or, with the Department during the three (3) month time  
1502 period alleged in the petition.
- 1503 (ii) The parent had good cause for having failed to communicate about  
1504 the child with the person or persons who had physical custody of the  
1505 child or the Department throughout the three (3) or six (6) month time  
1506 period alleged in the petition.

1507 (b) *Relinquishment*. Relinquishment occurs when a parent gives up or abandons their child  
1508 and all rights to their child. Relinquishment shall be established by proving that a court of  
1509 competent jurisdiction has found that the parent has relinquished custody of the child when  
1510 the child was seventy-two (72) hours old or younger.

1511 (c) *Continuing Need of Protection or Services*. Continuing need of protection or services  
1512 shall be established by proving any of the following:

1513 (1) That the child has been found to be in need of protection or services and placed,  
1514 or continued in a placement, outside his or her home pursuant to one (1) or more  
1515 dispositional orders containing the notice required by section 708.22-8;

1516 (2) That the Department has made a reasonable effort to provide the services  
1517 ordered by the Court;

1518 (3) That the child has been outside the home for a cumulative total period of six (6)  
1519 months or longer pursuant to such orders; and that the parent has failed to meet the  
1520 conditions established for the safe return of the child to the home and, if the child  
1521 has been placed outside the home for less than fifteen (15) of the most recent  
1522 twenty-two (22) months, that there is a substantial likelihood that the parent will  
1523 not meet these conditions as of the date on which the child will have been placed  
1524 outside the home for fifteen (15) of the most recent twenty-two (22) months, not  
1525 including any period during which the child was a runaway from the out-of-home  
1526 placement or was residing in a trial reunification home.

1527 (d) *Continuing Parental Disability*. Continuing parental disability shall be established by  
1528 proving that:

1529 (1) The parent is presently, and for a cumulative total period of at least two (2)  
1530 years within the five (5) years immediately prior to the filing of the petition has  
1531 been, an inpatient at one (1) or more hospitals as defined in either the Nation’s laws  
1532 or state law;

1533 (2) The condition of the parent is likely to continue indefinitely; and

1534 (3) The child is not being provided with adequate care by a relative who has legal  
1535 custody of the child, or by a parent or a guardian.

1536 (e) *Continuing Denial of Periods of Physical Placement or Visitation*. Continuing denial  
1537 of periods of physical placement or visitation shall be established by proving all of the  
1538 following:

1539 (1) The parent has been denied periods of physical placement by Court order in an  
1540 action affecting the family or has been denied visitation under a dispositional order  
1541 containing the notice required by section 708.22-8, Wis. Stat. 48.356(2), or Wis.  
1542 Stat. 938.356 (2); and

1543 (2) A Court order has denied the parent periods of physical placement or visitation  
1544 for at least one (1) year.

1545 (f) *Child Abuse*. Child abuse shall be established by proving that the parent has committed  
1546 child abuse against the child who is the subject of the petition and proving either of the  
1547 following:

1548 (1) That the parent has caused death or injury to a child resulting in a felony  
1549 conviction; or

1550 (2) That a child has previously been removed from the parent's home pursuant to a  
1551 dispositional order after an adjudication that the child is in need of protection or  
1552 services.

1553 (g) *Failure to Assume Parental Responsibility.* Failure to assume parental responsibility  
1554 shall be established by proving that the parent or the person(s) who may be the parent of  
1555 the child have not had a substantial parental relationship with the child.

1556 (1) In evaluating whether the person has had a substantial parental relationship with  
1557 the child, the Court may consider such factors, including, but not limited to, the  
1558 following:

1559 (A) Whether the person has expressed concern for or interest in the support,  
1560 care or well-being of the child;

1561 (B) Whether the person has neglected or refused to provide care or support for  
1562 the child; and

1563 (C) Whether, with respect to a person who is or may be the father of the child,  
1564 the person has expressed concern for or interest in the support, care or well-  
1565 being of the mother during her pregnancy.

1566 (h) *Incestuous Parenthood.* Incestuous parenthood shall be established by proving that the  
1567 person whose parental rights are sought to be terminated is also related, either by blood or  
1568 adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

1569 (i) *Homicide or Solicitation to Commit Homicide of a Parent.* Homicide or solicitation to  
1570 commit homicide of a parent, which shall be established by proving that a parent of the  
1571 child has been a victim of first-degree intentional homicide, first-degree reckless homicide  
1572 or 2nd-degree intentional homicide or a crime under federal law or the law of any other  
1573 state that is comparable to any of those crimes, or has been the intended victim of a  
1574 solicitation to commit first-degree intentional homicide or a crime under federal law or the  
1575 law of any other state that is comparable to that crime, and that the person whose parental  
1576 rights are sought to be terminated has been convicted of that intentional or reckless  
1577 homicide, solicitation or crime as evidenced by a final judgment of conviction.

1578 (j) *Parenthood as a Result of Sexual Assault.*

1579 (1) Parenthood as a result of sexual assault shall be established by proving that the  
1580 child was conceived as a result of one of the following:

1581 (A) First degree sexual assault [under Wis. Stats. 940.225(1)];

1582 (B) Second degree sexual assault [under Wis. Stat. 940.225 (2)];

1583 (C) Third degree sexual assault [under Wis. Stat. 940.225(3)];

1584 (D) First degree sexual assault of a child [under Wis. Stat. 948.02(1)];

1585 (E) Second degree sexual assault of a child [under Wis. Stat. 948.02 (2)];

1586 (F) Engaging in repeated acts of sexual assault of the same child [under Wis.  
1587 Stat. 948.025]; or

1588 (G) Sexual assault of a child placed in substitute care [under Wis. Stat.  
1589 948.085].

1590 (2) Conception as a result of sexual assault may be proved by a final judgment of  
1591 conviction or other evidence produced at a suspension or termination of parental  
1592 rights fact-finding hearing indicating that the person who may be the parent of the  
1593 child committed, during a possible time of conception, a sexual assault as specified  
1594 in this section against the other parent of the child.

1595 (3) If the conviction or other evidence indicates that the child was conceived as a  
1596 result of a sexual assault in violation of Wis. Stat. 948.02 (1) or (2) or 948.085, the  
1597 parent of the child may be heard on his or her desire for the suspension or  
1598 termination of the other parent's parental rights.

- 1599 (k) *Commission of a Felony Against a Child.*  
1600 (1) Commission of a serious felony against the child, shall be established by  
1601 proving that the child was the victim of a serious felony and parent was convicted  
1602 of that serious felony.  
1603 (2) In this subsection, “serious felony” means any of the following:  
1604 (A) The commission of, the aiding or abetting of, or the solicitation,  
1605 conspiracy or attempt to commit, a violation of any of the following:  
1606 (i) First degree intentional homicide [under Wis. Stat. 940.01];  
1607 (ii) First degree reckless homicide [under Wis. Stat. 940.02];  
1608 (iii) Felony murder [under Wis. Stat. 940.03];  
1609 (iv) Second-degree intentional homicide [under Wis. Stat. 940.05]; or  
1610 (v) A violation of the law of any other state or federal law, if that  
1611 violation would be a violation of the above-mentioned felonies if  
1612 committed in Wisconsin.  
1613 (B) The commission of a violation of any of the following:  
1614 (i) Battery, substantial battery, aggravated battery [under Wis. Stat.  
1615 940.19 (3), 1708 stats., or Wis. Stats. 940.19 (2), (4) or (5)];  
1616 (ii) Sexual assault [under Wis. Stat. 940.225 (1) or (2)];  
1617 (iii) Sexual assault of a child [under Wis. Stat. 948.02 (1) or (2)];  
1618 (iv) Engaging in repeated acts of sexual assault of the same child [under  
1619 Wis. Stat. 948.025];  
1620 (v) Physical abuse of a child [under Wis. Stats. 948.03 (2) (a), (3) (a),  
1621 or (5) (a) 1., 2., or 3.];  
1622 (vi) Sexual exploitation of a child [under Wis. Stat. 948.05];  
1623 (vii) Trafficking of a child [under Wis. Stat. 948.051];  
1624 (viii) Incest with a child [under Wis. Stat. 948.06];  
1625 (ix) Soliciting a child for prostitution [under Wis. Stat. 948.08];  
1626 (x), Human trafficking [under Wis. Stat. 940.302 (2) if Wis. Stat.  
1627 940.302 (2) (a) 1. b. applies]; or  
1628 (xi) A violation of the law of any other state or federal law, if that  
1629 violation would be a violation listed under the above listed felonies if  
1630 committed in Wisconsin.  
1631 (C) The commission of a violation of neglecting a child under Wis. Stat.  
1632 948.21 or a violation of the law of any other state or federal law, if that  
1633 violation would be a violation of Wis. Stat. 948.21 if committed in this state,  
1634 that resulted in the death of the victim.  
1635 (l) *Prior Involuntary Suspension or Termination of Parental Rights of Another Child.*  
1636 Prior involuntary suspension or termination of parental rights to another child shall be  
1637 established by proving all of the following:  
1638 (1) That the child who is the subject of the petition is in need of protection or  
1639 services under section 708.5-2(b), (d), or (k); or that the child who is the subject of  
1640 the petition was born after the filing of a petition under this subsection whose  
1641 subject is a sibling of the child; and  
1642 (2) That, within three (3) years prior to the date the Court determined the child to  
1643 be in need of protection or services as specified in section 708.34-1 (l) (1) or, in the  
1644 case of a child born after the filing of a petition as specified in section 708.34-1 (l)

1645 (1), within three (3) years prior to the date of birth of the child, a Court has ordered  
1646 the suspension or termination of parental rights with respect to another child of the  
1647 person whose parental rights are sought to be suspended or terminated on one or  
1648 more of the grounds specified in this section.  
1649

1650 **708.35. Petition for Suspension or Termination of Parental Rights**

1651 708.35-1. *Who May File a Petition for Suspension or Termination of Parental Rights.* A petition  
1652 for the suspension or termination of parental rights shall be filed by the:

- 1653 (a) Nation’s Child Welfare attorney;  
1654 (b) Department; or  
1655 (c) child’s parent in the case of a step-parent adoption.

1656 708.35-2. A petition for the suspension or termination of parental rights shall be filed when the  
1657 child has been placed outside of his or her home for fifteen (15) of the most recent twenty-two (22)  
1658 months or if grounds exist for suspension or termination of parental rights unless any of the  
1659 following applies:

- 1660 (a) The child is being cared for by a fit and willing relative of the child;  
1661 (b) The child’s permanency plan indicates and provides documentation that suspension or  
1662 termination of parental rights to the child is not in the best interests of the child;  
1663 (c) The Department, if required by a dispositional order, failed to make reasonable efforts  
1664 to make it possible for the child to return safely to his or her home or did not provide or  
1665 refer services to the family of the child for the safe return of the child to his or her home  
1666 that were consistent with the permanency plan; or  
1667 (d) Grounds for an involuntary suspension or termination of parental rights do not exist.

1668 708.35-3. A petition for the suspension or termination of parental rights shall include the following  
1669 information:

- 1670 (a) The name, birth date, address, and tribal affiliation of the child;  
1671 (b) The names, birth dates, addresses, and tribal affiliation of the child’s parents;  
1672 (c) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit; and  
1673 (d) One (1) of the following:  
1674 (1) A statement that consent will be given to voluntary suspension or termination  
1675 of parental rights as provided in section 708.33; or  
1676 (2) A statement of the grounds for involuntary suspension or termination of  
1677 parental rights under section 708.34 and a statement of the facts and circumstances  
1678 which the petitioner alleges establish these grounds.

1679 708.35-4. *Temporary Order and Injunction Prohibiting Contact.* If the petition includes a  
1680 statement of the grounds for involuntary suspension or termination of parental rights, the petitioner  
1681 may, at the time the petition is filed, also petition the Court for a temporary order and an injunction  
1682 prohibiting the person whose parental rights are sought to be suspended or terminated from visiting  
1683 or contacting the child who is the subject of the petition. Any petition under this section shall  
1684 allege facts sufficient to show that prohibiting visitation or contact would be in the best interests  
1685 of the child.

- 1686 (a) The Court may grant an injunction prohibiting the respondent from visiting or  
1687 contacting the child if the Court determines that the prohibition would be in the best  
1688 interests of the child. An injunction under this subsection is effective according to its terms  
1689 but may not remain in effect beyond the date the Court dismisses the petition for suspension

1690 or termination of parental rights or issues an order suspending or terminating parental  
1691 rights.

1692 708.35-5. Upon filing with the Court and at least seven (7) days prior to the initial hearing, the  
1693 petitioner shall serve the summons and petition upon the following persons by personal service or,  
1694 if personal service is not possible, by certified mail, return receipt requested:

1695 (a) The parent(s) of the child, including an alleged father if paternity has not been  
1696 established; and

1697 (b) The child’s foster parent, guardian or legal custodian, if applicable. If the address has  
1698 been marked confidential by the Court, the Court shall send a copy of the summons and  
1699 petition to the home in which the child is placed via first-class U.S. mail.

1700

1701 **708.36. Initial Hearing on the Suspension or Termination of Parental Rights Petition**

1702 708.36-1. The initial hearing on the petition to suspend or terminate parental rights shall be held  
1703 within forty-five (45) days after the petition is filed. At the hearing the Court shall determine  
1704 whether any party wishes to contest the petition and inform the parties of their rights.

1705 708.36-2. If the petition is contested, the Court shall set a date for a fact-finding hearing to be held  
1706 within sixty (60) days after the hearing on the petition, unless the Court enters an order finding  
1707 good cause to go outside the time limits.

1708 708.36-3. If the petition is not contested, the Court shall hear testimony in support of the  
1709 allegations in the petition and may proceed immediately with a dispositional hearing if the parties  
1710 agree. Before accepting an admission of the alleged facts in a petition, the Court shall:

1711 (a) Address the parties present and determine that the admission is made voluntarily with  
1712 understanding of the nature of the acts alleged in the petition and the potential outcomes  
1713 and possible dispositions by the Court;

1714 (b) Establish whether any promises or threats were made to elicit an admission; and

1715 (c) Make such inquiries to establish a factual basis for the admission.

1716

1717 **708.37. Fact Finding Hearing for a Suspension or Termination of Parental Rights**

1718 708.37-1. The fact-finding hearing is a hearing conducted by the Court to determine whether there  
1719 is clear and convincing evidence to establish that grounds exist for the suspension or termination  
1720 of parental rights.

1721 708.37-2. The fact-finding hearing shall be conducted according to the Oneida Judiciary Rules of  
1722 Civil Procedure except that the Court may exclude the child from the hearing.

1723 708.37-3. If grounds for the suspension or termination of parental rights are found by the Court,  
1724 the Court shall find the parent(s) unfit. A finding of unfitness shall not prevent a dismissal of a  
1725 suspension or termination of parental rights petition. Unless the parties agree to proceed  
1726 immediately with the dispositional hearing and the Court accepts, the Court shall set a date for a  
1727 dispositional hearing no later than forty-five (45) days after the fact-finding hearing, unless the  
1728 Court enters an order finding good cause to go outside the time limits.

1729

1730 **708.38. Department’s Suspension or Termination of Parental Rights Report**

1731 708.38-1. In any case that the Department is a party, the Department shall submit a written report  
1732 to the Court prior to any dispositional hearing, with a copy to the parties by first-class mail no later  
1733 than seven (7) days prior to the hearing, which shall contain all of the following:

1734 (a) The social history of the child and family, including any relevant medical conditions;

- 1735 (b) A statement of the facts supporting the need for suspension or termination of parental  
1736 rights;
- 1737 (c) If the child has been previously adjudicated to be in need of protection or services, a  
1738 statement of the steps the Department has taken to remedy the conditions responsible for  
1739 Court intervention and the parent's response to and cooperation with these services. If the  
1740 child has been removed from the home, the report shall also include a statement of the  
1741 reasons why the child cannot be returned safely to the family and the steps the Department  
1742 has taken to effect this return;
- 1743 (d) A statement applying the standards and factors identified in sections 708.39-2 and  
1744 708.39-3 regarding the case before the Court; and
- 1745 (e) If the report recommends that the parental rights of both of the child's parents or the  
1746 child's only living or known parent are to be suspended or terminated, the report shall  
1747 contain a statement of the likelihood that the child will be adopted. This statement shall  
1748 include a presentation of the factors that might prevent adoption, those that may facilitate  
1749 adoption, and the Department shall be responsible for accomplishing the adoption.
- 1750 (1) If the Department determines that it is unlikely that the child will be adopted,  
1751 or if adoption would not be in the best interests of the child, the report shall include  
1752 a plan for placing the child in a permanent family setting. The plan shall include a  
1753 recommendation for the appointment of a guardian for the child.
- 1754 708.38-2. The Court may order a report as specified under this section to be prepared by the  
1755 Department in those cases where the Department is not a party.

1756  
1757 **708.39. Standards and Factors**

- 1758 708.39-1. In making a decision about the appropriate disposition for suspension or termination of  
1759 parental rights, the Court shall consider the standards and factors enumerated in this section and  
1760 any report submitted by the Department.
- 1761 708.39-2. The best interests of the child shall be the prevailing standard considered by the Court  
1762 in determining the disposition of all suspension and termination of parental rights proceedings.
- 1763 708.39-3. In considering the best interests of the child the Court shall also consider, but not be  
1764 limited to, the following factors:
- 1765 (a) The likelihood of the child's adoption after suspension or termination;
- 1766 (b) Whether the child will be raised in an environment that is respectful of the child's  
1767 race(s), culture(s), and heritage(s);
- 1768 (c) The age and health of the child, both at the time of the disposition and, if applicable, at  
1769 the time the child was removed from the home;
- 1770 (d) Whether the child has substantial relationships with the parent or other family  
1771 members, and whether it would be harmful to the child to sever these relationships;
- 1772 (e) The wishes of the child, if the child has the capacity to express their wishes;
- 1773 (f) The duration of the separation of the parent from the child; and
- 1774 (g) Whether the child will be able to enter into a more stable and permanent family  
1775 relationship as a result of the suspension or termination, taking into account the conditions  
1776 of the child's current placement, the likelihood of future placements and the results of prior  
1777 placements.
- 1778



1779 **708.40. Dispositional Hearings for Suspension or Termination of Parental Rights**

1780 708.40-1. Any party may present evidence relevant to the issue of disposition, including expert  
1781 testimony, and may make alternative dispositional recommendations to the Court. After receiving  
1782 any evidence related to the disposition, the Court shall enter a disposition and issue a written  
1783 decision consistent with the Oneida Judiciary Rules of Civil Procedure.

1784 (a) The Court shall give the foster parent or other legal custodian a right to be heard at the  
1785 dispositional hearing by permitting the foster parent or other legal custodian to make a  
1786 written or oral statement during the dispositional hearing, or to submit a written statement  
1787 prior to disposition, relevant to the issue of disposition.

1788 708.40-2. The Court shall enter one (1) of the following dispositions:

1789 (a) The Court may dismiss the petition if it finds the evidence does not warrant the  
1790 suspension or termination of parental rights or if the Court finds that a parent is attempting  
1791 to voluntarily suspend or terminate their parental rights for the sole purpose of avoiding a  
1792 child support obligation; or

1793 (b) The Court may enter an order suspending or terminating the parental rights of one or  
1794 both parents.

1795 708.40-3. If the rights of both parents, or of the only living parent, are suspended or terminated  
1796 and if a guardian has not been appointed, the Court shall do one (1) of the following while adhering  
1797 to the placement preferences pursuant to section 708.11-1 when possible:

1798 (a) Transfer guardianship and custody of the child pending adoptive placement to:

1799 (1) A tribal or county department authorized to accept guardianship;

1800 (2) A child welfare agency licensed to accept guardianship;

1801 (3) The State of Wisconsin upon written confirmation from the State that they are  
1802 willing to accept guardianship;

1803 (4) A relative with whom the child resides, if the relative has filed a petition to  
1804 adopt the child or if the relative is a kinship care relative or is receiving payments  
1805 for providing care and maintenance for the child; or

1806 (5) An individual who has been appointed guardian of the child by a court of a  
1807 competent jurisdiction; or

1808 (b) Appoint a guardian and transfer guardianship and custody of the child to the guardian.

1809 708.40-4. The written Court order shall include the following:

1810 (a) If the Court dismisses the petition, the order shall contain the reasons for dismissal; or

1811 (b) If the disposition is for the suspension or termination of parental rights, the order shall  
1812 contain all of the following:

1813 (1) The identity of any agency, department, or individual that has received  
1814 guardianship of the child;

1815 (2) If an agency or department receives guardianship and custody of the child, an  
1816 order ordering the child into the placement and care responsibility of the agency or  
1817 department and assigning the agency or department primary responsibility for  
1818 providing services to the child; and

1819 (3) A finding that the suspension or termination of parental rights is in the best  
1820 interests of the child.

1821 (c) If the disposition is for the suspension or termination of parental rights, the order may  
1822 contain all of the following:

1823 (1) A termination of the right of the parent to have contact with the minor child  
1824 including contact in person, by mail, by telephone, or through third parties;

- 1825 (2) Order restraining a parent from contacting the minor child, the child’s foster  
1826 parent, the child’s adoptive parent and/or the social services agency or agencies  
1827 possessing information regarding the child;  
1828 (3) Order that the biological parents’ obligation to pay child support, except for  
1829 arrearages, is hereby terminated; and  
1830 (4) Order that any prior court order for custody, visitation, or contact, with the  
1831 minor child is hereby terminated.

1832 708.40-5. The Court shall provide a copy of the order suspending or terminating parental rights  
1833 to the child's parent, guardian, and legal custodian; the other parties to the action; and the current  
1834 or future foster parents for the purpose of pursuing adoption.

1835 708.40-6. If an order is entered involuntarily suspending or terminating parental rights, the Court  
1836 shall orally inform the parent(s) who appear in Court or place in the written order the ground for  
1837 suspension or termination of their parental rights specified in section 708.34-1(1), which provides  
1838 that a prior involuntary suspension or termination of parental rights, under certain circumstances,  
1839 is a ground for the suspension or termination of parental rights for another child.

1840 708.40-7. If the Court suspends or terminates parental rights, the Department, or the Court if the  
1841 Department is not a party to the action, may forward the following information to the State of  
1842 Wisconsin:

- 1843 (a) The name, date of birth, and tribal affiliation of the child whose birth parent's rights  
1844 have been suspended or terminated;  
1845 (b) The names and current addresses of the child's birth parents, guardian and legal  
1846 custodian; and  
1847 (c) Any medical or genetic information received by the Department.

1848 708.40-8. If only one (1) parent consents to a voluntary suspension or termination of parental  
1849 rights or if the grounds for involuntary suspension or termination of parental rights are found to  
1850 exist as to only one (1) parent, the rights of only that parent may be suspended or terminated  
1851 without affecting the rights of the other parent if the Court finds such suspension or termination to  
1852 be in the best interest of the child.

1853  
1854 **708.41. Adoption**

1855 708.41-1. Adoptions under this law shall take the form of customary adoptions when the Court has  
1856 granted a petition to suspend parental rights. When the Court grants a petition to terminate parental  
1857 rights the adoption shall be closed.

1858 708.41-2. *Customary Adoptions.* The purpose of customary adoption is not to permanently deprive  
1859 the adopted child of connections to, or knowledge of, the adopted child’s biological family, but to  
1860 provide the adopted child a permanent home. The following shall apply to all customary adoptions  
1861 and shall be contained in all adoptive orders and decrees:

- 1862 (a) The relationship between an adoptive parent and adopted child shall have all the same  
1863 rights, responsibilities, and other legal consequences as the relationship between a  
1864 biological child and parent;  
1865 (b) The adopted child shall have an absolute right, absent a convincing and compelling  
1866 reason to the contrary, to information and knowledge about his or her biological family and  
1867 his or her Oneida heritage, if applicable. The adopted child may obtain adoption  
1868 information from files maintained by the Court or Department;  
1869 (c) Adoption shall not prevent an adopted child from inheriting from a biological parent in  
1870 the same manner as any other biological child. The biological parents shall not be entitled

1871 to inherit from an adopted child in the same manner as parents would otherwise be entitled  
1872 to inherit. An adopted child shall be entitled to inherit from adoptive parents, and vice  
1873 versa, in the same manner as if biological parents and child;

1874 (d) Although parental rights have been suspended, the biological parent may retain certain  
1875 residual parental rights when appropriate as determined by agreement between the adoptive  
1876 parent and biological parent made through peacemaking, or by order of the Court. Such  
1877 residual parental rights may include:

- 1878 (1) The right to communication;
- 1879 (2) The right to visitation;
- 1880 (3) The right or obligation to contribute to support or education;
- 1881 (4) The right to be consulted regarding the adopted child’s religious affiliation,  
1882 major medical treatment, marriage, or other matters of major importance in the  
1883 child’s life; and/or
- 1884 (5) Such other residual rights the Court may deem appropriate, considering the  
1885 circumstances.

1886 (e) Adoption does not extinguish the relationships between the adopted child and the  
1887 adopted child’s extended biological family. The adopted child’s extended biological family  
1888 retains the right to reasonable communication and visitation with the adopted child, subject  
1889 to reasonable controls of the adoptive parents.

1890 708.41-3. *Closed Adoptions*. Closed adoptions occur in situations where an adopted child needs a  
1891 permanent home and it is necessary to sever all ties between the adopted child and his or her  
1892 biological family. The following shall apply to all closed adoptions:

- 1893 (a) The relationship between an adoptive parent and adopted child shall have all the same  
1894 rights, responsibilities, and other legal consequences as the relationship between a  
1895 biological child and parent;
- 1896 (b) The relationship between the adopted child and all persons whose relationship to the  
1897 adopted child is derived through the biological parents shall be completely altered and all  
1898 the rights, duties, and other legal consequences of those relationships shall cease to exist;
- 1899 (c) The adopted child’s biological family shall not be entitled to or have access to any  
1900 information regarding said child;
- 1901 (d) The adopted child shall be entitled to information and knowledge regarding his or her  
1902 culture and heritage; and
- 1903 (e) The adopted child shall be entitled to information regarding his or her biological family  
1904 upon reaching the age of majority. The adopted child may obtain adoption information  
1905 from files maintained by the Court or Department.

1906  
1907 **708.42. Adoption Criteria and Eligibility**

1908 708.42-1. *Criteria for Adoption*. Any child who is subject to this law may be adopted if any of the  
1909 following criteria are met:

- 1910 (a) Both of the child's parents are deceased;
- 1911 (b) The parental rights of both of the child's parents with respect to the child have been  
1912 suspended or terminated;
- 1913 (c) The parental rights of one of the child's parents with respect to the child have been  
1914 suspended or terminated and the child's other parent is deceased; or
- 1915 (d) The person filing the petition for adoption is the spouse of the child's parent and either  
1916 of the following applies:

- 1917 (1) The child's other parent is deceased; or  
1918 (2) The parental rights of the child's other parent with respect to the child have been  
1919 suspended or terminated.

1920 708.42-2. *Eligibility*. The following persons are eligible to adopt a child who falls under the  
1921 jurisdiction of this law pending the successful clearing of a background check:

- 1922 (a) A married adult couple;  
1923 (b) Either spouse if the other spouse is a parent of the child; or  
1924 (c) An unmarried adult.

1925 708.42-3. If the person proposing to adopt the child cannot successfully clear a background check,  
1926 and any convictions the person may possess have not been pardoned, forgiven, reversed, set aside  
1927 or vacated, the Court may still deem the person eligible to adopt if the Court determines by clear  
1928 and convincing evidence that the adoption would be in the best interests of the child.

1929  
1930 **708.43. Adoption Procedure**

1931 708.43-1. *Petition for Adoption*. A person proposing to adopt, or the Department, shall initiate a  
1932 proceeding for the adoption of a child by filing a petition with the Court. The petition shall include  
1933 the following information:

- 1934 (a) The name, birth date, address, and tribal affiliation of the petitioner;  
1935 (b) The name, birth date, address, and tribal affiliation of the child;  
1936 (c) The names, birth dates, addresses, and tribal affiliation of the child's biological parents;  
1937 (d) The name by which the child shall be known if the petition is granted;  
1938 (e) The relationship of the petitioner to the child; and  
1939 (f) A copy of the order suspending or terminating parental rights of the child's biological  
1940 parent(s).

1941 708.43-2. Upon the filing of a petition for adoption, the Court shall schedule a hearing within  
1942 sixty (60) days.

1943 708.43-3. When a petition for adoption is filed, the Court shall order an investigation to determine  
1944 whether the child is a proper subject for adoption and whether the petitioner's home is suitable for  
1945 the child.

- 1946 (a) The Court shall order one (1) of the following to conduct the investigation:  
1947 (1) If the Department, or another agency or department, has guardianship of the  
1948 child, the agency or department that has guardianship; or  
1949 (2) If no agency or department has guardianship of the child and a relative,  
1950 including a stepparent, has filed the petition for adoption, the Department.  
1951 (b) If the Court orders the Department to conduct the investigation, the Department may  
1952 contract with a third-party agency to conduct the investigation.

1953 708.43-4. The Department or other agency or department making the investigation shall file its  
1954 report with the Court prior to the hearing on the petition and shall provide a copy of the report to  
1955 the parties by first-class mail at least seven (7) days prior to the hearing.

1956 708.43-5. If the report of the investigation is unfavorable or if it discloses a situation which, in the  
1957 opinion of the Court, raises a serious question as to the suitability of the proposed adoption, the  
1958 Court may appoint a guardian ad litem for the child whose adoption is proposed.

1959 708.43-6. During the hearing the parties may agree to attend peacemaking to establish an  
1960 agreement regarding residual rights of a birth parent, birth sibling, or other birth relative of the  
1961 child.

1962 708.43-7. If after the hearing and a study of the report required by section 708.43-3 the Court is  
1963 satisfied that the adoption is in the best interests of the child, the Court shall make an order granting  
1964 the adoption. The order may change the name of the child to that requested by petitioners.

1965 708.43-8. After the order of adoption is entered the relation of parent and child and all the rights,  
1966 duties and other legal consequences of the natural relation of child and parent thereafter exists  
1967 between the adopted child and the adoptive parents. The relationship between the adopted child  
1968 and biological parents shall be completely altered and all the rights, duties, and other legal  
1969 consequences of those relationships shall cease to exist, excluding any residual rights granted to  
1970 the biological parents and extended family through customary adoption. If the biological parent  
1971 is the spouse of the adoptive parent, the relationship shall be completely altered and those rights,  
1972 duties, and other legal consequences shall cease to exist only with respect to the biological parent  
1973 who is not the spouse of the adoptive parent.

1974 708.43-9. Within five (5) days after entry of the order granting a closed adoption, the Department  
1975 shall mail a copy of the order to the State of Wisconsin Bureau of Vital Statistics and furnish any  
1976 additional data needed for the issuance of a new birth certificate.

1977

1978 **708.44. Non-Compliance with a Residual Rights Agreement**

1979 708.44-1. Any party to a residual rights agreement or the child who is the subject of the  
1980 proceedings may petition the Court that approved the agreement to compel any person who is  
1981 bound by the agreement to comply with the agreement. The petition shall allege facts sufficient to  
1982 show that a person who is bound by the agreement is not in compliance with the agreement and  
1983 that the petitioner, before filing the petition, attempted in good faith to resolve the dispute giving  
1984 rise to the filing of the petition. The petition may also allege facts showing that the noncompliance  
1985 with the agreement is not in the best interests of the child.

1986 708.44-2. After receiving a petition for action regarding a residual rights contact agreement the  
1987 Court shall set a date and time for a hearing on the petition and shall provide notice of the hearing  
1988 to all parties to the agreement and may reappoint a guardian ad litem for the child.

1989 708.44-3. If the Court finds, after hearing, that any person bound by the agreement is not in  
1990 compliance with the agreement and that the petitioner, before filing the petition, attempted in good  
1991 faith to resolve the dispute giving rise to the filing of the petition, the Court shall issue an order  
1992 requiring the person to comply with the agreement and may find a party in contempt.

1993 708.44-4. The Court may not revoke a suspension or termination of parental rights order or an  
1994 order of customary adoption because an adoptive parent or other custodian of the child or a birth  
1995 parent, birth sibling, or other birth relative of the child fails to comply with a residual rights  
1996 agreement; however, the parties may return to peacemaking to revise the agreement, or the Court  
1997 may amend an order if it finds an amendment to the order is in the best interests of the child.

1998

1999 **708.45. Peacemaking and Mediation**

2000 708.45-1. The Court may refer the parties to peacemaking or mediation if the parties agree to  
2001 attend peacemaking or mediation. The Court shall not refer the parties to peacemaking or  
2002 mediation if attending the session will cause undue hardship or would endanger the health or safety  
2003 of a party.

2004 708.45-2. When the parties attend peacemaking or mediation based on a referral from the Court,  
2005 the Court shall enter an order finding good cause to suspend the time limits established under this  
2006 law.

2007

2008 **708.46. Appeals**

2009 708.46-1. Appeals of all orders issued under this law shall be heard by the Nation’s Court of  
2010 Appeals in accordance with the Rules of Appellate Procedure.

2011  
2012 **708.47. Liability**

2013 708.47-1. No liability shall attach to the Department, Indian Child Welfare Worker, the Nation’s  
2014 Child Welfare Attorney or any person acting under their authority for statements, acts or omissions  
2015 made in good faith while in the course of activities taken under this law.

2016  
2017 *End.*

---

2018 Adopted – BC-07-26-17-J

2019 Amended – BC-\_\_-\_\_-\_\_-\_\_