



LEGISLATIVE OPERATING COMMITTEE MEETING AGENDA REVISED

Business Committee Conference Room - 2nd Floor Norbert Hill Center
July 6, 2022
9:00 a.m.

- I. Call to Order and Approval of the Agenda**
- II. Minutes to be Approved**
 1. June 15, 2022 LOC Meeting Minutes (pg. 2)
- III. Current Business**
 1. Healing to Wellness Court Law (pg. 4)
 2. Children's Code Amendments (pg. 28)
- IV. New Submissions**
 1. Eviction and Termination Law Amendments (pg. 85)
 2. Emergency Management Law Amendments (pg. 94)
- V. Additions**
 1. Elder Assistance Program Law (pg. 102)
 2. Oneida Nation Assistance Fund Application Submission Period and Disbursement Timeframe for 2022 Resolution (pg. 127)
 3. Election Law Emergency Amendments (pg. 131)
- VI. Administrative Updates**
- VII. Executive Session**
- VIII. Recess/Adjourn**



LEGISLATIVE OPERATING COMMITTEE MEETING MINUTES
Oneida Business Committee Conference Room-2nd Floor Norbert Hill Center
June 15, 2022
9:00 a.m.

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

Others Present: Clorissa N. Santiago, Grace Elliot, Carolyn Salutz, Brooke Doxtator, Lawrence Barton, Amy Spears (Microsoft Teams), Justin Nishimoto (Microsoft Teams), Joy Salzwedel (Microsoft Teams), Michelle Schneider (Microsoft Teams), Kristal Hill (Microsoft Teams), Rhiannon Metoxen (Microsoft Teams), Rae Skenandore (Microsoft Teams), Katsitsiyo Danforth (Microsoft Teams)

I. Call to Order and Approval of the Agenda

David P. Jordan called the June 15, 2022, Legislative Operating Committee meeting to order at 9:00 a.m.

Motion by Marie Summers to adopt the agenda as is; seconded by Kirby Metoxen. Motion carried unanimously.

II. Minutes to be Approved

1. June 1, 2022 LOC Meeting Minutes

Motion by Kirby Metoxen to approve the June 1, 2022, LOC meeting minutes and forward to the Oneida Business Committee; seconded by Jennifer Webster. Motion carried unanimously.

III. Current Business

1. Elder Assistance Program Law

Motion by Marie Summers to approve the updated public comment review memorandum (with noted change), draft, legislative analysis, and fiscal impact statement request memorandum, and forward to the Finance Department directing that a fiscal impact statement be prepared and submitted to the LOC by July 14, 2022; seconded by Jennifer Webster. Motion carried unanimously.

IV. New Submissions

1. Oneida Personnel Policies and Procedures: Designation of Juneteenth as a Paid Holiday

Motion by Kirby Metoxen to accept the request as information to be discussed during the



current development of amendments to the Oneida Personnel Policies and Procedures; seconded by Jennifer Webster. Motion carried unanimously.

V. Additions

VI. Administrative Items

VII. Executive Session

VIII. Adjourn

Motion by Marie Summers to adjourn at 9:14 a.m.; seconded by Daniel Guzman King. Motion carried unanimously.



Legislative Operating Committee
July 6, 2022

Healing to Wellness Court Law

Submission Date: 12/20/17	Public Meeting: 5/4/22
LOC Sponsor: Daniel Guzman King	Emergency Enacted: n/a

Summary: *This item was carried over from last term. The request to a develop a Wellness Court law came from the Tribal Action Plan (TAP)- Laws and Policies Sub-Committee in December 2017. A Wellness Court brings together alcohol and drug treatment, community healing resources, and the tribal justice process by using a team approach to achieve the physical and spiritual healing of the individual participant, and to promote Native Nation building and the well-being of the community.*

10/7/20 LOC: Motion by Kirby Metoxen to add the Wellness Court Law to the Active Files List with Daniel Guzman King as the sponsor; seconded by Jennifer Webster. Motion carried unanimously.

11/18/20: *THWCPI Training.* Present: Marc Panasiewicz (NADCP), Kris Pacheco (TLPI), Misti Porter (NADCP), Brittany Lanier (NADCP), Katy Burke (WI Statewide Treatment Court Coordinator), Chelsea Place (WI DOC Probation & Parole), David P. Jordan, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Kristal Hill, Rhiannon Metoxen, Deborah Thundercloud, Mari Kriescher, Elijah Metoxen, Hon. Layatalati Hill, Hon. John Powless, Hon. Patricia Hoeft, Simone Ninham, Eric Boulanger, Joel Maxam, Tsyoslake House, Wesley Martin, Gerald Hill. The group participated in the Tribal Healing to Wellness Court Planning Initiative (THTWCPI) Training presented by the National Association of Drug Court Professionals (NADCP) held through Microsoft Teams.

11/19/20: *THWCPI Training.* Present: Marc Panasiewicz (NADCP), Kris Pacheco (TLPI), Misti Porter (NADCP), Brittany Lanier (NADCP), Katy Burke (WI Statewide Treatment Court Coordinator), Chelsea Place (WI DOC Probation & Parole), David P. Jordan, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Kristal Hill, Rhiannon Metoxen, Deborah Thundercloud, Mari Kriescher, Elijah Metoxen, Hon. Layatalati Hill, Hon. John Powless, Hon. Patricia Hoeft, Simone Ninham, Joel Maxam, Wesley Martin, Gerald Hill. The group participated in the Tribal Healing to Wellness Court Planning Initiative (THTWCPI) Training presented by the National Association of Drug Court Professionals (NADCP) held through Microsoft Teams.

11/20/20: *THWCPI Training.* Present: Marc Panasiewicz (NADCP), Kris Pacheco (TLPI), Misti Porter (NADCP), Brittany Lanier (NADCP), Katy Burke (WI Statewide Treatment Court Coordinator), Chelsea Place (WI DOC Probation & Parole), David P. Jordan, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Kristal Hill, Rhiannon Metoxen, Deborah Thundercloud, Mari Kriescher, Elijah Metoxen, Hon. Layatalati Hill, Hon. John Powless, Hon. Patricia Hoeft, Simone Ninham, Eric Boulanger, Tsyoslake House, Wesley Martin, Gerald Hill. The group participated in the Tribal Healing to Wellness Court

Planning Initiative (THTWCPI) Training presented by the National Association of Drug Court Professionals (NADCP) held through Microsoft Teams.

- 1/6/21:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Eric Boulanger, Joel Maxam, Hon. Layatalati Hill, Hon. John Powless, Hon. Patricia Hoeft, Simone Ninham, Deborah Thundercloud, Mari Kriescher, Tsyoslake House, Wesley Martin, Gerald Hill, Kristal Hill, Rhiannon Metoxen, Bridget Mendolla-Cornelius, Chelsea Place. This work meeting was held through Microsoft Teams. The purpose of this work meeting was to begin the development of the Nation’s Wellness Court law by reviewing an initial draft based off of other Tribal Healing to Wellness Court laws to serve as an outline for discussion. The drafting attorney will schedule another work meeting to continue the review of the draft.
- 1/20/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Eric Boulanger, Joel Maxam, Hon. Layatalati Hill, Hon. Patricia Hoeft, Simone Ninham, Mari Kriescher, Tsyoslake House, Wesley Martin, Gerald Hill, Kristal Hill, Rhiannon Metoxen, Chelsea Place. This work meeting was held through Microsoft Teams. The purpose of this work meeting was to continue review and discussion of the Wellness Court law draft.
- 1/28/21:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss a plan for moving this item forward through the legislative process.
- 2/5/21:** *Work Meeting.* Present: Clorissa N. Santiago, Hon. Layatalati Hill, Hon. Patricia Hoeft, Simone Ninham. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to provide the Judiciary an opportunity to provide input on the development of the Wellness Court law.
- 3/2/21:** *Work Meeting.* Present: Daniel Guzman King, Clorissa N. Santiago, Eric Boulanger, Joel Maxam, Hon. John Powless, Hon. Patricia Hoeft, Simone Ninham, Mari Kriescher, Leslie Doxtator, Renita Hernandez, Deborah Thundercloud, Tsyoslake House, Wesley Martin, Gerald Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the various objectives for “TAP, Goal 4: Create and implement a comprehensive Justice System that includes a Wellness Court and a rehabilitative corrections system” and set a process for moving forward with work meetings.
- 3/16/21:** *Work Meeting.* Present: Daniel Guzman King, Clorissa N. Santiago, Eric Boulanger, Joel Maxam, Hon. John Powless, Simone Ninham, Mari Kriescher, Leslie Doxtator, Renita Hernandez, Wesley Martin. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss potential eligibility requirements for the Wellness Court.
- 5/18/21:** *Work Meeting.* Present: Clorissa N. Santiago, Hon. John Powless, Hon. Patricia Hoeft, Simone Ninham, Mari Kriescher, Leslie Doxtator, Renita Hernandez, Robert Brown. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and discuss Wellness Court phase considerations.
- 1/19/22:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Carmen Vanlanen, Kristen Hooker, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting

was to review the updated and simplified draft of the Wellness Court law and determine the next steps for moving this legislative item forward.

- 1/27/22:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Carmen Vanlanen, Kristen Hooker, Rhiannon Metoxen, Hon. Layatalati Hill, Hon. John Powless, Hon. Patricia Hoeft, Simone Ninham, Eric Boulanger. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review updated and simplified draft of the Wellness Court law with the larger group, as well receive an update from the Judiciary on the progress of the internal policies and procedures for the Wellness Court.
- 2/10/22:** *Work Meeting.* Present: Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Clorissa N. Santiago, Carmen Vanlanen, Hon. Layatalati Hill, Hon. John Powless, Hon. Patricia Hoeft, Simone Ninham, Eric Boulanger, Joel Maxam, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the two issues identified in the last work meeting (closed court vs. open court, and court of record vs. not a court of record), as well as review and discuss some suggested revisions from the Judiciary.
- 2/16/22 LOC:** Motion by Marie Summers to approve the draft of the Healing to Wellness Court law and direct that a legislative analysis be developed; seconded by Kirby Metoxen. Motion carried unanimously.
- 3/16/22 LOC:** Motion by Jennifer Webster to approve the legislative analysis for the Healing to Wellness Court law; seconded by Marie Summers. Motion carried unanimously.
- 3/31/22:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the public meeting notice for this law.
- 4/6/22 LOC:** Motion by Jennifer Webster to approve the public meeting packet and forward the Healing to Wellness Court law to a public meeting to be held on May 4, 2022; seconded by Marie Summers. Motion carried unanimously.
- 5/4/22:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to prepare for this afternoon's public meeting.
- 5/4/22:** *Public Meeting Held.* Present: Daniel Guzman King, Marie Summers, Brooke Doxtator, Clorissa N. Santiago, David P. Jordan (Microsoft Teams), Alebra Metoxen (Microsoft Teams), Diana Hernandez (Microsoft Teams), Michelle Myers (Microsoft Teams), Rhiannon Metoxen (Microsoft Teams), Kristal Hill (Microsoft Teams), Tsyoshaat Delgado (Microsoft Teams), Stephanie Reinke (Microsoft Teams), Joy Salzwedel (Microsoft Teams). The public meeting for the proposed Healing to Wellness Court law was held in person in the Norbert Hill Center and on Microsoft Teams. Two (2) individuals provided public comment during the public meeting on Microsoft Teams.
- 5/11/22:** *Public Comment Period Closed.* One (1) submission of written comments was received during the public comment period.

5/18/22 LOC: Motion by Marie Summers to accept the public comments and the public comment review memorandum and defer these items to a work meeting for further consideration; seconded by Jennifer Webster. Motion carried unanimously.

5/18/22: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Marie Summers, Kirby Metoxen, Clorissa N. Santiago. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review and consider the public comments that were received.

6/1/22 LOC: Motion by Jennifer Webster to approve the updated public comment review memorandum, draft, and updated legislative analysis; seconded by Kirby Metoxen. Motion carried unanimously.

Motion by Marie Summers to approve the fiscal impact statement request memorandum and forward to the Finance Department directing that a fiscal impact statement be prepared and submitted to the LOC by June 15, 2022¹; seconded by Jennifer Webster. Motion carried unanimously.

Next Steps:

- Approve the adoption packet for the Healing to Wellness Court law and forward to the Oneida Business Committee for consideration.

¹ LOC later subsequently agreed to amend the due date of this FIS for the Healing to Wellness Court law to June 29, 2022, at the request of the Finance Department.



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson
DATE: July 13, 2022
RE: Adoption of the Healing to Wellness Court Law

Please find the following attached backup documentation for your consideration of the adoption of the Healing to Wellness Court law:

1. Resolution: Adoption of the Healing to Wellness Court Law
2. Statement of Effect: Adoption of the Healing to Wellness Court Law
3. Healing to Wellness Court Law Legislative Analysis
4. Healing to Wellness Court Law
5. Healing to Wellness Court Law Fiscal Impact Statement

Overview

On October 7, 2020, the Legislative Operating Committee added the Healing to Wellness Court law to its Active Files List. The Healing to Wellness Court law had been carried over from the last Legislative Operating Committee term, with it originally added to the Active Files List in December 2017. The purpose of the Healing to Wellness Court law is to establish the Nation's Healing to Wellness Court to:

- offer intensive case management, treatment, and court supervision to individuals who committed an offense directly or indirectly related to a substance abuse or addiction issue;
- provide access to holistic, structured, and phased substance abuse treatment and rehabilitation services that incorporate culture, tradition, and Tsi Niyukwaliho tÁ (Our Ways);
- create intragovernmental and intergovernmental collaborative teams to interact with each participant; and
- encourage and support each participant in the goal of their recovery to lead lawful productive lives free of substance abuse and addiction. [8 O.C. 808.1-1].

This resolution adopts the Healing to Wellness Court law which will:

- Establish the Healing to Wellness Court as a division of the Trial Court and delegate jurisdiction to the Healing to Wellness Court for matters related to substance abuse and addiction, and any matter arising under this law [8 O.C. 808.4-1, 808.4-2];
- Delegate authority to the Healing to Wellness Court to collaborate and enter into intergovernmental agreements with other courts of competent jurisdiction that exercise concurrent jurisdiction [8 O.C. 808.4-2];
- Establish the Healing to Wellness Court team, comprised of a Trial Court Judge, Court Coordinator, Oneida Police Department Officer, representative from Probation, Substance Abuse Treatment provider, representative of Oneida culture and heritage, and any other

- member as determined by the Team, and provide how any revisions to the composition of the Healing to Wellness Court team are made [8 O.C. 808.4-3];
- Delegate authority to the Healing to Wellness Court to establish policies and procedures governing the operation and implementation of the Healing to Wellness Court program [8 O.C. 808.5-1];
 - Provide that all Healing to Wellness Court Team meetings and hearings are closed to the public, and held in accordance with the policies and procedures created by the Court [8 O.C. 808.5-2, 808.5-3]; and
 - Provide that the Healing to Wellness Court is a non-adversarial forum, not a court of record, where the Oneida Judiciary Rules of Evidence and Civil Procedure do not apply [8 O.C. 808.5-4, 808.5-6, 808.5-7].

The Legislative Operating Committee developed the Healing to Wellness Court law through collaboration with representatives from the Oneida Nation Judiciary Trial Court, Oneida Police Department, Tribal Action Plan (TAP), Oneida Behavioral Health, Department of Corrections - Probation, and the Legal Resource Center. The Legislative Operating Committee held fifteen (15) work meetings on the development of this law and also participated in a three (3) day Tribal Healing to Wellness Court Planning Initiative Training presented by the National Association of Drug Court Professionals in November 2020.

In accordance with the Legislative Procedures Act, a public meeting on the proposed Healing to Wellness Court law was held on May 4, 2022. Two (2) individuals provided oral comments during the public meeting. The public comment period was then held open until May 11, 2022. The Legislative Operating Committee received one (1) submission of written comments during the public comment period. All public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on May 18, 2022. Any changes made based on those comments have been incorporated into this draft.

Requested Action

Adopt the Resolution: Adoption of the Healing to Wellness Court Law

Oneida Nation

Post Office Box 365

Phone: (920)869-2214

Oneida, WI 54155



BC Resolution # _____ Adoption of the Healing to Wellness Court Law

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WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

WHEREAS, the purpose of the Healing to Wellness Court law (“the Law”) is to establish the Nation’s Healing to Wellness Court to: offer intensive case management, treatment, and court supervision to individuals who committed an offense directly or indirectly related to a substance abuse or addiction issue; provide access to holistic, structured, and phased substance abuse treatment and rehabilitation services that incorporate culture, tradition, and Tsi Niyukwaliho t^ (Our Ways); create intragovernmental and intergovernmental collaborative teams to interact with each participant; and encourage and support each participant in the goal of their recovery to lead lawful productive lives free of substance abuse and addiction; and

WHEREAS, it is the policy of the Nation to bring together community-healing resources with the Nation’s justice system to work collaboratively with intragovernmental and intergovernmental partnerships to reduce the abuse of alcohol and other drugs and drug-related criminal activity affecting the Nation’s community in an effort to promote life-long substance abuse recovery and the reintegration of participants into the Oneida community; and

WHEREAS, the Law establishes the Healing to Wellness Court as a division of the Trial Court and delegates jurisdiction to the Healing to Wellness Court for matters related to substance abuse and addiction, and any matter arising under this Law; and

WHEREAS, the Law delegates authority to the Healing to Wellness Court to collaborate and enter into intergovernmental agreements with other courts of competent jurisdiction that exercise concurrent jurisdiction; and

WHEREAS, the Law establishes the Healing to Wellness Court team, comprised of a Trial Court Judge, Court Coordinator, Oneida Police Department Officer, representative from Probation, Substance Abuse Treatment provider, representative of Oneida culture and heritage, and any other member as determined by the Team, and provide how any revisions to the composition of the Healing to Wellness Court team are made; and

WHEREAS, the Law delegates authority to the Healing to Wellness Court to establish policies and procedures governing the operation and implementation of the Healing to Wellness Court program; and

44
45 **WHEREAS,** the Law provides that all Healing to Wellness Court Team meetings and hearings are
46 closed to the public, and held in accordance with the policies and procedures created by
47 the Healing to Wellness Court; and
48
49 **WHEREAS,** the Law provides that the Healing to Wellness Court is a non-adversarial forum, where the
50 Oneida Judiciary Rules of Evidence and Oneida Judiciary Rules of Civil Procedure do not
51 apply; and
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53 **WHEREAS,** in accordance with the Legislative Procedures Act a legislative analysis and fiscal impact
54 statement were developed for this Law; and
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56 **WHEREAS,** a public meeting on this proposed Law was held on May 4, 2022, and the public comment
57 period was held open until May 11, 2022; and
58
59 **WHEREAS,** the Legislative Operating Committee accepted, reviewed, and considered all public
60 comments received on May 18, 2022; and
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62 **NOW THEREFORE BE IT RESOLVED,** that the Healing to Wellness Court law is hereby adopted and shall
63 become effective on July 27, 2022.
64



Statement of Effect
Adoption of the Healing to Wellness Court Law

Summary

This resolution adopts the Healing to Wellness Court law.

Submitted by: Clorissa N. Santiago, Senior Staff Attorney, Legislative Reference Office

Date: June 30, 2022

Analysis by the Legislative Reference Office

This resolution adopts the Healing to Wellness Court law. The purpose of the Healing to Wellness Court law is to establish the Nation's Healing to Wellness Court to:

- offer intensive case management, treatment, and court supervision to individuals who committed an offense directly or indirectly related to a substance abuse or addiction issue;
- provide access to holistic, structured, and phased substance abuse treatment and rehabilitation services that incorporate culture, tradition, and Tsi Niyukwaliho tĀ (Our Ways);
- create intragovernmental and intergovernmental collaborative teams to interact with each participant; and
- encourage and support each participant in the goal of their recovery to lead lawful productive lives free of substance abuse and addiction. [8 O.C. 808.1-1].

This resolution adopts the Healing to Wellness Court law which will:

- Establish the Healing to Wellness Court as a division of the Trial Court and delegate jurisdiction to the Healing to Wellness Court for matters related to substance abuse and addiction, and any matter arising under this law [8 O.C. 808.4-1, 808.4-2];
- Delegate authority to the Healing to Wellness Court to collaborate and enter into intergovernmental agreements with other courts of competent jurisdiction that exercise concurrent jurisdiction [8 O.C. 808.4-2];
- Establish the Healing to Wellness Court team, comprised of a Trial Court Judge, Court Coordinator, Oneida Police Department Officer, representative from Probation, Substance Abuse Treatment provider, representative of Oneida culture and heritage, and any other member as determined by the Team, and provide how any revisions to the composition of the Healing to Wellness Court team are made [8 O.C. 808.4-3];
- Delegate authority to the Healing to Wellness Court to establish policies and procedures governing the operation and implementation of the Healing to Wellness Court program [8 O.C. 808.5-1];
- Provide that all Healing to Wellness Court Team meetings and hearings are closed to the public, and held in accordance with the policies and procedures created by the Court [8 O.C. 808.5-2, 808.5-3]; and

- Provide that the Healing to Wellness Court is a non-adversarial forum, not a court of record, where the Oneida Judiciary Rules of Evidence and Civil Procedure do not apply [8 O.C. 808.5-4, 808.5-6, 808.5-7].

The Legislative Procedures Act (“the LPA”) was adopted by the General Tribal Council for the purpose of providing a process for the adoption or amendment of laws of the Nation. [1 O.C. 109.1-1]. The Healing to Wellness Court law complied with all processes and procedures required by the LPA, including the development of a legislative analysis, a fiscal analysis, and the opportunity for public review during a public meeting and public comment period. [1 O.C. 109.6, 109.7, 109.8].

A public meeting on the proposed Healing to Wellness Court law was held on May 4, 2022. Two (2) individuals provided oral comments during the public meeting. The public comment period was then held open until May 11, 2022. The Legislative Operating Committee received one (1) submission of written comments during the public comment period. All public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on May 18, 2022. Any changes made based on those comments have been incorporated into this draft.

The Healing to Wellness Court law will become effective ten (10) business days after the adoption of this resolution, on July 27, 2022, in accordance with the LPA. [1 O.C. 109.9-3].

Conclusion

Adoption of this resolution would not conflict with any of the Nation’s laws.



HEALING TO WELLNESS COURT LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Law	<ul style="list-style-type: none"> ▪ Establish the Healing to Wellness Court as a division of the Trial Court and delegate jurisdiction to the Healing to Wellness Court for matters related to substance abuse and addiction, and any matter arising under this law [8 O.C. 808.4-1, 808.4-2]; ▪ Delegate authority to the Healing to Wellness Court to collaborate and enter into intergovernmental agreements with other courts of competent jurisdiction that exercise concurrent jurisdiction [8 O.C. 808.4-2]; ▪ Establish the Healing to Wellness Court team, comprised of a Trial Court Judge, Court Coordinator, Oneida Police Department Officer, representative from Probation, Substance Abuse Treatment provider, representative of Oneida culture and heritage, and any other member as determined by the Team, and provide how any revisions to the composition of the Healing to Wellness Court team are made [8 O.C. 808.4-3]; ▪ Delegate authority to the Healing to Wellness Court to establish policies and procedures governing the operation and implementation of the Healing to Wellness Court program [8 O.C. 808.5-1]; ▪ Provide that all Healing to Wellness Court Team meetings and hearings are closed to the public, and held in accordance with the policies and procedures created by the Court [8 O.C. 808.5-2, 808.5-3]; and ▪ Provide that the Healing to Wellness Court is a non-adversarial forum, not a court of record, where the Oneida Judiciary Rules of Evidence and Civil Procedure do not apply [8 O.C. 808.5-4, 808.5-6, 808.5-7].
Purpose	<p>The purpose of this law is to establish the Nation’s Healing to Wellness Court to:</p> <ul style="list-style-type: none"> ▪ Offer intensive case management, treatment, and court supervision to individuals who committed an offense directly or indirectly related to a substance abuse or addiction issue; ▪ Provide access to holistic, structured, and phased substance abuse treatment and rehabilitation services that incorporate culture, tradition, and Tsi Niyukwaliho tá (Our Ways); ▪ Create intragovernmental and intergovernmental collaborative teams to interact with each participant; and ▪ Encourage and support each participant in the goal of recovery to lead lawful, productive lives free of substance abuse and addiction [8 O.C. 808.1-1].
Affected Entities	Oneida Nation Judiciary, Oneida Police Department, and Oneida Behavioral Health
Related Legislation	Public Peace law, Judiciary law, Oneida Judiciary Rules of Civil Procedure, Oneida Judiciary Rules of Evidence
Public Meeting	A public meeting was held in accordance with the Legislative Procedures Act on Wednesday, May 4, 2022, with a public comment period held open until May 11, 2022.
Fiscal Impact	A fiscal impact statement prepared in accordance with the Legislative Procedures Act was provided by the Finance Department on June 29, 2022.

1 SECTION 2. LEGISLATIVE DEVELOPMENT

2 **A. *Background.*** The request to develop a Healing to Wellness Court law came from the Tribal Action
3 Plan (TAP)- Laws and Policies Sub-Committee in December 2017 and was originally added to the
4 Active Files List in December 2017. The Legislative Operating Committee then added the Healing to
5 Wellness Court law to the Active Files List this legislative term on October 7, 2020.

6 **B. *History of Drug Courts.*** The drug court movement started in the late 1980s to help combat an increase
7 in the number drug-related offenses and re-offenses that resulted in overcrowded jails and prisons,
8 which incarceration alone was not able to control.¹ Between 1980 and 2000, arrests for drug offenses
9 more than doubled.² Those who were imprisoned were not being treated for their substance abuse and
10 the underlying problems and were subjected to traumatization by the prison system and faced many
11 barriers upon release³. The response to this issue was to develop a court approach that systematically
12 prioritized treatment in substance abuse cases.⁴ A drug court is a special court docket to which cases
13 involving alcohol and other substance abusing offenders are assigned for intensive supervision and
14 treatment.⁵ Drug courts are distinguished by several features, such as expedited case processing,
15 outpatient treatment, and support services (e.g., job placement and housing services).⁶

16 **C. *Development of Healing to Wellness Courts in Native Nations.*** Native nations were looking to develop
17 a court that would help confront intergenerational substance abuse issues while avoiding the term “drug
18 court”, thus developing the term “healing to wellness court”. This term referred to the healing and
19 wellness aspects of this approach, along with the idea that wellness is an ongoing journey.⁷ In August
20 2003, state and national drug court efforts were used to help draft tribal-specific healing to wellness
21 court curriculums. The newly developed Healing to Wellness Courts were not simply tribal courts that
22 heard cases involving substance abuse but were special court docket-collaboratives that partnered with
23 service providers to create a program for participants that included extensive supervision and
24 treatment.⁸ Tribal Healing to Wellness courts are guided by the Tribal Ten Key Components, which
25 are the fundamental essentials of the drug court concept that were adjusted to reflect the tribal notions
26 of healing and wellness, particularly the concept of a healing to wellness journey and the collaboration
27 involved.⁹

28 SECTION 3. CONSULTATION AND OUTREACH

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

- 31 ▪ Oneida Nation Judiciary;
- 32 ▪ Oneida Police Department;
- 33 ▪ Oneida Behavioral Health;
- 34

¹ U.S. Department of Justice Office of Justice Programs, “Tribal Healing to Wellness Court: The Key Components,” (April 2003).

² Arthur J. Lurigio, “The First 20 Years of Drug Treatment Courts: A Brief Description of Their History and Impact”.

³ Tribal Law and Policy Institute, “Tribal Healing to Wellness Courts: Intergovernmental Collaboration,” (May 2021).

⁴ *Id.*

⁵ *Id.*

⁶ Arthur J. Lurigio, “The First 20 Years of Drug Treatment Courts: A Brief Description of Their History and Impact”.

⁷ Tribal Law and Policy Institute, “Tribal Healing to Wellness Courts: Intergovernmental Collaboration,” (May 2021).

⁸ *Id.*

⁹ *Id.*

- 35 ▪ Tribal Action Plan (TAP);
- 36 ▪ Legal Resource Center;
- 37 ▪ General Manager; and
- 38 ▪ Oneida Business Committee.
- 39 **B.** The following groups outside of the Nation were consulted in the drafting of this law and analysis:
- 40 ▪ Tribal Law and Policy Institute;
- 41 ▪ National Association of Drug Court Professionals (NADCP);
- 42 ▪ Wisconsin Department of Corrections; and
- 43 ▪ Wisconsin Statewide Treatment Court Coordinator.
- 44 **C.** The following laws and ordinances from other States, municipalities, and Tribes were reviewed in the
- 45 drafting of this Law and analysis:
- 46 ▪ Ho-Chunk Nation Healing to Wellness Court Code;
- 47 ▪ Cherokee Tribal Drug Court Code of Ordinances;
- 48 ▪ Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians Wellness Court Tribal
- 49 Code;
- 50 ▪ Fort Peck Wellness Court Code;
- 51 ▪ Penobscot Nation Healing to Wellness Court Program Procedures;
- 52 ▪ Poarch Band Creek of Indians Healing to Wellness Court Code;
- 53 ▪ Swinomish Tribal Court Code;
- 54 ▪ Fort McDowell Yavapai Nation Law and Order Code;
- 55 ▪ Winnebago Tribal Traditional Wellness Court Code; and
- 56 ▪ Tlingit and Haida Indian Tribes of Alaska Wellness Court Code.

57

58 **SECTION 4. PROCESS**

- 59 **A.** This Law has followed the process set forth in the Legislative Procedures Act (LPA).
- 60 ▪ On October 7, 2020, the Legislative Operating Committee added this Law to its Active
- 61 Files List.
- 62 ▪ On February 16, 2022, the Legislative Operating Committee approved the draft of this law
- 63 and directed that a legislative analysis be developed.
- 64 ▪ On March 16, 2022, the Legislative Operating Committee approved the draft of the
- 65 legislative analysis.
- 66 ▪ On April 6, 2022, the Legislative Operating Committee approved the public meeting packet
- 67 and forwarded the Healing to Wellness Court law to a public meeting to be held on May 4,
- 68 2022.
- 69 ▪ On May 4, 2022, the public meeting was held in person in the Norbert Hill Center and on
- 70 Microsoft Teams. Two (2) individuals provided public comment during the public meeting
- 71 via Microsoft Teams.
- 72 ▪ On May 11, 2022, the public comment period closed. One (1) submission of written
- 73 comments was received during the public comment period.
- 74 ▪ On May 18, 2022, the Legislative Operating Committee accepted the public comments and
- 75 the public comment review memorandum and deferred these items to a work meeting for
- 76 further consideration.
- 77 ▪ On June 1, 2022, the Legislative Operating Committee approved the updated public
- 78 comment review memorandum, draft, and updated legislative analysis. The Legislative

79 Operating Committee also approved the fiscal impact statement request memorandum and
80 forwarded the request memorandum to the Finance Department directing that a fiscal
81 impact statement be prepared and submitted to the Legislative Operating Committee by
82 June 15, 2022.

- 83 ▪ On June 1, 2022, the Finance Department requested additional time to complete a fiscal
84 impact statement, the Legislative Operating Committee then subsequently agreed to amend
85 the due date of the fiscal impact statement to June 29, 2022.
- 86 ▪ On June 29, 2022, the Finance Department provided the Legislative Operating Committee
87 with the fiscal impact statement.

88 **B.** A group that included members from the departments of the Legislative Reference Office, Legislative
89 Operating Committee, Oneida Business Committee, Oneida Nation Judiciary, Oneida Police
90 Department, Oneida Behavioral Health, and the Legal Resource Center participated in the Tribal
91 Healing to Wellness Court Planning Initiative (THTWCPI) Training held by the National Association
92 of Drug Court Professionals (NADCP) through Microsoft Teams on the following dates:

- 93 ▪ November 18, 2020;
- 94 ▪ November 19, 2020; and
- 95 ▪ November 20, 2020.

96 **C.** At the time this legislative analysis was developed the following work meetings had been held
97 regarding the development of this Law:

- 98 ▪ January 6, 2021: LOC work meeting with the Oneida Police Department, Oneida Judiciary,
99 General Manager, Oneida Behavioral Health, Legal Recourse Center, and Wisconsin
100 Department of Corrections.
- 101 ▪ January 20, 2021: LOC work meeting Oneida Police Department, Oneida Judiciary,
102 General Manager, Oneida Behavioral Health, Legal Recourse Center, and Wisconsin
103 Department of Corrections.
- 104 ▪ January 28, 2021: LOC work meeting.
- 105 ▪ February 5, 2021: Work meeting with Oneida Judiciary.
- 106 ▪ March 2, 2021: LOC work meeting with Oneida Police Department, Oneida Judiciary,
107 General Manager, Oneida Behavioral Health, Legal Recourse Center, and Tribal Action
108 Plan.
- 109 ▪ March 16, 2021: LOC work meeting with Oneida Police Department, Oneida Judiciary,
110 General Manager, Oneida Behavioral Health, and Legal Recourse Center.
- 111 ▪ May 18, 2021: Work meeting with Oneida Judiciary, Oneida Behavioral Health, Tribal
112 Action Plan, Cultural Heritage.
- 113 ▪ January 19, 2022: LOC work meeting.
- 114 ▪ January 27, 2022: LOC work meeting with Oneida Police Department, and Oneida
115 Judiciary.
- 116 ▪ February 10, 2022: LOC work meeting with Oneida Police Department, and Oneida
117 Judiciary.
- 118 ▪ March 31, 2022: LOC work meeting.
- 119 ▪ May 4, 2022: LOC work session.
- 120 ▪ May 18, 2022: LOC work session.

121

122 **SECTION 5. CONTENTS OF THE LEGISLATION**

- 123 **A. *Purpose and Policy.*** The purpose of this Law is to establish the Nation’s Healing to Wellness Court.
124 The Court shall offer intensive treatment, case management, and court supervision to individuals who
125 have committed an offense directly or indirectly related to substance abuse or addiction issues. [8 O.C.
126 808.1-1]. It is the policy of the Nation to bring together community-healing resources with the Nation’s
127 justice system to collaborate with partnerships to reduce the risk of substance abuse and criminal
128 activity related to substance abuse. [8 O.C. 808.1-2].
- 129 **B. *Establishment.*** The Healing to Wellness Court is hereby established as a division of the Trial Court.
130 [8 O.C. 808.4-1]. The Court shall have the authority to issue all orders necessary to ensure the safety,
131 well-being, and rehabilitation of individuals who come within or consent to its jurisdiction. [8 O.C.
132 808.4-1(a)]. The Court shall have the power to implement all the duties, responsibilities, and remedies
133 set out in this Law, including the power to enforce subpoenas and orders of restriction, fines and orders
134 of restitution, contempt, and other powers as appropriate. [8 O.C. 808.4-1(b)].
- 135 **C. *Jurisdiction.*** The Healing to Wellness Court shall have jurisdiction over matters related to substance
136 abuse and addiction and any matters arising under this Law. [8 O.C. 808.4-2].
- 137 **D. *Healing to Wellness Court Team.*** The Healing to Wellness Court program shall be administered by a
138 Healing to Wellness Court Team, which shall be comprised of the following individuals:
- 139 1. Trial Court Judge;
 - 140 2. Healing to Wellness Court Coordinator;
 - 141 3. Oneida Police Department Officer;
 - 142 4. Representative of Probation;
 - 143 5. Substance Abuse Treatment Provider;
 - 144 6. Representative of Oneida culture and heritage; and
 - 145 7. Any other member to be determines by the Healing to Wellness Court Team. [8 O.C. 808.4-
146 3(a)].
- 147 The composition of the Healing to Wellness Court Team may be revised as necessary as determined by
148 the Court. The Court shall provide notification of any revision to the composition of the Healing to
149 Wellness Court Team to the Oneida Business Committee and General Manager. [8 O.C. 808.4-3(b)].
- 150 **E. *Healing to Wellness Court Procedures.*** The Court shall establish policies and procedures governing
151 the operation and implementation of the Healing to Wellness Court program. [8 O.C. 808.5-1]. All
152 Healing to Wellness Court Team meetings and hearings shall be closed to the public except for invited
153 guests as allowed by HIPAA regulations. [8 O.C. 808.5-3]. The Court shall not be a court of record.
154 Any information obtained, used, or disclosed by a member of the Healing to Wellness Court Team,
155 including the participant, while the participant is under the jurisdiction of the Court shall not be used
156 as evidence against the participant in any other proceeding in the Judiciary or any other court in any
157 other jurisdiction. All Court records are privileged and confidential and shall not be disclosed except to
158 the members of the Healing to Wellness Court Team. [8 O.C. 808.5-7]. However, confidential
159 information may always be disclosed after the participant has signed a proper consent form, even if it
160 is protected by Federal confidentiality regulations. The regulations also permit disclosure without a
161 participant’s consent in several situations, including medical emergencies, program evaluations, and
162 communications among program staff. [8 O.C. 808.5-7(a)].

163

164 SECTION 6. RELATED LEGISLATION

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

- 166 ▪ *Judiciary law.* The Judiciary law established a Judiciary for the Nation, and provides for the
167 administration of law, justice, judicial procedures, and practices by the Nation as a sovereign
168 nation by exercising the inherent power to make, execute, apply, and enforce its own law, and
169 to apply its own customs and traditions in matters affecting the Oneida people. [8 O.C. 801.1-
170 1].
- 171 ▪ *Court Open to the Public.* The Judiciary law provides that proceedings of the Trial
172 Court shall be public, and members of the general public may freely attend the same,
173 except for peacemaking or mediation proceedings or if expressly prohibited by law. [8
174 O.C. 801.4-4].
- 175 1. This Law provides that all Healing to Wellness Court Team hearings shall be
176 closed to the public except for invited guests as allowed by HIPAA
177 regulations. [8 O.C. 808.5-3].
- 178 ▪ *Subject Matter Jurisdiction.* The Judiciary law provides that Trial Court shall have
179 subject matter jurisdiction over cases and controversies where laws of the Nation
180 specifically authorize the Trial Court to exercise jurisdiction.
- 181 1. This Law provides that the Healing to Wellness Court shall have jurisdiction
182 over matters related to substance abuse and addiction and any matters arising
183 under this law. [8 O.C. 808.4-2].
- 184 ▪ *Internal Operating Procedures.* The Judiciary law provides that the Judiciary is
185 authorized to establish internal operating procedures governing the operation of the
186 court, as long as the procedures shall not affect substantive rights and shall not conflict
187 with existing law, the Rules of Procedure, or other rules enacted or approved by the
188 Oneida Business Committee or Oneida General Tribal Council.
- 189 1. This Law provides that the Court shall establish policies and procedures
190 governing the operation and implementation of the Healing to Wellness Court
191 program. [8 O.C. 808.5-1].
- 192 ▪ *Oneida Judiciary Rules of Civil Procedure.* The Oneida Judiciary Rules of Civil Procedure
193 governs all civil actions that fall under the jurisdiction of the Nation to ensure that there is a
194 consistent set of rules governing the process for civil claims, in order to ensure equal and fair
195 treatment to all persons who come before the Tribal Courts to have their disputes resolved. [8
196 O.C. 803.1-1, 803.1-2].
- 197 ▪ This Law provides that the Oneida Judiciary Rules of Civil Procedure shall not apply
198 in any Court proceedings. [8 O.C. 808.5-6].
- 199 ▪ *Oneida Judiciary Rules of Evidence.* The Oneida Judiciary Rules of Evidence establishes rules
200 of evidence to apply in proceedings held in the Trial court and Family Court of the Oneida
201 Judiciary administer Court proceedings fairly, eliminate unjustifiable expense and delay, and
202 promote the development of evidence law, by obtaining the truth and securing a just
203 determination. [8 O.C. 804.1-1, 804.1-2].
- 204 ▪ This Law provides that the Oneida Judiciary Rules of Evidence shall not apply in any
205 Court proceedings. [8 O.C. 808.5-6].
- 206 ▪ *Public Peace Law.* The Public Peace law sets forth community standards and expectations
207 which preserve the peace, harmony, safety, health, and general welfare of individuals who live
208 within the boundaries of the Reservation. [3 O.C. 309.1-1]. The Public Peace law prohibits a

209 person from committing a civil infraction involving alcohol, tobacco, and drugs. [3 O.C. 309.4-
210 4, 309.9]. Upon a finding by the Trial Court that a violation of the Public Peace law has
211 occurred, the individual may be ordered to participate in counseling or any other program
212 relevant and available to the Nation. [3 O.C. 309.11-2(c)].

213 ▪ Potentially, a person who violates the Public Peace law may be ordered to participate
214 in the Nation’s Healing to Wellness Court program is allowed by Court’s policies and
215 procedures.

216

217 SECTION 7. OTHER CONSIDERATIONS

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

219 a. Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation
220 except emergency legislation. [1 O.C. 109.6-1].

221 i. A fiscal impact statement shall be submitted by agencies as directed by the Legislative
222 Operating Committee. [1 O.C. 109.6-1].

223 ii. Fiscal Impact statements may be prepared by any agency who may receive funding if
224 the legislation is enacted, any agency who may administer a program if the legislation
225 is enacted, any agency who may have financial information concerning the subject
226 matter of the legislation, or by the Finance Office, upon request of the Legislative
227 Operating Committee. [1 O.C. 109.6-1(a) and (b)].

228 iii. Oneida Business Committee resolution BC-10-28-20-A titled, *Further Interpretation*
229 *of ‘Fiscal Impact Statement’ in the Legislative Procedures Act*, provides further
230 clarification on who the Legislative Operating Committee may direct complete a
231 fiscal impact statement at various stages of the legislative process, as well as
232 timeframes for completing the fiscal impact statement.

233 b. *Conclusion.* A fiscal impact statement was provided by the Finance Department on June 29,
234 2022.

235

236

Title 8. Judiciary - Chapter 808
HEALING TO WELLNESS COURT

808.1. Purpose and Policy
808.2. Adoption, Amendment, Repeal
808.3. Definitions

808.4. General
808.5. Healing to Wellness Court Procedures

808.1. Purpose and Policy

808.1-1. *Purpose.* The purpose of this law is to establish the Nation’s Healing to Wellness Court to:

- (a) offer intensive case management, treatment, and court supervision to individuals who committed an offense directly or indirectly related to a substance abuse or addiction issue;
- (b) provide access to holistic, structured, and phased substance abuse treatment and rehabilitation services that incorporate culture, tradition, and Tsi Niyukwaliho tá (Our Ways);
- (c) create intragovernmental and intergovernmental collaborative teams to interact with each participant; and
- (d) encourage and support each participant in the goal of their recovery to lead lawful productive lives free of substance abuse and addiction.

808.1-2. *Policy.* It is the policy of the Nation to bring together community-healing resources with the Nation’s justice system to work collaboratively with intragovernmental and intergovernmental partnerships to reduce the abuse of alcohol and other drugs and drug-related criminal activity affecting the Nation’s community in an effort to promote life-long substance abuse recovery and the reintegration of participants into the Oneida community.

808.2. Adoption, Amendment, Repeal

808.2-1. This law was adopted by the Oneida Business Committee by resolution BC-__-__-__-__.

808.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

808.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

808.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

808.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

808.3. Definitions

808.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) “Court” means the Oneida Healing to Wellness Court, which is a division under the Trial Court that has the designated responsibility to oversee the Healing to Wellness Court program matters.
- (b) “Court of competent jurisdiction” means a federal, state, or tribal court that has jurisdiction and authority to do a certain act or hear a certain dispute.
- (c) “Healing to Wellness Court program” means a court-supervised evidence-based treatment program which promotes recover through a coordinated community-based

41 response for individuals who abuse or are dependent on any controlled substance or
42 alcohol.

43 (d) “Intragovernmental” means relating to or conducted within a government.

44 (e) “Intergovernmental” means relating to or conducted between two (2) or more
45 governments.

46 (f) “Judiciary” means the Oneida Nation Judiciary, which is the judicial system that was
47 established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later
48 authorized to administer the judicial authorities and responsibilities of the Nation by
49 Oneida General Tribal Council resolution GTC-03-19-17-A.

50 (g) “Nation” means the Oneida Nation.

51 (h) “Participant” means an individual who is admitted to the Healing to Wellness Court.

52 (i) “Trial Court” means the Trial Court of the Oneida Nation Judiciary.

53
54 **808.4. General**

55 808.4-1. *Establishment.* The Healing to Wellness Court is hereby established as a division of the
56 Trial Court.

57 (a) The Court shall have the authority to issue all orders necessary to ensure the safety,
58 well-being, and rehabilitation of individuals who come within or consent to its jurisdiction.

59 (b) The Court shall have the power to implement all the duties, responsibilities, and
60 remedies set out in this law, including the power to enforce subpoenas and orders of
61 restriction, fines and orders of restitution, contempt, and other powers as appropriate.

62 808.4-2. *Jurisdiction.* The Court shall have jurisdiction over matters related to substance abuse
63 and addiction and any matter arising under this law.

64 (a) *Concurrent Jurisdiction.* The Court shall have the authority to collaborate with courts
65 of competent jurisdiction that exercise concurrent jurisdiction.

66 (b) The Court may enter into collaborative inter-jurisdictional agreements with other
67 courts of competent jurisdiction, law enforcement agencies, and other service providers
68 upon approval by the Oneida Business Committee.

69 808.4-3. *Healing to Wellness Court Team.* The Healing to Wellness Court program shall be
70 administered by a Healing to Wellness Court Team. The Healing to Wellness Court Team is the
71 group of professionals who are primarily responsible for overseeing the day-to-day operations of
72 the Healing to Wellness Court program and administering the treatment and supervisory
73 interventions.

74 (a) *Composition.* The Healing to Wellness Court Team shall be comprised of the following
75 individuals:

76 (1) Trial Court Judge;

77 (2) Healing to Wellness Court Coordinator;

78 (3) Oneida Police Department Officer;

79 (4) Representative of Probation;

80 (5) Substance Abuse Treatment Provider;

81 (6) Representative of Oneida culture and heritage; and

82 (7) any other member to be determined by the Healing to Wellness Court Team.

83 (b) *Revisions to the Composition of the Healing to Wellness Court Team.* The composition
84 of the Healing to Wellness Court Team may be revised as necessary as determined by the
85 Court. The Court shall provide notification of any revision to the composition of the
86 Healing to Wellness Court Team to the Oneida Business Committee and General Manager.

87

88 **808.5. Healing to Wellness Court Procedures**

89 808.5-1. *Establishment of Policies and Procedures.* The Court shall establish policies and
90 procedures governing the operation and implementation of the Healing to Wellness Court program.
91 The policies and procedures of the Healing to Wellness Court program shall not affect substantive
92 rights and shall not conflict with existing law or rules enacted or approved by the Oneida Business
93 Committee or Oneida General Tribal Council unless otherwise provided for within this law.

94 808.5-2. Healing to Wellness Court Team meetings and hearings shall proceed pursuant to the
95 policies and procedures adopted by the Court.

96 808.5-3. All Healing to Wellness Court Team meetings and hearings shall be closed to the public
97 except for invited guests as allowed by HIPAA regulations.

98 808.5-4. The Court is strictly a non-adversarial forum.

99 808.5-5. The Court judge shall make all findings of facts relevant to each participant's case
100 pursuant to the policies and procedures adopted by the Court.

101 808.5-6. *Exclusion from the Oneida Judiciary Rules of Evidence and Oneida Judiciary Rules of*
102 *Civil Procedure.* The Oneida Judiciary Rules of Evidence as well as the Oneida Judiciary Rules
103 of Civil Procedure shall not apply in any Court proceedings.

104 808.5-7. *Not a Court of Record.* The Court shall not be a court of record. Any information
105 obtained, used, or disclosed by a member of the Healing to Wellness Court Team, including the
106 participant, while the participant is under the jurisdiction of the Court shall not be used as evidence
107 against the participant in any other proceeding in the Judiciary or any other court in any other
108 jurisdiction. All Court records are privileged and confidential and shall not be disclosed except to
109 the members of the Healing to Wellness Court Team.

110 (a) Confidential information may always be disclosed after the participant has signed a
111 proper consent form, even if it is protected by Federal confidentiality regulations. The
112 regulations also permit disclosure without a participant's consent in several situations,
113 including medical emergencies, program evaluations and communications among program
114 staff.

115
116 *End.*

117
118

Adopted – BC- __ - __ - __ - __

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

TO: Lawrence Barton, Chief Financial Officer
 FROM: RaLinda Ninham-Lamberies, Assistant Chief Financial Officer
 DATE: June 21, 2022
 RE: **Fiscal Impact of the Healing to Wellness Court Law**

I. Estimated Fiscal Impact Summary

Law: Healing to Wellness Court Law		
Implementing Agency	The Nation's Judiciary, Oneida Police Department, and Oneida Behavioral Health	
Estimated time to comply	Three to six months	
Estimated Impact	Current Fiscal Year	10 Year Estimate
Total Estimated Fiscal Impact	\$259,147	\$2,798,088-\$4,123,996

II. Background

A. Legislative History

This is a new law to establish the Nation's Healing to Wellness Court.

B. Summary of Content

The purpose of this law is to establish the Nation's Healing to Wellness Court to:

- Offer intensive case management, treatment, and court supervision to individuals who committed an offense directly or indirectly related to a substance abuse or addiction issue;
- Provide access to holistic, structured, and phased substance abuse treatment and rehabilitation services that incorporate culture, tradition, and Tsi Niyukwaliho tál (Our Ways);

- Create intragovernmental and intergovernmental collaborative teams to interact with each participant; and
- Encourage and support each participant in the goal of their recovery to lead lawful productive lives free of substance abuse and addiction.

III. Methodology and Assumptions

A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office expenses, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.

Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

The analysis was completed based on the information provided as of the date of this memo.

IV. Executive Summary of Findings

- The Healing to Wellness Court is hereby established as a division of the Oneida Trial Court.
- The Law will have the authority to issue all orders necessary to ensure the safety, well-being, and rehabilitation of individuals who come within or consent to its jurisdiction.
- The Law will have the power to implement all the duties, responsibilities, and remedies set out in this law, including the power to enforce subpoenas and orders of restriction, fines and orders of restitution, contempt, and other powers as appropriate.
- The Law will have jurisdiction over matters related to substance abuse and addiction and any matter arising under this law.
- The Law will have the authority to collaborate with courts of competent jurisdiction that exercise concurrent jurisdiction.
- The Law may enter into collaborative inter-jurisdictional agreements with other courts of competent jurisdiction, law enforcement agencies, and other service providers upon approval by the Oneida Business Committee.
- The Healing to Wellness Court Team shall be comprised of the following individuals:

- (1) Oneida Trial Court Judge;
- (2) Oneida Healing to Wellness Court Coordinator;
- (3) Oneida Police Department Officer;
- (4) Representative of Probation;
- (5) Substance Abuse Treatment Provider;
- (6) Representative of Oneida Culture and Heritage; and
- (7) Any other member to be determined by the Healing to Wellness Court Team.

- The composition of the Healing to Wellness Court Team may be revised as necessary as determined by the Court.
- The Law will establish policies and procedures governing the operation and implementation of the Healing to Wellness Court program.
- All Healing to Wellness Court Team meetings and hearings shall be closed to the public except for invited guests as allowed by HIPAA regulations.
- The Law is strictly a non-adversarial forum.
- The Law will not be a court of record. Any information obtained, used, or disclosed by a member of the Healing to Wellness Court Team, including the participant, while the participant is under the jurisdiction of the Court shall not be used as evidence against the participant in any other proceeding in the Judiciary or any other court in any other jurisdiction.

V. Agency

The Law governs the overarching budget process and establishes requirements of the Nation's Judiciary, Oneida Police Department, and Oneida Behavioral Health. Oneida Behavioral Health will need approximately 3 to 6 months for implementation. The Oneida Police Department will be able to implement immediately. The Oneida Judiciary will be able to implement with 45 days.

VI. Financial Impact

The Oneida Judiciary and the Oneida Police Department have identified the estimated fiscal impact to their areas for the proposed law. The Oneida Judiciary estimates the annual impact to be approximately \$259,622 and the Oneida Police Department has estimated the cost for a deputy for each eight-hour increment to be approximately \$475.00. As it is unclear the level of need for the program upon adoption of the law, the fiscal impact estimation includes eight hours to be conservative. The total fiscal impact for one year is estimated at \$259,622 and the ten-year impact is estimated at \$2,798,088

with an annual inflation factor of three percent (3%). If the level of need for the program would require the Oneida Police Department to add a full-time position, the annual impact is estimated at \$382,647 for year one and the total for ten-year is estimated at \$4,123,996 with an inflation factor of three percent (3%).

VII. Recommendation

Finance Department does not make a recommendation on course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of this legislation, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.



Legislative Operating Committee July 6, 2022

Children’s Code Amendments

Submission Date: 10/7/20	Public Meeting: 6/15/22
LOC Sponsor: David P. Jordan	Emergency Enacted: N/A

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

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

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

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

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

- 4/12/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Jennifer Berg-Hargrove, Alebra Cornelius, Heather Lee, Michael Hoeft, Peggy Schneider, Lydia Witte, Kristal Hill, Rhiannon Metoxen. This work meeting was held over Microsoft Teams. The purpose of this work meeting was for the Indian Child Welfare (ICW) Department to provide a “Children’s Code 101” and then for the workgroup to begin reviewing the Children’s Code line-by-line and discussing potential amendments to the law.
- 4/26/21:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Hon. Robert Collins, Hon. Marcus Zielinski, Kristina Denny, Patricia DeGrand, Rhiannon Metoxen, Kristal Hill. This work meeting was held over Microsoft Teams. The purpose of this work meeting was for the workgroup to continue reviewing the Children’s Code line-by-line and discussing potential amendments to the law.
- 6/4/21:** *Work Meeting.* Present: Clorissa N. Santiago, Jennifer Berg-Hargrove, Alebra Cornelius, Heather Lee, Michael Hoeft, Peggy Schneider, Lydia Witte, Kristal Hill. This work meeting was held over Microsoft Teams. The purpose of this work meeting was to review and discuss potential amendments to the law.
- 2/16/22:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Kirby Metoxen, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Lydia Witte. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to allow Attorney Lydia Witte to introduce herself to the LOC and provide some background on the amendments the ICW Department is requesting.
- 4/12/22:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Marie Summers, Clorissa N. Santiago, Carmen Vanlanen, Lydia Witte, Peggy Van Gheem, Jennifer Berg-Hargrove, Heather Lee, Alebra Metoxen, Michael Hoeft, Hon. Robert Collins II, Hon. Rodney Dequaine, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the initial draft of proposed amendments to the Children’s Code.
- 4/20/22 LOC:** Motion by Marie Summers to approve the draft of the Children’s Code amendments and direct that a legislative analysis be developed; seconded by Jennifer Webster. Motion carried unanimously.
- 5/4/22 LOC:** Motion by Jennifer Webster to approve the updated draft and the legislative analysis for Children’s Code amendments; seconded by Daniel Guzman King. Motion carried unanimously.
- 5/12/22:** *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Daniel Guzman King, Marie Summers, Kirby Metoxen, Clorissa N. Santiago, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to review the public meeting notice for the Children’s Code amendments.
- 5/18/22 LOC:** Motion by Jennifer Webster to approve the public meeting packet and forward the Children’s Code amendments to a public meeting to be held on June 15, 2022; seconded by Marie Summers. Motion carried unanimously.
- 6/15/22:** *Public Meeting Held.* Present: Jennifer Webster, Marie Summers (Microsoft Teams), Clorissa N. Santiago, Carolyn Salutz, Grace Elliot, Brooke Doxtator, Jameson Wilson

(Microsoft Teams), Jeanette Ninham (Microsoft Teams), Michelle Myers (Microsoft Teams), Jennifer Berg-Hargrove (Microsoft Teams), Lydia Witte (Microsoft Teams), Hon. Robert Collins II, Kristal Hill (Microsoft Teams). The public meeting for the Children's Code amendments was held in person in the Norbert Hill Center and on Microsoft Teams. No individuals provided public comment during the public meeting.

6/22/22: *Public Comment Period Closed.* One (1) submission of written comments were received during the public comment period.

Next Steps:

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



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office, Senior Staff Attorney *CMS*
DATE: July 6, 2022
RE: Children's Code Amendments: Public Comment Review

On June 15, 2022, a public meeting was held regarding the proposed amendments to the Children's Code ("the Law"). The public comment period was then held open until June 22, 2022. This memorandum is submitted as a review of the written comments received during the public comment period.

The public meeting draft, public meeting transcript, and written comments received are attached to this memorandum for review.

Comment 1 – GAL Access to Information:

708.8. Guardian ad litem

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

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

Jessica Vandekamp (written): Shekoli, The recommendations I have to add to the Children's Code Amendments are to be consistent with Title 7 Children, Elders & Family Chapter 705, Child Custody, Placement and Visitation. Specifically for the purposes to carry out duties described in 705.85 Guardian ad Litem Responsibilities without undue delay.

Recommendation: Agencies (Child Support, ICW, Oneida Judiciary, GAL etc.) shall share information on family court cases that are serving in the best interest of children.

Challenge: Currently sharing of information between agencies is not included in the law, therefore, as a Guardian ad Litem, ICW requires me to retrieve a signed authorization form before releasing information – a court order isn't enough. I'm not able to get timely and important information from ICW workers or on CHIPS cases. The problem this presents is that a GAL has to make time and find the parent, meet with a parent to get a signature on a form to authorize consent to obtain information. Sometimes the parent is reluctant to sign, and/or their child that may not even be in their custody.

Question: In many cases the same judge assigning a GAL to a case is the same judge doing the CHIPS hearing so why does it have to be so difficult to for one to obtain information on a common case?

Solution: To save time, resources, money and frustration by an agency/entity (GAL), documentation regarding serving for the best interest of children must be shared for all parties to get a wholistic view of the situation.

Response

The commenter expresses concern over her experience working as a guardian ad litem (GAL) and the difficulty she faced in efficiently obtaining information from the various agencies of the Nation. Specifically, the commenter discussed an appointment as a GAL for a child in a case under the Child Custody, Placement, and Visitation law and difficulty obtaining information from the Indian Child Welfare Department for information pertaining to the same child in a related child welfare case. The commenter expresses the importance of a GAL being able to efficiently access all information regarding a child in order to come to a conclusion as to the best interests of a child.

A GAL is a person appointed by the Court to appear at any peacemaking, mediation, or hearing who is tasked with representing the best interest of the person appointed for. [7 O.C. 708.3-1(x), 705.3-1(g)].

Under the Children's Code, the GAL has the following responsibilities:

- investigate and review all relevant information, records and documents, as well as interview the child, parent(s), social workers, and all other relevant persons to gather facts when appropriate;
- consider the importance of the child's culture, heritage and traditions;
- consider, but shall not be bound by, the wishes of the child or the positions of others as to the best interests of the child;
- explain the role of the guardian ad litem and the court proceedings to the child in language and terms appropriate to the child's age and maturity level;
- provide a written or oral report to the Court regarding the best interests of the child, including conclusions and recommendations and the facts upon which they are based;

- recommend evaluations, assessments, services and treatment of the child and the child's family when appropriate;
- inform the court of any concerns or possible issues regarding the child or the child's family;
- represent the best interests of the child;
- perform other duties as directed by the Court; and
- comply with all laws, policies and rules of the Nation governing the conduct of a guardian ad litem. [7 O.C. 708.8-3].

Under the Child Custody, Placement, and Visitation law GAL has the following responsibilities:

- be an advocate for the best interests of a child;
- consider, but shall not be bound by, the wishes of the child or the positions of others as to the best interests of the child;
- investigate the issues and provide a written report to the Court; and
- communicate to the Court the wishes of the child, unless the child asks the guardian ad litem to do otherwise. [7 O.C. 705.8-5].

Overall, an important responsibility of a GAL is to investigate and review all relevant information, records and documents.

When the Court appoints a GAL, whether that be in a case under the Children's Code or the Child Custody, Placement, and Visitation law, the Court's order contains the following statement:

The guardian ad litem shall be provided access to all records in possession of juvenile intake; the tribal, county or state department of social services; child welfare agencies; schools; or law enforcement agencies pertaining to the above captioned case, regardless of the originating source, including but not limited to, medical, mental health, psychological, counseling, drug or alcohol records from a non-federally assisted program as defined in 42 CFR Part 2, financial, educational, employment, probation, and law enforcement records.

The inclusion of this statement in the Court order is to avoid unnecessary delay, especially when the GAL has to meet expedited timelines included under the Children's Code. Requiring a GAL to seek a signed authorization form from the parent in order to access information from the Indian Child Welfare Department should not be necessary when there the order made by the Court already addresses the release of information to the GAL.

In order to clarify this issue and avoid unnecessary delay in the future, it is recommended that the following revision be made to the Children's Code:

708.14. Discovery and Records

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

708.14-2. The Department shall make available for inspection or disclosure the contents of any record kept, regardless of the originating source, to a guardian ad litem appointed in a Children's Code or family law case when that access is granted by order of the Court.

LOC Consideration

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

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 ~~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 708.11-1 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 ~~of~~ 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;

- 652 ~~(b)~~ (2) A finding that the Department and/or anyone else providing services to
653 the child had reasonable grounds to remove the child from the home based on the
654 child's best interest;
- 655 ~~(c)~~ (3) A finding that the Department- has made reasonable efforts to prevent
656 the removal of the child from the home, while assuring that the child's best
657 ~~interest~~interests are the paramount concerns;
- 658 ~~(d)~~ (4) The Department made reasonable efforts to make it possible for the
659 child to return safely home; and
- 660 ~~(e)~~ (5) If the child has one (1) or more siblings, who have also been removed
661 from the home, a finding as to whether the Department has made reasonable efforts
662 to place the child in a placement that enables the sibling group to remain together,
663 unless the Court determines that a joint placement would be contrary to the safety
664 or well-being of the child or any of those siblings, in which case the Court shall
665 order the Department make reasonable efforts to provide for frequent visitation or
666 other ongoing interaction between the child and the siblings, unless the Court
667 determines that such visitation or interaction would be contrary to the safety or
668 well-being of the child or any of those siblings.

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

- 670 (1) an transfer of the legal custody of the child, including decisions about health
671 care and education.

672 708.16-~~87~~. An order to hold a child in custody remains in effect until a dispositional order is
673 granted, the petition is withdrawn or dismissed, or the order is modified or terminated by further
674 order of the Court.

675 708.16-~~98~~. An order to hold a child in custody may be re-heard upon motion of any party if, in
676 the Court's discretion, good cause is found, whether or not counsel was present.

677
678 **708.17. Petition for a Child in Need of Protection or Services**

679 708.17-1. The Nation's Child Welfare attorney or the Department shall initiate proceedings under
680 this section by filing a petition with the Court, signed by a person who has knowledge of the facts
681 alleged or is informed of them and believes them to be true. Upon filing with the Court, the
682 Department shall provide a copy of the petition to the parties by personal service or, if personal
683 service is not possible, by certified mail with return receipt requested.

684 708.17-2. The petition shall include the following:

- 685 (a) The name, birth date, address, and tribal affiliation of the child;
- 686 (b) The names, birth dates, addresses, and tribal affiliation of the child's parent, guardian,
687 legal custodian or spouse, if any; or if no such person can be identified, the name and
688 address of the nearest relative;
- 689 (c) Whether the child is in custody, and, if so, the place where the child is being held and
690 the date and time he or she was taken into custody unless there is reasonable cause to
691 believe that such disclosure would result in imminent danger to the child or legal custodian;
- 692 (d) A Uniform Child Custody Jurisdiction and Enforcement Act affidavit;
- 693 (e) A plain and concise statement of facts upon which the allegations are based, including
694 the dates, times, and location at which the alleged acts occurred. If the child is being held
695 in custody outside his or her home, the statement shall include information showing that
696 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 **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 (b2) The names, birth dates, addresses, and tribal affiliation of the child's parent(s),
964 guardian(s), and legal custodian(s);
 - 965 (e3) The date on which the child was removed from the home;
 - 966 (d4) A statement as to the availability of a safe and appropriate placement with an
967 extended family member;
 - 968 (e5) 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 (f6) 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

1015 **708.24. Change in Placement**

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

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
1380

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-

1564 two (22) months, not including any period following the termination of parental
1565 rights fact-finding hearing during which the child was a runaway from the out-of-
1566 home placement or was residing in a trial reunification home.

1567 (d) *Continuing Parental Disability.* Continuing parental disability shall be established by
1568 proving that:

1569 (1) The parent is presently, and for a cumulative total period of at least two (2)
1570 years within the five (5) years immediately prior to the filing of the petition has
1571 been, an inpatient at one (1) or more hospitals as defined in either the Nation’s laws
1572 or state law;

1573 (2) The condition of the parent is likely to continue indefinitely; and

1574 (3) The child is not being provided with adequate care by a relative who has legal
1575 custody of the child, or by a parent or a guardian.

1576 (e) *Continuing Denial of Periods of Physical Placement or Visitation.* Continuing denial
1577 of periods of physical placement or visitation shall be established by proving all of the
1578 following:

1579 (1) The parent has been denied periods of physical placement by Court order in an
1580 action affecting the family or has been denied visitation under a dispositional order
1581 containing the notice required by section 708.20-722-8, Wis. Stat. 48.356-(2),(2),
1582 or Wis. Stat. 938.356 (2); and

1583 (2) A Court order has denied the parent periods of physical placement or visitation
1584 for at least one (1) year.

1585 (f) *Child Abuse.* Child abuse shall be established by proving that the parent has committed
1586 child abuse against the child who is the subject of the petition and proving either of the
1587 following:

1588 (1) That the parent has caused death or injury to a child resulting in a felony
1589 conviction; or

1590 (2) That a child has previously been removed from the parent's home pursuant to a
1591 dispositional order after an adjudication that the child is in need of protection or
1592 services.

1593 (g) *Failure to Assume Parental Responsibility.* Failure to assume parental responsibility
1594 shall be established by proving that the parent or the person(s) who may be the parent of
1595 the child have not had a substantial parental relationship with the child.

1596 (1) In evaluating whether the person has had a substantial parental relationship with
1597 the child, the Court may consider such factors, including, but not limited to, the
1598 following:

1599 (A) Whether the person has expressed concern for or interest in the support,
1600 care or well-being of the child;

1601 (B) Whether the person has neglected or refused to provide care or support for
1602 the child; and

1603 (C) Whether, with respect to a person who is or may be the father of the child,
1604 the person has expressed concern for or interest in the support, care or well-
1605 being of the mother during her pregnancy.

1606 (h) *Incestuous Parenthood.* Incestuous parenthood shall be established by proving that the
1607 person whose parental rights are sought to be terminated is also related, either by blood or
1608 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 arrears, 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- - - -



**LEGISLATIVE OPERATING COMMITTEE
PUBLIC MEETING**

Children's Code Amendments

Business Committee Conference Room-2nd Floor Norbert Hill Center
June 15, 2022 12:15 p.m.

Present: Jennifer Webster, Marie Summers (Microsoft Teams), Clorissa N. Santiago, Carolyn Salutz, Grace Elliot, Brooke Doxtator, Jameson Wilson (Microsoft Teams), Jeanette Ninham (Microsoft Teams), Michelle Myers (Microsoft Teams), Jennifer Berg-Hargrove (Microsoft Teams), Lydia Witte (Microsoft Teams), Hon. Robert Collins II, Kristal Hill (Microsoft Teams)

Jennifer Webster: The time is 12:15 p.m. and today's date is Wednesday, June 15, 2022. I will now call to order the public meeting for the proposed amendments to the Children's Code.

The Legislative Operating Committee is hosting this public meeting to gather feedback from the community regarding this legislative proposal. The public meeting is not a question and answer period. The LOC will review and consider all comments received during the public comment period. The LOC will respond to all comments received in a memorandum, which will be submitted in the meeting materials of a future LOC meeting.

All persons who wish to present oral testimony in person need to register on the sign in sheet at the back of the room. If you leave an email address on the sign in sheet, we can ensure you receive a copy of the public comment review memorandum. Individuals who wish to present oral testimony on Microsoft Teams, please raise your hand and you will be called on.

Additionally, written comments may be submitted to the Nation's Secretary's Office or to the Legislative Reference Office in person, by U.S. mail, interoffice mail, e-mail or fax as provided on the public meeting notice. These comments must be received by close of business on Wednesday, June 22, 2022.

In attendance from the LOC today is myself, Jenny Webster.

The LOC may impose a time limit for all speakers pursuant to section 109.8-3(c) of the Legislative Procedures Act. As the presiding LOC member, I am imposing a time limit of 5 minutes. This time limit shall be applied equally to all persons. If I could ask one of you to do the time limit – okay, thank you.

So we'll now begin today's public meeting for the proposed amendments to the Children's Code. 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.

Those who wish to speak please come to the microphone or raise your hand.

Is there anybody online that would like to speak? Please raise your hand.

So not seeing anybody online wishing to speak, raising your hand, or anybody in attendance here we'll give it a few more minutes.

It is now 12:25, with there being no speakers registered and nobody signing, raising their hand online the public meeting for the Children's Code amendments is now closed at 12:25.

Written comments can be submitted until close of business day on Wednesday, June 22nd, 2022, 2022. Thank you all for coming.

-End of Meeting-

From: [Jessica L. Vandekamp](#)
To: [LOC](#)
Subject: Written Comments for Children's Code Amendments
Date: Thursday, June 9, 2022 3:24:03 PM

Shekoli,

The recommendations I have to add to the Children's Code Amendments are to be consistent with Title 7 Children, Elders & Family Chapter 705, Child Custody, Placement and Visitation. Specifically for the purposes to carry out duties described in 705.85 Guardian ad Litem Responsibilities without undue delay.

Recommendation: Agencies (Child Support, ICW, Oneida Judiciary, GAL etc.) shall share information on family court cases that are serving in the best interest of children.

Challenge: Currently sharing of information between agencies is not included in the law, therefore, as a Guardian ad Litem, ICW requires me to retrieve a signed authorization form before releasing information – a court order isn't enough. I'm not able to get timely and important information from ICW workers or on CHIPS cases. The problem this presents is that a GAL has to make time and find the parent, meet with a parent to get a signature on a form to authorize consent to obtain information. Sometimes the parent is reluctant to sign, and/or their child that may not even be in their custody.

Question: In many cases the same judge assigning a GAL to a case is the same judge doing the CHIPS hearing so why does it have to be so difficult to for one to obtain information on a common case?

Solution: To save time, resources, money and frustration by an agency/entity (GAL), documentation regarding serving for the best interest of children must be shared for all parties to get a wholistic view of the situation.

Jessica Vandekamp, Tribal member
920-362-6280



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



AGENDA REQUEST FORM

- 1) Request Date: June 30, 2022
- 2) Contact Person(s): Clorissa N. Santiago
Dept: Legislative Reference Office
Phone Number: (920) 869-4417 Email: csantia1@oneidanation.org
- 3) Agenda Title: Eviction and Termination Law Amendments
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
The Legislative Operating Committee is currently developing
amendments to the Real Property law, and during those initial
discussions it was suggested that the Nation's Eviction and Termination
law be reviewed for potential amendments.

List any supporting materials included and submitted with the Agenda Request Form

- 1) Eviction and Termination law
- 2) _____
- 3) _____
- 4) _____

- 5) Please list any laws, policies or resolutions that might be affected:
Real Property law
- 6) Please list all other departments or person(s) you have brought your concern to:

- 7) Do you consider this request urgent? Yes No
If yes, please indicate why:

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee.

Signature of Requester:

Please send this form and all supporting materials to:

LOC@oneidanation.org
or
Legislative Operating Committee (LOC)
P.O. Box 365
Oneida, WI 54155
Phone 920-869-4376

Title 6. Property and Land - Chapter 610
EVICTIION AND TERMINATION
shakonato·líhe? okhale? washakonahtú·tha? Aolihwá·ke
they shoo them away – they vanished them – issues

610.1.	Purpose and Policy	610.6.	Failure to Vacate Following Notice of Eviction or Contract Expiration
610.2.	Adoption, Amendment, Repeal	610.7.	Withholding From and Return of Security Deposits
610.3.	Definitions	610.8.	Eviction and Termination Actions
610.4.	Administrative Rulemaking Authority		
610.5.	Early Contract Termination		

610.1. Purpose and Policy

610.1-1. *Purpose.* The purpose of this law is to provide consistent procedures relating to the Nation’s rental and leasing programs for terminating a contract and/or evicting an occupant which affords the applicant due process and protects all parties involved.

610.1-2. *Policy.* It is the Nation’s policy to provide fair termination and eviction processes that preserves the peace, harmony, safety, health, general welfare and the Nation’s resources.

610.2. Adoption, Amendment, Repeal

610.2-1. This law was adopted by the Oneida Business Committee by resolution BC-10-12-16-A.

610.2-2. This law may be amended or repealed by the Oneida Business Committee pursuant to the procedures set out in the Legislative Procedures Act.

610.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

610.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

610.2-5. This law is adopted under the authority of the Constitution of the Oneida Nation.

610.3. Definitions

610.3-1. This section shall govern the definitions of words and phrases as used herein. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Comprehensive Housing Division” means the entity responsible for housing matters specifically related to contracts governed by this law as defined by Oneida Business Committee Resolution.¹

(b) “Contract” means either a lease document pursuant to the Leasing law or a rental agreement pursuant to the Landlord-Tenant law.

(c) “Eviction” means to expel an occupant from the premises.

(d) “Nation” means the Oneida Nation.

¹ See BC Resolution 09-27-17-H providing that the Comprehensive Housing Division means the division within the Oneida Nation under the direction of the Comprehensive Housing Division Director which consists of all residential services offered by the Nation, including but not limited to, all rental programs, the rent-to-own program, and the residential sales and mortgages programs.

(e) “Nuisance” means an occupant’s interference with another occupant’s use and enjoyment of the premises. Nuisance activities include, but are not limited to, allegations of harassment, disorderly conduct, battery, lewd and lascivious behavior, prostitution, theft, possession of stolen property, arson, illegal drug activity, gambling, animal violations, trespassing, weapons violations, habitual noise violations (as defined in the rules which the Land Commission and the Comprehensive Housing Division shall jointly establish), execution of warrants, alcohol violations, obstruction/resisting, inspection related calls in which a law enforcement agency responds.

(f) “Occupant” means the person granted the right to use or occupy a premises pursuant to a lease or rental agreement entered into in accordance with the Leasing law or Landlord-Tenant law respectively.

(g) “Owner” means the Nation in its capacity as a lessor as defined in the Leasing law or as a landlord as defined in the Landlord Tenant law.

(h) “Premises” means the property covered by a contract, including not only the real property and fixtures, but also any personal property furnished by the owner pursuant to a contract.

(i) “Rent” means the sum or amount agreed in the contract to be paid by the occupant to the owner for exclusive possession of the property for the period of time set by the contract.

(j) “Rule” means a set of requirements, including citation fees and penalty schedules, enacted in accordance with the Administrative Rulemaking law based on authority delegated in this law in order to implement, interpret and/or enforce this law.

(k) “Security Deposit” means a payment made to the owner by the occupant to ensure that payments will be made and other responsibilities of the contract performed.

(l) “Waste” means physical damage or deterioration caused to the premises, whether intentional or negligent.

610.4. Administrative Rulemaking Authority

610.4-1. *Residential Contracts.* The Land Commission and the Comprehensive Housing Division may jointly create rules to further govern the processes contained in this law related to residential contracts.

610.4-2. *Agricultural and Business Contracts.* The Land Commission and the Division of Land Management may jointly create rules to further govern the processes contained in this law related to agricultural and business contracts.

610.5. Early Contract Termination

610.5-1. *Causes for Early Contract Termination.* The owner may terminate the contract prior to the contract term and evict the occupant, if the occupant:

- (a) Violates the terms of the contract;
- (b) Is alleged to have violated any applicable law or rule; and/or
- (c) Is alleged to have committed one or more nuisance activities.

610.5-2. *Domestic Abuse Defense to Eviction.* An occupant has a valid defense to eviction if he or she alleges that if not for the alleged domestic abuse, which is noticed to the owner with any of the following documentation, there would not be cause for eviction under section 610.5-1:

- (a) An injunction order under Wis. Stat. 813.12(4) or any other law of the Nation protecting the tenant from a co-tenant;

- (b) An injunction order under Wis. Stat. 813.122 or any other law of the Nation protecting a child of the tenant from a co-tenant;
- (c) An injunction order under Wis. Stat. 813.125(4) or any other law of the Nation protecting the tenant or child of the tenant from a co-tenant, based on the co-tenant's engaging in an act that would constitute sexual assault under Wis. Stat. 940.225, 948.02 or 948.025, or stalking under Wis. Stat. 940.32, or attempting or threatening to do the same;
- (d) A condition of release under Wis. Ch. 969 ordering the co-tenant not to contact the tenant;
- (e) A criminal complaint alleging that the co-tenant sexually assaulted the tenant or a child of the tenant under Wis. Stat. 940.225, 948.02 or 948.025;
- (f) A criminal complaint alleging that the co-tenant stalked the tenant or a child of the tenant under Wis. Stat. 940.32; or
- (g) A criminal complaint that was filed against the co-tenant as a result of the co-tenant being arrested for committing a domestic abuse offense against the tenant under Wis. Stat. 968.075.

610.5-3. *Notice.* This section governs the amount of notice required to evict as well as the manner and form of notice required. When an owner provides notice in compliance with these requirements, the occupant is not entitled to possession or use of the premises after the date of the termination provided in the notice.

(a) *Eviction for Failure to Pay Rents.*

(1) If an occupant fails to pay any installment of rent when due, the occupant's contract is terminated if the owner gives the occupant notice requiring the tenant to pay rent or vacate on or before a date at least thirty (30) calendar days after the giving of the notice and if the occupant fails to pay accordingly.

(2) If an occupant has been given notice under 610.5-3(a)(1) and has paid the rent on or before the specified date, or been permitted by the owner to remain in possession contrary to such notice, and thereafter fails to pay a subsequent installment of rent on time within one (1) year of said notice, the occupant's contract is terminated if the owner, while the occupant is in default in payment of rent, gives the occupant notice to vacate on or before a date at least fourteen (14) calendar days after the giving of the notice.

(b) *Eviction for Waste or Contract Breach other than Rent Payment.*

(1) If an occupant commits waste or breaches any covenant or condition of the occupant's contract, other than for payment of rent, the occupant's tenancy is terminated if the owner gives the occupant a notice requiring the occupant to remedy the default or vacate the premises on or before a date at least thirty (30) calendar days after the giving of the notice, and if the occupant fails to comply with such notice. An occupant is deemed to be complying with the notice if promptly upon receipt of such notice the occupant takes reasonable steps to remedy the default and proceeds with reasonable diligence, or if damages are adequate protection for the owner and the occupant makes a bona fide and reasonable offer to pay the owner all damages for the occupant's breach.

(2) If within one (1) year from the giving of any notice under 610.5-3(b)(1), the occupant again commits waste or breaches the same or any other covenant or condition of the occupant's contract, other than for payment of rent, the

occupant's contract is terminated if the owner, prior to the occupant's remedying the waste or breach, gives the occupant notice to vacate on or before a date at least fourteen (14) calendar days after the giving of the notice.

(c) *Eviction for Violation of Applicable Law or Rule or Nuisance by Occupant.* The owner may terminate an occupant's contract based on an alleged violation of an applicable law or rule or if the occupant commits a nuisance act.

(1) In order to terminate based on this section, the owner must have received notice, which may be from, but is not limited to, another occupant, law enforcement agency or a local government's office of the district attorney, which reports:

(A) a violation of an applicable law or rule on behalf of the occupant or in the occupant's unit, or

(B) a nuisance that exists in that occupant's unit or was caused by that occupant on the owner's property. In order to terminate the contract, the owner shall give the occupant written notice requiring the occupant to vacate on or before a date at least five (5) calendar days after the giving of the notice.

(2) The occupant may contest a termination based on a violation of applicable law or rule or nuisance by filing a complaint challenging the basis of the eviction with the Oneida Judiciary.

(3) If the occupant contests the termination prior to the termination date provided in the notice, the eviction is stayed and the contract may not be terminated without proof to the Oneida Judiciary by the owner by the greater preponderance of the credible evidence of the allegation that a violation of law and/or rule and/or nuisance exists in that occupant's unit or was caused by that occupant.

(4) Despite an owner's satisfaction of the proof requirements in section 610.5(c)(3), the Oneida Judiciary may, at its discretion, stay an eviction by honoring any alternative agreement regarding pending actions entered into by the occupant and a court of competent jurisdiction pending successful completion of the alternative agreement.

(d) *Content, Form and Manner of Giving Notice.*

(1) *Notice Content.* Notices required to be provided under this law shall include the following:

(A) The violation of law and/or rule, committing of nuisance and/or breach of the contract, with citations to the applicable law, rule and/or contract clause;

(B) If the notice is pursuant to section 610.5-3(a), the current delinquent balance due;

(C) If the notice is pursuant to section 610.5-3(a) or (b):

(i) A statement that the occupant has a thirty (30) day period to cure;

(ii) The date the period to cure expires and the termination becomes effective in the event occupant does not cure; and

(iii) Potential consequences for failure to cure, which may include, but are not limited to eviction and the assessment of damages against the occupant.

(D) If notice is pursuant to section 610.5-3(c), a statement that the occupant may request a hearing with the Oneida Judiciary prior to the effective date of the termination provided on the notice, and that, if the occupant timely files for a hearing, there is an automatic stay on the eviction pending the determination of the Oneida Judiciary;

(E) The contact information for the Comprehensive Housing Division staff available to answer questions and/or hear concerns of the occupant related to the notice.

(2) *Notice to Individuals.* When providing notice to an occupant that is an individual, the owner shall use one of the following methods:

(A) Giving a copy of the notice personally to the occupant or by leaving a copy at the occupant's usual place of abode in the presence of some competent member of the occupant's family at least fourteen (14) years of age, who is informed of the contents of the notice, provided that the owner may request that the notice be personally served to the occupant by the Oneida Police Department;

(B) Leaving a copy with any competent person apparently in charge of the premises or occupying the premises or a part thereof, and by mailing a copy by first class mail to the occupant's last-known address;

(C) If notice cannot be given under subsection (A) or (B) with reasonable diligence, by affixing a copy of the notice on an entrance to the rented premises where it can be conveniently read and by mailing a copy by first class mail to the occupant's last-known address;

(D) By mailing a copy of the notice by registered or certified mail to the tenant at the tenant's last-known address;

(E) By serving the occupant as prescribed in the Rules of Civil Procedure for the service of a summons.

(3) *Notice to Corporations or Partnerships.* If notice is to be given to a corporation notice may be given by any method provided in subsection (1) except that notice under subsection (1)(A) may be given only to an officer, director, registered agent or managing agent, or left with an employee in the office of such officer or agent during regular business hours. If notice is to be given to a partnership, notice may be given by any method in subsection (1) except that notice under subsection (1)(A) may be given only to a general partner or managing agent of the partnership, or left with an employee in the office of such partner or agent during regular business hours, or left at the usual place of abode of a general partner in the presence of some competent member of the general partner's family at least fourteen (14) years of age, who is informed of the contents of the notice.

(4) *Notice to One (1) of Several Parties.* If there are two (2) or more co-occupants of the same premises, notice given to one (1) is deemed to be given to the others also.

(5) *Effect of Actual Receipt of Notice.* If notice is not properly given by one (1) of the methods specified in this section, but is actually received by the other party, the notice is deemed to be properly given; but the burden is upon the owner alleging actual receipt to prove the fact by clear and convincing evidence.

(e) *Contrary Provision in the Contract.* Except for leases entered into pursuant to the Leasing law, any termination provisions in a contract that are contrary to those provided in this law are invalid.

610.6. Failure to Vacate Following Notice of Eviction or Contract Expiration

610.6-1. *Changing of Locks and Removal of Occupant.* If an occupant fails to vacate the premises following notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract, the owner shall secure and take possession of the premises once the timeframe in the notice of termination has expired.

(a) The Comprehensive Housing Division shall contact the Oneida Police Department to request that an Oneida Police Officer be on the scene while the locks are being changed.

(b) In the event the occupant has left personal property in the home, the occupant may retrieve the said personal property by contacting the Comprehensive Housing Division staff listed on the notice of termination. The Comprehensive Housing Division shall hold personal property for a minimum of five (5) business days, where a business day is Monday through Friday from 8:00 a.m. to 4:30 p.m. and excludes holidays recognized by the Nation.

(1) The Comprehensive Housing Division shall keep a written log of the date and the work time the Comprehensive Housing Division's staff expends storing and/or removing personal property and/or removing/disposing of debris left at the premises after the expiration of the timeframe provided in the notice of termination.

(2) The Land Commission and the Comprehensive Housing Division shall jointly create rules further governing the disposition of personal property in relation to residential contracts and the Land Commission and the Division of Land Management shall jointly create rules further governing the disposition of personal property in relation to agricultural and business contracts.

610.6-2. *Effect of Failure to Vacate.* A failure to vacate following notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract does not in any circumstances, regardless of acceptance of rent payments, create a periodic tenancy. For the purposes of this section, a periodic tenancy means when an occupant uses/occupies a premises without an effective and valid contract by paying rent on a periodic basis including, but not limited to, day-to-day, week-to-week and month-to-month.

610.6-3. *Damages for Failure to Vacate.* If an occupant remains in possession of the premises without consent of the owner after notice of termination based on eviction, occupant termination or expiration and non-renewal of a contract, the owner may, at the owner's discretion, recover from the occupant damages suffered by the owner because of the failure of the occupant to vacate within the time required. In absence of proof of greater damages, the landlord shall recover as minimum damages twice the rental value apportioned on a daily basis for the time the occupant remains in possession. As used in this section, rental value means the amount for which the premises might reasonably have been rented, but not less than the amount actually paid or payable by the occupant for the prior rental period, and includes the money equivalent of any obligations undertaken by the occupant as part of the contract, such as regular property

maintenance and repairs. Nothing in this section prevents the owner from seeking and recovering any other damages to which the owner may be entitled.

610.7. Withholding From and Return of Security Deposits

610.7-1. *Applicability.* This section applies only to contracts that require a security deposit.

610.7-2. *Standard Withholding Provisions.* When the owner returns a security deposit to an occupant after the occupant vacates the premises, the owner may withhold from the full amount of the security deposit only amounts reasonably necessary to pay for any of the following:

- (a) Occupant damage, waste, or neglect of the premises;
- (b) Unpaid rent for which the occupant is legally responsible;
- (c) Payment that the tenant owes under the contract for utility service provided by the owner but not included in the rent;
- (d) Payment that the tenant owes for direct utility service provided by a government-owned utility, to the extent that the landlord becomes liable for the tenant's nonpayment.
- (e) Unpaid monthly municipal permit fees assessed against the occupant by a local unit of government, to the extent that the owner becomes liable for the occupant's nonpayment; and
- (f) Any other payment for a reason provided in a nonstandard provision document described in 610.7-3.

610.7-3. *Nonstandard Withholding Provisions.* A contract may include one or more nonstandard withholding provisions that authorize the owner to withhold amounts from the occupant's security deposit for reasons not specified in 610.7-2(a) through (f). The owner shall provide any such nonstandard withholding provisions to the occupant in a separate written document entitled "Nonstandard Withholding Provisions." The owner shall specifically identify each nonstandard withholding provision with the occupant before the occupant enters into a contract with the owner. If the occupant signs his or her name, or writes his or her initials, by a nonstandard withholding provision, it is rebuttably presumed that the owner has specifically identified the nonstandard withholding provision with the occupant and that the occupant has agreed to it.

610.7-4. *Normal Wear and Tear.* This section does not authorize the owner to withhold any amount from a security deposit for normal wear and tear, or for other damages or losses for which the occupant cannot reasonably be held responsible under the terms of the contract, and applicable laws and/or rules of the Nation.

610.7-5. *Timing for Return of the Security Deposit.* The owner shall deliver or mail to an occupant the full amount of any security deposit paid by the occupant, less any amounts that may be withheld under subsections 610.7-2 and 610.7-3, within thirty (30) calendar days after any of the following:

- (a) If the occupant vacates the premises on the original termination date of the contract, the date on which the contract terminates.
- (b) If the occupant vacates the premises or is evicted before the original termination date of the contract, the date on which the occupant's rental agreement terminates or, if the owner re-rents the premises before the occupant's rental agreement terminates, the date on which the new occupant takes occupancy/use of the premises.

(c) If the occupant vacates the premises untimely or is removed from the premises pursuant to 610.6-1, the date on which the owner learns that the occupant has vacated the premises or has been removed from the premises under section 610.6-1.

610.8. Eviction and Termination Actions

610.8-1. The Oneida Judiciary is granted jurisdiction to hear complaints filed regarding actions taken pursuant to this law.

610.8-2. No administrative hearing body, including a board, committee or commission, is authorized to hear a complaint regarding actions taken pursuant to this law and/or a rental agreement.

610.8-3. The owner is the Comprehensive Housing Division in regards to taking actions authorized under this law and complaints filed with the Oneida Judiciary shall name the Comprehensive Housing Division and the specific program.

End.

Adopted – BC-10-12-16-A



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



AGENDA REQUEST FORM

- 1) Request Date: June 30, 2022
- 2) Contact Person(s): Clorissa N. Santiago
Dept: Legislative Reference Office
Phone Number: (920) 869-4417 Email: csantia1@oneidanation.org
- 3) Agenda Title: Emergency Management Law Amendments
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
During the 6/24/22 storm emergency debrief session between the OBC and the Emergency Management Director it was identified that amendments would be needed to the Emergency Management law to address the composition of the ONEPC.

List any supporting materials included and submitted with the Agenda Request Form

- 1) Emergency Management law 3) _____
- 2) _____ 4) _____

- 5) Please list any laws, policies or resolutions that might be affected:
Boards, Committees, and Commissions law
- 6) Please list all other departments or person(s) you have brought your concern to:

- 7) Do you consider this request urgent? Yes No
If yes, please indicate why:
The ONEPC needs to be functional and ready for the next potential emergency.

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee.

Signature of Requester:

Please send this form and all supporting materials to:

LOC@oneidanation.org
or
Legislative Operating Committee (LOC)
P.O. Box 365
Oneida, WI 54155
Phone 920-869-4376

Title 3. Health and Public Safety – Chapter 302
Yotlihokté Olihwá:ke
Matters that are concerning immediate attention
EMERGENCY MANAGEMENT

302.1. Purpose and Policy
 302.2. Adoption, Amendment, Conflicts
 302.3. Definitions
 302.4. Emergency Management Department
 302.5. Oneida Nation Emergency Planning Committee

302.6. Entity Cooperation
 302.7. Public Health Emergencies
 302.8. Proclamation of an Emergency
 302.9. Emergency Core Decision Making Team
 302.10. Enforcement and Penalties

302.1. Purpose and Policy

302.1-1. *Purpose.* The purpose of this law is to:

- (a) provide for the development and execution of plans for the protection of residents, property, and the environment in an emergency or disaster;
- (b) provide for the direction of emergency management, response, and recovery on the Reservation; as well as coordination with other agencies, victims, businesses, and organizations;
- (c) establish the use of the National Incident Management System (NIMS); and
- (d) designate authority and responsibilities for public health preparedness.

302.1-2. *Policy.* It is the policy of the Nation to provide:

- (a) a description of the emergency management network of the Nation;
- (b) authorization for specialized activities to mitigate hazardous conditions and for the preparation of the Nation's emergency response plans, as well as to address concerns related to isolation and/or quarantine orders, emergency care, and mutual aid; and
- (c) for all expenditures made in connection with such emergency management activities to be deemed specifically for the protection and benefit of the inhabitants, property, and environment of the Reservation.

302.2. Adoption, Amendment, Repeal

302.2-1. This law was adopted by the Oneida Business Committee by resolution BC-07-15-98-A and amended by resolution BC-12-20-06-G, BC-05-13-09-F, and BC-03-10-21-A.

302.2-2. This law may be amended or repealed by the Oneida Business Committee and/or General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

302.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

302.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

302.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

302.3. Definitions

302.3-1. This section shall govern the definitions of words or phrases as used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

- (a) "Biological agent" means an infectious disease or toxin that has the ability to adversely affect human health in a variety of ways, from mild allergic reactions to serious medical conditions, and including death.

- (b) “Communicable disease” means any disease transmitted from one person or animal to another directly by contact with excreta or other discharges from the body, or indirectly via substances or inanimate objects that may cause a public health emergency.
- (c) “Community/Public Health Officer” means an agent of the Comprehensive Health Division, or his or her designee(s), who is responsible for taking the appropriate actions in order to prevent a public health emergency from occurring on the Reservation.
- (d) “Comprehensive Health Division” means the Oneida Comprehensive Health Division, which is authorized to issue compulsory vaccinations, require isolation, and quarantine individuals in order to protect the public health.
- (e) “Director” means the Director of the Nation’s Emergency Management Department.
- (f) “Emergency” means a situation that poses an immediate risk to health, life, safety, property, or environment which requires urgent intervention to prevent further illness, injury, death, or other worsening of the situation.
- (g) “Emergency Management Network” means the entities, volunteers, consultants, contractors, outside agencies, and any other resources the Nation may use to facilitate inter-agency collaboration, identify and share resources, and better prepare for local incidents and large-scale disasters.
- (h) “Emergency Response Plan” means the plan established to coordinate mitigation, preparedness, response, and recovery activities for all emergency or disaster situations within the Reservation.
- (i) “Entity” means any agency, board, committee, commission, or department of the Nation.
- (j) “Fair Market Value” means the everyday cost of a product in an ordinary market, absent of a disaster.
- (k) “Isolation” means the separation of persons or animals presumably or actually infected with a communicable disease, or that are disease carriers, for the usual period of communicability of that disease in such places and under such conditions as will prevent the direct or indirect transmission of an infectious agent to susceptible people or to those who may spread the agent to others.
- (l) “Nation” means the Oneida Nation.
- (m) “National Incident Management System” or “NIMS” means the system mandated by Homeland Security Presidential Directive 5 (HSPD 5) issued on February 28, 2003, that provides a consistent nationwide approach for federal, state, local, and tribal governments to work effectively and efficiently together to prepare for, prevent, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.
- (n) “Oneida Nation Emergency Planning Committee” means the committee that assists the Director in the implementation of this law.
- (o) “Proclaim” means to announce officially and publicly.
- (p) “Public Health Emergency” means the occurrence or imminent threat of an illness or health condition which:
- (1) is a quarantinable disease, or is believed to be caused by bioterrorism or a biological agent; and
 - (2) poses a high probability of any of the following:
 - (A) a large number of deaths or serious or long-term disability among humans; or
 - (B) widespread exposure to a biological, chemical, or radiological agent

that creates a significant risk of substantial future harm to a large number of people.

(q) “Quarantine” means the limitation of freedom of movement of persons or animals that have been exposed to a communicable disease or chemical, biological, or radiological agent, for a period of time equal to the longest usual incubation period of the disease or until there is no risk of spreading the chemical, biological, or radiological agent. The limitation of movement shall be in such manner as to prevent the spread of a communicable disease or chemical, biological, or radiological agent.

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

(s) “Trial Court” means the Trial Court of the Oneida Nation Judiciary, which is the judicial system that was established by Oneida General Tribal Council resolution GTC-01-07-13-B, and then later authorized to administer the judicial authorities and responsibilities of the Nation by Oneida General Tribal Council resolution GTC-03-19-17-A.

(t) “Vital resources” means food, water, equipment, sand, wood, or other materials obtained for the protection of life, property, and/or the environment during a proclaimed emergency.

302.4. Emergency Management Department

302.4-1. The Emergency Management Department shall be responsible for planning and coordinating the response to a disaster or emergency that occurs within the boundaries of the Reservation.

302.4-2. *Authority of the Director.* The Director shall be responsible for coordinating and planning the operational response to an emergency and is hereby empowered to:

- (a) organize and coordinate efforts of the emergency management network of the Nation;
- (b) implement the Emergency Response Plan as adopted by the Oneida Business Committee;
- (c) facilitate coordination and cooperation between entities and resolve questions that may arise among them;
- (d) incorporate the HSPD 5 which requires all federal, state, local, and tribal governments to administer the best practices contained in the NIMS;
- (e) coordinate the development and implementation of the NIMS within the Nation;
- (f) ensure that the following occurs:
 - (1) an Emergency Response Plan is developed and maintained, and includes training provisions for applicable personnel;
 - (2) emergency resources, equipment, and communications systems are developed, procured, supplied, inventoried, and accounted for;
- (g) establish the line of authority as recorded in the Emergency Response Plan as adopted by the Oneida Business Committee; and
- (h) enter into mutual aid and service agreements with tribal, local, state, and federal governments, subject to Oneida Business Committee approval.

302.4-3. *Action when an Emergency is Proclaimed.* In addition, in the event of a proclamation of an emergency on the Reservation, the Director is hereby empowered:

- (a) to obtain vital resources and to bind the Nation for the fair market value thereof, upon approval of the Emergency Management purchasing agent, who is identified in the Emergency Response Plan. If a person or business refuses to provide the resource(s)

required, the Director may commandeer resources for public use and bind the Nation for the fair market value thereof. In the event the purchasing agent is unavailable, the chain of command, as approved by the Oneida Business Committee, shall be followed.

(b) to require emergency activities of as many members of the Nation and/or employees as deemed necessary.

(c) to execute all of the ordinary powers of the Director, all of the special powers conferred by this law or by resolution adopted pursuant thereto, all powers conferred on the Director by any agreement approved by the Oneida Business Committee, and to exercise complete emergency authority over the Reservation.

(d) to coordinate with tribal, federal, state, and local authorities.

302.5. Oneida Nation Emergency Planning Committee

302.5-1. The Oneida Nation Emergency Planning Committee shall consist of representatives from entities and a community representative as identified in the Oneida Nation Emergency Planning Committee bylaws as approved by the Oneida Business Committee.

302.5-2. The Oneida Nation Emergency Planning Committee shall meet as necessary to assist the Director in drafting and maintaining the Emergency Response Plan.

302.5-3. At the request of the Director, the Oneida Nation Emergency Planning Committee shall provide assistance to the Director in the implementation of the provisions of this law or any plan issued thereunder.

302.6. Entity Cooperation

302.6-1. All entities shall comply with reasonable requests from the Director relating to emergency planning, emergency operations, and federal mandate compliance.

302.6-2. The Nation may implement more strict policies or requirements than those issued by the Community/Public Health Officer.

302.7. Public Health Emergencies

302.7-1. In order to prevent a public health emergency, the Director and the Community/Public Health Officer shall take action to limit the spread of any communicable disease, in accordance with this law.

302.7-2. *Investigation of Communicable Disease.* If the Community/Public Health Officer suspects or is informed of the existence of any communicable disease, the Community/Public Health Officer shall investigate and make or cause examinations to be made, as are deemed necessary.

302.7-3. *Quarantinable Diseases.* The Community/Public Health Officer shall provide a list of quarantinable diseases specified in a resolution to be adopted by the Oneida Business Committee.

302.7-4. *Authority of the Community/Public Health Officer.* The Community/Public Health Officer shall act as necessary to protect the public including, but not limited to, the following actions:

(a) Request the Director to take the necessary steps to have a public health emergency proclaimed;

(b) Quarantine, isolate, or take other communicable disease control measures upon an individual(s); and

(c) Issue any mandate, order, and/or require restrictions which may limit the spread of any communicable disease to any individual, business, or the general population of the Reservation.

302.7-5. *Quarantine and Isolation.* The Community/Public Health Officer shall immediately quarantine, isolate, and/or take other communicable disease control measures upon an individual if the Community/Public Health Officer receives a diagnostic report from a physician or a written or verbal notification from an individual or his or her parent or caretaker that gives the Community/Public Health Officer a reasonable belief that the individual has a communicable disease that is likely to cause a public health emergency.

(a) If an individual is infected with a communicable disease and the Community/Public Health Officer determines it is necessary to limit contact with the individual, all persons may be forbidden from being in direct contact with the infected individual, except for those persons having a special written permit from the Community/Public Health Officer.

(b) Any individual, including an authorized individual, who enters an isolation or quarantine premises may be subject to isolation or quarantine under this law.

(c) When the Community/Public Health Officer deems it necessary that an individual be quarantined, isolated, or otherwise restricted in a separate place, the Community/Public Health Officer shall have that individual removed to such a designated place, if it can be done without danger to the individual's health.

302.7-6. *Action when a Public Health Emergency is Proclaimed.* In addition, when a public health emergency is proclaimed, the Community/Public Health Officer may do all of the following, as necessary:

(a) organize the vaccination of individuals;

(1) The following types of individuals shall not be subject to a vaccination:

(A) an individual who the vaccination is reasonably likely to lead to serious harm to the individual; and

(B) an individual, for reason of religion or conscience, refuses to obtain the vaccination.

(b) isolate or quarantine individuals, including those who are unable or unwilling to receive a vaccination; and

(c) prevent any individual, except for those individuals authorized by the Community/Public Health Officer, from entering an isolation or quarantine premises.

302.7-7. The Oneida Police Department shall take enforcement action when necessary and work with the Community/Public Health Officer to execute the Community/Public Health Officer's orders and properly guard any place if quarantine, isolation, or other restrictions on communicable disease are violated or intent to violate becomes apparent.

302.7-8. Expenses for necessary medical care, food, and other articles needed for an infected individual shall be charged against the individual or whoever is liable for the individual's care and support.

302.8. Proclamation of an Emergency

302.8-1. *Proclamation of an Emergency.* The Oneida Business Committee shall be responsible for proclaiming or ratifying the existence of an emergency and for requesting a gubernatorial or presidential declaration.

(a) The Director may request that the Oneida Business Committee proclaim the existence of an emergency. The Oneida Business Committee may proclaim the existence of an emergency without a request from the Director, if warranted.

(b) In the event the Oneida Business Committee is unable to proclaim or ratify the existence of an emergency, the Director may proclaim an emergency which shall be in effect until such time the Oneida Business Committee can officially ratify this declaration.

302.8-2. No proclamation of an emergency by the Oneida Business Committee or the Director may last for longer than sixty (60) days, unless the proclamation of emergency is extended by the Oneida Business Committee.

302.8-3. *Management Network.* The emergency management network of the Reservation shall be as specified in the Emergency Response Plan, as adopted by the Oneida Business Committee.

302.8-4. *After-Action Report.* After an emergency has subsided, the Director shall prepare, or shall work in conjunction with the appropriate entity to prepare, an after-action report to be presented to the Oneida Business Committee, any interested entity, and the public. This report shall be presented to the required parties no later than sixty (60) days after the emergency has subsided, unless an extension is granted by the Oneida Business Committee.

302.8-5. During a proclaimed emergency, the Conservation Department shall be responsible for the care, disposal, and sheltering of all abandoned domestic animals and livestock. The Conservation Department may delegate this responsibility to a contracted agency.

302.9. Emergency Core Decision Making Team

302.9-1. *Emergency Core Decision Making Team.* Upon the proclamation of an emergency under this law, the Oneida Business Committee may establish an Emergency Core Decision Making Team through the adoption of a motion. The motion shall identify the positions of the Nation which shall make up the members of the Emergency Core Decision Making Team based on the type and severity of emergency the Nation is experiencing.

302.9-2. *Delegation of Authority.* The Emergency Core Decision Making Team shall have emergency authority to take the following actions:

(a) Notwithstanding any requirements of the Legislative Procedures Act, declare exceptions to the Nation's laws during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees; and

(b) Notwithstanding any requirements in any policy, procedure, regulation, or standard operating procedures, declare exceptions to any policy, procedure, regulation, or standard operating procedure during the emergency period which will be of immediate impact for the purposes of protecting the health, safety, and general welfare of the Nation's community, members, and employees.

302.9-3. *Declarations.* All declarations made by the Emergency Core Decision Making Team shall:

(a) be written on the Nation's letterhead;

(b) provide the date the declaration was issued;

(c) contain a clear statement of the directives;

(d) provide the date the directive shall go into effect;

(e) be signed by the Oneida Business Committee Chairperson, or Vice Chairperson in the Chairperson's absence; and

(f) be posted on the Nation's website.

302.9-4. *Duration of Authority for Exceptions Declared by the Emergency Core Decision Making Team.* Any declaration made under the authority granted in this section shall be effective upon the date declared by the Emergency Core Decision Making Team and shall be effective for the duration of any proclaimed emergency, or for a shorter time period if identified.

302.9-5. *Notification to the Oneida Business Committee.* Within twenty-four (24) hours of a declaration being made, the Emergency Core Decision Making Team shall provide notification of the declaration to the Oneida Business Committee.

302.9-6. The Oneida Business Committee may modify, extend, or repeal any declaration or emergency action taken by the Emergency Core Decision Making Team.

302.10. Enforcement and Penalties

302.10-1. It shall be a violation of this law for any person to not comply with or willfully obstruct, hinder, or delay the implementation or enforcement of the provisions of this law or any plan issued thereunder, whether or not an emergency has been proclaimed.

302.10-2. *Citations.* An Oneida Police Department officer may issue a citation to any person who violates a provision of this law.

(a) A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.

(b) The Oneida Business Committee shall adopt through resolution a citation schedule which sets forth specific fine amounts for violations of this law.

(c) The Trial Court shall have jurisdiction over any action brought under this law.

302.10-3. *Disciplinary Action.* An employee of the Nation who violates this law during their work hours or who refuses to follow the Emergency Response Plan may be subject to disciplinary action in accordance with the Nation's laws and policies governing employment.

(a) An employee of the Nation who is disciplined under this law may appeal the disciplinary action in accordance with the Nation's laws and policies governing employment.

End.

Adopted - BC-07-15-98-A

Amended - BC-12-20-06-G

Emergency Amended – BC-04-30-09-A (Influenza A (H1N1))

Amended - BC-05-13-09-F

Emergency Amended – BC-03-17-20-E (COVID-19)

Extension of Emergency – BC-08-26-20-A

Amended – BC-03-10-21-A



Legislative Operating Committee
July 6, 2022

Elder Assistance Program Law

Submission Date: 11/3/21	Public Meeting: 5/18/22
LOC Sponsor: David P. Jordan	Emergency Enacted: N/A

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

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

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

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

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

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

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

- 3/2/22 LOC:** Motion by Marie Summers to accept the draft of the Oneida Elder Assistance Program law and defer to a work meeting for further discussion; seconded by Jennifer Webster. Motion carried unanimously.
- 3/10/22:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Jennifer Webster, Clorissa N. Santiago, Carmen Vanlanen, Kristal Hill, Rhiannon Metoxen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was for the LOC to review and consider the input received from the Trust Enrollment Department Director and the General Manager.
- 3/16/22 LOC:** Motion by Marie Summers to approve the updated draft of the Elder Assistance Program law and direct that a legislative analysis be developed; seconded by Jennifer Webster. Motion carried unanimously.
- 3/29/22:** *Joint OBC and OTEC Meeting.* Present: David P. Jordan, Kirby Metoxen, Daniel Guzman King, Marie Summers, Jennifer Webster, Clorissa N. Santiago, Barbara Webster, Brandon Yellowbird-Stevens, Carl Artman, Geraldine Danforth, John Danforth, Keith Doxtator, Norbert Hill Jr., Sandra Skenandore, Shannon Davis, Tehassi Hill, Venessa Cardish, William Gollnick, Lisa Liggins, Terry Cornelius. This was a joint Oneida Business Committee and Oneida Trust Enrollment Committee meeting held through Microsoft Teams. The purpose of this meeting was to provide the OTEC and the OBC an opportunity to discuss and provide input on the Elder Assistance Program law.
- 4/14/22:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Carmen Vanlanen. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was for the LOC to review the public comment period notice.
- 4/20/22 LOC:** Motion by Jennifer Webster to approve the legislative analysis and public meeting packet and forward the Elder Assistance Program law to a public meeting to be held on May 18, 2022; seconded by Marie Summers. Motion carried unanimously.
- 5/18/22:** *Public Meeting Held.* Present: David P. Jordan, Jennifer Webster, Marie Summers, Kirby Metoxen, Clorissa N. Santiago, Cheryl Aliskwet Ellis, Shannon Davis, Edward Delgado, Michael Denny, Barbara Cornelius, Carl Artman (Microsoft Teams), Carrie Lindsey (Microsoft Teams), Gerald Sexton (Microsoft Teams), Jameson Wilson (Microsoft Teams), Jeanette Ninham (Microsoft Teams), Mark W. Powless (Microsoft Teams), Michelle Myers (Microsoft Teams), Matthew Cornelius (Microsoft Teams). The public meeting for the proposed Elder Assistance Program law was held in person in the Norbert Hill Center and on Microsoft Teams. Three (3) individuals provided public comment during the public meeting.
- 5/25/22:** *Public Comment Period Closed.* Three (3) submissions of written comments were received during the public comment period.
- 6/1/22 LOC:** Motion by Kirby Metoxen to accept the public comments and the public comment review memorandum and defer to a work meeting for further consideration; seconded by Marie Summers. Motion carried unanimously.
- 6/1/22:** *Work Meeting.* Present: David P. Jordan, Kirby Metoxen, Jennifer Webster, Marie Summers, Clorissa N. Santiago, Kristal Hill. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was for the LOC to review and consider the public comments received.

6/15/22 LOC: Motion by Marie Summers to approve the updated public comment review memorandum [with noted change], draft, legislative analysis, and fiscal impact statement request memorandum, and forward to the Finance Department directing that a fiscal impact statement be prepared and submitted to the LOC by July 14, 2022; seconded by Jennifer Webster. Motion carried unanimously.

7/1/22: *Work Meeting.* Present: David P. Jordan, Jennifer Webster, Marie Summers, Daniel Guzman King, Clorissa N. Santiago, Grace Elliot, Ralinda Ninham-Lamberies, Keith Doxtator, Jameson Wilson, Barbara Webster. This was a work meeting held through Microsoft Teams. The purpose of this work meeting was to discuss the communication of the Oneida Nation Assistance Fund and the Elder Assistance Program, specifically how it relates to per capita, and to discuss the application submission period and disbursement timeframe resolutions.

7/1/22: *Fiscal Impact Statement Received.* The Finance Department provided the fiscal impact statement for the proposed Elder Assistance Program law on July 1, 2022.

Next Steps:

- Approve the adoption packet for the Elder Assistance Program law and forward to the Oneida Business Committee for consideration.
- Approve the resolution, *Elder Assistance Program Application Submission Period and Disbursement Timeframe for 2022*, and corresponding statement of effect and forward to the Oneida Business Committee for consideration.



TO: Oneida Business Committee
FROM: David P. Jordan, LOC Chairperson [Signature]
DATE: July 13, 2022
RE: Adoption of the Elder Assistance Program Law

Please find the following attached backup documentation for your consideration of the adoption of the Elder Assistance Program law:

1. Resolution: Adoption of the Elder Assistance Program Law
2. Statement of Effect: Adoption of the Elder Assistance Program Law
3. Elder Assistance Program Law Legislative Analysis
4. Elder Assistance Program Law
5. Elder Assistance Program Law Fiscal Impact Statement

Overview

On November 3, 2021, the Legislative Operating Committee added the Elder Assistance Program law to its Active Files List. The purpose of the Elder Assistance Program law is to establish the Elder Assistance Program to govern how the Nation provides financial assistance to elders, pursuant to the Oneida General Welfare law. [10 O.C. 1002.1-1]. It is the policy of the Nation to prioritize the general welfare needs of its elders and recognize that its elders possess unique and irreplaceable stores of knowledge, skill, culture, and experience that enhance and enrich the lives of every member of the Nation. [10 O.C. 1002.1-2]. The interests of the Nation are advanced when its elders remain confident that their general welfare needs can be met.

This resolution adopts the Elder Assistance Program law which will:

- Establish the Elder Assistance Program as an approved program of the Nation in accordance with the Oneida General Welfare law. [10 O.C. 1002.4-1].
- Provide how this program qualifies for general welfare exclusion. [10 O.C. 1002.4-2].
- Provide the eligibility requirements for accessing assistance from the Elder Assistance Program – which is that a person is a member of the Nation, age sixty-five (65) or older, and submits a completed application during the designated submission timeframe. [10 O.C. 1002.5-1].
- Provide the minimum requirements for the information that must be included on the application. [10 O.C. 1002.5-3].
- Provide how and when funds from the Elder Assistance Program are disbursed [10 O.C. 1002.5-2, 1002.5-4].
- Provide for the types of expenses that shall be considered qualifying expenditures for use of assistance from Elder Assistance Program by the recipient. [10 O.C. 1002.5-5].
- Provide information on the funding source and who determines that amount of available funding to an eligible participant. [10 O.C. 1002.6-1, 1002.6-2].

- Provide that the Trust Enrollment Department is the department that has the responsibilities to administer the Elder Assistance Program. *[10 O.C. 1002.5-6, 1002.5-7].*

The Legislative Operating Committee developed the Elder Assistance Program law through collaboration with representatives from the Oneida Law Office, Oneida Business Committee, Finance Administration, Trust Enrollment Department, Oneida Trust Enrollment Committee, Governmental Administrative Office, and the Intergovernmental Affairs and Communications. The Legislative Operating Committee held ten (10) work meetings on the development of the Elder Assistance Program law.

In accordance with the Legislative Procedures Act, a public meeting on the proposed Elder Assistance Program law was held on May 18, 2022. Three (3) individuals provided oral comments during the public meeting. The public comment period was then held open until May 25, 2022. The Legislative Operating Committee received three (3) submissions of written comments during the public comment period. All public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on June 1, 2022. Any changes made based on those comments have been incorporated into this draft.

Requested Action

Adopt the Resolution: Adoption of the Elder Assistance Program Law

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____ Adoption of the Elder Assistance Program Law

- 1
2
3 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
4 recognized by the laws of the United States of America; and
5
6 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and
7
8 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
9 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and
10
11 **WHEREAS,** the purpose of the Elder Assistance Program law (“the Law”) is to establish the Elder
12 Assistance Program to govern how the Nation provides financial assistance to elders,
13 pursuant to the Oneida General Welfare law; and
14
15 **WHEREAS,** it is the policy of the Nation to prioritize the general welfare needs of its elders and
16 recognize that its elders possess unique and irreplaceable stores of knowledge, skill,
17 culture, and experience that enhance and enrich the lives of every member of the Nation;
18 and
19
20 **WHEREAS,** the interests of the Nation are advanced when its elders remain confident that their general
21 welfare needs can be met; and
22
23 **WHEREAS,** the Law establishes the Elder Assistance Program as an approved program of the Nation
24 in accordance with the Oneida General Welfare law; and
25
26 **WHEREAS,** the Law provides how this program qualifies for general welfare exclusion; and
27
28 **WHEREAS,** the Law provides the eligibility requirements for accessing assistance from the Elder
29 Assistance Program – which is that a person is a member of the Nation, age sixty-five (65)
30 or older, and submits a completed application during the designated submission timeframe;
31 and
32
33 **WHEREAS,** the Law provides the minimum requirements for the information that must be included on
34 the application; and
35
36 **WHEREAS,** the Law provides how and when funds from the Elder Assistance Program are disbursed;
37 and
38
39 **WHEREAS,** the Law provides for the types of expenses that shall be considered qualifying expenditures
40 for use of assistance from Elder Assistance Program by the recipient; and
41
42 **WHEREAS,** the Law provides information on the funding source and who determines that amount of
43 available funding to an eligible participant; and

44
45 **WHEREAS,** the Law provides that the Trust Enrollment Department is the department that has the
46 responsibilities to administer the Elder Assistance Program; and
47
48 **WHEREAS,** in accordance with the Legislative Procedures Act a legislative analysis and fiscal impact
49 statement were developed for this Law; and
50
51 **WHEREAS,** a public meeting on this proposed Law was held on May 18, 2022, and the public comment
52 period was held open until May 25, 2022; and
53
54 **WHEREAS,** the Legislative Operating Committee accepted, reviewed, and considered all public
55 comments received on June 1, 2022; and
56
57 **NOW THEREFORE BE IT RESOLVED,** that the Elder Assistance Program law is hereby adopted and shall
58 be effective immediately.
59



Statement of Effect

Adoption of the Elder Assistance Program Law

Summary

This resolution adopts the Elder Assistance Program law.

Submitted by: Clorissa N. Santiago, Senior Staff Attorney, Legislative Reference Office

Date: July 1, 2022

Analysis by the Legislative Reference Office

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

This resolution adopts the Elder Assistance Program law which will:

- Establish the Elder Assistance Program as an approved program of the Nation in accordance with the Oneida General Welfare law. [10 O.C. 1002.4-1].
- Provide how this program qualifies for general welfare exclusion. [10 O.C. 1002.4-2].
- Provide the eligibility requirements for accessing assistance from the Elder Assistance Program – which is that a person is a member of the Nation, age sixty-five (65) or older, and submits a completed application during the designated submission timeframe. [10 O.C. 1002.5-1].
- Provide the minimum requirements for the information that must be included on the application. [10 O.C. 1002.5-3].
- Provide how and when funds from the Elder Assistance Program are disbursed [10 O.C. 1002.5-2, 1002.5-4].
- Provide for the types of expenses that shall be considered qualifying expenditures for use of assistance from Elder Assistance Program by the recipient. [10 O.C. 1002.5-5].
- Provide information on the funding source and who determines that amount of available funding to an eligible participant. [10 O.C. 1002.6-1, 1002.6-2].
- Provide that the Trust Enrollment Department is the department that has the responsibilities to administer the Elder Assistance Program. [10 O.C. 1002.5-6, 1002.5-7].

The Legislative Procedures Act (“the LPA”) was adopted by the General Tribal Council for the purpose of providing a process for the adoption or amendment of laws of the Nation. [1 O.C. 109.1-1]. The Elder Assistance Program law complied with all processes and procedures required by the LPA, including the development of a legislative analysis, a fiscal analysis, and the

opportunity for public review during a public meeting and public comment period. [1 O.C. 109.6, 109.7, 109.8].

A public meeting on the proposed Elder Assistance Program law was held on May 18, 2022. Three (3) individuals provided oral comments during the public meeting. The public comment period was then held open until May 25, 2022. The Legislative Operating Committee received three (3) submissions of written comments during the public comment period. All public comments received were accepted, reviewed, and considered by the Legislative Operating Committee on June 1, 2022. Any changes made based on those comments have been incorporated into this draft.

The Elder Assistance Program law will become effective immediately upon adoption by the Oneida Business Committee on July 13, 2022, in accordance with the LPA. [1 O.C. 109.9-3].

Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws.



ELDER ASSISTANCE PROGRAM LAW LEGISLATIVE ANALYSIS

SECTION 1. EXECUTIVE SUMMARY

<i>Analysis by the Legislative Reference Office</i>	
Intent of the Proposed Law	<ul style="list-style-type: none"> ▪ Establish the Elder Assistance Program as an approved program of the Nation in accordance with the Oneida General Welfare law. [10 O.C. 1002.4-1]. ▪ Provide how this program qualifies for general welfare exclusion. [10 O.C. 1002.4-2]. ▪ Provide the eligibility requirements for accessing assistance from the Elder Assistance Program – which is that a person is a member of the Nation, age sixty-five (65) or older, and submits a completed application during the designated submission timeframe. [10 O.C. 1002.5-1]. ▪ Provide the minimum requirements for the information that must be included on the application. [10 O.C. 1002.5-3]. ▪ Provide how and when funds from the Elder Assistance Program are disbursed [10 O.C. 1002.5-2, 1002.5-4]. ▪ Provide for the types of expenses that shall be considered qualifying expenditures for use of assistance from Elder Assistance Program by the recipient. [10 O.C. 1002.5-5]. ▪ Provide information on the funding source and who determines that amount of available funding to an eligible participant. [10 O.C. 1002.6-1, 1002.6-2]. ▪ Provide that the Trust Enrollment Department is the department that has the responsibilities to administer the Elder Assistance Program. [10 O.C. 1002.5-6, 1002.5-7].
Purpose	The purpose of this law is to establish the Elder Assistance Program to govern how the Nation provides financial assistance to elders, pursuant to the principles of General Welfare Exclusion. [10 O.C. 1002.1-1].
Affected Entities	Oneida Business Committee, Oneida Trust Enrollment Department, the Nation's Elders
Related Legislation	Oneida General Welfare Law
Public Meeting	A public meeting was held in accordance with the Legislative Procedures Act on May 18, 2022, with a public comment period held open until May 25, 2022.
Fiscal Impact	A fiscal impact statement prepared in accordance with the Legislative Procedures Act was provided by the Finance Department on July 1, 2022.

SECTION 2. LEGISLATIVE DEVELOPMENT

- 1
- 2 **A. Background.** The Elder Assistance Program law (“the Law”) will be a new law adopted by the Nation
- 3 for the purpose of establishing the Elder Assistance Program to govern how the Nation provides
- 4 financial assistance to elders, pursuant to the principles of General Welfare Exclusion. [10 O.C. 1002.1-
- 5 1]. The request to develop an Elder Assistance Program Law came from Councilman David P. Jordan
- 6 based on a recommendation from the Chief Financial Officer during the October 20, 2021, LOC
- 7 meeting. This request asked the LOC to consider developing a new law to establish an approved
- 8 program under the Oneida General Welfare law which transitions the Nation’s Elderly 65+ Per Capita

9 Payment Distribution Fund, from being utilized for per capita payments to being utilized for general
10 welfare assistance payments for elders.
11

12 SECTION 3. CONSULTATION AND OUTREACH

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

- 15 ▪ Oneida Law Office;
 - 16 ▪ Oneida Business Committee;
 - 17 ▪ Finance Administration;
 - 18 ▪ Trust Enrollment Department;
 - 19 ▪ Oneida Trust Enrollment Committee;
 - 20 ▪ Governmental Administrative Office; and
 - 21 ▪ Intergovernmental Affairs and Communications.
- 22

23 SECTION 4. PROCESS

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

- 25 ▪ On November 3, 2021, the Legislative Operating Committee added this Law to its Active Files
26 List.
- 27 ▪ On March 16, 2022, the Legislative Operating Committee approved the draft of this Law and
28 directed that a legislative analysis be developed.
- 29 ▪ On April 20, 2022, the Legislative Operating Committee approved the legislative analysis and
30 the public meeting packet and forwarded the Law to a public meeting to be held on May 18,
31 2022.
- 32 ▪ The public meeting was held on May 18, 2022, in person in the Norbert Hill Center and on
33 Microsoft Teams. Three (3) individuals provided public comment during the public meeting.
- 34 ▪ The public comment period was held open until May 25, 2022. Three (3) submissions of written
35 comments were received during the public comment period.
- 36 ▪ On June 1, 2022, the Legislative Operating Committee accepted the public comments and the
37 public comment review memorandum and deferred these items to a work meeting for further
38 consideration.
- 39 ▪ On June 1, 2022, the Legislative Operating Committee reviewed and considered all the public
40 comments received.
- 41 ▪ On June 15, 2022, the Legislative Operating Committee approved the updated public comment
42 review memorandum [with noted change], draft, legislative analysis, and fiscal impact
43 statement request memorandum, and forwarded these materials to the Finance Department
44 directing that a fiscal impact statement be prepared and submitted to the Legislative Operating
45 Committee by July 14, 2022.
- 46 ▪ The Finance Department provided the fiscal impact statement for the proposed Elder
47 Assistance Program law on July 1, 2022.

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

- 50 ▪ January 13, 2022: LOC work meeting.
- 51 ▪ January 19, 2022: LOC work meeting with the Oneida Law Office, Finance Administration,
52 and the Trust Enrollment Department.

- 53 ▪ February 16, 2022: LOC work meeting.
- 54 ▪ February 22, 2022: Work meeting with Oneida Law Office.
- 55 ▪ February 25, 2022: LOC work meeting.
- 56 ▪ March 10, 2022: LOC work meeting.
- 57 ▪ March 29, 2022: Joint Oneida Business Committee and Oneida Trust Enrollment Committee
- 58 Meeting.
- 59 ▪ April 14, 2022: LOC work meeting.
- 60 ▪ June 1, 2022: LOC work meeting.
- 61 ▪ July 1, 2022: LOC work meeting with Finance Administration, Trust Enrollment Department,
- 62 Intergovernmental Affairs and Communications, and Governmental Administrative Office.
- 63

64 SECTION 5. CONTENTS OF THE LEGISLATION

- 65 A. **Purpose and Policy.** The purpose of this Law is to establish the Elder Assistance Program to govern
66 how the Nation provides financial assistance to elders, pursuant to the Oneida General Welfare law.
67 [10 O.C. 1002.1-1]. It is the policy of the Nation to prioritize the general welfare needs of its elders.
68 The Nation recognizes that its elders possess unique and irreplaceable stores of knowledge, skill,
69 culture, and experience that enhance and enrich the lives of every member of the Nation. The interests
70 of the Nation are advanced when its elders remain confident that their general welfare needs can be
71 met. [10 O.C. 1002.1-2].
- 72 B. **Establishment.** The Elder Assistance Program is hereby established as an approved program of the
73 Nation in accordance with the Oneida General Welfare Law. The Elder Assistance Program meets the
74 requirements of the General Test as defined in the Oneida General Welfare law; General Criteria as
75 defined in I.R.S. Rev. Proc. 2014-35, section 5; and the requirements of the Tribal General Welfare
76 Exclusion Act of 2014 26 U.S.C. §139E(b). [10 O.C. 1002.4-1].
- 77 C. **Guidelines and Requirements.** The Law provides guidelines and requirements for the Elder Assistance
78 Program. The Elder Assistance Program shall be open to any individuals who meet the following
79 criteria: is a member of the Nation; is age sixty-five (65) or older; and submits a completed application
80 during the designated submission timeframe [10 O.C. 1002.5-1]. The Oneida Business Committee shall
81 set forth, through the adoption of a resolution, an application submission period and disbursement
82 timeframe for a distribution of assistance from the Elder Assistance Program. [10 O.C. 1002.5-2]. Any
83 individual seeking assistance from the Elder Assistance Program shall submit an application. [10 O.C.
84 1002.5-3]. The Trust Enrollment Department shall make available an Elder Assistance Program
85 application form and instructions. [10 O.C. 1002.5-3(a)]. The Law provides the minimum information
86 that is required to be provided on the application. [10 O.C. 1003.5-2(a)(1)(A)-(I)]. Assistance provided
87 through the Elder Assistance Program application shall be disbursed in accordance with the timeframe
88 set through resolution by the Oneida Business Committee. [10 O.C. 1003.5-4]. Funds from the Elder
89 Assistance Program may be disbursed through direct deposit, or check, depending on the selection
90 made on the application by the recipient. [10 O.C. 1002.5-4].
- 91 D. **Qualifying Expenditures.** The following types of expenses shall be considered qualifying expenditures
92 for use of assistance from the Elder Assistance Program by the recipient:
- 93 ▪ costs relating to housing needs of principal residences such as:
 - 94 ▪ mortgage payments, rent payments, and down payments;
 - 95 ▪ enhancements for habitability of housing;
 - 96 ▪ basic housing repairs or rehabilitation;

- 97 ▪ improvements to adapt housing for special health needs;
- 98 ▪ costs for paying utility bills and charges, including, but not limited to, the following:
 - 99 ▪ water;
 - 100 ▪ electricity;
 - 101 ▪ gas;
 - 102 ▪ basic communication services such as:
 - 103 ▪ phone
 - 104 ▪ internet; and
 - 105 ▪ cable;
 - 106 ▪ costs associated with food security;
 - 107 ▪ costs associated with home care assistance;
 - 108 ▪ costs associated with vehicle payments, maintenance, repair, and insurance;
 - 109 ▪ costs associated with medical care and transportation, room, and board costs for seeking
 - 110 medical care;
 - 111 ▪ funeral and burial expenses and expenses for attending wakes, funerals, burials, bereavements,
 - 112 and subsequent honoring events; and
 - 113 ▪ costs related to any other emergency circumstance [10 O.C. 1002.5-5].

114 **E. Oversight and Records Maintenance.** The Trust Enrollment Department shall oversee the collection,
115 review, and permitted distribution of funds from the Elder Assistance Program to the qualifying
116 recipients and shall be responsible for maintenance of records for the Elder Assistance Program [10
117 O.C. 1002.5-6; 10 O.C. 1002.5-7]. The recipient shall retain receipts for the expenditure of the funds
118 associated with the Elder Assistance Program. [10 O.C. 1002.5-7].

119 **F. Funding.** The Elder Assistance program shall be funded through the Elder, Education and General
120 Welfare Trust Fund, which is derived from the Emigrant NY Indian Claims Award 75 Trust Fund. [10
121 O.C. 1002.6-1]. The Oneida Business Committee may obligate additional funding to the Elder
122 Assistance Program through any other funding source deemed necessary by the Oneida Business
123 Committee. *Id.* Use of the Elder Assistance Program is contingent upon available funding from the
124 Elder, Education and General Welfare Trust Fund. *Id.* The Oneida Trust Enrollment Committee shall
125 determine the amount of assistance available to an eligible recipient from the Elder Assistance Program
126 per any permitted distribution. [10 O.C. 1002.6-2].

127

128 SECTION 6. RELATED LEGISLATION

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

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

138 SECTION 7. OTHER CONSIDERATIONS

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

- 140 a. Under the Legislative Procedures Act, a fiscal impact statement is required for all legislation
141 except emergency legislation. [1 O.C. 109.6-1].
142 i. A fiscal impact statement shall be submitted by agencies as directed by the Legislative
143 Operating Committee. [1 O.C. 109.6-1].
144 ii. Fiscal Impact statements may be prepared by any agency who may receive funding if
145 the legislation is enacted, any agency who may administer a program if the legislation
146 is enacted, any agency who may have financial information concerning the subject
147 matter of the legislation, or by the Finance Office, upon request of the Legislative
148 Operating Committee. [1 O.C. 109.6-1(a) and (b)].
149 iii. Oneida Business Committee resolution BC-10-28-20-A titled, “Further Interpretation
150 of ‘Fiscal Impact Statement’ in the Legislative Procedures Act,” provides further
151 clarification on who the Legislative Operating Committee may direct complete a fiscal
152 impact statement at various stages of the legislative process, as well as timeframes for
153 completing the fiscal impact statement.
- 154 b. *Conclusion.* The Legislative Operating Committee received a fiscal impact statement from the
155 Finance Department on July 1, 2022.

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

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

1002.5. Guidelines and Requirements
1002.6. Funding

1002.1. Purpose and Policy

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

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

1002.2. Adoption, Amendment, Repeal

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

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

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

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

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

1002.3. Definitions

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

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

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

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

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

(f) "Nation" means the Oneida Nation.

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

42 approved program requirements.

43
44 **1002.4. Establishment**

45 1002.4-1. *Establishment*. The Elder Assistance Program is hereby established as an approved
46 program of the Nation in accordance with the Oneida General Welfare law. The purpose of the
47 Elder Assistance Program is to provide financial assistance to elders of the Nation to address the
48 unique and compounding general welfare needs of elders.

49 1002.4-2. *General Welfare Exclusion*. The Elder Assistance Program meets the requirements of
50 the General Test as defined in the Oneida General Welfare law; General Criteria as defined in
51 I.R.S. Rev. Proc. 2014-35, section 5; and the requirements of the Tribal General Welfare Exclusion
52 Act of 2014, 26 U.S.C. §139E(b). The assistance provided through the Elder Assistance Program
53 is:

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

63
64 **1002.5. Guidelines and Requirements**

65 1002.5-1. *Eligibility*. The Elder Assistance Program shall be open to any individual who meets
66 the following criteria:

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

70 1002.5-2. *Distribution Period*. The Oneida Business Committee, in consultation with the Oneida
71 Trust Enrollment Committee, shall set forth through the adoption of a resolution an application
72 submission period and disbursement timeframe for a distribution of assistance from the Elder
73 Assistance Program.

74 1002.5-3. *Application for Funds*. Any individual seeking assistance from the Elder Assistance
75 Program shall submit an application.

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

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

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

88 and federal law; and
 89 (I) signature of the applicant, electronic or handwritten, affirming the
 90 declaration.

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

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

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

101 1002.5-4. *Disbursement of Funds.* Assistance provided through the Elder Assistance Program
 102 shall be disbursed in accordance with the timeframe set through resolution by the Oneida Business
 103 Committee. Funds from the Elder Assistance Program may be disbursed through direct deposit, or
 104 check, depending on the selection made on the application by the recipient.

105 1002.5-5. *Qualifying Expenditures.* The following types of expenses shall be considered
 106 qualifying expenditures for use of assistance from the Elder Assistance Program by the recipient:

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

108 (1) mortgage payments, rent payments, and down payments;

109 (2) enhancements for habitability of housing;

110 (3) basic housing repairs or rehabilitation;

111 (4) improvements to adapt housing for special health needs;

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

113 (1) water;

114 (2) electricity;

115 (3) gas;

116 (4) basic communication services such as:

117 (A) phone;

118 (B) internet; and

119 (C) cable;

120 (c) costs associated with food security;

121 (d) costs associated with home care assistance;

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

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

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

127 (h) costs related to any other emergency circumstance.

128 1002.5-6. *Oversight.* The Trust Enrollment Department shall oversee the collection, review, and
 129 permitted distribution of funds from the Elder Assistance Program to the qualifying recipients.

130 1002.5-7. *Records Maintenance.* The Trust Enrollment Department shall be responsible for
 131 maintenance of records for the Elder Assistance Program. The recipient shall retain receipts for
 132 the expenditure of the funds associated with the Elder Assistance Program.
 133

134 **1002.6. Funding**

135 1002.6-1. *Funding Source.* The Elder Assistance Program shall be funded through the Elder,
136 Education and General Welfare Trust Fund, which is derived from the Emigrant NY Indian Claims
137 Award Docket 75 Trust Fund. The Oneida Business Committee may obligate additional funding
138 to the Elder Assistance Program through any other funding source deemed necessary by the Oneida
139 Business Committee. Use of the Elder Assistance Program is contingent upon available funding
140 from the Elder, Education and General Welfare Trust Fund.

141 1002.6-2. *Amount of Available Funding.* The Oneida Trust Enrollment Committee shall
142 determine the amount of assistance available to an eligible recipient from the Elder Assistance
143 Program per any permitted distribution.

144
145 *End.*

~~146~~

148 _____
Adopted – BC-__-__-__-__

FINANCE ADMINISTRATION

Fiscal Impact Statement



MEMORANDUM

TO: Lawrence Barton, Chief Financial Officer

FROM: RaLinda Ninham-Lamberies, Assistant Chief Financial Officer

DATE: July 1, 2022

RE: **Fiscal Impact of the Oneida Elder Assistance Law**

I. Estimated Fiscal Impact Summary

Law: Curfew Law		
Implementing Agency	Oneida Business Committee Oneida Elders Finance Administration Oneida Trust and Enrollments	
Estimated time to comply	Upon adoption of the Law	
Estimated Impact	Current Fiscal Year	10 Year Estimate
Total Estimated Fiscal Impact	Savings \$367,930.50 to the eligible member	Savings \$3,679,305 to the eligible member

II. Background

A. Legislative History

This law would establish an Elder Assistance Program as an approved program of the Oneida General Welfare Law. The purpose of the law is to provide financial assistance to Oneida Elders pursuant to the principals of the General Welfare Exclusion.

III. Methodology and Assumptions

A “Fiscal Impact Statement” means an estimate of the total identifiable fiscal year financial effects associated with legislation and includes startup costs, personnel, office, documentation costs, as well as an estimate of the amount of time necessary for an agency to comply with the Law after implementation.

Finance does NOT identify the source of funding for the estimated cost or allocate any funds to the legislation.

The analysis was completed based on the information provided as of the date of this memo.

IV. Executive Summary of Findings

- The Law will govern how the Oneida Nation provides assistance to eligible Oneida Elders on a non-tax reportable basis, pursuant to the principles of the General Welfare Exclusion Act of 2014 26 U.S.C. §139E(b).
- The Oneida Elder Assistance Program meets the requirements of the General Test as defined in the Oneida General Welfare Law and requirements of the Tribal General Welfare Exclusion Act of 2014 26 U.S.C. §139E(b).
- The Oneida Elders Assistance Program shall be open to any individuals who are an enrolled member of the Oneida Nation; is age sixty-five or older; and submits a completed application during the designated submission timeframe.
- The Oneida Business Committee shall by adoption of a resolution set an application submission period and disbursement timeframe for a distribution of assistance from the Elder Assistance Program.
- The Oneida Trust and Enrollment Department shall make an application form and instructions available to the eligible member.
- Qualifying expenditures for use of assistance from the Oneida Elder Assistance Program shall include:
 - Costs relating to housing needs;
 - Costs for paying utility bills and charges;
 - Costs associated with food security;
 - Costs associated with home care assistance;
 - Costs associated with vehicle payments, maintenance, repair, and insurance;
 - Costs associated with medical care and transportation and room and board costs for seeking medical care;
 - Funeral and burial expenses and expenses for attending wakes, funerals, burials, bereavements, and subsequent honoring events; and
 - Cost related to any other emergency circumstance.

- The Oneida Elder Assistance Program shall be funded through the Oneida Elder, Education and General Welfare Trust Fund derived from the Emigrant NY Claims Award 75 Trust Fund.

V. Agency

There are no startup, personnel, office, or documentation costs associated with this legislation. The Law shall become effective upon adoption.

VI. Financial Impact

The Law has no direct increased fiscal impact for the Oneida Nation. The Law is funded by the investments held by Oneida Trust and Enrollments in the Elder, Education and General Welfare Trust Fund derived from the Emigrant NY Claims Award 75 Trust Fund.

The fiscal impact to the individual eligible Oneida member is an annual savings on the voluntary Federal Tax withholding of \$140.70. The total Membership count for 65+ is 2615 as of March 31, 2022.

The estimated one-year fiscal impact on the total population of 2,615 eligible Oneida members is a savings of \$367,930.50 for the voluntary Federal Tax withholding and a 10-year fiscal impact to the total eligible Oneida member population of 2,615 is a total savings of \$3,679,305 in voluntary Federal Tax withholdings.

VII. Recommendation

Finance Department does not make a recommendation regarding course of action in this matter. Rather, it is the purpose of this report to disclose potential financial impact of this legislation, so that the Oneida Business Committee and General Tribal Council has the information with which to render a decision.

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

BC Resolution # _____

Elder Assistance Program Application Submission Period and Disbursement Timeframe for 2022

WHEREAS, the Oneida Nation is a federally recognized Indian government and a treaty tribe recognized by the laws of the United States of America; and

WHEREAS, the Oneida General Tribal Council is the governing body of the Oneida Nation; and

WHEREAS, the Oneida Business Committee has been delegated the authority of Article IV, Section 1, of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

WHEREAS, the Elder Assistance Program law (“the Law”) established the Elder Assistance Program as an approved program in accordance with the Oneida General Welfare law to govern how the Nation provides financial assistance to elders, pursuant to the Oneida General Welfare law; and

WHEREAS, it is the policy of the Nation to prioritize the general welfare needs of its elders and recognize that its elders possess unique and irreplaceable stores of knowledge, skill, culture, and experience that enhance and enrich the lives of every member of the Nation; and

WHEREAS, the interests of the Nation are advanced when its elders remain confident that their general welfare needs can be met; and

WHEREAS, the Law provides that the Oneida Business Committee, in consultation with the Oneida Trust Enrollment Committee, shall set forth through the adoption of a resolution an application submission period and disbursement timeframe for a distribution of assistance from the Elder Assistance Program; and

WHEREAS, the Law provides that the Oneida Trust Enrollment Committee shall determine the amount of assistance available to an eligible recipient from the Elder Assistance Program per any permitted distribution; and

Amount of Assistance for Disbursement

NOW THEREFORE BE IT RESOLVED, in accordance with section 1002.6-2 of the Elder Assistance Program law, the Oneida Trust Enrollment Committee determined that for the 2022 disbursement the amount of assistance available to an eligible recipient from the Elder Assistance Program shall be seven hundred three dollars and fifty-four cents (\$703.54).

Application Submission Period and Disbursement Timeframe

BE IT FURTHER RESOLVED, that in accordance with section 1002.5-2 of the Elder Assistance Program law, the application submission period for the 2022 disbursement of assistance from the Elder Assistance Program shall be from July 14, 2022, through September 7, 2022, with the disbursement of assistance to be made on or before September 30, 2022.

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Late Application Submission Period and Disbursement Timeframe

BE IT FINALLY RESOLVED, if an applicant does not submit an application for assistance from the Elder Assistance Program by September 7, 2022, the applicant shall be allowed to submit a late application for the 2022 disbursement of assistance from the Elder Assistance Program from September 8, 2022, through March 1, 2023, with the late disbursement of assistance to be made on or before March 30, 2023.



Statement of Effect

Elder Assistance Program Application Submission Period and Disbursement Timeframe for 2022

Summary

This resolution sets forth the amount of assistance available for an applicant, as well as the application submission period and disbursement timeframe for the 2022 disbursement of assistance from the Elder Assistance Program.

Submitted by: Clorissa N. Santiago, Senior Staff Attorney, Legislative Reference Office
Date: July 5, 2022

Analysis by the Legislative Reference Office

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

The Elder Assistance Program law provides that the Oneida Trust Enrollment Committee shall determine the amount of assistance available to an eligible recipient from the Elder Assistance Program per any permitted distribution. [10 O.C. 1002.6-2]. The Oneida Business Committee, in consultation with the Oneida Trust Enrollment Committee, is then responsible for setting forth, through the adoption of a resolution, an application submission period and disbursement timeframe for a distribution of assistance from the Elder Assistance Program. [10 O.C. 1002.5-2].

This resolution provides that in accordance with section 1002.6-2 of the Elder Assistance Program law, the Oneida Trust Enrollment Committee determined that for the 2022 disbursement the amount of assistance available to an eligible recipient from the Elder Assistance Program shall be seven hundred and three dollars and fifty-four cents (\$703.54). Then, in accordance with section 1002.5-2 of the Elder Assistance Program law, the resolution provides that the application submission period for the 2022 disbursement of assistance from the Elder Assistance Program shall be from July 14, 2022, through September 7, 2022, with the disbursement of assistance to be made on or before September 30, 2022.

Finally, this resolution addresses a secondary application submission period and disbursement timeframe for those individuals who are late and miss the first application deadline. This resolution provides that if an applicant does not submit an application for assistance from the Elder Assistance Program by September 7, 2022, the applicant shall be allowed to submit a late application for the 2022 disbursement of assistance from the Elder Assistance Program from September 8, 2022,

through March 1, 2023, with the late disbursement of assistance to be made on or before March 30, 2023.

Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws.

HANDOUT

Oneida Nation

Post Office Box 365

Phone: (920)869-2214



Oneida, WI 54155

1 **Oneida Nation Assistance Fund Application Submission Period and Disbursement Timeframe for**
 2 **2022**

3
 4 **WHEREAS,** the Oneida Nation is a federally recognized Indian government and a treaty tribe
 5 recognized by the laws of the United States of America; and

6
 7 **WHEREAS,** the Oneida General Tribal Council is the governing body of the Oneida Nation; and

8
 9 **WHEREAS,** the Oneida Business Committee has been delegated the authority of Article IV, Section 1,
 10 of the Oneida Tribal Constitution by the Oneida General Tribal Council; and

11
 12 **WHEREAS,** the Oneida Nation Assistance Fund law (“the Law”) established the Oneida Nation
 13 Assistance Fund as an approved program in accordance with the Oneida General Welfare
 14 law to govern how the Nation provides financial assistance to its members, pursuant to the
 15 Oneida General Welfare law; and

16
 17 **WHEREAS,** it is the policy of the Nation to prioritize the general welfare needs of its members and
 18 recognize that the interests of the Nation are advanced when its members remain confident
 19 that their general welfare needs can be met; and

20
 21 **WHEREAS,** the Law provides that the Oneida Business Committee shall set forth through the adoption
 22 of a resolution an application submission period and disbursement timeframe for a
 23 distribution of assistance from the Oneida Nation Assistance Fund; and

24
 25 **WHEREAS,** the Law provides that the Oneida Business Committee shall determine the amount of
 26 assistance available to an eligible recipient from the Oneida Nation Assistance Fund per
 27 any permitted distribution; and

28
 29 *Amount of Assistance for Disbursement*

30 **NOW THEREFORE BE IT RESOLVED,** in accordance with section 1003.6-2 of the Oneida Nation
 31 Assistance Fund law, the Oneida Business Committee determined that for the 2022 disbursement the
 32 amount of assistance available to an eligible recipient from the Oneida Nation Assistance Fund shall be as
 33 follows:

- 34 ▪ *General Disbursement.* A disbursement of assistance of one thousand three hundred dollars
 35 (\$1300) is available to any eligible applicant.
 36 ▪ *Additional Disbursement for Elders.* An additional disbursement of assistance of two thousand
 37 dollars (\$2000) is available to any eligible applicant who also meets the additional requirement of
 38 being age sixty-two (62) or older.
 39

40 *Application Submission Period and Disbursement Timeframe*

41 **BE IT FURTHER RESOLVED,** that in accordance with section 1003.5-2 of the Oneida Nation Assistance
 42 Fund law, the application submission period for the 2022 disbursement of assistance from the Oneida
 43 Nation Assistance Fund shall be from July 14, 2022, through September 7, 2022, with the disbursement of
 44 assistance to be made on or before September 30, 2022.

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Late Application Submission Period and Disbursement Timeframe

BE IT FINALLY RESOLVED, if an applicant does not submit an application for assistance from the Oneida Nation Assistance Fund by September 7, 2022, the applicant shall be allowed to submit a late application for the 2022 disbursement of assistance from the Oneida Nation Assistance Fund from September 8, 2022, through March 1, 2023, with the late disbursement of assistance to be made on or before March 30, 2023.



Statement of Effect

Oneida Nation Assistance Fund Application Submission Period and Disbursement Timeframe for 2022

Summary

This resolution sets forth the amount of assistance available for an applicant, as well as the application submission period and disbursement timeframe for the 2022 disbursement of assistance from the Oneida Nation Assistance Fund.

Submitted by: Clorissa N. Santiago, Senior Staff Attorney, Legislative Reference Office
Date: July 5, 2022

Analysis by the Legislative Reference Office

The Oneida Nation Assistance Fund law established the Oneida Nation Assistance Fund to govern how the Nation provides financial assistance to its members, pursuant to the Oneida General Welfare law. [10 O.C. 1003.1-1]. It is the policy of the Nation to prioritize the general welfare needs of its members and recognize that the interests of the Nation are advanced when its members remain confident that their general welfare needs can be met. *Id.* [10 O.C. 1003.1-2].

The Oneida Nation Assistance Fund law provides that the Oneida Business Committee shall determine the amount of assistance available to an eligible recipient from the Oneida Nation Assistance Fund per any permitted distribution. [10 O.C. 1003.6-2]. The Oneida Business Committee is then responsible for setting forth, through the adoption of a resolution, an application submission period and disbursement timeframe for a distribution of assistance from the Oneida Nation Assistance Fund. [10 O.C. 1003.5-2].

This resolution provides that in accordance with section 1003.6-2 of the Oneida Nation Assistance Fund law, the Oneida Business Committee determined that for the 2022 disbursement the amount of assistance available to an eligible recipient from Oneida Nation Assistance Fund shall as follows:

- *General Disbursement.* A disbursement of assistance of one thousand three hundred dollars (\$1300) is available to any eligible applicant.
- *Additional Disbursement for Elders.* An additional disbursement of assistance of two thousand dollars (\$2000) is available to any eligible applicant who also meets the additional requirement of being age sixty-two (62) or older.

Then, in accordance with section 1003.5-2 of the Oneida Nation Assistance Fund law, the resolution provides that the application submission period for the 2022 disbursement of assistance from the Oneida Nation Assistance Fund shall be from July 14, 2022, through September 7, 2022, with the disbursement of assistance to be made on or before September 30, 2022.

Finally, this resolution addresses a secondary application submission period and disbursement timeframe for those individuals who are late and miss the first application deadline. This resolution provides that if an applicant does not submit an application for assistance from the Oneida Nation Assistance Fund by September 7, 2022, the applicant shall be allowed to submit a late application for the 2022 disbursement of assistance from the Oneida Nation Assistance Fund from September 8, 2022, through March 1, 2023, with the late disbursement of assistance to be made on or before March 30, 2023.

Conclusion

Adoption of this resolution would not conflict with any of the Nation's laws.



Oneida Nation
Oneida Business Committee
Legislative Operating Committee
PO Box 365 • Oneida, WI 54155-0365
Oneida-nsn.gov



HANDOUT

AGENDA REQUEST FORM

- 1) Request Date: 07/05/2022
- 2) Contact Person(s): Shannon Davis
Dept: GAO
Phone Number: ext. 4324 Email: sdavis@oneidanation.org
- 3) Agenda Title: Emergency Amendment to Election Law
- 4) Detailed description of the item and the reason/justification it is being brought before the LOC:
Election Board is requesting a reduction in the number of signatures required on the election totals due to the number of Election Board members and alternates.

List any supporting materials included and submitted with the Agenda Request Form

- 1) Memo from OEB Chair
- 2) _____
- 3) _____
- 4) _____

- 5) Please list any laws, policies or resolutions that might be affected:
Election Law 102.10-2
- 6) Please list all other departments or person(s) you have brought your concern to:
None
- 7) Do you consider this request urgent? Yes No
If yes, please indicate why:
The 2022 Special Election is in 11 days

I, the undersigned, have reviewed the attached materials, and understand that they are subject to action by the Legislative Operating Committee.

Signature of Requester:

Shannon Davis

Please send this form and all supporting materials to:

LOC@oneidanation.org
or
Legislative Operating Committee (LOC)
P.O. Box 365
Oneida, WI 54155
Phone 920-869-4376



MEMORANDUM

To: Business Committee
From: Pamela Nohr, Election Board Chair
Date: July 5, 2022
Re: Emergency Amendments to Election Law

The Oneida Election Law 102.10-2 states: *At least six (6) Election Board members shall sign the election totals, which shall include the tape signed by the members of the Nation before the polls were opened per section 102.9-3.*

The Election Board has only received three (3) applications for the Alternate position, there is one (1) Board member that has recused themselves, and there is one (1) Board member that has resigned.

Request

In preparation for the July 16, 2022 Special Election, the Election Board is respectfully requesting the following emergency amendment to the Election Law:

- Reduce the number of Oneida Election Board members who are required to sign the election totals on machine counted ballots from six (6) to three (3).

Please let us know if any questions or concerns.

Yaw^ko

July 2022

July 2022							August 2022						
Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa
					1	2		1	2	3	4	5	6
3	4	5	6	7	8	9	7	8	9	10	11	12	13
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24	25	26	27	28	29	30	28	29	30	31			
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SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
Jun 26	27	28	29	30	Jul 1 9:00am Elder Assistance Program Law & Oneida Nation Assistance Fund Law	2
3	4 8:00am Holiday - Independence Day	5	6 8:30am LOC Prep (BC_Conf_Room) - Clorissa 9:00am LOC Meeting 1:30pm Oneida Nation Law	7	8	9
10	11 9:00am LRO Staff Meeting (Legislative Reference Office) - Clorissa N. Santiago	12	13	14 10:00am LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Santiago	15	16
17	18 9:00am LRO Staff Meeting (Legislative Reference Office) - Clorissa N. Santiago	19	20 8:30am LOC Prep (BC_Conf_Room) - Clorissa N. Santiago 9:00am LOC Meeting (BC_Conf_Roo	21	22	23
24	25 9:00am LRO Staff Meeting (Legislative Reference Office) - Clorissa N. Santiago	26	27	28 9:30am LOC Work Session (Microsoft Teams Meeting) - Clorissa N. Santiago	29	30
31	Aug 1	2	3	4	5	6